

On Wednesday evening, October 14, 2009, the City Council Members met in the Council Chamber.

Present: Mayor Hooper; Council Members Golonka, Hooper, Jarvis, Sheridan, Sherman and Weiss; also City Manager Fraser.

Call to Order by the Mayor.

Mayor Hooper called the meeting to order at 7:00 P.M.

09-247. General Business and Appearances

Clancy DeSmet, Planning and Zoning Administrator, who serves as staff to the Montpelier Historic Preservation Commission, and James Duggan, a fellow Commissioner, appeared before City Council to talk about Montpelier's Historic Preservation Week. They are going to hold the event in honor of Margot J. George. There is a proclamation ready to act upon. Monday night, October 19th, David Ripken is going to speak about sustainability in downtowns at the Pavilion at 7:00 P.M. On Tuesday there will be a historic walking tour which was designed by the Montpelier Heritage Group and Margot J. George. On Wednesday they are going to discuss the Montpelier Historic District Amendment that they worked on with the certifiable government grant.

James Duggan said on Thursday night they have a collection of approximately 10 contractors, crafts people and consultants involved in the preservation trades. The evening will start at 7:00 P.M. There will be about an hour of public presentation and slide show of these folks' work to introduce them, and then there will be hands-on demonstrations until about 10:00 P.M. The topics covered will be timber framing, plaster, masonry, decorative painting, and weatherization strategies for older buildings. It is a lot of really important information for not just folks who find themselves within our Historic District but anyone with an older house.

Mayor Hooper said information on all of the events can be found on the city's web site. The city's web site is www.montpelier.org.

Mayor Hooper read the proclamation for Historic Preservation Week. A copy of the proclamation is attached to the minutes

09-248. Consideration of the Consent Agenda: V.A.

Consideration of minutes from the September 23rd, 2009, regularly scheduled City Council Meeting.

Actual adoption and signing of the Council Proclamation for *Historic Preservation Week, October 19-22*.

Acknowledgment of a Proclamations signed by the Mayor proclaiming that 2010 marks the 20th Anniversary of the Americans with Disabilities Act.

Acceptance of low bid submitted for the Elm Street Culvert (Bridge #75) Project for the Public Works Department, and to authorize the City Manager to sign contract documents to award the project.

Consideration of awarding a contract for the Montpelier CSO 09-11 Project. An advertisement for bids was placed by the Public Works Department for the above project. Bids were opened on September 29, 2009.

Eight (8) bids were received for the project and a tabulation of the bids is attached. The low bidder was SD Ireland of South Burlington, Vermont, with a bid of \$469,510, which is under the estimate of \$550,000.

Based on the past work experience of the department and the reference check by the City's engineer, the recommendation by the Public Works Director is to award the project to the low bidder, SD Ireland.

Funding for this project will be the CSO bond that was approved in the special bond vote and includes a 50% forgiveness from the Clean Water State Revolving Fund under the American Reinvestment and Recovery Act. The cost to include engineering and legal fees is currently under the existing bonded amount for this project.

Consideration of awarding a contract for the Montpelier Waste Water Treatment Facility Solar Panel Project. An advertisement for bids was placed by the Public Works Department for the above project. Bids were opened on September 24, 2009.

Two (2) bids were received and a tabulation of the bids is attached. After review of these bids, we recommend that the low bid, submitted by Peck Electric, South Burlington, Vermont, be accepted in the amount of \$212,900. Based on the reference check by this office, the recommendation by the Public Works Director is to award the project to the low bidder, Peck Electric.

This amount is included in the FY 2010 budget as a bond of \$366,000 with 50% forgiveness of debt from the American Recovery and Reinvestment Act through the Clean Water State Revolving Fund.

Considering of selling the existing 2000 Vactor Sewer Rodder/Vacuum Truck to the Town of Barre for \$55,000. The bid of the new Sewer Rodder/Vacuum Truck included a trade value for the existing Vactor. The low bidder, Tenco New England, quoted a trade price of \$50,000, which was not accepted with the offer from the Town of Barre. The recommendation of the Public Works Director is to sell the existing 2000 Vactor Truck to the Town of Barre in as-is condition for \$55,000.

Acceptance of the bid submitted by Cheney Trucking of Montpelier for Parking Lot Plowing (Lot #1) for the 2009-2010 and 2010-2011 winter seasons, and to authorize the City Manager to sign all pertinent contracts and paperwork.

Consideration of the City of Montpelier sponsoring the 350 Climate Action on October 24th, as well as providing a police escort for the Action beginning at 1:00 P.M. at Montpelier High School; gathering in Berlin at the Vermont State Employees Credit Union parking lot (on the Barre-Montpelier Road across from Novello's); and returning to the high school.

Consideration of approving a contract with Veolia Energy to conduct a Feasibility Study for the District Energy Project.

Consideration of waiving the rental fee for the City Hall Auditorium for the 2009 Great Green Mountain Bob Dylan Wannabe Contest. The event is scheduled for Saturday, November 28th, at 7:00 P.M. The cost is \$10.00 per person to benefit Home Share of Central Vermont, and WGDR-FM in Plainfield, two nonprofits with many years of working to improve their communities. No decisions have been made about selling refreshments; in '07, the organizers sold brownies and bottled water. If selling refreshments is an obstacle to obtaining a fee waiver, they would agree to NOT sell refreshments. (Council Members have received a copy of the request with further background information and details.)

Consideration of becoming the Liquor Control Commission for the purpose of receiving the following:

Ratification of a poll vote taken of Council Members to obtain approval for issuance of a Liquor License to Duane David Wendt who recently purchased Village Pizza; being a new owner and the license not transferring with the property, he was required to apply for a new one. (Staff obtained enough signatures from Council Members so that the City Clerk could issue the license.

Approval of payroll and bills:

General Fund Warrant dated September 9, 2009, in the amount of \$322,687.01.

General Fund Warrants dated September 23, 2009, in the amount of \$593,452.32 and \$461,420.72 and Community Development Agency Funds in the amount of \$1,037.00 and \$742.00
Payroll Warrant dated October 1, 2009, in the amount of \$139,600.27.
General Fund Warrants dated October 7, 2009, in the amount of \$1,558,285.23 and \$497,248.42 and Community Development Agency Funds in the amount of \$80.85.
Payroll Warrant dated October 15, 2009, in the amount of \$134,270.04.

Council Member Weiss requested that the acceptance of the bid submitted by Cheney Trucking and waiver of the auditorium fee be removed from the consent agenda and be considered separately.

Motion was made by Council Member Hooper, seconded by Council Member Sheridan to approve the consent agenda after removal of the two items. The vote was 6-0, motion carried unanimously.

09-248A.

Acceptance of the bid submitted by Cheney Trucking of Montpelier for Parking Lot Plowing (Lot #1) for the 2009-2010 and 2010-2011 winter seasons, and to authorize the City Manager to sign all pertinent contracts and paperwork.

Council Member Weiss said there were two bids received and he asked for clarification on interpretation of the numbers.

Todd Law, Director of Public Works, said Cheney Trucking is from Montpelier so his mobilization costs are minimal. The other gentleman is from Waterbury. He was looking for a location to house his loader for the winter so the biggest discrepancy there is that he is going to have to truck his loader from Waterbury to Montpelier to remove the snow. That is why there was such a big discrepancy between the two numbers. This is what it is going to cost per snowfall to remove the snow from the Blanchard Court and Pitkin Court parking lots. He actually reviewed the contract documents and we wouldn't be able to remove snow for \$10,000 per snowstorm. It was very clear in the contract documents that it was per snowstorm and not for the entire season.

Council Member Weiss said this is for a two year contract and there is a provision if we aren't satisfied with his work the first year you do not have to enter into the contract the second year.

Public Works Director Law said they could end the contract at any time.

Motion was made by Council Members Sheridan, seconded by Council Member Jarvis to approve the bid submitted by Cheney Trucking for parking lot plowing and authorize the City Manager to sign all pertinent contracts. The vote was 6-0, motion carried unanimously.

Mayor Hooper said since no one was present for the Bob Dylan Wannabe Contest they would postpone discussion until the end of the meeting.

Mayor Hooper asked Becka Rolfe to speak to the council about the Climate Action 350 Bicycle Ride.

Becka Rolfe representing the Montpelier Bikes Project thanked the council for being a sponsor of the Climate Action 350 Bicycle Ride. She explained that the 350 stands for 350 parts per million which is considered to be a sustainable level for the amount of carbon dioxide in the atmosphere. This bicycle ride is going to be from Montpelier toward Barre and Barre toward Montpelier, meeting in the middle and calling attention to the hopeful need to complete the Central Vermont Regional Bike Path that will eventually link our cities. She wants to invite everyone to attend. They are gathering at 1:00 P.M. at the High School on Saturday, October 24th.

Mayor Hooper said Becka has been the Chair of the Montpelier Bike Team and has now taken a job in Salt Lake City, Utah.

09-249. Appointment to Montpelier Housing Authority. V.A.

Because of the staggered terms, each year one of the 5-year terms of this 5-member board is up for (re)appointment.

This year, Ed Larson's term expires; he would like to be reappointed for another term.

