

## BOARD OF MAYOR AND ALDERMEN

November 25, 2008

7:30 PM

Mayor Guinta called the meeting to order.

The Clerk called the roll. There were fourteen Aldermen present.

Present: Aldermen M. Roy, Gatsas, Sullivan, J. Roy, Osborne, Pinard,  
O'Neil, Lopez, Shea, DeVries, Garrity, Smith, Ouellette, Murphy

### CONSENT AGENDA

Mayor Guinta advised if you desire to remove any of the following items from the Consent Agenda, please so indicate. If none of the items are to be removed, one motion only will be taken at the conclusion of the presentation.

### Approve under supervision of the Department of Highways

A. Pole petitions:

#11-1223 2 poles on 45 Ellis Street

### Informational to be Received and Filed

- B. Monthly Bulletin from the City of Manchester Health Department for November 2008.
- C. Communication from Jay Minkarah, Economic Development Director, submitting a quarterly report for period ending September 30, 2008.

## REFERRALS TO COMMITTEES

### COMMITTEE ON LANDS & BUILDINGS

- D.** Communication from Phil Greazzo, Chairman of the Manchester Dog Park Association, requesting approval to use open space on Bass Island for a city dog park.

*HAVING READ THE CONSENT AGENDA, ON MOTION OF ALDERMAN O'NEIL, DULY SECONDED BY ALDERMAN OSBORNE, IT WAS VOTED THAT THE CONSENT AGENDA BE APPROVED.*

**Mayor Guinta** stated I'm going to, without objection from the Board, prior to getting into the regular agenda, just insert an item of New Business that was addressed at CIP regarding Crosbie Street. We have residents here in the gallery and rather than keep them here for the evening, if we could just have a quick discussion and recap of that issue for their edification.

**Alderman M. Roy** stated I guess I'll lead off. I know Senator Gatsas has some comments also. To me this falls to the absolute most basic reason why there is government, to help and protect those that you're sworn to serve. A lot of us stood in the water down on Crosbie Street back in September and I for one, after digging for six hours in front of my mother's house to get a trench, thought the pain and suffering of that storm was over. Come to find out there were people that were suffering a lot worse than I ever thought I could. The water that flooded that pond, no matter who is to blame for actions regarding the dam and the water that ended up in the 13 basements...The water comes off of the hill from the VA Hospital to every street on the east side of Fairfield. That is an entire quarter of Ward 1 which dumps water into Goldfish Pond. If those residents had been treated properly, none of their basements would have flooded, but being the catastrophic storm that it was, if that dam had been open at Goldfish Pond, all of that water would have

ended up in Dorrs Pond and we would be looking at a tragedy far worse than unfortunately these people suffered. Their suffering did more for this City than has been recognized, and I applaud their actions for not only keeping a cool head but dealing with it, dealing with city and state officials and working forward to a resolve. One of the problems that came out of that flood was that their pump station, through no fault of theirs, was flooded. It is a sewer pump. It is a private pump. They maintain it. They pay for it and they keep it in good working order because that is how the Planning Board designed their neighborhood. They didn't choose to put it next to the pond on private land. It was put there by the builder/developer who did the property back in, I believe, the late eighties. It has come before CIP to find a way to pay \$17,000 to help out this neighborhood to take the burden off of them in these hard economic times. They have a relationship with the pump maintenance person, who also does work for the City. They would like to keep it as a very positive relationship. I do believe when the final report comes out in January, the state will be found negligent and any monies expended will be able to be recouped from the state, so I would ask this Board and I'm sure Alderman Gatsas will ask the same thing, that we find a way either through contingency or CIP funds to go ahead and take the burden off of these 13 neighbors.

**Alderman Gatsas** stated I think that it is important we understand that sometimes we do things as a Board, that we may react in a different way in some situations. We looked at...I want to say it was Mission Avenue...and I think we ended up taking that street over because there was a problem on that street. We do things as a Board to try and help situations out in the City of Manchester. I would love to tell the people on Maple Street, between North and Webster, that I had a pot of money to fix their drainage problem because every time it rains, they have a serious problem there. I think it is important that we understand that we are doing separation of water and sewer throughout the City and certainly that is on the next

phase and that is something that you could tell the people on Maple Street. I don't think the people on Crosbie Street are asking for anything that they don't deserve. I happened to pick up the paper the next day and read a glowing article about a lot of people from this Board that were there extending their hands to help them and yes, they brought in porta-potties and ways to shower, garbage trucks to remove clothing and furniture that was destroyed in those homes. I think that the pump station is there, as Alderman Roy said, by no fault of their own; they did nothing to create the problem. The problem was either to alleviate Goldfish Pond and flood some bigger homes on the other side of Dorrs Pond or not do that. I know we as Aldermen, every time we have an opportunity to help a constituent, we do that. Sometimes it is with the assistance of the colleagues on this Board and sometimes we can do it on our own and not need the help of the Board. I asked the question, I want to say it was four meetings ago, there was a CIP number 810707 and I know that the Planning Department couldn't get me that number but I found it quick enough on my own, and the item that was there was CIP number 713609 and I asked the question of Mr. Maranto at the time, because we had just taken \$2,000 to take care of a monument for Highway workers that passed away. I have the minutes right here. The next question I asked Mr. Maranto was can the \$17,000 be used for Crosbie Street? His answer was yes. I know that the people on Crosbie Street at times have been led to believe that the problem was going to get resolved. I am probably one of those people that led them to believe that, only because the colleagues that I have on this Board would have voted for it the first time except some believed it was for only one homeowner. Then when they understood it was for 14 families in a neighborhood, I got assurances from them that there wouldn't be a problem. So I ask for your indulgence because this is a neighborhood and we pride ourselves in the City of Manchester for our neighborhoods, and we certainly try to effectively do things for our constituents. Now I know they are constituents of Ward 1 but I think they are a constituent of every Alderman-at-large and every other Alderman that is in this City. We

shouldn't turn a blind eye to any Alderman's Ward no matter who it is and no constituent in this City. With that I ask your indulgence that we take care of this problem and once that report comes out, or if we can find the money from FEMA or some other process at the state level, I know that the Governor stood right there and said he would do whatever he could do to take care of this problem. Certainly I will be at his door step to tell him that the City is taking the problem and we need to get some relief from the state.

