

## CITY COUNCIL MEETING STATED MEETING & PUBLIC HEARING OCTOBER 27, 2010

On Wednesday evening, October 27, 2010, the City Council Members met in the Council Chamber.

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

10-257. Call to Order by the Mayor.

Mayor Hooper called the meeting to order at 7:05 P.M.

Council Member Weiss moved that the Council amend the agenda to include a report from the Energy Advisory Committee. They have a recommendation to be reported by either Harold Garabedian or Gwen Hallsmith which includes the appointment of a third party to help with the technical evaluation of the proposals that have come in regarding the biomass. Council Member Sheridan seconded the motion. The vote was 6-0, motion carried unanimously.

10-258. General Business and Appearances.

None.

10-259. Consideration of the Consent Agenda:

- a) Consideration of the Minutes from the City Council's October 13<sup>th</sup> Regular Meeting.
- b) Consideration of leasing three new digital imaging systems:
  - 1) Due to incentives that are currently being offered by IKON and OCE North America, the City has the opportunity to have newer digital imaging equipment with added functions and save money when compared to our current costs.
  - 2) The Finance Director and the Information & Communications Systems Manager recommended accepting IKON's proposal for a five-year lease for three digital servicing systems at the monthly cost of \$1,445. This proposal includes consolidating and improving the printing, copying, scanning and faxing functions in the Finance, Planning and Clerk/Treasurer's Offices. (For details, see memo included in Council packet.)

- c) Consideration of approving a proposal for replacing a Cisco Router/Firewall and Port Switches for City Hall in the amount of \$11,100. The proposal requested was submitted by the Tech Group out of South Burlington. The funding for the purchase of this upgrade is in the 2011 Equipment Budget.
- d) Acting as the Liquor Control Commission, City Council Members may now ratify the issuance of the following permits:
  - 1) Catering Permits to 10 Gems, LLC, d/b/a The Black Door Bar & Bistro for: A State Supreme Court Reception/Portrait Presentation scheduled to be held on Thursday, October 28<sup>th</sup>, from 3:00 to 5:00 P.M. at 111 State Street, 2<sup>nd</sup> floor; and A Lost Theater *Edgar Allen Poe Reception* scheduled to be held on Saturday, October 30<sup>th</sup>, from 7:00 to 11:00 P.M. in the City Hall Auditorium.
- e) Approval of Payroll and Bills.

General Fund Warrant dated October 20, 2010, in the amount of \$40,303.24 and \$441,986.93.

Payroll Warrant dated October 28, 2010, in the amount of \$113,054.64 and \$30,081.53.

Mayor Hooper said the staff has requested they pull item (b) off the Consent Agenda.

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

10-260. Appointment to Montpelier Housing Authority Board.

- a) Every year, one of the 5-year terms on this board expires; this year it is Jack McCullough's.
- b) Staff advertised and as of the deadline, noon on Thursday, October 21<sup>st</sup>, only an e-mail from Mr. McCullough (seeking reappointment) had been received.
- c) Recommendation: Reappointment for another 5-year term.

Motion was made by Council Member Hooper, seconded by Council Member Sheridan to reappoint Jack McCullough to a five year term on the Montpelier Housing Authority Board. The vote was 6-0, motion carried unanimously.

- 10-261. Appointment of a public trustee to serve on the Kellogg-Hubbard Library's Board of Trustees.
- a) Suzanne Eikenberry has served as the City's representative since 2008.
  - b) Because her 3-year term expires in January, staff advertised to fill this vacant seat.
  - c) As of the deadline, noon on Thursday, October 21<sup>st</sup>, only Suzanne Eikenberry had applied asking for reappointment.
  - d) Recommendation: Reappointment.

Motion was made by Council Member Sheridan, seconded by Council Member Weiss to reappoint Suzanne Eikenberry to serve as the City's representative on the Kellogg-Hubbard Library's Board of Trustees for a three year term. The vote was 6-0, motion carried unanimously.

- 10-262. 58 Barre Street Update.
- a) The City's Community Development Specialist, Garth Genge, will be providing this update.
  - b) As part of this presentation, City Councilors will be asked to...
    - 1) Authorize certification that the Montpelier Housing Authority, through Capital City Housing, has fulfilled the requirements of the option agreement with the City of Montpelier for acquiring and redeveloping the portion of 58 Barre Street as outlined in the agreement (*the letter will be provided for signature*).
    - 2) Authorization to proceed with the redevelopment of the MSAC space at 58 Barre Street as per the plan submitted.
      - A. Funding in place (*budget attached with notes*)
        - 1) Action for approval on allocations of funds to RLF's.
        - 2) Addition of Public Facilities as a use of loan fund.
      - B. Schedule Projection (*attached*).

