



City of Concord

City Council

Meeting Minutes - Final

Tuesday, October 15, 2019

7:00 PM

City Council Chambers
37 Green Street
Concord, NH 03301

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

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

At 5:30 p.m., Councilor Grady Sexton moved to enter into non-public session in accordance with RSA 91-A: 2, I (a) to discuss collective bargaining strategies and RSA 91-A: 2, I (b) for a non-meeting with legal counsel. The motion was duly seconded and passed with no dissenting votes.

At 6:47 p.m., Councilor Keach moved to adjourn the non-public session. The motion was duly seconded and passed unanimously with no dissenting votes.

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

1. Call to Order.

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

2. Invocation by Pastor Jonathan Threlfall, Trinity Baptist Church.
3. Pledge of Allegiance.
4. Roll Call.

Present: 12 - Councilor Candace Bouchard, Mayor Jim Bouley, Councilor Byron Champlin, Councilor Mark Coen, Councilor Amanda Grady Sexton, Councilor Meredith Hatfield, Councilor Allan Herschlag, Councilor Fred Keach, Councilor Jennifer Kretovic, Councilor Gail Matson, Councilor Zandra Rice Hawkins, and Councilor Brent Todd

Excused: 3 - Councilor Linda Kenison, Councilor Keith Nyhan, and Councilor Robert Werner

5. Approval of the Meeting Minutes.

September 9, 2019 City Council Meeting Minutes.

Action: Councilor Grady Sexton moved approval of the September 9, 2019 meeting minutes. The motion was duly seconded and passed on a voice vote. Councilor Rice Hawkins abstained from voting due to being absent during the September meeting.

6. Agenda overview by the Mayor.

Consent Agenda Items

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

Approval of the Consent Agenda

Action: Councilor Bouchard moved approval of the consent agenda with item 24 removed for discussion at the end of the agenda. The motion was duly seconded and passed with no dissenting votes.

Referral to the Recreation and Parks Advisory Committee

7. Communication from Esther Dickinson asking that consideration be given to changing the hours of operation of the White Park pool.

Action: This communication referred to the Recreation and Parks Advisory Committee.

Items Tabled for November 12, 2019 Public Hearings

8. Ordinance amending the Code of Ordinances; Title II, Traffic Code; Chapter 18, Parking, Article 18-3, Parking Meters, Schedule X, South State Street and Wall Street; together with report from the Director of Redevelopment, Downtown Services & Special Projects.

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

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, Blake 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 18, Parking, Article 18-1, Stopping, Standing and Parking, Schedule IX, parking prohibited during certain hours and months in designated places, Short Street and Summit Street; together with report from the Director of Redevelopment, Downtown Services and Special Projects.

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

11. Resolution appropriating the sum of \$496,800 as a transfer out to the Economic Development Reserve and accepting the sum of \$496,800 from the sale of that portion of the former Allied Leather Tannery Complex located at #33-35 Canal Street; together with report from the Director of Redevelopment, Downtown Services & Special Projects.

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

12. Resolution appropriating the sum of \$170,950, to include \$108,200 to the Project Inspection Fund, and \$62,750 to the General Fund for Fiscal Year 2019 retroactive to June 30, 2019, to be funded entirely from excess revenues and fund balance in the Inspection Fund and fund balance in the General Fund; together with report from the Deputy City Manager - Finance. (Revised resolution submitted)

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

13. Resolution appropriating the sum of \$52,341 for Police Department Roadway Safety Initiatives and acceptance \$52,341 in grant funds from the New Hampshire Highway Safety Agency; together with report from the Police Department.

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

14. Resolution appropriating the sum of \$50,000 for distribution to families and individuals in need in the Concord community and accepting the sum of \$50,000 as an anonymous donation; together with report from the Police Department.

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

15. Resolution appropriating the amount of \$35,000 for funding of a Homeland Security Training Exercise in conjunction with the Merrimack Valley School District and accepting the sum of \$35,000 in unmatched grant funding from the New Hampshire Department of Safety, Division of Homeland Security and Emergency Management; together with report from the Police Department.

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

16. Resolution appropriating the sum of \$15,536.94 to fund fifty percent of ballistic vest purchases made by the Concord Police Department and accepting the sum of \$15,536.94 from the Department of Justice, Office of Justice Programs, Bulletproof Vest Partnership Program; together with report from the Police Department.

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

17. Resolution appropriating the sum of \$12,500 for a library renovation/expansion conceptual analysis (CIP #68) and accepting the sum of \$12,500 from the Concord Public Library Foundation as a donation for this purpose; together with report from the Library Director.

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

18. Resolution appropriating the sum of \$8,500 for stewardship fees and operation costs for the Fisk Road Easement to Five Rivers Conservation Trust and authorizing the transfer of \$8,500 from the Conservation Reserve to the Conservation Property Fund; together with report from the Assistant City Planner.

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

19. Resolution approving the acquisition of open space property located off of Hot Hole Pond Road for conservation purposes and authorizing the expenditure of up to \$3,600 from the Conservation Trust Fund for this purpose, as recommended by the Conservation Commission; together with report from the Assistant City Planner.

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

From the City Manager

20. Positive Citizen Comments.

Action: This positive comments was received and filed.

Consent Reports

21. Diminimus gifts and donations report from the Library Director requesting authorization to accept monetary gifts totaling \$1,407.14 as provided for under the pre-authorization granted by City Council.

Action: This consent report was approved.