*Alderman Gatsas moved to take funds from the CIP fund #810707 to pay for the pump station repairs on Crosbie Street. Alderman M. Roy duly seconded the motion.*

**Alderman O'Neil** stated I am their neighbor. I live up the hill from them on West Haven. I believe that there is a willingness by the 15 of us here to help. Availability of funds is not the issue. What is at issue here is that advice of the legal counsel was sought and our action, not that it would be a bad practice, it is illegal. The action would be illegal. That is what we were told. I don't know how we can sit here and be asked to vote on an action that is illegal. We do not have the legal ability, whether it is a loan or just to grant the money. It has nothing to do with the willingness of this Board to want to help them out. I think every member of this Board is willing to help them out. It is not the amount of money. We cannot legally do it. That is what the issue is here. I yield to Attorney Clark just to clarify that.

**Mr. Thomas Clark**, City Solicitor, stated as I advised the CIP Committee, I understand why the residents are upset and distressed. However, the City is only empowered to do what the legislature tells us we can do. The courts have ruled that we cannot use public funds for a private project. This is a private pump station that the City did not build, will not own, will not maintain. You are asking

the taxpayers of the City of Manchester to pay money to a private project and it is just not allowed.

**Alderman M. Roy** stated while I do have a great deal of respect for our City Solicitor I tend to disagree when we look at the definition of public and private. Yes, the ownership of the pump station is private. I will give you that. But when you look at the usage of different things throughout the City, Alderman Gatsas mentioned Mission Avenue... We have looked at if the road was washed out in front of any of these houses we would be there the next day fixing it. Through no fault of their own, our drainage system which is public, contributed to this problem. While I respect your opinion, I respectfully disagree and would ask my colleagues to support the constituents of the City.

**Alderman Garrity** stated as Chairman of CIP I would like to echo Alderman O'Neil's comments. Before this evening's meeting I was ready to go in there and find the money to take care of this neighborhood. When you have your legal counsel tells you it is illegal, it's an illegal vote, our hands are tied. I feel bad for this neighborhood. I don't have a problem finding the money and spending it for that purpose, but Tom Clark has told us legally we cannot do it. I am not going to sit here and take an illegal vote.

**Alderman Ouellette** asked what would happen if we took the vote and the motion were to pass, if it is an illegal vote, or in your opinion illegal? What would then happen?

**Mr. Clark** replied in my opinion it would be creating an unlawful act subject to a taxpayers' suit which would subject the City to attorneys' fees, the attempt to recollect the money and legal fees.

**Mayor Guinta** asked Tom, give me an example. Let's assume a private property owner files a claim with the City as a result of a flood. The City agrees to pay X amount in a settlement. How is that different than this action which is being considered?

**Mr. Clark** replied that is a pure hypothetical.

**Mayor Guinta** stated it is not a hypothetical, it happens.

**Mr. Clark** stated it is a hypothetical. It happens when we review the materials. The Risk Manager goes out, the appraisers go out, the adjusters...and when they determine the City had some negligence then there is a payment. In this case I am being told that the City was not negligent. It was not the City's fault.

**Mayor Guinta** asked who is telling you that?

**Mr. Clark** replied I talked to Kevin Sheppard. Nothing failed. This was an act of God. This was a horrendous rain storm.

**Mayor Guinta** asked if there is a property on Bridge Street with the same storm that has water that comes into it because of an act of God, or the Mother's Day flood or the storm after that and we paid money to those property owners, how is that different?

**Mr. Clark** replied I don't know the details of those payments. I couldn't tell you. I am just telling you that you cannot use public funds for a private project.

**Mayor Guinta** stated although we have paid private property owners for flood damage.

**Mr. Clark** replied when there has been a reason to, when the City was at fault, yes.

**Alderman Gatsas** asked how are you going to rule on item 13 on the agenda this evening? For clarification it says, Communication from St. Mary's Bank requesting a discharge of mortgage to the City of Manchester in the amount of \$30,000 for lead abatement done on a property located at 92-94 Vinton Street. My question is how are you going to rule on taking public funds to pay for this abatement discharge?

**Mr. Clark** replied I hadn't planned on making a ruling. There is a mortgage on the property. The property is worth far less; we are actually in third place on the mortgages. The property is worth less than the first mortgage. The bank has asked you to release the mortgage to allow a short sale to recoup some of the money to get the property back in somebody's hands. The fact that you release the mortgage does not release the promissory note to the City of Manchester, and the City of Manchester has the ability to pursue that promissory note to collect its money. That being said, this person is behind on their mortgage and the odds are they are not going to have any money to pay us when we sue them.

**Mayor Guinta** stated you're saying if we vote to discharge that mortgage we still have an opportunity...

**Mr. Clark** interjected it doesn't release the promissory note, no.

**Mayor Guinta** asked if the residents of Crosbie Street file a claim with the City and Harry Ntapalis all of a sudden decides after his review, because I assume he hasn't reviewed the situation, that there was some negligence or potential cause, your ruling would then be different regarding the \$17,000 payment?

**Mr. Clark** replied Harry Ntapalis wouldn't make that decision.

**Mayor Guinta** stated that is not what I asked you. How do you know what decision he would make?

**Mr. Clark** replied that decision would go to the adjusters and then legal counsel to determine whether or not there is any fault on the City's part.

**Mayor Guinta** asked you said the adjuster and legal counsel? Meaning you?

**Mr. Clark** replied either myself or...

**Mayor Guinta** interjected so the Risk Manager would not have anything to do with that? He has dealt with this in other events, but he wouldn't in this one?

**Mr. Clark** replied after he gets advice from legal counsel, correct.

**Mayor Guinta** stated so he would then get legal counsel from you. Your counsel would be that there...

**Mr. Clark** interjected if a formal claim was filed we would review the situation and determine whether or not there was any fault of the City. My understanding at this point is there was no fault of the City. It was an act of God; the City is immune under those instances.

