

On Wednesday evening, February 10, 2010, the City Council Members met in the Council Chamber.

Present: Mayor Hooper; Council Members Golonka, Jarvis, Hooper, Sherman and Weiss; also City Manager Fraser. Council Member Sheridan arrived later in the meeting.

Call to Order by the Mayor:

Mayor Hooper called the meeting to order at 6:00 P.M.

10-32. Consideration of conducting the City Manager's Annual Evaluation, including the review of his Employment Agreement with the City.

- a) In accordance with Title I, Section 313, Subsection (a)(3) of the Vermont State Statutes, Council may choose to enter into an Executive Session ... as it reads:

(a) ... A public body may not hold an executive session except to consider one or more of the following:

(3) The appointment or employment or evaluation of a public officer or employee; ...

Motion was made by Council Member Hooper, seconded by Council Member Jarvis to go into executive session in accordance with Title I, Section 313, Subsection (a)(3) of the Vermont State Statutes to conduct the City Manager's Annual Evaluation and Employment Agreement. The vote was 5-0, motion carried unanimously.

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

Motion was made by Council Members Jarvis, seconded by Council Member Sherman to come out of executive session in accordance with Title I, Section 313, Subsection (a)(3) of the Vermont State Statutes where they had conducted the City Manager's Evaluation and Employment agreement. The vote was 5-0, motion carried unanimously. Council Member Sheridan had arrived and abstained from the vote.

Mayor Hooper told the member of the public that they had began the meeting at 6:00 P.M. to conduct the City Manager's Annual Evaluation and would now begin the regular portion of the meeting. It was now 7:00 P.M.

10-033. General Business and Appearances:

None.

10-034. Consideration of the Consent Agenda:

- a) Consideration of the minutes from the January 6th; January 13th; and January 31st, 2010 City Council 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 and Senior Center Fund for a six-month period beginning July 1, 2009, and ending December 31, 2009.

- c) Consideration of adopting and executing the documents for the for \$1,174,700.05 City of Montpelier Sewer System Improvement General Obligation Bond. This Vermont Clean Water State Revolving Fund loan shall be discounted by \$587,350.03, repayable without interest and together with an administrative fee of 2%. The voters approved this borrowing at the March 3, 2009 and July 14, 2009 meetings to receive 50% funding from the American Recovery and Reinvestment Act (stimulus money) for the CSO elimination projects, solar panels installation and vacuum truck replacement.
- d) Consideration of approving a VT Agency of Transportation (VTrans) grant reimbursement form (TA-65) to signify that work supported by a VTrans "Town Highway Structures Program" grant awarded to the Public Works Department has been completed in accordance with the terms of the grant agreement. The grant-assisted project completed in 2009 was the resurfacing of the Granite Street Bridge deck. The Public Works Department, on advice of VTrans staff, submitted a follow-up request to amend the original reimbursement amount. This amendment was approved by the Secretary of Transportation on January 20th, and the City is now entitled to an additional \$16,469.10 in assistance for the completed project. Although the City Council approved and signed the TA-65 at the meeting of January 6, 2010, to obtain the original authorized grant reimbursement, an amended TA-65 must also be signed to indicate final approval. With the amendment, the revised total grant award is \$25,380.00 which equals the maximum eligibility of 90% of the project cost. City Council Members are asked to acknowledge their approval by signing the enclosed form.
- e) Consideration of approving the Annual Highway Mileage Certificate for State Fiscal Year 2011 in accordance with 19 V.S.A. § 305(b). The certificate is a sworn statement of the description and measurement of all classifications of town highways as shown on the official Town Highway Map of Montpelier. The certificate must be filed annually by the town clerk by no later than February 10th of each year and submitted to the Vermont Agency of Transportation, Policy & Planning Division by no later than February 20th, to formally document the mileage of public highways owned and maintained by the City of Montpelier which forms the basis for determining the amount of state aid participation a town receives for maintenance. No changes to the measurements are necessary or proposed at this time. In regards to ACT 178 of 2006 and known as the "Ancient Roads Legislation", the Department of Public Works has provided a memorandum describing efforts expended to locate and document any unmapped roads and trails which is included in the City Council's packets.
- f) Consideration of becoming the Liquor Control Commission for the purpose of acting on the following:
- 1) Ratification of the issuance of Catering Permits to Vermont Hospitality Management, d/b/a New England Culinary Institute, for a Reception on February 2nd, from 8:00 to 11:20 P.M. at the T.W. Wood Art Gallery; a Reception on February 5th, from 8:30 P.M. to 1:30 A.M. at Alumni Hall, Vermont College of Fine Arts; and a Reception on February 6th, from 6:30 to 10:00 P.M. at the T.W. Wood Art Gallery, Vermont College of Fine Arts.
 - 2) Ratification of the issuance of a Catering Permit to John McCann for a "Wine Tasting Event for the State Legislators" on February 18th, from 4:00 to 6:00 P.M. at the State House Cafeteria.

- 3) Ratification of the issuance of Catering Permits to Vermont Hospitality Management, d/b/a New England Culinary Institute, for: a Reception/Dinner on Sunday, February 7th, from 4:00 to 8:30 P.M. at the National Life Hopkins House; a Reception on Monday, February 8th, from 4:00 to 8:30 P.M. at Noble Hall on the Vermont College of Fine Arts Campus; and a Reception/Dinner on Wednesday, February 10th, from 4:00 to 8:00 P.M. at the National Life Hopkins House.

As part of the same poll vote, City Councilors were also asked to consider an Application for a Catering Permit from Yebba, Inc., d/b/a The Abbey Pub and Restaurant, for a Cocktail Reception on Thursday, February 11th, from 4:00 to 8:00 P.M. in the Cedar Creek Room of the State House.

- 4) Applications for Catering Permits from Yebba, Inc., d/b/a The Abbey Pub and Restaurant, for Cocktail Receptions from 4:00 to 8:00 P.M. on Tuesday, February 16th, and Wednesday, February 17th, in the Cedar Creek Room of the State House.
- 5) Application for Catering Permit from Hyzer Industries, Inc. d/b/a the Three Penny Taproom, to cater a customer appreciation celebration at Onion River Sports, 20 Langdon Street, on February 12, 2010 from 6:00 P.M. to 9:00 P.M.
- 6) Application for Catering Permit from Yebba, Inc., d/b/a the Abbey Pub & Restaurant, to cater a cocktail reception at the Cedar Creek Room at the State House, 115 State Street, on February 18, 2010, from 4:00 P.M. to 8:00 P.M.

g) Approval of Payroll and Bills

General Fund Warrant dated January 27, 2010 in the amount of \$254,930.68 and \$3,770.00 and Community Development Agency Funds in the amount of \$452.77.

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

Council Member Jarvis said she appreciated Tom McArdle's memo on the ancient roads issue. He did a really good job summarizing it.

Mayor Hooper told the members of the audience that was one of the backup documents to the Council's certification of their road mileage.

10-035. Appointments to the Montpelier Tree Board.

- a) The 3-year terms of Wendy Blakeman and John Van Deren should be John Snell expire this month; staff advertised and as of the deadline, received application letters from:

John Van Deren should be John Snell
(seeking reappointment)
17 First Avenue

Wendy Blakeman
(seeking reappointment)
81 East State Street

Sarah D. Mitchell
184 Elm Street – Apt. #4

- b) On February 26, 1997, City Council approved an amendment to the City's Code of Ordinances, amending the number of members for this board from five to nine; therefore, if Council chooses, Sarah could be appointed as well.

Recommendation: Opportunity to meet the applicants; appointments to fill the 3-year terms.

Motion was made by Council Member Sheridan, seconded by Council Member Weiss to appoint John Snell, Wendy Blakeman and Sarah Mitchell to the Montpelier Tree Board. The vote was 6-0, motion carried unanimously.

10-036. Appointment to the Wrightsville Beach Recreation District Board of Directors.

- a) Staff advertised to fill an expired term on this board; said term will expire in February, 2013. As of the deadline, application letter(s) had been received from the following:

Jessica Chaves
7 Kent Street

Recommendation: Opportunity to meet the candidate; appointment to fill the 3-year term.

Motion was made and seconded by Council Members Sheridan and Weiss to appoint Jessica Chaves to the Wrightsville Beach Recreation District Board of Directors for a term that would expire February, 2013. The vote was 6-0, motion carried unanimously

10-037. Receive Report of the Montpelier Financial Review Committee.

- a) This item was tabled at the Council's January 13th meeting.
- b) On November 11, 2009, the City Council asked State Auditor of Accounts Thomas Salmon to head up a committee to review the City's finances and issues related to Scott Construction, Inc.; the Committee has met weekly since November 16, 2009.
- c) The Committee retained the services of Accountant Ray Cota to perform a financial analysis.
- d) The Committee has prepared a report of their work, findings and recommendations and will be presenting that report to the Council.

Recommendation: Receive report; provide direction to staff as necessary.

