

BOARD OF MAYOR AND ALDERMEN

December 21, 2010

7:30 PM

Mayor Gatsas called the meeting to order.

The Clerk called the roll.

Present: Aldermen Craig, Ludwig, Long, Roy, Osborne, Corriveau, O'Neil
Lopez, Shea, DeVries, Shaw, Greazzo, Ouellette, Arnold

3. Presentation by the Joint Sustainability Committee in regards to the Committee's goals, mission, and accomplishments.

The presentation was made during the Public Participation meeting.

CONSENT AGENDA

Mayor Gatsas 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.

Accept BMA Minutes

- A. Minutes of a meeting held on August 16, 2010 (one meeting).

Ratify and Confirm Poll Conducted

- B.** Ratify and confirm phone poll of the Board of Mayor and Aldermen conducted December 10, 2010, approving the proposed Site Entry Agreement between PSNH, Danais Realty Group and the City of Manchester.
(Unanimous vote with the exception of Alderman Ludwig who could not be reached and Alderman DeVries who abstained.)

Approve under supervision of the Department of Highways

- C.** Pole Petitions:

11-1279	(4) Maple & Amherst Streets
11-1285	500 Harvey Road
11-1286	Harvey Road
11-1287	Dove Lane
11-1289	Holt Avenue
12-0332	Smyth Road

Information to be Received and Filed

- D.** Approved minutes from the MTA Commission meeting held October 26, 2010, October 2010 Financial Report, and October 2010 Ridership Report submitted by Michael Whitten, Executive Director MTA.
- E.** Communication from the Trustees of Trust Funds regarding the City of Manchester Old System Retirement Plan.

REFERRAL TO COMMITTEE

COMMITTEE ON FINANCE

- F.** Resolution:

“Amending the FY 2011 Community Improvement Program, authorizing and appropriating funds in the amount of Forty Four Thousand, One Hundred Ten Dollars (\$44,110) for the FY 2011 CIP 214811 Public Health Emergency Response (H1N1) Extension Funds.”

REPORTS OF COMMITTEES

COMMITTEE ON ACCOUNTS, ENROLLMENT & REVENUE ADMINISTRATION

- G.** Advising that it has received and filed a communication from Regions First, LLC regarding waiving outstanding inspection fees.
(Unanimous vote)

- H.** Recommending referring to the Committee on Administration/Information Systems the issue of building code regulations for a review of the existing policy on inspection fees and code violations, and to explore ways to strengthen existing and new building code ordinances.

The Committee further recommends that the Finance Officer and City Solicitor aid in the process of reviewing building code regulations, fees, and penalties.
(Unanimous vote)

COMMITTEE ON COMMUNITY IMPROVEMENT

- I.** Recommending that the Public Works Director be authorized to purchase one new vehicle for the Information Systems Department, two new vehicles for the Planning & Community Development Department and one new vehicle for the Health Department.

The Committee further recommends that funds from auction proceeds and MER bond balances be used for the purchases.
(Unanimous vote)

- J.** Recommending that the Fire Chief be authorized to complete the competitive bidding process and order a fire pumper in January for an August 2011 delivery.

The Committee further notes that the truck is included in the FY 2012 MER plan.
(Unanimous vote)

- K.** Recommending that a request from the Health Department to accept funds in the amount of \$44,110 from the New Hampshire Department of Health and Human Services to be used towards the H1N1 pandemic preparedness and response capabilities be approved.

(Unanimous vote)

- L.** Recommending that the request for various CIP Project extensions be approved.

(Unanimous vote)

- Q.** Recommending that the request from the National MS Society for the use of Arms Parking Lot on Sunday, April 17, 2011, from noon until 4:00 p.m. for their annual Walk MS Manchester event be approved.

(Unanimous vote)

- R.** Recommending that the request from MCCI to purchase four reserved commercial parking spaces on Elm Street at a discounted rate of \$8.00 per space, per day be approved.

(Unanimous vote)

- S.** Advising that it has approved Ordinance:

“Amending Chapter 71.13 Overnight Winter Parking of the Code of Ordinances of the City of Manchester revising the times for overnight winter parking from 12:00 a.m. and 7:00 a.m. to 1:00 a.m. and 6:00 a.m.”

and recommends same be referred to the Committee on Bills on Second Reading for technical review.

(Unanimous vote)

T. Advising that it has approved Ordinance:

“Amending Chapter 70: Motor Vehicles and Traffic of the Code of Ordinances of the City of Manchester by amending Section 70.54 Permit Parking in Lieu of Coin Deposit establishing a monthly rate for downtown post secondary schools.”

and recommends same be referred to the Committee on Bills on Second Reading for technical review.

(Unanimous vote)

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

M. Advising that the attached request for a \$20,000 loan under the First Time Homebuyers – Down Payment Assistance program through NeighborWorks Greater Manchester has been approved.

(Unanimous vote)

Alderman Greazzo stated in the CIP Committee meeting we had a discussion with NeighborWorks regarding their vetting process for who these loans go to. I would ask, and I think Chairman O’Neil acknowledged in our meeting, that we have a way to find out the criminal history of the folks we are giving this money to. It would certainly be a shame to be aiding folks coming into the City with a down payment on a house if they have a criminal history - pedophiles, rapists, and other violent offenders. I would just ask that we keep an eye on that.

Mayor Gatsas asked is there a motion or is it just an oversight?