**Alderman M. Roy** stated Your Honor, I had a question for myself so I started looking at the CIP program from fiscal year 2009 that you put forward. My question that I just stumbled upon, the 50/50 sidewalk program, when someone takes out a concrete curb and pays 50% and puts in a granite curb, that benefits one individual homeowner. The other 50% is absorbed by the City. We have been doing that for years. How does that fall in...nothing but improving private property? If this is down to who owns what, the curb in front of someone's house, changing it from a concrete curb to a granite curb in some of our neighborhoods, that is the most specific private property rights. I guess I would ask for clarification on that.

**Mr. Clark** replied again that is a Public Works project. You are facilitating traffic and it is specifically authorized by statute to do assessments for sidewalks and curbing.

**Alderman M. Roy** stated I would just personally be willing to take the risk that a taxpayer association or any other association that feels that we are not doing the right thing for our neighborhood, our community and our City by helping out the homeowners affected, I'd be the first to say I'd welcome that fight because they will be the same people in here when they need a chronic drain project done in their neighborhood so ...

**Mayor Guinta** interjected that is also an assumption that that would happen.

**Alderman M. Roy** stated right. I am just saying that is the course of action and I respectfully disagree with the Solicitor, but if that is what could happen I will be the first to say, let it happen. Let's take care of our constituents; let's go forward. Let's work with the state to get this reimbursed and then when fault is there, when the report is done in January, I would rather be an ally to our constituents than be on the other side. I would implore all of my fellow Aldermen to join that fight with me if it should ever happen.

**Alderman Lopez** asked Tom, did I understand you correctly that if the residents filed a claim against the City, the procedure would be that it would go to Risk Management and he would research it with legal counsel and the liability insurance as to whether the City is at fault in any way?

**Mr. Clark** replied it is not legal insurance. We don't have insurance in this situation. We are self-funded. If a claim came in, either a lawsuit or a claim, it would go to the adjusters, to the third party administrator, and they would review it. It would come back to Mr. Ntapalis and he would, on a case of this nature, seek advice of counsel to determine whether or not the facts point to any fault of the City.

**Alderman Lopez** stated we haven't had any claim to the City as this point. Is that correct?

**Mr. Clark** stated not to my knowledge, no.

**Mayor Guinta** stated on this particular item.

**Alderman Lopez** stated I am torn between the legal advice, because I'm sworn to uphold the Ordinances and the policies of the City but then I look at the Preamble. "This charter expresses the desire we, the citizens, have to govern ourselves in the most effective, efficient and beneficial manner. We resolve for ourselves and for our children that there be a representative government..." and so on and so on. You can read the rest yourself. I'm sure if the vote is forced, legal advice is going to weigh heavily on a lot of votes. Why would we not take the course of the association going through the procedures of filing a claim against the City and let's try to resolve it because I think I heard in Committee somebody was looking at state funds or along that line, some other type of situation that could solve the problem. Let us at least give it a fair chance if they desire to send a claim to the City, to go through the process before we are forced to make the vote here tonight.

**Alderman J. Roy** stated at the last couple of meetings I have been insistent that this goes through Committee because that is how we do things, and I thought that was the proper avenue. I certainly wasn't going to vote against helping these people. With that said...and I also heard something...I'm thinking along the lines as Alderman Lopez is, could we get our staff, probably the Planning Department, to contact the state to see if there are any loans available to help these people. I say that because I agree that a lot of us are going to be affected by legal counsel, not wanting to break the law. I would ask this group that is in front of us, would it be acceptable to you? And of course I would have to ask the Alderman who made the motion, would it be acceptable to let us try to research this and get a remedy for you other than us possibly breaking the law tonight? I just learned tonight that this was going to be against the law. I am just trying to get a compromise here so we don't have to break the law and I want to let you know that I am one of the guys and I think most of the people here want to support you; we just want to do it right.

**Alderman Gatsas** stated just for my colleague's edification, it's not that this is the only avenue that I have looked for. We have met with these people twice. I can tell you that FEMA, DOT and other people have given up their evenings to come down and find the ability to take care of this situation. Certainly the stones will continue to be turned. I certainly have a lot of respect for the City Solicitor but I to ask your indulgence right now to read me the RSA where this breaks the law.

**Mr. Clark** stated there is no RSA. The courts have ruled that you cannot use public funds to benefit a private entity or private project. It has to be an overall benefit to the full city. It has to be a Public Works project or it has to be authorized by statute which is charitable donations and such.

**Alderman Gatsas** asked so every contribution that we make to a Little League team, to a cheerleading team, to any other fraternal order, for whatever they may be looking for, that there are no problems with that?

**Mr. Clark** responded those are authorized.

**Alderman Gatsas** asked how is this any different if this Board authorizes to pay Crosbie Street \$17,000 for a pump station that certainly if the proper procedures were taken care of Dorrs Pond would have been flooding and homes below them would have been affected and their pump station would still be okay. My question is if we can't use public funds for this project, how do we take public funds and deem them for other projects?

**Mr. Clark** stated because they meet the statutory or the court imposed guidelines. This does not. This is not a charitable donation. You are paying for a private project.

**Alderman Gatsas** stated I certainly don't want to stress where the money came from originally. The first time I saw it, it was \$2,000 for a monument for Highway employees that have passed away.

**Mr. Clark** stated that is specifically authorized. The City is empowered to put up monuments.

**Mayor Guinta** stated it just seems illogical that we can put up a monument but we can't help people. I think that is what the crux of the discussion is here.

**Mr. Clark** replied Your Honor; it is not my job to tell you what is logical and not logical.

**Mayor Guinta** stated I understand that.

**Mr. Clark** stated my job is to tell you...I feel bad for these people but my job, by law, is to give you legal advice. My legal advice is that this is not an authorized expenditure.

**Alderman Gatsas** stated it is not an authorized expenditure but it is not against the law.

**Mr. Clark** stated it is against the law, Alderman. I have been telling you that for the last half hour. We had discussions on this last week.

**Mayor Guinta** stated I am still not sure how this differs from a payment to a property owner on Bridge Street which has been made in the past several years for flooding. The City has made payments in the past.

**Alderman O'Neil** asked Your Honor, for clarification on that, those were claims filed against the City. There could be something in that exploration that there was negligence. Now we don't know that there is negligence.