Staff advertised; as of the deadline (noon on Thursday, October 8th); Ed's e-mail to staff was the only one received.

Recommendation: Appointment for 5-year term.

Motion was made by Council Member Sheridan, seconded by Council Member Hooper to reappointment Ed Larson to the Montpelier Housing Authority Board. The vote was 6-0, motion carried unanimously.

09-250. First Public Hearing to consider an amendment to the City's Code of Ordinances, **Chapter 11, POLICE REGULATIONS AND OFFENSES, ARTICLE V. USE OF FIREARMS, BB GUNS, BOW AND ARROWS, AND SIMILAR WEAPONS.** V.A.

Parks Director Geoff Beyer would like to expand the area limiting the discharge of weapons within city limits. He is proposing the following amendment:

Sec. 11-502. DISCHARGE OF FIREARMS OR WEAPONS IN [HUBBARD PARK] ANY CITY PARK.

The discharge of a revolver, pistol, rifle, shotgun, air rifle, BB gun, arrow from a bow, or a similar firearm or weapon within the limits of Hubbard Park, North Branch River Park or any city park is not permitted without written permission of the Police and Parks Departments.

Police Chief Facos totally supports this amendment.

Recommendation: Conduct the First Public Hearing; direction to staff if there are any further changes; and set the Second Public Hearing for October 28th.

Mayor Hooper opened the public hearing at 7:15 P.M.

Parks Director Geoff Beyer said before there was the North Branch River Park the Parks Commission and he asked and received permission from the City Council to create an ordinance for no discharge of weapons of any kind. This was primarily because they had to post 185 acres every year which takes a lot of time and energy. With the ordinance change they can put up boundary markers that state the ordinance and save staff time and money. With Hubbard Park it wasn't a real issue because there is a history of no hunting there. With the North Branch River Park there had been hunting there so they have posted the huge No Hunting signs, letting people know it is a public park. It is a pretty well established park now, and it seems like a good time to make a city wide park ordinance that makes people feel safer. Right now they have run into a few people who know there are No Hunting signs and they have been walking around carrying a rifle which has been disturbing to the park regulars. It would be nice to be able to cite the ordinance to keep a better park atmosphere.

Council Member Hooper asked Parks Director Beyer if he could think of any situation where he would give permission for the discharge of a firearm in the park.

Parks Director Beyer said rabid animals. The deer get are over populated and the City Council thought that maybe a week or two of allowing hunting might be permissible. They have had a couple of requests from

archery clubs for ten years to have a place where they could shoot in a corner of Hubbard Park. It was granted once, and not granted another time.

Council Member Jarvis said the way this is written it doesn't outlaw the presence of weapons. It sounds like people were disturbed by just the mere presence of weapons.

Parks Director Beyer replied that was true. From his understanding when they did the original ordinance it wasn't possible even for the city to create an ordinance for the possession of a weapon but only for the discharge of a weapon.

Mayor Hooper said they are conducting the first public hearing and this is an opportunity for any member of the public to address the City Council on this proposed change to the ordinance.

Jason Garrow, a resident of 2 Ewing Street in Montpelier, asked if this applies just to Hubbard Park or citywide.

Parks Director Beyer said the request they are looking for is for all city parks.

Mr. Garrow said if he wanted to sight in his bow in his backyard it is okay.

Parks Director Beyer replied it was. This ordinance wouldn't affect that at all.

Mayor Hooper stated that currently Hubbard Park is regulated in this manner. The proposal is to add the other parks that have subsequently come under the city's ownership, specifically the North Branch Park.

Council Member Hooper asked if this included paint ball weapons as well.

Parks Director Beyer said that hasn't been considered by the Park Commission. He personally doesn't consider it a weapon because the intent is not to hurt or harm. It's his understanding that is not included in this language.

Council Member Weiss said they put in the optional words without permission. Does he have a preference to have the words included or not.

Parks Director Beyer said he likes the flexibility.

Mayor Hooper closed the public hearing at 7:22 P.M.

Motion was made by Council Member Sherman, seconded by Council Member Sheridan to approve first reading and set the second public hearing for the October 28, 2009 regular city council meeting. The vote was 6-0, motion carried unanimously.

09-251. Presentation from Chris Cole, General Manager of CCTA, regarding Regional Transportation Authority legislation that they have introduced. V.A.

Over the next two months, GMTA and CCTA are going to be meeting with their member municipalities and other regional and statewide stakeholder groups to engage them in the RTA legislation they have introduced and hope to see move through the legislative process this coming session.

GMTA and CCTA are hoping to educate their municipal, and other, partners on the benefits of a five-county Regional Public Transportation Authority. In turn, they want to hear concerns and issues from these groups in hopes to address them ... if able.

Recommendation: Receive the presentation outlining their proposal; opportunity for discussion; and possible direction to staff.

Chris Cole, General Manager of CCTA said he met recently with the Vermont Agency of Transportation to discuss H.457. In trying to create a Regional Public Transportation Authority you have to have several partners. A local government such as the City of Montpelier that contributes to our services needs to give their support for the legislation. They need the Vermont Agency of Transportation's support, the Governor's support and also the Legislature's support. The process they are undergoing right now is getting feedback. They are not going to be pursuing enabling legislation. Instead, they will be pursuing a simple charter change of CCTA's charter. CCTA is a regional transportation authority. They will probably include provisions where municipalities may join them if they so desire. They need to move in this direction to eliminate the redundancy of what occurs at CCTA. CCTA manages GMTA. All of the administrative functions are held at CCTA. They do payroll, budgeting, fixed asset reports and management of the grants. Everything is done at CCTA, but they do it twice. There are two separate cost allocation plans and they would like to consolidate that into one. It would make both of their organizations much more efficient and save taxpayer dollars. They will probably put forth another piece of legislation ready for introduction this year. They would like to come back before the City Council and brief them on the components of that legislation. It will probably be very similar to what CCTA's charter looks like. They will have to do something with the assessment policy in terms of how municipalities get involved because it will have to be changed. Montpelier and Washington County can't contribute at the same levels as Chittenden County. GMTA is now a four-county area – Washington, Lamoille, Franklin and Grand Isle. There are different abilities to pay within the region and they are going to need to develop a different assessment formula that moves forward. He sees the finances coming in as the status quo. The other good news is they are not going to be asking the City of Montpelier for an increase in the funding for GMTA for FY11. The residents of the city were very generous to them last year and they are going to put forth a zero percent increase. He would like to speak with City Manager Fraser at some point and come back before the City Council when they have a bill for their perusal. He will provide the Council with CCTA's charter and they will probably make amendments to that in the next month.

- 09-252. Consideration of a request from James Duke, Training and Employment Coordinator for VATD (Vermont Associates for Training and Development,) seeking some free parking for their staff. V.A.

Council Members have received a copy of a letter from Mr. Duke, along with a copy of their *Trainee Orientation Handbook*, which outlines what VATD does as a non-profit.

Recommendation: Receive verbal request from Mr. Duke; discussion; possible direction to staff.

Mr. Duke was not present at this time and action on this item was delayed to later in the meeting.

- 248B. Consideration of waiving the rental fee for the City Hall Auditorium for the 2009 Great Green Mountain Bob Dylan Wannabe Contest. The event is scheduled for Saturday, November 28th, at 7:00 P.M. The cost is \$10.00 per person to benefit Home Share of Central Vermont, and WGDR-FM in Plainfield, two nonprofits with many years of working to improve their communities. No decisions have been made about selling refreshments; in '07, the organizers sold brownies and bottled water. If selling refreshments is an obstacle to obtaining a fee waiver, they would agree to NOT sell refreshments. (Council Members have received a copy of the request with further background information and details.)

Council Member Weiss said the rental policy for upstairs is very simple. In cases where the rental fee is waived, which is what these folks are asking for, no food or beverages can be served, and a mandatory minimum maintenance fee of \$50 will be charged. In their memo to us they are willing to abstain from selling refreshments. If we approve this we just need to make sure that we are advising them that they will not be able to sell food and beverages and they will be charged the \$50 maintenance fee.

Motion was made by Council Member Jarvis, seconded by Council Member Weiss to waive the rental fee for the City Hall Auditorium for the 2009 Great Green Mountain Bob Dylan Waannabee Contest. The vote was 6-0, motion carried unanimously.

09-256. Report by the City Council

Council Member Weiss said he would like to complement the Vermont League of Cities and Towns and our City Manager. He had the opportunity to attend their evening banquet function and it was very well done.

Council Member Sheridan reported they had another ADA meeting (Americans with Disabilities Act). The committee is looking at how we are going to bring the city into compliance. There is going to be a meeting later in the month and early next month to start working on forming a grievance panel to hear concerns brought to them. They are going to start on the transition plan. Under capital projects they have put in a request for \$10,000 for the upcoming year to be used in ways to help bring the city into compliance in some areas. It may be an ongoing request.

Council Member Jarvis congratulated Lost Nation Theater for the Complete Works of William Shakespeare. The last show was excellent and very funny. It's great to see that kind of thing in town.