Alderman O’Neil responded I don’t think there was a specific motion, but we asked the Solicitor’s office to research what we are allowed to do or not do within State law on that. I would expect at the next CIP meeting they would be reporting

back to us on that. If you want, Your Honor, I will make a motion to that effect just to shore it up.

Mayor Gatsas stated so that a report can come back with them, that's fine.

Alderman Lopez stated I sit on the Board of Directors of NeighborWorks and I will bring it up to them.

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

- N.** Recommending that the Job Specification of Deputy Tax Collector as presented and amended be approved.
(Aldermen Shea, Ludwig, Ouellette, and Arnold voted yea; Alderman Craig voted nay.)

Alderman Shea stated I am going to request that this be sent back to the Human Resources Committee for more work.

On motion of Alderman Shea, duly seconded by Alderman Arnold, it was voted to send this item back to the Committee on Human Resources/Insurance.

- O.** Recommending adding coverage to the City's health plan related to the State of New Hampshire health related insurance mandates for hearing aids and the treatment of Autism.

The Committee further recommends that the Board consider the matter during the FY12 Budget discussions.
(Unanimous vote)

Alderman Shea stated this was a little bit difficult to interpret, Your Honor. The Committee actually would like the motion to be considered in the 2012 budget

discussions. The first part of that would be the vote, which I feel we could take off, and just keep the second part of that motion. I would be requesting the Board to vote accordingly in that regard. It's difficult to interpret this in terms of what the motion really was. In speaking to the Committee members, they felt that although it's a worthwhile recommendation because the State has adopted both the hearing aids and the treatment of Autism, the primary concern was that it be addressed in the 2012 budget discussions.

Mayor Gatsas stated let's send the whole thing to the Committee on Finance during the budget process.

***Alderman Shea** moved to send this item to the Committee on Finance to be taken up during the budget process. **Alderman Arnold** duly seconded the motion.*

Alderman Lopez asked shouldn't we have some information on this?

Mayor Gatsas responded in the budget process we'll hear all the information we'll need.

Alderman Craig asked could I just ask that Mr. Normand clarify that if we were to vote in the affirmative what that would mean?

City Clerk Matt Normand stated my understanding of the intent here is to accept the committee report but to refer that on to the budget discussions for FY2012.

Alderman Craig stated so this isn't locking us into anything.

Mayor Gatsas stated absolutely not. You are not adding this to the medical plan tonight. This is about discussion to see what happens during the budget process.

Alderman DeVries asked is this just item O? I apologize. I think I missed item N when we were deliberating again on item M.

Mayor Gatsas stated N has been referred back to Committee.

Mayor Gatsas called for a vote on the motion. The motion carried, with Alderman DeVries being duly recorded in opposition.

- P.** Recommending that the following regulations governing standing, stopping, parking and operation of vehicles, be adopted pursuant to Chapter 70 of the Code of Ordinances of the City of Manchester and put into effect when duly advertised and the districts affected thereby duly posted as required by the provisions of that Chapter and Chapter 335 of the Sessions Laws of 1951.

Section 70.36 Stopping, Standing, or Parking Prohibited
--

STOP SIGN:

On Laxson Avenue at Edouard Street – SWC
Alderman DeVries

STOP SIGNS – 4 –WAY:

On Tory Road at Joe English Lane – NWC, SEC
*** Review attached

Alderman Craig

On Mystic Street at Cameron Street – NEC,SWC
*** Review attached

Alderman Shaw

On Holly Avenue at South Wilson Street – NEC,SWC

*** Review attached

Alderman Shaw

YIELD SIGN:

On Hospital Avenue at Cypress Street – SWC
Alderman Osborne

RESCIND NO PARKING LOADING ZONE:

On Wilson Street, west side, from a point 20 feet south of Clay Street to a point 26 feet south
(Ord. 9919)

NO PARKING ANYTIME:

On Massabesic Street, south side, from Jewett Street to a point 50 feet east
On Massabesic Street, south side, from a point 70 feet west of Jewett Street to a point 40 feet west
Alderman Osborne

RESCIND NO PARKING – 8:00 AM – 4:00 PM – MONDAY – FRIDAY:

On Central Street, south side, from a point 135 feet east of Maple Street to a point 20 feet east
(Ord. 6397)
Alderman Osborne

CROSSWALK – EMERGENCY ORDINANCE:

On Weston Road, east of Circle Road
Alderman DeVries

15 MINUTE PARKING – 8:00 AM – 11:00 PM – EMERGENCY ORDINANCE:

On Maple Street, east side, from Merrimack Street to Monadnock Lane
Alderman Roy

STOP SIGN:

On Whitwell Street at Pine Island Road – NWC
Alderman DeVries

(Unanimous vote with the exception of Alderman Roy who voted in opposition to the four way stop signs.)

Alderman O’Neil stated before I bring up this item, I would be remiss if I didn’t recognize the gentleman who watches over us every time we are in this Chamber and that is former Alderman Bill Cashin. I’m sure he’s here on some official business in his current capacity. I just want to go on record with the three four-way stop signs. I’ve been consistent with it. None of them meet the standards of a traffic warrant for four-way stop signs. I believe that puts the City at some risk, so I just want to go on record as opposed to the three four-way stop signs, as in all three cases they were not recommended by staff as meeting the warrant.

*On motion of **Alderman O'Neil**, duly seconded by **Alderman Roy**, it was voted to approve the traffic report. Aldermen O'Neil and Roy were duly recorded in opposition to the three four-way stops.*

5. Communication from Anthony Poore advising the Board of his resignation from the Office of Youth Services Advisory Board.