State Auditor of Accounts Thomas Salmon said he had some brief opening remarks. He thanked the City Council, Mayor Hooper and City Manager Fraser for appointing the Financial Review Committee. It has been a satisfying experience to facilitate the process of the Montpelier Citizens Review Committee. He thanked the committee membership who worked so hard with him, Nick Marro, Andrew Brewer, Sheila Coniff, Jack Lindley and Nancy Martel. He also recognized the Council appointments who worked very hard, Sarah Jarvis and Tom Golonka, as well as certain citizens like Gary Schy, Fran Miller, Mark Pitton and Joe Juhasz, his Deputy from the Auditor's Office.

He said about a \$462,336.13 overpayment occurred December 22, 2004. Citizens were concerned about this issue and asked if the State Auditor could be involved. It is a credit to the City Council, the Mayor and City Manager, and he was invited to the November 11th meeting and the committee charged on the 18th to carry out a review of relevant transactions, controls and policies related to the over payment and to hire a CPA firm fostering a report by January 11, 2010.

How did this get accomplished? The spirit of cooperation, code of conduct, hundreds of documents the committee reviewed to revisit the situation, and in that spirit they had 9 continuous Monday nights, a

forum on December 21st with the Mayor, Attorney Stitzel and the City Manager. There was another round table with the City Manager on January 11th and the completed report was given to the city on January 15th. In fact, two reports resulted and posted on the city's web site January 15th. In summary, the two reports first included one by Cota CPA capturing the overpayment and the breakdown here in Montpelier internally with recommendations. He performed what they call in the accounting world as an agreed upon procedures engagement and received the management's discussion memo which was the story of management. He determined why there was a breakdown internally, weaknesses in the controlled environment, especially related to large contracts or large projects and oversight. He noted that the city had made policy changes since the error was discovered and worked very diligently to capture what the situation was and what has changed since the overpayment occurred. The night they met with citizens going through 14 to 18 items and what the success looked like for this committee and for the city. He provided in the report various references to vendor purchase forms, project reconciliation forms and other strategies. He also recommended other things in the report related to a potential internal audit committee. The second piece which this committee worked very hard getting was probing documents and getting information to Nick Marro who put the raw material together and gave to Sheila to do the editing.

Mr. Marro said everybody contributed to the report. He did the initial draft from material he reviewed from everybody.

State Auditor of Accounts. Salmon said the committee gave its sustained attention and produced their report which really stressed the issues in that report which were more non-financial in nature – the role of the city attorney, steps leading to the receivable and promissory notes and executive session use. The citizens put forth a section on lessons learned as well as recommendations about full disclosure, contractor quality, and an internal audit committee of up to four people. The reports have been posted and were delivered 25 days ago. When the recommendation was to not just reports but give them to the City Council and have the committee speak to what they found and recommended.

Jack Lindley said they have received the Citizens Review Committee report along with the work from Cota CPA. They should all receive the crafting of this document and give special thanks to Nick Marro and Sheila Coniff for their drafting talents. We should recognize the special work of Tom Salmon and his staff. He said he supports the document. However, using 20/20 hindsight after reviewing hundreds of pages of hard copied communications it only leads to one conclusion. The city was taken by a less than honest businessman and elected officials in Montpelier made very bad decisions based on very strange legal advice.

Only two questions remain for the people of Montpelier to ask. How much did the legal advice cost the city relative to this caper? Since it has been 60 days since the Mayor announced that the city's insurance policy would make the city whole, is there a legal written document that the League of Cities and Towns in Montpelier will be paying the claim? Very basic rules should have been followed in this case. The State's Attorney should have been contacted immediately about the problem and the citizens should have been notified right after the State's Attorney. To think that someone can and would pay back ill gotten gains of this magnitude should never have been accepted. The accounting and budget control issues were not the highest priority facing management and the City Council at the time of the fiasco. The citizens of Montpelier need to accept this report in its entirety and engage Mr. Cota to gain some hope this will never happen again in our city.

Sheila Coniff said she is a little concerned. She thought they did a not bad job of putting together a consensus from the committee, and Jack's statement wasn't quite the consensus of the committee so she wants to make that clear. The consensus of the committee was there was no question that this vendor was not an honest man. However, she thinks the city made choices that at the time they thought were the right ones. They based their choices on advice they were given. Looking backwards they probably would have changed some of those choices, but at the time she doesn't think anybody was making any choices that weren't what was in the best interest of or what they hoped would be the best interests of the city. She wants to make it very clear that she feels, and think the report states, that nobody involved in this situation had any intention of doing anything that was not in the best interest of the city. You

can't always tell where your actions are going to lead you. She does think that some of their legal advice maybe was not what they would have liked to have gotten, but it is what they got and they worked the best they could. She does hope they will look at some of the suggestions in the Cota report. There are some good things in there they could put to work for them.

Andy Brewer said he wanted to echo some of Jack's and Tom's comments. He thinks Nick is being generous when he hinted that everybody on the committee contributed equally. He also agrees with Jack's opening remarks where they all stand by this report. They never said they were looking for a consensus on this and he doesn't think that was necessary. People who sat in on the meetings were very well aware that there were differing opinions coming out of this and they all thought that was fine and necessary. He tends to lean more towards Sheila's view on this that with the benefit of 20/20 hindsight there is no question there are a lot of things that people probably would have done differently. He came away questioning no one's integrity on this. He does feel that their primary goal was absolutely to get this money back. Was it drawn out too long? He, too, hopes the Council takes serious consideration of a lot of the recommendations they put into play here.

Nick Marro said over the nine weeks there were some spirited discussions. There was mostly consensus, but there were some areas that the committee had some disagreements. He read from the report:

Other than Scott Construction there are no villains here. The Committee believes that well intentioned people made mistakes and difficult choices, but they did so believing their actions were in the best interest of the taxpayers.

That was what the Committee decided as a consensus. He would urge the City Council, Mayor and City Manager to accept the report, take a close look at the recommendations that the Committee and Cota made particularly in the Cota report there are some very good recommendations that would be beneficial to the city.

Mayor Hooper said she wanted to add her thanks and speak for the City Council for the work the Committee has done in a tremendously busy time of the year. The members gave us an enormous amount of time and she is grateful to the citizens of this community for how willing they are to step up. She said it was very extraordinary what Auditor Salmon gave the city and the opportunity to help shepherd this through. They also appreciate their commitment to get the report to the Council on a date certain and their willingness to let the Council have the time to read it and digest it. Yes, the Council does accept the report. She doesn't believe that it would be necessarily appropriate for this Council to say they are doing x, y and z because they need the opportunity for a new Council to consider the recommendations and to act on them.

Council Member Weiss said he would like to comment in terms of parliamentary procedure. He would agree that the Council tonight should not vote to accept the report. However, he feels strongly that if we are going to use this as a basis for further discussion that the Council formally vote tonight to receive the report. Council Members Weiss and Hooper moved that the Council formally receive the Montpelier Financial Review Committee's report.

Ms. Coniff said it would seem to her that especially the Cota report and the breadth of suggestions certainly are not something that they are going to do all of them.

Mayor Hooper noted as an additional example for deferring taking the firm action is because she had asked the City Council if they wanted to consider the way we receive legal advice and they said they wanted to wait until after Town Meeting. That is a very important decision that in effect influences how they behave for years to come.

Mr. Lindley said he was a little stunned that the report isn't going to be in the City Annual Report and they are only going to reference it via the internet. It is 10 pages long. The members of the committee were led to believe that in fact it would be included in the City Report. The Citizens Review Committee report should at least have made the city report. He is very disappointed with that.

Mr. Brewer said he agrees with Jack.

Mr. Lindley said the citizens deserve to see what five other citizens did for work reviewing 400 documents. He encourages the city to get that out to people ASAP.

Mayor Hooper said she thinks inserting the Citizens Committee report into the Annual Report, which is delivered to every house in the city, is something they will do.

State Auditor Tom Salmon said in terms of follow up he thinks it would be valuable to report out in six months or even in next year's Town Report a reference to the progress made in terms of the recommendations.

Mayor Hooper said they will do that on the city's web site and follow the progress.

Gary Schy from 22 Hubbard Street said he read the Cota report, which is a report from a professional CPA firm the city paid \$6,500. If the city doesn't follow it to the letter then why did we hire them? They are not giving suggestions. They are telling you what to do to create fiscal responsibility within the city. He doesn't think they gave them suggestions. They didn't throw things out just to hear themselves talk. He thinks they made suggestions based on sound financial and accounting principles. There are still holes and they are telling the city how to fill them. It's a difficult job; this is a very difficult thing to do. This is going to take time to implement, and it needs to be done. This is what they are saying needs to be done, or else don't hire people to give you that opinion. For anyone on the City Council to second guess the professionals who wrote a report of this magnitude he would suggest when the time comes to make a commitment to follow through with their suggestions.

In the Cota report they said that classifying the overpayment as accounts receivable represented the best way of achieving full disclosure. He is wondering if classifying accounts receivable in its entirety was the best way of achieving full disclosure, or would it have been better to present it on the books in a more user friendly way that would have allowed the reader to better understand the true and accurate picture of the city's finances. Anybody looking at an accounts receivable would not have known what had happened. He doesn't think this is something that would be considered full disclosure. He has talked to Tom Salmon about it, and other CPAs, and their immediate reaction was that this should have been on the liability side.