**Mayor Guinta** stated essentially we are going to say we can't help you unless you sue us.

**Alderman O'Neil** stated that is not suing. That is filing a claim. That is not a lawsuit against the City.

**Mayor Guinta** stated well you file a claim. It is a legal demand. If you file a claim, legal counsel has to get involved. I don't want to get into specifics of this but how this started...let's be clear. Goldfish Pond is not owned or operated by the City of Manchester. That is the responsibility of the State of New Hampshire. That has been clearly identified. The frustration I think that some members of this Board have as well as the residents is, I think there was a fair amount of discussion at the time, in the neighborhood, and there were claims made by state officials that said there was a fault and there would be help. Now, City officials didn't necessarily say that there would be financial help until some time later. When the dust settled and we got the families back on their feet, we resolved the flooding situation as quickly as humanly possible and even the residents have said the City of Manchester has done a phenomenal job. They've thanked me. They've thanked the firefighters. They've thanked some of the people in this room. Now there is a separate item. The families have been told there was fault on the part of the state. However, there has not been a determination if and when or if at all the state is going to make restitution. A reasonable alternative is then for the City...and let's remember we had legal counsel here, not Mr. Clark, but we had legal counsel represented when all I asked at this meeting was that this be referred

to the Committee so it would go through proper review. There was no mention of this. CIP staff said it was perfectly fine.

**Mr. Clark** interjected to be clear on that, Mr. Arnold was here. I have discussed that with him. It was being referred to Committee and he planned on bringing it up at the Committee if he was there. I came to you earlier than that. The purpose of the Committees is to vet it out.

**Mayor Guinta** stated if legal counsel is here at these meetings...we were this close to a vote that night, Tom.

**Mr. Clark** stated I wasn't here, Your Honor.

**Mayor Guinta** stated I was. We were this close to a vote and I asked...there was a recommendation made or a motion made by Alderman Gatsas. All I asked was to let it go to Committee. The Deputy Solicitor was here. He knew how close it was to going to a vote. I think most people in this room know how close it was going to a vote. He could have piped up at any time and he didn't.

**Mr. Clark** replied maybe he should have or maybe he was waiting to see what happened. Alderman Gatsas asked me the exact same question last week. I told him if that had happened I would have had to come back to this Board and give you the same advice.

**Mayor Guinta** stated I don't want anyone here to feel like they are breaking a law. That is not the role of elected officials. I think people feel deeply committed to the families of Crosbie Street and to the challenges that they have gone through. I feel terrible that this is the situation the families are in. I feel that there is a reasonable opportunity to help these families, a reasonable opportunity to recoup

these funds from the state of New Hampshire which is what I said at the last two meetings and I still feel that again, legal counsel is legal counsel, and we respect his opinion and it is an opinion. I think a case could be made that based on the more than 200 houses that have run-off there is an issue there. It has not formally gone through a claim or legal proceeding so I understand the challenge that we are in. The one thing I would say is we feel like we are faced with doing the right thing versus a legal issue. No matter how technical it is, we have to follow the law. It is a tough, tough situation to be in but I think ultimately, as much as we want to help these families, we have to follow the advice of our legal counsel. If we disagree with it, then I think we have to get an alternative opinion. I think we have to seriously consider legal counsel's opinion. We are not obligated to follow it if we feel differently, as I understand. Correct? If this Board doesn't agree with your opinion we don't have to follow it.

**Mr. Clark** replied I can't force you to follow my opinions.

**Alderman Smith** stated I think a lot has to do with communication. We have the same problem on the west side. We had two or three floods as you well know. There are 61 pump stations in the City of Manchester and I think you are opening up a can of worms. I feel for these people and I think it is a matter of communication, and you should lead, and with our two senators we should try to demand from the state, the Governor and anybody possible and get letters in writing so that we can give to these people some resolution. Our hands are tied. I am not going to break the law, and I am sure that is why we have somebody getting paid big dollars to make the decision for us. He knows legal ramifications and I will tell you one thing, the City of Manchester never should have allowed pump stations, but the developers brought it on in the 1960's and 1970's and that's how the homes were built. You have the same problems with the pump station during an electric storm because it doesn't work and everything backs up. This is

a problem that should be resolved and I think that communication is the best thing and I think that with our senators, put the buck where it belongs, to the state.

**Alderman Gatsas** asked for Alderman Smith, are the state funds not public funds?

**Alderman Smith** replied it is a state problem. We don't own that pond.

*Alderman Gatsas requested a role call vote on the motion to take funds from CIP project #810707 totaling \$17,000 to pay for the Crosbie Street pump repair, and to seek reimbursement from the state.*

Aldermen Gatsas, J. Roy, M. Roy voted yea. Aldermen Sullivan, Osborne, Pinard, O'Neil, Lopez, Shea, DeVries, Garrity, Smith, Ouellette, and Murphy voted nay.  
*The motion failed.*

4. Communication from Patrick Jordan advising the Board of his resignation from the Board of Water Commissioners.

*On motion of Alderman Ouellette, duly seconded by Alderman Murphy, it was voted to accept this resignation with regret.*

**Alderman Shea** asked is it possible for people who are interested in that position to submit resumes?

**Mayor Guinta** replied yes.

**Alderman Ouellette** asked was Mr. Jordan a member of the commission because he is a union member?

**Mayor Guinta** replied yes.

**Alderman Ouellette** stated so that position, just for the public, I believe we would be looking for a union member.

**Mayor Guinta** stated thank you for the clarification.

5. Nominations to be presented by Mayor Guinta.

**Mayor Guinta** stated pursuant to Section 3.14b of the City Charter, please find below the following nominations:

**Arts Commission**

Anthony Williams to succeed himself, term to expire December 1, 2008.

**Conduct Board**

Toni Pappas to succeed Douglas Wenners due to a term limit, term to expire October 1, 2011.

Jerome Duval to succeed Toni Pappas, as an alternate member, term to expire October 1, 2012.