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

6. Communication from Lisa Michaud advising the Board of her resignation from the Office of Youth Services Advisory Board.

*On motion of **Alderman Craig**, duly seconded by **Alderman O'Neil** it was voted to accept this resignation with regret.*

7. Nominations presented by Mayor Gatsas.

Mayor Gatsas stated pursuant to Section 3.14 (b) of the City Charter, please find below the following nominations:

Eva Castillo-Turgeon to succeed Lisa Michaud (resignation) as a member of the Office of Youth Services Advisory Board, term to expire December 31, 2011;

Monique Lafond to succeed Anthony Poore (resignation) as a member of the Office of Youth Services Advisory Board, term to expire December 31, 2011;

David Allen to succeed Ovide LaMontagne as a member of the Revolving Loan Committee, term to expire June 1, 2013.

These nominations will layover until the next meeting of the Board pursuant to Rule 20 of the Board of Mayor and Aldermen. Your consideration of these nominees is appreciated.

8. Confirmations presented by Mayor Gatsas.

Office of Youth Services Advisory Board

Bobby Kessler to succeed Dick Anagnost, as a member, term to expire January 1, 2014;

Karen Burkush to succeed Susan McKeown, as a member, term to expire January 1, 2014;

Tom Donovan to succeed Kendall Snow, as a member, term to expire January 1, 2014.

On motion of Alderman Ouellette, duly seconded by Alderman Arnold, it was voted to confirm these nominations.

9. Nomination of Department Head to be presented by Alderman Lopez.

Alderman Lopez stated I have received correspondence since the last Board meeting on the nomination of Robert Gagne as the department head of the Assessor's Office.

On motion of Alderman Lopez, duly seconded by Alderman Roy, it was voted to approve this appointment.

Alderman Lopez stated I would like to accept the resignation of Commissioner Joseph Deselle from the Manchester Transit Authority Board with deep regret and wish him the best.

Alderman O'Neil stated we should recognize Bob for his appointment.

10. Communication from Thomas Clark, City Solicitor, requesting approval of the Water Line and Sewer Line Extension Agreement related to the NH Job Corps project.

On motion of Alderman Arnold, duly seconded by Alderman O'Neil, it was voted to approve this request.

11. Discussion regarding the Manchester Municipal Complex Contract.

Mr. Kevin Sheppard, Public Works Director, stated I have nothing to report tonight other than we are still in negotiations with two construction managers. Neither one is willing to take the risk for contaminated soils or materials on the site, but we are still in discussion with both, and hopefully by the next Board meeting we will either have a recommendation or, even better, a full contract. I can't guarantee that, but I think we will get there.

Alderman O'Neil stated many of us talk to Mr. Sheppard regularly. Would a motion be in order to get rid of that item regarding the risk of the unknowns in the ground so that he can move forward and try to get a contract? Alderman Long has reminded me on several occasions that the longer we wait to get a contract we continue to put the pricing of the contract at risk. Kevin, can you give me the exact requirement?

Mr. Sheppard responded unknown conditions for hazardous materials and soils.

Mayor Gatsas stated I would just ask that we allow the department head to do his work. I don't think he's going to walk away from this, but I think that he's negotiating it. He has been having discussions and we should allow him to do his

work. He certainly has been carrying the ball this far. I think that if he thought he needed a motion tonight he would come forward with it. Allowing him two more weeks to negotiate I don't think is preventing us from moving forward. The bigger concerns that I have are not so much what might or might not be in the ground, but it has to do with design and whether we are over-designing what we have. Those are bigger concerns of mine than what might be in the ground. My other concern is that we have been doing this battle for the better part of eight months. When I read in the newspaper that there are unions that are talking about not wanting to walk, I invite them down to City Hall to walk to the garage. I don't think the distance from here to there is any different. For me to read that in the paper, I can tell you...for us doing everything in our power to get this project done, and people are saying they don't want to walk because it is changing our work...whatever they want to call it. I have a real problem with that.

Alderman O'Neil moved to shift the liability for unknown material and soil contamination from the contractor to the City of Manchester. Alderman DeVries duly seconded the motion.

Alderman O'Neil stated we've heard Mr. Sheppard say that neither of the contractors is going to sign it. The longer it's out there on the table, it is a distraction. It has never been done, to the best of my knowledge, in Manchester. Checking in other communities and even with the State, it has never been done. The sooner we get rid of that condition, the more likely Mr. Sheppard is going to get an agreement. It is a distraction right now, in my opinion, in these negotiations. We could get rid of it and allow them to negotiate to get a guaranteed maximum price with one of the contractors.

Alderman Long stated I still have the concerns of this project getting postponed in December, January or February. However, after speaking with Mr. Sheppard I have to agree that they are negotiating right now and this aspect that this Board is going to vote on may compromise that negotiation. It may give Harvey Construction the feeling that it has the Board with it. I believe it would compromise a two to three week finalization that Mr. Sheppard believes he can get without us moving on any of this.