22. Diminimus gifts and donations report from the Parks and Recreation Director requesting authorization to accept monetary gifts totaling \$5,000 as provided for under the pre-authorization granted by City Council.

Action: This consent report was approved.

23. Diminimus gifts and donations report from the Planning Division on behalf of the Conservation Commission requesting authorization to accept a monetary gift totaling \$100.00 as provided for under preauthorization granted by City Council.

Action: This consent report was approved.

24. Report from the Deputy City Manager on the Next Steps for the Whitney Road/Hoit Road Intersection. (Pulled from consent by Councilor Hatfield)

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

25. October 2019 Economic Development Report from the Economic Development Director.

Action: This consent report was approved.

26. Report from the Director of Real Estate Assessments outlining a new mission and vision statement for the Assessing Department.

Action: This consent report was approved.

27. Quarterly current use change tax report from the Director of Real Estate Assessments.

Action: This consent report was approved.

28. Report from the Public Safety Board Report on a referral from City Council regarding a communication from Monique Scharlotte, Concord resident, expressing her concerns with the increased frequency of violent crime in Concord, the increasing opioid epidemic, and the expanding homeless/transient population.

Action: This consent report was approved.

Consent Resolutions

29. Resolution in recognition of the services of Joseph "Joe" Labontee.

Action: This consent resolution was approved.

30. Resolution authorizing the City Manager or his designee to apply for grant funding in the amount of \$6,000 through the New Hampshire Department of Safety Emergency Management Performance Grant Program for the purpose of developing a continuity of operations plan; and accepting the terms of the grant and appropriating funds award for this purpose; together with report from the Fire Chief.

Action: This consent resolution was approved.

31. Resolution repurposing the sum of \$41,593.90 for use on the 2016 Equipment Process Upgrades subproject (CIP #104), including \$17,349.50 from the 2016 SCADA software upgrades subproject (CIP #104) and \$24,244.40 from the 2017 Liquid Waste Receiving Facility Design subproject (CIP #104); together with report from the General Services Director.

Action: This consent resolution was approved receiving the required two-thirds vote.

Appointments

32. Mayor Bouley's proposed appointment to the Committee for Concord's Plan to End Homelessness. Ellen Fries

Action: This appointment was approved.

33. Mayor Bouley's proposed appointment to the Transportation Policy Advisory Committee. Terri Paige

Action: This appointment was approved.

End of Consent Agenda

Public Hearings

- 34A. 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, Library position; 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.

- 34B. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-2, Zoning Districts and Allowable Uses; Section 28-2-3, The Zoning Map; and Article 28-4, Development Design Standards; Section 28-4-5, Development of Attached and Multifamily Dwellings; together with a report from the City Planner. (Supplemental ordinance and report submitted for October agenda) (Amended supplemental ordinance submitted)

Action: City Planner Heather Shank provided a brief overview of the amended supplemental ordinance.

In regards to number one within section five, Councilor Herschlag indicated that it references that the Planning Board may waiver the requirement for non-residence use to the approval of a conditional use permit. He questioned whether it would be potentially possible for a developer to not have any non-residential use in the Gateway Performance District. Ms. Shank responded that the reason that this is in there is in the event that there is a relatively small parcel or if somebody wanted to sub-divide a very large parcel and doing a number of phases to a development and a portion that they want to have on their own lot, subdivided of a larger lot to be just the residential piece. She added that it is not intended to allow some large piece of property to become entirely residential.

Referencing 28-2-4, Councilor Herschlag pointed out that it already recognizes lots less than 20,000 square feet and that residential uses are permitted in the Gateway Performance District. He inquired whether this would require that non-residential would have to be on the first floor on a lot less than 20,000 square feet. Ms. Shank responded that it doesn't require first floor. Councilor Herschlag asked if they could have no commercial in the Gateway Performance District regardless of the size of the lot. Ms. Shank responded that to be correct.

Councilor Hatfield indicated that it was stated that the Conservation Commission was consulted and was not opposed. Ms. Shank responded that to be correct. Councilor Hatfield referenced Ms. Shank's August 27th report which states "the entire tract is considered a Conservation Focus Area by the recently updated Open Space Plan, indicating that the land should be conserved to the greatest extent possible, or that development of the tract should be sensitive to natural features".

She questioned whether this was a topic of conversation with the Conservation Commission. Ms. Shank responded yes indicating that this was the focus of their conversation. She stated that when that report was written, nobody went out to every single site that was evaluated as to the actual value; the open space document is intended to be a guideline for the Conservation Commission when they evaluate whether or not to purchase property or what to do with property that they may have purview over. She stated that, in this case, they did go out and visit the site.

Councilor Hatfield pointed out that there is also discussion within the report and the request about possibly conserving some of the land that's most valuable and questioned whether the Conservation Commission would participate in those discussions. Ms. Shank noted that when the petitioner came to staff, they came to them originally with a proposal that they are going to put this area under easement; they have continued under the train of thought that, eventually, that the lower portion that is still RO would go under easement.

Councilor Hatfield pointed out that the report states that the entire tract is considered the highest ranked habitat in the region for its habitat type by NH Fish and Game. She questioned whether this is still the case. Ms. Shank replied that this is what they got from their documents that the open space plan came from but is not sure if that is what NH Fish and Game would conclude if they went out there. Councilor Hatfield indicated that it appears that staff's sense is that there are regulations in place that would protect the riparian wetland resource and other natural resources of the area. Ms. Shank responded that to be correct.

