

COMMITTEE ON LANDS AND BUILDINGS

July 7, 2009

5:45 PM

Chairman Smith called the meeting to order.

The Clerk called the roll.

Present: Aldermen Smith, Gatsas, M. Roy, J. Roy, Osborne

Messrs: D. Mara, T. Clark, T. Clougherty, D. Cornell

Chairman Smith addressed item 3 of the agenda:

3. Communication from David Wihby, Chairman of Members First Credit Union of NH, submitting lease agreements for an existing ATM at One City Hall Plaza and a new ATM at the Police Department.

Mr. Matt Normand, City Clerk, stated I would just note that on the contract for the Police Department, the Chief has concerns about the original intent of the ATM contract. Typically, the revenue that comes in from that contract goes into the General Fund, as does the one for City Hall. I believe the Chief had asked that these go to a special account at the Police Department, but he's here to address that with the Committee.

On motion of Alderman Osborne, duly seconded by Alderman M. Roy, it was voted to discuss this item.

Mr. David Mara, Police Chief, stated the reason the whole issue about the ATM came up at the Police Department was because we reached out earlier this year to the Members First Credit Union and the previous CEO to explore the possibility of getting an ATM at the Police Department. The reasons were twofold. Number one, for the public as well as the employees, I think it's a good idea to have it there. The public oftentimes comes into the Police Station to make copies, only to find out it costs money. People also come in to bail out a relative or a friend who's been arrested. People going to Verizon, I think, would feel safer stopping at an ATM at the Police Department. That is one of the reasons. The other reason was, we started an Activities Committee at the Police Department and we have an Activities Fund at the Police Department and we're looking at ways to raise revenue and funds without having to go into the Department budget. Getting an ATM in there is one of the things we looked at. This fund is used for things like sending flowers or our condolences if a Police Officer's relative dies or if we have activities for the Police

Department like the annual retirement dinner. The fund is also used if we need something like a television in the lounge or piece of exercise equipment. As a Committee, this is one of the things that we wanted to explore to see if there was a possibility of gaining the funds that are generated from that to come back to the Police Department for the Activities Fund. This fund has a committee that oversees it and it's only used for those purposes.

Alderman Osborne stated Chief, just a small question here. I know it doesn't mean too much and I'm sure it doesn't burn a lot. Under the lease what are the utilities of the electricity? That thing doesn't burn much, does it?

Chief Mara replied not that we are aware of. For instance, just to get the thing set up it isn't going to cost the City anything. The phone company and Verizon will come in to move wires or do whatever they need to do. It's maintained by the Credit Union.

Alderman Osborne asked from \$100 to \$150?

Mr. Mara replied well we don't have one now, but it's my understanding that they are going to take the one that is in City Hall and put that one at the Police Department. Then they are going to put a new one at City Hall.

Alderman Smith stated I'd like to ask the City Solicitor if this is appropriate.

Mr. Tom Clark, City Solicitor, replied while the intent is good, by law, revenues have to be deposited in the General Fund. Departments can only spend revenues that have been appropriated.

Alderman Smith asked did you get that, Chief?

Mr. Mara replied yes, I did, unfortunately. Would it be possible to take that revenue from the General Fund to put into the actual account that we have through the Police Department?

Mr. Clark replied no, the budget has already been passed. What you're talking about is a supplemental appropriation, which can't happen until later in the year when the Finance Officer can certify that there are additional revenues in the City than what were anticipated. You can't spend revenues that are coming into the City.

Alderman M. Roy stated first off, Chief, are you okay with that? I'm going a different direction regarding the lease so I don't want to cut the Chief short on that discussion if he has further questions.

Mr. Mara stated as far as having an ATM at the Department I am still in favor of that.

Alderman M. Roy stated Mr. Chairman, I have a concern regarding the addendum to the lease. It's stated for an unlimited term. Very rarely do we put an open ended contract out there, especially if there is revenue to the City without any financial escalators. I know this is Members First and they do a great service for the City employees, but in my opinion there should be some end day or at least a revision date or a discussion date.

Alderman Smith stated we'll take that under consideration.

Alderman M. Roy stated it does have a 30 day termination period. In our last meeting we had a discussion regarding contracts and who is keeping an eye on the ball regarding revenues. If it's convenient and no one is watching and in ten years we have a different City Clerk, different staff and a different Police Chief, it may fall under the radar as other contracts have. I wouldn't mind having either a review date or a discussion date somewhere in the contract. I'm not going to hold it up because of that, but it is definitely something that I would like to see in our contracts as we go forward.

Alderman Smith stated just to follow up with the City Solicitor, aren't most contracts like that, with 30 days for termination from one party or the other?

Mr. Clark replied it varies quite a bit, but there are several contracts that have a 30 day termination clause.

Alderman M. Roy stated Mr. Chairman, I do appreciate the 30 day termination language, but it's the unlimited term language in the addendum, with no closing or renegotiation time that concerns me.

Alderman Gatsas stated Tom, the first lease that we did was September 2002. Was that for a specific amount of time? Was that a seven year lease because I don't see it in here?

Mr. Clark replied I don't believe it was. It was just a month to month lease with a 30 day termination clause.

Alderman Gatsas asked they are coming in and offering another \$50 per month?

Mr. Clark replied correct. It's \$50 more for the City Hall one and a new ATM at the Police Department, which is an extra \$150.

Alderman Gatsas stated I understand that. There was no term in the first contract that we had in 2002?

