



City Council Meeting
Minutes
May 13, 2013
City Council Chambers
7:00 p.m.

1. The Mayor called the meeting to order at 7:00 p.m.
2. Invocation by Pastor David Butler, Center Point Church.
3. Pledge of Allegiance.
4. Roll Call. Councilors Blanchard, Bouchard, Mayor Bouley, Councilors Coen, DelloIacono, Keach, Kretovic, McClure, Nyhan, Patten, St. Hilaire, Shurtleff and Werner were present. Councilors Bennett and Grady-Sexton were excused.
5. Approval of the April 8, 2013 meeting minutes.

Action: Councilor Blanchard moved approval of the April 8, 2013 meeting minutes. The motion was duly seconded and passed with no dissenting votes.

6. Agenda overview by the Mayor.
7. Labor Relations Committee report relative to the City Manager's evaluation, in accordance with Section 21(b) of the City Charter.

Action: Councilor St. Hilaire moved to issue an order of satisfactory on the City Manager's performance. The motion was duly seconded.

Mayor Bouley pointed out City Manager Tom Aspell's outstanding job for the financial health of the city; for providing the Council with a balanced budget again this year; for increasing the financial reports given; for following through with many of the Council's push for openness and accessibility to government.

Councilor St. Hilaire's motion passed with no dissenting votes.

- Consent Agenda Items -

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

Action: Along with items 12, 13 and 39, Mayor Bouley indicated that he would like to remove item 49 from the consent agenda. Councilor Kretovic moved approval of the consent agenda with items 12, 13, 39 and 49 moved to the end of the agenda for discussion. The motion was duly seconded and passed with no dissenting votes.

Referral to the Police Department and the Legal Department

8. Petition, signed by New Hampshire citizens, requesting the City of Concord establish and enforce a code to create a buffer zone of 35', the distance at which demonstrators and protesters must stay from the property of reproductive health care clinics within the City; together with communications from Rebecca Herman in support of said petition.

Referrals to the Traffic Operations Committee and the Parking Committee

9. Petition requesting the installation of a four way stop intersection at the intersection of Thorndike and South State Streets as well as a request that additional improvements in that area be considered.
10. Communication from Kathleen Dunn requesting consideration be made for traffic flow improvements in the vicinity of Centre Street and Main Street in Concord.

Referral to City Administration – to forward Planning Board and Conservation Commission comments to the U.S. Department of Energy (DOE)

11. Communication from the Board of Mckenna's Purchase Unit Owners Association (MPUOA) requesting City Council submit comments to the DOE regarding the proposed Northern Pass Transmission project. (4-18a)

Items Tabled for a June 10, 2013 Public Hearing

12. Resolution authorizing the City Manager to enter into a development and purchase and sales agreement with the Siena Bodwell Joint Venture Group to accomplish the following 1) to purchase a +/- 2.7 acre parcel from the State of New Hampshire, identified as MBL 111E-1-12 for \$955,000 and a \$1,100 administrative fee with the costs for this purchase being borne by the Siena Bodwell Joint Venture Group; and 2) to sell +/- .58 acres of City of Concord land identified as MBL 111E-1-17 and MBL 111E-1-18 to the Siena Bodwell Joint Venture Group to allow for the Siena Bodwell Joint Venture Group's construction of certain public improvements identified as City CIP #39 and the development of +/- 31,000 square feet of commercial real estate; together with a report from the Deputy City Manager – Development. *(Pulled from consent by Councilor Bouchard)*

Action: Item to be discussed at the end of the agenda.

13. Resolution authorizing the City Manager to convey a portion of the North State Street right-of-way to WBIN Media, Inc. and to accept a portion of land along Bouton Street to become

new public right-of-way; together with report from the City Planner. *(Supplemental report received from the City Planner; item pulled from consent by the City Manager)*

Action: Item to be discussed at the end of the agenda.

14. Ordinance amending the Code of Ordinances, Title II, Traffic Code; Chapter 18, Parking; Article 18-1, Stopping, Standing, and Parking, Conant Drive; together with report from the Parking Manager and the Traffic Engineer.
15. Ordinance amending the Code of Ordinances, Title II, Traffic Code; Chapter 18, Parking; Article 18-1, Stopping, Standing, and Parking; Section 18-1-7, Parking Prohibited During Certain Hours and Months in Designated Places, Schedule IX, Abbot Downing Elementary School area.
16. Resolution to discontinue completely West Locke Road, a Class VI local highway, in Concord New Hampshire; together with report from the City Planner.
17. Resolution authorizing the City Manager to submit an application in an amount of up to \$190,000 and to accept, appropriate, and administer grant proceeds of up to \$190,000 in Community Development Block Grant funds on behalf of the Belknap-Merrimack County Community Action Program; together with report from the Assistant for Special Projects.
18. Resolution authorizing the City Manager to submit an application in an amount of up to \$200,000 and to accept, appropriate, and administer grant proceeds of up to \$200,000 in Community Development Block Grant funds on behalf of the Children's Place and Parent Education Center.
19. Resolution authorizing the City Manager to submit an application in an amount of up to \$110,000 and to accept, appropriate, and administer grant proceeds of up to \$110,000 in Community Development Block Grant on behalf of the Women's Club of Concord.
20. Resolution authorizing the City Manager to submit an application in an amount of up to \$500,000 and to accept, appropriate, and administer grant proceeds of up to \$500,000 in Community Development Block Grant funds on behalf of the Capital Regional Development Council.
21. Resolution re-adopting the City of Concord's Housing and Community Development Plan.
22. Resolution re-adopting the City of Concord's Anti-Displacement and Relocation Plan.
23. Resolution accepting and appropriating the sum of \$41,000 from the sale of the Triacca property to Equity Trust, Inc., as previously authorized by Resolution #8632; together with report from the Conservation Commission.

24. Ordinance amending the Code of Ordinances, Title V, Administrative Code; Chapter 35, Classification and Compensation Plan, Schedule D of Article 35-2, Class Specification Index; together with report from the Purchasing Manager.
25. Ordinance amending the Code of Ordinances, Title V, Administrative Code; Chapter 34, Personnel Rules and Regulations, Article 34-11, Leave, Section 34-11-3, Injury Leave; together with report from the Human Resources and Labor Relations Director.