Councilor Hatfield feels that one of the most interesting features is that potential walking trail along the Merrimack River. She questioned whether this is something that the Planning Board could require when they review the actual proposal. She wants to ensure that this is something that is achievable. Ms. Shank responded that they can certainly seek to make those conditions of approval. She always approaches these things as conversations with the property owner and the developer to see how these play out; this is something that they hope happens. Councilor Hatfield noted that there is a comment about a recommendation that they should ensure pedestrian access to Terrill Park and asked if the same would be true. Ms. Shank responded that this is a good condition to make as part of the approval.

Referencing the conceptual plan, Councilor Hatfield pointed out that it shows a mix of retail, coffee shops and different types of housing. She questioned whether this

is fair to think that this is an aspirational goal and that it could end up looking different. Ms. Shank noted that her understanding is that they represent footprints of retail space; whether or not they become mixed use, is up to considering what the market can support. In terms of the traffic impact that this will have on Manchester Street, Councilor Hatfield asked if this is something that the Planning Board would consider. Ms. Shank responded that she would defer to the Engineering Department during the site plan review process on these issues. She noted that this is something that they should consider through the Planning Board process.

Councilor Todd believes that the Conservation Commission may have concerns later down the road in terms of some of the things that Councilor Hatfield had mentioned. He noted that he was at the last Conservation Commission meeting and their decision, at that point, was not to render a decision at this time.

Councilor Herschlag believes that, within the CIP, there is an item for road improvements on Manchester Street at this intersection for approximately \$500,000. He asked how this would be assessed - would the full amount be assessed through the developer of this project or would it be proportional throughout that area. Mr. Aspell indicated that the development, if applicable, pays impact fees based on what is current to pay an impact fee for. He added that the Planning Board would look at the development operational from a traffic standpoint and require any improvements that would occur in there; they look at everything that is feeding this intersection and assess a comparable share as to what would be required for this type of development. Ms. Shank explained that they no longer have active traffic impact fees for commercial development but they still have impact fees for recreation and transportation for residential development. To the extent that there is residential components to this project, they would be required to pay recreational and transportation impact fees; these would go into a fund that's specifically designated for that quadrant of the city and those impact fees could be used for any project within that quadrant.

Mayor Bouley opened the public hearing.

Public Testimony

Attorney Ari Pollack, Gallagher, Callahan and Gartrell, indicated that, on behalf of the trust, he filed a rezoning petition which was reviewed with staff who concurred to much of what he was asking; they retooled items at a series of meetings. He noted that they presented their proposal to the Planning Board after the Council

made the referral; the Planning Board held a public hearing and also took a look at a proposed development concept which is possible based on the rezoning. He explained highlights of the rezoning request: rezone two parcels from RO to Gateway, amend the flood mapping section, amend the table of uses for the Gateway District to allow for multi-family and assisted living, add dimensional standards for those two uses. Attorney Pollack noted that both staff and the Planning Board approve of the request before Council this evening.

Councilor Herschlag referenced the former Macy's site in Bedford in which a developer was approved for multi-use development. He noted that they recently came back and indicating that what they got the approval for didn't appear to be working and went back to get a conditional use for all residences there. He asked for recommendations as to how they could protect the community that they would require a developer have a multi-use development on the parcel asking to be rezoned. Attorney Pollack responded that the city should rely on their site plan process and make sure that the plan is both compliant and offers the city some of the things that they are looking for; if somebody comes back after the fact to look for changes, think hard about whether they are within the city's interest.

Councilor Herschlag noted that there would be nothing to prevent them from coming initially to the Council and asking for that conditional use approval. He indicated that he is asking if there is a way that they can build into the Gateway District, for the zoning of the parcel being considered, that would meet what he feels is important for the city which is to have a mixed use development but not impede this project at the same time. Attorney Pollack replied that he is not sure what this would be. He doesn't know if anything, within the project, is going to change or how it would change. What he would say is that if the zoning isn't changed, there won't be mixed use and that this is the opportunity to have this occur on the site and in the area.

Councilor Herschlag asked if Attorney Pollack would be opposed to removing the conditional use wording so that there would be a requirement for any lot over 20,000 square feet to have at least twenty five percent non-residential. Attorney Pollack responded that his sense is to leave it the way staff has it. He noted that there hasn't been a section of the ordinance that he has focused on because the site is considerably larger than that; staff has been focused on that and he wouldn't want to speak for them.

Councilor Hatfield asked if this parcel is the subject of the pending request for this

revision from FEMA. Attorney Pollack responded not at this time. He noted that if the rezoning is approved, that is one of their next steps. Councilor Hatfield inquired whether they have been through this process before. Attorney Pollack responded that he has not personally but members of their team has including their civil engineering staff. Councilor Hatfield asked for a sense as to how long this will take. Attorney Pollack responded that it would take several months.

Questioning the concept drawing, Councilor Hatfield pointed out that, in addition to the trail, it shows a proposed canoe access. She asked, if this happens, whether it would be publicly accessible or for residents of the proposed development. Attorney Pollack responded that they don't feel strongly one way or another. He feels that this is something that would come out in the site plan process. Because this is a shoreland area around a shoreland regulated river, he knows that the Department of Environmental Services would have opinions about this. He stated that they have just tried to stay short of designating these items one way or another until they have input from the parties that they have to approach. From the developer's perspective, no particular preference.

Councilor Coen asked what the value would be if this is developed as proposed. Attorney Pollack responded that it would be much higher than it currently is. Councilor Coen noted that this would enhance the city's tax base.

