



City of Concord

City Council

Meeting Minutes

Monday, March 11, 2019

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 to begin at 5:30 p.m.

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

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

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

At 6:49 p.m., Councilor Matson moved to exit non-public session . The motion was duly seconded and passed unanimously with no dissenting votes.

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

The time being 6:50 p.m., Councilor Bouchard moved to adjourn the non-public session.

1. Call to Order.

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

2. Invocation by the Reverend Peter Hey, Wesley United Methodist Church.

No one was present for invocation.

3. Pledge of Allegiance.

4. Roll Call.

Present: 13 - Councilor Candace Bouchard, Mayor Jim Bouley, Councilor Byron Champlin, Councilor Mark Coen, Councilor Allan Herschlag, Councilor Fred Keach, Councilor Linda Kenison, Councilor Jennifer Kretovic, Councilor Gail Matson, Councilor Keith Nyhan, Councilor Brent Todd, Councilor Robert Werner, and Councilor Zandra Rice Hawkins

Excused: 1 - Councilor Amanda Grady Sexton

5. Approval of the Meeting Minutes.

February 11, 2019 City Council Meeting Minutes.

Action: Councilor Kretovic moved approval of the February 11, 2019 City Council meeting minutes. The motion was duly seconded and passed with no dissenting votes.

6. Canvass of the Votes for the Special Municipal Election held on March 5, 2019.

City Clerk Janice Bonenfant highlighted the Canvass of the Votes report.

Councilor Champlin moved to accept the report. The motion was duly seconded and passed with no dissenting votes.

7. Ceremonial swearing in of newly elected members of City Council.

Newly elected Ward 10 Councilor Zandra Rice Hawkins and Councilor At Large Byron Champlin were sworn in by Mayor Bouley.

Councilors Rice Hawkins and Champlin thanked their families and the public for their support.

- 7.5 Resolution in honor of the services of retired Captain/Communications Supervisor Ernest Petrin.

Mayor Bouley presented a resolution in honor of the services of retired Captain/Communication Supervisor Ernest Petrin.

8. Merrimack County Presentation.

Ross Cunningham, Merrimack Valley Department of Corrections Superintendent and Administrator, indicated that its their goal to begin educating on what is received for services from the county. He noted that there are currently 827 employees that are managed and supervised throughout the county. He highlighted programs implemented within the Department of Corrections including a reentry

program and Hero Pups program. Matt Lagos, Merrimack County Nursing Home Administrator, was present.

Councilor Keach, referencing the Department of Corrections relationship with Riverbend, asked if the connection is drug abuse and mental health issues. Mr. Cunningham responded over 80 percent.

Mayor Bouley inquired as to how many residents the nursing home had. Mr. Lagos responded that they are licensed for 290 and presently have 284.

Councilor Kenison commended them for their innovations.

Councilor Herschlag stated that he attended the open house when the old jail was renovated for the substance abuse treatment program noting that he is impressed with the outcomes of this program. He wonders if there are other inmates in the population, that don't have substance abuse issues, in which similar programs would prepare them for reentry into the community. Mr. Cunningham explained that jail populations deal with pre-trial individuals and sentenced up to a year; this is the split in this state between a prison and a house of corrections environment. He stated that they do not do a lot of work with the pre-trial population but they will support them. He noted that they have case managers that work in the facility that will work with people to help get employment and housing. He indicated that 85 percent of the jail population comes back to their community; 29 percent of last year's population came out of the City of Concord; last year they processed over 2,500 individuals in and out of the facility.

9. Agenda overview by the Mayor.

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

Approval of the Consent Agenda

Action: Councilor Kretovic moved approval of the consent agenda with items 17 and 21 removed to the end of the agenda for discussion. The motion was duly seconded and passed with no dissenting votes.

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

Referral to the Planning Board

10. Communication from BCM Environmental & Land Law, PLLC on behalf of Jeff

and Nicole Kipphut requesting consideration be given to rezoning property located at 15 Frost Road, Tax Map 471Z-22, owned by Marion Clattenburg as trustee, from the Single-Family Residential District (RS) to Medium Density Residential District (RM).

Action: Communication referred to the Planning Board.

Items Tabled for April 8, 2019 Public Hearings

11. Ordinance amending the Code of Ordinances, Title I, General Code; Chapter 1, Government Organization, Article 1-5, Fees, Fines, and Penalties; together with non-ordinance fees and a report from the Deputy City Manager-Finance.

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

12. Ordinance amending the Code of Ordinances, Title IV, Zoning Code; Chapter 28, Zoning Ordinance, Appendix A, Application Fees for the Zoning Board of Adjustment (ZBA); together with report from the Deputy City Manager-Finance.

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

From the City Manager

13. Positive Citizen Comments.

Action: This positive comments was received and filed.

Consent Reports

14. Diminimus gifts and donations report from the Library Director requesting authorization to accept monetary gifts totaling \$1,574.68 as provided for under the pre-authorization granted by City Council.

Action: This consent report was approved.

15. Diminimus gifts and donations report from the Parks and Recreation Director requesting authorization to accept monetary gifts totaling \$28,009.04 as provided for under the pre-authorization granted by City Council.

Action: This consent report was approved.

16. City Council 2018-2019 Quarterly Priorities Report from the City Manager.

Action: This consent report was approved.

17. Report from the Fiscal Policy Advisory Committee regarding LSR 2019-0006. (Pulled from consent by Councilor Herschlag)

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

18. Report from Deputy City Manager Finance recommending the FY 2020 Finance Committee budget review Schedule and Guidelines.

Action: This consent report was approved.

19. Report from the Deputy City Manager for Development concerning the annual Economic Development Report.

Action: This consent report was approved.