Items tabled for a June 20, 2013 Public Hearing

26. Resolution fixing and determining the amount of money to be appropriated by the City of Concord for the fiscal year 2014 ending June 30, 2014. *(Not previously distributed)*
27. Resolution amending the amount of money to be appropriated by the City of Concord for the fiscal year 2014 ending June 30, 2014. *(To be submitted under separate cover)*
28. Resolution closing and completing certain capital projects; rescinding/de-authorizing appropriations; returning funds to their sources; and transferring, reappropriating or otherwise making remaining balances available for future purposes; together with report from the Senior Accountant.
29. Resolution for bonded projects within the Capital Budget for Fiscal Year 2014 (July 1, 2013 to June 30, 2014) hereby is authorizing and approving the expenditure of \$9,018,000 and authorizing the issuance of \$9,018,000 in bonds and notes for various capital projects more specifically identified below and in the attached worksheet 1; together with report from the Deputy City Manager – Finance. *(Not previously distributed)*
30. Ordinance amending the Code of Ordinances, Title I, General Code; Chapter 1, Government Organization, amending Schedule I of Article 1-5, Fees, Fines and Penalties, Water Rates. *(Not previously distributed)*
31. Ordinance amending the Code of Ordinances, Title I, General Code; Chapter 1, Government Organization, amending Schedule I of Article 1-5, Fees, Fines and Penalties, Sewer Rates. *(Not previously distributed)*

From the City Manager

32. Positive Citizen Comments.
33. Council meeting date calendar.

Consent Reports

34. Diminimus gifts and donations report from the Library Director requesting authorization to accept monetary gifts totaling \$2,153.64 as provided for under the preauthorization granted by City Council.

35. Report from the Recreation and Parks Department and the Recreation and Parks Advisory Committee in response to a communication from Marshall Crane, the Frank Monahan Foundation, proposing the establishment of a High School Basketball Summer League to be held at White Park in Concord beginning in June 2013. (3-7)
36. Semi-annual Pay-As-You-Throw (PAYT) report from the General Services Department.
37. Concord City Auditorium Annual Report from the Deputy City Manager – Finance.
38. Quarterly Financial Statements and report from Deputy City Manager – Finance.
39. Report from the Engineering Services Division on the Pleasant/Warren/Fruit Intersection Traffic Operations Improvement Project, CIP #283. (*Pulled from consent by Mayor Bouley*)

Action: Item to be discussed at the end of the agenda.

40. Council Quarterly Priorities Report from the City Manager.

Consent Resolutions

41. Resolution transferring the sum of \$20,000 from the Compensation Adjustment Account; together with report from the Deputy City Manager – Finance.
42. Resolution in recognition of the services of Master Police Officer Daniel Reilly.
(*For presentation in June*)
43. Resolution authorizing the City Manager to provide a letter to the Friends of the Concord City Auditorium that explains the relationship between the City of Concord City and Friends of the Concord City Auditorium that will be used in conjunction with a grant application by the Friends of the Concord City Auditorium for an Arts Conservation Grant that may be awarded directly to the Friends of the Concord City Auditorium for plaster restoration work in the City Auditorium; together with report from the Deputy City Manager – Finance.

Consent Communications

44. Street closure request from the Concord Veterans Council for a Memorial Day Parade to be held on May 27, 2013.
45. Street closure request for Midsummer Night Magic festivities to be held on Friday, June 21, 2013.
46. Street closure request for the World Refugee Day and Multicultural Celebration to be held on Thursday, June 20, 2013.

Appointments

47. Mayor Bouley's proposed reappointments to the Transportation Policy Advisory Committee.
Thomas Irwin, Dick Lemieux, Ursula Maldonado and Brent Todd

48. Mayor Bouley's proposed reappointments to the Community Development Advisory Committee (CDAC). *Michael Gfroerer and Nadine Salley*

49. Mayor Bouley's proposed appointment to the Personnel Appeals Board.
Steven Winer

Action: Item to be discussed at the end of the agenda.

50. City Manager's proposed reappointments to the Concord Housing Authority.
James Fowler and Ari Pollack

****End of Consent Agenda****

51. **May 13, 2013 Public Hearings**

A. Ordinance amending the Code of Ordinances, Title I, General Code; Chapter 17, Vehicles and Traffic; Article 17-7, Rights and Duties of Pedestrians, panhandlers; together with report from the City Solicitor. (1-9) (2-33b; 2-35) (3-38) (4-7)

Action: City Manager Tom Aspell provided a brief overview.

City Solicitor Jim Kennedy explained that staff came before the Council with ordinances over the past few months in regards to panhandling and that staff, since then, has worked with various organizations and individuals in a collective effort. He stated that what they are seeing is that the most immediate problem is panhandling activity at intersections. He indicated that the proposed ordinance addresses safety issues relative to persons at those intersections receiving or exchanging any type of handout with the occupant of a motor vehicle.

Police Chief John Duval added that this proposed ordinance will allow them the necessary tools to deal with issues that have been brought forth to their attention in terms of safety and other various problems.

Referencing concerns in regards to panhandling in the downtown area, Councilor Blanchard inquired whether there are currently ordinances that can be enforced to take care of harassment and loitering. Chief Duval responded that the nature of the issues reported to the Police Department observed in downtown is different in terms of safety concerns. He noted that the problems downtown relate more to behavioral issues directly towards citizens and existing laws and ordinances will address those issues. He added that they have already started putting their focus in these areas.

Councilor McClure questioned whether both the person who hands out and the person who receives will be in violation and subjected to a fine of \$500 each. Mr. Kennedy responded that it's the person who is exchanging, distributing or receiving and not the occupant of a motor vehicle; it's the person who is on the side that is distributing and engaged in the conduct of distracting a driver. He clarified that the fine is up to \$500.

Councilor Shurtleff questioned whether a person that is fined the \$500 would have a criminal record. Mr. Kennedy replied that it is a violation and pointed out that it's important to note that the fine is up to \$500.