Mr. Salmon replied that wasn't true.

Mr. Schy said to take the books from 2005 or 2006, or whenever it was put on as an accounts receivable, and ask a CPA firm to take a look at it and give us a report of what is going on with the city. They never would have come up with saying it looked like they had made an overpayment. Did the taxpayers in the budget that was voted on approve a loan of \$462,000 to Scott Construction? A loan is an arms length agreement between two people. You agree on terms and then they agree to the terms of repayment. This was an accident, or a mistake that was then classified as a loan. If it had been designated as a loan he would have thought the city was loaning money. No one loaned anybody money. What you did was negotiated terms of repayment of an overpayment. If he had read the books he would never have known that. An over running principle of general accepted accounting principles is full disclosure so that any CPA or any accountant, or anybody for that matter, can pick up the books and understand fully what is going on.

The Cota report says they discussed this issue with the City Council, City Manager and the Mayor and said because it was their belief that the collection of the \$462,000 was not in question that the city was justified in listing it as an accounts receivable because of its solid confidence in receiving the money in full. However, the explanation by the city government to the people in October as to why they kept the facts about this from the public was because Scott Construction was on the verge of bankruptcy and public disclosure of this could push them into bankruptcy. One understanding was that Scott was so close to bankruptcy that the mere disclosure of this would have pushed him over the edge. On the

other hand, the reporting of it in accounts receivable in its entirety meant you had the full belief that you would collect every penny. He doesn't see how they can have both.

Mr. Salmon told Gary the committee appreciated his input along the way. In the meetings he did not attend those very statements and questions by this committee were both raised and shared. If you look on pages 39 and 40 of Ray Cota's report this committee made it a high priority that he, the CPA hired to do this job, addressed the receivable issue.

Mr. Schy asked if there was ever any reason to believe that the amount would never be collected. The Cota report never mentions the explanation given repeatedly to the public why this wasn't disclosed and the City Council felt it was in the best interest of the city not to disclose this to the public because if the public found out that Scott Construction owed an additional \$462,000 that there could be a run of creditors. That sounds like a company on the verge of bankruptcy and not one that is solid enough to trust that we are going to be paid back.

Ms. Coniff said Mr. Schy opened his statement by saying that this was a solid report by a reputable accounting firm that the Council should accept immediately in its entirety. Then he says he has a problem with one of the corner stones. That is two separate statements.

Mr. Schy said there are recommendations here regarding internal controls. Those are specific recommendations by a CPA firm about our internal controls. This is guesswork about who thought what. This is about reason to believe. This is about beliefs and opinions. That is different than the specific accounting recommendations. The specific accounting recommendations should be taken in their entirety. However, the conclusions and beliefs that are stated here are just that. They are open to discussion, and he thinks they raise some questions.

Auditor of Accounts Salmon said this issue was beat to death by the CPA firm. That work has been done. He is free to call Ray Cota.

Mr. Marro said when they first met back in mid November this very issue was something that we all discussed the first night. Mr. Schy and Mr. Lindley raised it and they talked about it in great detail. As their work continued over the nine weeks they not only charged Cota to look at this but specifically asked the City Manager, the Mayor and the Council Members about this on the 21st, and revisited it on several occasions. He read something from the Cota report on page 39.

Even when Mr. Scott failed to make payments on the promissory note and later ended up filing bankruptcy there were still avenues that the city had available to collect the remaining amount due plus accrued interest. Therefore, at no point in the process – from the time the overpayment was initially discovered until the city's most recent insurance application – was there ever any reason to conclude that the amount would never be collected.

That is the reason and the rationale that Cota uses for saying it falls within acceptable accounting procedures.

Mr. Schy said there is a disconnect. He read the report and respects that Cota has made a decision that it was okay to put it into accounts receivable, and he accepts that. He wouldn't have done that and doesn't agree with that. He doesn't feel it offers the reader the best chance of understanding exactly what happened. He has sat here and listened to all of the Council tell the public that they would have loved to have told them but if they had done so Scott probably would have gone under. There was never any reason to conclude how that money was going to be collected. He agrees with the committee that the City Council acted with good intentions. Cota did not attend the City Council meetings and did not hear those arguments and weigh in on them in the report, so this report is not based on those meeting. He thinks the Committee's work was amazing. The report is professional. The recommended internal control recommendations should be followed and he does agree that the members of the City Council acted in a way they felt was best for the community. All of them are volunteers and give a tremendous amount of their time and he is not trying to discredit the City Council in any way

Council Member Golonka said he wanted to thank the committee members and Tom Salmon for their hard work. One thing he is intrigued by is the establishment of an audit committee. It was a recommendation both in the Cota report as well as the Committee's report. This could potentially give them a way to start the process in terms of implementation, and he is prepared to support that section at this stage and perhaps make a charge for the audit committee to review this and come back to the Council with some further recommendations. He asked Auditor of Accounts Salmon his opinion on the audit committee and how it should be set up.

Auditor of Accounts Salmon said they have been working on trainings across the state on the audit as a management tool and having an audit committee or a group of financially skilled people to give sustained attention to the findings of the audit, or in this case a finding of a special project or a review or agreed upon procedure. Committees of this type can be structured in a very flexible way. They don't have to just be finance committees that look at budgets or audit committees that just look at audits. He thinks a small group putting attention to the internal control environment. Such a committee's charge might include selection through a competitive process or contract an auditor for a contract period because it is sort of the liaison to the auditor. What happens often times in local government because of schedules and volunteerism that sometimes the auditor ends up working very close with management and there is no oversight over the audit process. The key of a small group with a specific charge would be to address the needs of a particular entity, and he applauds them for that.

Mr. Lindley said there is a bill in the Legislature right now that Senator Brock, the former Auditor of Accounts, is pushing forward. They reviewed documents that would indicate that there were memos and conversations between management and the audit firm. In the process that now exists in Montpelier it is very easy for management to influence the auditor and get whatever audit they want to give out. There needs to be something inserted between management and the auditor, and that is missing in the Montpelier system right now. They are dead on in looking at that as an ongoing function that needs to be looked at.

Auditor of Accounts Salmon said one of the lines in the report is periodically this committee review the internal control policies and procedures to insure continued best practices. They are really to follow up twelve months a year looking at the control environment and insuring that there are no findings that are either significant deficiencies or material weaknesses, which is what the Senate bill is all about. It is making sure that those findings get posted on the web site of the town so the citizens know that there are deficiencies. That is a great communication tool.

Ms. Coniff said an audit committee isn't spending its time doing the business of the city; management isn't spending its time doing the business of the City Council; it's focused on purely the fiscal aspects both retrospectively and prospectively and trying to anticipate reducing any future findings. Internal controls are ongoing and constantly need to be tweaked. When she was thinking about having citizens she was thinking about professionals that had the time or were willing to give time along with members of the City Council to form a small group to sit down periodically and look at how things are going and what the status is.

Mr. Lindley said on page 5 there is some conversation about the activities of city officials and the auditors and inserting an audit committee in there would lend a lot more credibility and strength to the normal citizen on the street.

Mr. Marro said the city has an elected position for an auditor and nobody is running for it, or has. This is an opportunity to examine the city charter, get rid of whatever we have that doesn't work and perhaps find an avenue to put something in place that might serve the city better.

City Manager Fraser thanked everyone for participating. He wanted to assure people that in fact the Council as a body wants to weigh in on some of these things. The actual recommendations they have already started doing anyway and many more are already in the works. From a staff perspective they have already seriously begun doing many of the things. They really don't have any influence over the outside audit. It is an independent audit and they don't see their findings or management letter until it is

presented to the city. Certainly, they ask questions but they don't have a say in how it comes out. There is no doubt in his mind that looking back at when this situation came up they might call and say they have something unusual and ask for recommendations on how to best handle it.

State Auditor of Accounts Salmon said across the state of Vermont there is this lack of sustained attention for twelve months related to the audit and then therefore by default the auditor doesn't know who to deal with because there is no living body except management. That wasn't implied in his remarks at all.

Mayor Hooper thanked Auditor of Accounts Tom Salmon and the Montpelier Financial Review Committee for their work.

Motion was made by Council Member Golonka, seconded by Council Member Jarvis to receive the report by the Montpelier Financial Review Committee. The vote was 6-0, motion carried unanimously.

Council Member Golonka moved that the Council establish an audit committee of five members with the initial charge of reviewing the report and come back with recommendations for implementation. There would be an ongoing charge of the creation of sustainability of this committee for the future. Council Member Jarvis seconded the motion.

Council Member Weiss said he wasn't opposed to the motion but opposed to the timing.

Council Member Golonka said if they have to advertise for a position that when they set their committees in early March they will have time to advertise for people.

Council Member Weiss said he would like to see the charge to that committee first.

Council Member Golonka said the charge he is stating in the motion is to review these recommendations.