**Senior Services Commission**

C. Arthur Soucy to succeed the late Lillian Duval, term to expire January 1, 2009.

**Heritage Commission**

Donna Daneke to succeed Linda Seabury, as the Heritage Commission representative to the Millyard Design Review Committee, term to expire January 1, 2010

**Alderman O'Neil** asked do you want to suspend the rules on the first item, because it is to succeed himself?

**Mayor Guinta** replied I wouldn't mind just doing it for all of them, since...

**Alderman O'Neil** stated we have been pretty disciplined about this process; we will be opening up...

**Mayor Guinta** replied fair enough.

*On motion of Alderman O'Neil, duly seconded by Alderman J. Roy, it was voted to suspend the rules for the nomination of Mr. Williams to succeed himself as a member of the Arts Commission. There being none opposed, the motion carried.*

**Mayor Guinta** stated thank you very much.

*On motion of Alderman J. Roy, duly seconded by Alderman Osborne, it was voted to recess the meeting to allow the Finance Committee to meet.*

**Mayor Guinta** called the meeting back to order.

**8. Report of the Committee on Finance**

No report.

**9. Reports of Committee on Human Resources/Insurance**

The Committee on Human Resources/Insurance respectfully recommends, after due and careful consideration, that a request for reclassification of Custodians, salary grade 8, to a new classification of Parking Maintenance Worker, salary grade 10, be approved; and further recommends adoption of related ordinances.

*Alderman Lopez moved to accept this report and adopt its recommendations.  
The motion was duly seconded by Alderman J. Roy.*

**Alderman O'Neil** asked Brandy Stanley, Parking Manager, to come up to the microphone. He stated Brandy, I guess this fits a general maintenance position.

My concern is the installation, maintenance and repair of parking signs on public streets in the downtown area, as needed. Tell me what that means. We don't need to have a second sign department in the City of Manchester.

**Ms. Brandy Stanley**, Parking Manager, replied no, that is not the intention. There are occasional sign changes and replacements on existing poles that just come in one's or two's. It is easier for our guys to take the old signs down and put the new ones up, rather than waiting for us to hire the traffic guys to come in on overtime. They will not be putting in or removing any poles. That's not included in the job description. This is just occasional sign replacements when we change an Ordinance.

**Alderman O'Neil** asked this will not get out of control?

**Ms. Stanley** replied no.

*Mayor Guinta called for a vote on the motion. The motion carried, with Alderman Garrity being duly recorded as voting in opposition.*

The Committee on Human Resources/Insurance respectfully advises, after due and careful consideration, that the communication from David Mara, Chief of Police, submitting details related to current pay for Reserve Officers, has been received and filed.

*On motion of Alderman Lopez, duly seconded by Alderman Osborne, it was voted to accept this report.*

**10. Reports of Committee on Administration/Information Systems**

The Committee on Administration/Information Systems respectfully advises, after due and careful consideration, that the proposal for a new Department of Facilities, Grounds & Recreation submitted by Mayor Guinta, has been received and filed.

*On motion of Alderman O'Neil, duly seconded by Alderman Osborne, it was voted to accept this report.*

The Committee on Administration/Information Systems respectfully advises, after due and careful consideration, that the proposal for a new Community Development Department submitted by Mayor Guinta, has been received and filed.

*On motion of Alderman O'Neil, duly seconded by Alderman Osborne, it was voted to accept this report.*

The Committee on Administration/Information Systems respectfully advises, after due and careful consideration, that it has ratified and confirmed the poll granting permission for Peter Ramsey of the Palace Theater to hang a banner across Hanover Street starting after November 7, 2008 and to continue through December 2008.

*On motion of Alderman Sullivan, duly seconded by Alderman Osborne, it was voted to accept this report and adopt its recommendations.*

**11. Report of Committee on Community Improvement**

The Committee on Community Improvement respectfully recommends, after due and careful consideration, that a request from MHRA seeking a commitment from the City of \$200,000 of HOME funds from the FY 2010 Community Improvement Program be approved.

**Mayor Guinta** asked could I get a motion to table till next week? We have a meeting on Tuesday and I have the Housing Task Force Committee coming in on that day.

**Alderman O'Neil** stated we learned in Committee that the tax credits are in jeopardy if we don't move on this. It can't wait a week.

**Mayor Guinta** stated I think it can wait until the end of the year.

**Alderman O'Neil** stated that is not what we were told in Committee, Your Honor. We were told if they don't act on this, give them some word by the end of the week, these tax credits could be loss.

**Mr. Dick Webster**, Manchester Housing & Redevelopment Authority, stated we did make a commitment in receipt of the tax credits that we would get back to New Hampshire Housing Finance Authority and let them know as soon as possible. We are to let them know, if at all possible, before the end of the week, if we are going to be in a position to proceed with the project. We have been trying to get this on the fast track so that we could get back to them. We do have a commitment to get back to them and give them our report that this can go forward.

**Mayor Guinta** asked when did you convey that to them?

**Mr. Webster** replied we conveyed it to them, I believe Friday, through our consultant. I think that is when we communicated with them last.

**Alderman O'Neil** stated it was explained to us, the only reason that these tax credits are available is because another project could not move forward. Manchester Housing & Redevelopment Authority was next on the list. If we fail to act, they are going to pass on Manchester Housing & Redevelopment Authority and go to the next project on the list.

**Mr. Webster** stated that is correct.

**Mayor Guinta** asked so you think waiting till next Tuesday is going to be a problem?

**Mr. Webster** stated it would be a problem in the sense that we wanted to get back to them before that and we committed to them that we would get back to them.

**Mayor Guinta** asked are they even open on Thursday and Friday of this week?

**Mr. Webster** replied I don't know. I was hopeful...I promised my consultant that I would get back to him by tomorrow and let him know the results.

**Mayor Guinta** stated I have a hard time believing that the Housing Authority, if we ask them for an extension until Tuesday, which is one week from today, Thursday and Friday being a holiday, that they are going to actually move to another community. I can make a personal call to ask them to wait till Tuesday. Do you really think that they are going to offer this between tomorrow and Tuesday of next week to another community?

**Mr. Webster** replied I am not in a position to know what they are thinking. I can only convey the results of any conversations I've been involved in. It makes me extremely uneasy not to be able to proceed.