20. 2019 Beaver Meadow Golf Course Daily Fee Rate, Outing and Tent Fee Recommendations from the Golf Advisory Committee.

Action: This consent report was approved.

21. Report from the General Services Director in response to a referral regarding public water line extension on River Road to service 64, 65, 67, 69 and 71 River Road. (Communication from residents of River Road submitted) (Pulled from consent by Councilor Todd)

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

22. Report from the Deputy Fire Chief requesting an expansion of scope for the 2018 Central Station Roof Replacement project, CIP #252.

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

23. Report from the Parks and Recreation Director and the Cemetery Administrator regarding cemetery division operations.

Action: This consent report was approved.

24. Report from the Fire Chief recommending the City Manager be authorized to enter into an agreement with Concord Fire Fighters Association Local 1045 to relocate the City's "Fire Gong".

Action: This consent report was approved.

25. Report from the City Clerk recommending City Council set a date of June 4, 2019 for a Special Election to be held specific to the current Ward Four City Council vacancy.

Action: This consent report was approved.

Consent Resolutions

26. Resolution authorizing the City Manager to apply for a grant for up to \$111,112 with the New Hampshire Department of Transportation (NHDOT), Bureau of Aeronautics, for the purpose of completing a Terminal Area Study at the Municipal Airport as programmed in the Capital Budget; together with report from the Associate Engineer.

Action: This consent resolution was approved.

Appointments

27. Mayor Bouley's proposed appointment to the Parks and Recreation Advisory Committee. Geoa Geer

Action: This appointment was approved.

28. City Manager's Proposed Appointment to the Library Board of Trustees. Charles O'Leary

Action: This appointment was approved.

29. City Manager's Proposed Appointment to the Heritage Commission. Michael M. Dunn

Action: This appointment was approved.

End of Consent Agenda

Public Hearings

- 30A. Resolution authorizing the Annual Appraisal of Real Estate at Market Value per RSA 75:8-b; together with report from the Director of Real Estate Assessments. (Public hearings to be held in February and March with action taken in April)

Action: City Manager Tom Aspell indicated that this is a continuation of the public hearing held in February.

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

- 30B. Ordinance amending the Code of Ordinances; Title II, Traffic Code; Chapter 18, Parking, Article 18-1, Stopping, Standing and Parking, Section 18-1-6, Parking Prohibited at All Times in Designated Places, Schedule I, by amending Schedule I to add / modify parking prohibitions on Nivelles Street; together with report from

the Director of Redevelopment, Downtown Services & Special Projects. (Public testimony received) (Action table at the March 11, 2019 City Council meeting)

Action: City Manager Tom Aspell provided a brief overview.

Mayor Bouley opened the public hearing.

Public Testimony

Attorney Tom Colantuono, Bianco Professional Association, indicated he is present to represent Patricia and David Daniels. He provided a brief description of the properties and the background indicating that the Daniels have never had a problem with their neighbors or parking until a year and a half ago when the Ruiz family moved next door. He provided a description of the layout of the properties and street indicating that its a street that is open to parking with a 50 foot right of way which provides plenty of parking on both sides of the street. Attorney Colantuono indicated that the Ruiz family insists on parking two to three of their vehicles on the street opposite his clients home to block the area along his frontage preventing his clients friends, guests and family from parking near the house. He stated that the problem is that the Ruiz family doesn't recognize the city's 50 foot right of way and believes that he owns all the way to the pavement. He referenced a Parking Committee meeting which resulted in a gentleman's agreement dated August 16th in which each family would have two spaces on each side of the street. He stated this worked for a few weeks until city staff sent out a follow up from the meeting pointing out all the ordinance requirements for city parking. Attorney Colantuono feels that Mr. Ruiz didn't like the ordinances and the agreement fell apart. He highlighted some of the issues between the property owners and parking. He stated that they believe that the proposed ordinance before the Council is a bad idea; it appears to target only his clients and will unnecessarily inconvenience them. In summary, Attorney Colantuono stated that a strong statement needs to be made that the behavior by the Ruiz family will not be tolerated.

Councilor Coen asked if going back to the gentleman's agreement would resolve the issue. Attorney Colantuono responded that if it doesn't then his suggestion is for the city to start enforcing the ordinances. Councilor Coen asked if Attorney Colantuono's clients followed the agreement. Attorney Colantuono responded yes stating that they are willing to follow this agreement.

Referencing Ms. Cooper's written testimony, Councilor Champlin pointed out that

it requests that City Council hold off on any changes to the parking ordinance so that litigation can be instituted. He wonders what they hope to do through litigation. Attorney Colantuono responded that he is not sure he read it the same way; he is not sure of her intent. He stated that he spoke to Ms. Cooper this morning and she wanted him to put forth the suggestion that Council either deny this or table this until she can finish getting the documents from her right to know request. He feels that if Council does what they recommend, he doesn't feel that there is any need for litigation on this issue.

Councilor Champlin asked if Attorney Colantuono had a sense of what Ms. Cooper hopes to gain through her right to know request. Attorney Colantuono responded that a lot of things happened after the August meeting in which nobody was privy to. He stated that they were not aware of what was happening behind the scenes.

Councilor Kretovic asked where Ms. Cooper resides on this street. Attorney Colantuono responded that she lives in the south end approximately four blocks away. Councilor Kretovic asked if she was impacted by any of this. Attorney Colantuono responded no stating that she is a close friend of his clients. Councilor Kretovic inquired as to what he has been retained for. Attorney Colantuono responded that he was retained to be at this meeting.

