

On Wednesday evening, October 21, 2009, the City Council Members met in the Council Chamber.

Present: Mayor Hooper; Council Members Sheridan, Sherman, Jarvis and Hooper; also City Manager Fraser. Council Members Golonka and Weiss were away. Council Member Golonka was connected by speaker phone.

Call to Order by the Mayor:

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

09-261.

City Council consideration of comments received regarding City's and Council's response to Scott Construction overpayment; consideration of City's system of financial controls; establishment of plan for addressing issues.

Mayor Hooper said the purpose of the meeting is for the City Council to consider the comments which have been received and to have a conversation about how the Council would like to proceed. Since the principal focus of their conversations have been around the city's financial management systems she also asked the City's Finance Director to give them an overview of the City's financial management systems. There have been a lot of conversations about how could this have happened and what have we done to rectify the situation. That is a small portion of our financial management system.

There is some other business associated with this. Her colleagues being good taciturn Vermonters have said but perhaps it hasn't been abundantly clear that we were, we have been, and we continue to be appalled by the magnitude of the error that was made and have been working as hard as they can to rectify the situation. This is a problem the Council took very seriously from the day they learned about it. She thinks there is the notion out there that we are not going to be able to recover the funds that have been lost to the City of Montpelier, and that is not necessarily true. They are pursuing every option available. We no longer believe that we have an option to recover it directly from Scott Construction, Inc., but there are a variety of other options they are pursuing. She said last week they have referred it to the State's Attorney. They have been pursuing insurance options and are continuing to pursue those. They are will not leave any rock uncovered. There has been a lot of talk about how to make the water fund whole. To date, the people of Montpelier have not paid for this mistake because the city has been carrying it as a liability which is due to the city. They now have to move it to the other side of the books, but no one is paying for that liability yet. It is going to be some time before they see that, if they ever see it in the water rates because they are doing everything they can to recover the money. They are not done with that yet and she feels it is important that people understand.

The other thing she wants to talk about is that there has been the speculation that the Council has been covering up its actions. She appreciates that folks can see this in different ways, but moving backwards from now when they address the question of the records they would like to release the press, that when they became aware that the city's options against Scott Construction, Inc. were at a dead end the City Council and the City Manager made plans to put the discussion of this problem on the agenda for the meeting of October 14th. She really looks forward to having the discussion about the appropriate use of Executive Session and when you should or should not be talking about matters in private. If you look at the documents which have been publicly available since the date they knew as a city about this problem, they will see conversations about going into Executive Session to discuss Scott Construction, Inc. They have also carried it in their financial statements. She understands that folks want them to have a bigger discussion of that in the public. She wants to be clear that it has been carried for some time in public documents for all to see.

One of the things they are going to deal with right away is the issue of when it is appropriate to go into Executive Session. The Times-Argus carried a box today saying that the ACLU and Common Cause have been invited to this meeting. That was a misunderstanding. She spoke with the Executive Director of the ACLU and told him the Council would like to have a presentation on the issue of open government and Executive Sessions and told him they would be in touch. The Council needs to make a decision about when they would like to do that. She would like to do that at a special meeting as soon as possible. There are people who know these issues who can help us understand what they have been doing and if there are ways they can do it better.

When the discussion of the issue of Executive Session came up, the City Manager prepared a memo which summarizes all of the Executive Sessions the Council has had and there is a guide to open meetings produced by the Secretary of State's Office

The city has been asked to release a variety of documents to Seven Days. The city's staff does not have the authority to release some of the documents because some of the documents are privileged communications between our attorney and the city, and the City Council is the only one who can release those privileged documents. There is another set of documents they have asked for that is already public record and they are releasing those, too. She is going to ask the City Manager to walk the Council through what they need to do. We need to handle this very specifically because there are ongoing issues that we need to be able to address. They need to protect their ability to have conversations with our attorney about pending legal matters.

City Manager Fraser said the city's goal is to get as much documentation out as possible. The request they received was simply for communications between the Mayor, himself and the Council. He has prepared three groups. One is that particular group of all of their communications with Scott Construction, Inc. The other is the information the Mayor spoke of which is information that has been available all along, the Council minutes, Council agendas and the legal memo he prepared for the City Council and the meeting. They have spoken to their attorney. As the Mayor mentioned, there are additional recovery efforts and they don't want to do anything that would violate attorney/client privilege with regard to those issues going forward. However, anything involving Scott Construction, Inc. they will disclose the basic facts. There is already a court judgment in the city's favor. The information of what led to that is certainly not going to change any of the tactics the city might have so he asked the City Attorney to prepare motions that allow the Council to waive their attorney/client privilege to release all of the documents from things in the past while still preserving any privilege they may have going forward in terms of ongoing or still to be resolved affairs. This allows them to give the public every document they have to date on this case. The plan is to release it on the city's web site by tomorrow so it will be available to the entire city.