Mr. Clark replied that's my understanding, correct.

On motion of Alderman Osborne, duly seconded by Alderman Gatsas, it was voted to approve the lease agreement.

Chairman Smith addressed item 4 of the agenda:

4. Communication from Jonathan Hallet, Jonathan's Quick Eats LLC, requesting permission to operate as a peddler in the Middle Street parking lot on Tuesday nights between the hours of 9:00 P.M. and 2:00 A.M.

On motion of Alderman M. Roy, duly seconded by Alderman Osborne, it was voted to discuss this item.

Alderman M. Roy asked isn't this something that would normally be handled by the Clerk's Office? Would the Clerk like to give an update?

City Clerk Normand stated if I may, Mr. Chairman, this is not something that the Clerk's Office recommends because it is a parking spot on City property that is not under the control of the Clerk's Office. It does have to be approved by Lands and Building, but not something we recommend, either.

Alderman Smith asked this came before the Committee on Administration for seven days and it was defeated and now he wants to go in the City parking lot until 2:00 AM?

City Clerk Normand replied that's correct.

Alderman Smith stated thank you. I thought the Committee members would want to know that.

Alderman M. Roy asked is that individual here? No? Okay. I'm against this. There are enough problems in that parking lot now. The bars dump out and the residents down there occasionally are disturbed by that. I don't think we need people down there until 2:00 AM buying Quick Eats.

On motion of Alderman M. Roy, duly seconded by Alderman Osborne, it was voted to receive and file this item.

TABLED ITEMS

5. Communication from Kevin Sheppard, Public Works Director, advising that the City purchase a certain tract of land adjacent to their current property, on Maple and Valley Street, parcel ID 859-2.
(Tabled 5/19/09, Alderman Gatsas to discuss with Pan AM Railways.)

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

On motion of Alderman Osborne duly seconded by Alderman J. Roy, it was voted to discuss this item.

Mr. Tim Clougherty, Deputy Public Works Director, stated what the Clerk is handing out is a revised purchase and sale agreement. This was a previously tabled item in front of the Committee. We had proposed a purchase price to the Committee of \$58,900 during the month of May. We were asked to go back and talk to the Railroad. After some further negotiations, we offered a price of \$49,900 and the Railroad agreed to split the difference, decreasing the agreed to purchase price by \$4,500 to \$54,400. The purchase and sale agreement recognizes that dollar amount and we would ask the Committee to favorably vote upon this.

Alderman M. Roy asked Tim, the only changes in the contract from last month to this month are the purchase price and the deposit?

Mr. Clougherty replied without going word for word, I did look at each page to make sure there were no material changes. I did read through it. While I'm not a lawyer I don't see anything in there that would be blatantly objectionable to someone with my background. The previous purchase and sale agreement was sent over to the City Solicitor's Office. If it pleases the Committee, it's advised that the Committee moves forward to approve the purchase and sale agreement, subject to the City Solicitor's approval of said agreement.

Alderman Osborne stated when I read this letter from Pan AM Railways it disturbed me a little bit the way they stated this. I'll shorten this a little bit. If it's not accepted within ten days, the price was \$5,890, but then it goes on to say the agreement will then be signed by a proper officer of the Boston and Maine Corporation and fully executed original return to you. Time is of the essence in this transaction. I can't comprehend that. Why is there a time? It's been there since Abraham Lincoln and no one can use it except the Highway Department. Why is time of the essence?

Mr. Clougherty replied not being the author of the letter I'd hesitate to speak to that, Alderman.

Alderman Osborne stated it just struck me funny to have a ten day period.

Alderman M. Roy stated if it helps my colleague, time is of the essence is a term used in real estate that will keep all parties working towards the end closing. It's just a phrase that gets people on the same page moving forward.

On motion of Alderman M. Roy, duly seconded by Alderman Gatsas, it was voted to approve the purchase agreement.

6. Report of the Board of Mayor and Aldermen advising that is has requested staff to prepare documents to provide that the City agree to extend the term on the 2nd mortgage relating to Lowell Terrace Associates property located at the northwest corner of Lowell and Chestnut Streets to coincide with the expiration of the existing first mortgage in 2013.

(Note: The Committee has requested clarification from Finance as to whether financials from 1984 – 2001 have been provided; Solicitor to provide a fair market value for the property as established by the Superior Court in October; Tabled 8/04/08; The Committee requests the Solicitor to provide an updated Certificate of Insurance for the property; Retabled 12/2/08. Information to be provided by the Assessor.)

On file for viewing in Office of the City Clerk, One City Hall Plaza.

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

Alderman Smith stated I can expound on it a little bit. That's in litigation with our Assessors. That's all I can tell you. It's still being fought in the courts.

Mr. David Cornell, City Assessor, stated we are in the middle of settlement. Basically, it's settled, but the finalized paperwork needs to be signed.

Alderman J. Roy asked is the settlement public, David?

Mr. Cornell replied I would say so. It's not signed yet, but we have an agreement. We've agreed to a value, so I believe for all intent and purpose it is public.

Alderman J. Roy asked once the settlement is signed could you get a letter out to the entire Board as to the disposition of that?

Mr. Cornell replied sure.

On motion of Alderman M. Roy, duly seconded by Alderman J. Roy, it was voted to retable this item.

There being no further business on motion of Alderman J. Roy, duly seconded by Alderman M. Roy, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee