

CITY COUNCIL MEETING STATED MEETING & PUBLIC HEARING APRIL 14, 2010

On Wednesday evening, April 14, 2010, the City Council Members met in the Council Chamber.

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

Call to Order by the Mayor:

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

Mayor Hooper said a good friend and colleague, Sandy Pitonyak, who works in the Manager's Office suffered a tragic loss last week with the death of one of her sons. Our hearts have been aching and have been with Sandy through this past week. We mourn her loss and offer our deepest condolences to her whole family.

10-086. General Business and Appearances:

Pastor Johnson Tata said he had moved from the state of Indiana to Vermont in 2008. He has been here as a missionary and educator. He would like to open an international school in the city of Montpelier. He got involved in missionary work and education as a teacher in the state of Indiana in the city of Indianapolis. He discovered that with the immigrant children that are coming from Africa they are having problems with culture shock. They are mostly children and copied negative things from the school and have high drop out rates. The school would be middle school through Grade 12 and it would involve members who are immigrants with the same culture. He is proposing a dormitory and boarding school. He thinks that will bring a big diversity into the city of Montpelier.

Mayor Hooper said she would urge him to speak with either the Manager's Office or the Planning Office who would be very happy to work with him and might have some interesting ideas and direction for him.

10-087. Consideration of the Consent Agenda:

A) Consideration of the minutes from the City Council's March 10th and 24th, 2010 Regular Meetings.

B) Summary Budget Report by Department for General Fund and Detailed Budget Status Reports for General Fund, Water Fund, Sewer Fund, Cemetery Fund, Parks Fund, Parking Fund and Senior Center Fund for a eight-month period beginning July 1, 2009, and ending February 28, 2010.

C) Consideration of awarding the FY 10-FY 12 audit services contract to Love, Cody & Co., CPA's proposal and authorizing the City Manager to sign a contract for these services.

D) Consideration of a "Petition & Order For Pole & Wire Locations" submitted by Fair Point Communications seeking permission to replace and relocate a utility pole within the Kent Street highway right-of-way at #25 Kent Street. The purpose of the replacement is to meet service requirements and maintenance needs originating from a customer (owner of 25 Kent Street) via Green Mountain Power. The subject pole to be replaced is currently positioned within the public sidewalk and is in poor condition. The new pole location will be 23' southerly of the existing pole and placed in the lawn about 1' from the back edge of the sidewalk. The Department of Public Works reviewed the petition and supports approval in the interest of removing the pole from the public sidewalk. The adjacent property owner was contacted by Public Works and obtained confirmation of approval of the proposed new pole location.

E) Consideration to accept the proposal submitted by Live View GPS, Inc. of Valencia, California, for thirty (30) GPS vehicle trackers and including the monthly subscription fee for the Public Works Department, and to authorize the City Manager to make the purchase in the amount of \$11,968.50.

F) Consideration of authorizing and approving the submittal of two grant applications for financial assistance from the Vermont Agency of Transportation through the "Town Highway Class 2 Roadway and Town Highway Structures" grant programs.

G) Consideration of becoming the Liquor Control Commission for the purpose of acting on the following:

a. Ratification of the issuance of a Catering Permit to Yebba, Inc., d/b/a The Abbey Pub & Restaurant, for a Cocktail Reception held on Thursday, March 8th, 2010, from 3:00 to 7:00 P.M. at the State House.

- b. Application for an Outside Consumption Permit from Royal Dragon, Inc., d/b/a The Royal Orchid Thai Restaurant, in order for them to serve alcohol on their front deck at 38 Elm Street (12' x 14' with seating capacity of 8-10 only).
- c. Application for an Outside Consumption Permit from Scott Connor and Wes Hamilton of the Three Penny Tap Room for an event they hope to hold under a tent in the lot between the back of their business and Andrew Brewer's building (on Langdon Street) on Saturday, May 1st, from approximately 1:00 to 8:30 P.M. There will be music which will end at 8:30 P.M.; the main entrance for the fenced-in area will be from Langdon Street, leaving the alleyway open for emergency vehicles, etc. The organizers have notified neighboring tenants and business owners, as a courtesy, and they will be in attendance this evening to answer any further questions that City Council Members have. Also, attached to this agenda are comments from the Police Chief, Fire Chief and Public Works Director.
- d. Annual renewal of Liquor Licenses. (City Clerk will distribute list of applications at the meeting.)
- e. Annual renewal of Tobacco Licenses. (City Clerk will distribute list of applications at the meeting.)
- H) Approval of Payroll and Bills.

General Fund Warrant dated March 24, 2010, in the amount of \$506,871.95 and \$1,000.00

Payroll Warrant dated April 1, 2010 in the amount of \$107,185.57 and \$26,162.53.

General Fund Warrant dated April 7, 2010 in the amount of \$476,896.16, \$4,713.06 and \$80.00 and Community Development Agency Funds in the amount of \$50,000.00

Motion was made by Council Member Jarvis, seconded by Council Member Hooper to approve the consent agenda. The vote was 5-0, motion carried unanimously.

10-088. Consideration of appointments to Montpelier's Tree Board.

- a) All terms on this board are 3-year terms; John Snell's and Carole Naquin's both expire this month.
- b) Staff advertised and as of the deadline, noon on April 8th, had only received e-mails from John and Carole who would both like to be reappointed.
- c) Recommendation: Appoint John Snell and Carole Naquin to another 3-year term.

Motion was made by Council member Sheridan, seconded by Council Member Sherman to reappoint John Snell and Carole Naquin to the Montpelier Tree Board for a three year term. The vote was 5-0, motion carried unanimously.

10-089. Discussion of possible ANR Enforcement action regarding Wastewater Treatment Plant with Attorney Steve Stitzel

- A) In fall of 2008, ultraviolet lights at the WWTP briefly flickered off resulting in some discharge of treated but not finally disinfected wastewater.
- B) Due to an internal error, this discharge was not immediately reported to the state. A similar error had been made in June of the same year.
- C) The city has corrected both the operations discharge problem and the internal communications system. No further problems have occurred.
- D) The State of Vermont Agency of Natural Resources has initiated an enforcement action and proposed fines. The City Manager and Attorney Stitzel have been in negotiation with ANR since spring of 2009 about this matter. The issue has not been resolved.
- E) Attorney Steve Stitzel will be present to brief the Council on the issue and outline the choices for the Council.
- F) Recommendation. Review issues with Attorney Stitzel, provide direction.

Attorney Stitzel had provided the City Manager with a 5-page memo summarizing the history and unlawful discharge that occurred back in May of 2008. It involves a very brief interruption in the UV disinfection system at the city's main wastewater treatment facility. This occurred because of a low flow

condition experienced at the treatment plant. The design and setup of the plant, which is typical of UV systems, provides that in the event there is low flow or no flow in a UV disinfection channel the bulbs are turned off to prevent them from burning out, which is what would happen if they remained illuminated for an extended period of time with no wastewater flowing past them. It is important to understand that these were brief shutoffs of minutes and not hours. The first notice and then reported event occurred in May of 2008. When that occurred the plant operator promptly put into motion steps to prevent this from occurring in the future, to identify exactly what happened and what would be an appropriate course of action to prevent it from occurring again. He is to be commended on his diligence after identifying it and moving forward to prevent it from occurring again. He believes because of the extremely brief duration of the shutoff and the fact that it was a resolvable problem without a great deal of modification at the facility that he simply did not report it within the 24 hours that is required in the discharge permit to the Agency of Natural Resources. Under the city's discharge permit any time there is a discharge of undisinfected wastewater into the Winooski River there is a requirement that a report be lodged with the Agency of Natural Resources. The city acknowledges that was not done. The city acknowledged, and has from the outset, that the discharge did occur. During the summer months modifications were made to the facility. They are discussed in the memo he prepared. The modifications to the best of the city's knowledge have in fact prevented a reoccurrence of the event that did occur in May of 2008 and were the appropriate measures to prevent reoccurrence. The total expenditure by the city for the various improvements made over the summer months, and in the months after, is approximately \$44,000. The improvements that were made to the facility not only addressed this type of low flow situation at the treatment facility but also provided enhancements. This was a low flow event that occurred because the total volume of wastewater going to the treatment plant had dropped way below what had been the design parameters for the treatment plant. Other low flow events occurred as the city performs routine maintenance operations from time to time. What was discovered as a result of this low flow event was that the actual equipment at the plant would not readily accommodate performing some of the necessary routine maintenance materials without again resulting in this low flow event that would trigger a shutoff. What has happened as a result of this one event is that improvements have been put in place that are designed to prevent the reoccurrence of that type event but also enhance the routine operation and maintenance of the facility over time.

Unfortunately, in September of 2008 a second undisinfected discharge occurred again for a very brief period of time. The improvements that were put in place over the summer of 2008 was a coordinated effort between the

plant operators and the manufacturer of the UV lighting equipment and the representatives of the manufacturer were making visits to the facility as this was occurring and made a visit to the facility in September of 2008. The Chief Operator of the facility was not present during the time of the visit and the Calgon representative made a change in some operational parameters which unfortunately did not get communicated to the Chief Operator. The Chief Operator had the facility working in the way that had been determined necessary for the proper operation of the plant and the Calgon representative was not aware of that change, made a modification and again there was a very short term discharge. That discharge was in fact reported to the Agency of Natural Resources, and they believe within the 24 hour period, but it was not a report from the Chief Operator. It did not come through the channels that the discharge permit contemplated.

All told the Agency has informed the city that it is looking for payment of fines of \$23,000 for the discharges that occurred in May and September and the two failures to provide timely reports they have agreed in the interest of attempting to resolve the matter to reduce that fine to \$17,000. The purpose of his memo was to summarize for the Council in more detail some of the more specific facts that come to bear on this particular matter.

The assurance of discontinuance that is identified as the specific item for the consideration by the Council this evening is a document in which the city admits that these violations did occur, that it will do what it can to see that they do not occur in the future, and that it will agree to make payment of the agreed upon penalty amount in a resolution of this matter. Upon payment of that an execution of the assurance of discontinuance the Agency will not further pursue enforcement proceedings against the City of Montpelier. If the city declines to execute the assurance of discontinuance the Agency has indicated it will commence civil proceedings much like a zoning enforcement proceeding by the city against a land use violator in the Vermont Environmental Court. In those proceedings the Agency will be seeking the full amount of fines, not the reduced amount of fines.