Councilor Herschlag asked if anyone has come across any documents from when the street was constructed that showed that a hammerhead was proposed. Attorney Colantuono responded not to his knowledge. Councilor Herschlag asked if loud music had been reported to the police. Attorney Colantuono responded no explaining that his clients don't want to get involved in endless hassles with Mr. Ruiz who they feel is intimidating. Councilor Herschlag noted that it's his understanding that the request from Ms. Cooper to have this tabled was to give her an opportunity to further review and respond in regards to the information she received per her right to know request. Attorney Colantuono feels that this was her intent but he doesn't feel that it needs to be tabled if it's denied. Councilor Herschlag asked if, in any situation, it would be appropriate for City Council to legislate a change because of a neighbor or a neighborhood dispute. Attorney Colantuono responded that maybe when both neighbors are violating the laws but certainly not when one neighbor has been there for 25 years with no problems.

Councilor Rice Hawkins noted that the Ruiz mailbox had been moved and questioned where it was previously located. Attorney Colantuono responded that

he believes its been in several different places noting that there has been talk about joining them in the same place. He stated that this is not the issue here because the post office doesn't have an issue. Councilor Rice Hawkins asked if he was aware that the US Postal Services did request that the Ruiz's move their mailbox because they were having trouble with delivery. Attorney Colantuono was unaware of this.

Derek Ruiz, Nivelle Street, pointed out, per other neighbors, that previous residents of his property had disputes with the Daniels family. He stated that one of his concerns is that there is no place for large vehicles such as delivery or trash vehicles to turn except in resident's driveways because the cars that are along the street block the end of the street for turns. He stated that there are occasions in which he doesn't receive mail due to his mailbox being blocked. Per the post master's request, he relocated his mailbox in front of the Daniels house which was purposely blocked. Due to not receiving mail or his medication, he opened up a post office box and gave the post master six months to come up as to where he wanted him to put his mailbox. He stated that the mailbox is currently where the post master instructed him to put it. He spoke to the Disabilities Rights Center and they want to be informed as to the outcome of this meeting due to him being a disabled vet and not being able to receive his medication. He highlighted the parking issues on the street. His main concerns include: not receiving mail, the Daniels loose dogs, his neighbors drinking on his property.

Referencing the gentleman's agreement, Councilor Coen asked what in the agreement worked and what did not work. Mr. Ruiz responded that it worked for a bit but when his mailbox was being blocked it upset him. Councilor Coen noted that it sounds like the mailbox was the number one item that blew this agreement up. Councilor Coen asked if Mr. Ruiz received any written items from the postal service. Mr. Ruiz responded that he has one email from the post master that instructed him to place the mailbox in front of the Daniels house. At the end of the six month for the po box, he indicated that the post office suggested that he place his mailbox after the Daniels mailbox on his side - four to five feet away from theirs. Councilor Coen asked if the mailbox controversy was taken care of, would Mr. Ruiz have any other issues with the original agreement. Mr. Ruiz responded that the only other issue would be the trucks having to pull into the driveways. Councilor Coen stated that it appears that the mailbox issue is what blew up the agreement.

Mayor Bouley indicated that he drove down the street today and saw that a red vehicle was blocking the mailbox. He inquired as to who's car this was. Mr. Ruiz

responded that he believes that it was Ms. Cooper's vehicle.

Councilor Herschlag asked if it is because Mr. Ruiz objects to the Coopers parking on his side of the street or where they are parking on the side of the street where his property is. Mr. Ruiz responded that if they park on the side without blocking the mailbox, there is nothing that he can do. Councilor Herschlag asked if it is because there is nothing that he can do or would it be okay with him as long as they weren't blocking the access to the mailbox or driveway. Mr. Ruiz would like it if his mailbox wasn't blocked. Councilor Herschlag asked how it would impact a UPS truck turning around without turning into a driveway if there were no parking on either side of the street. Mr. Ruiz responded that there is a fourteen foot easement on either side to loop around. Councilor Herschlag inquired whether they would still have to drive off the pavement in order to turn around. Mr. Ruiz responded yes.

Dave Daniels, Nivelles Street, responded that there were no problems where the mailbox was located when Mr. Ruiz moved in. He indicated that Mr. Ruiz moved it directly in front of his own house and from what he understands, the post office will have ride alongs and believes that the post office noticed his mailbox had been moved and may not have been delivering his mail until his mailbox was moved to another location. He believes that they couldn't come to an agreement with the postal service so that is when Mr. Ruiz got his post office box - after which he placed the mailbox where it currently is per the post office's request. Mr. Daniels added that his mailbox was on his side of the street where he was instructed to put it in which Mr. Ruiz didn't like. The post office allowed them to move it on their side of the street as a compromise. He stated that the drinking is a non-issue it's on their deck and not in the street and the dog issue did not involve his dog.

Councilor Coen asked if the mailbox was the issue with the gentleman's agreement falling apart. Mr. Daniels responded no stating that he feels that it's Mr. Ruiz's way or no way.

Patricia Daniels, Nivelles Street, noted that when Mr. Ruiz had moved the mailbox in front of their house, Ms. Cooper came over and parked there in the early morning to drop off items and was well gone before the mail comes. She stated that she is always aware of the mailbox and tries to ensure that vehicles are not parked in front of it.

Councilor Kretovic pointed out that there is obviously tension and asked if the

parking issue is going to solve this tension. Mr. Daniels responded no. Ms. Daniels responded that she had hopes that they would get along when the Ruiz family moved in. Councilor Kretovic stated that she believes that they are all getting a sense of what is happening in the neighborhood and she is trying to get a sense as to how the City Council finds peace and resolution in their neighborhood through the ordinances that they have controlled to support either side. Ms. Daniels stated that they will not block Mr. Ruiz's mailbox or driveway. Mr. Daniels indicated that they are trying to accommodate.