## C. Management by City

- 1) ...with Montpelier Housing Authority
  - 2) Permission for the City Manager to sign contracts as necessary (*Gossens Bachman Architects and the contractor chosen for the asbestos remediation*).
  - 3) Authorize permission for the City Manager to sign contracts as necessary.
- c) Recommendation: Receive update; discussion; and voting action on the three requests listed above.

Garth Genge, Joanne Troiano and Jack McCullough were present for this agenda item.

Garth Genge, Community Development Specialist said this has been the most efficient development project he has ever worked on. Between the Montpelier Housing Authority and the other consultants they have been working with it has been a very professional experience. Everybody has done their job on time and done an incredible job. He would like to formally announce that they did get the Vermont Community Development Program funding which means that the housing portion is fully funded and the \$300,000 for the Senior Center has been awarded to the Senior Center. The only missing funding source for the Senior Center now is the \$200,000 that will be covered by the Capital Campaign, which is in progress.

The requirements for the option have been fulfilled. Jeff Kantor's letter is requesting that the City Council acknowledge that the conditions have been fulfilled to date and announcing to the City Council that they will be exercising their right by the due date of April 2011 to exercise the option and proceed. The city is in a position to move forward and they are asking for permission to start. The management, schedule and funding have been put in place.

They are trying to do a few things they can do outside the architect's contract, things like asbestos remediation, which are done directly by the applicants in a project like this. The asbestos remediation has to happen and it can be done independent of the rest of the project. They have to do that before they can actually do a demolition plan and clean up the building from the fire which is the next step. They have requested submissions for the asbestos project and the cleanup contracts. The request is really for the City Manager to have permission to sign contracts following city policies.

Council Member Sheridan moved that the Council authorize certification that the Montpelier Housing Authority through Capital City Housing has fulfilled their requirements of the option agreement with the City of Montpelier for acquiring and redeveloping a portion of 58 Barre Street as outlined in this agreement, the authorization to proceed with the redevelopment of the

Montpelier Senior Activity Center space at 58 Barre Street per the plans submitted, and authorize permission for the City Manager to sign contracts as necessary. Council Member Hooper seconded the motion.

Council Member Weiss said he had a request. Garth was very kind in putting together this report for the Council. At the top of the third page it reads Community Development Specialist, Garth Genge, will represent the city as project manager. He would move to amend the motion to change those words to appoint Garth as Clerk of the Works. There is a significant difference as it relates to the ownership of the project and the relationship of the architect and the contractor. If this motion passes it needs to be included in the architect's contract. We need somebody on a project of this magnitude who officially represents the municipality and the Clerk of the Works does that.

Council Member Sheridan said he would accept that as a friendly amendment.

Community Development Specialist Genge said he doesn't think as project manager he would be doing anything different, but Clerk of the Works is a title that is fine.

Mayor Hooper called for a vote on the motion. The vote was 6-0, motion carried unanimously.

Community Development Specialist Genge said one of the reasons this was as successful as it was is because of the municipal provisions that the City Council put into it. The ratings for the success for the Rural Development Program the extra points were really the deciding factor for the contribution of the space. That is the big difference in the rating. That was the pivotal piece.

Mayor Hooper said this wouldn't have happened but for the work of a number of people and a number of partners. Six months later this project has complete funding. She does not believe that any other project in the state has accomplished a project of this scope and magnitude in such a short period of time. She felt it was extraordinary.

Community Development Specialist Genge said he has been doing this type of work for over ten years and has been associated with a lot of projects and nothing in Vermont has ever come this close.

Elizabeth Dodge, Chair of the MSAC Advisory Board, said she appreciates what the Council and Garth has done as they have been able to get this finished so quickly.

10-263. Consideration of a request from Montpelier's Housing Task Force asking Council to restore full funding of \$52,000 in the next fiscal year; receive an update on recent awards; and receive the Advisory Committee's proposed amendments to the Housing Trust Funds' **Guidelines**.

- a) Chair of this Committee, Jim Libby, will be providing the update and presenting the proposed changes to the **Guidelines** for Council discussion.
- b) Recommendation: Receive report; discussion; and voting action on the request for funding, as well as the proposed amendments to the **Guidelines**.

Jim Libby, Co-Chair of the Montpelier Housing Task Force, said when the Council decided to reduce funding for the Housing Trust Fund a couple of years ago we all hoped there would be a time when the Council would restore full funding. The voters had approved it for a number of years and on behalf of the Housing Task Force and the Central Vermont Community Land Trust and Montpelier Housing Authority they hope the Council can restore funding this year understanding things are still challenging from a revenue perspective. The Council has committed all of the money in the Housing Task Trust Fund and most recently to the 58 Barre Street project. That, in addition to the donation of the building with an incredible amount of support and energy that the city has put into that project makes a difference these days. There are other projects they would like to do in the city although small ones but still providing housing in the way of accessory apartments or maybe taking on the Dickey Block. There are some really exciting community development projects that remain to be done.

Just a year ago at this time of year the Montpelier Housing Task Force did a Healthy Homes Workshop. They received some money from the Central Vermont Community Land Trust and it was also televised on ORCA.

The next items that are from the Montpelier Housing Trust Fund Advisory Committee is just an update reminding what the Council awards have meant.

The Housing Trust Fund Advisory Committee is asking the Council to amend the guidelines for the Housing Trust Fund. The Council received a copy of the guidelines with the proposed changes. The action the Advisory Committee would like the Council to take is to amend the guidelines.

Council Member Golonka said he is a member of the Montpelier Housing Trust Fund Committee and he thinks what is lost here is the real reason for the committee. He thinks the changes to the guidelines are important and the committee was unanimous in its support for the changes.

Mr. Libby said they tried to summarize on page 2 of his memo. They decided to broaden the eligible applicant pool. Up until now it has been pretty much nonprofit organizations and they decided it was time to open it up to other entities including homeowners and private developers to see whether or not they would get more proposals and thinking about entertaining requests for accessory apartments which would come from homeowners. That is the change for eligible applicants. On page 2 they decided to raise the income ceiling understanding they would still try to target the lowest incomes possible but make the projects funded by this open to individuals who were earning up to median income. That may give us more flexibility on accessory apartments.

They decided with respect to the affordability of those units they would keep it at 80 percent. In the housing business you discover it is always good to have a window between your income ceilings and your actual costs, so they kept that the same with the goal always being to try to have occupants pay no more than 30 percent of their income for housing.

Since the Council has routinely increased the financial caps they decided to raise that to \$15,000 per residential unit which is consistent with what few awards they have made. On the last page of the guidelines they clarified the difference between the income ceiling and the affordability ceiling and then added two new preferences. One is to formalize the leverage requirement. They have gotten excellent leverage. One of the goals of the city fund has been trying to encourage other funders to come in, and they have been very successful. They put a minimum leverage amount of 1 to 1 in cash or in-kind for residential unit, and then added the category of new accessory apartments to the list.

Council Member Weiss asked where the funding came from for the awards of up to \$15,000.

Mr. Libby said it is from the general fund of the city.

Council Member Golonka said it is the voted in amount. There is a trust fund we have built up and have used it all up.

Council Member Weiss asked if approved where does the \$52,000 go?

Council Member Golonka said it would go into the Trust Fund and then the Advisory Committee makes recommendations to the Council and the Council considers those recommendations.

Mayor Hooper said as Jim noted a portion of that was used for the funding of the 58 Barre Street condominiums. They have also put a portion of that into some of the other housing development on Barre Street. The city has used it strategically to make much larger housing opportunities work. The significance in the change is that it has always been limited to going to nonprofit developers. The proposal is to broaden who can participate in the program. This is based on the advice that we are seeing from our Housing Task Force which is trying to move this money further out into the community and help get going some of the other things we have said would be good for the community like accessory apartments to increase the number of housing units in the community.

Community Development Specialist Genge said relative to the accessory apartments he gets calls all of the time and calls from the One More Home program. If 50 percent of the people who have called him applied we would go through the majority of the \$52,000 for accessory apartments. Just the impact of being able to do that is really big. They don't have any other source that really fit for a single family home that wants to add on. The demand is there for accessory apartments.

Council Member Golonka moved the Council accept the guidelines as recommended by the Montpelier Housing Trust Fund Advisory Committee. Council Member Weiss seconded the motion. The vote was 6-0, motion carried unanimously.

Mayor Hooper noted that Jack McCullough is the other Co-Chair of the Housing Task Force. Joanne Troiano sits on the Housing Task Force. This community has worked really hard to create housing opportunities and it is a real tribute to the work they all have done.

10-264. Update on Montpelier-Berlin Regional Bike Path.

- a) This project was put on hold in January of 2010 due to the proposed rail change usage by the State of Vermont.

- b) Staff will brief Council on how much has been spent by Federal, State and the two local governments on this 10-year project to date.
- c) Since the project has been put on hold, the Project Manager has resigned and taken employment with the State.
- d) Recommendation: Receive update; opportunity for discussion.

Mayor Hooper said there are a number of folks from the Agency of Transportation to provide the Council with the update. There are also a number of community members who are interested in this and they will have some questions as well as Council Members will have questions. While this is an update on the bike path the impetus for having this conversation is the renewed activity of looking at doing something with rail so they will learn about that from VTrans. The last time they had a presentation from VTrans they were talking about the issues around Stone Cutters Way and the potential that the bike path and Stone Cutters Way would be reused or lost to the city in terms of the way it is being used today. We heard there was an interest or a need in having some renewed activity along the rail line. What the City Council has just learned about is just that one section of the line. The fact that additional work was happening actually came to light with the Council when Bill Fraser was having a meeting with Federal folks about the work they are trying to do with the Carr Lot which has part of the bike path running through there. It was at that time they learned there was going to be an expansion of the rail line. She received a call from a person who lives out on Old Country Club Road saying she went to get a building permit to do some work on their property and found out there was going to be an expanded rail line there. While she is grateful they have the folks from VTrans present the last time they were here the city asked to be kept in the loop on this. They feel really out of the loop on this issue and disappointed they heard from the federal people or someone trying to get a building permit that in fact there is renewed interest in expanding the rail line. She and members of the community have a number of questions and look forward to understanding what is being proposed.

Trini Brassard, Assistant Director of Operations for the Agency of Transportation; Joe Flynn, the Rail Director for the Agency of Transportation; Andy Deforge, who works in local transportation facilities and the Project Supervisor for the bike path; and Todd Sumner who works for VTrans and the project manager for the bike path appeared before the Council.

Trini Brassard said what they are facing right now at the Agency of Transportation and the rail program as a whole is the Federal Rail Administration which is mostly a compliance agency at the federal level have now been given

some funding they can distribute. She is sure folks have seen on the news where they received the \$50 million to upgrade the Vermonter Line and they applied for the Western Corridor funds which don't look hopeful although the official announcements aren't out yet. About three and a half weeks ago the FRA came out with this notice of funding available. It was to allow realignment of their rail line. In about three weeks time they went through a variety of projects they had on the books and looked at where they might be able to take advantage of getting some federal funds. The information that has been compiled was all very technical. When they looked at the bridges on the line the worst bridge to nobody's surprise was the one by Shaw's. There is no saving that bridge at this point. They will be looking at a complete replacement in that location. The other two bridges in need of some work is the bridge out near the roundabout by Formula Ford and the third worst bridge is behind the House of Tang. When they looked at what the costs would be to just bring the last two bridges up to par is between \$7 and \$8 million dollars worth of work for the two bridges. Right now they can move freight across them. They can move trains with between 3 and 5 cars depending on what the freight is on the cars. When you look at the capacity of a rail bridge it is not necessarily what you have on it. It is the impact of the weight when the wheels hit the abutments of the bridge. They could take the bare loads. It means a spacer car so it would be a 100 foot loaded car, a 100 foot spacer car, a 100 foot loaded car and a 100 foot spacer car so the trains coming through would be twice as long. It isn't something they really relish the idea of.

This grant funded program would give them the opportunity to realign the track so it would allow it to move from its existing alignment across the two bridges to the other side of the river and avoid the bridges and still allow the train to run through. They completed the application and it has been uploaded. It is about a \$2.5 million project. It will be about three to four months before they hear about the application.

What they are looking at is realigning the track. The other will remain in place and be used mostly to move empty cars on or to store them. It will still be there and available to be used but the main line to be used would be the new alignment.

They looked at a variety of things when they did this project regarding some of the impacts to the area. She received a call before they even selected this project from Mr. Coniff advising he had been to the city to get a permit and they pointed them in the state's direction because there was some rail activity that might impact his property. She did talk with him extensively about where the track would be and what the rights-of-way were and explained that to him. This project is on the alignment of the rail bed. The rail bed is still an active rail bed

and has not been rail banked. It is the alignment that was being looked at for the bike path. In looking at the property there is enough publicly owned right-of-way that it appears everything could fit in there. The trains going through there won't be going at top speeds so they are not looking at needing 100 feet or 25 feet of safety clearance through there. They do know it will impact the existing alignment between Granite Street and Route 2. The train will come right back on to the existing alignment before it crosses Route 2 so any impacts to the adaptive reuse of the Pioneer Street Bridge there won't be any. The plans from that point forward remain the same. It is the in between segment they need to look at.

Council Member Jarvis said she is having a hard time picturing all of this. Do they have anything visual they can look at?

Ms. Brassard said this is the original grant application that has been uploaded to FRA for consideration and it is available to the public. There are some blackout areas. It's not because they are trying to keep secrets. It's the trade information for the railroad which they are allowed to consider as private and not available for public consumption. When you look at the application there are some maps which might help. The realignment is on the other side of the river. You'll see from Granite Street down they do have the siding there currently. The right-of-way the state owns is in orange. It will run parallel from the switch on the left hand side out through, and just before it gets to the Ibey property it will fork out. They have done a lot of work with the Ibeys and they have been very cooperative and worked with them with cleaning that site up. They have just done some hazmat testing and to nobody's surprise there are some issues with the soil so the soil is being removed right now. They are doing part of it and the state will have to step in and help them. She isn't sure they have the means to do it all. That property will actually get a clean bill of health before they put the track out through there.