Council Member Golonka said last Thursday they had their regional meeting with Alan Weiss and Jim Sheridan attending at the Chamber of Commerce. George Malek did a good job in organizing the different communities. They discussed a public service department and how they would structure it. He received a call from the Library with regards to setting up a joint City/Library meeting with regards to our concerns over the funding formula. He believes they will set up something early in November to discuss this.

Council Member Hooper reported that the Solid Waste District is in a bit of a pickle. If they keep doing what they are doing now they will be flat out of money in February 2010 so they are looking at some drastic changes in how they operate. He has a meeting with the Executive Director shortly to discuss Montpelier's interests with the district and how any restructuring would help Montpelier. There are looking at some very drastic options such as doubling per capita and closing all of the depots.

Council Member Sherman reported that the enVision Montpelier Steering Committee summarizing the results of the recent public meeting where everyone voted on strategies and actions. There is a list of the top placements for each goal and they are continuing to take input on that. They are working on a schedule to bring a workable draft to the Council early next year.

Mayor Hooper said they are going to be meeting on a monthly basis to review the documents. This is going toward creating our Master Plan which will be presented to the Planning Commission and the City Council for consideration. There is an opportunity for people to do the survey on the web site.

Council Member Sheridan said he received a phone call from a Berlin resident who spoke about a structure on Berlin Pond close to the water. He said the Town of Berlin is working things out with the City. Maybe the City Manager could provide an update.

City Manager Fraser said there is an individual who owns property on the pond and built a storage shed inadvertently on the city's property. He talked about doing a line swap to make it work. The Town of Berlin is pretty clear that it was not allowed in their zoning district and talked to him about moving it or taking it down. He is trying to work that out with the town.

09-257. Mayor's Report:

None.

09-258. Report by the City Clerk-Treasurer:

None.

09-259. Status Reports by the City Manager.

City Manager Fraser said he was going to ask the Council if they felt they should try to keep time on the agenda. They try to do it as a courtesy, but sometimes it is confusing. Most other communities list the agenda and starting time. He heard this week from a member of the Pylalisk Board that VTtrans has pulled their lease. They told the Pylalisk they hadn't done what they were supposed to do. They have a loan from the Central Vermont Community Loan Fund for approximately \$100,000 that the lease value is basically the collateral for. They were hoping to transfer that lease in that amount so they could pay off that loan. By losing that lease the Central Vermont Community Loan Fund is out \$100,000. The Pylalisk Group will cease to exist and there will be no one to collect against. It is amazing that the State of Vermont can do that. There is a prospective private developer negotiating with the State for the lease. They were going to buy out the lease from Pylalisk and the state said no.

09-253. Update on Scott Construction litigation.

Mayor Hooper thanked everyone for attending and the interest they have shown in the Scott Construction litigation. They plan to explain what has gone on and then give members of the public an opportunity to address the Council. The Council intends to stay and listen to members of the community for as long as they want to address them. There is an outline of the timeline of events provided. While there has been a lot of discussion over the Scott Construction Company overpayment on the street and in the press they really haven't had a chance as a community to sit down, review the facts, consider what happened and what will happen in the future. The City Council is anxious to hear from the public and their views of the situation. Because this is such a deeply serious problem and because it is complex it would be helpful to spend some time reviewing that timeline and the action taken.

Mayor Hooper said the Council and she deeply apologize to the people of this community for the mistakes that were made and the resulting breach of confidence in city government. While in her opinion there is no doubt in her mind that their intention was only to recover lost money she deeply regrets both the original error and the subsequent loss of confidence. She wanted to personally apologize to the entire community. She is sure that City Council Members will at some point also take the opportunity to say this to the public.

There are several issues that people would like to understand. How could this have happened? What did the city do to recover the money? What steps has the city taken against the parties involved? Why didn't we tell the public about it, and what is the city going to do going forward?

City Manager Fraser said probably a lot of people have read the two summaries he posted. One was printed in full in the Times Argus on Saturday and also posted on the city's web site, and there was a second one posted on the city's web site on Monday. He has tried to get some explanation out with some detailed information. In 2004 Scott Construction from Newport was doing two separate construction projects for the city. They were water lines which were Public Works jobs which had been bonded for. In December 8, 2004 the city received a bill from Scott Construction for \$85,774, and that bill has been made public. You can see there was a hand corrected amount of the payment made showing an amount of \$548,110 in prominent numbers and a smaller amount below showing the amount due. A clerical employee picked up the wrong number and drafted the accounts payable warrant with the invoice. That warrant was submitted to the department head who saw the number and had an opportunity to look at the bill. He signed the warrant in the amount of \$548,110 and it went to the city's finance office for accounts payable and off for the check signing. The Council signs off as a pro forma exercise. Once that is done the City Clerk-Treasurer issues the check and it is mailed to the vendor. In this case obviously the wrong number was passed through. Scott

Construction actually picked up the check the next day and deposited it into their bank account. It appears by the end of the week some pay down against his line of credit with TD Banknorth was made.

City Manager Fraser said the next invoice received on this project from Scott Construction wasn't until September of 2005, so there was no additional activity. There was nothing else to prompt the next month's bill to make them look at the prior month. The project wasn't actually closed out until July of 2006. In October 2005 the city was conducting its audit and this bill was looked at. The auditors are here and will speak about their role in this. In October 2006 things still didn't look right. There was a deficit in the water fund they couldn't explain. The Water Rate Committee was looking at all of these things. Normally if a project goes over budget there is a reason. In the meantime the city had a new Finance Director and new Public Works Director so we didn't have people working from their memories. They were trying to trace it back through the records. They were calling the former employees and they were as helpful as they could be, but no one could remember a problem. Finally, the former Finance Director came in and along with the current Finance Director and they started going through bills together, and on the night of October 11 they discovered the payment and what had happened. Immediately after the City Council meeting was over the Finance Director told him she needed to talk to him right away. She told me what happened and the next morning he called the City Attorney and asked him what this meant legally. He said the first thing the city should do is to write a letter to ask Scott Construction to give the money back. The City's attorney approved the letter which was sent to Scott Construction. The following Monday he called and said he didn't know anything about this and he would check his records. He told the Council Members what happened. Then we provided Scott some documentation he requested. At this point the city considered it a matter of potential litigation. That is why it was discussed in Executive Session so as not to tip the city's hand in a lawsuit until they had all of the facts. Mr. Scott told the city in December that he didn't dispute the claim and wanted to make it right. There was some correspondence back and forth about that. By mid December Mr. Scott had identified a local attorney, Jerry Diamond, to represent him and there were meetings and conversations with Mr. Diamond. They provided the city with information concerning Scott's financial situation and immediately said they wanted to pay the money back. They were looking at that as a possible settlement to a potential litigation claim.

City Manager Fraser said the city filed a claim with our property insurer the Vermont League of Cities and Towns Property and Casualty Insurance Fund on January 10 and on January 19 the city received a letter from their attorney that the claim was not covered under the terms of the policy. On the 22nd of January Mayor Hooper, Council Member Golonka, Attorney Stitzel and he met with Dan Scott, Attorney Diamond and Mr. Scott's bookkeeper to talk about a repayment plan. Terms were met and agreed upon. On January 25th the Council met in Executive Session to review those terms. After that session was over, at 7:15 P.M. when the Council came out of Executive Session, they met in public session and passed a motion to approve the terms of the promissory note by Scott Construction as discussed in Executive Session authorizing the Mayor to sign all of the related documents. The motion passed and the document was signed and executed.

The next month the Finance Director provided the Council with recommendations for updated financial controls to address concerns spawned by this situation. In a public session on the 21st of February the Council reviewed the financial controls in open session and approved them. They also received the Audit Report for the year ending June 30, 2006 and voted to accept the report which included the funds due as a receivable asset.

Beginning February 2007 through March 2008 Scott Construction paid every month \$7,444.89. In April of 2008, he sent a letter saying he needed some time and the city said if he was current by June 1st for all three payments it was fine. Beginning April 30 there were occasional Executive Sessions, every one of them labeled discussing a legal matter (Scott Construction). Obviously, by mid June the city hadn't received a payment. The city received a payment in the middle of the summer that bounced and pursued the bounced check. At this point Scott Construction was no longer represented by Attorney Diamond. He was represented by Attorney John Robinson of Newport. Attorney Stitzel spoke with Attorney Robinson and said the city was ready to call the note and prosecute him. They finally received a bank check to replace the bad check and Attorney Robinson said they were going to send in a revised plan.

At all times the financial records and all the representations being made to us the city thought that Scott Construction prior to 2008 had sufficient funds to pay the debt off he did have heavy loans and if they were to be called which would send a ripple effect causing foreclosure and him going into bankruptcy. The city had no standing in the bankruptcy proceeding. The main concern the city had was that he would go bankrupt and the city wouldn't collect anything. The Council and he were trying to make sure they collected the money.