Referencing photos, Councilor Herschlag stated that he doesn't want it interpreted that they shouldn't park on the other side of the road but if they didn't park on the other side, there appears that from the driveway from 37 to the property going up to 5, there doesn't seem to be any driveways along their side of the road that would be interfered with. He asked if this is something that would work for them and might take away some of the heat. Ms. Daniels responded that this is a suggestion that they have all thought of too. She noted that there are two driveways between them and the end of the street; their neighbor at 37 has a business, has large trailers, and would interfere with him. Referencing the next house, Ms. Daniels indicated that they entertain quite often, have a large RV, and would impose on them.

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

- 30C. Ordinance amending the Code of Ordinances; Title II, Traffic Code; Chapter 17, Vehicles and Traffic, Article 17-6, Miscellaneous Rules, Operation of Motor Vehicles; Section 17-6-7, Truck Routes in the City of Concord; together with report from the Traffic Engineer.

Action: City Manager Tom Aspell provided a brief overview.

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

- 30D. Resolution rescinding the bond authorization of \$1,150,000 for the Multi-Purpose Skate House at White Park (CIP #51) and establishing the funding sources for this project as follows: \$575,000 from donations, \$175,000 from Recreation Reserve, and \$400,000 from General Fund Unassigned Fund Balance; and appropriating \$400,000 from General Fund Unassigned Fund Balance to transfer to CIP #51; together with report from the Deputy City Manager - Finance.

Action: City Manager Tom Aspell provided a brief overview.

Councilor Keach asked how the fire of this building impacted this budget. He inquired as to what caused the fire. Mr. Aspell responded that it does not impact this budget.

Matt Walsh, Director of Redevelopment, Downtown Services & Special Projects, confirmed that the fire does not impact the budget; the cost of the fire, preliminarily between \$115,000 to \$120,000, is being handled through the insurance company of the construction manager as well as the two sub-contractors. It is his understanding that the fire was caused by accidental disposal of rags that were used in staining.

Mayor Bouley opened the public hearing.

Public Testimony

Jennifer Frizzell, skatehouse fundraising committee, provided a brief update on the skatehouse fundraising efforts and where they are at. She distributed a handout outlining the status of the campaign. She pointed out that the total combination of cash and pledges has reached in excess of \$377,000. Kristen Van Ostern was present. *(Handout on file at the City Clerk's Office).*

Councilor Herschlag inquired as to how the donation portion is going to fit in with the payment for the construction costs. Mr. Aspell responded that the city will cover the entire project cost without having to go out and bond it. As this money comes in, he explained that they will see this as a revenue. Councilor Herschlag continued to question the funding. Brian LeBrun, Deputy City Manager-Finance, explained, for example, that the Council will approve a capital project in June, do the project in September but not go out and bond it until January; the city has ample cash flow in order to make the payments for the construction to cover them in this time period. He stated that this time period is a little bit longer and there will be cash coming in from the donations for that period of time. He indicated that the city has, in hand, \$197,000 in cash already in the bank and that coupled with what the city is going to fund through fund balance and the recreation reserve will leave a little bit of a gap of a few hundred thousand dollars. Mr. LeBrun noted that they can handle this cash flow for a period of time, in this case a few years, in order to allow for the donations to come in; they will post the funding in the proper places - it's funding versus cash flow.

Mayor Bouley recognized and thanked the skatehouse fundraising committee.

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

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

Action: City Manager Tom Aspell provided a brief overview.

In regards to upgrading to the solid floor, Councilor Kenison imagines that would increase use and the payback would be worth doing this. Mr. Aspell responded that it would make it more versatile and attract all different types of users.

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

- 30F. Resolution adopting the All Veteran's Tax Credit for the City of Concord pursuant to the provisions of RSA 72:27-a; together with report from the Director of Real Estate Assessments.

Action: There being no Council objection, the City Clerk read the titles for items F and G together.

City Manager Tom Aspell provided a brief overview.

Regarding the blind exemption, Councilor Herschlag inquired whether Administration has made contact with any of their legislative delegation regarding the thought that there perhaps should be a testing applied to this. Mr. Aspell responded that the Council has not suggested to do that. He added that this was brought up approximately a decade ago and not received fondly.

Mayor Bouley opened the public hearings for items F and G. There being no public testimony, the Mayor closed the hearings.

- 30G. Resolution modifying the Elderly Exemption for the City of Concord pursuant to the provisions of RSA 72:27-a; together with report from the Director of Real Estate Assessments.

Action: Public hearing for this item taken with public hearing item F.

Public Hearing Action

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

Action: No action taken on this item. Action to be taken at the April City Council meeting.

32. Ordinance amending the Code of Ordinances; Title II, Traffic Code; Chapter 18, Parking, Article 18-1, Stopping, Standing and Parking, Section 18-1-6, Parking Prohibited at All Times in Designated Places, Schedule I, by amending Schedule I to add / modify parking prohibitions on Nivelles Street; together with report from the Director of Redevelopment, Downtown Services & Special Projects. (Public testimony received) (Action table at the March 11, 2019 City Council meeting)

Action: Mayor Bouley indicated that he has three suggestions: a) they go back to the agreement; b) someone from the city reach out to the postal service to find out where they believe the mailbox should go; c) if there are no complaints and everyone gets along, in June he will provide hamburgers and hot dogs for a picnic at the end of Nivelles Street. Lastly, he asked that this item be tabled this evening and if no one can get along the Council can bring it back up. He feels that there are some reasonable solutions to this and they can work through them.

Councilor Champlin moved to table this item. The motion was duly seconded.

Councilor Keach feels that its a mistake if Council dives into this level to solve a neighborhood problem that should be solved through negotiation and compromise. He feels its a bad precedent and supports tabling this item.