Alderman DeVries stated my concern is that heading into the holidays we've got additional...we're not just layering on a small amount of time here that this could significantly delay the project. I certainly agree with Alderman O'Neil that we need to finalize this contentious piece of this contract. It is unique. We are asking for our cake and we would like to eat it too in the fact that we want them to take all responsibility for all costs involved with any hazardous material that is sub-surface at the site. But we know we monitor from many spills that have happened over the decades at the site. We want them to take all liability and responsibility for all of those costs, but yet return back to us a contingency. We need to get this rolling in order for our cost containment to stay in place. We need to assure that we have the right contractor in place working with us as soon as possible. If we wait another three or four weeks on this, where is that going to leave you with the project? I just think we need to get rolling on this sooner rather than later.

Alderman Ouellette stated we pay the department heads and the professionals to give us recommendations and report back to the Board on how they feel, either to run a department, or in this case, to negotiate on behalf of the City. We have given Mr. Sheppard the authority and the confidence to go ahead and do that on our behalf. I agree with Alderman Long, that if we vote this tonight we are kind of cutting his legs out from under him without even having a proper response to

the Board as to where the negotiations are. Kevin has not come to this Board saying that we are at an impasse yet. If he were to be at that point, I'm sure he would do that, and he would advise the Board on which way he would think that we should go, and we would have all of the information in front of us. I'm not completely ruling it out in the future, depending upon what the recommendation of the department head is, but we are in the middle of negotiations and to do this right now, while he's in the middle of negotiations, I don't think that's fair. The message is clear and the RFP was clear. I still stand by what I said that night. We should really try to work through this. It's a give and take; it's a negotiation. If we accept this, what's to give and what's to take on the other side? I don't know that answer because he's not ready to report that to us. I'm not ready to vote on this tonight. I'm going to oppose this motion tonight. That doesn't mean that I won't, in the near future, be in favor of it. I just don't think it's fair to do that to Kevin at this time.

Alderman Shea stated not knowing what Alderman Ouellette was going to say, I totally agree. Kevin, you are the head honcho in this. Do you feel comfortable in keeping the negotiations going?

Mr. Sheppard responded yes, I do.

Alderman Shea stated so you would prefer to keep the negotiations going, and I think, Your Honor, what we should try to do is set a date by which Kevin has to and we have to, make a final decision. This can't go on forever.

Mayor Gatsas stated I agree with you.

Alderman Shea stated we have to do that within the next 30 days or so. Would you feel comfortable, Kevin, if that were the case? Can you think through the fact that within the next 30 days or whenever, you would have an definitive answer for the Board in terms of what you would feel comfortable doing and what recommendations you could come forward with?

Mr. Sheppard responded I would prefer to leave it on the Board agenda for every other week. I would rather you don't give me a deadline because if I do run into contract negotiations and the CM I am dealing with feels that I have a deadline, that constrains my negotiations. Believe me, it's in the best interest of the City and me to move forward with this as soon as possible. I'm hoping to come back next time the Board meets with something, but who knows which way negotiations are going to go. If you put a limit, it may constrain negotiations.

Alderman Greazzo stated I concur with Aldermen Ouellette and Long. This was actually in the RFP and everybody knew what was out there and what they would have to deal with in taking on these contracts. I don't think it is in good faith to try to negotiate that out of their contract at the last minute. We've already given away enough of our hand in negotiating these deals to build this complex, that we don't need to give up even more at the last minute.

Alderman O'Neil stated we've heard the director say tonight that both firms he has talked to won't reach an agreement with that in there. Kevin, did you say that five minutes ago?

Mr. Sheppard responded yes, that's what I said, but...

Alderman O'Neil interjected Kevin, it's what you said. Don't skate on it now. I've worked with Mr. Sheppard a long time. He's capable of getting a contract done. This isn't about Kevin getting a contract done. This is about a condition that never belonged in the RFP. And as he said the last time we met, RFP's are just guidelines; not everything in the RFP goes into the contract. He said that the last time we met. We are not in any great position here. This project is underfunded. They've already had to cut part of the project to make it fit the number. We're kidding ourselves that he's going to get an agreement with this item in it. It's a non-starter for the two firms he has talked to. He is at an impasse. If he weren't, he wouldn't have to go to the second firm to have discussions. So, to say he's not at an impasse...Kevin needs this off his back to he can have negotiations with the contractors. It's not about give and take. This is a multi-million dollar item that's on the table for a project that's already underfunded.

Alderman O'Neil called for a roll call vote on the motion to shift the liability for unknown material and soil contamination from the contractor to the City.

Mayor Gatsas stated and if it's under budget and there are no changes, I'll leave it up to those people that wanted to take the motion tonight and have a roll call on it. It works both ways. These designs aren't completed. Kevin, is there 30% to 40% left to design on these buildings?

Mr. Sheppard responded I would say there is probably 25% to 30% left.

Mayor Gatsas stated tomorrow there is not a contract being signed and a shovel in the ground. They haven't completed the drawings. They aren't done. We are hearing from somebody...and let's remember that we wanted no risk when we built the Verizon Wireless Arena. No risk? No reward. There was contamination there. We didn't absorb it. We wanted no risk at the ballpark. There was

contamination there. We didn't absorb it. The City has always said that we didn't want the risk.

Alderman O'Neil stated it is very misleading that you use those two as examples. There was a developer in between the City who assumed the risks at the ballpark. That had nothing to do with the City. The developer assumed those liabilities. There is no developer involved in this. That's very misleading.

Mayor Gatsas stated we wanted no risk if there was contamination in the soil. That's what we told the developer. If you will remember, the City still owns that property. It's not owned by an independent.

Alderman O'Neil stated but there is no one to hand it off to on this. It's the City and the contractor. There is no middleman. And, in the case of that project, the contractor went out of business after that project. Let's compare apples to apples.