It continues around on the other side of the river. Where the river comes through just northeast of the roundabout and the tracks will merge back together before they cross Route 2 on the current road crossing and then when they connect back everything is the same.

The trains are not running through the city as much as they had been. They have been involved in a lot of discussions with the Army Corps of Engineers, specifically their Florida folks who are receiving the granite. It ends up that their visual for their spec for chunky rock and our interpretation up here in Vermont of chunky rock and their engineer who came up agreed with us but didn't necessarily agree with the on site guy who had to accept it. There have been some pretty heated discussions. The rock will start moving. They have replaced

the project manager in Florida and the cars that are down there and have been backlogged for about three months are starting to be unloaded and will be coming back up through to finish the project.

There are three other projects that have been awarded to this group and those are timed in with them so they should see about four projects; all are under 100,000 ton. What this project will help with is when they get to competing for the million ton and 6 million ton projects it will give that mile of queuing for the train. With the existing alignment it would end up being split at some of the different intersections with the roads. This will allow them to queue completely out of the traffic flow and pull straight out when they are ready to go. They see that as a much smoother operation. It is out of the downtown and not backing across streets, which is always a good thing. If they were to queue on the existing line they would not be able to queue on the bridges. They would have to split the cars at Granite Street and pull them over on to Stone Cutters Way and back in, which is what they want to avoid.

They do believe when the larger contracts go out to bid that Vermont has a good chance of landing those. The rock that is up there has been classified as the hardest rock that the Corps of Engineers has ever tested. Some of these projects don't have quarries around them so we are competing on an even field with a higher quality product which makes it a more likely even they will get the bids.

This project if it is funded with the federal dollars will start next summer. If it is not the project will still probably go forward but with other funding sources. They obviously prefer to have 80 percent federal funds in a project like this.

Mayor Hooper said they said there was room to put the bike path in. How about maintaining the roads with the property? We are talking about a rail line, a bike path and a road, and she is suggesting there is sufficient room for that.

Ms. Brassard said if they look at the maps on pages 3 & 4 the public right-of-way is to the river. There is a fair amount of space. When they have been out there scoping projects and looking at that property it is used a lot for recreation now anyway. There are a lot of folks walking, on bikes and walking dogs so it is fairly well used for recreation purposes.

Ms. Brassard said they have not done the engineering plans for the rail line. They know there are some ditches and some culvert work that will have to be done, but those plans aren't required to apply for the grant but required when they move forward with the project.

Council Member Jarvis asked if the grant application required any local input.

Ms. Brassard said it is a lot different when you deal with the FRA than it is with a lot of other federal funding sources. If you look at the railroads themselves their authority comes back from some laws that were written in the late 1800's or early

1900's. When the FRA looks at a project they are looking at whether you own the right-of-way, which we do, is it active rail right-of-way, which it is. If it is rail banked there is a document we file that takes it out of being rail banked to go back into active rail.

Council Member Jarvis said she is more than a little surprised that the state process would allow this kind of grant application of this magnitude to go forward without consulting municipalities. This is a huge project in Montpelier that will cause major impacts and repercussions for the whole city. She is shocked that the state would submit a grant application of this magnitude without consulting the municipality. That really surprises her.

Ms. Brassard said they have had some discussions. Obviously, the railroad has to be involved in this application and some of the partners at the state level. What they have talked about in looking at this is what the impacts are to the Historic District in Montpelier. They know there aren't any direct impacts in the Historic District because of the location and the traffic is coming no matter what. It is a matter of realigning it outside of the Historic District. But looking at the indirect impacts are there any indirect impacts caused by this project? They are interested in hearing whether Montpelier or its residents feel there are indirect impacts caused by the project to the Historic District. They know there are issues dealing with the day to day operations of the railroad and the timing and how willing they are to share information. The state struggles with that piece and not just the city. What they are able to address when it comes to rail is a lot different than all of the other projects so it makes it tougher all the way around. When it comes to the Historic District they are interested in looking at what the indirect patterns are from the change of the pattern of the rail.

Council Member Sheridan said they said the Shaw's bridge has to be entirely replaced. Is it going to be the same? Is it going to be different?

Ms. Brassard replied there is no engineering work that has been done.

Council Member Sheridan said they don't know if there is going to be a piece put in where people can cross.

Ms. Brassard said they won't be able to cross on the rail bridge. It is for rail traffic only. The bridge will be constructed for the rail traffic. They understand for the other project there is some planning going on for pedestrian crossing.