Mayor Hooper said there are three sets of documents that the Council wants the public to have. There needs to be motions on each set of documents. The City Council has a memo describing what the three sets of documents are. The first group contains correspondence between the City Manager and Scott Construction for the period beginning when the overpayment was discovered in October 2006 through the time the city commenced legal action against Scott Construction in the spring of 2009. Since commencement of the suit there have been no further communications between the City Manager and Scott Construction. These documents deal with the city's efforts to negotiate the initial and successor agreements with Scott Construction to obtain payment. They are exempt from public disclosure and in another statute section they are exempt from records that are relevant to litigation. That is what they are saying is okay to disclose to the public.

Motion was made by Council Member Hooper, seconded by Council Member Jarvis that the Council waive the protection from public disclosure afforded these documents under 1 V.S.A. Sections 317 (c) (14) & (15) and authorize their disclosure. The vote was 4-0, motion carried unanimously.

Mayor Hooper said the second group of documents they want the public to have is the weekly memo that the City Manager prepares for the City Council. They have always regarded this as a public document. If you came into the Manager's Office and said can I see the weekly memo the administrative assistant would hand it to you.

The final one is a group of communications between the City Manager, the Mayor and the City Council dating back to October 2006 dealing with Scott Construction. These records are exempt from public disclosure for the two reasons previously mentioned. There is a further exemption that applies to many of these documents at relative times dating back to October 2006. The City Manager has been in contact with legal counsel to obtain advice. The City Manager then reported this advice to the Council, sometimes summarizing it and sometimes quoting it directly. With one exception this is advice addressed to the issues with Scott Construction, Inc. The one exception deals with the city's request to PACIF, which is their insurance company, for insurance coverage. All of this advice from legal counsel is exempt from disclosure on the basis of attorney/client privilege as well as the litigation exemption. The City Manager and legal counsel determined that the public disclosure of these records that do not contain attorney/client communications at this time will not jeopardize ongoing city efforts. The question is, is the Council willing to release those?

Motion was made by Council Member Jarvis, seconded by Council Member Sheridan that the Council waive the protection from public disclosure under 1 V.S.A. Section 317 (c) (14) & (15) afforded those documents that do not contain attorney/client communications and authorize their disclosure. The vote was 4-0, motion carried unanimously.

Further, legal counsel has reviewed the documents that contain attorney/client communication and points out there have been additional communications, written, oral and electronic, between his office and the City concerning Scott Construction matters since October 2006. Solely as to the specific comments attributed to or quoted from his office in this group of documents that deal directly with Scott Construction, Inc., he has determined that public disclosure of such statements will not jeopardize ongoing City efforts since the City currently has a final judgment against Scott Construction, Inc.

Council Member Hooper asked if the Council had seen this document.

Mayor Hooper said it was in the weekly memo.

Council Member Sherman asked if there was still an opportunity that we might be able to get some insurance payment from PACIF.

City Manager Fraser replied yes. What the attorneys are advising is that even though that is not resolved he doesn't believe this document will compromise that. He is just noting that it is an ongoing issue.

Motion was made by Council Member Sherman, seconded by Council Member Hooper that the Council waive attorney/client privilege and the protection from public disclosure under 1 V.S.A. Section 317 (c) (4) afforded those documents containing attorney/client communications concerning the city's initial request for insurance coverage from PACIF in 2006-2007 and authorize their disclosure. The vote was 4-0, motion carried unanimously.

Legal counsel further points out that there have been communications from his office regarding other potential claims and courses of action. The documents currently under consideration for disclosure did not upon review appear to contain any advice concerning such matters. If, after more thorough review, it turns out that such is not the case, how does the Council want to proceed?

Council Member Hooper said this motion as it is written says that if it is discovered that there could be a future value in the privacy of some of these documents they are not to be released.

Mayor Hooper said that is correct.

Council Member Jarvis said these are still potential claims and courses of action.

Motion was made by Council Member Sherman, seconded by Council member Hooper that the Council specifically limit its waiver of attorney/client privilege and the protection from public disclosure under 1 V.S.A. Section 317 (c) (4) afforded those documents containing attorney/client communications only to documents concerning the City's claims against Scott Construction, Inc. and its initial request for insurance coverage from PACIF and not authorized disclosure beyond such limits.

Mayor Hooper said they are keeping it very narrow so they don't jeopardize any future claims they have.

Council Member Hooper said his only concern is who decides.

City Manager Fraser said if they inadvertently release a record it can open the door to all of the other records unless you specifically said this is all we are releasing. The notion is that sometimes you inadvertently release a record that opens up another category of records, and by narrowly defining what it is you are intending to release and the Council is intending to release its information about its view on Scott Construction, Inc. and its dealings on the very initial claim. By wording this motion this way it allows the city to defend later that additional information they have already opened the door to is still privileged.