Council Member Weiss said he thinks they need to take a good hard look at that and he would like to see what that charge would be.

Council Member Golonka said he is making the motion that the initial charge is to review the documents and come back to the Council with recommendations for a long term audit committee. That is his charge. His motion is that the Council establish an audit committee of five members, they advertise for such a committee with a portion to be Council Members to be determined, with the initial charge of reviewing these two documents and coming back to the Council with a recommendation for long term implementation.

Mayor Hooper said she had imagined that very soon the City Council was going to sit down and walk their way through the reports and hear back from the staff on actions that have been taken and have a discussion of how to implement the recommendations that were made. One is to either appoint members of a committee or consider appointing an outside committee. She feels they would be leaping over some of the thoughtfulness the Council needs to be taking in order to understand. She felt that Council Member Golonka's motion was a little premature.

Mayor Hooper called for a vote on the motion. The vote was 2-4, with Council Member Sheridan, Weiss, Sherman and Hooper voting against the motion. The motion failed.

0-038. Full report to the Council by the City's Health Officer concerning operations at the Vermont Compost Company.

- a) The report will address concerns of the operation that have had a public health impact on the neighboring properties.

- b) It is expected that interested parties will be in attendance and request to address the City Council.
- c) The City's Health Officer has signed an ***Agreement Concerning the Winter Receipt of Food Residuals at the Vermont Compost Company's Montpelier Property***. Council Members have received a copy to review, and it is posted as an attachment to this agenda on the City's website as well.

Recommendation: The City Council may wish to give guidance to staff for future actions.

Council Member Jarvis recused herself from the discussion to avoid the appearance of a conflict of interest as the law firm she works for represents Vermont Compost Company.

Mayor Hooper said she would like to receive a report from the City's Health Officer and provide Councilors an opportunity to ask questions. She also wants an opportunity for members of the community to ask questions.

City Health Officer Gesualdo Schneider said he is glad to give this report because he is cautiously optimistic that maybe they have settled at least the worst of the issue. He has had to be fairly quiet and reserved in his own process here and be careful of what he did because this was a very complicated situation. He thinks the LaRosa's were subjected to something they could call disgusting and wrong. He wanted to help them, but one of the primary reasons he had to be cautious is that "disgusting" is not necessarily a health violation; wrong is not necessarily a health violation.

If you asked him for a general conclusion that the primary issue is a property rights issue. The health risks ranges from not significant to low. Evaluating a health risk, especially one like this, was an interesting process. First of all, you always start looking for the rules and regulations. The primary guide they have as health officers is a Town Health Officer Manual which provides a lot of information but he also finds out there isn't a lot of information on some things. To look for a definition of garbage related to the Health Officer rules he had to look in the residential rental rules which does give a definition of garbage which includes primarily food wastes and also gives the responsibilities of both owners and renters in terms of their need to keep the area clean of garbage. However, technically that didn't apply directly to this situation. There was no rental involved. Even if the LaRosas had been renting to a third party he could be citing the LaRosas for failure to keep their property cleaned up if they were trying to focus on the rules.

The other general area in the Health Officer Manual that deals with it talks about solid waste. Basically, solid waste and hazardous waste are Department of Environmental Conservation and the Health Officer's role is usually limited. If the Health Officer feels there is a specific problem with garbage he may get involved with an investigation but the primary concern appears to be the rodent or insect infestations. When they looked back on the residential rules the primary concern about garbage is going to be the rodent or insect infestation of a residential property.

They have to get very good information on something like this any time they do an investigation. This is an investigation that has potential legal impacts on people and you need the best information you can get. At the last meeting and in the newspapers he talked about watching his wife collect 2.5 to 5 gallon buckets a day. It is a picturesque description and probably describes what he was feeling about it, but it is not really an accurate description. Had they held a hearing they would have had Barbara presenting a lot of information to them. She would have testified and been the primary source of factual information concerning this issue, that she was the one most directly related to it. They would have found out that the first complaint was January 8, 2008 and at that time they did make a plan to document the extent of the issue. Barbara would have testified that she decided not to follow the plan and did not want to be a bother to the city. He highly suspects at that time she was not aware of the impact this was going to have on her personally. In April of 2008 the problem increased suddenly. Glenn Moore did go up at that time. He had contact with Karl Hammer and

Karl killed about 100 crows and the problem was significantly lessened at that point. However, the solution of killing the crows was not acceptable either to Karl, the LaRosas or to the community.

In the spring and summer of 2008 there were several meetings and a mediation. Karl made some changes in his procedures in an attempt to move the dumping areas further away from the LaRosa's home. The mediation was tried and failed so the parties were not talking to each other at that point. Then, on December 17, 2008 Barbara notified him the crows were back. They started an active collection process and the amounts he would describe were up to a one gallon plastic bag every day or every two or three days.

By January 9, 2009 based on what he had seen he determined that a public health hazard existed. That is when he notified Karl that he was asking for voluntary compliance from him. In the winter and spring of 2009 he did a significant change in the procedures, and apparently there was a significant improvement. Unfortunately, the one thing he has to hold against Karl was he started in the summer of 2009 to bring back fresh foods without telling him. He just happened by and in talking with him discovered that.

On October 15, 2009 he received notice from Barbara that the crows were back. On December 21, 2009 he had the first notice of food waste from Barbara. Through January 9th she did an excellent job in terms of collecting and documenting, and the amounts that were documented from the area around the house they could describe as a dinner plate load per day on a regular basis that was being deposited, and most of that was fresh material.

On January 11, 2009 Karl changed the process and the situation improved significantly after that. The results of the collection are that it appears to be seasonal, relatively small amounts regularly deposited and a high percentage of that being fresh material. The next step is there needs to be a very careful evaluation of the information to get a clear definition of the problem. A very good example of the importance of the defining comes from the last meeting where Deb Glottman made a very good description of compost piles under every tree. It was a very picturesque way of describing it but it is basically not the situation they faced. He thinks everybody is aware that there is a difference between a compost pile which is piled up 2 or 3 feet high and at least several feet in diameter in which a process is heat and aerobic versus isolated pieces of material on the ground, which is the situation they were dealing with. It was a very picturesque description but they have to be very careful in the definitions they use.

The problem he saw was small amounts of spread out garbage being deposited on the property. He went through the process of trying to evaluate the problem as a health risk. He looked at the importation of exotic diseases and he came to the conclusion that it is virtually nonexistent based on the fact that the food scraps were from meals consumed by humans and there has been no kind of indication of any human disease related to that. Secondly, the food is used for the feeding of chickens. Mr. Hammer has a very healthy population of chickens and healthy egg production out of it.

He tried to consider the disease from local micro organisms, and that they consider extremely low because there is very little to no chance of human consumption. While not of the same material necessarily but similar sized amounts of vegetative and animal material occur naturally and decompose in the yard. The dog and horse waste are probably more serious than the isolated garbage which has been deposited.

Regarding the rodent and insect infestation from the spread out garbage he feels there is not enough food or material concentrated to compose a problem. Visual – yes, it is disgusting looking but it is not necessarily a health issue. However, the accumulation of day after day could rise to a definable health risk. That is why after about 21 days in each case he was willing to say that accumulation of small amounts of food waste around the house represents a level of a health risk that they should not be exposed to.

Health Officer Schneider said he wanted to say a few things about the issues around public health orders. A public health order is a very serious action. This is the only one he has been involved with or has even considered the possibility of having to use one. There have been rats in houses. There have been septic systems overflowing. There was a house on Berlin Street that was full of garbage that needed to be cleaned up. They have never had a situation for a need to consider a health order.

The City Council sits as the Health Board and the first thing the City Council would have to do is review the evidence and determine from the evidence presented to them that a public health hazard exists, and that includes defining what the issue is. They would have to issue an order for a correction. The first step after that they would have to be willing to defend the order if it was appealed in court and he presumes it could be appealed both on procedures and the backs of the evaluation of the evidence that there was gross negligence, or it could be appealed on the means of correction.

If the city has a court order there is the possibility of enforcing it through Superior Court but it is the city's responsibility to pay for that enforcement even though there is the possibility of being reimbursed through the court order and legal fees to be paid. A court order is a very serious thing and holds potential civil penalties and criminal penalties to the person who the order is against if they do not comply. The state does not encourage orders. The state encourages voluntary compliance.

Questions were raised whether he needed further ordinances. Looking at this issue and other issues they have dealt with as a health officer the basic answer is no because he feels this issue is fundamentally not a public health issue but a property rights issue. The second reason that each time the level approached this level he felt was necessary to request it Karl has made changes. He is sorry he did bring back the foods last summer, and this last time he acted on his own before he had reason to issue a finding. He has spent a fair amount of money in terms of building a structure for feeding the chickens and keeping the crows out.

Health Officer Schneider said he had signed a Memorandum of Understanding with Karl Hammer. He did give an acknowledgement that there is a legitimate health concern at some level in terms of depositing the material on the LaRosa property. He agreed to specific actions in terms of the new covered feeding area he is using. He had made a commitment to stop, if necessary, and has shown a willingness to clean up the property that is affected.