In terms of additional specific corrective action by the city the Agency has not indicated in any of our discussions with the Agency that it will be seeking further corrective actions by the city. The purpose of the enforcement proceeding would be to recover payment of the fines for the discharge and reporting violations.

Council Member Jarvis asked if the Agency of Natural Resources would commit to the fact they won't require additional action or requirements.

Attorney Stitzel said the assurance of discontinuance contains nothing further. He is certain he could get a commitment, but the assurance of discontinuance does not require any further corrective actions by the city.

Council Member Jarvis said it doesn't include a promise by the Agency of Natural Resources that they will not issue any additional requirements.

Attorney Stitzel said for these violations it will constitute full disposition. It does not preclude them if there is a further violation in the future from seeking some other remedial action. He would point out that at this point based on the engineering review of the facility conducted by the city's engineers in cooperation with Calgon there is nothing specific that has been identified as a further enhancement that could be installed within the reasonable design parameters of the facility to address low flow conditions. In one of his letters not provided to the Council but provided to the Agency there was discussion at one point of what is called a recirculating pump. This is an enhancement at the facility that would in fact pump already treated wastewater back into the flow stream solely for the purpose of increasing the volume of flow at the facility to basically increase the flow above the amount that is naturally flowing through the facility based on the volumes being treated at the time. That is an extremely expensive enhancement. It also is something that based on discussions with the manufacturer and our design engineer is nonstandard. It is nothing that the manufacturer has recommended or had installed at its UV disinfection system installations. It is nothing that he is aware of as part of any UV disinfection system that exists elsewhere in the state of Vermont. It apparently was an enhancement that was observed by ANR personnel at a facility in New Hampshire. Upon further investigation it was discovered that it was something installed by the operators of that facility on their own initiative and not as a recommendation of the manufacturer. It is unclear exactly why that was installed at that facility. The Agency has not at this point recommended or requested that the city undertake installation of that enhancement.

Council Member Sherman asked if it was possible that Calgon might bear some of the responsibility for the fines from the state.

Attorney Stitzel said it is certainly a discussion the city can have with Calgon, and he would only be able to leave it at that level at this point. He would rather not comment more specifically on the nature of the exchange that occurred in the September event.

Council Member Hooper said it sounds like an unintended consequence of the CSO project that reduced our volume overall and perhaps reduced our bottom end of flowing as well.

Attorney Stitzel said they suggested to the Agency of Natural Resources that one possible cause of the low flow condition that was observed first in 2008 was a result of the CSO project. The original flow estimates for the design of the facility ended in 2004 so they were looking at the volume of the flow through the facility in a two-year period ending in 2004. After 2004, the city was doing further sewer separation to remove certain storm flows through the sewer. During the warmer months of the year the storm flows can in fact elevate volumes of water that is flowing through the sewer. The design low flow was 1.1 million gallons per day and the reported averages in the month of May 2008 were .8 million gallons per day. That is 300,000 gallons per day below what were the original estimated parameters.

The other thing that was observed was that it is not just a question of the volume of flow but the speed with which the volume can fluctuate. There are periods of the day when the flows drop dramatically and quickly so there was not built in sufficient time for an alarm to go off notifying an operator that we have a low flow event and allow an operator to then report to the plant and identify what is exactly occurring and take appropriate action to correct it.

Mayor Hooper said it is arguable that in fact this event happened because the city was complying with other expectations of the Agency.

Attorney Stitzel said just understand the first rule of government – no good deed goes unpunished.

Mayor Hooper said the two events that triggered this action were the failure of the UV light which provides tertiary treatment of the effluent. She would note that in fact the effluent is treated. It is the final disinfection.

Attorney Stitzel said it had been through the entire treatment process. If you were to observe what is there it looks like drinking water, although he wouldn't recommend drinking it. This is the final treatment step before the discharge into the Winooski River. The sole purpose is to reduce bacteriological contaminants in the water, primarily ecoli.

Mayor Hooper said it is a fairly new system to us. Many years ago we weren't doing this sort of treatment at all.

Attorney Stitzel said the state has strongly encouraged communities to move away from what have been the chlorination systems as the final disinfectant step in wastewater treatment for health and environmental reasons. UV disinfection has no residual in the effluent when it is finally discharged.

Council Member Weiss said he would like to make a motion that the Council accept the recommendation of Attorney Stitzel and that we accept the resolution in the amount of \$17,000 and other considerations. Council Member Sheridan seconded the motion.

Pastor Johnson said on the academic line he happened to make a dissertation on wastewater treatment in the city of Indianapolis which he explained. His suggestion is there should be a committee to look into this matter, look at the present population in the city and make a projection of 10 years and bring a facility for wastewater treatment that can last a long time.

Attorney Stitzel said there are several specific considerations in terms of the amount that is involved here. We are in open session and typically he would have this discussion in executive session. If the matter goes to court the amount being sought is \$23,000 in total fines. He would represent without being more specific that he does not believe the Agency would recover that amount in enforcement proceedings in the Environmental Court. He believes the Agency would recover a fine of some amount in enforcement proceedings. If they would like a more specific analysis he would prefer to have that discussion in executive session.

Any enforcement proceeding with the Agency of Natural Resources is a matter that the city needs to prepare for properly and will involve, given the factual history of this matter and scientific or technical side of this case, expert witnesses. Therefore, the case becomes more complicated in preparation and more expensive in presentation. They are easily looking at something upwards of \$5,000 and probably approaching \$10,000 to \$12,000 in litigation expense to pursue a competent defense of this enforcement proceeding. He said he would throw that out as a rough estimate for the Council to weigh against the issue of settlement for \$17,250.

A final factor should be considered. Penalties that are recovered from municipalities by the Agency may be applied to fund supplemental environmental projects. Instead of it being at least in the first instance a contribution to the General Fund of the state it is a payment which is escrowed and then may be expended over a year or two by the community itself on other projects within the community that positively impact the same watershed. The community cannot spend the money on constructing improvements at the

wastewater treatment plant. It can, however, and what typically occurs is that the money is paid to some group performing environmental enhancement work within the community, to accomplish some work which is of benefit to the watershed. Such things as stream bank restoration projects have been funded, studies of what might be necessary to do stream bank stabilization or other water quality enhancements in the watershed have been funded with the money that is paid. In considering payment of the amount and a decision whether to litigate or not they should be aware of that as an option. He doesn't know right now whether the city is aware of potential projects of the relevant water shed.

Council Member Hooper said there is a limitation on this for repeat violators. He wonders if these two violations constitute one occurrence or the second one is counted.

Attorney Stitzel said they are aggregating everything. Were this to occur again, then it is a real penalty.

Council Member Sheridan inquired whether a flood project would qualify.

City Manager Fraser said the city would make a recommendation and they would decide if it qualified. We don't know if they would consider a flood project or not.

Mayor Hooper said she was thinking of Friends of the Winooski.

Attorney Stitzel said that is exactly the type of organization that typically receives the funds and becomes the conduit to have certain work performed.

City Manager Fraser said he appreciates Steve Stitzel's guidance in this and his analysis is dead on and we do have to look at the practical considerations and weigh the options that are currently available to the city. One reason this has been delayed in coming to the Council is because they have been talking to the Agency of Natural Resources for an extended period of time. He strenuously objected to this and their whole approach. One, we switched out of the dangerous system of putting chemicals in the system to the UV system. That was an improvement. It was a safety factor and a water quality factor. This all came about because we were making an expensive change. We bore the cost of the project and were doing the right thing by the environment and by the water quality. Secondly, there has been no alleged or documented environmental degradation. Yes, we fully acknowledged that this treated but undisinfecting water frequently went into the Winooski with no dead fish, no dead plants and no issues of anybody getting ill. There was no allegation at any time that there

was any kind of environmental hazard as a result of this. He knows we are allowed under heavy rain conditions to have our sewers overflow into the river, and that is considered permissible with raw sewage. That happens on rare occasions. We are trying to correct that through the CSO but under the CSO order those events happen with no penalty. Having two short brief instances of treated but undisinfectated wastewater going into the river they charged us a \$23,000 penalty. Third, the goal of any enforcement is compliance. We all know from our own activities here with zoning we try to get the people to stop the problem. The city has completely and fully cooperated with the state. We spent \$44,000 to correct the issue and have worked on all of their communications issues. There have been no reoccurrences. We understand the reporting requirements. We took this on. He wrestled to address this issue when we have fully complied. The city has done what they would want for enforcement. We have made all of the improvements. We even proposed additional improvements with a circulating pump which is another improvement that our engineer recommended. The state declined that offer. The city has not contested any of the facts. The city hasn't argued with them. We provided them the information. They were concerned in fact that if there was a fine or any kind of penalty that was being paid by the ratepayers and we asked if they had concerns and they had not followed procedure, and they said no there was not going to be any actions against the operator. They couldn't find anything wrong in that regard. He considers it punitive and he doesn't consider it good government. He is really disappointed in the state on this. He doesn't understand why they are pursuing the case.

City Manager Fraser went on to say we accept this proposal and seek to negotiate a different settlement with them. We have fought very hard at times to keep us at civil discourse. You shouldn't feel that your city officials weren't on the ball or they were negligent. We have done everything that could be expected of us in this situation.

Mayor Hooper said the motion is that we pay the proposed settlement.

Attorney Stitzel told Council Member Weiss that in terms of the wording of his motion which was to accept his recommendation he did not include in his material a specific recommendation for that. He would be prepared to make a recommendation to the Council, but that he would ask for an opportunity for an executive session because whatever the Council decides in this case is what he will need to pursue on behalf of the city. Having publicly disclosed a particular disposition he believes that might prejudice the city's ability to pursue whatever course of action it pursues.

Council Member Jarvis questioned how that would work logistically.