Mayor Bouley noted that the Council has a responsibility to ensure that emergency vehicles can access streets and that plow trucks can get down streets to provide a safe travel way.

Councilor Coen inquired as to how they can communicate Council's action to table to all the parties.

Mayor Bouley indicated that the Clerk's Office notifies parties of action items by the Council. He stated that he is going to reach out to the neighbors personally.

Councilor Kretovic asked if Ms. Cooper is going to be included in notification so

she understands that they are tabling this item. She feels that she is a part of this as well.

Mayor Bouley indicated that he is going to notify the people who live on the street.

Councilor Herschlag inquired whether people can park in the city's right of way in front of their house. Mr. Aspell responded yes.

Councilor Kenison asked if anyone from the Fire Department or General Services has ever expressed concerns. Mr. Aspell responded that he is not aware of any concerns. Matt Walsh, Director of Redevelopment, Downtown Services & Special Projects, indicated that he has not heard of any concerns.

Councilor Nyhan noted that he sympathizes with everyone involved. He further thanked everyone involved in this issue including staff, the Parking Committee and the Police Department. He thanked the Mayor for the least offensive way to move this forward. He believes that the gentleman's agreement that they negotiated back in August is the most effective way to move forward on this issue. Councilor Nyhan feels that tabling this issue will allow the Council to make a decision if they have to in good conscious.

The motion to table this item passed with no dissenting votes.

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

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

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

Action: Councilor Champlin moved approval. The motion was duly seconded.

Councilor Herschlag thanked staff for the way they are funding this. He stated that this is a perfect example as to why they put these funds where they do so they don't have to impact the tax rate in the future.

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

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

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

Councilor Herschlag indicated that he would have liked to have seen this come along when the tent was first approved. While he voted against funding for the tent, which was approved, he feels that it doesn't make any sense not to add funds that would maximize the use of the tent. He would have preferred to see all this as one appropriation as opposed to being split up.

Councilor Kretovic noted that the committee looked at what is going to make the tent successful which is that they have to have a base; a good solid foundation. She stated that the committee feels this is the best way to move forward.

Mayor Bouley pointed out that the interest for larger golf tournaments has increased dramatically. He stated that the Golf Pro has booked events that used to be held elsewhere. Based upon questions received, he feels this may become a popular place.

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

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

Action: Councilor Matson moved approval. The motion was duly seconded. Councilors Coen and Nyhan took Rule 6-A. The motion to approve passed on a voice vote.

37. Resolution modifying the Elderly Exemption for the City of Concord pursuant to the provisions of RSA 72:27-a; together with report from the Director of Real Estate Assessments.

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

Reports

New Business

38. Presentation by the City Solicitor in response to a request from Councilor Herschlag, that the City Solicitor meet with City Council to review City Council Rules 6 a, b, c & d and City Ordinance 1-6, Code of Ethics.

Action: City Solicitor Jim Kennedy provided a detailed powerpoint presentation. *(Presentation on file at the City Clerk's Office)*

In regards to confidential information, Councilor Keach inquired whether there is criminal liability involved or just an ethics violation. Mr. Kennedy responded that it would be removal from the Council; it would be a violation of the oath of office therefore subject to dismissal from the public body.

Councilor Werner asked how honoraria is treated for example if one of them is invited to a conference in their capacity for their knowledge as a Councilor. He asked if this would be considered a gift. Mr. Kennedy responded that speaking engagements are not considered gifts.

Councilor Kretovic indicated that she has an existing confidentiality agreement with her employer in order to protect the confidentiality of their clients. She stated that there are times in which a matter would appear before the Council and she would need to recuse herself because she has direct relationship with those clients. She added that she also has a confidentiality agreement that she is not to disclose who the client is. She questioned whether its enough to say that she has a professional conflict of interest without disclosing specifically what the conflict is, who the conflict is with, etc. Mr. Kennedy responded that, under the ordinance, it's very clear that they are supposed to state what the conflict is; under the ordinance he would say no it's not enough.

Mayor Bouley asked if Councilor Kretovic would have to name the client and break her work confidentiality agreement. He noted that disclosure is just that -

disclosure; it's letting the public know and that they are not participating. Referencing a slide, Mr. Kennedy read "whenever any matter becomes before any City of Concord public body, no officer elected shall introduce, ask questions, speak on or vote on any motion, ordinance, resolution or issue in which he or she has a conflict of interest". He noted that Councilor Kretovic's question is "and shall disclose the reason for the conflict of interest prior to the public body's discussion on the matter." He stated that the reason for the conflict of interest can simply be one has a conflict of interest due to my employment.

Councilor Kretovic pointed out that she was referencing a professional conflict of interest. Mr. Kennedy responded that would be sufficient to indicate so.

Regarding 6-a, Councilor Herschlag noted that this references the Code of Ethics. The Code of Ethics references who's included in that. He indicated that when they get to a, b, c and d it talks about City Councilors not members of the Council. He wonders if 6 a, b, c and d also include the Mayor or just City Councilors. Mr. Kennedy construes through the Council's adoption of the Council Rules for it to apply to the Mayor and City Council members. He doesn't feel that there was any question when Council adopted this that they were excluding the Mayor from the Council rules.

Councilor Coen inquired as to why this wouldn't have been written within the Council Rules.

Councilor Herschlag provided a history noting that when the Rules Committee revised the City Council rules, the wording came out changed. He pointed out that it used to state the City Council and for some reason it was changed to City Councilor. He noted that when the Code of Ethics is referenced, it is clear that 6-a includes the Mayor but whether this carries on to the other sections of 6 is why he posed the question.