**Alderman O'Neil** stated I know this report is expected out. I am guessing some of the information we probably already know. We heard that there are somewhere in the vicinity of 10,000 people on the list for public housing, and 4,500 of them are elderly, which fall right into this category. It's 4,500 people and we have an opportunity to plug away. It's not a great number, but to plug away at the number. They have the financing all in place; they are just waiting for us. We're the last part of the deal. I expect that this report is coming out, but I don't think it's going

to change my opinion on whether or not to move forward with this project. I would encourage my colleagues, let's move forward on this one tonight.

**Mr. Webster** stated we have two concerns, and one of them is the oral commitment that we made to get back to them. The other is that the market for tax credits is going south rather quickly. In order for us to proceed, we have to invest some more money in the project. We need to get that process underway rather quickly so that the project remains viable. If the price of tax credits continues to go south, even the tax credits that we have been awarded up to this point would not be enough to enable us continue the project. We have two reasons why we are anxious.

**Mayor Guinta** asked how much in tax credits are we talking about?

**Mr. Webster** replied I do not have the exact award letter with me.

**Alderman Shea** interjected I think it would be safe to say \$4 million.

**Alderman O'Neil** stated \$3.7 million, something like that.

**Mr. Webster** stated I think it is around \$4 million.

**Alderman Gatsas** stated thank you, Your Honor. What difference does it make what the report says? They're going to pay full tax base. We're increasing the tax base when right now we see the tax base diminishing. It does not matter what that report says because we are putting something on the roles.

**Mayor Guinta** stated the concern that I have is that it is new stock as opposed to focusing on existing stock and renovating existing stock. We have got an issue where foreclosure rates have dramatically increased in the last six months. We've got 20% vacancy rates in parts of the City. We need to improve those neighborhoods. This is something that I discussed with MHRA six months ago; I made my position known then. This is brand new news to me this evening, and for MHRA to make a promise for this Board is not really appropriate. I am just asking for a week. I think we really need to focus on renovation of existing homes. I would be more than happy for the HOME dollars to go to that purpose. We have a report coming out in seven days. Within those seven days, we have a weekend and two vacation days. I just can't imagine that the tax credits are going to change that much between now and Tuesday, or that this is going to be offered to another community between now and Tuesday.

**Alderman O'Neil** stated just a couple of clarifications: He didn't say that he made a commitment on behalf of the City; all he said was that he made a commitment that he would get back to them. That is what I heard. Secondly, to the best of my knowledge, the City of Manchester is open for business on Friday. Correct?

**Mayor Guinta** replied I know that I will be working...

**Alderman O'Neil** stated I think the majority are working Friday. Again, Your Honor, I agree with Alderman Gatsas. This thing is just a positive, and I do not see anything in the report that is going to change my thinking regarding this project.

**Mayor Guinta** stated the report has not been issued yet.

**Alderman O'Neil** stated I know. We have had great success with projects partnering with the Housing & Redevelopment Authority.

**Mayor Guinta** stated again, when we have 20% vacancy rates in parts of the City, why wouldn't it be a policy decision or discussion of this Board to look at existing housing stock to renovate it, rather than building new stock?

**Alderman O'Neil** asked where are those 4,500 people...

**Mayor Guinta** interjected they can go into the existing housing stock that is renovated, and you can use funds for other purposes.

**Alderman O'Neil** stated it is a possibility that some of that housing stock is not quality to live in.

**Mayor Guinta** stated that is why you renovate it.

**Alderman Gatsas** asked what is stopping any developer from coming forward and asking for that money to renovate? I haven't seen one here in ten years, except for what we see coming forward from MHRA. I have not seen anybody. There are an awful lot of big players out there.

**Mayor Guinta** asked who should dictate this policy? Shouldn't we as a government entity try to dictate some sort of general housing guides and policy for the City to improve the City?

**Alderman Gatsas** stated no, I think free enterprise should dictate that, Your Honor.

**Mayor Guinta** asked well, if that is the argument, why are we giving the money only to a non profit?

**Alderman Gatsas** replied they are paying full tax base.

**Mayor Guinta** stated yes, but you have buildings probably within 100 feet of this location that could be renovated.

**Alderman Gatsas** stated Your Honor, nobody is stopping those people from coming forward.

**Mayor Guinta** replied MHRA could.

**Alderman Gatsas** stated no, nobody is stopping those other owners, those other property owners from coming forward.

**Mayor Guinta** stated I agree. What I am saying is, do we have a duty to review the housing policy for the City and determine how is it in the best interest to use funds? The answer is yes. We should be trying to determine what is the best way to use funds. My position is, can we wait until the report, which is coming in a week, to see what the collective wisdom of the group suggests?

**Alderman Gatsas** asked does this take all of the funds? How much is left in the funds?

**Mr. Webster** replied we are returning about \$77,000 out of the \$200,000 that we received.

**Alderman Smith** stated thank you, Your Honor. From what I understood this is for disabled people, elderly, and people in great need that have no income whatsoever, so I think this is a plus. The faster we move on this the better off we are going to be. If someone wants to remodel a three tenement house and put people in there, fine. This project is going to take care of 31 needy people. We have been told that in the Mary Gail House and the Brown House they are at full capacity, and there are 10,000 people waiting to get some type of house to live in. This is a worthwhile project, and like I say, it is for the disabled, elderly and people in need. I was told people with an income of \$260 a month would be able to live there. That is my reason for trying to push this right along at this time, Your Honor.

**Alderman DeVries** stated thank you. How about a clarification on how much is being returned in funds over what was approved in CIP? Isn't it hundreds of thousands?

**Mr. Webster** stated I beg you pardon.

**Alderman DeVries** asked is it hundreds of thousands?

**Mr. Webster** asked that is being returned?

**Alderman DeVries** asked is it CDGB or is it ?

**Mr. Webster** replied we've received funds in the past. What we are doing now is we have some left over from the last project and we have another project that has developed program income. Between the two programs, we have about \$77,000 that we are in the process of returning to the City.

**Alderman DeVries** stated I apologize, I can't find it. It must have been in the CIP package that I read earlier. I thought I recalled seeing that, by utilizing the tax credits you are going to be using less of the funds than what you had already been approved for in this year's CIP, in the budget process.