Councilor Matson does like this proposal and feels that it follows many of the things that the Council has looked for which is mixed use. She would like to see the canoe access be available for public access as well. She feels that the proposal would provide a lot of opportunities to help the city with their tax base and to also bring some needed opportunities to this area.

Councilor Keach feels that this project is exactly the kind of development Concord needs to see. He asked if a lot of this market is due to the proximity to the interstate and would they expect a lot of the commercial driven by that traffic. Attorney Pollack responded that a lot of the appeal is driven by the proximity to the interstate and the DOT investment in the interchange that's at the bottom of Manchester Street. He doesn't know if it's on and off the highway type of development although they do have a significant residential component.

Mayor Bouley reminded the Council that what they have before them this evening is an amendment to the zoning ordinance; they are not the Planning Board and there will be a long process to have whatever is proposed approved in the future. He

stated that the question pending before them this evening is: is this zoning ordinance in the best interest of the City of Concord.

Roy Schweiker, resident, feels that this is an interesting project but shares many of the concerns that have been expressed this evening. He suggests, to the extent that they allow residential development in a Gateway District when not previously allowed, they also require mandatory contributions as part of this including the residential component of the Gateway District.

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

- 34C. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-5, Supplemental Standards; Section 28-5-50, Keeping of Chickens as Pets Accessory to a Residential Use; together with a report from the City Planner. (Ordinance referred to the Public Safety Advisory Board at the October 15, 2019 City Council meeting)

Action: City Manager Tom Aspell provided a brief overview.

Mayor Bouley opened the public hearing.

Public Testimony

Francesca Brown, Christa McAuliffe School fourth grader, feels that chickens can be pets. She pointed out that, depending upon a breed, a chicken is able to produce between 50 and 300 eggs per year. She indicated that chickens are quiet and not smelly. She stated that the droppings can be composted and, after sitting for six months, droppings are considered black gold as fertilizer. She added that chickens are omnivores and will eat ticks, mosquitoes, grubs and even rodents.

Stacey Brown, resident, asked the Council to keep an open mind in regards to keeping chickens. She noted that they recognize that the traditional perspective is that they belong on farms and not in cities but that is not the vision described in Concord's master plan, especially the energy chapter. She pointed out that the master plan envisions a city where people are recycling, composting, reducing their alliance on fossil fuels and growing their own food. To realize this vision, she noted that they have to re-examine how they do things and what steps they can take to achieve that goal of sustainability. She indicated that when they asked for a change in the ordinance, they were thinking of chickens primarily as pets, however, after reading the City Planner's report and the master plan, raising chickens is a step towards achieving many of their city's goals - composting, local food production

and reducing household waste (one chicken can eat seven pounds of food waste in a month). She noted that chickens will eat disease carrying pests such as ticks and mosquitoes. She supports the City Planner's report modifying the ordinance to align more closely with the master plan.

Councilor Coen noted that he agrees to what has been stated and his issue is the five feet versus what it is currently. He indicated that everything stated can be done now within the thirty feet. He asked what is being restricted by not having the five foot setback. Ms. Brown responded that the City Planner examined all the lots in the downtown area that are non-conforming, such as their property so they are unable to have chickens on their property with a thirty foot setback. Ms. Brown indicated that they personally had no complaints but received an anonymous complaint that they were not meeting the requirements of the ordinance. She stated that they would be able to have chickens if there was a five foot buffer.

Councilor Grady Sexton indicated that they worked together back in 2011 to pass this ordinance. She feels the same in terms of the environmental benefits of having backyard chickens but, at that time, this ordinance was originally brought to the Public Safety Board which reviewed it thoroughly determining that the thirty foot setback was appropriate. At that time, she pointed out that Ms. Brown stated in her testimony that would not be helpful to them because they had a twenty foot setback. Ms. Brown responded that she hadn't measured it at that time noting that she knew that their barn was absolutely thirty feet; she didn't think that it included the run space. She was thinking of them as farm animals but noted that they had a micro flock and her daughter began holding them, they became pets and they wanted to give them space to run around in so they didn't just keep them in the barn.

Councilor Kretovic indicated that the setback Ms. Brown had was twenty feet and it wasn't within the ordinance of the thirty feet. She asked if Ms. Brown could live with fifteen feet knowing that chickens require eight to ten square feet per chicken and the ordinance is up to five chickens. Ms. Brown noted that she actually measured what it would be if it were fifteen feet noting that it would be difficult because it would be a smaller space and would be confined to a much smaller area.

Councilor Champlin asked, if the city were to reduce the required buffer, would it be reasonable to have protection for neighbors regarding smells and other things they may not feel comfortable with so that the city could reasonably determine whether somebody's chickens were actually bothering somebody who was next

door or nearby. Ms. Brown responded that they are looking at chickens as pets and there is no ordinance saying how far dogs need to be from a property line. She would hope neighbors would try to work it out amongst each other first. Councilor Champlin asked if the answer is no. Ms. Brown asked if he is asking that there should be protections more than other pets. Councilor Champlin responded similar to other pets. Ms. Brown noted that she would say similar such as rabbits, dogs or cats - absolutely.

Councilor Hatfield asked if Ms. Brown is aware that the ordinance requires that chickens must be kept in a manner that will not disturb the use or enjoyment of neighboring lots due to noise, odor or other adverse impact. Ms. Brown responded yes pointing out that there is a letter from her neighbor in which the chickens were right up against the property of and she had no issue noise or smell; they were closer to this neighbor than anyone else.