Councilor Bouchard asked what would happen if a person doesn't have the money to pay the fine. Mr. Kennedy responded that it would be up to the Prosecutor's Office to work out with the court noting that he anticipates something can be done at that level – some type of payment or conduct in lieu of payment. Councilor Bouchard referenced the firefighters that ask for donations in the island in the intersection of Loudon Road and questioned whether they would be in violation of this ordinance if it is passed this evening. Mr. Kennedy responded absolutely noting that what is important about this ordinance is that it's content neutral and is not targeting any type of speech or conduct. The goal is to maintain safe roadways in the City of Concord.

Councilor Werner inquired as to how the judgment is made in terms of the severity of the violation obtained. Mr. Kennedy responded that it is the discretion of the court and based upon his experience before judges, they will look at the individual before them, look at the track record, and what the circumstances are. He noted that the judge will have the tool to fine up to \$500.

The Mayor opened the public hearing.

Public Testimony

Roy Schweiker, Concord resident, noted that he feels that, for the purposes of the residents of the city, the ordinance should be more assertive and provide for the safety and protection of the residents. He noted that they were told at the previous meeting that this law was not needed because the existing traffic laws could be used to prevent people in cars from exchanging items with people on the side. He indicated that he was originally told that this law would apply to both people; the person in the vehicle and the person on the side. He noted that he feels that this should also apply to the person in the vehicle because they are making it unsafe at the intersection by stopping. He spoke of the idea of individuals having to apply for permits.

Elliott Berry, NH Legal Assistance Attorney, expressed his gratitude to all for the energy and effort that was put into the need to balance public safety, free speech and also the need not to increase the burdens of being poor and homeless. He noted that he feels that everyone has dealt with this issue in the utmost good faith and this is a good compromise that promotes the public safety.

David Frydman, resident and board member of the Concord Coalition to End Homelessness, presented a letter of support for this proposed ordinance from the coalition. He stated that the coalition strongly supports this proposed ordinance and commends the city for the efforts it did to really focus on behaviors.

Devon Chaffee, Civil Liberties Union Executive Director, noted how impressed she is with the amount of work that has been put into figuring out this issue. She further noted she is impressed with Mr. Kennedy and Chief Duval for the amount of thought and effort that they put into the proposal that Council is considering this evening. She stated that this really does get at the issue of what the conduct is that is potentially posing a safety issue to the people of Concord and not focusing on what is the content of speech.

Mayor Bouley indicated that the Town of Newington proposed an emergency rule which stays in effect until the next time they meet. He questioned whether Ms. Chaffee has been there to visit with those folks. Ms. Chaffee responded no but they are aware of the proposed ordinance and are very concerned with it because it's incredibly broad and, on its face, would limit any number of first amendment activities from sidewalks and private property anywhere close to a roadway.

Kevin Curdie, Concord resident, noted that he personally doesn't believe that anyone should be standing by the street at an intersection soliciting for anything. He indicated that he feels that nobody seems to be concerned about his rights to be able to travel downtown without being harassed by individuals asking for money.

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

- B. Resolution accepting and appropriating \$30,000 from the New Hampshire Housing Finance Authority Community Planning Grant Program for the development of a new Penacook Village Center Zoning District; together with report from the City Planner. (4-8)

Action: City Manager Tom Aspell provided a brief overview.

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

April 8, 2013 Public Hearing Action

- 52. Resolution authorizing the Annual Appraisal of Real Estate at Market Value per RSA 75:8-b; together with report from the Director of Real Estate Assessments. (2-7) (3-10) (4-29A) *(Public hearings held in March and April; action to be taken in May)*

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

Councilor Coen inquired whether this will be implemented if Council approves this resolution questioning whether there is staff available to do this. Mr. Aspell responded that all staffing is in place to do this and the Board of Assessors has been asked that if they get to the point that they don't think this is possible to undertake, to come back well in advance to the City Council and then Council can make the decision to move forward or not.

Councilor Blanchard questioned as to what has been happening in regards to the commercial properties; have there been a lot of applications for abatement. Mr. Aspell responded that there are typically several hundred applications that come in and that there may be 100 more commercial applications this year than is typical.

Councilor St. Hilaire noted that if some Councilors are dissatisfied with how the commercial assessments came out, it might be prudent to vote in favor of this so that when the assessment is done for the next year, potentially things could be balanced out in a more fair way.

Mayor Bouley indicated that he is extremely troubled by what transpired this past year with commercial assessments. He stated that he believes that it's important to continue the annual assessments one more year to flush this out and maybe correct some things. He noted that he did make the request at a previous public hearing that they hear back from the Board of Assessors so they could avoid this in the future and make sure that it doesn't happen again. He stated that maybe something happened in the department and it didn't get done and his hope is that it will not happen again.

The motion to approve passed with no dissenting votes.

May 13, 2013 Public Hearing Action

53. Ordinance amending the Code of Ordinances, Title I, General Code; Chapter 17, Vehicles and Traffic; Article 17-7, Rights and Duties of Pedestrians, panhandlers; together with report from the City Solicitor. (1-9) (2-33b; 2-35) (3-38) (4-7)

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

Councilor Nyhan referenced testimony from individuals that stated that the city is not doing enough to protect the residents noting that in many ways he does agree with what they have to say. He recognizes this ordinance as an important first step in addressing a behavior that Council can address relatively quickly. He noted his support of the ordinance and feels that it's an important first step. He indicated that he has spoken to a few Councilors who do believe this is a first step but not a final step and that there is more to be done in curbing what he considers to be aggressive panhandling not a homeless issue or a freedom of speech issue.

Councilor Bouchard commented that she is not comfortable with the fine and finds it to be a little excessive.

Councilor Blanchard noted that she is still concerned that the person in the motor vehicle is not in violation because they are the ones that are actually holding up traffic and creating a situation.