Council Member Jarvis said the issue is not so much limiting the document as limiting the waiver of the attorney/client privilege.

City Manager Fraser said it means in the future if there is a request for documents the Council, based on advice received from counsel, opted not to release this Council would not have had already waived its attorney/client privilege at this time.

Council Member Hooper said this says anything beyond a claim against Scott Construction or a claim against PACIF need not be released. It could be largely a document concerning Scott Construction.

City Manager Fraser said the privilege runs to the client, so basically what the Council is saying is the client is willing to waive our privilege on these documents but reserving the right to claim it on future documents. There is case law that says if you release documents in a certain subject area then all other documents related to that are waivable. They don't believe there is anything in here, but if there is something inadvertent in there we can still claim privilege if that is the Council's choice. This could apply to documents that exist on other matters.

Council Member Hooper said he thinks he understands the purpose. He just doesn't know what the mechanism is by which this is put into place.

Mayor Hooper said there are staff documents there that we are prepared to put up on the web site and to hand to the public. She is putting three file folders that Bill has put together in the past week. He is

still reviewing his e-mails and looking for other things that might go into that stack. What they are trying to avoid is something that is unrelated to this being drawn into it. The City Attorney is advising us that we need to do that because evidently there has been past situations where people have tried to argue.

Council Member Hooper said he just wants to make sure that the disclosure the Council is authorizing is as broad as he wants it to be.

Council Member Jarvis said the paragraph says we are talking about communications regarding potential claims and courses of action on things that have not yet come into fruition. If we look at something that has already been written and realize that it talks about something that hasn't happened yet that it might not be something they want to release in full. It is still the Council's privilege to waive so if there is an issue it is something the Council can decide on in the future.

City Manager Fraser says it is simply saying that the documents that the city is releasing relates to Scott Construction and that is what we are waiving and we are not inadvertently waiving anything beyond that.

Mayor Hooper said she thinks Council Member Hooper is suggesting there may be other things out there that he would like the public to know about.

Mayor Hooper called for a vote on the motion. The vote was 4-0, motion carried unanimously.

Mayor Hooper said one of the principle conversations they have had during the past week is how this could have happened and what sort of controls are in place to assure this doesn't happen in the future. They have asked their Finance Director to put together a presentation for the Council and public to understand what we have in place.

Sandy Gallup, Finance Director, said she thought it was really important to clear up that the city does have internal controls, and it isn't just something she made up today. She had it prepared during the year for their auditors. It is all encompassing. It has to deal with our history. It has to deal with who we are, how we operate, and the integrity and ethics we have in the city of Montpelier. If they expect her to answer questions about check processing and how we handle receipts, that wouldn't give you the answer that you need. They need a complete understanding of the city's internal controls.

Let's define what an internal control is. It is defined as a process effected by the City Council, the city management and other personnel designed to provide reasonable assurance regarding the achievement of objectives in three categories. These categories are effectiveness and efficiency of operations. The second is the reliability of financial reporting, and a third is compliance with applicable laws and regulations. This is all information from the Committee of Sponsoring Organization (COSO) which consists of the American Institute of CPAs, the Institute of Management Accountants, the Institute of Internal Auditors, Financial Executives International and the American Accounting Association.

Internal control consists of five interrelated components. The internal controls are affected by all levels of city government, including the City Council and the supervisor out on the street.

1. Control environment. This is sometimes referred to as the "tone at the top" of the organization, meaning integrity, ethical values, and competence of the City's people; management's philosophy and operating style; the way the management assigns authority and responsibility and organizes and develops its employees; and the attention and direction provided by the Council. It is the foundation for all other components of internal control, providing discipline and structure.
2. Risk assessment. The identification and analysis of relevant risks to achieve the objectives that form the basis to determine how risks must be managed. This component should address the risks, both internal and external, that must be assessed.

3. **Control activities.** Policies and procedures that help ensure that management directives are carried out. Control occurs throughout the organization at all levels in all functions. These include activities, such as approvals, authorizations, verifications, reviews of operating performance, security of assets, and segregations of duties.
4. Information and communication. Components that address the needs of the city to identify, capture and communication information to the right people to enable them to carry out their responsibilities. Information systems within the organization are a key part of internal control. Internal information, as well as external events, activities and conditions must be communicated to enable management to make informed business decisions and for external reporting purposes.
5. Monitoring. The activity undertaken by management and others in the city with regard to the internal control system. This is the framework element that is associated with the internal audit function in the company, as well as other means of monitoring such as general management activities and supervisory activities. It is important that internal control deficiencies be reported upstream, and the serious deficiencies be reported to the top management and the Council.

The control environment was the first piece. It has five areas. They are very important. She wished she had this book when she started here. Integrity and ethical values. You should really start with the Montpelier Code of Ordinances, especially Chapter 2 which talks about the City Clerk, the City Seal, the City Manager's duties, standards of conduct, the oath of office for the elected officials and City Manager. It has the City Council's rules and procedures and an ethics policy that they reaffirm every year.