Councilor Hatfield pointed out that the ordinance doesn't allow chickens to be kept in a front yard. In terms of manure management, she noted that there is also a provision that is specific about how much can be stored. She asked Ms. Brown to speak to this issue and how someone living on a small lot in a city would manage it in a way that wouldn't cause impact to their neighbors. Ms. Brown replied that it depends upon how often one cleans out a coop - they can pick up just the individual droppings, they could compost some of it or move it to another location. She stated that they had some in a bin but also gave it away because people wanted it. She doesn't recall having a lot of it.

Roy Schweiker, resident, feels that this proposed ordinance is poorly written and should be sent back to the Planning Board noting his concerns with the setbacks. He suggested that if someone wanted the five feet setback, it shouldn't be a zoning issue by right but a special exception so that someone would need to go before the Zoning Board.

Susan Craigie, Rumford Street, noted that this issue is about two neighbors who agree not to agree. She stated that there are so many non-conforming buildings in Concord where a chicken coop could be five feet from the property line and also five feet from somebody's house which she doesn't feel is enough space. She doesn't understand why the ordinances currently in place cannot be enforced now. She indicated that its fine if the city feels like giving a special exception but doesn't want Council to change the ordinance for all.

Bill Brochu, Rumford Street, noted that in looking at the ordinances for South Portland and Portland, they have conditions to the keeping of chickens rather than just the setback including required inspections, fees, maintenance, penalties for non-compliance, and other ancillary items to help ensure that a chicken operation in a backyard is done appropriately. He urged that some of these items be added in the proposed ordinance. He pointed out that the minimum lot size in Manchester, NH is a half acre with a twenty foot setback. He further pointed out that the University of NH has published a best management practice guidance and, within it, they recommend a minimum of a fifty foot setback. He feels that a flaw in the Planning Board's analysis was the logic that if you reduce the buffer size, you are not reducing the size of the problem - all the issues with chickens is the same and everything is concentrated into a smaller lot so, in effect, they are exasperating the problem. He noted concerns with varmints and predators pointing out that these ancillary things are not included within the ordinance. He isn't sure if its appropriate to consider chickens as pets. Regardless of what is decided upon for a final buffer, the nuisance odors that can and will eventually happen aren't going to know any boundaries.

Gina Brochu, Rumford Street, feels that if they take away a buffer, they are really taking away any protection that the neighbors have when there is a problem. Her concern is that not everyone is going to take really good care of their chickens and noted that it is very hard to speak up and say something when it isn't going well with a neighbor.

Councilor Hatfield inquired whether the Brochus are open to any reduction or is their position is that the ordinance should remain as is. Mr. Brochu responded that, as a minimum, he feels they should keep it as thirty feet but urged the Council to consider augmenting it to fifty feet.

Mr. Brochu distributed handouts from the University of NH. (handouts on file at the City Clerk's Office).

Catherine Pappas, resident, doesn't feel that chickens belong in the city and feels that the city should do the right thing.

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

- 34D. Public hearing regarding Senate Bill (SB) 191, Keno and the funding of full-day kindergarten in New Hampshire.

Action: Mayor Bouley recused himself from public hearings D and E due to a conflict stating that he represents a company named Intralot which sells lottery tickets and they are in consideration for a bid on sports betting.

There being no Council objection, Mayor Pro Tem Bouchard opened the public hearing for both items D and E.

Public Testimony

Andy Sanborn, The Draft owner and owner of a new start up charitable gaming operation called Win Win Win, indicated that he learned new information today - the Governor signed house bill 4 that redefines where the money would go from the money that is raised from Keno. He pointed out that when they had this discussion, Keno was presented to the legislature and to the people of the State of NH as a way to fund full day kindergarten; the bill signed by the Governor last week, strips away the money from going to kindergarten and instead sends all of the money into the general education fund. He noted that to take the money raised from Keno going from only kindergarten to education in general raises the question as to whether or not they should look to try to raise more money for education without actually raising taxes. He indicated that now that the question of where the funds will be used has changed dramatically, does it raise the question as to whether or not they should be doing what they can do to try to raise money for education. Mr. Sanborn noted that he first voted against Keno when it came out in the legislature because he was concerned about the haves and the have nots. He stated that he has competitors in nearby communities that implemented Keno into their establishments and, as a result, they are doing more business. He has been amazed of the sheer number of people that come into his establishment everyday questioning as to why he doesn't have Keno. He feels that passing Keno in this community is a win-win.

Mr. Sanborn indicated that the benefit on the sports bet bill is that the money, again, is going to go towards education. He has the same comments in regards to Keno on sports betting but the troubling part to him about this legislation is that, no matter what, people who want to bet on sports will be able to do it with the existing legislation; there is nothing this Council or community can do to try to prohibit this. He pointed out that there are three types of betting in the sports bet bill. He indicated that they have a conflict that a piece of legislation was constructed that allows 80 +/- percent of the actions to happen with no regard of whether or not there is a local option. He believes that if they are going to allow something to happen, shouldn't they be consistent. He stated that the net benefit from all of this

is that its going to help children.

Councilor Coen inquired whether one would be able to place a bet on their phone within 24 months. Mr. Sanborn responded that it would be within a month, in November. Councilor Coen questioned why they are putting this on a ballot if its going to happen anyway; why does the state want cities and towns to go through this process. Mr. Sanborn believes that the legislation should be everybody or nobody.