Councilor Werner noted his support of the ordinance because he feels that it strikes the balance between the constitutional protections of speech and public safety. Referencing testimony with regard to concerns about being protected in the downtown area from being accosted by people, he noted that it's his understanding that the city has ordinances on the books that can be enforced that could reasonably protect individuals who find themselves in that situation. Mr. Aspell responded that is the case and the Police Chief has stated on several occasions that what it takes is someone that has been accosted needs to make a complaint to the Police Department.

Councilor Coen noted that he is supporting this ordinance. He feels that that issue of a fine of up to \$500 sends a signal out that they are taking this seriously. He added that he is comfortable with the court handling this with the flexibility and is comfortable with the maximum of \$500.

Councilor St. Hilaire indicated that he feels that a judge will rarely issue a fine of \$500 for an offense such as this. He stated that nobody is going to be arrested for a city ordinance and will just be given a summons to appear in court. He explained that the \$500 is more of a cap instead of going up to \$1,000 if nothing is in place. He added that they need something in place in case someone is there ten times and is not getting the message. He noted his support.

Councilor Keach indicated that he is in support of this ordinance and that it addresses a quality of life issue for the residents of the city. He noted that, at some point, the community needs to go back and look at the fact that this is a symptom of a larger problem and that it's not their focus or responsibility to solve that problem.

Mr. Aspell asked the Council to look in the revenue source for restitution and fines within their budget and that they will see they are dramatically down because judges are not issuing those fines and ordering that restitution because they are taking into consideration people's ability to pay.

In response to Councilor Blanchard's concern with the person in the vehicle not being charged with a violation, City Solicitor Kennedy explained that the ordinance is not written for addressing that type of conduct. He stated that the type of conduct that they are concerned about is the person that is actually trying to distribute or receive or exchange some item with the occupant of a motor vehicle; they are going after the triggering event, the person that is triggering that type of activity as opposed to the occupant of a motor vehicle that is responding to that triggering type of event.

The motion to accept the ordinance passed with no dissenting votes.

54. Resolution accepting and appropriating \$30,000 from the New Hampshire Housing Finance Authority Community Planning Grant Program for the development of a new Penacook Village Center Zoning District; together with report from the City Planner. (4-8)

Action: Councilor Shurtleff moved approval. The motion was duly seconded and passed 13 to 0 on a roll call vote with Councilors Blanchard, Bouchard, Mayor Bouley, Councilors Coen, DelloIacono, Keach, Kretovic, McClure, Nyhan, Patten, St. Hilaire, Shurtleff and Werner voting yes.

Appointments by the Mayor

Reports

55. Presentation from the Friends of the Merrimack River Greenway Trail.

Action: Dick Lemieux, FMRGT President, indicated that since July 2011 they have cleaned up almost a mile of the river between Loudon Road and Terrill Park; they have flagged and mapped the wetlands; have become a registered non-profit corporation; received their 501(c)(3) tax exempt designation from the IRS; have assembled a highly skilled and enthusiastic board of trustees including: Greg Bakos, Jim Green, Chris Kane, Claudia Prendergast, Craig Tufts, Mag Blacker, Jonathan Gregory and Alex Vogt.

Greg Bakos, FMRGT Trustee, highlighted a photo of the trail following the Merrimack River which is approximately 14 to 15 miles long and the vision is that it would be a 10 to 12 foot wide paved trail and provide connectivity north-south. He explained that eventually the trail will connect eighteen towns from the Massachusetts border to Vermont; the fact that they are a central and incomplete link along this route is very important and their organization is trying to complete their portion. Mr. Bakos explained that they are beginning with a phased approach: Phase 1 will go from Manchester Street to Loudon Road and that they are looking for community support to make it a reality.

Mr. Lemieux noted that to date they have received over \$80,000 in donations for the trail and are actively beginning to raise the rest of the money they need to design and permit the first phase. He stated that they are not here this evening to ask for money from the taxpayers explaining that as they make their rounds and asking for financial support some people have been asking them what assurance they have that the city is behind this project; what assurance do they have that, once the money is raised and spent, the city will accept the trail and build it. He stated that they are here this evening to receive some indication that the Council continues to support the building of the trail with mostly donated funds.

Councilor Blanchard inquired whether the trail will be ultimately paved. Mr. Lemieux responded yes explaining that it will be a paved 10 foot bike trail.

Councilor Werner questioned what their goal is in terms of completion. Mr. Lemieux responded that their goal is to build it as fast as they can raise the money and to raise the money as fast as they can. He indicated that they hope to complete the design in 2014 and if

they can raise \$2 million they hope that the completion of Phase 1 can be done by the end of 2015. Councilor Werner inquired whether there was a portion of dollars that would not come from private donations. Mr. Lemieux replied that they are pursuing private grants and government grants.

Councilor Nyhan asked what the challenges were to complete a 15 mile project other than funding and whether there were obstacles such as land acquisition or rights of way. Mr. Lemieux responded that they have quite a few hurdles to cross for getting permissions to cross on property.

Councilor St. Hilaire moved that the City of Concord supports the proposed Merrimack River Greenway Trail as a contributing project to the quality of life of our community and that the city authorizes the Friends of the Merrimack River Greenway Trail to seek permits and preliminary design of Phase 1 of the trail on city property bounded by Manchester Street to the south and Loudon Road to the north. The motion was duly seconded and passed with no dissenting votes.

56. Main Street Project Update from the Community Development Department.

(Constituent communication regarding Main Street redesign received)

Action: A detailed powerpoint presentation of visual elements was given to the City Council. *(Full printed presentation on file at the City Clerk's Office).*

City Engineer Ed Roberge highlighted information contained within his report including ADA accessibility, underground utilities, snow melt system and public comment.

Councilor Werner asked what the anticipation was of the new arrangement with lanes in terms of speed and traffic downtown noting that a major concern that he has is the speed in which cars currently travel up and down Main Street. Mr. Roberge responded that he feels that the lane conversion component of this project has significant benefits in eliminating that aggressive driver. He noted that this project is about trying to create a safe environment downtown for either pedestrians crossing or people traveling along that is going to co-exist with bikes. He feels that there is great gain with this travel lane arrangement. Councilor Werner asked how many recycling receptacles are anticipated to be available the length of the project. Mr. Gene McCarthy, McFarland-Johnson Project Manager, responded that there are twelve which are a combination of trash and recycling.