Mayor Gatsas stated and that vote was 13 to one on the ballpark.

Alderman Ouellette asked if we vote for this tonight and we let the taxpayers assume the risk, what dollar figure do we take away from the project to set aside in case there is contamination there? We're going to have to have a dollar figure set aside in a contingency fund in case this happens. If we don't do that, and we find something in the ground and it's quite expensive to remove, then the taxpayer is on the hook. Where do we get the money for that? So that contingency money that we are going to have to set aside, what would be the cost? I don't even know how you would start to figure that out. Doesn't that take away from the cost of the building and wouldn't that pare down the number even more?

Mayor Gatsas responded I think we should allow the department head to negotiate and move forward.

Alderman Ouellette stated that's what I think.

Alderman Lopez stated we ought to take a vote unless the maker of the motion wants to withdraw it.

Alderman Ludwig stated I'm confused as to what leeway Kevin has to negotiate. Alderman O'Neil is correct in one sense, if the decree from this Board was that we are not accepting any responsibility for contaminated soils. As we sit here, I don't know if Kevin can talk about splitting the baby down the middle.

Mayor Gatsas stated I think he has to go with whatever he offers whatever CM and come back to the Board and say that is the best deal he could negotiate. It's up to this Board to say whether we accept it or we don't. But I'm sure we are going to take his advice.

Alderman Ludwig stated I'm happy to take his advice. It's just if he is sitting there with a directive from this Board that says we are not right now taking responsibility for contaminated soils, then that's it. He's not negotiating. He's just telling them we are not taking it. That's not negotiating.

Mayor Gatsas stated I think he understands where he is at, and rather than doing it in public, he has the ability to move one side or another.

Alderman Ouellette stated I don't think this Board has ever given Kevin one way or another. We just gave him a directive to negotiate. You are correct, Alderman. We don't have that information in front of us to make an informed decision as to

what we are giving up and what we are getting on the other end. I agree with you. We don't have enough information to make an informed decision.

A roll call vote was taken on the motion. Aldermen O'Neil, DeVries, Arnold, and Corriveau voted yes. Aldermen Lopez, Shea, Shaw, Greazzo, Ouellette, Craig, Ludwig, Long, Roy and Osborne voted nay. The motion failed.

Alderman O'Neil asked is he coming back next meeting with a contract? This can't go out 30 days or 60 days.

Mayor Gatsas stated it will be on every full Board agenda.

Alderman O'Neil stated that's not my question. Will he be back on the fourth of January with a contract?

Mayor Gatsas responded I can't give you that answer this evening and I don't think he can.

Alderman Shea stated I think every member of this Board should raise their hand and be recognized, rather than speaking out. If we all decided to speak out whenever we wanted to, we would have total chaos, and you should recognize people who raise their hand without necessarily speaking up. In all due respect to all members we should follow the same decorum, Your Honor.

On motion of Alderman Ludwig, duly seconded by Alderman Craig, it was voted to recess the meeting to allow the Committee on Finance to meet.

Mayor Gatsas called the meeting back to order.

14. Report of the Committee on Finance.

The Committee on Finance respectfully recommends, after due and careful consideration, that Resolutions:

“Amending the FY 2011 Community Improvement Program, authorizing and appropriating funds in the amount of Forty Four Thousand, One Hundred Ten Dollars (\$44,110) for the FY 2011 CIP 214811 Public Health Emergency Response (H1N1) Extension Funds.”

A Resolution “Rescinding \$590,000 of Bonds, Notes or Lease Purchases of a Bond Resolution for 2009 CIP 711209 which authorized \$3,211,500 of Bonds, Notes or Lease Purchases, so as to endorse the issuance of a bond authorization in the amount of \$2,621,500.”

ought to pass and be enrolled.

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

15. Report of the Committee on Lands and Buildings.

The Committee on Lands and Buildings respectfully recommends, after due and careful consideration, that a request of the Manchester Elks Lodge for the construction of an access from the public parking lot, located at the northwest corner of Granite and Second Streets to the sidewalk on Granite Street, be approved.

Alderman Ouellette stated when I received a call from Kevin Sheppard on this, I thought they were just going to pave a little path. I wasn't aware that there were going to be steps there. Who is going to maintain the steps in the winter time and who is going to assume the liability for a slip and fall down the stairs? A third question would be, 'Does this violate any ADA rules?'

Mr. Thomas Clark, City Solicitor, responded I'm not aware of what the ADA rules are for these stairways. We just received this request last week. As far as liability, it would be a part of the sidewalk and therefore would be immune. I don't know if Kevin Sheppard knows who is going to maintain this property.

Alderman Lopez stated we were told in Committee that the people will take care of it and pay for the cost of it and maintain it.

Mr. Sheppard stated their cover letter did say they would maintain it during the winter months. I'm not sure that absolves the City from maintaining it. I'm sure we will still have to maintain it, but they have said that they will volunteer to maintain it.

Alderman Ouellette asked are they going to remove the snow from it?

Mr. Sheppard responded that's what their cover letter said.

Alderman Ouellette asked in your opinion, does this violate any ADA laws?

Mr. Sheppard responded in my opinion, it doesn't. I've taken a look at that. There is access to that parking lot out the main entrance which is accessible down to the sidewalk. This is just a shortcut.

Alderman Ouellette asked when did this change from a little paved path to steps?