There is a commitment to competence area. There are detailed job descriptions which have been developed for most of our city employees. Employee performance is evaluated annually as are the job descriptions. Those are on file as well. The department heads report annually to the Council. It is another way we show commitment to competence.

Management's philosophy and operating style. For example, the City Manager's philosophy and operating style you can see the City Manager's message in the Annual Report every year. That is a great document that summarizes the way we operate and the state of the city. Goals are established annually and all departments have mission statements that we look to and remind us of what we want to achieve.

Organizational structure and assignment of authority and responsibility. City wide and departments all have organizational charts so it is clear who reports to whom. Department heads meet together monthly with the City Manager for planning, directing and controlling operations and achieve goals. The department heads also meet week individually with the City Manager. In the Montpelier Code of Ordinances we have a description of the Director of Public Works, which she thinks is interesting that it is such an important position that it was included in the Code of Ordinances.

There are human resources policies and practices. Examples of that are our sexual harassment policy and work related injury policies.

Risk Assessment. Internal controls should provide for assessment of the risks of the agencies, both external and internal. Every year we do an annual broad risk assessment by department. Also, they have Fothergill, Segale and Valley CPA firm who does our monthly financial reporting. They look them over before you see them. The city is also audited annually, and they check for fraud as well.

Information and Communications. For the City to run and control its operations we must have relevant, reliable and timely communications relating to internal as well as external events. Information is needed throughout the agency to achieve all of its objectives. Program managers need both operational and financial data to determine whether they are meeting their agencies strategic and annual

performance plans and meeting their goals for accountability for effective and efficient use of resources. We have new software and are going to try really hard to improve in this area. We are going to try to get things quicker and also be more available. Our Technology Department provides administrative and technical support city wide for work station network and telephone services. The city maintains a web site that provides information to city residents, employees and others interested in obtaining information regarding the City of Montpelier. Also, the City Council meets twice a month and receives weekly reports from the City Manager.

Control Activities. Internal control activities help to ensure that management's directives are carried out. The control activities should be effective and efficient in accomplishing the agency's control objectives.

- The City Manager and City Council track major department and program achievements and compare these to the plans, goals and objectives. That is like our annual goals, budget and what we achieve in our multi-year plans.
- Department Heads compare actual performance to planned and expected results through the city and analyze significant differences. They are always looking at the dollars and what they accomplish.
- City management strives to find the right personnel for the right job. They provide the right training, tools, structure, incentives and responsibilities to make city operations as successful as possible. Management also considers it best to retain valuable employees, plan for their eventual succession and ensure continuity of needed skills and abilities. Our people are very important to us. They are a big resource and we really manage some of the best we can and plan for success.
- The Finance and Technology Department provides controls over information processing. They do edit checks of data, account for transactions in numerical sequences and compare files, totals and control accounts and make sure everything is backed up and our information is protected.
- All employees are aware of the importance of physical control over vulnerable assets-security for and limited access to assets such as cash, inventories and equipment which might be vulnerable to risk of loss or unauthorized use. We do periodic inventory and compare to the control records.
- The Council has expressed interest in the establishment of review of performance measures and indicators and the City Manager is working on finding resources to accomplish this task.
- Segregation of duties is accomplished by establishing procedures that divide or segregate key duties and responsibilities among different people to reduce the risk of error or fraud. The responsibility of authorizing transactions, processing and recording them, review the transactions and handling any related assets are all separated. No one individual controls all key aspects of a transaction or event. There are many accounting manuals and processes.
- Procedures that are in place to assure proper execution of transactions and events. Transactions and other significant events are authorized and executed only by persons acting within their authority. Authorizations should be clearly communicated to managers and employees. The Finance Office has a procedural manual that contains step by step instructions (accounting manual). Transactions are recorded promptly to maintain their relevance and value to management in controlling operations and making decisions. In these two areas the city has come a long ways since 2004, and we can always try to do better.
- Access to resources and records are limited to authorized individuals and accountability for their custody and use is assigned and maintained.

We contract with a CPA firm for in-house financial and accounting services. They started in March, 2005 and she provided the Council with a copy of the Fothergill, Segale & Valley agreement. We also contract with Sullivan Powers & Co for our annual audit, and she provided the council with a copy of the engagement letter.