**Alderman O'Neil** interjected if I may...that was corrected in the main text of the letter. I think the request was \$580,000 or something?

**Mr. Webster** replied we had originally requested \$680,000.

**Alderman DeVries** stated my point being that for the renovation of other properties, Your Honor, by using the tax credit, it is going to put more back into the pool of dollars. This is disabled properties, and I don't think you're going to find too many of the average triple-deckers can be easily renovated to suit the disability population. We don't have too much housing that works well for them in the City, and that is a real shortfall. I am hoping that we call a vote on this and get this done. This is a project that needs to happen.

**Mayor Guinta** stated Dick, I have two questions. Who is this housing for?

**Mr. Webster** replied it would be for elderly, people with disabilities, and people who are also lacking in the ability to achieve two activities of daily living. They have to be especially frail; they have to be of low income within 50% of median income. The people who go in there are all reviewed by a professional assessment committee to determine that they need the services that we offer. The professional assessment committee consists of representatives of the New Hampshire Office of Elderly and Adult Services, the Moore Center, the VA, the VNA, the Mental Health Center and the Great Day Program. All of the people are either homeless or at imminent risk of homelessness for a number of reasons. The homeless rift

could be because, for example, a resident or apartment dweller may go to the hospital, and then get shipped off to rehab. While they are in rehab, sometimes they lose their apartment and the hospital has no place to return them to. We get a call saying here is someone too frail to look for an apartment, too low income to even rent a new apartment. We work with the hospital trying to get people placed in that manner.

**Mayor Guinta** asked how many homeless has MHRA placed?

**Mr. Webster** replied I would say that they are all either homeless or at risk of homelessness. We are trying to prevent homeless or solve homelessness.

**Mayor Guinta** asked how many are actually homeless that have been placed?

**Mr. Webster** replied I couldn't tell you that exact number.

**Mayor Guinta** asked can you tell me how many from New Horizons have been placed?

**Mr. Webster** replied not many from New Horizons. We have done some outreach to New Horizon. A number of the people who do come in do not want to follow the rules that they need to live in the housing.

**Mayor Guinta** asked are you talking 10, 50, 100?

**Mr. Webster** replied I don't have any numbers. I would be guessing completely. I am not involved in that end of the operation. I did speak to staff just before the meeting to find out the type of people that come in. We do have referrals that come from shelters, transitional housing or New Horizons. We do have...

**Mayor Guinta** interjected how many homeless were placed in Gail or Brown?

**Mr. Webster** replied that's what I am saying. I don't have any numbers, but I do know that we have some.

**Mayor Guinta** asked do you have any plans to use HOME funds in the future for existing housing stock?

**Mr. Webster** replied for existing housing stock? We've been talking a lot with Sam Maranto about getting involved in the Neighborhood Stabilization Program. We would like to do something there to try to help the City resolve the issues with the existing housing stock.

**Mayor Guinta** asked does MHRA have anything on the horizon to focus on existing housing stock?

**Mr. Webster** replied we do not have anything immediate at this point. This is a project that we have been working on for quite some time. The problem that we have for this particular project is to make a project of this nature work, considering the services that we want to offer on site, considering the process in applying for low income housing tax credit, it needs to be a sizable project. We have found that projects in the neighborhood of 30 dwelling units is the right size in order to make it cost effective. The cost involved in doing everything that you need to do to apply for tax credits needs to be shared among a number of apartments in order to make it worthwhile.

**Mayor Guinta** asked tax credits can be used for renovation and developments, right?

**Mr. Webster** replied correct.

**Mayor Guinta** asked does MHRA have a plan to actually consider renovating existing housing? Is there even a discussion that you are having at MHRA?

**Mr. Webster** replied the last two projects that we did were renovations. We are all for it. We like the renovation idea, but we need to build the housing in order to satisfy our waiting list. We need to build the housing where it exist. We have a project here that works, so we have pursued it.

**Alderman Lopez** stated thank you, Your Honor. I was just going to say, I think we should move this thing, await your report. The report is going to take awhile to establish some type of policy. There are a lot of questions. The way I said it to CIP and reading the documentation, I think it is a worthwhile project. Let's move this and wait for your report to come in. There will be more HOME funds later on.

*On motion of Alderman O'Neil, duly seconded by Alderman Shea, it was voted to accept the request from MHRA seeking a commitment from the City of \$200,000 of HOME funds from the FY 2010 Community Improvement Program.*

12. **Report of the Committee on Accounts, Enrollment and Revenue Administration**

No report.

13. Communication from St. Mary's Bank requesting a discharge of the mortgage to the City of Manchester in the amount of \$30,000.00 for lead abatement done on a property located at 92-94 Vinton Street.  
(Note: Communication sent to the Board on 10/17/2008.)

*Alderman Osborne moved to approve this request. The motion was duly seconded by Alderman Pinard.*

**Alderman Lopez** stated thank you, Your Honor. Tom, we received a communication from Matt Normand on the 21<sup>st</sup> in reference to 92-94 Vinton Street. Could you explain this a little bit? I know you mentioned once what this really means.

**Mr. Clark** stated presently the homeowner is behind on her mortgage and the foreclosure process has started. The bank has requested the City to release its mortgage which was for lead hazard removal and another aspect. There are actually two aspects to it. We have a third mortgage on the property. The bank has had the property appraised and the value of the property is far below the first mortgage, not to mention the second mortgage, or our mortgage. They have been approached by a buyer who is willing to take the property and to fix it back up again. However, they need to get a release from the mortgages in order to do that. It's a short sale, so they wouldn't have to go through the foreclosure process. If the City agrees to release its mortgage and if the second mortgagee agrees to release...I don't know if they have or haven't...then there would be a short sale. The property would be rehabbed and begin paying taxes again. That would not wipe out the City's promissory note. However, I would caution you that the chances of us collecting it, if the person is under foreclosure now, are very slim. The other alternative is, if the City does not agree, as I see it, the bank will probably continue on with its foreclosure process. If it does, the foreclosure will wipe out our mortgage.