Mr. Sheppard responded originally I thought we were talking about the parking lot on the northeast corner and actually it's the parking lot on the northwest corner. Once we took a look at the grades, we knew that steps would be required, plus a railing for the steps as well.

Alderman Ouellette asked so you just forgot to call me about the change?

Mr. Sheppard stated yes.

Alderman Long stated just to follow up on what Alderman Ouellette said, I would like not for the Solicitor to consider this, but for the Solicitor to assure us that we are not liable for this. Is it skateboard accessible? Come on. You've got a handrail sitting out there pretty. That's an invitation. Within this contract should be the maintenance and assurance that the City is not liable for this. A stairway like that with a railing is just an open invitation.

Mr. Clark stated this is going to be a City-owned stairway. It's part of the sidewalk. By State law we are immune from any accidents that happen on sidewalks. We don't have the liability for this.

Alderman Long stated so we are going to remain liable for this.

Mr. Clark stated there is no liability by State law.

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

16. Report(s) of the Committee on Accounts, Enrollment & Revenue Administration.

There were no reports.

17. Report(s) of the Committee on Administration/Information Systems

There were no reports.

18. Resolutions:

“Amending the FY 2011 Community Improvement Program, authorizing and appropriating funds in the amount of Forty Four Thousand, One Hundred Ten Dollars (\$44,110) for the FY 2011 CIP 214811 Public Health Emergency Response (H1N1) Extension Funds.”

A Resolution “Rescinding \$590,000 of Bonds, Notes or Lease Purchases of a Bond Resolution for 2009 CIP 711209 which authorized \$3,211,500 of Bonds, Notes or Lease Purchases, so as to endorse the issuance of a bond authorization in the amount of \$2,621,500.”

On motion of Alderman Roy, duly seconded by Alderman Long, it was voted to waive reading of the Resolutions.

On motion of Alderman Shea, duly seconded by Alderman Arnold, it was voted that the Resolutions ought to pass and be enrolled.

TABLED ITEMS

19. Report of the Committee on Community Improvement

Recommending that the request from the Planning & Community Development Director to rescind \$590,000 of the Bond Resolution for Annual ROW Reconstruction Program, CIP 711209 be approved.

(Unanimous vote)

(Note: Tabled 9/21/10)

On motion of Alderman Roy, duly seconded by Alderman Long, it was voted to remove this item from the table.

On motion of Alderman DeVries, duly seconded by Alderman Long, it was voted to receive and file this item.

- 20.** Petition for discontinuance of a portion of Hayward Street.
(Note: Tabled 10/5/10; pending project completion)

This item remained on the table.

- 21.** Petition for discontinuance of a portion of Lincoln Street.
(Note: Tabled 10/5/10; pending project completion)

This item remained on the table

NEW BUSINESS

Mayor Gatsas stated Hackett Hill. We have a communication from DOT that they are willing to pay for half of the exit ramp that leads from the new fire station onto the highway. I sent them some reports about the number of accidents and the accessibility we could get from the fire station if we could have a direct access. You can see that they are willing to pay for one half of that amount or \$44,000, which obviously saves us money. There is also a report from Finance that we have roughly \$30,000 in impact fees that are available to go to the fire station. When I first started looking at the impact fees, we have to send a check back to some of the developers up there because we didn't use it in a timely manner. We are sending them back \$56,000 that we probably could have used on some projects up there. Maybe some discussions have to happen. We have designated impact fees to impact particular stations. We have roughly \$60,000 in impact fees for the

station on East Industrial Drive. We have two options there. One of them is to pay down some of the debt which certainly is not a bad thing. It certainly would behoove us if we could buy some equipment. That might make a little bit more sense. Maybe we should revisit that ordinance and maybe we can apply it to another fire station in the south end of Manchester that might...but I can see that the City Solicitor is on the edge of his chair.

Mr. Clark stated Mayor, we would be happy to look at it with you, but I think the statute restricts the uses, but we'll explore what we can do.

Mayor Gatsas asked is it by statute or by ordinance?

Mr. Clark responded it is by statute, but the ordinance follows the statute.

Mayor Gatsas stated so if we happen to buy a piece of equipment that is at that station...

Mr. Clark interjected generally it is not for equipment but we'll take a look and see what we can use it for.

Alderman Arnold asked just out of curiosity, what is the timeframe that the impact fees have to be spent by?

Mayor Gatsas responded I think it is a six year period.

Alderman Arnold stated I'll just mention that this is basically the only sort of thing that the funds can be used for, as far as Hackett Hill is concerned, so I appreciate the support.

Alderman DeVries stated I'm just wondering if there are any costs incurred with the other item that you provided to us which is talking about highway access in an agreement. It seems that there could be a City cost component to that. Can we apply the residual funds to the City side?

Mayor Gatsas responded no, that has been included in the design. I'm just getting back from the State something that we were going to do anyway. The Chief had asked me if we could get access. They are in the process of getting the access now; I just got the State to pay for half of the access.

Alderman DeVries stated thank you for that clarification, Your Honor. What would you like us to do so that staff can continue to work with the Solicitor to see if there is another project we can remand the dollars to?

Mayor Gatsas responded the first two were just informational, that we have access to the highway now. The third one would be to see what we could do with the impact fees that might be in south Manchester, on what we might be able to do there.

Alderman DeVries stated always looking for help.

Alderman Lopez asked is there a procedure in place to insure that we don't lose any impact fees?