Council Member Sherman asked initially what size and frequency are we talking about in terms of trains with granite going through town.

Ms. Brassard said what they have seen to date with the granite is what they are looking at ranging from 5 to 10 cars coming through. One of the problems you have with freight rail is that there is no schedule like with passenger rail. With passenger rail you know it is going to be there at 10:00 o'clock each day. With freight rail it means when it is ready. The one piece they can do and control a little better with this is have them queuing on that one track until they are ready to pull out to the Junction so you won't get the 4 and 5 car trips through the city at multiple times.

Council Member Sherman said when they go to the larger contract how many cars?

Ms. Brassard said what they will see with the larger contract is ramp up their volume where they can do what they call unit cars and unit cars will pull all the way from origin to destination. They will have a time schedule by which they pull out with the cars and they don't go sit in a yard somewhere and get hooked on to the next car going through. Those can be anywhere from 50 to 80 cars in a unit train. The worse case scenario would be that they land the 6 million ton contract which is an East Coast project. Under that scenario it is about 140 cars that would have to move out and 140 empty cars to be moved in every day. You are looking at three unit trains. Those would be whole and not broken up. They would work in multiple times in the day when they could pull their train into the queue on the freight lines. With rail you have your carrier that is in control of the line and other carriers can haul on your line in time slots that you give them.

Council Member Sherman said they would be going both ways through town so they would close downtown.

Ms. Brassard said there would be one pulling out and one coming back in empty.

Mayor Hooper said that is a mile and a quarter long. She would suggest Nancy's point is well taken since we have intersections about every quarter of a mile. There are four intersections within a mile and a half. While those trains are moving through it would be impossible to move from this side of the river to the other side of the river when they are in close proximity to an intersection. When they are moving they are in close proximity to all of our intersections.

Ms. Brassard said the trains are probably not going to go through town much above 5 to 10 miles per hour. They come through now between 2 and 3 miles per hour.

Mayor Hooper said it would take 6 to 12 minutes to clear a crossing.

Council Member Golonka said they are saying in their application there is no significant impact to the City of Montpelier. Quite frankly, he is really offended by this. They came to the Council in March and told the city we would be included in the process, and they haven't. There is a 22 page application we received 5 minutes before they came here and they expect them to ask questions about the project with really no input, and he thinks it's offensive. We are partnering with you. In March we indicated that the city would be willing to work with you and this is just sort of throwing it in our face. This is not transparency. This is not the State working with the City of Montpelier. This is you trying to create a project here in Montpelier and ram it through. We could have worked with you to help you with this, but where in the process of 22 pages didn't you think that maybe Montpelier would have an issue with this. Or, did you, and said who cares? We don't really want to hear their input. That is what he feels they have done to the city.

Ms. Brassard said she respected his opinion on that.

Council Member Golonka replied no, they don't.

Ms. Brassard said the direct area of the project is what they had to look at and they do know it has some impact on the Barre Street crossing and on the other side of the river, and they looked at that. They are continuing to look at indirect impacts to the Historic District and the areas in there. The rail traffic is coming no matter what. Whether they do this project and move it to the other side or whether they leave them on the existing alignment the volume and amount of rail traffic to move is not a factor in this project. What they are looking at this project for is a safety issue because the alignment they have currently and a way to get the queue out of the downtown. If we don't get this work done on the bridges the trains will be twice as long because they will put a spacer car in between each load. You have to separate this project from the trains and the movement of the trains because from Granite Street to Montpelier Junction everything is going to be insane.

Council Member Golonka asked why was she telling them that tonight and not six months ago?

Ms. Brassard replied they knew about the funding source three and a half weeks ago; that's it. They have raised this issue with the Congressional delegation, the FRA and others that their funding for freight comes out not very often and secondly there are extremely tight deadlines to turn around all of the pieces and get the application in. This application went in with no design plans or the actual

specs where the culverts are and how they would be treated. The rail traffic and how it impacts things is a completely different piece than just the realignment of the track. The railroad is going to bring that traffic through whether we do this project or not.

Council Member Golonka said they want to be included in certain aspects of the project. If we close down half the town we can't get ambulances over to Northfield Street. Those are issues. The city will probably get a thing six months from now where they will be applying for a \$7 million grant for the replacement of a bridge so it can accommodate new rail. Get it on the table. Tell us what you are planning. He hates half truths they hear from different people and we don't hear from the Agency of Transportation, and what we hear from them is wrong. It is mistruths and deception and suddenly they get this 22 page application that just seems completely nontransparent and out of context with what we are doing.

Ms. Brassard said she would argue that they have not told them anything that is not true. At the beginning they talked about the larger projects. They have not landed one of those projects yet.

Council Member Golonka said the state isn't getting the projects. The companies are getting the projects.