He wanted to make a couple of statements to the LaRosas at this time. He apologizes if he appeared unresponsive at times because this is a very difficult process and he has had to act very cautiously. He sympathizes very much with the LaRosas and he felt he was not going to be the person to tell them they had to put up with it. However, they felt that the health risk was obvious; he did not. Overstating the case would have been harmful and led to difficulties for everybody involved. He felt at times that because it was such a complicated issue that the LaRosas were attempting to use him outside of his area of responsibility so he had to be extremely cautious about what he said or wrote to them. He also thinks there is a general perception that Health Officers yield a magic wand with great powers. That may happen in clear cut cases but some cases are complicated with many shades of gray.

Lastly, he thanks Barbara for her patience and work. He hopes she can find peace in the situation. He realizes it will be difficult because he thinks any solution for them is going to involve opening communication with Karl. We have to make peace treaties with their friends and make peace treaties with our enemies and those who have harmed us.

Mayor Hooper said Chief Schneider has made a determination and have enacted a course of action to an agreement with Vermont Compost. If anyone in the community disagrees with that course of action, can Chief Schneider describe what their recourse is to the determination?

Health Officer Schneider said any action they could ask the Council as the Health Board to go ahead and issue an order, but assuming no change in the situations one of the factors they will have to consider is what he told them about his evaluation of the health risk. He suspects someone would have to present evidence specifically stating that his evaluation was wrong and why.

Mayor Hooper said essentially one could appeal his decision to the Board of Health and present evidence that would contradict what he had suggested to the Council.

Health Officer Schneider said for the Council acting as the Board of Health somebody could bring an action but he also has the responsibility having investigated it to present the information. The only place it isn't clear on that is that if it is an emergency order then there has to be a hearing. However, if they are in compliance with an emergency order, which is for a significant health risk, then they can ask for that hearing to be put off until the issue is abated and the person the order is against asks the Council to drop the order at that time.

Mayor Hooper asked if Chief Schneider had made a formal determination that this is not a health hazard.

Health Officer Schneider said he described his process that the accumulation of material after awhile reached a level of a low public health risk. It is not a significant health hazard.

Council Member Weiss told Mayor Hooper she raised a very interesting question. By what authority does this gentleman have the right to enter into an agreement on his own behalf?

Mayor Hooper said it's not by his own behalf but as the City's Health Officer.

Health Officer Schneider said basically this is a voluntary compliance with what he has determined is probably a health issue. He has asked for voluntary compliance from the person and last year it was a non-written verbal communications and a change of policy. This year he has asked for a written statement so we have a little more emphasis behind it. Is it enforceable? He thinks it is enforceable as an agreement as far as any kind of contractual agreement, but the key thing he has established and put down in his own words is we do have a public health interest in the issue.

Council Member Golonka said the Chief said in April 2009 he issued a health order. Would he describe that in more detail? How is that complied with?

Health Officer Schneider said on December 17, 2008 Barbara LaRosa notified him that the crows were back and they started the first collection.

Council Member Golonka said as a health officer did he issue a ruling.

Health Officer Schneider replied no. Twenty-one days later on January 9th he wrote an e-mail to Karl Hammer telling him he thought it was a public health risk – not a significant public health risk but a public health risk – and he was asking for voluntary compliance. That was in January 2009. That was when they changed the procedures in terms of the trucking as well as transporting the waste out to the East Montpelier location. That happened during that winter and spring.

Council Member Golonka said from there he feels those concerns from last winter have been completely resolved.

Health Officer Schneider said the change in process appeared to have resolved the issue for that winter and into the spring.

Council Member Golonka said fast forward to 2010, are those issues resolved?

Health Officer Schneider said he is optimistic that there is a very good chance that his setting up the feeding structure which he developed will resolve the issue. On January 11, 2009 Karl changed his process voluntarily. Before he had a chance to ask for voluntary compliance this year he changed his process of deciding to take the foods and residuals to East Montpelier temporarily while he built the feeding structure for the birds. He has built the feeding structure for the birds and it is in use. Now he is receiving food on the property for the purpose of feeding the birds.

Council Member Golonka asked what can prevent the crows from climbing in like the chickens do.

Health Officer Schneider said there doesn't appear to be a lot of crows around there. There are starlings that have gotten in. He drove up to where he could view the property from Center Road and he observed no crows at all.

Council Member Golonka asked what his plan of action for the next months to insure there is no public health threat.

Health Officer Schneider said he is relying on the LaRosas to inform him if they start to see violations.

Council Member Golonka asked if he had a formal plan for monitoring the agreement.

Health Officer Schneider said the problem is if they receive a report of food residuals being deposited on neighboring lands then they will double check it. He will probably go up because of the interest that people have.

Council Member Golonka said according to the Vermont Town Health Officer Manual listed last February he quotes:

The Town Health Officer is the person responsible for investigating and addressing public health problems in his or her town or jurisdiction. Therefore, town officers have the authority to enforce any of the health regulations in their specific town."

Looking at Montpelier rules, how do you incorporate those? All of our Montpelier rules are 50 plus years old. How do you enforce Montpelier rules as well as public health rules as your role as a Health Officer?

Chief Schneider said as Health Officer he is a state appointee. Once the Council becomes the Health Board you are acting under state jurisdiction and not the city.

Council Member Golonka said on page 5 it lists the relationship of the Select Boards of Health and it is not as clear cut. We are more in partnership in regards to enforcing public health rules, both for the state and the local rules. He is trying to figure out how he interprets both the Montpelier rules as well as the state rules, and how do you enforce that? What type of Montpelier rules should we change to make the Chief's role a little easier? Our rules seem to be archaic and don't seem to be very helpful.

City Health Officer Schneider said they have to understand that probably the local health rules have very, very limited impact because of the fact that the state drives so many of these things. You could make the Montpelier rules more stringent but you would have to be very careful in terms of what we are defining. This is why he talks about the definitions. Technically, as you look at Montpelier rules they may not allow a single compost pile in the city, and they may not technically allow any of those green composters in the city. The state law supersedes local law in so many different areas that we would have to be very careful. We would really have to have a specific reason to deal with a specific health hazard. The state probably covers most of the issues. In fact, the state is dumping a lot of issues on to the local health officers. For the stuff they run into that

are clear cut health issues there is no problem or difficulty. The real problem here is that unfortunately it was not a real health issue.

Council Member Golonka said he would like to see how they can avoid that rising to that level again in the compliance efforts over the next six months other than relying on citizens to call and complain.

City Health Officer Schneider asked if they were talking about Vermont Compost, which is a very unique situation, or are we talking about trying to make a general ordinance out of it. It would be difficult to define in any clear way what was going on in the Vermont Compost situation. It isn't littering in terms of somebody dumping the garbage on the neighbor's lawn, which is clearly illegal under the environmental conservation laws. It questions technically whether or not it is garbage because it was not being used as garbage; it was being used as food and accepted as a food. It was garbage for some but became food for others. In fact, it was the crows that were transporting and not the Hammers who were dumping it on the neighbor's lawn. There are a lot of real technicalities that had to be reviewed. It was compounded by the fact they had the chicken issue. The chicken issue was resolved and Mr. Hammer spent a lot of money on fencing. The dog issue was settled at the state level in terms of the ordinance related to working dogs. The zoning issues are basically settled. There are a lot of other issues that were not health related. Unfortunately, when he looked at it he had to be very careful to stick with the one thing he felt that could work. Scattered garbage on a property by itself is not a health issue. In order to say it is a health issue it has to be ongoing and accumulating over a period of time.

Mayor Hooper said she is hearing questioning around both the specifics of this issue and in general about how we make our laws work more effectively for our community and to protect the interest of our community. There may be additional questions that Council has and other folks may want to address the City Council on the specifics. We know there are archaic items in our charter that they need to address and changes in the ordinances we need to address. If she understands Chief Schneider's testimony correctly, he carefully went through all of the laws and ordinances that were available for him to consider and could not find a way to address this other than through our health ordinance. He reached a voluntary compliance agreement and now there will be some questions about how effective that will be in the enforcement of that. The Health Officer from the Town of East Montpelier is present, Dave Grundy, and perhaps he would like to add something.

Mr. Grundy said given the history of this situation with Vermont Compost agreeing to do certain things and then over time that doesn't happen, we now have a written agreement. Why does he have confidence that this written agreement will work?

City Health Officer Schneider said he is trying to solve a problem that he considered was wrong and he is trying to solve it in the most effective way possible. He believes Mr. Hammer has been responsible. He believes Mr. Hammer took a beating when the e-mails were going around with the pictures of the material that was being spread. He also has been cooperative. He has spent a lot of money and made changes. Yes, he was personally disappointed he brought back the food, but after he informed him he also permitted it to happen.