There being no further public testimony, the Mayor Pro Tem closed the hearings for items D and E.

34E. Public hearing regarding House Bill (HB) 480-N, Sports Betting in New Hampshire.

Action: Public hearing for this item held with item D.

Public Hearing Action

35. 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, Library position; together with report from the Director of Human Resources and Labor Relations.

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

36. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-2, Zoning Districts and Allowable Uses; Section 28-2-3, The Zoning Map; and Article 28-4, Development Design Standards; Section 28-4-5, Development of Attached and Multifamily Dwellings; together with a report from the City Planner. (Supplemental ordinance and report submitted for October agenda) (Amended supplemental ordinance submitted)

Action: Councilor Bouchard moved to substitute the ordinance with the amended supplemental ordinance. The motion was duly seconded and passed with no dissenting votes.

Councilor Matson moved approval of the amended supplemental ordinance. The motion was duly seconded.

Referencing Section V, Councilor Herschlag feels that the ability to go back to the Planning Board or go before the Planning Board initially and remove any commercial or non-residential uses is a concern. He hears from some of his fellow

Councilors that they are increasing the tax base but just because they are increasing the tax base doesn't mean that they are meeting the new expenses that are created by a particular project. He highlighted his comments in regards to Bedford that he brought up during the public hearing. He is concerned about the minimum of 25 percent and would like to see that 50 to 75 percent non-residential use. He would like to make an amendment that they remove the conditional use provision.

Councilor Herschlag moved to make an amendment that the last sentence within Section V, 1 be struck. The motion was duly seconded.

Councilor Kretovic appreciates what Councilor Herschlag is saying but stated that its hard to speculate what another town did versus what they do here in Concord. She noted that they are in the beginning stages of a potential gateway to their city. She feels that this is something that they should consider one stage at a time and see what comes out of this; supporting the amended ordinance, as presented, is the direction that they need to go in first before they can make long term speculative decisions.

Councilor Champlin understands and respects Councilor Herschlag's concerns. He noted that without bodies and workers they cannot fill jobs and if they can't fill jobs they can't attract businesses to the city and businesses are another way in which they expand the tax base. He stated that he will be voting against the proposed amendment so that they can move forward with this.

Councilor Herschlag reminded his fellow Councilors that this is within the Gateway Performance District only which is a very small section of their city. As he understands, the Gateway Performance District is to attract business and people and, as they look forward to moving forward with their form based code, he is attracted to the idea that they should have mixed uses not only in other areas but also in all areas. He stated that what he is requesting is that the waiver for non-residential uses be eliminated. He pointed out that it would still allow 75 percent residential development in that district.

The amendment failed on a voice vote.

Councilor Hatfield asked the City Planner if she was present to hear testimony about concerns that the city would not get the recreational benefits from this proposed development. Ms. Shank responded yes. Councilor Hatfield asked if she feels that they have the tools they need to ensure that they get those benefits or

does she feel that the ordinance needs to be changed. Ms. Shank responded that these are common things that they deal with during the site plan review process; these are common types of things that they try to address through conditions, negotiations and discussions with the developer. Councilor Hatfield asked whether this includes the use of recreational impact fees. Ms. Shank replied that recreational impact fees are allocated and believes they are used by the Parks and Recreation Director for specific projects. She hasn't dealt with them that much but for instance, easements, are something they've got conditions of certain approvals for plans. She noted that they can ask for a recreation easement on this piece of property or some type of allocation of rights that would be formalized in some way.

Councilor Herschlag asked if he was correct in understanding that there is no requirement for first floor commercial in the OCP anymore. Ms. Shank responded that to be correct. Councilor Herschlag questioned whether this carried over the Gateway. Ms. Shank responded yes. Councilor Herschlag feels that these are some fairly expansive changes even though they are small in wording and the amount of space they take up. He noted that they are in the process of implementing form based code and, not to hold up a project like this, but he wonders if it wouldn't make sense to sit down with their consultants from the form based code and ask them what their thoughts are moving forward with an ordinance like this and how this would fit in with the big picture with form based code when presented to the city. Ms. Shank responded that she has done this and they steered her within the direction that she is currently taking for maximum flexibility because they recognize that redevelopment can require some flexibility; they want to avoid giving the message that people need to go get variances for things. She added that a part of these amendments include the comprehensive development plan; currently they require a comprehensive development plan for subdivisions and performance districts. She has used that tool and modified it to also require a comprehensive development plan for residential uses proposed in the Gateway Performance, the Opportunity Corridor Performance, and the Office Performance District.

Councilor Herschlag noted that, if the goal is to have comprehensive development to have mixed use development, he doesn't understand why the provision is in there to allow conditional use permit to remove any commercial development. Ms. Shank responded that some developers choose to develop all buildings on one giant parcel which is what the petitioner is doing; some developers like to subdivide off their different uses and different buildings so you may actually have a

comprehensive development plan, which is why its required for sub-division, but your going to actually have a residential use on a lot; they don't want that person to have to get a variance.

Councilor Herschlag stated that he is concerned enough about this portion of the ordinance so he will not be supporting it.

Mayor Bouley noted that he had a similar question as Councilor Herschlag in terms of the change. Referencing staff's report dated August 27th, the Mayor read: "the changes being requested at this time are consistent with the anticipated changes to the zoning code through the update to the ordinance currently underway". He questioned whether staff stands by this statement. Ms. Shank responded yes.