Councilor Blanchard asked for an explanation of the solar concept in the trash receptacles and how \$4,200 is justified for each. Jonathan Law replied that the receptacle is dual, one side for recycling and one side for trash. He indicated that if you had had a standard receptacle each individually would cost \$1,200. He explained that the solar power receptacles have a compactor inside which crushes the trash and the recycling therefore reducing the amount of man hours needed to empty the receptacles.

Councilor Nyhan inquired as to the life cycle of the trash receptacles. Mr. Law responded that he did not know the exact timeframe but indicated that he believes that it is more than five years. Councilor Nyhan requested information on the life cycle of the receptacles.

Councilor McClure pointed out that if you Google “Big Belly” one can find out more information on these trash receptacles.

Referencing Concord Steam, Councilor Blanchard noted that it’s been indicated that it sounds as if the city is still negotiating for this project but in a memo Council received from Carlos Baia, Deputy City Manager-Development, it indicated that it’s not going forward. Mr. Baia responded that the project that’s been envisioned in all agreements that the city has entered into, that project he is confident to say is not going forward, however, there are parties involved with the representative of Concord Power and Steam to secure a package of financing for perhaps an alternative to that project that might be a reduced scale power plant. He indicated that they are moving forward positively thinking that Concord Power and Steam will be able to come together with some sort of proposal. Councilor Blanchard noted that it’s her recollection that the steam for the snow melt process was going to be excess steam and didn’t realize it would be so costly. Mr. Baia responded that the project, as it’s been presented, is that the steam into the snow melt system is part of the cooling process for the plant in which there would be excess product but there still is cost associated with all the piping that would go into the sidewalks. He noted that there shouldn’t be a large cost ongoing if it’s just based on the excess steam from the plant.

Councilor Werner asked what it means for the project as a whole and the financing of the project if Concord Steam does not reach a viable solution. He asked if this would free up any additional resources if it doesn’t happen and how would those be applied. Mr. Roberge replied that they included the cost in the estimate, at least the grant limits of what a snow melt system was considered originally. He noted that if it’s not viable and doesn’t occur that the line item that’s in the budget today would be removed.

Councilor Nyhan noted that the \$634,500 for the snow melt system is for the core area only and inquired as to what that core area is. Mr. Roberge indicated that it was from Loudon Road at Centre Street on Main Street to Pleasant Street, the downtown core, for the sidewalk only. Councilor Nyhan asked what the costs are at for what it’s going to cost for steam to melt the snow on that sidewalk area. Mr. Roberge responded that the system was predicated upon a waste energy element so staff thinks there would be little to no cost. Councilor Nyhan asked, for clarification, if the additional \$275,000 maintenance cost does not include the cost of steam. Mr. Roberge indicated that to be correct.

Councilor Kretovic pointed out that the report indicates that the owners of the clock are not interested in having it moved to Phenix Avenue and that the Council has heard numerous times from the businesses behind Main Street on Low Avenue and their concerns about closing Phenix Avenue and eliminating that access point. She questioned whether there was an alternative plan; is the clock going to be moved; are they still intending to close Phenix Avenue if it’s not going to be moved; are they doing something to help these businesses in regards to delivery trucks. Mr. Roberge indicated that they developed a design that showed

the relocation of the clock and approached the owners of the clock tower today. He stated that there was a lot of time and effort that was expended to get the clock tower to where it is today and it might not have ended up in the spot in which everybody wanted at the time but that was a compromise in its effort to get it there. He noted that he feels that there is community attachment to its current location but that it's not the ideal location.

Councilor Keach asked who is the owner of the clock tower and questioned whether it was up to the city where that clock tower ends up. Mr. Roberge responded that the clock tower is owned by the NH Historical Society and is licensed at that location within the public right of way.

Mayor Bouley asked if it's being suggested that the city revoke the license if the city wants to move the clock tower. Mr. Roberge replied that he hopes that they would be able to work out an agreement to relocate it to an acceptable location and grant them a new license. Mayor Bouley inquired whether the NH Historical Society was interested in moving it. He stated that it indicates that they are not interested in moving it. Mr. Baia responded that the owners are concerned, because it is a change, as to where it's going to go and that people are attached to where it is today. He stated that he doesn't characterize them being opposed to it but just concerned that they need more detail.

Councilor St. Hilaire inquired as to why the decision was made to shift the clock tower 45 degrees. Mr. Roberge responded that it was to utilize that space a little bit better. Councilor St. Hilaire questioned whether people could see the clock less ideally if it's shifted that way rather than straight on with motorist and pedestrian traffic. Mr. Law explained that the reason why they twisted it was to try to get away from everything running parallel and perpendicular to the building faces.

Councilor Bouchard questioned whether some of the businesses at Eagle Square pay towards the electricity of the clock tower. Mr. Roberge indicated that to be correct. Councilor Bouchard asked if different businesses would contribute to electricity of the clock if it is moved to another location or would the city be paying. Mr. Roberge responded that it could potentially be either. Councilor Bouchard stated that, potentially, the city could be picking up an extra cost there. She inquired as to the cost of this. Mr. Roberge replied that he believes it is a very nominal cost and that it may be \$300 to \$400 a year.

Councilor Kretovic asked if the clock doesn't move to Phenix Avenue what is the intention there; is the intent to continue to close it. Mr. Roberge responded that, from a traffic/safety standpoint, it's really important to close this. He stated that the access and egress of vehicles at that close interchange with pedestrians on the sidewalk there, with limited sight distance, is really a safety problem. He indicated that he still recommends that it be closed to vehicle traffic even if the final design alternative it can't be decided on. Councilor Kretovic asked if staff is working with the businesses on Low Avenue that have concerns about Phenix Avenue closing. Mr. Roberge responded that they have been working closely with them and feels that they have received some great comments and points. Mr. Baia added that one of the things that is recommended for the upcoming budget year is to look at the entire parking system and proposing some other changes to parking and over the next year, as construction

starts to take off, they will be looking at loading zones, parking spaces, how to manage parking, etc. so there may be some changes that could help as well.