Council Member Jarvis moved that the Council go into executive session at 7:47 P.M., in accordance with Title 1 V.S.A. Sec. 313(a)(6) that a premature general public knowledge would clearly place the municipality at a substantial disadvantage in our negotiations with the state and that City Manager Fraser and Attorney Stitzel be included in the executive session. Council Member Hooper seconded the motion. The vote was 5-0, motion carried unanimously.

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

After motion duly made by Council Member Jarvis, seconded by Council Member Sherman, the council came out of executive session at 8:02 P.M. in accordance with Title 1 V.S.A., Sec. 313 (a)(6) that a premature general public knowledge would clearly place the municipality at a substantial disadvantage in our negotiations with the state. The vote was 5-0, motion carried unanimously.

Motion was made by Council Member Sherman, seconded by Council Member Jarvis to table this agenda item. The vote was 5-0, motion carried unanimously.

10-090. First public hearing to consider proposed amendments to the City's Vendor Ordinance.

- A) City Council first began discussing these proposed amendments at their March 10th meeting; they'd received a memo from *Montpelier Alive* Executive Director Suzanne Eikenberry, outlining some changes they'd like to see incorporated before the 2010 summer vending season.
- B) This subject was revisited at the Council's March 24th meeting. At that time, Council instructed staff to invite a group of interested vendors and business owners to meet and discuss their concerns and suggestions; the City Manager held this meeting on April 7th and will outline what resulted from that discussion.
- C) Recommendation: Conduct the first public hearing; possible further direction to staff; set the date of the second public hearing for April 28th, with or without further amendments.

Mayor Hooper said the next item is the conducting of the first public hearing to consider amendments to the vendor ordinance. Mayor Hooper opened the public hearing at 8:05 P.M.

City Manager Fraser noted that there is a draft on their desk which is the same draft they talked about at the last meeting except on the very last page is the proposed redraft of the enforcement section which is administrative enforcement. There have been a couple of informal discussions about this and once staff finds out the Council's direction they will reword everything.

Mayor Hooper said she would like to begin with City Council Members.

Council Member Weiss said he doesn't support the concept of the Council getting involved in private commercial business and let the vendors and restaurant people compete as anybody else would. However, if we are going to have an ordinance, then in terms of the process his strong recommendation is sometime in January of each year we have an RFP, which is a Request for Proposal, and anybody who wants to be a vendor applies and decisions are made based upon the quality of the RFPs and you make your first choice and second choice. He is not happy with the whole concept. If we are going to have an ordinance, then let's do it very businesslike and set it up as a Request for Proposal and everybody submit at the same time to meet the deadline and a committee will make the decisions.

City Manager Fraser said the goal of an ordinance from the city's perspective has never been to select or regulate which vendors or which services or goods are being sold. It is strictly to deal with the fact that they are on city property. It is regulating the use of city space and how that will be apportioned in a way that provides safe traffic and access for the public. He doesn't think it has ever been the Council's consideration to attempt to dictate which businesses. The ordinance did talk about the proximity of like businesses.

Council Member Sherman said given the criteria that the City Manager needs to follow in creating the list of designated locations we are going to have a limited number of licenses and it would be on a first come first serve basis. Applications will have a start date and there are 20 people for 12 spaces. How do we manage that?

City Manager Fraser replied that is currently what happens now. There haven't been that many applications so there hasn't been a problem, but in practical reality even if we don't designate spaces there are only so many spaces that meet the dimensional requirements in the ordinance now. There are approximately 8 or 9 that have been identified as designated spaces. If there were 20 vendors now, the first 9 that got there any given morning would be the 9 out there for the day. Conceivably, if 20 people paid for a vending license they would be racing each other for spots in the morning with no additional assigned spaces. The suggestion is that once people are assigned their slots

people would be on a waiting list and as a spot opened up they could accept the spot they are offered or not. People would move up the waiting list.

Council Member Sherman said they wouldn't issue more licenses than there are spaces.

City Manager Fraser said in the designated downtown but people could also try to find spaces that meet the criteria in other locations. The ordinance says they can only be in designated spaces. It says the City Manager will assign the spaces so he was explaining how they would do that as an administrative matter. It would be irresponsible to sell a license to somebody who didn't have a space.

Mayor Hooper said there are 10 spaces and 10 vendors, are we tying vendor #1 to space #1?

City Manager Fraser replied that has been the proposal from the beginning.

Council Member Sheridan reminded members that some of the spaces are non-food spaces.

City Manager Fraser said if the ordinance passes in this form we would have to write up a policy and establish clear guidelines for vendors to follow.

Council Member Sheridan said there has been talk about the value of spaces. Is that a consideration by the Council still?

City Manager Fraser said he provided members a summary of the conversation they had. The thought at that point that because it is April already that to think about how to price spaces differently might be unwieldy this time around and perhaps we should just go with assigned spaces and reevaluate it in the fall. The recommendations of the working group are that folks who had been there last year in a certain location would be given a priority to return to their location. When people completed their form they would request their first, second and third choices. If there were a tie breaker the tie breaker first would be somebody who had been there before and the second tie breaker would be who had applied first. Let's say there is a scenario where there are 9 spaces and 15 vendors. In his view 10 through 15 applicants would be put in the order they had been received and when a spot opened they would go to #10 and say spot #5 is open and they might not want spot #5 or might not be eligible because it is a food space or non-food space. They can also be outside of the designated downtown if they meet the criteria.

Mayor Hooper said what they are doing right now is trying to explore the broad policy parameters.

Council Member Hooper said he agrees with Council Member Weiss about not trying to micro-manage how business is done. He thinks an RFP process is unwieldy right now. In looking at restrictions on vendors, in section 1406 almost all of the wording about maintaining public access to the public right-of-way except for sections 4 and 5 about competition, the 50 foot rule and tables and seating for customer use rule, he accepts that section 4 is well accepted.

City Manager Fraser said that is the current regulation right now.

Council Member Hooper said he would suggest they not implement section 5 allowing tables for customer use so long as it meets the space requirements for public access. He would strike 5 and allow tables and chairs as long as it meets the requirement for access.

Council Member Sherman said she isn't in favor of that. She thinks the access to city sidewalks is important. Even if you have the table and chairs next to the cart people need the space to get up and around. It adds traffic congestion to the sidewalks. If a lot of vendors decided to use table and chairs it would make a major impact on the sidewalks.

Council Member Jarvis said she too would not be in favor of striking that provision but for a different reason. She thinks it is more of an equity issue. There are a lot of restaurants in town that would like to have tables and chairs and are not allowed to under our current regulations. Those businesses pay property taxes and are here during the lean months of the year when we need them. It is really important that we try to be equitable to everyone who is trying to do business in Montpelier.

City Manager Fraser said with regard to current restaurants that are not allowed to have tables and chairs the city regulates them on the sidewalks in the same way we regulate carts who have sufficient space. Restaurants that don't have indoor seating aren't regulated by a city regulation but a state health rule states that if you don't have a restroom for their customers you cannot have any tables inside or out.

Council Member Jarvis said under state rules a vendor can have a table and chairs and doesn't need to have a restroom.

City Manager Fraser said tables are an open question.

Mayor Hooper said they are generally in agreement with the notion of having designated spaces. She has a concern about trash. Our existing ordinance states that all trash and debris accumulating within 50 feet shall be collected by the vendor and deposited in a trash container. She doesn't think they need to pick up other peoples' trash but she would expect them to carry away their trash and not place it in the city's trash barrels. That is a policy issue she would request that vendors cart away their own trash. She would like to hear from the public about policy issues.

Timothy Azarian, a food vendor, said he started last year with his wife. They are both passionate cooks and wanted to do this for a long time. They tried it in Thailand but the streets were too crowded to make it work. They wanted to do a Thai food cart in Montpelier. They like having a nice street atmosphere where you can walk outside and get food on the street and then enjoy the food by sitting down at a table and chair. In a lot of countries there are cafes. In Thailand they are just little plastic tables and chairs that people bring out just for the lunch hour and then take them away. They were excited when they read in the Vermont Health Department rules they were allowed up to 16 seats. He wanted to address two of the main issues brought up by Council Members Sherman and Jarvis, and this was also something brought up by Suzanne from Montpelier Alive. The two main issues against tables and chairs is an equity issue and it isn't fair to other restaurants in town because some of those restaurants do not have a public restroom and are not allowed to have a table and chair out on the street. It is a very small percentage of restaurants in town that do not have a restroom. He knows of two, Mr. Mike's and Pinky's. In terms of equity, there is a huge list of benefits that restaurants have over vendors. A few would be that they are opened all year long. They get their breakfast, lunch and dinner crowd if they so choose. Vendors only have a crowd during the lunch hour. It's not worth it to stay there all day hour after hour because there is no traffic. In the evening people are probably going to want to sit down and go to a restaurant. There are just a couple of hours out of the day they are really going to have vending traffic downtown. This issue to him is applying to only a small percentage of the restaurants that for some reason the state made a determination that if they don't have a public restroom they can't have a table and chair out front. To summarize his point about equity he doesn't think it is fair to pick out one thing and say it is an equity issue when the vendors can come up with a long list of disadvantages they have compared to having an established restaurant in town. It is a much smaller business for them.

The other issue is the space issue. He brought some photographs to show the Council. The photo was the space in front of the courthouse. There is 8 feet of sidewalk to the left and the little brick areas are close to 4 feet, so roughly

there is 20 feet from curb to curb. He doesn't see a space issue there, especially considering the tables will be there for approximately 2 to 3 hours a day for a few days a week and then packed up and brought home. At lunch hour they will bring out some temporary seating and then take it back. On the second page is Rhapsody. They have tables and chairs out and you will see only the sidewalk space. He doesn't know if people have complained about this, but if tables and chairs can fit in this space without people complaining he would say their space certainly meets the requirements of not blocking the sidewalk.

He sees possibly an issue with some other vendor spots. They might not have enough room to have tables and chairs; some do. All of the spaces have different advantages over other ones. They aren't all equal so this just doesn't bump one over the equity line for other vendors. No other vendors have advocated for this issue. They don't seem to be interested in tables and chairs but more interested in more quick food and to go items. He doesn't see the city being overrun with tables and chairs. Right now there are a lot of restaurants in town that could have tables and chairs out front that do not.