Mayor Gatsas responded that's a great question because when I first asked the question, I was told we had somewhere around \$94,000. Then I was told that \$56,000 has to go back. There is actually another \$14,000 to other developers that also must be returned.

Alderman Lopez asked can I ask the Finance Officer? Is it the Finance Department's responsibility on impact fees or who keeps track of the actual impact fees we have in the City so that we don't lose any money?

Mr. Sanders responded the Finance Department keeps track of and invests the monies that are received for impact fees. We work with the Solicitor and Planning & Community Development to determine if we can find projects for which the impact fees can be used. The use of the impact fees is subject to review by the Solicitor, and they are specifically for increasing the capacity of fire houses in the specific location for which the fees have been raised. They are much more specific than School impact fees, for example, which can be used for increasing school capacity throughout the City. They are not designated to one geographical area. So, the use of fire impact fees is very specific as to what does and does not qualify.

Alderman Lopez asked is it the responsibility of the Finance Department on all impact fees or are certain departments monitoring impact fees so that we do not lose them? Is there a mechanism in place to indicate that...

Mayor Gatsas interjected Alderman, to answer your question we are going to develop one so that it doesn't happen again.

Alderman Lopez stated okay, that's fair.

Mr. Sanders stated it would be appropriate this evening for the Board of Mayor and Aldermen to approve the use of the Hackett Hill impact fees for the use of the Hackett Hill fire house project that is in process at the moment because we want to stop the clock on returning the money. We need a resolution from the Aldermen to stop the clock.

On motion of Alderman Arnold, duly seconded by Alderman DeVries, it was voted to approve the use of available impact fees on the Hackett Hill fire station project.

Mayor Gatsas stated next we have a communication from Chief Burkush regarding equipment that the town of Chester would like to borrow for a month. That was just brought to me today. I guess it's time sensitive. Even though I don't like doing this, it's not an impact to us in any way, and the Chief has made the request.

On motion of Alderman O'Neil, duly seconded by Alderman Roy, it was voted to approve the Fire Chief's request to allow the town of Chester to borrow a spare pumper for approximately four weeks.

Mayor Gatsas stated the next one is a communication from Kevin Sheppard. I had sent a letter to have him reexamine the sewer rates because I had noticed that there was a surplus of cash. Certainly we anticipated the fourth CSO (combined sewer overflow) project to be on line by now, and it is not. We have sent our project to the federal government. We are still waiting for them to come back and negotiate with us as far as what we have to do, so I thought it would be appropriate for a reduction in the sewer rates of 7%. It doesn't impact their budget in any way. It would just be going forward with the understanding that once we put the CSO project on line that we would have to go back out and ask for a rate increase to pay for the debt service on the CSO project.

Alderman O'Neil stated there was a lot of time spent back in 2007 and part of 2006. A consultant was brought on board and a financial plan was laid out. We have moved forward with Cohas Brook and continue to move forward with the

Cohas Brook collection system. The department continues to move forward with improvements at the plant. The third piece of it, I honestly don't remember. The fourth piece was the east side CSO Phase II. We know that is going to be somewhere around \$160 million. It will be three times the size of the west Manchester CSO. We knew we were banking money in anticipation of this CSO program coming forward. We know it's coming. We have our application into the EPA. I don't know if 'application' is the correct word. We are waiting to hear back from them. I think the plan that was laid out was the proper plan. We should stick with it. To lower the rates now only to have to raise them again to a higher number is not the responsible thing to do. If we are being asked to vote on this tonight, I'm going to vote against it. If you want to send it to Committee to take a look at it...There were months spent in preparation of this plan that was adopted by this Board. I think to vote on it tonight is irresponsible.

Mayor Gatsas stated Alderman, I am not looking for a vote tonight. I'm bringing it forward to send it to a Committee because I would never ask you for a vote tonight.

Alderman O'Neil stated that's not what it says here.

Mayor Gatsas stated I'm not looking for a vote. I'm bringing the information forward. I think it's very clear that when we talked about it in 2006 we thought the CSO program was going to start in 2010. When we made those rate increases, we made them under the assumption that a project would begin. I don't have to tell you that it could be two to three years before this project starts, so I think that right now, with the discussions, or the people who have called me about their sewer rates, and I would think that probably a lot of Aldermen have been called, I would think it would be appropriate that we reduce the rates and let the project come forward. Then if the project calls for 5% or 6% or 7% rate to pay for the

debt, then that is something that people understand. Just to collect their money today...I think they know how to spend their money better than us holding it.

Alderman O'Neil stated Your Honor, we've done this before. We banked money in anticipation of Phase I CSO. There was a very specific plan laid out. I think the downfall in this city is the rollercoaster we put the taxpayers and the ratepayers on. We drop, we're up, and we're down, instead of giving them a nice, even plan to stick with. I'm fine sending it to Committee. I have reservations, but whatever Committee it is, I'm sure we'll spend the proper time going through what was presented, how it was laid out. I respectfully disagree that this CSO is going to be off three or four years. I would be surprised if within the next six months we didn't hear back from the EPA to start the negotiations regarding it.

Mayor Gatsas asked can I get a motion to send it to the Committee on Administration?

Alderman O'Neil asked doesn't it belong more in CIP because it's capital projects?

Mayor Gatsas responded I think because it is policy, about this Board dropping rates, I think it's more of a policy situation than CIP looking at a capital project.

Alderman O'Neil stated well it's all based on capital projects. Cohas Brook is a capital project; the Waste Water Treatment Plant is a capital project.