Finance Director Gallup said she also heard another question last week she would like to answer. How did the overpayment to Scott Construction occur in 2004? And, why wasn't it caught until October 2006, almost two years later? We heard a lot of information from the City Manager and heard from our auditor. She would like to tell everyone how she sees it from the Finance Office. We had some unusual and unfortunate circumstances, some of them internal and some of them external. It would be hard to ever have that happen again. The clerk made a very large error on the warrant jacket. To simplify it warrant jackets aren't used any longer. They stopped that in 2007. The Director of Public Works did not see the error and approved the payment. We have a policy that the Finance Director now reviews all invoices over \$25,000 and verifies that the payment is correct. The contractor did not acknowledge the overpayment. She doesn't know if there is another contractor in the state that we could have mailed that check to that wouldn't have picked up the phone and dealt with us in a timely fashion. The overpayment did not make the total project, which was \$1.4 million, over budget. If it had it would have been a blessing because then they would have probably been able to see right away the error. In addition, the city's Finance Office at that time tracked all general fund capital projects with quarterly reports, but it did not do the same reporting for the water and sewer fund capital projects. She doesn't know why, but now they track all of their capital projects.

The next requisition for Scott's Construction was not until nine months later. That is very unusual. When the requisition was made the contractor did not acknowledge the payment that we had made with the overpayment in the next requisition, which, again, is a huge unusual situation. Now the Finance Director verifies the amount paid to date with the city records.

The city contracted with a CPA firm beginning in March of 2005 for in-house financial and accounting consulting services. Although they were not directly asked to monitor this particular construction project they were in-house all that time and never caught the error. The city contracted with Sullivan Powers & Co. to perform the audit for 2004, and you heard from Fred Duplessis. They could have but they didn't catch the error.

Then, the Finance Director and the Director of Public Works retired in late 2005 and early 2006. The new Finance Director, myself, and the Director of Public Works, who was also very new, did not have first hand knowledge of the water line project because it had occurred before we arrived, and that was unfortunate. Scott Construction was unable to pay back the funds. That was an external event they just didn't want to happen.

Finance Director Gallup said she wasn't trying to make excuses. She is just trying to help them understand how the events and the circumstances prevented the discovery of the Scott overpayment. Our controls have greatly improved since 2004. With our current procedures the chances of a substantial overpayment is very low, and if it did occur we would catch it quickly.

Those are the two questions she wanted to clarify.

Mayor Hooper asked what changes would she make in the system going forward?

Finance Director Gallup said going forward she would also like to consider Council Member Jarvis' purchase order system, especially for large purchases and contracts. That way if a payment exceeds the contract the software will flag it and not allow it to happen. She also wants to continue employee time cards. That is something she has been linking up to our system to try and make sure that we accurately document our labor costs – they're huge! It is good to have a good system of accountability there. When they have the new software up and running she would really take the time to study how other cities and schools use it to help them and improve on timely information. She would like to bring us into a more effective and financial world.

Council Member Jarvis asked if she said that the overpayment did not go over budget for the project.

Finance Director Gallup said at the time of the overpayment it was a \$1.4 million project, and it was in two pieces. This was just the first part. Another contractor did about \$400,000 on the second part of this project and we still had some money to pay to Scott Construction on this project. If that payment in December 2004 had made the project over the \$1.4 million there would have been a much greater chance of us catching the error, but it didn't.

Council Member Jarvis said when the project was finished it must have been greatly over budget.

Finance Director Gallup replied yes, it was.

Council Member Jarvis asked why wouldn't that have triggered someone notice. You have a budgeted project and it goes \$400,000 over budget, wouldn't the Department of Public Works see that?

Finance Director said the project didn't end until in the Spring of 2006 so they were looking at it all the way from then until early October when they found it. Until we finished the second part of the project it didn't appear. You need to understand that she was relatively new and Todd was new so they weren't aware of any problems with the previous part.

City Manager Fraser said in fact they even called in the former people to try to figure it out. It took awhile.

Council Member Jarvis asked if she thought the way things have changed now if we had a project that went over budget that even a lesser amount would trigger someone's notice very quickly.

Finance Director Gallup said right now they have quarterly reports that they do on all of their projects and she goes over with whoever is in charge, Todd Law or Tom McArdle. It is usually one big contract and the engineering contract that goes with it, and that is all there are on these big projects. This one was unusual. There were many components.

Council Member Jarvis said it looks like in her present practices she is much more involved with each of the individual projects.

Finance Director Gallup said since they caught it they have tried to make every project go under budget because any way they could appropriately do that it would help some of the hurt.

Council Member Sherman asked if she recalled that when this project was done it was putting in a line underneath the river close to Bailey Avenue.

City Manager Fraser said he's not sure that was the job she was thinking about.

Council Member Sherman said with that job there was some timing reshuffling because the river was low and they could save a lot of money by doing it off schedule. Sometimes there are reasons in big projects for moving things around.

City Manager Fraser said this was for the replacement of a line on Bailey Avenue.

Council Member Golonka asked how do we not bounce a check. Why do we handle so many accounts in our current financial model?

Finance Director Gallup said they combine all of our funds into one cash account so there is a lot of money available, plus we do have fund balances. The fund balance account for the general fund wasn't that large, but we did have some unspent bond money and also had the sewer fund in an okay position

at that point. The simple answer is we have a lot of money so this probably isn't as big for that cash account as you might think.