There were meetings through the fall; there were face to face meetings that outlined some terms and conditions. Finally, in late October he agreed to provide property security and they got the title records. In February he signed all of the documents to provide us the security interest on a property in New Hampshire. It is important to note that all of his properties had first and second mortgages on them. There were no free and clear titles. He signed an agreement stating he had sufficient equity in the real estate to cover the bill. Immediately, there were problems and he was late with the first payment and claimed it was due over confusion because we just signed the note. He did make the payment. He missed the second payment. The Council had enough and sent him a notice saying this was the end. On April 29, 2009 he hadn't paid and he asked the Council to add an Executive Session. He told the Council per their earlier instructions the city were taking him to court the next day and they agreed. The next day the city filed the lawsuit. They found out that Attorney Robinson was no longer representing Scott Construction and he didn't have an attorney. The city filed notices for attachment on his properties and bank accounts. On June 3rd they received a notice that a New Hampshire bank was foreclosing on his Pembroke properties. On June 10 the Council met with Attorney Stitzel to make sure they understood their position. On June 16th the city was awarded a judgment in favor of the city for close to \$400,000. Scott made a last ditch effort to try to get the city to negotiate with him and the city said no unless he paid cash. That was the last conversation. Since that point the city has been collecting subpoenas and doing discovery on all of his financial records to see what he might have for assets that could be attached.

Finally, a week from today the city's attorney advised us that the Chittenden Bank had begun foreclosure on all of Scott's properties, had first mortgage and had so much money outstanding that far exceeded Scott's assets it really appeared the city would not be able to collect the money. He told the Council, began work on the statement that was released and circulated it to the Council and attorney for review, and on Friday it was released to the web site and to the press. The city followed up with a piece on Monday with an article. Today, acting through the Police Chief, Attorney General, the City's Attorney and Washington County State's Attorney they referred this matter to the Vermont State Police and the State's Attorney for investigations as to whether there was any criminal activity. That is the sequence of events.

Mayor Hooper said Fred Duplessis with Sullivan and Powers would like to briefly describe some of the audit procedures and the sequence of what happened.

Fred Duplessis said he is a partner in the firm of Sullivan Powers & Company. They have done the audit for the City of Montpelier for a number of years. They have audited a lot of municipalities in the state, some larger and smaller than the City of Montpelier, and have been doing this for a long time. The audit for the year ending June 30, 2005 commenced in October 2005, which is the normal timing for most audits. They asked for a list of all construction in progress and that list was prepared and provided to them. The Scott Construction's bill in question was on the list and in fact was selected for testing. At that point remember this was 10 months after this check was paid. A lot of times because of construction season in Vermont they are looking at invoices that are sometimes 15 months old because the work is done in July, August and September. The audit is done in a timely basis for when they can close their books, but it is still a long time after bills are paid. Unlike bills for things like equipment or supplies, construction bills are typically for work in progress and progress payments to date. The City Manager talked a little bit about that. It's not uncommon for the engineering firm to make changes to these bills because there are change orders, additions and subtractions, and rejected materials before they sign them. Unlike bills for equipment, particularly for things like water and sewer projects where lines are underground, as auditors they can't go out and see these things so they have to rely on the controls and processes that are in place in a municipality or private business. Fortunately, for construction bills there is an additional control in place, and that is the fact there is typically an outside consulting engineer who is responsible for reviewing that work. They did this in this case.

Their authorization to pay indicates that they agree with the quantity of work, that it is correct, and that the work is in accordance with the specifications in the contract documents. In addition, it's not uncommon for the engineers to make changes to those bills at that point in time. This particular bill was in fact signed by the engineer on December 10, 2004 and they did cross out two lines on the bill. One was a previous payment amount and then they crossed out the amount due amount, and then they hand wrote in the amount of \$548,110.83 and initialed that change on the right. The City Manager then signed this on December 14, 2004. This went to the Public Works Department administrative assistant who then prepared the voucher jacket for processing. She entered the \$548,110.83 that was handwritten on the bill as the amount to pay. This was then reviewed and signed by the Director of Public Works. Based on his understanding of the progress of the work to date he authorized the payment on that bill. In an audit of this type those are what they are relying on. They make sure that not only the engineer has said the work was done and accurate but that the Public Works Director or Project Manager who is the most familiar with the work that is done is authorizing that bill. When that was done, they checked those processes and controls and that had in fact happened. The engineer signed, they made a change, it was put on the voucher jacket and then signed by the Director of Public Works to pay, and then it was processed for payment through the normal process, including being put on a warrant to the City Council. The very next progress bill from Scott Construction didn't happen until eight months later. There was no bill sent until August of the next year. The project was completed during that period and a bill came in. Just like the bill the engineer did the same thing, crossed out a line, hand wrote an amount to the left and the city went through the same process. That amount was then put on the voucher jacket and paid. This time that was the right amount to pay.

The contract ran over to the next fiscal year. The bill in question was the last one in fiscal year 2005. Another bill was paid in October 2005, again about 10 months later. When the city was preparing for the 2006 audit, the year the contract was completed, they looked at what the impact was and discovered the overpayment and notified Scott Construction. They do a lot of these audits and see over payments all of the time, but certainly not of this magnitude. The difference is when over payments are typically made the company that gets the over payments usually calls the client and asks what they want to do with it. Shall they send it back or credit that account? He has never seen a case like this in the thirty years he has been doing this where the money was kept. Scott's didn't do that. They didn't call. On the next bill there is a line for previous payments and they didn't show that amount on that next bill either as being paid. Those two things are very unusual.

Mayor Hooper said the last broad question out there is why city government didn't inform the public about this process and about what had happened. The City Council from the first time they knew about this situation considered both the public's right to know about this but also the public's right to be made whole financially. The Council has a fiduciary responsibility to the community which is two-fold. One is financial and the second is an openness in its actions and its transparency. Their dilemma is that the one fiduciary responsibility was directly at odds with the second responsibility. The Council believed very strongly that the city would lose their ability to recoup the funds that had been overpaid if they went public with it. There are different points of view on that, but the Council felt the larger obligation was to get the money back and they worked as hard as they could to accomplish that. With all of the wisdom of hind sight, in her opinion when they filed the lawsuit in Superior Court earlier this year that was an obvious time when it wasn't working any more and we could at that point say to the community this has happened and here are the steps they have taken and outline the steps they were still trying to take. Up until that point they were still engaged in an active attempt to recover the funds, and because of those steps they took they did manage to recover \$100,000 of what had been lost. That is the theory the Council was working from.

The last question is, what are you doing going forward? The City Manager has already mentioned that we referred this to the State's Attorney and we are still looking into the other options. Bill Fraser and she had a long conversation with the City Attorney this afternoon talking about other courses of actions out there and other possibilities we could take. They are still exploring the opportunities that may be available to the city. The Council wants to listen to the public and understand their points of view. If there are specific questions they can answer they will attempt to do that.

Vicki Lane, a resident at 190 Berlin Street, appeared before the Council and read a prepared statement into the record.

I've been thinking a lot about this since I heard about it. Bill's October 12th letter clarified a few things for me. I remember what was happening in the life of the Public Works Director at that time. He had just lost his son. His was the defining approval signature. After his approval I doubt anyone looked any further and just signed it. That does not excuse others down the line that should have simply looked at the bill before signing, especially since everyone knew that Steve Gray was not himself. Remember his retirement was because he felt he could not give the city its due. I do understand the circumstances.

I don't understand why this was not picked up in a simply monthly variance analysis by the Finance Department or the City Council.

As far as the auditors are concerned, an audit is not designed to find mistakes. It is designed to determine if the city is conducting business according to accepted accounting principles. That said, after reading Bill's Monday letter, which stated this item was selected for testing during the audit, I don't understand why they didn't find it. I've been a CPA for 28 years and have public accounting with a major accounting firm, internal auditing at corporations, private corporate financial analysis and accounting for experience. I'm also an extremely conservative accountant. It is my opinion that once the item was chosen for testing that test should have included tracing back to the source documents and accounting, not just verification that the signatures were appropriate. Had this been done the accounting firm would have found it.

However, when the City Council became aware of it we as the voters and taxpayers should have been told. I cannot accept keeping this from us. I understand the reasoning but I simply can't accept it. By keeping it from us you also did not avail yourselves of the opportunity to hear suggestions from the public as to what to do. I don't want to hear or see the words Executive Session on the agendas for a long, long time.

I reserve my most contemptuous thoughts for the owner of Scott Construction. There is no way he could not have known about the overpayment immediately on receiving it. And I didn't know that he had dumped the \$500,000 into his TD Banknorth account. He clearly knew what he was doing. An ethical and upstanding business owner and fellow citizen would have been on the phone to the City of Montpelier as soon as they opened the mail. Certainly, if they had to cash the check because they needed the portion that was due to them the excess would have been disbursed back to the city or held in an escrow account and not considered a "gift."

I don't have any magic answers for how we recoup this. I do, however, insist that it be spread around and not dealt with by cutting people in the fire, police and street departments when we get to the budget.

Stephen Morse said he has lived in the city for 33 years and owned a home for 27 years on St. Paul Street. He has worked in state government for 34 years. He works in the educator licensing office and is accountable for thousands of dollars that come in every day. He is picked up on everything he does, every check that comes in. If there is overpayment he questions it. Nothing is ever unaccounted for. When this first broke he is ashamed, embarrassed and humiliated to be a member of this community, and it just seems it is being dumped over onto us. Judge Judy Shinlan says you are accountable for your actions, and it needs to go right back to square one with the writing of the check, the company dealing with it, and why this was held against us for so long and is now suddenly being passed off on to us. He doesn't think this is right and he doesn't know how some people in this community sleep with what has happened.