Councilor DelloIacono indicated that he is hearing a lot of unknowns and asked about the process and where they need to be.

Councilor Shurtleff asked if the water feature is supposed to be ornamental or is it to encourage public bathing. He noted that he feels that the memorial arches in front of the State House is not an appropriate play area. Mr. Law responded that it's an area in which they wanted to bring some vitality to this area and felt that the location was appropriate and that, by adding this, it's going to encourage more people to come to this street.

Mayor Bouley asked if they envision kids in this area playing in the water. Mr. Law responded yes. Mayor Bouley inquired whether it's appropriate to have this type of feature in front of two war memorials. Mr. Law responded that it depends on the person and it can be looked at in very different ways.

Councilor Bouchard pointed out that this particular sidewalk is used a lot and there is always a lot of activity in this area. She noted that she has concerns of putting a water display in this area and that maybe this could be a feature in one of the other pocket parks. Mr. Law indicated that the water could be shut off if something is planned within this area.

Councilor Werner indicated that he visits Boston often and feels that the Rose Kennedy Greenway is a fantastic addition to the city and every time he has been there in the warm weather those fountains have been utilized. He wondered if there may be an alternative noting that he thinks the aspect with the area in front of the State House is a bit barren. He asked that instead would it be possible to extending some kind of landscaping into these areas rather than a fountain. He noted that he shares Councilor Bouchard's concerns about the typical usage of that area and the need to respect this space because of the memorials. Mr. Roberge indicated they thought, because it is a primary gathering space at times, that leaving this space as open as possible without landscaping elements was a priority. He noted that he thought that the design team looked at an innovative way as to how they could utilize a feature there.

Councilor Nyhan questioned, of the incremental \$275,000, how much of this is related to ongoing maintenance of this fountain. Mr. Roberge responded that with the startup, winterization, annual maintenance and the cost of water it is approximately \$7,000 a year.

Mayor Bouley indicated that a question came to him from the Governor's office as to who actually owns the State House Plaza and questioned who does own it. Mr. Roberge replied that he believes it to be part of the Main Street public way. Mayor Bouley asked if the city owns it. Mr. Roberge responded that the city wouldn't own the underlying land but it's been occupied as part of the Main Street public way for quite some time. Mayor Bouley indicated that it has been relayed to him by individuals in the State House that they do not want fountains on the State House Plaza. He asked if the state could tell the city to take them out if the city decides to install them. Mr. Roberge responded that, based on the exhaustive

research that staff has done, he is not sure the state is going to find any other record that the city doesn't have.

Councilor McClure noted that staff has apprehension for the back in angled parking and wondered if staff could elaborate more on this and how it's a different maneuver that a car has to make with parallel parking. With respect to the back in angled parking, Mr. Roberge explained that this was part of the project advisory committee's deliberations early on and had concerns; they recognized the theoretical benefits of back in parking with respect to bike safety but they didn't feel that could and should be explored. He explained that they did leave the door open by saying maybe there's an opportunity to test this somewhere. Councilor McClure inquired as to the number of required accessible parking spaces in the project area and how many is the city providing. Mr. Roberge responded that there is some conflicting guidance/guidelines and they balanced those off and tried to look at a block count by the number of spaces. He indicated that they came up with a number of seven within the downtown core area. Councilor McClure noted that it mentions that it's recommended that timed parking be introduced during construction and questioned whether this was over and above what they have now since there is timed parking now. Mr. Roberge responded that there is timed parking but that it's metered parking and recognizing that once they start construction it's going to be tough for them to leave unanchored kiosks in the downtown core. He explained that staff is suggesting that they modify all of the downtown or segments of the downtown that it be a timed permitted parking only. Councilor McClure indicated that the presentation showed different width sidewalks and as she understands it, what is proposed are nineteen foot sidewalks. She referenced a letter from Mark Cibrowski that Council received suggesting amendments with width and asked staff to describe the difference between what's proposed versus what the letter is suggesting. Mr. Roberge responded that they are really talking about the side where there is parallel parking today; the parallel parking bay is eight feet wide and if they go to angled parking on that other side of the street, that becomes seventeen feet wide so it's an additional nine feet of area that needs to be made up somewhere. In the letter it suggests maybe reducing the dimension of the parking bay depth and suggests reducing the width of the median that would make up some of that difference. He indicated that, right now, they are talking about a nine foot difference between the layout that is seen today and potentially a future layout with angled parking in downtown. Councilor McClure clarified indicating that she is just trying to figure out, compared to nineteen foot sidewalks, what the letter is suggesting. Mr. Roberge replied that fourteen foot sidewalks is being suggested.

Councilor Nyhan asked whether Mr. Cibrowski participated in any of the meetings. Mr. Roberge responded that he was a project advisory committee member.

Councilor Keach questioned whether this design, as it currently exists, address as the issue of accessibility and is there an obligation of the city to address those issues. Mr. Roberge replied that the aspirational goal of the project was to make Main Street as accessible as possible and when they started the project there were four accessibility elements that they had to deal with and that they have addressed three; the last piece is related to business access and that's a different section of ADA title and there are challenges.

Councilor Bouchard asked if there were any concerns expressed by ADA individuals with the use of brick or granite pavers. Mr. Roberge indicated that they heard that in the public process and what the design team looked at was durable surfaces that are as ADA compliant as possible.

Referencing the presentation, Councilor Kretovic indicated that they talked about pedestrians crossing the street and she took it as jaywalking across the street. She noted that she is curious as to whether the cobblestone is ADA compliant. Mr. Law responded no indicating that they don't want to encourage people walking down the median.

Councilor Werner questioned whether any thought was given to permeable or porous surfaces and what has the experience been with other communities, if any, that have pursued that kind of surface. Mr. McCarthy responded that this is something that they have considered and are continuing to consider. He stated that this is something that they are not probably going to use throughout and that there are areas in which they may want to explore it adding that there are some concerns they have using it in the sidewalk next to older buildings that have basements. Councilor Werner inquired whether they have any sense of where they would be looking. Mr. McCarthy responded in the first section adjacent to the curb line.