Mayor Hooper inquired if they should have separate accounts.

Finance Director Gallup said that is not how they do it. She doesn't believe that would help the situation. Are there too many funds? The city has a history of complex financial pieces. She does have a lot of funds and would like to eliminate any that they can.

Mayor Hooper said in addition to the water and the sewer and the principal accounts you would expect the city to have, there are a lot of little small accounts.

Finance Director Gallup said the Community Development Agency is a very complicated fund. There is the Housing Trust Fund and a Hubbard Park Trust Fund. Some don't have a lot of activity and others do. They all at any point can make for a lot of accounting. The Montpelier Fire District still exists. There is also Montpelier Net.

Mayor Hooper said they need to come up with a plan for eliminating or simplifying.

Finance Director Gallup said she thinks the city is complicated because it is a small city and it has a lot of events so it seems like a lot for a small city. We have everything a big city has.

Charles Ferry said he has lived in Montpelier since 1957. He looks at the number penciled in here - \$548,110.83. He doesn't know where that number came from.

Finance Director Gallup said it is the number that was paid previously so he would find that number in the previous requisition, which would be payment #4 and took the paid to date and added what we paid on that.

Mr. Ferry asked wouldn't it be an important part of the record to show #4 as well as this so they could see the trail.

Finance Director Gallup said she could provide a copy of the requisition.

Mr. Ferry said it would be helpful to show the continuity because he is sure other people wonder where that number comes from. It was his understanding that at the City Council meeting last week that this \$548,000 represented either 5 or 10 percent of the city's budget at that time. Can she clarify that for him?

Finance Director Gallup said this was a capital project for the water fund. If you take our general fund budget and look at that number, that's where you are coming from. It is really a capital project. You could even compare it to the water fund operation budget but that wasn't that accurate, either, but it would be more accurate than comparing it to the general fund.

Jack Lindley said these were low interest federal loans. Is that what financed that project?

Finance Director Gallup said it was a city bond. It is a nontaxable bond through the Vermont Municipal Bond Bank.

Mr. Lindley asked if it was subject to a single audit?

Finance Director Gallup replied no.

Mr. Lindley asked if we had a single audit in the city done because there are other federal funds.

Finance Director Gallup replied that in the last four years that three of those years they have had single audits.

Mr. Lindley asked if that included the time frame for this activity.

Finance Director Gallup said she didn't know if 2004 had a single audit.

Council Member Hooper asked Finance Director Gallup to describe a single audit.

Mr. Lindley said he knows these terms because of his activity with the federal government.

Finance Director Gallup said if they pass a certain amount of money you receive annually in federal awards and grants or if you reach the magic number of \$500,000, you get a single audit.

City Manager Fraser said a number of years ago the federal government and different grant people, i.e. HUD, CBG, required an audit for the federal funds, and they had slightly different requirements so municipal governments often had to do numerous audits or several sub-audits for all of their different projects. Congress passed an act calling for a single audit, but if you have any funds from any sources you can do one single audit that can then be supplied to all federal agencies from whom you receive funds. That audit has certain standards in it that have to be met.

Finance Director Gallup said the accountants don't look at them and deal with the federal money that same way. It would have been great if this had received a single audit, but the single audit wouldn't have covered this project.

Mr. Lindley said his concern is that the flow through on this project really involves some federal activity in water and sewer. He isn't sure without talking to the Agency of Natural Resources how this takes place, but he would assume the city is having some conversations with them about that.

Finance Director Gallup said she was unaware of federal dollars or state dollars on this project.

Mr. Lindley said he assumes that in the Council's vote that it included all transmitted e-mails back and forth between Council Members and the City Manager. He thinks everything is open, and he applauds that, and he applauds the Council for taking that position. He isn't sure that he depends on the same lawyer privilege accounts any longer. This gives the community an opportunity to review all of that activity. He would ask the Council to look at the single audit issue and try to get it resolved and see what the Agency of Natural Resources will tell them. If there was a single audit for that year he would like to be able to see it.

Melody Ashford said this is a wonderful document. She has heard a lot of "we" and it really should be "us." Who pays for all of this?

Finance Director Gallup said it would be part of the operations for the City of Montpelier so it would be tax dollars.

Ms. Ashford said she has a real issue with paying for something that she can't look at. Where else in the world would she pay money for something she can't look at, so this should be public record.

Mayor Hooper replied it is.

Ms. Ashford said everything that takes place should be public record. Who was the city attorney? As taxpayers we are paying for him as well she would assume.

City Manager Fraser said the city attorney on this case was Steve Stitzel. The city pays any of their attorneys on a use basis. They don't have retainers or salaries.

Ms. Ashford asked if there was a fund the city uses to pay for the attorneys. We're caught in a Catch 22 where we are not only dealing with a goof up but paying for it as well.