Peter Harris, a resident on East State Street, asked for clarification as to how many people from the city government signed off on the check before it was presented to Scott Construction.

City Manager Fraser said the department head signed the warrant jacket, and then a manifest of the checks are signed by the City Council and then the City Treasurer signs the checks. There are nine people.

Mr. Harris said nine people signed them. This is really incredible.

City Manager Fraser said the Treasurer's name is stamped on the bottom of the checks. She doesn't review the bills for each one. Once the check payables go to the Treasurer, which is the standard procedure, her job

is to make sure the funds are in the account to cover the check. She isn't in the approval line of process. The Council signs the manifest that has every check that is going out.

Peter Harris said he would like to know now what policies are in effect to prevent this from happening again.

City Manager Fraser said right after that the City's Finance Director made some internal changes and the warrant jacket was eliminated. The payment is made directly from the bill. There is no more second step to rewrite the number. Any payments over \$25,000 are specifically reviewed by the Finance Director, totaled and then brought to him for his signature also.

Mr. Harris said he is dismayed. He thinks this is so sketchy because the City Council knew of this before they stood for election and the Mayor holds two jobs and she contested a job for the State Legislature knowing this happened. He's sure she wouldn't have prevailed if she had to go to the people and say they have taken \$400,000 of their money and squandered it. You can't handle one job, and you are going to run for two! He is very surprised. This will be an eye opener to see whether she stands for election again. He doesn't get it anyhow. You have been the dukes of the perfect crime. Maybe they can sell the story to Hollywood and recoup the money. This is a shame!

Stephanie Lahr, a homeowner and a service business owner in Montpelier, said she read about this, and it is horrible mistake. As a service business owner who bills and receives payments she was really struck by the behavior of Scott Construction receiving this money and not saying anything. That feels akin to a theft to her. She wants to thank all of the members of the City Council, the City Manager and the Mayor who had to deal with trying to strategize around this. It sounds incredibly difficult. She doesn't think there is any right choice about it, and it is really easy to look back and second guess this. She read in the media and feels in the room somewhat of a mob mentality that really scares her. She feels like there is some character assassination going on and telling people it is their intention that they are hiding this. This is probably a terrible choice to make. It probably wouldn't have made any difference had it been disclosed earlier. She would have liked to have seen it disclosed earlier this year, but she appreciates everyone who had to hold this and come up with a good strategy. She really hopes they don't try to ruin people over this because she doesn't think it is a matter of bad personal intentions.

Donald Lyons from District 2 and a lifetime resident of Montpelier said there are a couple of questions that arise out of all of this. The deficit obviously was spotted by the new Finance Director in 2006 and he thinks they will continue to ponder the question of why wasn't the deficit which occurred as an overpayment in 2004 caught by Finance and the City Manager in 2005. He doesn't expect all of these questions to be answered at this point. He is really wondering whether the city makes payments in excess of \$500,000 without oversight by top management. What was the total project cost on the bid for Scott? What was the review given and by whom does Scott's ability to perform the work satisfactory? It was reported that the Scott Project and that of another contractor in other city work were merged which would have inflated the figures on the books and hard to separate and distinguish what we were supposed to be paying and to whom. If so, why were the two projects merged, and who authorized it? With regards to the question of whether the Mayor, the Council and everybody else falter by not letting the public know in advance is a little bit of a smoke screen. What really happened, or didn't happen, in 2004 and 2005 – the City Manager's job description says it is the highest responsible administrative position directing municipal affairs and carries the responsibility for planning, organizing and directing activities of city government. It reports that the position is accountable for advising department heads on operational problems. He is sure a lot of these things happen. He reviews department plans and reports and makes regular reports to the Council presenting them with recommended courses of actions. What specific recommendations were made regarding the Scott matter by the City Manager? The Manager is also accountable for the preparation of the annual city budget. Again, the question of why the deficit wasn't caught in 2005 budget preparations he is sure is a question that is in everybody's minds here. He said they have heard there are going to be a lot of options as to what the Council can consider in the future. These are certainly not recommendations, but options to consider. These options could include resignation by the City Manager or others who are still employed by the city, or forfeit of the three year increases and city costs for benefits to the Manager and others involved in the matter, that

any proposals for retirement benefits be reduced by those three years also, 2004, 2005 and 2006. These funds could then be applied toward reducing the deficit amount that is going to be laid on the taxpayers.

Jack Lindley, a resident at Chestnut Hill, said he is sorry to have to come down this evening. We were here not many months ago on another serious problem called reappraisal. The reappraisal debacle cost the city about \$250,000 extra. He thinks the City Council is aware of the mess that was generated and how we finally got our way out of this thing, and hopefully this year it will be solved. This is either the most elaborate cover up in the state of Vermont or just plain simple stupidity. He can't tell them the frustration he has with elected officials and public officials who cannot seem to keep things in order since they are elected to do so and then have appropriate people cover it up. The question would be how many pay raises and bonuses given since 2005 with the knowledge that we have a problem in the water fund. He is going to suggest that the City Council is too close to this and probably the City Manager is too close to this. He would recommend to them as was done prior to create some type of committee in the town made up of towns people who have some thoughtful suggestions so this never occurs again and what are the options for the city so our water rates don't have to take this on the chin because they have been going up at an exponential rate. He would suggest they think seriously about moving this over to a committee of town's people that would be respected so we can bring back trust and integrity to this town because he thinks it does exist in this town. Sometimes we do some dumb things. Basically, he thinks we can bring some hope that this debacle won't happen again ever. He has only been here 40 years. He does remember supporting and working hard to move the city meeting from a stampede over to a ballot item so more people would participate. We have a full community that participates. We have very high voting turnout and it would be good for somebody in the community to stand up and work diligently and report back to the City Council within so many days in order to produce a budget for this next year.

David Dobbs, a resident at 18 Summer Street, said it is difficult to speak about this. It is important there be plenty of sunlight on this so that everyone ends up understanding what happened and that the discussion about this, both tonight and in other times, be held in a way that holds everyone accountable and makes sure we don't have these things happen again but does not unduly erode the fabric of this town. There is clearly a huge issue of trust here. There's a feeling on the part of many people that while they are understandably upset that something has been hidden from them, that the something involved a lot of money, and as the paper put it yesterday what else might we not know that has been hidden? There are two issues here. One is, what happened that allowed this overpayment to be made? He doesn't think the Council and the City Manager need to be further inspired to figure out what happened and making absolutely dead sure that this or something like it can't happen again. The other issue is, what happened after they discovered the boo-boo, the overpayment, the catastrophe? Here we get into much murkier waters. This is a real mess. To him it seems if he had put himself in the Council's seat he isn't sure what his call would have been at the time. He thinks it is important to remember the different contexts. There was a completely different feeling about finances and the economy at the time. He doesn't know Scott Construction's business, but in general this was not an era in which you worried about the financial health of construction businesses. They were making a lot of money. There was reason to believe that he could and would make his payments as he did for awhile. It is a little too easy to question the acts of the Council during that time. This is where you get into the issue of character and trust, and he is glad the previous speaker brought up the issue of the appraisal. The last time he stood here at this microphone was when he was complaining superfluously about the screwy appraisal process. That was quite a mess too, if you recall. When he tried to assess the string of decisions the Council made to not hide but not to declare the problem with Scott Construction he came back to that night and what the Council showed us that night. What they showed the citizens is that they in one night based on the testimony of people in this room they reversed course completely in a most constructive way. They were not interested in saving face. They were not interested in sticking to their guns. They were not interested in defending bad decisions already made. They reversed course and corrected an egregious problem and showed where their hearts and ethics lie and what sorts of principles and values drive their considerations, both in open session and closed session. There is plenty of reason to be upset here. This is an unholy mess! He would hate to see a presumption of malintent brought against them when we try to evaluate the decisions they made between the time they discovered it and a few days ago.

Bob Withey, a resident on Robinhood Circle, said three and a half years ago they moved back to Montpelier. Twenty years before that they lived in a neighboring community, and seven years before that they lived in Montpelier. He said he must confess that the last three years he has been somewhat disappointed. The reappraisal problem has been mentioned. The second speaker tonight pointed out the fact that information had not been available to the public and he felt he had been cheated. He votes every year and his decisions would have probably been much different as to who he would vote for if he had the information he has now. To be very honest, he feels cheated in terms of democracy and trying to elect the best people to do the best job or whatever job needs to be done in town. While the 20 years he lived in another community he was a member of the Select Board for five years. He fully understand the pressures that town councils and select boards have. Three of those years he was Chair of the Select Board. He tried to avoid going into Executive Session every way possible. In fact, he ran on the basis that he felt the public has a right to know. The public has a right to speak, which the Council is affording them the opportunity to do tonight. He wouldn't even accept an e-mail on the Select Board because the former Select Board was doing business through e-mails and walking into a meeting and voting with a decision already made. That is not democracy in his way of thinking, or by his definition or his generation. Executive Sessions are not a good thing to use. He also checked with the Secretary of State's Office and found out that when you go into Executive Session that once you have made your decision majority rules and you don't do anything about it after that. There is no state law that prohibits a member of a town council or select board from walking out of an Executive Session and talking to the public. It is not always good to have that happen. In many cases when we get into personnel issues bad things can happen out there. You don't have to go along with the majority. If your commitment is so strong and you feel so sincere you are right, sometimes that minority is right. Another issue he would hope the Council might consider is the statute of limitations. It is his understanding that they don't apply to all issues. Some are only three years in length, so in some cases whatever action you may be contemplating may be good-bye so he wouldn't waste time. He wishes the Council well in straightening this problem out. He is disappointed.