Steve LaRosa, a resident of 2012 Main Street, said he is going to take the liberty to talk for a little while to address some of the things he has heard tonight and to address the agreement that Vermont Compost wrote for the city to sign. He thinks he is speaking for himself and his neighbors that they are not against composting. They have no interest in seeing Vermont Compost close and no interest in seeing Vermont Compost have to become no longer economically viable. They provide a great product. They are doing some great things for recycling for this city and entities around it. However, they do want that operation to function in a manner that is appropriate and doesn't have impact on the neighbors.

Specifically regarding food waste, they are paid and contractually obligated to treat and deal with food waste. One person's garbage is now someone else's food, but the bottom line is it is waste. It

is waste that is managed by the Solid Waste District. They have a contract with every entity that he knows of and Vermont Compost. They are obligated to taking that money and accepting that waste, or just accepting the waste without any restitution or taking any money. He would be happy to make lots of money by taking all of your food, piling it in his yard and leaving it for whatever happens with it. It can run down the stream; the animals can come and grab it. It can do anything because apparently that is acceptable and it is not a health hazard. All of the restaurants in Montpelier can pile their food waste behind the building on their property and leave it forever. They never have to have it picked up because that is not a health hazard, especially if they can spread that food as far as possible because dilution of that waste makes it no longer a problem. If we spread it out to as many people as we possibly can, spread it throughout enough area, if there is only a little that no longer is a problem.

Landfills have to cover their waste every single day. They have to pay tens of thousands of dollars to control birds and other vectors that take the food waste away. Birds don't go to landfills, and skunks and rats don't go to landfills to take old pieces of drywall or plastic bags away. All of those regulations exist because food waste is a health hazard.

He has worked in the environmental community for 22 years. Food waste is a health hazard. When you take waste into a facility and accept it, it is your responsibility to keep it and treat it and not have it migrate away from you. The laws are very clear on this.

The other thing he wants to get out is he understands that the Council Members don't believe there was much volume they were recovering, but he will point out that they never came to their house this year and saw what volumes of food were being recovered. The pictures they sent that had the brown paper bags that everyone got, those brown paper bags they took the pictures on are 2' x 2' square and were completely covered with food waste day after day after day. That volume is not a plate full and it is not some rosy imagination that he or his wife had brought up to try to exaggerate the situation. There is nothing he has to gain by exaggerating the situation. He is personally offended and extraordinarily upset with your representation of what we have provided for five years to this Council, and what his neighbors are now looking at and deal with on their properties as some sort of imaginary impact they are witnessing.

Mr. LaRosa went on to say that Chief Schneider has been in a very difficult situation trying to deal with this. He understands it is very difficult to understand what one can do and what one can't do, but it certainly seems to him from being near the industry this is a pretty clear cut case. When one takes in food waste one has to actually keep control of it. Letting it escape from the property, be it by birds, runoff, or any other method, is unacceptable.

He said he would like to address the agreement that has apparently been entered into by the city through Chief Schneider. The last time he was here his biggest concern was the timing and what level of enforcement could there be. He understands the Health Officer is not in the punishment business, but the word "officer" does imply enforcement. In #6 it is indicated that Vermont Compost Company shall cease receiving all food residuals immediately and shall work with the City Health Officer to alter and establish new practices with this agreement if the Health Officer receives indications that there is off site deposition of food wastes. The next sentence says if the Vermont Compost Company has a reasonable basis to believe that its food receipt practices are not resulting in the deposition of food in other areas they can keep doing whatever they have been doing. In other words, no matter what happens, no matter what we generate, no matter what the Health Officer believes, if Vermont Compost believes that it is not really their food waste and it hasn't anything to do with what they are doing they can keep on doing what they are doing. This agreement actually provides them with less rules to follow than what they are doing right now when Chief Schneider says to please stop taking food waste. There are no teeth with this and it basically does not provide any enforcement, any timing, and any definition of how much waste is too much waste and how long does it have to happen. How long does Vermont Compost have to deal with this? Do they actually have to give a formal plan or say verbally they will try out something else? It

does nothing to insure that Vermont Compost will not allow their food waste to migrate off the property.

He agrees that the new building they have put up and what has been implied may very well get us to where we all want to be, but if it doesn't there is nothing in the agreement that will make them have to do anything else. As for spending money and trying to do things differently he agrees that Vermont Compost has done some things. They have never stopped taking food waste to his knowledge without Mr. Schneider indicating that they cannot. In the most recent instance before they started building this building it is his understanding from the e-mails he received from Ges that after the 20 plus days indicated they needed to stop taking fresh food waste until they came up with a plan which resulted in this document. He believes they were requested to stop taking the fresh food waste. Chief Schneider allowed them to start taking fresh food waste prior to the building being completed because it got cold out in February in Montpelier, Vermont. Vermont Compost as it was indicated to him by Ges said it is a dangerous time when it is cold out for the chickens and they must take food residuals in to feed them despite the fact they had no plan provided to Ges and had not built this building or any of the things they were obligated to do in accordance with what the verbal agreement was. Ges allowed that to happen. He could do that with grain, hay, organic grain, or many other alternatives other than taking in food waste with it uncovered which has caused this problem for the last five years. He worries that even if there are some ways to negotiate in this agreement that there is not a willingness to enforce any of these issues to make this stop happening.

They very much hope this will take care of the food waste being distributed around the neighborhood. They aren't the only property; they are the only occupied property. Now that they have cut down all of their trees they have neighbors on other properties that are seeing it, too. The crows don't just come to their house. Take that and multiply it by 5 or 60 degrees of the flight path around this place and that is how much material is immigrating off this property.

Deb Glottman from 210 Center Road in East Montpelier said she would like to take a moment to reflect and appeal this decision and agreement. Once again, here we are as the LaRosas have been for five years. She does not plan to do this for five years, but without the city's enforcement the LaRosas past and present is her future. On January 13th Chief Schneider ordered the Vermont Compost Company to stop taking in food waste until he built a structure. Within 24 hours of no food waste they had zero crows – cause and effect. January 28th, a little over 14 days later, there is a cold spell in Vermont and Mr. Hammer calls Mr. Schneider and says he needs the food waste to feed his chickens. Without suggesting that Mr. Hammer feed his hens grain and hay like the rest of us Mr. Hammer is obliged and food waste is returned. Amazingly enough, the crows return. Not nearly in the droves they were but it only takes one crow to drop food waste. She understands that Chief Schneider doesn't have to report to her but he does report to City Council and his citizens. Usually, a victim of a crime gets to hear what his or her offender will be faced with. Vermont Compost Company's neighbors are victims of VCC's poor vector management protocols and the city's lack of reinforcement of its ordinances, laws, actions, etc.

There are no consequences listed here if the Vermont Compost Company does not comply. The Vermont Compost Company has proven time and time again that it does whatever it wants, whenever it wants and however it wants. In fact, it has proven it over and over again for the last five years, and that is why they are here before the Council again today. It takes months to have problems get through the appropriate channels and dealt with, even though they are the same problems for the last five years. The city should be ashamed that this has gone on for as long as it has. Other citizens should be outraged that this much time and money has been made to be spent on getting along in a sandbox issue.

It is on his neighbors to prove his negligence. She respects what Chief Schneider has to do and is very happy she doesn't have to do it. Every day she appreciates his efforts in his job, but your lack of conviction, especially in this agreement, on resolving this problem with true and real resolutions brings her to be completely and totally disappointed in his position, not necessarily in him. She wants to know how a soft loop hole filled document like this can get signed before the City Council

reviews it. How can he think this can make a difference, knowing what he knows about Vermont Compost's prior inactions?

She pointed out some highlights. Page 1, the 2nd line –

“Vermont Compost Company’s operations have over time included a poultry operation which relies on source separated community food residuals from residents, businesses, schools and institutions in and around Montpelier to feed its flocking of laying hens.”

Vermont Compost Company relies on food residuals to feed its laying hens. Let her translate. The city and others pay the Compost Company to take food waste, then they sell the eggs, and then their food waste yield and sells compost that the food waste either became initially or after it has gone through the chicken. So far she only sees the Vermont Compost Company winning here. So what if a little, or gallons, of garbage ends up on his neighbor's lawns? You pay him to take the waste. He makes her neighborhood into the city's landfill, and then he profits from his eggs, his compost and their tax dollars.

Lastly, on page 3, paragraph 1 –

“Vermont Compost Company and the City should do no such thing as reach a reasonable series of protocols and procedures toward a common end of stopping transport of fresh and recognizable food residuals by wild birds.”

They should reach unquestionable, unavoidable, indisputable solutions that are upheld by city officials. That is more of what an agreement should have said. Five years of wasting everybody's time. “During the scope of this agreement,” which is on page 3, #3, implies that there is a time when this agreement will no longer matter. We should never again have a piece of chicken carcass on our lawns. Is that a wrong statement? Is there a season that other citizens welcome chicken carcasses on their lawn?

The Vermont Compost Company should be held liable for any morsel of food, period! He gets paid for it. Therefore, he owns it and is responsible for it. You, as a City Council need to mandate that a new document gets signed that actually holds the Compost Company responsible for constant infractions. Please just fix it with some conviction, with some consequences once and for all.