Ms. Brassard said the companies are not getting the projects alone. It's taking group effort to get those projects. They are not only looking at just the Rock of Ages. They have two other groups.

Council Member Golonka asked, who does the City of Montpelier go to in order to hear our concerns? Is it the Surface Transportation Board? He is concerned. He really thinks we need to have legal advice and go to a different board because we are not getting represented. Montpelier is getting really railroaded without representation. He is really concerned about the future of Montpelier. If we don't talk about it now, when do we talk about it? When you get the \$7 million grant for the new bridge? Or when there are 200 trains coming through in one day? We are really going down this slippery slope where we need to ask for it now. He thinks people will trust that people on the Council didn't do their job. He would hate to be the person who has a heart attack on Northfield Street when there is a 12-minute train going through, and they can't answer how that is going to be impacted. If the city doesn't have a voice at the table in the early stages we are doing a disservice to the citizens of Montpelier. He thinks we need to get legal counsel and go to the Surface Transportation Board to voice our concerns strongly and loudly in addition to comment on this grant application because we were not consulted, and that's insulting!

Council Member Sherman said she is interested in the fact that the bridge behind the Agency of Transportation hasn't been mentioned and it was a bridge that was knocked off the abutments during the ice storm. It seems to her that is totally inadequate for the kind of rail traffic you are looking forward to here. You are focusing on the realignment but a major bridge that all of these trains will go over. It goes from the Credit Union to behind 120 State Street.

Ms. Brassard said that bridge has been inspected and that is one of the better ones on the line. It was repaired after it got knocked off.

Mayor Hooper said one of the places she gets lost with is the statement "This is going to happen." If the rail operator gets contract these trains will run. If the bridges are insufficient to support what is going to go through, do they run until they fall down? Unless improvements are made by the state it seems to her that it would be impossible for this to happen. While she is saying this is going to happen because the rail operators are getting it, it strikes her that it is not possible for this to happen unless there is an active participation in terms of bringing funding and appropriately dealing with safety issues. At that point you get to weigh the safety considerations versus all of the other issues the Council is going to raise. She can't imagine they would run the trains if the rail bridges are going to fall down and unless the state puts money, or the federal government puts money in, the bridges are going to fall down. It won't happen unless they actively participate in securing the funding.

A representative from the Agency of Transportation said as Trini said there can be restrictions put on traffic that address the limitations on the bridges as they currently are rated. The bridges couldn't carry loads of a size that exceeds the ratings today but the traffic is going through there now. If there is increased traffic or increased loads there are formulas that are beyond his knowledge. By spacing the cars the engineers can determine what the bridge stresses can take. It is their goal to seek funding to improve the bridges to accommodate efficient movement. The standard in the industry today is 286,000 pounds. That is like an 80,000 pound tractor trailer. The freight rail business today is 286,000 and pushing upwards of 315,000 in some parts of the country. In order for freight railroad operators to operate efficiently and the shippers and receivers to maximize the value of freight, aside from the green aspects of it, they need to be able to load their cars to the maximum capable, and that is not the case on this line and not the case throughout a lot of the state of Vermont. They continue to work to improve that every year with their appropriations through the transportation budget. They have also applied for some earmark funds that they have not yet heard about through Washington, D.C. for this railroad line out here. They have a request in for \$7 million and with the bridges they have already identified and the rail that will need to be upgraded. It's a lot of money,

but when you are in the railroad business it doesn't seem to go as far as we think it should as ordinary citizens. They don't operate the trains but they do their best to restrict operations of the trains based on the science and engineering their people tell us with respect to the ratings of the bridges and their capacity to handle the loads. The state and citizens put safety first as well. This has been a tough issue for a year now and they have been to many meetings. That is where he first met Mayor Hooper eleven months ago. The difficulty they have had is the state is not the railroad. As the Agency of Transportation they represent the people of the state of Vermont who own the property and they are charged with the maintenance of the property and to make it available for rail activity which is under federal law their mandate. The railroad has the right to operate the trains. With respect to this application which addresses just a small stretch of mileage, 1.5 or 1.6 miles of a 13 mile line, they are trying to move this from one area to another because of the possibility that it will improve the rail operations and minimize the impacts to the city as a whole. With respect to the larger contracts that are on the horizon, it is speculation whether or not they are landed, but they have tried to be straight forward with what it could look like. That really has been said from day one in these meetings.