Mayor Bouley feels that the conversation is a good conversation and what he would like to do is refer this to the Rules Committee to take up some of the nuance items and if there are suggested changes, the committee level may be the best place to hash out some of these items and then come back to the Council.

Mayor Bouley moved to refer this item to the Rules Committee. The motion was duly seconded.

Councilor Herschlag asked, as a member of the Council, Council is going to vote on it, and you have a conflict, if a Councilor wouldn't be able to participate at the committee level and wouldn't be able to testify as an individual before a committee. He questioned whether he was correct in his understanding of this. Mr. Kennedy believes he is correct on the sub-committee level; as to whether or not the Councilor can testify at the committee level, he noted that they have to go back to the conflict of interest for that definition. He read "when a person takes an action or makes a decision that would affect his or her financial interest" He noted that if you are conflicted, you are not taking an action necessarily when you are testifying. He pointed out that they made clear that when they testify, at least under the Council rules, you are not doing so in your capacity as a City Councilor and not doing so on behalf of or representing the City Council.

Councilor Kretovic asked hypothetically that if they are in non-public session and take notes and someone leaves the meeting with those notes which are accidentally seen by somebody. She questioned whether this is intentional or unintentional; what are the consequences. Mr. Kennedy, highlighting their oaths and non-public session, responded that he doesn't necessarily see issues with accidents.

Referencing Councilors Coen and Nyhan's recusal from voting on item 36, Mayor Bouley indicated that the language is within item 53 of the City Charter which explains official interest of contracts: no elected or appointed official or employee of the city shall take part in decision concerning the business of the city in which the officer or employee has a financial interest aside from the salary as such, direct or indirect, greater than any other citizen or taxpayer.

The motion to refer this item to the Rules Committee passed with no dissenting votes.

Unfinished Business

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

Action: This item remains on the table.

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

Action: Councilor Kretovic moved to remove this item from the table. The

motion was duly seconded and passed with no dissenting votes.

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

Councilor Herschlag noted that he would like the word "intends" within the last paragraph of the report to be changed to either required or shall. He stated he is not comfortable approving this until he hears community input and until they have a final report on this.

Councilor Herschlag moved to amend the last paragraph from "staff intends to return" to "staff shall return". The motion to amend the report was duly seconded and passed with no dissenting votes.

The motion to approve the report with the amendment passed with no dissenting votes.

Comments, Requests by Mayor, City Councilors

Councilor Todd announced that there is a Central NH Bicycling Coalition event that is coming up called the Bikes of March on March 14th from 6:30 p.m. to 8:30 p.m.

Councilor Kretovic noted that the community lost Lieutenant Kevin Tucker who was with the Penacook Rescue Squad. He fully believed in the importance of community and was involved with the Holiday Parade, the Christmas Tree lighting ceremony, as well as contributing the walkie talkies for Market Days for many years.

Councilor Champlin noted that he has been driving on a lot of the roads throughout the city over the past few months. He has noticed that potholes are being filled quickly throughout neighborhoods. He acknowledged General Services for keeping up with them.

Councilor Coen noted that while he was at the Beaver Meadow Golf Course, cross country skiers had come into the snack bar and commended the golf course for the grooming of the trails for cross country skiing.

Mayor Bouley thanked the election workers for running the election last Tuesday. He recognized the Clerk's Office staff for their work during the election.

Mayor Bouley recognized several members of General Services: Brian Deschenes, Wade Heath, Matt Bumford, Zach Montoya, Thaxter Palmer, Dale Morse, Steve DelBene for their work clearing the streets of snow.

Comments, Requests by the City Manager

City Manager Tom Aspell pointed out that he feels that residents of the community would be interested in the information contained within item 23 in regards to the cemeteries within the city.

Consideration of items pulled from the consent agenda for discussion

** Items 17 and 21 have been pulled from the consent agenda for discussion.*

17. Report from the Fiscal Policy Advisory Committee regarding LSR 2019-0006.
(Pulled from consent by Councilor Herschlag)

Action: Councilor Herschlag indicated that the concern he had was that there was a comment made at the end of the report that it is not necessary to have these bills added to the Council agenda for referral to various departments and committees. In regards to whether these should be referred to other departments and committees, he agrees that they shouldn't be a big process unless its an issue that the Council feels is controversial or they need more input from. If there is an issue that the city is going to testify at the legislature, either for or against, he feels that an item on the consent agenda would give notice to the Council and the public for comment. He feels that when City Administration is representing the city's position on an issue when testifying the Council should be informed; this would provide the Council with the opportunity to comment, agree or disagree, to approve or disapprove. He noted that an item on the consent agenda should be sufficient allowing any Councilor or communication from a member of the community with a concern to comment. In the past, he indicated that the Council would appoint a Councilor to represent the city at the New Hampshire Municipal Association's (NHMA) legislative setting agenda session yet the Council would need to discuss NHMA's agenda priorities or provide guidance to our representative. At last month's meeting, he believes the Mayor may have misconstrued his intent when he stated that the NHMA posts a bulletin each week in regards to municipal activities which should save the Administration a little time and energy to having to write about these items when another organization is posting them. His concern was not the posting of legislation items but when Administration follows the recommendations of the NHMA or independently takes a position on an issue the Council should be informed. He stated that NHMA has taken positions on issues that Administration has supported and he himself has held a different view. It is for

this reason he feels that it is important that Administration inform Council of the position that they are taking when testifying. It is not his intention to prevent Administration from testifying on an issue in a timely manner when it will impact the city either in a positive or negative manner. His intent is that Council is made aware of testimony to the legislature when Administration is representing the city's position on an issue. He thanked Administration and the City Manager for all the work they do to ensure that the legislature takes into account how it impacts their community when they are passing legislation.

Councilor Herschlag moved to accept the report. The motion was duly seconded.