Joslyn Wilschek, a new homeowner in Montpelier, said she has one overarching request for the Council. She is really concerned based upon Mr. Fraser's most recent article and fears that small town politics and the desire for everyone to get along and not step on other's toes may really prevent an objective and independent assessment of what is going on. I ask if you can't do this to bring in someone else who can assess the situation. We heard from Sullivan, Powers & Co and she knows as a ratepayer in Montpelier she would certainly want an independent accountant with that kind of experience to assess the situation and see if there is any way for us to get any malpractice benefits if indeed it rises to that level. She appreciates that they came. She can't imagine that most people in the audience really knew if they followed accounting practices. The tone she heard in Mr. Fraser's most recent letter was that we are all part of the same big family. Sullivan Powers & Co is a great company, but she thinks the city owes it to hear from someone else. Her second request, or at least something to think about, is she is concerned about Mr. Fraser's ability to manage the city. If you go back to 2004, the fact there wasn't a system in place to examine checks over a certain amount makes her think what other parts of the system don't have a check and balance. She sees a lot of finger pointing back and forth and the buck stops somewhere. That happened in 2004. How do they know there aren't inefficiencies in the system in other places that will lead to the same problem? He spoke of City Manager Fraser's most recent article which spoke about Scott Construction's outstanding debt to the Chittenden Bank. At what point in the process did they ask to look at the bank's records to find out the guarantees that Scott Construction had issued or to really understand what he had or didn't have?

City Manager Fraser said they had audited financial statements from Mr. Scott.

Ms. Wilschek said her last point is that here you have a guy that was able to take a check and cash it in his personal bank account. Knowing that in 2006 you continued to negotiate with this man who stole the city's money. That's black and white! There's nothing ambiguous about that to her. Right there that is theft. If they had filed a criminal action immediately it may have prevented negotiations but there was no truthful basis to start from. That to her really places doubt on how things went. She would finally take an objective perspective, and it's hard when people have to be let go or people need to be independently investigated, but that is what needs to happen here.

Carol Blake, a resident on Connor Road said their house is currently on the market. She spoke of the number of homes on the market and said people aren't clamoring to move into Montpelier. The appraisal mess, this mess and our overall general high taxes are combining to aggravate the problem. In her work life she administers state training grants that total millions of dollars. If she were to make a mistake or be involved in any way of something of this magnitude she can guarantee she would be fired immediately. She went on to say she wouldn't be fired because she would have the decency to resign.

Donna Youngblood said she moved to Montpelier from Boston and had been a renter in Montpelier a long time. This is a big amount of money. She spoke of the rock slide and how well the city had handled when people who had lived in the area had been terrified. The construction company had done an excellent job. The city restored the courage of the people at North Branch, many of who are quite disabled. That was an example of some good judgment as to how someone was selected who knew what they were doing. She spoke about construction companies in the area and wondered why they picked someone from Newport. She is really grateful for a lot of the leadership that is in the city and for the caring. She doesn't think we should doubt their ethics. She is wondering if we just decided to give a half million dollars to the Northeast Kingdom.

Gary Schy, a resident at 22 Hubbard Street, said he has an extensive background in finances, auditing, and accounting. He has audited Fortune 500 companies in New York City. He would like to second a lot of what some of the citizens said about not making a witch hunt out of this. His sincere belief in his heart is that everyone in this room has good intentions, that there isn't any wrong doing. He does believe there is proof that we do not have in place a system of processes and procedures and internal control to know what is happening with the finances of this city; it's impossible. As someone who has done audits to have 10% of a budget – remember this amount over represented 10% of the city portion of the budget. It wasn't missing in inventory but missing in cash. He can't fathom 10% of a budget in cash being missing. The scope of this would be if the State of Vermont were missing \$200 million and didn't know where it was. Jack Lindley talked about a citizen committee and he agreed a citizens committee should be appointed. Independent outside experts need to be brought in. We need to audit and review the processes that run this city. We need to have the books re-audited. How many \$10,000, \$50,000, or \$5,000 over payments are out there? If we didn't know about this one, how can anybody in this room tell him that they know what is going on with the finances of the city when for two years 10% of the budget in cash had escaped them? He thinks the Attorney General's Office should be contacted. The more outside independent agencies that come in and review everything the more faith people will have. He isn't looking for a man hunt, but the buck does stop with the City Manager. If someone can come in and review the way the city is run and recommend internal controls, processes and procedures that will prevent this from happening again, and the City Manager adopts those processes and procedures and the Council adopts them, and these outside firms are convinced that these will prevent this from happening again he would be satisfied. If it takes six months or a year it doesn't matter. He thinks they need to go back 10 years and start looking because there is money out there. If this was allowed to fall through, then there has to be other over payments. With regard to the nondisclosure, if you had an overdraft you could have disclosed the error but not the payee. That would have prevented anyone from knowing who had done it. It would have prevented his creditors from knowing and you wouldn't have threatened collecting the money. They could have told the public an overdraft was made but you were withholding the name of the payee for legal reasons so the city can collect the money so he doesn't have a run of creditors and go bankrupt.

Mr. Schy said he thinks the city is really well run. He knows a lot of things Bill has done with the city and he knows everyone in this room is very dedicated. There are differences, but that is what a community is all about. He is going to let the public know that if he doesn't see the proper agenda items on the city agenda he will write the Council to put them on so we can discuss these things until there is a citizen committee. He doesn't think we should walk away from this until the proper procedures have been done to satisfy everybody. He also would like to second a comment he heard that he absolutely believes that the difference should come off the top of the salaries of all of the employees who work in the city. We are in the worst recession in the history of this country since the Great Depression. Every city, every state has had layoffs, 10% slashes in salary. The entire world has dropped in salary and dropped benefits. Montpelier somehow seems to be in another world. We need to bring down the budget through voluntary 10% cuts

across the board pay reductions and benefit reductions like everybody else has done. That would help the tax burden for all of the people in the community.

Stanley Grandfield said he isn't an accountant or an engineer or a politician. He is a resident of Montpelier and a taxpayer. He thought for some time about coming to this meeting and expressing his views about this unfortunate situation. Everything he was going to say has already been said. Gary Schy just covered the last item that he was going to include in his brief comments to the Council. Don't pass the burden on to the taxpayer and the water and sewer customers. It should be passed to those who were responsible for having this occur.

Jennifer Hollar, a resident at 14 McKinley Street, said this is an incredibly unfortunate mistake that has happened and it comes at a high cost to the city. She thinks the Council, the Mayor and City Manager have clearly laid out what they have done to rectify the problem, and unfortunately in this situation it looks like there may not be a way to fix it. She is really disturbed by the calls and suggestions that there ought to be resignations because she feels if we were to lose the leadership we have now in the city that Montpelier would experience an even a greater loss.

Justin Turcotte, a resident at 8 Wilder Street, said he has a couple of questions about the City Attorney. Who was the City Attorney in 2005 and 2006?

Mayor Hooper said the city has several attorneys they use depending on what the issue is, and the attorney they used in this particular case was Steve Stitzel with Stitzel, Paige and Fletcher out of Burlington.

Mr. Turcotte asked what made them decide to use him instead of some of the other attorneys.

City Manager Fraser said he handles cases like that for the city. We have attorneys here in town that handle a lot of our general contract bonding work.

Mr. Turcotte asked if the city was planning to pursue looking into his malpractice insurance. He would assume they used his counsel to help make the decisions.

Mayor Hooper said he advised the Council in making these decisions. She asked if he was suggesting that his advice was inappropriate.

Mr. Turcotte replied perhaps. The house that was used as collateral in New Hampshire.

City Manager Fraser said it was commercial property.

Mr. Turcotte said it is his understanding that the land was assessed over a million dollars, but for a lack of about \$300 in taxes it went into tax foreclosure.

City Manager Fraser said the bank in New Hampshire held the first mortgage and they experienced similar problems with him so they foreclosed. It wasn't a tax sale. The bank foreclosed and sold it at an auction for \$600,000. He noted in the record that the city had received a notice in March of a delinquent tax bill which was a signal to the city that something was amiss.

Darcy Johnston of Murray Hill asked if there was a city attorney of record.

City Manager Fraser said the general city attorney is Paul Giuliani.

Ms. Johnston asked when he was notified of the problem.

City Manager Fraser said he wasn't sure he was officially.

Ms. Johnston said that seems to be a problem. Maybe he would have had a different recommendation.