Councilor Keach asked if there has been active input from the Disability Rights Commission during this process. Mr. Roberge responded yes affirming that they had engaged them early in the process.

Referencing wayfinding signs, Councilor St. Hilaire pointed out that the report didn't mention internal lighting and asked whether this is an oversight. Mr. Roberge responded that they are still developing the signage plan and this is one of the last details that the process goes through. He indicated that they will bring back better details to the Council. Councilor St. Hilaire asked if it's being suggested that there will be another presentation in the future to talk about even more details of the project.

Mayor Bouley questioned as to why the signage isn't done for tonight pointing out that staff has been pushing for dates and indicating that many items will be coming soon. Mr. Roberge responded that he thinks that it's a matter of timing and the amount of constrained design time and that they are trying to fit as many items in detail as much as they go. He noted that staff recommended that there is another public meeting to make sure they finalize any little outstanding issues that is out there, including signage. Mayor Bouley asked if it was a matter that staff has not had time. Mr. Roberge responded that it's not a matter of not having time but a matter of going through the process. Mr. Baia clarified that the dates have been put on the city by the federal government. He added that this project has been rather accelerated and that they received the green light at the end of November and are trying to work in the confines of the limitations that they are under.

Councilor St. Hilaire indicated that they had a public meeting and a suggestion had been made for internal lighting. He questioned whether this is something that should be recommended or that is not going to be recommended. Mr. Roberge responded that, from a

code perspective, he doesn't believe the city's zoning regulations allow internally lit signs. He noted that he believes that they may have discussed this at the last public meeting along with electronic message centers. Councilor St. Hilaire noted that he does not recall this being discussed at a meeting. He indicated that they were discussing a map of Main Street pointing out places that had an internal light and that a lot of signs in Concord have an internally lit sign. Mr. Baia noted that if the direction of the Council is that internally lit signs are the preference and if they have to make proposed changes to the zoning ordinance to accommodate that, staff can bring this to the Council. Councilor St. Hilaire stated that it's not that he is harping on internally lit signs, his concern is that a suggestion is made at a public meeting and he asks about it tonight and he feels like he doesn't get an answer one way or another whether staff supports it or not. He noted that if he doesn't have an answer he just wants to know when it is that this Council will be discussing those details so that they can vote on a plan that they all agree to.

Mayor Bouley asked whether the Council would consider the following schedule: hold a public hearing on May 23rd on the final design as presented this evening to the Council; hold Council work sessions on May 28th, 29th and 30th; a public hearing and final adoption of the design for Main Street on June 6th. He explained that he would like consideration of this schedule so that the community has the benefit to hear what the Council has done and what they have changed and then the Council would be able to vote on a final adoption. He stated that the reason he picked June 6th as the final date is because Mr. Baia has informed him that they need to have the design completed and finished by June 13th and if Council were to make any changes, the design team would need some time to make the changes to prepare the document for June 13th.

Councilor DelloIacono questioned whether Council will be getting additional details for the May 23rd meeting or for the work sessions. Mayor Bouley responded that his assessment is that as the answers are developed, they will be given to the Council. Mr. Baia added that staff will bring answers to the Council as quickly as they can.

Councilor St. Hilaire moved the adoption of the schedule proposed by Mayor Bouley: to hold a public hearing on May 23rd on the final design as presented this evening; hold Council work sessions on May 28th, 29th and 30th; a public hearing and final adoption of the design for Main Street on June 6th. Councilor St. Hilaire amended his motion to include the suspension of the rules of City Council, section 4, to waive the ten day notice for a public hearing for the May 23rd meeting. The motion was duly seconded.

After brief Council discussion, Councilor St. Hilaire's motion was approved with no dissenting votes.

Councilor St. Hilaire indicated that he would like go over a few items that were mentioned at the last public meeting he attended. He inquired in regards to public bathrooms and that this was brought up by many of the merchants. Mr. Baia responded that, based on the input from the last public meeting, they asked the design team to look into metropolitan urban type restrooms; pricing them out and seeking out possible locations. Councilor St. Hilaire indicated that he noticed that a lot of planters are low now whereas before the pictures

showed higher planters and questioned whether they will be rectified with fencing so people don't walk through them. Mr. Law explained that the planters have always been a six inch raised curb with a fence and that the images may have confused people. Councilor St. Hilaire questioned up lighting for the trees. Mr. McCarthy indicated that there will be electricity at all the planters so that it's possible to do. Councilor St. Hilaire asked about irrigation for the trees. Mr. Law responded yes there will be irrigation installed.

Councilor Nyhan asked if any of these items have been costed out noting that he doesn't see any accountability for lighting and signage. Mr. McCarthy responded that the lighting fixtures and conduit is included in costs. He explained that the cost estimate that Council is looking at is really a conceptual estimate that itemizes all the real expensive hard items and they have contingencies for all of the other items such as signage. Councilor Nyhan inquired as to the cost of signage. Mr. McCarthy noted that the way finding are more expensive and currently the budget includes ten of these. Councilor Nyhan questioned whether that type of signage is included in the estimate within the contingency. Mr. McCarthy confirmed that to be correct. Councilor Nyhan asked what the estimated cost was for the way finding signs. Mr. Law replied that they cost \$10,000 per sign.

Councilor St. Hilaire inquired as to the way finding sign with internal lighting similar to ones in the photos from Boston. Mr. Law responded that they are open to providing those signs but wasn't sure if it was an appropriate design route to take because of the rules and regulations.

Councilor Keach noted that it's his understanding that internal lit signs are allowable.

Councilor St. Hilaire indicated that maybe this can be researched.

Councilor Bouchard asked if the minimum cost for maintenance was \$275,000 a year. Mr. Roberge replied this was above what they normally have. Councilor Bouchard inquired as to how this gets paid for. She stated that with this added cost, she has real concerns about the rest of the city and other gateways and being able to maintain those which they are not able to do currently.