Andre Gilbert, a resident on 30 Center Road in East Montpelier directly across from the LaRosas, felt Steven LaRosa made a very compelling argument for the fact that the food wastes that end up in their yards is a health hazard. The Health Officer said he disagrees with that. In his mind these discussions get into esoteric definitions of what is garbage and what is food scrapes, but it seems like a very simple issue to him. The Vermont Compost Company's stuff should not end up on their properties, and he thinks the town needs to do something about that because it is ending up on their properties. The LaRosas have been the most vocal about it, but he finds food scraps on his property. Many of the Council may be familiar with the LaRosas complaining about the dogs ingesting food scraps and getting sick. His wife had to pull a mussel shell out of their dog's mouth a few weeks ago. If he had swallowed that it could have been another esophageal tear, which is what the LaRosa's dog suffered. The food scraps are ending up on their properties, and something needs to happen. Whether it is deemed a health hazard or not the town needs to do something about it.

The Health Officer in his own words said it is wrong and it is disgusting what has been happening to the LaRosas. He said at one point he didn't feel that it was littering and hopefully he received an e-mail from him last week detailing the fact he does think it is littering. There is a Vermont state statute on littering, and it says “Littering is permitting to be thrown or deposited noxious things.” He thinks that by allowing the crows to take the food scraps and deposit them on their properties is littering, and it needs to be addressed.

Dan Richardson, an attorney representing Karl Hammer and Vermont Compost, said he wanted to speak on a couple of legal issues that have been raised. He would encourage both sides of an agreement to consult their attorney and not to enter into something that neither side wants. An agreement or contract is often called a meeting of the minds. This agreement doesn't lessen Vermont Compost's responsibility; it doesn't create an out. It creates a series of obligations that are meant to address the issue.

Public health issues are all about mitigating and getting compliance. They are not punitive. If you speed you get a ticket and pay a penalty. If you look through the statutes about public health it is really about getting people to comply. What this agreement is trying to do, and it was based on language from the city as well as Vermont Compost's input, is to get an agreement and a protocol together so going forward it is everyone's hope that the actions have been taken will solve this and they are not here next year. We need to address the problem now. This agreement creates a very quick way of working with the problem should it happen to arise again. That is really in paragraph 6, and he encourages them to read paragraph 6 as the language was written and not necessarily as it was paraphrased.

Council Member Golonka asked Attorney Richardson if he had interacted with any city attorney or just the Fire Chief.

Attorney Richardson said his primary contact was with Fire Chief Schneider.

Council Member Golonka asked Chief Schneider if any city attorney had reviewed the agreement. Chief Schneider replied they had not.

Attorney Richardson said paragraph 6 talks about what happens if there are new complaints. If the City of Montpelier's Health Officer receives complaints concerning the depositing of fresh and recognizable food residuals on properties neighboring the Vermont Compost Company's Montpelier location, such that he determines a need to assert his public health authority he shall notify the Vermont Compost Company of the complaints. The Vermont Compost Company shall cease receiving all food residuals immediately. That's immediate and not a due process, not an argument, not an excuse – notification and cessation – and shall work with the city's Health Officer to alter or establish new practices in accord with this agreement. We are talking in this agreement about two very specific practices that Karl and Vermont Compost have agreed to be bound by. These food residuals aren't being composted when they come in. They are to feed the chickens. Any food residuals that are received beyond what is needed for chickens have all been diverted to the East Montpelier site in Vincent Flats, and that hasn't changed since last year. There are two practices. One is that it goes into the greenhouse and the other is that it is buried deep enough by definition that wild animals can't get at it. If a wild bird is digging and able to get the food, then by the definition that is not deep enough. Under those two very specific practices if there are complaints, and there is a cessation first of all but they have reason to believe that the greenhouse is working, the covered shelter that has the netting on both sides that doesn't allow wild birds in is not the source of the problem but the other practice they need to change. In consultation and agreement with the Health Officer they can resume that. It is just a logical process. It doesn't give them any additional rights. It doesn't give them a unilateral power to do this. It is simply a logical way in which a poultry agricultural operation is based on the idea of taking community food residuals and using it to feed chickens, to raise them and survive, and resume that practice as it was founded in 1996.

This whole process began in 1998 when the Agency of Natural Resources gave a grant to Vermont Compost to raise a thrifty flock that was fed off of food residuals. It is a model of agriculture to do this kind of feeding to raise chickens. It is sort of the whole purpose and point. It is not the intent of Vermont Compost to create loopholes but to comply and be a good neighbor, and to act as you would want someone to act in this position responsibly and proactively. This is the kind of thing that when something happens there is action taken. It voids the process. There needs to be an agreement

on the table so there is a process in place so it stops as much as possible. If something happens there will be a procedure in place so it works.

Council Member Hooper asked what the value of an agreement is without saying what happens with a breach. There is no penalty.

Attorney Richardson said this agreement is entered into voluntarily. It is not a coercive agreement. For example, sometimes in litigation you have to make the parties comply because they are not willing to. There is a good faith and fair dealing clause that is implied in any contract that says the parties enter into it with good faith. They don't cross the fingers and intend to break it. What Vermont Compost has done all along is honor its word. It has done what it has said. What this obligation says is they are going to take food in a very specific way. If Vermont Compost was to behave in a manner that wasn't in accord with this agreement, would there be an immediate penalty? Not under this agreement, but he thinks that opens up a whole new world and window because then if they are not in compliance with this agreement that is evidence. They have every reason to comply because nobody wants to be here in the sense that nobody wants this to be a continuing problem. Vermont Compost has never demonstrated that they are bad actors or are dishonorable. Chief Schneider testified that they have complied and been cooperative with the city to the best of their ability on a complicated issue.

Council Member Sherman asked what happens if Vermont Compost believes that the food residuals are unrelated to its processes but others disagree.

Attorney Richardson said it puts the decision in the hands of the City Health Officer. It is his prior approval. He presumes that Chief Schneider is not just simply going to say that is right but look into it in greater detail. He becomes essentially the gatekeeper.

Council Member Sherman said they don't need of any other sources for the residual food that is happening in the area.

Attorney Richardson said there is a question about where it comes from.

Council Member Weiss told Attorney Richardson had hit the nail on the head with his word "gatekeeper." That has disturbed him quite awhile. You made reference to page 6 on line 4 that the Health Officer determines the need to assert the public health authority. He would like to delete that reference.

City Manager Fraser said he is curious what Vermont Compost's view is. They have heard the neighbors testify that they are paid to take the waste and it is their responsibility to make sure it happens. Is that an instruction that Vermont Compost is doing?

Attorney Richardson said Karl could answer that. He simply represents them legally.

City Manager Fraser said it is a legal question. It is their waste so it is their responsibility to manage it in a way that is responsible.

Attorney Richardson said once it is on their property it is completely their responsibility. That is a mixed question. The idea that it is on their property, yes, there is a certain argument to be made about the fact they have taken it on and have a responsibility and an obligation to deal with it. Then you get into questions about strict liability, which is much more of a legal question, and to what extent is managing it and to what extent is taking care of it and taking reasonable measures. If you have a bush in your yard and somebody walks by, decides to cut across your yard, trips and falls in the bush and impales their arm that is your bush. Or, if the bush breaks in the wind and goes through a neighbor's window and is taken by a force out of your control. Are you responsible for your neighbor's window? It's your bush. That is what the law is about and litigating responsibility and taking reasonable steps and reasonable actions for it. He doesn't think Karl or Vermont

Compost is taking a position of how that all got there. Clearly, they are bringing these source separated food residuals and mixing them with other materials and using it to feed the chicken flock and taking, as they understand it, reasonable action to control it and stop it from spreading. As there are problems they take new steps to manage it and control it. Is there some kind of strict liability? For example, with dynamite you are strictly liable. He is unaware of any case law that would support the management of community source separated food residuals, but it is a matter of reasonable management. Once it is on his property there is an obligation to manage it reasonably, and this is what this agreement touches on in part as well as his general practices. There is a general obligation to take care of stuff on your property within reasonable limits.

Barbara LaRosa, a resident of 212 Main Street, said one of the things she wants to remind City Council is that this has been going on over a long period of time. She does want to appeal this legal contract because she has a lot of issues with it. One of the things she wants to make clear is that if they report a problem it has always taken a great deal of time to get to this point in the past. She also wanted to point out that this is an issue of respect of boundaries on their property, and in the past it has always taken us enforcement to gain that respect of their boundary, whether it be the food waste issue or other issues they have had in the past and currently still have. She is a true believer that past behavior is a predictor of future behavior. Agreements have been broken in the past.

Mayor Hooper said if she wished to appeal the agreement, it is her understanding that she may do that and they need to receive that in writing.

City Manager Fraser said he could help them and give advice on how it is done. The Council would conduct a hearing as the Board of Health and receive testimony with which to make a decision.