Stanley Brinkerhoff said he recently purchased a home on Main Street in Montpelier. In the Times Argus he recently read that we are all facing having to pay back that money. It doesn't seem fair that as a community we need to do that or that he as a three month old homeowner needs to pay that. He is also concerned that if they are facing payments back out of pocket that there isn't further investigation into what happened, and what happens in the future. He hopes that the City Council does invest in that investigation.

Rory Malone, a resident on Barre Street, asked why the city had waited so long to investigate the possibility of criminal charges against Scott Construction.

City Manager Fraser said the city has been looking into possible criminal charges. In fact, one of the things they are doing with the financial records is to see if there is any evidence of fraud, of him moving the money around and hiding assets. They had always considered an option would be to refer it to a criminal case. Once it was deemed to be uncollectable they have been talking to everybody that needs to be talked to about how to do that formally.

Mr. Malone said when Scott Construction cashed the city's check that was a criminal act. If the construction company knew, and it appears from the bill that was circulated here, that they were aware at the time they received the overpayment that they were not entitled to over half a million dollars in city funds. That was a crime. He has heard the Mayor and City Manager Fraser talk about how the primary concern in this process was getting city funds back and taxpayer money back. Certainly, as part of any criminal case restitution is always awarded when funds are stolen. If the city had a concern about getting their funds back, pursuing a criminal matter would have both punished Scott Construction appropriately and would have made the city whole. We are sitting here today four or five years after the fact when there is no question now that Mr. Scott doesn't have the money to pay this. It seems it is a bit late in the process for us to refer this to the Attorney General's Office or the State's Attorney's Office.

City Manager Fraser said the time the check went through it was a year and a half later when it was discovered, so the first thing they did was to contact Scott Construction and put him on notice and he promptly admitted that he didn't have the money and couldn't pay it back.

Bradford Moore said he would point out that Dufresne-Henry approved the city's bill. Malpractice insurance there would be an avenue to look into.

Jason Garrow from Ewing Street asked if someone could describe the magnitude of the attorney's fees paid to Attorney Stitzel over the last three years.

Finance Director Gallup said at the end of August it was \$10,135. That would be from 2006 to 2009.

Mr. Garrow asked between 2004 and 2009 how many times was the issue of public disclosure discussed at any of the Council meetings, closed door or otherwise.

Mayor Hooper said it was discussed in Executive Session each time.

Mr. Garrow asked what the reason was for keeping it from the public?

Mayor Hooper said the desire to collect the funds.

Mr. Garrow said he is a firm believer in human nature and he thinks people are at least 98% good, but there is that other little piece of everybody that is all about self preservation. Clearly, the appearance of impropriety here by the Mayor, City Manager and City Council, the cover your ass affect, is something that is in the back of all the public's minds. He isn't assassinating anyone's character here. He believes everybody has the best of intentions, but it stinks. If they had decided somewhere around the time of the reappraisal debaucht to disclose this he would have to think that the makeup of the City Council now would be very different as a voter.

Anthony Iarrapino, a resident of Sabin Street, said he recognizes these people on the Council most of the time perform a thankless task and a lot of them ran unopposed because none of the rest of them wanted to do it. But that aside another lesson they have learned is that secrecy in government breeds mistrust. Not only do we have a financial deficit but we have a trust deficit. It's not just with the Council, but there are some questions about Attorney Stitzel who was still the city's attorney in matters like this. We could learn a little bit more to the extent that Attorney Stitzel wrote the City Council any memos or sent any advice in writing. To rebuild trust he thinks if the city is going to continue to employ Attorney Stitzel in matters like this they should let the public know exactly what his advice was so we can know whether the Council followed his advice or deviated from it. We heard Attorney Stitzel's qualifications described by the City Manager, but nothing in there had anything to do with criminal law. That goes back to a comment that was made earlier because there a couple of indications of criminality. One is whether we could have secured a better chance of getting repaid if our claim had been handled through the criminal law system instead of standing at the back of what was apparently a very long line of creditors in the civil system. We have an obligation to other people that are dealing with this guy. If he is willing to take our money and know he isn't entitled to it, what else is he willing to do and what else did he do that might have been stopped if the city had been willing to go to the authorities in a timely way and say this man needs to be investigated. He thinks they would have had just as good a chance to get our money back through the criminal system if it was timely reported than we clearly did through the civil system. The trust deficit also applies to Sullivan Powers & Co. To the extent they are going to continue to be in the city's employ we really need a justification of why they deserve to be. When you are an auditor, there is one job, and that's to get the money right. Of course, it could have been a mistake. The problem is he wouldn't rehire somebody who made a mistake that was so fundamental and at the core of the service they provide to the city. There are two deficits. There is the financial deficit and a trust deficit. There have been a lot of great suggestions on how to make up for the trust deficit. He doesn't think there are any great ideas other than exploring the malpractice insurance of some of the people that were advising the city in this process. At least on the trust deficit, more than what has happened now which is the city footing the bill for paid advertisements in the Times Argus it has to be more than that. It has to be independent and it can't involve people as close to it as the Council and administration is. As much as we appreciate the service they perform they need to step away and let someone independent come in to erase that other deficit.

Frances Miller from Ewing Street said he agreed with about 90% of what was said tonight. He agrees that the City Council has stolen from the citizens. Maybe not literally but it is being taken from us. He does feel the Council is stealing from us by not letting us know ahead of time. They are trying to say we have recovered \$114,000. We have lost \$500,000 plus we haven't collected any of it back. The \$114,000 doesn't even make up the interest on the \$500,000, so we haven't collected anything back. He hopes they settle it.

Eric Esselstyn, a taxpayer in Montpelier, said he has been before the City Council many times in the last two or three years, often taking a strong unpopular position. He would come down on the side of folks who would like to see an outside commission come in. He would like to come down on the side of folks who basically would say to cool our jets. For the last three days he has seen banner headlines in the Times Argus, and he thinks the Times Argus is a dandy paper. But the bloodhounds are out. When the headline says "Resignation," it is planting the seed of rebellion in the embroiled fans of the Times Argus or Montpelier. Let's cool our jets and get the outside advisory group in. Some people have said this is a pretty hard working group and they are unopposed because it is a God awful 52 times a year kind of job. He can absolutely assure you that the changes which have been put in place because of the fiasco that has occurred are for the improvement and better service for us all. You can be sure that kind of mistake is never going to happen again.

Vicki Lane said she wanted to echo what Mr. Esselstyn said about the Times Argus. We definitely knocked the chickens off the front page. We are getting more press than the chickens. In response to the man who stood up and mentioned Dufresne-Henry on this bill, there is nothing wrong with this bill. Dufresne-Henry did everything they would have had to do. Somebody simply looked at the wrong amount and wrote it down. It's not like we don't all do that once in awhile. It was just magnified many times over until it got to this point. She is interested in this business of where Mr. Scott deposited his check into the TD Banknorth account and paid down \$500,000 on his line of credit. She was wondering if we could get something from

TD Banknorth as a result of that. He deposited ill gotten gains for his benefit into the TD Banknorth account, which is not Chittenden who is going to take a loss. TD Banknorth must be one of the parties that are going to lose if he had a line of credit there.

City Manager Fraser said he refinanced that line of credit with the Chittenden Bank. They bought the note from TD Banknorth.

Ms. Lane said in response to all of the criminal charges and getting retribution from the criminal justice system, they will have to wait a long time to get any kind of repayment if you get any. However, bringing this guy to trial and putting him in jail, which is where he belongs, because he did steal from us – obviously, we're not the only ones he has taken to the cleaners. And he did worse. If you remember around that time he also suffered from pretty hefty fines for contributing to the death of one of his workers. This guy was obviously not exactly on the up and up. We may not ever get our money back, but she wants to see this guy suffer for this. The accounting profession had to alter its standards, which is usually in response to some Enron type thing. This guy needs to experience some of the things that some of the people that were involved in creating those scandals are experiencing. She hopes that the Attorney General does this because she knows if she received a check from the IRS for a refund and there were excess zeros on it she would find herself in jail if she cashed the check knowingly. She would certainly find herself in a whole lot of trouble. We may not get our money, but let's get our pound of flesh!

Gary Schy from 22 Hubbard Street said as an auditor if he had audited a company or a municipality and in his audit 10% of the budget of that entity was missing in cash and he didn't find that their firm would have been fired immediately. In fact, their reputation would have been so bad it would have been hard to find employment. This is cash. Ten percent of the budget of the city was missing from cash. It's impossible for that to happen. First of all, where was there that much excess cash that someone could have written a check for almost \$500,000 over? Why was there that much cash sitting around that it would have cleared? Every governmental budget all of the expenditures for the year are laid out so there is the cash in place for those expenditures. Why were the other expenditures able to have been made? Why were other checks able to be drawn after that much money was removed from cash? The checking account was short that much money. How many people in this room could be missing 10% of their earnings in cash and not notice it from their checking accounts? It's impossible. For a CPA firm to audit your cash is the number one. You follow the trail of cash. To miss it is unfathomable as well. It's impossible for that to happen.