Mayor Bouley complimented staff on the report pointing how important these zoning changes are and how serious they take them. He highlighted Section 28-10-4 noting that he is satisfied with the review of the Planning Board, the follow up memo, and all the work that has been done on this.

The amended supplemental ordinance passed with one dissenting vote by Councilor Herschlag.

37. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance; Article 28-5, Supplemental Standards; Section 28-5-50, Keeping of Chickens as Pets Accessory to a Residential Use; together with a report from the City Planner. (Ordinance referred to the Public Safety Advisory Board at the October 15, 2019 City Council meeting)

Action: Councilor Hatfield moved to table this ordinance. The motion was duly seconded.

Councilor Grady Sexton recommends that this item go back to the Public Safety Board noting that, under the ordinance and the purpose statement, they protect and promote the health, safety and welfare of residents of a neighborhood. She stated that this was not considered before the Planning Board but did get consideration in 2011 by the Public Safety Board and feels that its prudent to send it back that way.

Councilor Kretovic noted that she would also like the Planning Board to take into consideration the fact that there is a standard for a space that a chicken thrives in which is an eight to ten square foot area per chicken which they have never taken into consideration. She stated that she has neighbors that have chickens and she

never hears them, there is never a smell, and the kids in the neighborhood love them. She also appreciates that there are people in the neighborhood that do not like the chickens. She pointed out that there are specific reasons as to why a chicken acts up: a chicken will be noisy when one chicken dies and you bring in a new one, when dogs are barking at them, and when cats are coming into the neighborhood. She also feels that the importance, the care and the safety of the chickens and the fact that the ordinance specifically says up to five chickens. If they were to consider the size of the run, where the chickens need to be outside, they have nothing in this ordinance that addresses this whatsoever. She stated that, if they are going to take a step back to review it, they ought to take a full review and not just look at the safety and potential impacts to surrounding neighbors, they should also look at the potential of the chickens.

Mayor Bouley pointed out that they have a motion to table this item and also a recommendation that this item go back to the Public Safety Board and be referred back to the Planning Board for consideration.

Councilor Herschlag noted that it makes sense if this item is going to the Public Safety Board first and then a recommendation goes to the Planning Board and then back to Council but if going to both boards at the same time, he doesn't feel it meets the concerns.

Councilor Grady Sexton doesn't feel that it needs to go back to the Planning Board. She feels that they fully explored what they needed to within their purview. She feels that this needs to go to the Public Safety Board for the second tier of review that it warrants which is the piece on its impact of the welfare and safety of the neighborhood and residents and the health and safety of the chickens.

Councilor Kretovic believes that they would have differing points of view and feels that its reasonable to have the Public Safety Board talk about the safety aspects to the neighborhood but its also appropriate for the Planning Board to reconsider the impact to the area that the enclosed chicken spaces would be.

Mayor Bouley asked how the Council would feel if this goes to the Public Safety Board and they ask that the Planning staff to participate in this discussion.

Councilor Champlin asked if the motion before them, the motion to table, is independent of referring this to the Public Safety Board. If he votes for the motion to table he questioned whether it sits on the table or is it referred.

Mayor Bouley indicated that he took it all as one motion: to table it and refer it to the Public Safety Board.

The motion to table and refer to the Public Safety Board passed with one dissenting vote.

Reports

New Business

Unfinished Business

38. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance, Article 28-2, Zoning Districts and Allowable Uses, Article 28-4, Development Design Standards, Article 28-5, Supplemental Standards and Glossary for the purpose of regulating development of solar collection systems; together with report from the Assistant City Planner. (Revised report submitted) (Supplemental ordinance and report submitted along with communication from the Conservation Commission) (Action tabled at the September 9, 2019 Council meeting)

Action: This item remains on the table.

Comments, Requests by Mayor, City Councilors

Councilor Champlin applauded the efforts at Arnie's to create a public mural. He noted that it was a terrific collaborative effort organized by the Chamber of Commerce, funded by the NH Charitable Foundation, created/designed by people in the community and painted by people in the community. It's a tribute to the history and the traditions of the Heights.

Councilor Rice Hawkins indicated Steve White from Portsmouth Street asked her to pass on his thanks to the city and General Services for their work on culvert repair. She noted that General Services staff reported back to all the neighbors to let them know there would be loud noises and obstruction on the street.

Councilor Bouchard noted that it was relayed to her that there are seniors within the community that would like to participate in the senior programs at the citywide community center but not all are retired. She would like to refer this issue to the Recreation and Parks Advisory Committee to explore whether it is possible to do some programming at night for those seniors that are still working. There was no Council objection to this.

Councilor Hatfield thanked Matt Walsh and the Parking Committee for their attention to detail going street by street through the downtown. She is appreciative to the people who have come out the public meetings and encouraged them to stay involved. She indicated that several individuals have approached her with concerns about the pedestrian accidents that they have had recently. She wondered if the Transportation Policy Advisory Committee (TPAC) or the Public Safety Board are considering what the city might do about pedestrian safety, if anything needs to be done and, if not, whether this could be referred to the appropriate committee. Mayor Bouley indicated that this request is appropriate for TPAC pointing out that there is a subcommittee on pedestrian and bike safety.

Councilor Kretovic noted that there is a little over a month before the golf course closes, the grass golf play. She announced that, beginning in January, they will have the winter leagues that start with their indoor simulators. She noted that they do fill up fast and advised that people sign up quickly. She indicated that there is always time for people that are interested in learning how to golf to sign up with a pro.