He said he wanted to talk about the benefits that tables and chairs bring to Montpelier. The number one reason is the atmosphere. A very important reason is the environmental reason. When they have tables and chairs for people to sit down they provide them with the plates and bowls and they can sit down at a table. You can't stand up on the street with a plate and bowl, and if you offer a plate and bowl it is nice to offer people a place to sit down. They aren't talking about a whole park full of tables and chairs but two small tables and chairs. They sit down for 15 minutes, and then they are on their way. This cuts down on a lot of environmental waste they would have with to go containers. It also creates a very nice social atmosphere for Montpelier for people to sit outside on a summer day for a few minutes at lunch time. Complements came constantly to them about their tables and chairs. They were encouraged because it was so successful. It makes the town more colorful and more welcoming when you have people out on the street instead of taking their sandwiches and food back to their offices. It adds an atmosphere of engaging and liveliness to the town. He thinks it is important. He doesn't think the issue that the town will be overrun with tables and chairs. He doesn't think it is an issue now that needs to be severely restricted. The State Health Department made these rules and regulations and they aren't asking the city for any special privilege. They are just asking the city to preserve this rule that is in the state books. He has no problem if they want to restrict it or modify it. He thinks it is a little severe to eliminate them completely for the reasons that have been mentioned. Competition is good for Montpelier. He thinks people will ultimately go to the restaurant for what they want that day. Some people will want Thai food and some will want sandwiches.

In case the City Council or other people are worried that the city will be overrun with tables and chairs, first limit the number of tables and chairs so people can't take advantage of that rule and set up a mini restaurant downtown. They should limit the space to no more than half the sidewalk, or 4 feet or less, which is the same as a cart. The privilege should be linked to environmental

reasons. If you are a vendor and want to provide your customers with real plates and bowls, then you would be allowed to have tables and chairs. He thinks there won't be an explosion of tables and chairs because many people are not interested in the extra amount of work it takes to make it happen.

Council Member Sheridan said he is intrigued by his last comment. He might be interested in tables if people want to reduce the carbon footprint of trash. We have talked about having a sustainable city with reducing our carbon.

Elizabeth Dodge, a resident of Montpelier, said when she goes downtown and goes to a vendor she doesn't expect to do anything except to eat off a paper plate. She doesn't expect to sit down. That's not the purpose of it.

Terri Allen said she was a customer at the Thai food stand last summer, and it was such a pleasure. She works at home and can't afford to go a restaurant for lunch, but she could go downtown and meet people in the street and have a really pleasant meal, and she could sit. She is too old to stand up eating. It's all right if it is a hot dog, but if you want good healthy food it is the kind of food you want to sit down and enjoy. The town should be accommodating to both elderly populations and young populations. She spoke about the people who can't afford to go to a restaurant every day but who wants to have a social life in Montpelier. It is a very lovely way to have a social life. The atmosphere around the cart was great. Every time she would go she would see people she hadn't seen for years. She really encourages this because the atmosphere it brought to Montpelier.

Mary Alice Bisbee, a fairly new resident in Montpelier, who moved here from Waitsfield and the Valley where they have all kinds of vendors. She would love to have a place to sit down because she has a very bad leg and as an elder in this community it would be nice. She likes the idea of getting rid of trash and having real plates.

Paul McCloud said he has been a vendor here for the last five years in the same spot. He never really saw too many other vendors. Some would come and then they would leave. As the economy got worse you saw more vendors. He asked if it was their position that the vendor who has had his spot, and renewed it every year, gets to keep the same spot?

Council Member Hooper said that's not part of the ordinance. That is a policy that would go along with the ordinance. The city really didn't have a problem with the regulations until last year because there weren't that many vendors. Will there be enforcement on the 50 foot limit this year, and by whom?

City Manager Fraser said that is one of the things being taken out. Instead of having the 50 foot rule between carts there will be designated spaces, and some of those spaces might be within 50 feet of each other. They just wouldn't be within 50 feet of a like business. That piece of the ordinance would be changed.

Mr. McCloud said possibly when they do redraft the ordinance the number of vendors that will be allowed in the city of Montpelier will be limited.

City Manager Fraser said it is by default. The ordinance basically took the existing criteria and found spaces that meet that criteria so really they aren't restricting any spaces that aren't already legal, but there are only so many now that exist. We just haven't had enough vendors to fill all of the spaces, but there are a finite number of spaces. Whether you designate them or not they need to meet the requirement. What the ordinance proposes to do is simply designate the spaces and someone gets a license for that space so there is no question that your space is yours and not somebody else's. Hopefully, they won't have to go measure the 50 feet between everybody because if they are in this space it will be a legal space. There might only be 10 spaces. It also allows for someone to find a new space that meets all of the dimensional requirements the Council can approve it as an additional space. At some point they will run out of spaces, but that is no different than what exists now.

Mayor Hooper replied that it is for the designated downtown. Outside of that core area a different set of standards applies.

Chris said he is a full time student currently. However, during the summer he works full time in the city of Montpelier and he takes advantage of a lot of the street vendors. He has been to the Thai vendor and hopes he will be seeing them this summer. It is important that all of the vendors have a fair chance and post when the deadline is so everyone has a fair chance of getting their application in on time. He also thinks it is fair to limit the amount of vendor spaces there are in the city so there isn't a vendor every 50 feet. He thinks seating might be nice because as it is right now he gets his food and goes back to his employment. But if there was seating he would take advantage of it, especially if there was reusable dinner ware because he thinks saving the environment is important.

George Estes said he has been a vendor here locally for years. On the designated spots and the church where he and Paul have been, that is church designated space. They own that property. How is the city controlling what they do with that property? If they let him in there and he still has to get a city permit, but if they designate a spot and for some reason they don't want someone pre-existing who has been there and they want somebody new, is that one of the designated spots?

City Manager Fraser said it is the church's property so the city would have to work with them. They obviously have some say as to who is on their property and the city would have to defer to them on that.

Elysha from Rhapsody said she believes in fair competition. Having vendors on the street with tables and chairs is not fair because they as a restaurant had to build two bathrooms to have 50 chairs. They have a high rent in town and have to be in the buildings in the winter and they need to have the business from the summer. Their sales were down 30 percent last summer because of the vendors. She isn't against vendors at all. She wants to have a fair competition. There are so many restaurants in town with sit down spaces. There is so much competition within restaurants and to have vendors on top of this it is tough. She is not in favor of tables and chairs for vendors. They are the Greyhound Bus Station for the city and they receive many phone calls. They spend hours and make \$20 a day from Greyhound in ticket sales because most people buy their tickets online. It is bad pay for what they do because they receive 20 or 30 phone calls a day. They did the Greyhound because they hoped the people would come to their restaurant and they would get some business out of them. If the city puts two food carts in front of City Hall it will be very bad for them. Her proposal is that the vendors in front of City Hall can be non-food vendors and it will be considered as within 50 feet from Rhapsody because they do the Greyhound business.

Carol Marold said she and her husband own Uncle Mike's. With her was Erica Humphreys who works full-time at Uncle Mike's. Mrs. Marold said she finds herself in a position where she agrees with the vendors and actually would like tables when she is out dining. However, they are not able to have tables out on the sidewalk so they have tried to get benches. They hold a commercial caterer's license which is exactly what the vendors have and the stipulation is they can't have seating because they are open more than six months of the year. It doesn't seem fair that just because she is open all year she can't have seating. She advocates for seating, too, if she could have it. She wonders if there is a possibility she could have benches.

Erica Humphreys said if they become an entity within themselves it becomes unfair to the point where they are allowed to grow and have tables and chairs while they are here all year through the lean months fighting for essentially what is the same business. While they might all sell different things they are fighting for the same customers. If they are allowed to grow their businesses and bring in things to attract new customers, they can't. Even though they are open year round and even if they had a bench it would be useless in the winter. When summer comes around it really is a time to make up for the lack of business they all experience in the winter. She lives in Montpelier; she works in Montpelier. Carol works and lives in Montpelier. When business is down her hours go down. This is her only job, and if there are no hours for her she can't live in the city she loves. It has a spiral effect with less people coming in, less money coming in and less hours coming in.

Mrs. Marold said they had significant decreases last year. Some of it was the recession, but their numbers which had been very straight all of a sudden it was a dip. She also asked the Council to look at the state guidelines for using recyclable dishes. She doesn't know that is allowed. They have very strict guidelines on how you do dishes and how they are washed and stored.

Mayor Hooper said with her question about the benches she would direct her to Montpelier Alive which has helped with the placement of benches on the street. At Uncle Mike's location it is so narrow there isn't enough room for people to pass safely. She could certainly talk with Montpelier Alive about the possibility of benches.

Mrs. Marold asked if they could get benches would they be allowed in front of their store.

City Manager Fraser replied if there was enough space.

Council Member Sheridan said of course there is enough space because there is a bench in front of his building which is no different than what is there. If she wants to buy a bench and donate it to Suzanne and say that is where it goes it would be okay.

Mayor Hooper said unless there are new thoughts she would like to begin to draw the public hearing to a close.

Chip Hart said he really appreciates the effort that is going into this. The public officials he has dealt with in connection with this issue, Suzanne and Montpelier Alive have made a great effort and done some very good work. His interactions with the City Manager and the Chief of Police have been terrific

and the meeting last week was an excellent meeting where they had reached consensus. The significant issue was the tables issue for the one vendor and possibly the discussion of the Greyhound business in front of City Hall.

George Estes said in a 4 foot area if you have a cart that is 4 feet, and you have a designated 4 foot space. There is a person that stands approximately 18 to 24 inches back from the cart. If there is somebody in a wheelchair they cannot go by. By state code and by state law you need a 5 foot right-of-way. There has to be a 5 foot radius. When you are saying a 4 foot setback on the sidewalk you are crowding it.

Mayor Hooper closed the public hearing at 8:57 P.M. and brought the discussion back to Council Members. She has a lot of editorial changes she will give to the City Manager.

Council Member Sheridan said it seems like the main contention is the tables at this point. He doesn't see anything else in the ordinance that anybody has a problem with.