Mr. Schy said he would like to see the City Council produce documents showing the internal controls. He wants to see from the inception of a check through to the check being written. What processes are in place? What is there that happens so someone knows? You look at the expenditures and go back through and there has to be a systematic procedure in place, which is called an internal control, so this cannot happen. The backstop is the CPA firm. To miss it, it just can't happen. He would like to see that account and see the money. He wants to see how that much extra money was floating around. He can't imagine it as an auditor. With regard to resignations he doesn't want to go there. He doesn't think the City Council is going to do anything like that. People can change and systems can change. People can move forward and learn. People make mistakes. He thinks this was a huge mistake and it indicates a complete lack of internal control over our city's budget. He would bet that there has to be others and we need to find everything that is going on. He wants to second all of the great things that do happen in this administration, and the hard work that happens, and the hard work that the City Council does. It doesn't change this, but we have to look at the whole picture. We're all community members so let's start the process.

Gerry Kilcourse from Ridge Street said concerning the trust issue they didn't tell us when they found out about it, and to him that is a big factor. If Scott paid its note off, would we ever have known about it? Would we have ever known that the mistake was ever made?

Mayor Hooper thanked the group for giving an extraordinary amount of their time and things to think about. She doesn't believe the Council is going to make decisions tonight about how to move forward. They need to have time to mull over what the public has told them and consider how to move forward. She suspects there will be many conversations beginning at the next Council meeting with the community, and among

themselves, about how to build back the trust and how to provide the community with insight into the system and how it's working. She assumes the City Council may have some thoughts they would like to share with us.

Council Member Sheridan said he wanted to apologize for having people take an evening out of their busy lives to come down and deal with this. The Council takes time out of its busy lives because they obviously want to do it. The community wants to think the Council is going to take care of everything so they don't have to come down here. He wants to apologize for the things that have happened in the city. He is all for a citizen committee and hopes they get moving on that at the next meeting. He is all for using Executive Sessions extremely limited. Why he will not say never, is because we may be bidding on a property they want for a project and need to talk about our bid. If they give their bid in public competitors will only have to give a dollar more and eliminate that. He thinks from now on the Council wants to avoid going into Executive Session. This is, after all, a government of, by and for the people. It is your money and we need to learn the lesson they have given them tonight about disclosure. He is sincerely sorry for what happened. At the first meeting he wanted to go public simply because when he was a citizen he hated a government that didn't tell its people things. One of us could have come forward regardless of the Executive Session. He thought about that for a month. He wants to tell them why he didn't, and it certainly wasn't because of the Executive Session rule. It was because everybody loves a whistle blower's story. Everybody loves what they bring out. Nobody loves the whistle blower. If he had come out he would have had to resign immediately. Nobody would have worked with him on the City Council or city government. Nobody would have talked to him on the street. That's why he didn't. He has to live in this community and hopes to stay in this community, and nobody likes a rat. He doesn't blame his fellow Councilors for not joining him. They all had to make up their own minds, and there were good reasons. He doesn't believe anybody on this Council did it for the wrong reason. He judges people not by the mistakes they make but by how they learn from them. Everybody on the Council is an intelligent person and he thinks they will learn from this.

Council Member Sherman said in the light of this terrible problem she is deeply impressed that they have gathered tonight and the community has given the Council their sincere, honest, direct and uncensored opinion of what happened and what your questions are. They have listened to what the Council has said tonight. She thinks they have had a valuable public dialogue and very respectful about this critical problem. She has certainly learned a lot and hopes they can move forward. She believes many of the procedures for the city's financial department have been changed and the people in charge have approached what we do and how we manage our money so it will never happen again. They need to convince the community that this is the case. The Council will move forward and make the community proud of them again.

Council Member Jarvis read a prepared statement.

"I understand that you have questions, concerns and criticisms, but I want you to know that I have no doubt that we did what we thought was best for Montpelier. And when I say we, she means the city staff, the former Council and the present Council. I hear your anger and I share it. I have asked myself many times what kind of a person Dan Scott could possibly be. What kind of a person accepts an unearned \$400,000 without question and without protest? But I want to be clear that I am also really angry and disappointed in the fact that a mistake of this magnitude could have happened in the first place. There should have been a better system in place for handling the city's money. It's unacceptable that we had to learn the hard way that our system was inadequate.

However, as I'm sure you are all coming to understand, the situation presented a Catch 22 for the Council. There has always been uncertainty about whether Scott would pay the money back to the city. However, there was a genuine belief that the only hope of repayment was if Scott Construction remained in business. If the Council broadcast the fact that Scott Construction accepted a gross over payment then no one would want to do business with him in the future. Moreover, any creditors that he had at that time would have called their credit in and would probably push him into bankruptcy. Broadcasting the situation may very well have changed our chances of recovering the money from slim to none, and that is what we believed.

Hindsight is 20/20. At this point, we, the Council, staff, and residents, can analyze the situation with an understanding of what actually happened. But, at the time the decisions were made about how to recover the money they only had probabilities and possibilities. We did the best that we could. Our intent was to act in the best interest of the city and its taxpayers.

I have seen this City Council and our city staff working the problem with diligence and with care, but not the least desirable outcome has come to pass. We are not likely to recover much more, if any more, of our money. And we, and I mean we as a Council and we as a community, need to figure out what to do about it. I, as well as I'm sure as everyone else on the Council, am very deeply affected by this situation, and I will continue to be as we try to deal with this debt, but we need to keep moving forward. We need to consider if the debt that the collapse of Scott Construction has left us should remain in the water fund or if perhaps it should be moved to the general fund. It is just one of many things we need to decide.

I, in addition to Jack and Gary, would also really like us to consider the formation of a citizen committee to examine our response to the situation. Significant changes have been made in the way the finances are handled in the city, but the city could surely benefit from the input of a committee of thoughtful citizens who are charged with looking into this issue. I will work towards making this happen.

The members of this Council are citizens of Montpelier too. We're residents and taxpayers. Our children go to Montpelier schools. We are your neighbors. I take my role as a City Councilor very seriously. I can competently say that we all do. We do the best we can to understand the multiple of difficult subjects and making important decisions that we are faced with every week. We like what we do. We are motivated by our pride and our concern for this community and its residents.

Council Member Hooper said someone asked how often we discussed disclosure in Executive Session, and he thinks that was a failing of the Council's by not looking at the full situation and not stepping back in the latter sessions and saying we are at a point where we can't reasonably say that the opportunity of getting more money is worth more than the trust that is given up by maintaining this. He thinks they failed there. He knows when this was disclosed he was shocked by embarrassment for the city that we lost so much money for so long and he didn't even consider that the person we had given money to was criminal in any way at that point. It just didn't occur to him, and that was also an oversight.

Mayor Hooper thanked everyone. She is deeply grateful to live in this community and among people who help us figure out how to create a better community every day. We'll be talking about it at our next meeting going forward. She hopes they will continue visiting them at their City Council meetings to make sure we are doing the right thing for the City of Montpelier.

City Manager Fraser said he would also like to apologize to the citizens for this happening. He has been sitting here for almost 15 years and the people who have worked with him know that he takes this job and responsibility extremely seriously. He has always held himself and his staff and the community up to the highest possible ethical standards. He would support anybody else who would like to look at this. He would share any piece of information about this. He was in shock when he first heard about it, and they looked and looked. He was proud that their staff found it in the first place and just didn't ignore it. It would have just been a deficit in the water fund. He knows speaking for himself and from sitting in the meetings with this Council and the prior Council they didn't make the mistake. They weren't the ones that did the over payment. Their names are on the final check warrant, but they don't really have a proper financial control of any real value. They had nothing to hide. There was no cover. From their perspective they could have easily said they found this and this is what happened. They found it and exposed it. They showed the incompetence from one of the people who work here. They didn't do that because they believed it was the way to get the money back. He understands that people have a difference of opinion about that. He was trying to get the money back, too. He doesn't want to separate himself from them. He is embarrassed professionally by this. His staff has been fabulous and has taken this extremely seriously and will continue to do so. He would like to thank everybody who has come and spoken tonight, those that called for his job and those who were in support of him. He welcomes anybody who wants to look at anything we did. He knows they didn't do anything illegal and it was all done for the right reasons. He has been here 15 years as City Manager and has been in this business for 26 or 27 years. This is clearly the hardest thing he has ever had to deal with. He thanked them for coming.

Mayor Hooper thanked everyone and said they will work with the community as openly and as transparently as we can go forward.

Mayor Hooper suggested that the council might want to consider tabling the rest of the agenda.

Motion was made by Council Member Jarvis, seconded by Council Member Sheridan to table the remaining agenda items. The vote was 6-0, motion carried unanimously.

09-254. Discussion regarding City Council Budget Surveys. V.A.

09-255. Consideration of parking issues (general discussion). V.A.

Why does the city manage parking? Are there short-term steps which can be taken to create more parking?

Recommendation: Discussion and direction to staff.

Agenda Reports by the City Manager:

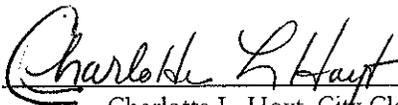
09-259. No further items as of "press time".

Adjournment.

After motion duly made and seconded by Council Members Sheridan and Sherman the council meeting adjourned at 9:43 P.M.

Transcribed by Joan Clack

Attest:



Charlotte L. Hoyt, City Clerk