City Manager Fraser said that in the court judgment the city had it does include all of the attorney's fees if the city was to collect. In the city budget there is a line item for legal services.

Ms. Ashford said she is wondering if this is something that needs to come out of the taxpayers' pockets. She wouldn't expect the city to pay for her traffic ticket.

Frances Miller said on the document that was in error we keep referring to Steve Gray approving it. He approved that the work was done. He didn't approve the \$482,000 payment, did he?

Council Member Hooper said he did.

Mr. Miller said the document they looked at was for \$85,000.

Finance Director Gallup said it is called a warrant jacket, which is what Steve Gray signed. This is an authorization to put it through accounts payable. That is the city's internal document that is stapled and put over the invoice using the codes on that document to pay that. There is actually nothing wrong with this.

Mr. Miller asked if that is the way it is being done now.

Finance Director Gallup replied no. On January 1st of 2007 the city stopped using warrant jackets and authorization for payment is stamped on the invoice.

Mr. Miller asked if the project manager sign off on these payments after the fact now, or do they sign off for the work being done.

Finance Director Gallup replied that the procedure now is the document is stamped and approved by the project manager. It is a stamp that says how much to pay.

City Manager Fraser said it is a two-part process. First, it is approved for the work being done and then approved by the department head that it is okay to pay. If it is over a certain amount then it gets additional approval.

Finance Director Gallup said if it is over \$5,000 the City Manager will sign off on it. Then, because it has the three components it is ready to go to the Director of Public Works for approval. If it is over \$25,000 it ends up on her desk and she checks the numbers again. The City Manager also has to sign this document.

Mr. Miller said she had answered his other question about the single audit. It is his understanding that as long as you receive any federal funds all funds of the city would be looked at because they are testing your system. If you had enough funds during this period there should have been a single audit.

Mayor Hooper asked how does a single audit happen. Does the city have to ask for it?

Finance Director Gallup said a single audit is part of the process when we get audited. We contract with an accounting firm and they tell us if we need a single audit there is an extra charge for this service. It is determined by how many federal funds we receive. Nobody would do a single audit without an underlying audit.

Mayor Hooper asked how does one know a single audit should be triggered.

Finance Director Gallup said she has a schedule of federal awards she has to provide to the accountants and the auditors.

City Manager Fraser said this year with all of the federal money the city has received it would trigger a single audit requirement.

Mr. Miller said he has no problem with Sullivan Powers & Company. To have them building the system for the city and then doing the audit is a little out of line. They probably should look to see if they couldn't pick up someone else do an audit, or at least bid on it.

City Manager Fraser said the city actually has a different accounting firm that works with them, Fothergill, Segale and Valley. They do the city's contract accounting. As part of the audit Sullivan Powers & Company over the years has provided the city with a management letter that gives advice. That would be part of any audit. Fothergill, Segale & Valley provides the city regular weekly accounting support and advice about its systems, so they are separate. The city does bid out the auditing services on a periodic basis and this is currently the last year of a three-year contract. The last times the city has bid they have only received one bidder.

Finance Director Gallup said there are not a lot of accounting firms that audit municipal government.

Mr. Miller said Scott Construction is also known as SCI. He had one contractor talk to him last weekend and said he saw the city was having problems. He's a great contractor and still working. When the Council met last week Bev Hill said he was selling his equipment at an auction because of the bankruptcy.

City Manager Fraser said he has not declared bankruptcy. He has been foreclosed on by the bank.

Mr. Miller said he talked to the architect who is working on Jay Peak. They are still working up there, so if he is working he has money coming in.

Council Member Jarvis added that it sounded like it was his son that was working.

Mr. Miller said if he is working under SCI or Scott Construction, it is the same thing.

City Manager Fraser said in the category of issues going forward the city has heard that information as well in the past couple of months.

Mr. Miller said he thinks we are headed in the right direction but we need to get the money back. If they do have a committee he would be willing to serve.

Mayor Hooper said Finance Director Gallup talked about the fact that in the past before she was employed we were tracking our general fund capital expenditures but not tracking the water and sewer.

Finance Director Gallup said if they look in the Fothergill, Segale and Valley consulting services contract it specifically says quarterly report for general fund and fund 30 which is where we put our capital improvement plan projects. There was no place where the sewer and water was noted. It

doesn't mean they weren't tracked by a spreadsheet somewhere else by the existing financial director. It wasn't in place that we would look at these projects quarterly.

Mayor Hooper said she would have thought that would have been picked up in the annual audit. It seems like a significant enough management control it would have told us to do that. She said she can almost grasp the auditing standard that says you have looked at the physical assets. Should we be tracking these sorts of projects differently?

Finance Director Gallup said she can watch it. She would like going forward to figure out a way to do it without creating another fund.

Council Member Jarvis said in the end what she was looking for as an expenditure was found as an asset.

Finance Director Gallup said enterprise funds are not the same as general funds.