Council Member Jarvis said she would point out that there are actually a lot of places to sit downtown. She spoke of the area graciously offered to the public in Christ Church park which is right across the street from where the pictures were taken. There is City Hall Park. Back to the issue of equity, she doesn't dispute that vendors bring vibrancy to the downtown. She absolutely agrees. It is wonderful to have the vendors. She certainly buys food from them when she can, especially when it is a beautiful day and she wants to be outside. She very often picks up a sandwich and eats in Christ Church Park when she can. Downtown businesses spend a lot of money to promote downtown and to keep downtown vibrant. Those who own property do have property taxes and those who pay rent do as well. The businesses that belong to the Montpelier Business Association and contribute to Montpelier Alive support things like the flower barrels that go out to keep downtown beautiful. There is a lot of money spent by the businesses that are permanently located in the downtown and the vendors don't make those kinds of contributions. They take advantage of them because they are in this great downtown that has been made right by the folks who are committed to staying here. She really takes issue with what Tim is saying about how inside businesses have advantages over vendors. If you are in a place permanently you do get business throughout the year. As you heard from Rhapsody times are tough for downtown businesses. Rents are very expensive in the downtown. Keeping the downtown vibrant and keeping the businesses that are here, helping them and supporting them to keep them in the downtown is one of the most important things they as a Council can do. Why

does two tables seem like a big deal? She really thinks it is important for the Council to take a stand and promote our local businesses.

Council Member Sheridan said he agreed with Council Member Jarvis. Although he liked Tim Azarian's argument about the biodegradable dishes and the environment.

Council Member Sherman said she agrees with Council Member Jarvis.

Mayor Hooper said she has not been bothered by the notion of tables and chairs. She thinks it is a self limiting opportunity. She would suggest that in other places where they talk about what the vendor's stand can and cannot do, which is section 1406, we also need to talk about some of the associated activity to make sure that the vendors and their associated activities are not spreading over into the sidewalk and pathways impeding traffic. She thinks that is what their real interest is here, is assuring the clear pathways and folks can walk unimpeded. There are very few places in the designated downtown that lend themselves to something beyond the cart and the individual standing there selling items from the cart. There are one or two spots where that may work and she thinks it adds an enormous amount of difference to our community. She thinks it would be terribly unfortunate if we had 10 or 15 hot dog carts lined up down the street. What has been pretty fabulous is the interesting mix of businesses that has happened as a result of people seeing the business opportunities. If we go down that path, then maybe we should say we should only have two carry out sandwich shops and three sit down stores of this nature, and then we would be going where we don't want to go which is regulating the flow of commerce. She isn't uncomfortable with it because she thinks it is self limiting. She would be very sad to see what she thinks is just a wonderful lively addition and she doesn't think it is going to blossom so we will have picnic benches lining the road. That would be her argument on the tables and chairs. We should be very clear about the designation of the space and people can't slop over. If they do slop over they lose their license to do that. We are going to be tough on the enforcement about this to make sure it works. At some point we are going to set this for the next hearing, but let's get a straw poll for the staff as to what to do with the tables and chairs. Who wants to allow tables? Council Member Hooper is in but no one else wants them.

Council Member Sherman said there was also a comment about the distance between Rhapsody and City Hall and how many places would be in the designated space at the plaza given the role that Rhapsody plays beyond the restaurant with the bus station. She thinks that is an important consideration.

Council Member Sheridan asked if she was saying they should have the bus spot as part of their restaurant.

Council Member Sherman replied no.

Council Member Sheridan said that is what she asked for.

Council Member Sherman said there should be some accommodation that is a special arrangement.

Council Member Sheridan asked if she was saying no food vendors in the City Hall Plaza.

Council Member Sherman said she doesn't want to see two.

Mayor Hooper said with all due respect to what has been testified to they are so grateful that Rhapsody chose to take the Greyhound bus on but that is something she agreed to do. The city did not require you to do it or expect that be done, and if it isn't working out for her then she shouldn't do it. She doesn't think the city becomes beholden to a business owner because of that service they are providing to all of us. She doesn't see an obligation on the city's part to any property owner that chooses to engage in that way. She was excited about the notion of carts being allowed in the City Hall Plaza because it really lacks something. It needs some liveliness and excitement and needs to be drawing people in. That is one of the reasons why she likes the Greyhound Bus stop because we have people beginning to recognize that it is a good place to go and sit and enjoy. That is one of the ideal places to allow two vendors carts. It is one of the larger more open areas and it would be unfortunate to limit a use there. She likes the notion of having the activity on City Hall Plaza.

Council Member Sheridan said there are three nods on this.

Council Member Jarvis said she agrees but just feels because the Greyhound bus is definitely a service provided by Rhapsody. It isn't just an issue of how much she is being paid by Greyhound because it is a service she is providing for the city as well.

Mayor Hooper said with the nods around the table there are more yes's to allowing two spots in City Hall Plaza. No one objected to her notion of vendors taking away trash. Are there any other substantive changes Members would like to propose?

Council Member Weiss said he has a question within the ordinance itself. If you look at the definitions in Section 9 a stand shall mean any news stand. If you look at Section 9, 14-10, which is at the end of the document, it says the provisions of this ordinance shall not apply to a vendor who sells or offers for sale in person or by its employees or agents newspapers. Do we have a conflict?

Council Member Hooper said there is, absolutely.

Council Member Weiss said if there is a conflict, as we get into the various readings of this ordinance we need to change it.

Council Member Sheridan said they should strike those exceptions.

City Manager Fraser asked if section b refers to when somebody puts their dresses and garments out on the sidewalk for sale.

Motion was made by Council Member Sheridan, seconded by Council Member Weiss to approve first reading with the changes proposed and set the second public hearing for April 28th. Council Meeting. The vote was 5-0, motion carried unanimously.

A question was asked when the ordinance would become effective.

City Manager Fraser responded that the ordinance when approved after second reading becomes effective six days after publication in the local newspaper.

- 10-091. Update from 58 Barre Street Working Group and consideration of proposed development plan.
- A. The City Council directed a working group which included the Montpelier Housing Authority, Central Vermont Community Land Trust and the City Planning & Development Department to prepare a land plan for the renovation and use of 58 Barre Street.
 - B. The group has developed a plan which is outlined in a proposed development option.
 - C. The group will review their work to date and summarize the proposal.

D. Recommendation. Approve the proposed option agreement between the City of Montpelier and the Capital City Housing Foundation, Inc.

Jeff Kantor and Garth Genge were present to update the City Council on the proposed development plan.

Garth Genge, Community Development Specialist said they have a proposal to present to the Council. The Montpelier Housing Authority has agreed to partner with the city on the development of the project doing the housing portion. They met with the committee last week and they reviewed all of the information. It would basically be a condominium development with the housing being one portion and the Montpelier Senior Center being owned by the city and occupied by the Senior Center. There is a pro forma that shows projected funding sources and costs. There are different options for funding. These are some of the most promising and there will be more continued development as it goes along. There is an Option Agreement that would need to be signed and they are asking the Council to consider that tonight. Once that agreement is signed they would be able to go forward with the housing portion applications they need to have for legal control of the site. In the Option on 13-A where it talks about coming forward with a feasibility study the city is actually doing the feasibility study with all of the funding they have received from different sources for grants. This proposal is what is coming from the Montpelier Housing Authority. They are having new construction estimates done once the preliminary plans by Gossens Bachman are developed. When they get the construction numbers if they come in with a very large variance then they would come back to the Council. If they come within the expected range, then they are expecting that this is the proposal that would be accepted by the Council. This is the proposal they are putting forward as being the best option for the building.

The donation of the space to the housing portion would be one way to make it financially feasible to do the project. That is a big portion of being competitive for all of the different grant applications. They have a list of different places we would be applying for and none are fixed in the sense that if one doesn't work there aren't alternatives. When he worked with CVCLT they had one project with 17 funding sources. These things develop over time. There are going to be various progressions of this in terms of the funding sources. On a regular basis they would meet with the committee that has been formed just to get an update and they would bring anything they felt was a major variation from this proposal to the Council.

One of the other real variables is the insurance payment. The number they put in there was the highest number he felt it could come to. What they

understand is they would come to whatever the real cost would be to fix the building. He is asking Gossens Bachman to do a separate estimate of what the impact of the fire would be and what the cost would be. The Vermont League of Cities and Towns is developing their own. Some of these numbers can vary fairly dramatically, but they would come to the committee with anything they felt would jeopardize the prospects of it being successful.

Council Member Weiss asked if there would be additional feasibility studies, and if so who will pay for them.

Community Development Specialist Genge said they are still in the process of the one they are doing now. They haven't gone through all of the pieces. They haven't gone to the Recreation Center piece which is again developing the Montpelier Senior Center facility's needs is part of the proposal that is still up in the air. We have to really define what they are going to need now, what we can do at 58 Barre Street, what their future possibilities might be. That is going to be a fairly drawn out proposal, but they are budgeting on a conservative basis so they can cover the immediate expenses. They may not be able to meet all of the needs for the Senior Center now and going into the future in that location, but we can put them back in there with a much better facility than they had before and the potential with a good plan over the long term for them to have more options.

Jeff Kantor said on the housing side the city has already done a majority of the work that they will need for the feasibility of the housing portion. There is a small amount of work done, but the additional \$10,000 they are applying to VHCBC will cover those needs.

Council Member Weiss said his second question deals with what they call a draft. Is the \$3 million one pocket and then the Senior Center at \$1.8 million another pocket of money?

Community Development Specialist Genge replied that was correct.

Council Member Weiss said the total would be in the \$5 million range.

Community Development Specialist Genge said the insurance is probably as high as it could go, and could end up being much less. The numbers are very conservative. They would rather come back later and say they are going to 5 or 10 percent less than to say it is going to be 15 to 20 percent more.

Council Member Weiss said on the Senior Center side when he looks at the bottom called sources the total there equals the total of the expenditures. Therefore, there will be a capital campaign of \$290,000.