Mayor Bouley asked the press to remind people in the community that it would be wise to go to the city's website and sign up for alerts.

Comments, Requests by the City Manager

City Manager Tom Aspell indicated that the Board of Directors at the New Hampshire Municipal Association are looking for members and wondered if anyone on the City Council would be interested in serving. He asked that if anyone is interested in serving on the board that they contact him.

Consideration of items pulled from the consent agenda for discussion

** Item 24 was pulled from the consent agenda for discussion.*

24. Report from the Deputy City Manager on the Next Steps for the Whitney Road/Hoit Road Intersection. (Pulled from consent by Councilor Hatfield)

Action: Referencing page two of the report, Councilor Hatfield read that: "staff will use a portion of the funds to engage the services of a surveyor" and asked for clarification that this is from the \$100,000 that the City Council has already approved for this project. Carlos Baia, Deputy City Manager-Development, responded that to be correct. Councilor Hatfield asked staff to give a sense of how much of those funds of the \$100,000 a surveyor would require. Mr. Baia

responded that they are currently in the process of soliciting quotes for this work and feels that it is premature to speculate. Councilor Hatfield inquired whether staff will come back to the Council each time they want to use those funds. Mr. Baia explained that there are various points to this process; if the Council wishes to move forward on the endeavor, there will be a number of opportunities staff will be coming before the Council because there are different appropriations that will be sought. Depending upon how Council would like to fund this process, there will be public hearings for that. Councilor Hatfield asked why the state has not put this project into the ten year plan. Mr. Baia replied that the state has a metric that they use for what they consider important enough to be on their ten year plan; the state looks at this project candidly as a development oriented project to generate tax base. The state doesn't see it as critical to their needs. Councilor Hatfield asked if staff agrees that the city has received some public comments about safety needs at the intersection as it already exists. Mr. Baia responded that to be correct noting that they have communicated this multiple times to the Department of Transportation.

Councilor Hatfield moved approval of the report. The motion was duly seconded.

Councilor Herschlag noted that the engineering study recommended a signal at the intersection and also incorporated Exit 17 improvements. He asked where the city is at with discussions from the state. Mr. Baia responded that staff met with the Department of Transportation as well as the consultants both for Mr. Rauseo and the city three weeks ago. At the time he was struck that there wasn't a lot of conversation about any changes to those on ramps at Exit 17 which, to him, was a relief in a sense because this would have been a very complicated endeavor dealing with the federal government. He is hopeful that they won't have to do much of anything.

Councilor Bouchard questioned whether it was unusual for the city to pay for an intersection for a developer. Mr. Baia responded that the city has a long history doing public/private partnerships in many different forms. Mr. Aspell added that if the only benefit was going to be a developer and a piece of property, he believes it would be unusual. He stated that it does open up a lot of whole other property for many years to come.

Councilor Herschlag noted that it wasn't too long ago that it was recommended and approved that they eliminate traffic impact fees; if they are not going to have impact fees, then those costs are going to fall on the city with the understanding that new

revenue generated by that development will be able to cover those improvements. If they have concerns about using tax dollars for improvements that are utilized by a new development, he noted that they should perhaps look once again at instituting traffic impact fees for commercial development.

Referring to the report, Councilor Todd pointed out that one of the items on the list for potential funding mechanism is impact fees.

The report passed with no dissenting votes.

Consideration of Suspense Items

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

Referral to the Planning Board

Sus1 Communication from Orr & Reno on behalf on their client, Banks Chevrolet Cadillac Buick GMC and its real estate affiliate, Daval Realty Associates, L.P., requesting consideration be made to amending the Code of Ordinances creating a separate landscape standard for motor vehicle display areas.

Action: Councilor Kretovic moved to refer this communication to the Planning Board. The motion was duly seconded and passed with no dissenting votes.

Adjournment

The time being 9:09 p.m., Councilor Kretovic moved to re-enter into a non-meeting with legal counsel in accordance with RSA 91-A: 2, I (b). The motion was duly seconded and passed with no dissenting votes.

The non-meeting with legal counsel was adjourned at 9:53 p.m.

Councilor Kretovic moved to enter into a non-public session in accordance with RSA 91-A: 3, II (d) to discuss property acquisition. The motion was duly seconded and passed with no dissenting votes.

At 10:13 p.m., Councilor Champlin moved to adjourn the non-public session relative to property acquisition. The motion was duly seconded and passed unanimously with no dissenting votes.

Councilor Kretovic moved to seal the minutes. The motion was duly seconded

and passed unanimously.

Councilor Keach moved to adjourn the City Council meeting at 10:13 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 March 25, 2019 Public Safety Board Approved Meeting Minutes.

Action: Information item received and filed.

Inf2 June 18, 2019 Concord's Plan to End Homelessness Meeting Minutes.

Action: Information item received and filed.

Inf3 August 8, 2019 Golf Course Advisory Committee Draft Meeting Minutes.

Action: Information item received and filed.

Inf4 September 16, 2019 Concord Public Library Trustee Meeting Minutes.

Action: Information item received and filed.

Inf5 September 16, 2019 Fiscal Policy Advisory Committee Draft Meeting Minutes.

Action: Information item received and filed.

Inf6 Communication from the New American Africans and the Organization for Refugee and Immigrant Success (ORIS) notifying the City of Concord of their merger.

Action: Information item received and filed.

Inf7 Communication from Comcast notifying the City of Concord about some upcoming changes in service.

Action: Information item received and filed.