City Manager Fraser said obviously the city has to meet all of the proper accounting standards.

Mayor Hooper said it seems that the over arching issue here is that we have a financial management system which has many components that have been improved over time, but we also have a system that has grown. We are an old city and keep rebuilding the existing system trying to make it work better. We have hired services from an accounting firm to come in and help us do certain things. There are relationships between the Finance Department and the City Treasurer's Office to do certain work. We might want to step back and say we were designing a system from scratch. There are potentially too many accounts.

Finance Director Gallup said we are also very departmentalized. With the new software there are many people who have to learn to do accounts receivable and accounts payable. We really do have very fine auditors and accountants that work with the city.

Mr. Lindley said essentially what happened is this was put into our system and the taxpayers saw it as an asset. It was then moved to be a receivable. This was our accountants doing their thing and they as taxpayers could never have picked up the fact we have a receivable being converted from an asset.

Vicki Lane of Berlin Street said she sees an audit report for the last year. She asked if the city was receiving a refund from the auditors. That was not a great audit. She doesn't know that they really met the requirements. She thinks they are due a refund for that year.

Charles Ferry said in line with Vicki's observations he would take a look at the errors and omissions insurance with Sullivan Powers & Company.

Mayor Hooper said what the Council wanted to do this evening was to have a thorough overview of the city's financial management systems, and this is the beginning of a learning opportunity both for the Council and the community. She suspects they will do the same thing with regard to open meeting laws and public communication. She suspects they will have a similar sort of session to have that conversation. On her list of other issues as something the public would like to understand more about is a review of the city's legal support system. Again this evening there was a question about the city attorney. She would like to review the different services we have and how we contract with them.

Council Member Jarvis said she was thinking they might like to have an assessment of what the city's legal needs are and how we delegate the legal work it needs and whether it makes sense to do what some cities do which is to hire a legal director or to have an attorney on staff.

Mayor Hooper said she would like to schedule a meeting to do the development of information, gathering the information and decide how to go forward in assessing these.

Council Member Jarvis said she would like to remind everyone that the Revenue and Expense Committee which Council Members Hooper, Weiss and she were on throughout the spring and summer, had as one of its recommendations they felt very strongly about is the city should hire someone to do a management and system analysis of the city. They think this is further proof they need to do this.

Jack Lindley said he would like the Council to look very carefully at the legal advice the city received on this issue. He thinks there is every reason to believe they didn't have the right person dealing with the subject at hand. Those people carry insurance just like the auditors do. If they gave us some bad advice we ought to take a long hard look at that.

Council Member Jarvis reminded them they would have a chance to look tomorrow when all of the documents are released.

Frances Miller said the city has another good source for an audit and what needs to be done through the state. At one time the state used to do all of the audits of the towns and cities. In 1967 they cancelled that, but in the late 80's they brought it back so they can come to the cities and towns and do a review. They are doing some work in Burlington now and doing some work in Bennington. They have done some work in a lot of the small towns and they are more than willing to do a management review.

Mayor Hooper said she wants to get to open meetings and executive sessions. There are a variety of people they can be in touch with. She has already mentioned the ACLU and Common Cause. We have other people who live in the community who have a particular expertise on this. This is in fact what the Secretary of State's Office does and the Vermont League of Cities and Towns. She said the next topic on their agenda will be publicly announced so everyone is aware.

Mayor Hooper said Council Member Golonka sent Council Members, the City Manager and her a memo that outlined eight areas he would like the Council to look at. They are:

1. Audit and Accountant Review.
2. Legal Review
3. Manager's Review
4. Council's Review
5. Use of Executive Session
6. Further efforts at collection and prosecution
7. Issues with the water funds
8. Citizens' Committee

The Council has begun the consideration of the city's financial systems with this discussion this evening. They are talking about the legal review and a management review which should include the Council. The city is pursuing efforts at further collection. The issue of the water fund they are continuing to try to collect from the funds. Council Member Golonka is saying he doesn't want to see tax hikes or rate increases associated with that which has been a sentiment expressed by many members of the Council. Before we solve that problem we need to know if it is a problem.

Council Member Jarvis said she thinks the city should consider engaging an attorney who specializes in bankruptcy law as we look ahead to the fact that Scott Construction probably will be declaring bankruptcy. She would like to see the city talk to someone about the possibility of removing the debt he owes to the city from the bankruptcy process so that he does not benefit from the protections of the bankruptcy process, especially here because we have allegations of fraud. If you have fraudulently

created debt it is not able to go through the bankruptcy process. She would like the city to get some advice on that. The best case scenario isn't all that great because if the answer is yes and our debt does get removed it just means it follows him.

Adjournment:

After motion was duly made and seconded by Council Member Sheridan and Sherman, the council meeting adjourned at 8:50 P.M.

Transcribed by: Joan Clack

Attest: _____
Charlotte L. Hoyt, City Clerk