Community Development Specialist Genge said that is the capital campaign/city contribution and that is a fairly open option. They will be pursuing other sources. There is grant money from different places they will be pursuing. There will be a gap between what the cost from the insurance and what the other funding sources are. Right now they are estimating that at about \$290,000 and the capital campaign/city contribution is just a title. They are hoping to close it even more with other sources.

Council Member Weiss said of the total of roughly \$5 million, how much of it has to be available before the housing people can start on their side?

Community Development Specialist Genge said all of the funders request that other sources of funds be committed before they commit their funds so you really have to show you have all of the money you need to proceed. They are agreeing to develop this with the housing portion so the city has the responsibility of meeting its side of the development also. Sources can change and applications can be rejected and sometimes come back with less money. The best guess is that it would be June 2011 before they would be breaking ground on the project.

Council Member Weiss asked if the housing portion would pay rent to the city.

Community Development Specialist Genge said it would be a condominium so each space would pay their share of the expenses to the condominium association.

Council Member Jarvis said the city is not going to own it. That is what the Option Agreement is, to give the housing portion to this entity.

Mr. Kantor said they would own their portion and pay taxes and water and sewer fees to the city.

Community Development Specialist Genge said the city would own the other section. They haven't come up with the best solution for the ownership of the playground. There might be a third component that is a separate piece for the playground.

Mayor Hooper asked if they had done an analysis of the Senior Center's ability to carry the costs of their share of the building.

Community Development Specialist Genge said they are working on having a development of the Senior Center future with not just the activity center but the other components in the senior community and how to partner with the different components. What the facility needs will be and what their expenses will be will be part of the ongoing costs.

Mr. Kantor said through the renovation their operating costs should go down just because the energy use is a huge factor. All of the energy needs will be addressed.

Community Development Specialist Genge said they are talking about having a very cost effective location for them. They think this is probably one of the best solutions in terms of putting them in a place that is as cost effective as anything that could be provided.

Council Member Jarvis said whatever ends up being the city's contribution would that be a bond vote?

Community Development Specialist Genge replied that could be a possibility. It will be easier once they settle with the insurance company and have some hard figures so they will know what the gap is and the size of it will determine whether it is worth a bond vote or not.

Council Member Jarvis said the timing is important because if they were to have a bond vote it would have to be in November of this year in order to have funding in place for July of 2011.

Community Development Specialist Genge said he was thinking the timeline would be March if they were to have a bond vote. His idea would be that the capital campaign would end in December and find out what the gap would be by then. They would be pursuing other options during that time so they might find some funding sources that could close it out without a bond vote.

Mayor Hooper said she would hope that a bond vote is not a default assumption and that every effort is made to raise the funds some other way.

Motion was made by Council Member Sheridan, seconded by Council Member Jarvis to approve the proposed Option Agreement between the City of Montpelier and the Capital City Housing Foundation, Inc. The vote was 5-0, motion carried unanimously.

- A. Planning Director Gwendolyn Hallsmith will provide an update on the District Heat/Energy Project.
- B. Council Members have been provided with a feasibility study and work summary.
- C. Recommendation. Discussion and direction to staff as necessary.

Planning & Development Director Gwen Hallsmith said joining her tonight is David Maribelli from Veolia Energy, the consultant on the project, and Dick Saudek from Cheney, Brock and Saudek who is the lawyer for the city on this project. She is going to give a quick overview of the project as a whole. The city has been considering district energy for over 10 years now. They had hoped a long time ago to hook up with the state plant when the state expanded their plant and had a bond vote back in 2003 for \$250,000 to run the pipe from City Hall to the new plant. The new plant hasn't materialized yet and doesn't seem likely given the high capital cost of the facility and the other competing demands for state capital money. Two years ago after the Energy Town Meeting we reconvened the District Energy Committee and had been looking at developing our own plant independent of the state and looked quite awhile at those options. Last spring we re-voted the bond that had originally been voted for running the pipe from City Hall to the new plant to allow us to use that bond for the feasibility study, design and permitting of a new facility. The funding for the study the Council will be looking at now came from both the city bond and from a grant we received from the Clean Energy Development Fund from the State of Vermont. They are moving forward very seriously considering the idea of building a district energy plant. This was helped enormously in January when the US Department of Energy awarded the city an \$8 million grant to pursue these plans for the plant. They have conducted the feasibility study around the parameters of that grant.

When the grant opportunity came up it occurred to any number of us that it would be a more competitive application and if instead of continuing to pursue our own facility the city teamed up with the State of Vermont and proposed a local/state private partnership to build the facility and the State of Vermont agreed to go in with the city to apply for the grant and continue our explorations. We have a feasibility study for the city working with our private partner and the state to essentially reconstruct the state energy plant on its current site which is off Taylor Street behind the Department of Motor Vehicles building. The main focus of this stage of the exploration is if it is economically and technically feasible and to examine some of the risks we expose ourselves to and look into all of the different facets of the partnership that we are developing with the state and private entities.

The summary of what they found is that it is economically and technically feasible. There are still some open questions they have raised about the study. With that introduction she would like to turn it over to David to walk the Council through it briefly and she will explain where she thinks they need to go from here.

David Mirabelli said the existing state plant currently provides steam to 550,000 square feet. That facility is actually below the floodplain. It is beyond its life expectancy. It was built in 1946 and is in need of replacement. What they are looking at here would do two things. One would replace that plant with a new plant that would be bio mass fired and they would also be able to expand and run distribution piping into the city to make it a full energy district for the whole city of Montpelier. What they are talking about is an 11,500 square foot facility that would have both bio mass in terms of the primary fuel and oil backup in the event that there was an issue with the fuel supply. They are talking about roughly a little over two miles of piping that would stretch out and tie in with the existing city facilities, schools, City Hall complex, the Fire Department complex as a start in terms of Phase 1. They would also go in the west direction over to the high school.

Council Member Hooper asked if they would replace the existing steam piping as well.

Mr. Mirabelli replied no. It would be bio mass fired with a power element which would mean they could make power with the steam, and then the exhaust off the turbine would be put into the pipes and sent over to the state's buildings for the steam system. Simultaneously you would be taking some of the steam and turning it into hot water and sending it out to the system for the city.

Mr. Mirabelli said Gwen was referring to the revenue portion. The crux of the matter is that essentially the state would become a customer of the city. The city potentially would own the plant and the state would become a customer. There would have to be a bond vote in order to raise the funding. Depending on the configuration of the plant they are looking at between \$250,000 and \$400,000 per year of net revenue to the city. Some of the things that affect the building of the system is the fact that it is in a floodplain. As a result of the EPA presenting a new flood zone and new floodway the existing building is actually sheered. The new floodway actually cuts a portion of the existing facility into a section, so that would affect where they would put the footprint of this particular plant. The first phase would be to build the backup boiler system, the oil system. Once that is constructed then the existing plant would be demolished and the new bio mass system would be put up. Essentially, you

would be building the new oil backup system during the summer, putting it online and then the following spring you would be building the new facility and having it ready for the following heating system.

Planning & Development Director Hallsmith said there are some next steps we need to take and ultimately the end point of the process. The steps she is recommending they take next are three.

First, we need a project manager. This is a full-time job. DOE calls her every day. There is an enormous amount of paperwork to keep managing just because of the grant alone. The report is in and has been accepted with no errors. We have the money for a project manager out of the grant that will help us move this forward with the speed with which we are expected to do it. The reason DOE calls her every day is because they are eager to get this money out of the door.

The other piece of the project that people aren't as aware of is that in addition to building the plant, partially to make the grant more competitive and partially because we as a city want to be more energy efficient and have more renewable energy deployed they included the project description to DOE the fact that we would be establishing a clean energy assessment district, which is a new type of energy district that was enabled by state legislation last year. It enables people to borrow money from the city and make improvements on their buildings, either energy efficiency improvements or renewable energy improvements, and pay those improvements back over the life of the improvements. Essentially, it would be like the water and sewer district we have but only for energy. The people who would pay for the district are the people who make the improvements so not everybody in the city would have a new energy bill if they don't have any improvements. If you want to insulate your attic, add a solar panel or put in a pellet stove, some of the things they would issue as qualified renewable energy efficiency strategies you could get the money and it would be paid back like a property tax over 20 years or over the life of the improvement. That means you wouldn't be responsible necessarily for paying it off before you sold your house because it would go with the house just like the water and sewer bills do, and it would also enable people to have more favorable loans or systems in place for making those improvements. That is another piece of the project that needs to be worked on and it will be another piece of whatever funding they raise to complete the project.

The second recommendation is they appoint a standing committee to oversee the project. So far they have had the District Energy Committee that grew out of the Energy Town Meeting they had back in 2007 and that has worked very well. We have an excellent group of people who are interested in this project in

the community, but as it gets closer to reality we need people who are going to make a commitment to sitting on this committee and coming up with recommendations for moving forward. So far they have been very good at being an advisory board and she has taken their advice and brought it to the Council, but she really thinks that the time has come to solidify that group.

The third recommendation is that we issue an RFP for the environmental assessment that needs to be commenced relatively quickly. The environmental assessment is required by the federal government before you spend federal funds, and they have been using Epsilon Associates which have been affiliated with Veolia to do the feasibility study but Epsilon is not that familiar with Vermont law and Vermont environmental regulations. She has talked to DOE and they are willing to let us issue an RFP for a contractor that is more familiar with the regulatory hurdles we have in Vermont for this type of facility because even though it may add a little time now it will save us time when we get to Act 250 and Act 248 and all of the other environmental regulations we need to follow. We want this plant to be a model facility.

Those are the three recommendations at this point. There are still some questions they want to explore in the final report for the feasibility study to pin down a few of the issues a little more closely. Once that is done they will come back to the Council with further recommendations.

City Manager Fraser said he thinks the main thing is to let the Council know what they are doing and see if there are any concerns with going ahead. It is all part of the grant and part of the plan.

Council Member Jarvis said Gwen said there were three recommendations, but where does the clean energy assessment district come in?

Planning & Development Director Hallsmith said that is something else the project manager will have to work on. There is a committee, a project manager and an environmental assessment.

Council Member Jarvis asked what is the pot of money that the homeowners will be drawing upon to make these improvements?