Mayor Gatsas stated when we voted on it the first time, increasing rates, it came out of the Committee on Administration.

Alderman DeVries stated I don't know if the Finance Officer is ready to answer this or if he just wants to make a note to report back to the Committee. My concern would be the effect on our bond rating. What is our bond counsel going to have to say about some of these moves that we are making? That certainly needs to be part of the discussion that we have at the Committee.

Mayor Gatsas stated I don't have a problem with him answering but certainly I can tell you the ratepayers would be thrilled if they knew they were getting a 7% reduction.

Alderman DeVries stated I understand, but taking care of our infrastructure is always one of the primary things that we have been taught by bond counsel to look at when we set rates.

Mayor Gatsas stated nobody is saying that you shouldn't.

Mr. Sanders stated I would need a little more time to look at it and familiarize myself with what the timetable is and how the rates may be increased before I could answer that.

Alderman DeVries stated that's fine. I'm just putting it onto your radar screen. That's what we need to be looking at from a policy standpoint, as well as keeping the rates as low as we can.

Mayor Gatsas stated I can tell you that this summer, as dry as it was, if they didn't have deduct meters, they were paying an awful lot of money for watering their lawns, so I would suggest...they've called me and I've asked them the first question: 'Do you have a deduct meter?' If they don't, I suggest to them for \$300, they are probably going to save that on watering their lawn. If the CSO project is

here in six months, then for six months they see a reduction in rates, and that's not a bad thing.

On motion of Alderman Shea, duly seconded by Alderman DeVries, it was voted to refer this item to the Committee on Administration.

Mayor Gatsas stated next is a communication from Attorney William Craig regarding MHRA. This just came to light today. The City Solicitor can weigh in on it and maybe he can give you a better explanation than I can because it has to do more with legalize than anything else.

Mr. Clark stated this is from the New Hampshire Housing Finance Authority. They foreclosed on a property back in January. At this point they are looking for the city to waive notice of that foreclosure. Notices were sent out through the Manchester Neighborhood Housing Services and also to the Tax Collector's office, but that wasn't sufficient. We have looked into it. I have talked to the attorneys involved. The foreclosure which took place wiped out the City's mortgage. It also wiped out a mortgage of New Hampshire Housing Services. In this case I think it is appropriate to issue the waiver so the property can be sold and put to a proper use. The mortgage the City had on the property was one of those for \$20,000 which we were never intending to collect. It was one that reduced every year that the person lived in the property, so I believe the balance was down somewhere around \$10,000. There was not enough equity in the property to cover our mortgage. We wouldn't have been paid even if we had received notice.

Alderman Arnold stated so Tom, we are not going to see any money regardless.

Mr. Clark stated that's right. We did receive tax payments though.

On motion of Alderman Arnold, duly seconded by Alderman Lopez, it was voted to execute a Waiver of Notice, subject to the review and approval of the City Solicitor, to cure a defect in a January 2010 foreclosure.

Mayor Gatsas stated the last item of new business is the World's Championship Chili Cook-off, returning to Manchester in 2011. We had finished negotiating. They had called and wanted to come back to Manchester. We have completed the negotiations. It's basically the same thing that we had last year. The difference is that we probably have an extra six months to work on it so that maybe we can have a bigger Chili Fest than what we had last year. I think when all is said and done, the final number...not economic impact; we are preparing those numbers and they will be coming forward to you from the Economic Development office of what the economic impact was and also the total financial numbers; with everything in, I think we ended up making \$6,000. So I can tell you that it's going to go a lot better because we have a lot more time to plan and go forward, and certainly I will hope to see 14 volunteers. I know that we had a couple last year, but hopefully everybody will be there this year to participate. There is an open house tomorrow at City Hall. We will be having cookies. We tried to get an oven so you could smell fresh chocolate chip cookies as you walk through the building, but the Fire Department told me I had to put a hood on and make sure it was sprinkled and everything else. It's here tomorrow. Come on in and enjoy. Parting words...We've been together for a year and it has been my honor and pleasure to serve with every one of you in this last year. We may not have always agreed but I think every one of us had the interest of the City at heart with whatever discussions we had. I look forward to the next year being as successful as the year we have behind us. I can tell you that people throughout the United States look at Manchester with envy about the jobs we are creating and the buildings we are building and the different things that are happening in this great city. I always tell

them it's because we are working together as one Board and getting an awful lot of things done. I think that is important. I think educationally...I was at a concert today and I was amazed at how many parents were there. The room was full. The kids were singing and they were having a great time. So not only is the City thriving, but the School District is thriving and the students are thriving. I want to see us continue that moving forward. I think we all understand that we have some difficult times ahead of us, but I think if we all work together, we'll get by them. We'll make sure the City is better when we leave it than when we came. So again, I want to thank you and wish you all a very, very Merry Christmas. I would hope that you would all come forward so that we can wish the viewers a Merry Christmas because I know that is something that we have all done in the past. So, if all of the Aldermen would come close. Is there any other new business?

Alderman Lopez stated after New Year's I have two Aldermen who want to join the Senior Center for the June dinner for the senior citizens. So if any other Aldermen want to join us, they are welcome. It's for fundraising. Secondly, you might have noticed at the Senior Center, as you go in the back entrance, the Cashin Senior Center spent \$3,100 for landscaping over there and that's really nice. The six-apartment building is down, so there will be more parking over there.

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

A True Record. Attest.

City Clerk