Mayor Hooper said that is a right accorded to her through the City's Health Board. This is unusual for all of us in terms of what the Health Officer's authority is and what the Council's relationship is and their direction. She was interested to learn that we had not had the city attorney review this agreement and she would like to have that happen. She suggested the Council's interest is in not having this ongoing discussion and having to spend our staffs' valuable time trying to reach settlement. Alan has suggested we not act as a gatekeeper on this issue.

City Manager Fraser said if there is going to be a hearing and they are going to be acting in a judiciary matter they might want to be careful about what direction they are going in and what outcomes might occur.

Council Member Golonka said he is very concerned that there has been some type of agreement without any type of legal counsel for the City of Montpelier. He thinks that is unacceptable. Secondly, as a Council we need to determine ourselves what relationship between the Select Board and the Board of Health and the Health Officer is. There are a wide range of examples in the state of Vermont that the true role should be somewhere in the middle. We don't give the Health Officer complete authority and yet you don't have to approve everything from the Select Board side. He thinks they need to have a discussion from this board in terms of what is our role and how we define that going forward so that Ges isn't the only one out there as the Board of Health because we are working in concert with one another. He would like the Council to define the role at some point. He doesn't accept the agreement because it hasn't been reviewed by our attorneys, and he would never accept it without that review.

Fire Chief Schneider said the important thing on the agreement is the language is fairly clear. The language is very clear and it does everything he had sent them in the e-mail asking him to do so he feels very comfortable signing it as a Health Officer to present to the Council.

Council Member Golonka said but he isn't an attorney, and that's his point.

Mayor Hooper said she would suggest this gets to that interesting place with the Council's role as the Board of Health and the Fire Chief's role as the Health Officer and what our relationship is with it. Generally, we need to be better trained. In the meantime she presumes the agreement stands.

Council Member Golonka said he wouldn't agree with that.

Mayor Hooper said in the meantime they will seek their attorney's advice.

Council Member Golonka said it states here that in some towns the Select Board gives the Health Officer the freedom to act on his or her own whenever a situation calls for it. In other towns the Health Officer acts only after the approval from the Select Board. We have never defined what our role is. We have never given him complete authority. In five years he has never seen the Council give any authority in that capacity. Until this is defined he would say that this agreement should not be entered into.

Linda Leonard, a Court Street resident said she is speaking as a citizen. First of all, the Health Officer has determined that there is no public health problem here. Secondly, Karl Hammer has built a structure to hold the food waste so the crows can't get at it. It seems to her that the problem is the crows coming and dropping food waste on the neighbors' property. It sounds like that has been taken care of. Montpelier was selected as the Greenest Capital City in the United States last year and she is very proud to live in the most environmentally aware capital in the whole United States. We are a model for the whole United States. Part of what makes us so environmentally ethical in leaders is having Vermont Compost in our town. All the kids in town put their food scraps in the compost receptacle and they know it gets fed to chickens. They can see it is a cycle and part of our sustainable agriculture we are promoting. I'm proud to live here and be in this town. With all due respect Vermont Compost was here before the LaRosas moved in next door. They moved in next door to a farm and then they decided maybe that was a mistake. It's stinky and smelly. Chickens wander on to their pasture. It's a hassle.

Gary Caccaso-Besen, a resident on the Center Road in East Montpelier, said in regard to the last lady's statement he has been there his whole life. That was a working farm, and he actually used to work that farm. Never did they drop anything on the neighbor's lawns. He doesn't know what source separated waste is. If it is meat and it is being dropped on your property the Chief said it was a low health risk. If it were different people, would it be a higher health risk? He doesn't understand what a low health risk is. Do you only get a little sick?

City Manager Fraser said they may be holding a hearing on this when they will be taking that kind of testimony.

Mayor Hooper said the City Manager has correctly suggested that we may be getting into that area of conducting a Board of Health hearing which they need to warn and do properly and not jeopardize anybody's right to due process. With that she isn't going to take any more comments from folks in the audience. They have asked to have the agreement reviewed and will get a report back. There is a course of action that is open and available to any one who is aggrieved by the decision of our Health Office. The City Manager has suggested that he would be happy to help people understand what the process is. She is going to close this portion of the Council meeting. It's so extraordinary to sit in a room with 25 or 30 people who feel very, very strongly and have dealt with an issue over a very long period of time on all sides of the issue and listen to a respectful, thoughtful appropriate discussion when passions are running high. She is deeply grateful to live in a community where people can talk about these sorts of issues in such an appropriate way. She is sorry they are continuing to have to have this conversation.

Council Member Sherman said she understands the agreement is in effect.

Mayor Hooper said there is a difference of opinion on that so they will seek legal counsel.

- 10-39. Consideration of accepting a “challenge” from City of Barre officials relating to conducting a food drive on Town Meeting Day; it appears the winner will be determined by calculating the pounds of food per registered voter who participates in the March election. Barre Town and Berlin have also been asked to participate.

It was reported in the paper that the City of Montpelier has been issued a challenge of conducting a food drive on Town Meeting Day. Does the Council want to participate in that?

Consensus of the council was they would conduct a food drive for the benefit of the Montpelier Food Pantry. It was unclear whether they were going to participate in the challenge.

- 10-40. Reports by City Council

Council Member Hooper reported they had an EC Fiber meeting last night and they aren't going to award us our \$17 million dollars. The good news is two major investment banks have said they could sell our COPS (Certificate of Public Operating). We could probably get 6 percent municipal money.

Council Member Sherman reported that tomorrow is a candidate's forum at 6:00 P.M. with the Mayoral candidates talking and Council candidates are on at 8:00. Nat Frothingham said the forum starts at 6:00 and will go on for about an hour and a half. Then, at 8:00 there will be an hour with the candidates for City Council.

Council Member Weiss reported a long while ago a Montpelier City Council in conjunction with Barre City, Barre Town, and Berlin appointed representatives to a public safety committee which is being organized by the local Central Vermont Chamber of Commerce. Last week that committee came close to finalizing a draft of its report and the Council will be receiving copies of that report. There is a meeting for Council members and others from the four communities scheduled for March 18th at the local Chamber office. The Council will receive formal notice of that. They are making progress. Mr. Golonka will be one of the presenters along with Mr. Sheridan. He is annoyed at the Montpelier City School Board. First of all, they were supposed to have made a presentation on or before the 15th of February and they haven't complied with that. But he is more annoyed by the fact that at their meeting on January 20th they voted unanimously to approve the Recreation Department budget in the amount of \$800,000 plus. When they came to the Council they were only asking for \$605,000. The question they have a right to know is where they are getting the other \$200,000. If they are getting it from a reserve fund, then why are they advertising only \$605,000 when they are going to spend \$812,000? There is a whole accountability issue here.

Council Member Golonka reported he serves on the school consolidation committee and they had a meeting the other day. More concern to him with the Recreation Department is that it is an orphan department he doesn't believe is being monitored and he agrees with Council Member Weiss. The issue that is going to come up is what happens with the Recreation Board in the future if there is any type of integration? He sees it as time for the city to take that back and he will be proposing that.

- 10-41. Mayor's Report

Mayor Hooper reported on recent activities of the Wood Art Gallery of which she is a de facto member by their charter. It has been struggling. In the last two months she has been really pleased with them finding its feet and its direction and she is looking forward to them coming in fairly soon to talk with City Council about its new philosophy of how it is managing itself and collections of which the city has an interest because they were given to the people of the City of Montpelier.

10-42. Report by the City Clerk-Treasurer

City Clerk-Treasurer Hoyt reported the ballots are in so people who want to vote early or who are going to be away can vote. There is a Board of Civil Authority meeting on February 17th at 6:30 P.M. Also, people should check the checklist to make sure they are on the checklist and at the right address. She has found a lot of people have moved around town and we don't have them in the right voting district. She is going to try to get the checklist on the web site so people can go to check their addresses. Taxes are due on Tuesday, February 16th.

10-43. Status Reports by the City Manager

City Manager Fraser said they continue to watch the river. There will be more update next week. We are seeing more open channels so that is all good news, but we do have similar characteristics in freeze-up situations. They are watching carefully the traffic action at Taylor and State Streets where the bridge construction is going on. They have received a couple of complaints already. The Police Chief has raised an issue about access for pedestrians.

10-44. Agenda Reports by the City Manager

None.

Mayor Hooper said the Council had been in Executive Session as part of the Manager's Annual Review. She asked if they wanted to continue the executive session or wait until the beginning of the next meeting.

Motion was made by Council Members Jarvis, seconded by Council Member Hooper for the Council to return to Executive Session at 9:40 P.M. under Title I, Section 313, Subsection (a)(3) of the Vermont Statutes to consider the evaluation of the City Manager. The motion was passed unanimously on a vote of 6 to 0.

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

After motion duly made and seconded by Council Members Jarvis and Hooper the Council came out of executive session in accordance with Title I, Section 313, Subsection (a)(3) of the Vermont State Statutes where they had conducted the City Manager's Evaluation and Employment agreement. The vote was 6-0, motion carried unanimously.

Adjournment:

After proper motion the council meeting was adjourned.

Transcribed by Joan Clack

Attest: _____
Charlotte L. Hoyt, City Clerk