Councilor Coen asked how many bills go through legislature in a year.

Councilor Kretovic indicated that the number is thousands.

Councilor Coen is wondering how, logistically, this would work for Council on the consent agenda noting that there could be pages and pages of bills. He feels that if there was a problem he could appreciate this but he hasn't seen one. He questioned how this would work and who would get them this information.

Councilor Herschlag clarified that he is not looking for a list of legislation from the legislature. He doesn't know why Council would object to the community being informed of the issues that the Administration takes a position on when they testify at the legislature for the city. He feels that staff is savvy enough to put the bill in one sentence and provide a link to the full bill. He is not looking to create extra work or many pages; his intention is that the Council and the public have a right to be aware of how the city is representing them in front of the state.

Councilor Kenison feels it is important for the Council to know what legislation Administration thinks should be followed in the interest of the city. She also feels that its appropriate, as Council members, if they see something that they believe may be in the interest of the city and to bring it to the attention of City Administration.

Councilor Rice Hawkins inquired as to how many bills the city typically weighs in on. City Manager Aspell responded that it is hundreds.

Councilor Bouchard pointed out that many city employees testify on a regular basis and are all positions that the city takes as part of their priorities, not anything

controversial.

City Manager Aspell indicated that the city has been doing it this way for over fifty years and now there is a problem. He doesn't see what the problem is and doesn't see where city staff has gone and testified opposite of what the Council's desire is. He stated that they can change this but it will take a lot of staff time to do what is being asked. He noted that they work with state legislators throughout the entire process.

Mayor Bouley spoke in regards of the amount of bills that go through the legislature and how the city's process works. He doesn't feel that there is nothing wrong with staff letting Council know with bigger ticket items and would be great for the community to understand that the city is plugging away for their benefit to make sure that they are returning tax dollars back for paving, maintenance, bridges, etc.

Referencing info item 14 on the agenda, City Manager Aspell asked if Council thought this was a good example. Council agreed this would be a great example.

Councilor Herschlag envisions that it would be a note such as that Administration supported or testified against a bill.

Councilor Champlin noted that he sits on the Chamber of Commerce's state government relations committee explaining that they sit down on a monthly basis with the Chamber's lobbyist to go over the legislation that they are tracking, not in great detail because there is a great deal of it. He suspects that if they were to follow Councilor Herschlag's well meaning but somewhat ingenuous suggestion, their eyes would be glazing over with the amount of material they would be looking over.

Councilor Kenison noted that, due to her lack of knowledge, she withdraws her support of being informed of every piece of legislation. On the other hand she feels that if a member of the Council feels that there is a bill that maybe should be followed that isn't being followed, it should be brought forth to the Council. There was agreement in regards to this.

Councilor Keach feels that Council establishes policy and direction and hires smart individuals to execute this. He doesn't feel they need all this detail because presumably staff knows what the Council wants to accomplish.

Councilor Todd agrees with this only if its at the City Manager's discretion as to which matters he brings before the Council or notifies them about. He is concerned with a lot of staff time which translates into a lot of tax dollars. He doesn't believe that people are interested in spending a lot of tax dollars to try to get information that is in fact within the public domain; all state activities is public information.

The motion to approve the report passed with no dissenting votes.

21. Report from the General Services Director in response to a referral regarding public water line extension on River Road to service 64, 65, 67, 69 and 71 River Road. (Communication from residents of River Road submitted) (Pulled from consent by Councilor Todd)

Action: Councilor Todd thanked city staff for trying to look back in time for information that was difficult to ascertain about what originally happened on this water line. He wanted to also highlight testimony supplied by the residents. His hope is that the residents will continue to ask questions of city staff for help, advisement, etc. and seek any and all other opportunities to address their water issues.

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

Councilor Herschlag indicated that he received a communication from one of the neighbors today and they requested information on the estimate, if available, to be emailed to them. He appreciates staff willingness to work with the neighbors.

The motion to approve the report passed with no dissenting votes.

Consideration of Suspense Items

Action: Councilor Champlin moved to suspend the rules to take up this suspense item not previously advertised. The motion was duly seconded and passed with no dissenting votes.

- Sus1 Request from the Concord Energy and Environment Committee asking that City Council and City Administration consider supporting bills on municipal aggregation and an increase in the net metering cap. (Communication from Mayor Craig submitted)

Action: Councilor Werner indicated that at the Energy and Environment

Committee's meeting on March 6th, they decided that the best course of action, in terms of two pieces of legislation of particular interest to the city in terms of meeting their energy goals that have been adopted, would best be discussed this evening. He stated that the two pieces of legislation are being considered soon: municipal aggregation bill and net metering bill. He provided an overview of each of these items noting that they are supported by the New Hampshire Municipal Association.

Councilor Werner moved to accept the report and that Council ask City Administration to support this legislation and communicate this to the legislature. The motion was duly seconded.

Referencing the Renewable Energy Legislation document, Councilor Coen pointed out that page one, bullet two reads that "New Hampshire's municipal aggregation statute is flawed". He stated that for him its not a fact, its someone's opinion that it is flawed. Referring to opt in and opt out, he stated that its setting up a utility for the city to staff and run. He finds it unique that the way it works is that, if the city decides to do this what happens with the opt in versus opt out is that everyone is automatically assigned. He noted that the opt out is that you have to make a choice of pulling out of it after already being in it. He stated that within documents it says that the success in the past in other states is that if its an opt out, they have 80 percent participation; if its an opt in, they have 30 or 40 percent participation. He feels that it's really important to understand what he is supporting noting that the information provided is very vague. He noted that there are pluses and minuses with the net metering bill - some people are in agreement and some people are not which is what is good about a discussion of the Council. He can't support of this because of the lack of information presented.