Planning & Development Director Hallsmith said in order to do the plant as we have described it the city needs to issue a bond vote in November for a fairly substantial amount of money. It is likely to be around \$20 million. It is a revenue bond as opposed to a general obligation bond, and that is the important part of looking at the feasibility study now because we won't be asking the taxpayers to pay that money back. The money to pay it back will

come from the revenues from the plant. When we vote for that bond we are also going to need to vote for the money to put into that pot of money that citizens would take from to make those energy improvements. We are going to need to vote to establish the Clean Energy Assessment District itself because that does require a vote of all of the citizens that would be affected by it, and we are probably going to need to have a minor charter amendment to allow us to sell energy in the same way that we sell water and sewer services. The charter enables us to set up water and sewer districts but doesn't really talk about energy. The enabling legislation at the state enables us to do that, but that is a question we have to figure out.

Council Member Jarvis said the voters have to vote to put money in that pot. From where? From the general fund?

Planning & Development Director Hallsmith said it would be part of the bond.

Mayor Hooper said the large portion of the bond, which will be for the plant, will be paid back from the revenues from the plant. The small portion for the Clean Energy Assessment District would be paid back by citizens who make improvements.

Council Member Weiss said one of the things she told them this afternoon is that if all of this goes through as planned that in within 11 ½ years that bond will be paid in full. The return on the investment is good.

Planning & Development Director Hallsmith said the figures are included in the report.

Mayor Hooper said there are a number of communities around us who have also been looking at creating clean energy assessment districts, and there has

been some discussion that we should all throw in together to consolidate the administrative costs. She thinks that means that everybody would like Montpelier to administer this for them. There are neighboring communities who would like to consider and be part of a clean energy assessment district.

Planning & Development Director Hallsmith said she understands Senator Sanders has managed to come up with about \$100,000 from the federal government to draw up all of the paperwork that is needed for these districts. Burlington has already voted it and they are moving forward.

Mayor Hooper said she thinks everybody is interested in this issue statewide. What they were trying to do is to look for Burlington to establish the model

and then we would be able to take the boiler plate from them to use in the process for establishing Montpelier's.

Planning & Development Director Hallsmith said in the grant they identified the Vermont Energy Investment Corporation as the entity they would work with to establish the district. That is also a possibility. Nancy Wasserman is working on it with Burlington.

Mayor Hooper asked Council Members if they were comfortable with them hiring a project manager, setting up the advisory group and issuing the RFP for the environmental assessment. Members of the council were in consensus to move ahead.

10-092. Carr Lot/Transit Center Update.

The Carr Lot was designated as a floodway by the FEMA process last fall. The city has appealed that designation on the Carr Lot, and they don't yet know what the results of that appeal will be. She has been assuming the worst and trying to figure out what their options might be if the appeal is denied. We don't really have enough money in the budget for another environmental assessment because the way these federal budgets work you spent that money on the existing site. If we move to a completely new virgin site where we would be developing land we would need to do another environmental assessment that we don't have the money for. There really are two options. One is to put the transit center in an existing building because by doing that we could get by with what they call a categorical exclusion from the FEMA process. Or we could put the transit center with another facility that needs to have an environmental assessment done. It turns out that is what is happening with the energy plant so she has been exploring the regulatory feasibility of combining the energy plant with the transit center so we could add a waiting

room, bus ticket sales, visitor center and a bathroom on to one side of the building. The energy plant is a way of creating a kind of interesting visitor center in the community and a bus stop.

She has had conversations with the DOE and the FTA with both on the phone and have approval from both DOE and FTA that the environmental assessment they are doing on the energy plant could actually serve FTA purposes. It could actually be a model for the rest of the federal government. She was told that nobody had ever asked this question before. They have been very cooperative and very helpful. At least from a regulatory feasibility side we could go ahead and try to combine them. For now it is actually keeping the

FTA project alive. They have been threatening to pull that funding because of the floodway issue. With the Council's approval she will continue to pursue that. What we would need to do next is to do a technical feasibility study with some design work to see what it would look like and see how many more parking spaces from the state we will eat up.

Council Member Sherman asked what the state's view of this was.

Planning & Development Director Hallsmith said all they have done is mention it in a meeting with Jerry Myers at this point. We do have language in the capital bill now to help him move forward with us on the energy plant. That might be another avenue, to add the transit center to the capital bill.

City Manager Fraser said they have been involved in the transit center all along. They didn't say no. They don't want to give up their own parking, but in this case it is already going to displace parking and we may need to use some of the Carr Lot to relocate some of the parking.

Planning & Development Director Hallsmith said conceivably if we ever obtain the Carr Lot we could still use the federal highway money that we have in the project to make the improvements we had planned there. It is just going to be a lot easier if we are not trying to build a building in the floodway so she thinks it is worth pursuing. She doesn't think they would go to any kind of extended process to obtain the land to do a parking lot and a bike path, but there are some other things in the works that might make that possible.

Mayor Hooper said when they received the different pots of money for the transit center, bike path, etc.; one of the things they had to do was an analysis of replacement parking. Now we aren't losing any so we don't have to worry about it. There was a whole thing about where you sited the building and how far people would walk. It was many years ago. There was this careful analysis when we were looking for where they could put the center. They looked at a variety of different places and part of that was how far people would be willing to go.

City Manager Fraser said in the original feasibility analysis there were a lot of downtown locations in terms of providing bus services. A lot of them were ruled out because the state initially said no state properties so they all got knocked down.

Planning & Development Director Hallsmith said typically the transportation analysis is part of the environmental assessment so we need to look at those questions. Where will people be coming from to use the facility? How will

they get there? Where will they park? What will the traffic impacts be? All of that is part of the assessment they have to do.

10-094. Consideration of an application for a Municipal Planning Grant

- A. The Planning Commission unanimously approved the following motion:
“to apply for a planning grant to do a study of our boundaries, the growth center boundaries, the potential TIF District boundaries and our current zoning boundaries with an eye toward correcting any mistakes in the growth center boundaries, identifying potential areas for a TIF District and answering the question of whether we want to continue with Euclidian [boundary based] zoning or move into a new form.”
- B. Recommendation. Approve the application as requested by the Planning Commission.

There are now copies of the Draft Master Plan. Many of the recommendations in the Master Plan look toward changing our zoning and changing the way the zoning works because the kind of zoning we have right now, which is boundary based zoning with high density residential, medium density residential, a design control district, lines on the map, is based on an era where there was real concern about the mix of industrial, residential and commercial uses. That was the 20th century. The 21st century is an era where increasingly people are working from their homes and having small businesses in their homes that are part of the creative economy, a part of our engineering and architectural services that the city offers. When homes turn into work places there is also more need for more distributive services, such as restaurants on the corner or more shops in the area than would be in the form of zoning we have now. It is her opinion and one of the recommendations in the plan that we look to a couple new kinds of zoning – form based codes and performance zoning. Both of those are not so reliant on the prescriptive boundary based zoning of the past, although boundaries may come into play. Certainly, the growth center designation will be important and a historic area would be important. We are getting away from the suburban/industrial era and moving into the 21st century. We need help doing that. We need help looking at why our boundaries are where they are now. Some of them are based on the 850 foot contour line because once upon a time that was how far the water could get in the community without needing to be pumped. Those days are gone. There have been water towers that have been built above that line and it doesn't apply any more, but meanwhile that is the basis for a lot of our zoning configuration and the basis for our growth center boundary.

You might remember as we went through the growth center process there was a lot of consternation about where those boundaries were. Because the growth center right now is based on our existing zoning we had already made the decisions around where we wanted medium density residential develop to go, so why not stick with that for now. The grant they are talking about would take a look at those issues – boundaries and new forms of zoning, making recommendations for how to move that forward and also make sure where we have identified the growth center is the right area. It would also be looking at where some appropriate areas for tax increment financing might be. That is a little trickier because of course in order for tax increment financing applications to work you do need concrete development proposals that are on the table that you can do a financial analysis of and show the state what the tax implications will be and show ourselves how we are going to pay the investment we need to make in the infrastructure, etc. We are not in a position, maybe with the exception of the district energy plant, to do that right now because we do not have any concrete proposals in front of us that would make that necessary or possible. Preparing and doing some of the preliminary work on that would make it a lot easier for us to do it when one of those comes through.

The grant application is due on April 30th and they are just looking for the Council's approval.

Council Member Sherman moved that the Council approve the application for the planning grant in the amount of \$15,000.. Council Member Sheridan seconded the motion.

Mayor Hooper said when they were talking about the tax increment financing districts and pursuing an analysis of that we said the \$15,000 planning grant wasn't enough to do just that, and now we are talking about doing three things. Looking at the Euclidian zoning is a \$100,000 project conceivably. How are they going to do all three things with \$15,000?

Planning & Development Director Hallsmith said they did a lot of the work on that before because she has some studies around it that show some analysis of the neighborhoods. She isn't sure if they will move in the direction of form based codes, and that is part of the reason they are doing the grant.

Mayor Hooper said her larger question is that all three of those are very large projects and each one would require more than \$15,000 plus. Are we trying to do too much?

Planning & Development Director Hallsmith said she believes she is right, that they would be trying to do too much if we were going to assume they would

make a TIF application after this project. That's not going to happen. If we assumed that we would come up with a completely revised zoning ordinance, which we won't be able to do. It really started with looking at our boundaries because the boundaries need work. As we are looking at our boundaries let's start to consider how the new form of zoning will fit with the landscape of the city. Maybe it needs new boundaries to go with a different kind of zoning. Maybe it needs scrapping the boundaries all together and working with a couple of larger concepts, which is right now what you will see in the Master Plan as the future land use map. We have the big growth center; we have the historic area. Everything else is low density rural with the exception of the office park area in which we called the future growth reserve which isn't currently in our growth center but could be in the future.

The way the form based codes and the performance zoning works is that instead of having highly prescriptive standards in the zoning you shift the burden of proof of it to the proposal and ask them to demonstrate how it meets your city goals rather than telling them in painstaking detail how they have to meet the city goals. It gives a lot more flexibility and also gets away from some of the more problematic elements of our very prescriptive zoning that are frankly outdated.