**Alderman J. Roy** asked Tom, can you explain to me one more time what is the benefit of us giving this mortgage up?

**Mr. Clark** replied I am not sure there is a benefit. This is a benefit that the bank is seeking.

**Alderman J. Roy** asked this is federal money for lead removal?

**Mr. Clark** replied you would probably have to check with Planning.

**Alderman J. Roy** stated I guess my point is that we have all of these programs that people get the money to take care of lead abatement or whatever, and then give the money back so we have the money to lend to other people. Is that how it is supposed to work?

**Mr. Clark** replied in this case that is not my understanding. This was a five year, no payment mortgage. If the eligible family lives in it for five years, then the mortgage is forgiven.

**Alderman J. Roy** stated it would have been a grant then.

**Mr. Clark** replied correct.

**Alderman Gatsas** asked Tom, are those federal dollars?

**Mayor Guinta** replied yes they are.

**Alderman Gatsas** asked but they are not public funds?

**Mr. Clark** stated as I have explained to you before Alderman, there are federal funds that come earmarked with certain programs and they tell you what you can do with them. If you accept those federal funds you can use them. The federal government is not governed by the same guidelines that the City of Manchester is, neither is the state of New Hampshire. The City can only do what the state allows us to do.

**Alderman O'Neil** stated Tom, you said there really is no advantage to us doing this as the City. There is an advantage to the bank? Are we setting a precedent that this could become a regular request before us?

**Mr. Clark** replied in this particular economic climate it may become a regular request. It may happen more frequently; I can't predict that. The only benefit possible to the City is if you forgave the mortgage, we could still chase the promissory note. The chances of collecting, if this person is going through a foreclosure, are going to be practically nil.

**Alderman O'Neil** stated I am trying to figure out what the upside is for the City. There doesn't seem to be one.

**Mayor Guinta** stated this makes it easier for the bank to complete their transaction.

**Mr. Clark** stated correct.

**Alderman Shea** stated Tom, if we don't do anything, if we don't agree to go along with this \$30,000, it doesn't benefit us, but it doesn't hurt us. Is that correct?

**Mr. Clark** replied I think the City is going to be in the same position regardless of what you do, yes.

**Alderman Shea** stated the problem that I see is that we have to be careful that we don't set precedent. If we say this okay for St. Mary's Bank and then Citi Bank comes in...they won't, of course. But another bank in the City, a credit union comes in and says there is a problem over on the west side and there is \$25,000 there, and so forth and so on.

**Mr. Clark** stated you may get this with more requests, yes. This is a request that the bank is making. This is not a recommendation out of City Staff.

**Alderman Lopez** stated thank you, Your Honor. A question for Tom: Would it be feasible to negotiate with the bank, and the bank gives us X number of dollars to release the mortgage?

**Mr. Clark** replied as I understand it, in the bank's opinion they are giving up money already. They are going to be collecting a lot less than they wrote on their mortgage. There is a second mortgage, which is at least double ours in second place, that they are also asking to forgive. I don't know if negotiations would work.

**Alderman Lopez** asked if we don't approve this and we tell staff to go back and try to negotiate and get some money from the bank for our mortgage, would that be legal?

**Mr. Clark** stated you could, I just don't know what the bank would do.

**Alderman M. Roy** stated thank you, Your Honor. I am not inclined to give away public funds. The owner of this property's address is in Boise, Idaho. I would be very leery for us to give up any rights, because this is obviously a rental property to a landlord that may be letting this go to foreclosure to protect property out of state. I think we are treading on very thin ice if we go ahead and relieve anything at this point.

**Mayor Guinta** stated there is a motion to accept, so a yes vote is for approval and a no vote would be to reject it.

*Alderman Gatsas requested a roll call vote.*

Aldermen Gatsas, Sullivan, J. Roy, Pinard, O'Neil, Lopez, Shea, DeVries, Garrity, Smith, Ouellette, M. Roy voted nay. Alderman Osborne, Murphy voted yea. *The motion failed.*

*On motion of Alderman O'Neil, duly seconded by Alderman Sullivan, it was voted to receive and file this item.*

**Alderman M. Roy** stated before we just let go of this, Attorney Clark made the statement that if someone lives in the property for five years...The tax bill has been going out of state, and my concern is that they may have already defaulted on the mortgage or the principal of the mortgage that we lent to them. I would ask that the Solicitor's office just look into the facts and possibly work with St. Mary's Bank.

**Mayor Guinta** stated okay.

### TABLED ITEMS

14. Recommendation from the Special Committee on Riverfront Activities receiving unanimous vote that the City purchase a certain .2633 acre parcel of land located at 2 Line Drive under the terms and conditions identified in the attached purchase and sales agreement.

*(Note: The Board voted to accept and adopt the recommendation of the committee and it was then vetoed by Mayor Guinta. Additional communications have been provided by Pamela H. Goucher, Interim Planning Director and Leon L. LaFreniere, Building Commissioner, and forwarded to Board on September 8, 2008; Tabled 09/16/2008)*

This item remained on the table.

15. The Committee on Public Safety, Health and Traffic respectfully recommends, after due and careful consideration, that the request from Attorney Cheryl LePine Beliveau for the City to eliminate two parking lot spaces on Map 292 Lot 11 be approved subject to the review and approval of the Zoning and Planning Boards.

The Committee further recommends that a revocable license be granted.

*(Note: Tabled 10/21/2008 upon request of the Board for the Solicitor to provide a copy of the revocable license.)*

This item remained on the table.

### **NEW BUSINESS**

**Alderman Pinard** stated this is time of year...Thanksgiving is here and for the past many years it is a tradition of Massabesic Circle that we light the Christmas tree. We have a surprise for all of the youngsters. Sandy's Variety has always been there with the hot coffee and the hot chocolate. We try to have a nice evening. I would like to wish everyone in the City a Happy Thanksgiving.

**Mayor Guinta** asked what time is on Friday?

**Alderman Pinard** responded Friday at 6:00 P.M. sharp.

**Mayor Guinta** stated Happy Thanksgiving everybody.

*There being no further business, on motion by **Alderman O'Neil**, duly seconded by **Alderman J. Roy**, it was voted to adjourn.*

A True Record. Attest.



City Clerk