Councilor Herschlag noted that, in looking at the information provided, any member of the Council or community could look up these bills and understand what the actual legislation is and not just the recommendations from the Energy and Environment Committee. He feels that this is the way the system is supposed to work; people have the opportunity to comment on it and is not sure why this report would preclude anybody from following up on additional information and why it would preclude somebody from not following up on additional information.

Councilor Kretovic appreciates Councilor Coen's point of view noting that she did not look up the legislation. She read the report and attachments and was not aware that its an opinion that the legislation is flawed. She feels that the difference is that

they have Administration that provides a report to them on anything in particular which lists the pros, the cons, and the recommendations; they are provided both sides. Since Councilor Coen raised that point, she is concerned that there is perhaps a slanted view.

Councilor Bouchard supports the concept of these bills but hasn't read them. Her bigger concern is that this is a slippery slope and believes that this can start something where they see bills that could benefit the city one way or another. She pointed out that they have 15 State Representatives that are doing their jobs in protecting the interest of the city and if they have concerns about bills they should either be contacting the City Manager in coming forward with this. She feels that they are doing a disservice to the citizens because they are taking a recommendation from an advisory committee on a complicated subject. It's not that she disagrees with the position, she is wondering, long term, where do they go from here.

Councilor Kenison understands some reservations about the aggregate bill and confusion around this. She feels that with the net metering, its such a direct benefit to the city to increase the net metering amount. She would like to get an opinion from the City Manager as to whether or not he feels that this is an important issue to follow.

City Manager Tom Aspell responded that this is the type of bills that he doesn't feel comfortable in which he can definitively say this is what the opinion of the City Council is therefore the committee needs to bring it to Council. At the same time, there are items moving very fast. Knowing what he knows and the way he looked at them, these are local options so he would want the Council to have these options; they don't currently have the option, they have only the 1MW. He doesn't see how this could hurt the city to have the option. In terms of the municipal aggregation, he has many of the same concerns not in terms of the "flawed" language but in terms of could they see the city eventually having another department - this would be taking this to a different direction. He stated that this isn't his decision its the Council's decision so by giving the local option to do this, Council would then have that decision to make. He's not really concerned about either one of these passing in legislation but would be concerned about the implementation.

Councilor Champlin stated what's significant to him is that there are some really good points raised relative to consideration of this proposal but he feels what is

significant here is that it comes from the Energy and Environment Committee and is closely tied to a goal they all bought into which is to be 100 percent reliant on renewable energy. As the City Manager has indicated, he pointed out that there are opt in provisions so its not that they will be automatically required to adopt any of these but this is another tool in their tool kit as they attempt to reach these renewable energy goals. He noted he will be voting in favor of this.

Councilor Werner stated that, even with the municipal aggregation bill, it provides the authority for a community to then examine whether they want to take that step; its not as if by supporting this bill that they even support the concept in all regard. It simply gives the municipalities across the state to then consider that and make that decision at a later time as to whether they want to take that path or not.

Councilor Rice Hawkins noted her support of the proposal explaining that she feels it fits in line with their vision for the city and believes that the committee has done some work to figure out how they can advance the goals that they've outlined for Concord. She feels that this discussion was informative and one of the things that she would suggest, informally, is that moving forward the City Manager or an appropriate department provide some guidance as to what they see as the opportunities and challenges.

City Manager Aspell indicated that he would like to do this but explained that it is not possible on a suspense item; it needs to be part of the regular agenda so that they have time to discuss this.

The motion to accept the report and ask City Administration to support this legislation and communicate this to the legislature passed with one dissenting vote by Councilor Coen.

Adjournment

The time being 10:24 p.m., Councilor Rice Hawkins moved to adjourn the meeting. The motion was duly seconded and passed with no dissenting votes.

A true copy; I attest:

*Michelle Mulholland
Deputy City Clerk*

Information

Inf1 October 16, 2018 Transportation Policy Advisory Committee, Public Transportation Subcommittee Meeting Minutes.

Action: Information item received and filed.

Inf2 November 5, 2018 Transportation Policy Advisory Committee Bicycle & Pedestrian Meeting Minutes.

Action: Information item received and filed.

Inf3 November 15, 2018 Transportation Policy Advisory Committee Meeting Minutes.

Action: Information item received and filed.

Inf4 December 3, 2018 Transportation Policy Advisory Committee Bicycle & Pedestrian Meeting Minutes.

Action: Information item received and filed.

Inf5 January 7, 2019 Transportation Policy Advisory Committee Bicycle & Pedestrian Meeting Minutes.

Action: Information item received and filed.

Inf6 January 24, 2019 Transportation Policy Advisory Committee Meeting Minutes.

Action: Information item received and filed.

Inf7 February 4, 2019 Concord Public Library Board of Trustees Meeting Minutes.

Action: Information item received and filed.

Inf8 February 6, 2019 Executive Council Meeting Report from Executive Councilor Andru Volinsky.

Action: Information item received and filed.

Inf9 February 14, 2019 Golf Course Advisory Committee Draft Meeting Minutes.

Action: Information item received and filed.

Inf10 February 26, 2019 Fiscal Policy Advisory Committee Draft Meeting Minutes.

Action: Information item received and filed.

Inf11 Xfinity Channel Updates notification from Comcast Cable.

Action: Information item received and filed.

Inf12 Communication from the University of New Hampshire notifying City Council that Marc Moore has achieved the status of Safety Champion.

Action: Information item received and filed.

Inf13 Concord Parks and Recreation Departments Spring Brochure.

Action: Information item received and filed.

Inf14 Communication from Governor Christopher T. Sununu.

Action: Information item received and filed.