Mayor Hooper said with regard to the TIF analysis her description was fair that we don't have a partner of a project that is ready to go. The Trust for Public Lands has said to her, which she believed she conveyed to the Council, that they are looking for the city to step up in terms of what it is we are going to do to assist them with their development. They always said it was based on the City pursuing a TIF to do the improvements at the intersection at Barre and Main Streets. That area has been identified as the impediment to the development of Sabin's Pasture. They do not believe they can get a development partner unless that piece is taken care of. We don't have a partner to do a TIF, but we can't do a TIF without a partner. Way back when we have always talked about Sabin's as being the area where we wanted to focus the housing growth for the next step. She is struggling how we get over this barrier.

Planning & Development Director Hallsmith said she didn't really mean a partner exactly but a development proposal, something we would be doing like putting in streets and water and sewer to serve these houses that a developer had proposed to do. We would have a strong enough sense of the size and value of those houses to understand what the tax implications would be. She raised an important issue which is the intersection of Main and Barre Streets, which is actually an impediment to a lot. It is a real bottleneck for a lot of things. The Capital District Master Plan talks about putting the Barre Street

Extension through that area and having the street actually cross the North Branch River and connect to Taylor Street so there would be two ways through town. Let's say that is the project we want to do with tax increment financing. One of the challenges would be, where would you identify the boundaries of the district that would benefit from that improvement and what would the tax implications within those boundaries be? Let's say the bridge on the Barre Street Extension costs \$25 million to put through. If the city was to spend \$25 million to reconnect those streets, and we understand that it would benefit the downtown and all the way out to Sabin's Pasture, so arguably we could try to create a TIF district that included those properties and we would still be relying on the incremental increased taxable value of all of those properties in the district based on that improvement to pay off the \$25 million. That is the part they might have a hard time proving when it came to the actual TIF district. Maybe that would be a good project for a TIF district. The question then would still be the boundaries and what would the tax implications within those boundaries be if we chose that project. The state law around TIFs is another real barrier to this because let's say we decided that is what we are going to do with the TIF forever because with TIFs you have to do it once, and you have to do it once for 20 years. You aren't going to have a chance to come back. That could be our once. She thinks it would be challenging without the proposal articulated clearly enough on Sabin's to show how we could pay it off.

Council Member Weiss indicated he didn't think this conversation was germane to the motion.

Mayor Hooper called for a vote on the motion. The vote was 5-0, motion carried unanimously

- 10-095. Consideration of the City's continued participation in the "Regional Services" process.
- A. Several City Council Members and Assistant City Manager Bev Hill attended a "Public Safety Committee" Meeting held at the Central Vermont Chamber of Commerce Office Building on March 18th.
 - B. A report from that meeting was previously shared with the City Council.
 - C. Each community was asked to review the report and indicate whether they wished to continue working on the process.
 - D. Recommendation. Discussion and direction to staff.

Council Member Weiss said he didn't want to make a presentation; that's been done at previous meetings. He moved that the Montpelier City Council continue its participation in the Regional Public Services Committee. Council Member Sheridan seconded the motion.

City Manager Fraser said he would note for the record that there is an attachment with a recommended motion.

Council Member Jarvis said she doesn't think the recommended motion was necessary for the work to continue.

Council Member Weiss said he knows Council Member Golonka and he would be willing to continue to serve and having the three of us, including Council Member Sheridan, made a very good working relationship.

Mayor Hooper said her thoughts are that until they get down to the question of quality of services, response time, training, supervision she isn't sure what the point of this is. The fundamental questions are what are we getting for it and how is it going to be managed?

Council Member Sheridan said that is what the next step is.

Council Member Jarvis said the discussions they have had everybody was saying it all comes down to costs, but that is the next step for the committee to look at costs because for a lot of communities that is the make or break.

City Manager Fraser said over the years the city has seen people move away from the city's ambulance service for lower costs, even though they were getting a reduced service. When the former Fire Chief and he went to each of the towns to talk to them about that service the Select Boards told them flat out that it was all about the dollars and cents. That was their key driver.

Council Member Sheridan said they have to consider that three people are willing to put their time in. The other communities will either opt in or out at some point and we may waste our time because of them.

Mayor Hooper called for a vote on the motion. The vote was 5-0, motion carried unanimously.

- 10-096. Consideration of recent court decision in Cheney vs. Montpelier concerning damages resulting from broken water line.

- A. A city water line broke resulting in damages to a private property.
- B. The matter was forwarded to the VLCT Property & Casualty Insurance Fund (PACIF) who denied the claim based on long standing practice and precedent.
- C. The individual brought the matter to court, where the decision was that the city and/or PACIF was liable for the damages which opens a new area of financial exposure for municipalities.
- D. The PACIF Board has authorized an appeal of this matter.
- E. Recommendation. Support PACIF's recommendation to appeal on behalf of the city.

City Manager Fraser said the Council has received the information about the *court decision and received the recommendation from the Vermont League of Cities and Towns PACIF fund and their attorney*. We discussed this briefly at the goal session and decided that we didn't want to provide a specific decision on a legal case at a workshop meeting.

Motion was made by Council Member Sheridan, seconded by Council Member Hooper to support PACIF's recommendation to appeal on behalf of the city.

Mayor Hooper said she wanted to be clear that the Council's decision to pursue this further in court has nothing to do with individual but it is to the larger issue of wanting to protect the city's interest. She wanted to say that in a public meeting so that would be clear because this is a much larger issue for the community. We have an obligation to stand up.

Mayor Hooper called for a vote on the motion. The vote was 5-0, motion carried unanimously.

10-097. Reports by City Council.

Council Member Sheridan said he would like to put on the next agenda a discussion of signs in the downtown and the possibility of making it an administrative action. It refers to the signs that people might put on the side of their building. People want to do it, but they don't want to pay. It's about the health of the city. He wants to exempt people from our sign ordinance.

Mayor Hooper asked if they had the authority to do that. We would have to change the zoning ordinance.

Council Member Sheridan said people want to put the signs on the outside so they are more visible. It is a disincentive to do the right thing.

Council Member Weiss said National Public Works Week is to be held May 16-27, and this is the 49th Annual Public Works Week Celebration. He doesn't know whether or not Montpelier has ever done anything in recognizing our Public Works Department in conjunction with this national week.

City Manager Fraser said he isn't sure if they have or not. At various points they have recognized different groups on those kinds of weeks.

Council Member Weiss said if it is appropriate it would be nice if they could do that with a resolution or something.

Council Member Jarvis told City Manager Fraser she appreciated his letter to the Secretary of Transportation outlining all of the rail issues and also the update on REACH. She wants to remind the Council and the public that this Thursday, April 15th from 6:00 to 8:00 P.M. at the Bethany Church the Montpelier Housing Task Force is convening a community conversation on homelessness. There will be housing advocates and people from area churches and it should be a very interesting evening and she would urge everyone to attend.

10-098. Mayor's Report.

Mayor Hooper said at some point she needs to understand what the city's position with regard to Sabin's Pasture is and she was trying to figure that out with the discussion she was trying to have with Gwen. She thought the Council had said that the development of housing was of a highest priority to the city and we would focus specifically on that yet we keep floating away from the opportunities to push that forward. She finds this really frustrating. She keeps trying to find creative ways of solving this problem and she isn't getting there. She would like some support.

10-099. Report by City Clerk-Treasurer.

City Clerk & Treasurer Hoyt had nothing to report this evening.

10-100. Status Reports by the City Manager.

Agenda Reports by the City Manager

City Manager Fraser said in line with what Council Member Weiss just said, this week is actually National Telecommunications Professionals Week and last year they did have their emergency dispatchers in. He would like to recognize them and just simply point out that they are the real vital cog to our emergency services and are people that people often don't see. They see the police officers responding, firefighters and ambulance responding, but the one who they don't see is that friendly voice at the other end of the 911 call and who is coordinating all of the efforts, calling in support and micro managing many facilities. Our fire trucks and ambulances cover around 24 communities. We handle our own police and other emergency services. They are rotating around the clock all of the time filling in each others' shifts. It is a much appreciated position and they do a great job at all times.

There was a status conference on Berlin Pond earlier this week and a full hearing on Friday at 4:00 P.M. on the matter. The state did come to the court and their attorney represented that as far as they were concerned the jurisdiction of Berlin Pond had to do with the rules promulgated by the Water Resources Board. That was the agency and not the Fish and Wildlife Division or Game Wardens who were saying they could fish on the pond. It was the Water Resources Board that produced a set of rules that the state has adopted from the Water Resources Board. They have each body of water in the state itemized and what the rules are for that body of water. The state has some general regulations for Berlin Pond and the footnote says it may be subject to additional regulations as a state or local Board of Health restricting recreational use or protecting public water supplies. They basically said as far as the city is concerned the city is within its rights to restrict the use. They don't have an issue and think this is fine. That was the attorney for the Agency of Natural Resources representing who spoke for the state. The attorney for the other parties basically said they were hearing different things and he has subpoenaed some Fish and Wildlife officials to come. The judge would not dismiss the state out of the case on Tuesday and said they need to be sure they have spoken to everyone in the Agency of Natural Resources. There will be a hearing. He has been subpoenaed. He doesn't know why because he isn't an expert on water treatment. None of our regulations were promulgated while he was here so he can't give the reasons why. In terms of factual information as to what is in the charter he doesn't know why they need him to testify for that. He was subpoenaed by the attorney from the other side.

They have been in discussions with the parties involved with the Vermont Compost issue. At some point they thought that perhaps they weren't going to go ahead with the appeal, but they are. We need to schedule a hearing and he has suggested it will either be May 12th or a special hearing night on May 19th. It would be his recommendation to have it on a special night. He suspects there will be objections. They have already received written objections.

City Manager Fraser said they had their first substantive Collective Bargaining session with the Police Department on Tuesday. It was brief and they exchanged proposals and agreed they would read them over and respond to each other at the next meeting.

Adjournment:

After motion duly made and seconded by Council Members Hooper and Sheridan, the council meeting adjourned at 10:44 P.M.

Transcribed by: Joan Clack

Attest: _____
Charlotte L. Hoyt, City Clerk