Mayor Bouley noted that he wants to have a successful public hearing on May 23rd and the more information they can provide, the better. He indicated that what he is looking for is a recommendation, what is the recommendation and what do they want the public to testify to. Mr. Law explained that the design is set and they just showed additional ones to show what other cities had chosen. Referencing ADA accessibility, Mayor Bouley noted that the TIGER grant does not pay for buildings. Mr. Law confirmed that to be correct. Mayor Bouley indicated that when they are talking about the issue accessibility they are talking about managing the grades and doing the best that they can. He asked to be shown how they have done the best they can so that Council can better answer questions when they come up during this process. He asked for more information regarding signage.

Councilor Werner noted that it's indicated that the design is set and questioned what this means in the context of the additional meetings and input. Mayor Bouley responded that

Council is tasked with making a final decision and believes they will make a better decision if they hear from the design team, the public and by talking amongst themselves.

City Manager Tom Aspell commented in regards to the trash receptacles he indicated that if someone has to empty them once a week as opposed to every day, there is a savings there but is there a number of these that are needed where it makes sense; if there are only two it would never save money but if there are twelve, maybe that's where they want to be. Regarding the signage, he suggested he be given leeway working with Mr. Baia and Mr. Roberge to come up with some decisions.

Following brief Council discussion, Councilor Coen moved to accept the report outlining the final design and to follow through with the schedule of public hearings and work sessions as approved in an earlier motion. The motion was duly seconded and passed with no dissenting votes.

Unfinished Business

57. Resolution approving the granting of a conservation easement to the Society for the Protection of New Hampshire Forests (SPNHF) on approximately 114 acres of land southerly and easterly of Gully Hill Road, as approved by the Conservation Commission; together with report from the Conservation Commission. (6-17) (7-36B; 7-38) (8-53) (9-39)(10-31) (11-43) (12-42) (1-52) (2-49) (3-37) (4-36) (*Action on this item tabled following a July 9, 2012 public hearing*)

Action: Item remains on the table.

58. Resolution amending the official map so as to establish the mapped lines of a future street for a new street from the intersection of Storrs and Theatre Streets southerly to Langdon Avenue; together with report from the Assistant City Planner. (1-16) (2-33I; 2-42) (3-39) (4-37) (*Action on this item tabled following a February 2013 public hearing*)

Action: Item remains on the table.

Comments, Requests by Mayor, City Councilors

Mayor Bouley indicated that Councilor Grady Sexton was unable to attend this evening's meeting but she wanted to compliment the Police Department for their quick work in making an arrest in regards to a home invasion that occurred recently within the city.

Comments, Requests by the City Manager

City Manager Tom Aspell indicated that he would like to change the Council agenda in regards to the Council meeting calendar. He indicated that the city now has a website that has all that information out there. He asked that it be eliminated from the agenda moving forward. Council agreed to remove the Council meeting calendar from the agenda.

Consideration of items pulled from the consent agenda for discussion

Items 12, 13 and 39 have been pulled from the consent agenda for discussion.

12. Resolution authorizing the City Manager to enter into a development and purchase and sales agreement with the Siena Bodwell Joint Venture Group to accomplish the following 1) to purchase a +/- 2.7 acre parcel from the State of New Hampshire, identified as MBL 111E-1-12 for \$955,000 and a \$1,100 administrative fee with the costs for this purchase being borne by the Siena Bodwell Joint Venture Group; and 2) to sell +/- .58 acres of City of Concord land identified as MBL 111E-1-17 and MBL 111E-1-18 to the Siena Bodwell Joint Venture Group to allow for the Siena Bodwell Joint Venture Group's construction of certain public improvements identified as City CIP #39 and the development of +/- 31,000 square feet of commercial real estate; together with a report from the Deputy City Manager – Development. *(Pulled from consent by Councilor Bouchard)*

Action: Councilor Bouchard indicated that she just wanted to inform the public that this a public hearing having to do with Loudon Road, Old Loudon Road and D'Amante Drive. Councilor Bouchard moved to set this resolution for a public hearing to be held on June 10, 2013. The motion was duly seconded and passed with no dissenting votes.

13. Resolution authorizing the City Manager to convey a portion of the North State Street right-of-way to WBIN Media, Inc. and to accept a portion of land along Bouton Street to become new public right-of-way; together with report from the City Planner. *(Supplemental report received from the City Planner; item pulled from consent by the City Manager)*

Action: City Manager Tom Aspell indicated that this item does not have to be set for a public hearing and asked the Council to accept this as a consent resolution.

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

39. Report from the Engineering Services Division on the Pleasant/Warren/Fruit Intersection Traffic Operations Improvement Project, CIP #283. *(Pulled from consent by Mayor Bouley)*

Action: Mayor Bouley pointed out that there are two maps included and with those maps is a future roundabout option. He indicated that he would like the City Manager to clarify that this report does not recommend a roundabout and simply defers this project to the future.

City Manager Tom Aspell explained that it simply states that one of the potential future options is a roundabout. He noted that this, in no way, binds the Council to the construction or funding of a roundabout any time in the future.

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

49. Mayor Bouley's proposed appointment to the Personnel Appeals Board.

Steven Winer

Action: Mayor Bouley noted that the City Clerk informed him that this does not meet the fifteen days per the Council Rules which is indicated within the last section of the appointment. He indicated that by accepting this and receiving this Council has already suspended the rules, but for purposes of pure clarification he asked for a motion to suspend section 15 of the Council Rules to accept the report.

Councilor Bouchard moved to suspend section 15 of the Council Rules to accept the report. The motion was duly seconded and passed with no dissenting votes.

Consideration of Suspense Items

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

5 Sus1 Referral to General Services and the Conservation Commission

Communication from Robert T. Baker, asking City Council to consider requesting an accounting of tree removals and plantings within the City of Concord as well as the implementation of policies that value shade trees vs. ornamental plantings within the city. (5Inf12)

Councilor Bouchard moved to refer this item to General Services and the Conservation Commission. The motion was duly seconded and passed with no dissenting votes.

Adjournment

The time being 10:13 p.m., Councilor Keach moved to adjourn the meeting. The motion was duly seconded and passed with no dissenting votes.

A true copy; I attest:

Michelle Mulholland

Deputy City Clerk