Council Member Golonka said to look at it from their perspective. They get a 22 page application. They are a department of the State of Vermont and they are a city in the state of Vermont. They work with us he would hope. They don't work for Rock of Ages or the other private companies. They work with the city so they can make it work for everyone and this could be a win/win situation. There are issues with the City of Montpelier that need to be addressed. It is the last developable portion of Montpelier where they could possibly lower their grand list. They have one of the highest tax rates in the state. If they had come to the city they would have asked how they could work around this. Is there a better spot so this 150 acres of land isn't cut off by a railroad application? These are the issues they are talking about. He thinks rail is great for economic development here in Central Vermont but he doesn't think they have brought it to the table with the city here in Montpelier. That is what concerns him. He isn't suggesting they aren't looking to create a rail passage. He feels they have been left out of the discussion for serious important issues that Montpelier needs to address before this goes through. He would hope they would respect that as a department of the State of Vermont.

Mayor Hooper said she recalled their first meeting when they met at the State House. They met at City Hall and they met once up at Rock of Ages and those are the only conversations they have been involved in.

Trini Brassard replied they met at the Central Vermont Chamber of Commerce as well.

Council Member Sheridan thanked Council Member Golonka for being the hammer for the last two years. When the bridge is being done by Shaw's and the trains can't move through and the contracts back up, does that mean when it is open that Montpelier is going to have more increased traffic to make up for the lost time? How does that work?

Trini Brassard replied they would put a temporary parallel line in. They will put a temporary bridge in right beside it.

Mayor Hooper and Council Member Jarvis asked if that was where they are building their pedestrian bridge.

Ms. Brassard said it is in the right-of-way.

Council Member Sheridan said they could have the train going through while the bridge is being repaired at the same time.

Ms. Brassard replied that is correct. The bridge will be constructed and then moved on to the abutments so there won't be the backup of orders, etc. Rail bridges are different than highway bridges. You can build them as a segment and then just move them on to the abutments.

Mayor Hooper said there isn't even room to park a car between the existing rail and M&M Beverage, and to say you are going to put another rail line in there she is a little lost on that.

A representative from the Agency of Transportation said the point is they would attempt to do that so it doesn't back up everything in an effort to facilitate the concerns.

Ms. Brassard said it also doesn't mean it would be on the M&M side that they would be doing the building. Rail bridges are different than highway bridges. What they would be looking at is constructing the bridge so you could on a Friday night shut the line down, pull the old bridge out, put the new bridge in and have it operational. The worst case scenario with a rail bridge is that you can also put a parallel track that literally is right tight to the other one.

Mayor Hooper said she would note that is precisely where they are talking about building the bike path, building the pedestrian bridge, building the multi-modal transit center, which is something they have been working on for years and involves millions and millions of dollars in federal grants. When they were having the Stone Cutters Way conversation which was when VTrans was saying they believed they needed to put the siding in this area members of the city staff

looked at alternative locations and proposed we look at the area from the Department of Labor down towards cemetery curve underneath the interstate highway and over by the wastewater treatment plant. It's not 1.3 miles in length and she understands there are some challenges in terms of wetlands and perhaps ownership but she would also suggest there are challenges with regards to ownership and stability of the soils in the area they are talking about. Why was that not considered as another location?

Ms. Brassard replied it was looked at and it was eliminated mostly because of the length that is needed and because of the drainage issues with the interstate and other areas.

Mayor Hooper asked if they had done engineering there and knows it won't work?

Ms. Brassard said they know the length won't work. They also investigated expanding the New England Central Railroad which wouldn't work, and they also looked at acquiring right-of-way along the New England Central line and putting it parallel to that line.

Mayor Hooper said she appreciates that the length won't work for what the rail would like to do but that strikes her as the perfect sort of compromise and they won't have the sort of impact that they are talking about on the downtown. The rail gets most of what it wants and we don't damage the community the same way. While it may not be the best it certainly is significantly better than running trains of this nature through our downtown. That seems to be an opportunity missed.

Sheila Coniff said she lives right in the middle of where they are putting the new rail. In a conversation with her husband a month ago they said the right-of-way had been expanded and could likely go through her living room. She is a little concerned about this because that is a bit different than what they had been told when they bought their property 20 years ago. If they are talking about queuing in their yard and there is going to be potentially 100 cars there it is going to take a while for them to get there. If during that time every day when it is queuing and her house catches on fire or her husband blows himself up and needs an ambulance they are out of luck. That concerns her. What is the city of Montpelier going to look like when there are 280 trains running through every day? Will the increased revenues to these companies offset the loss in tourism revenue to the entire city of Montpelier? That is a major issue. One of the questions Casey wanted to ask is how much money is going to fall into the community? Rock of Ages will make out like a bandit but is anybody else going to get anything out of this? In their road area there are three bridges and the

road has fallen in. The railroad bed they are talking about has fallen in at least four times in the last two years. Wetlands aside, this is going to need a lot of work. She also wants to know how the right-of-way grew so much from when they bought their land.

Trini Brassard said she did talk with her husband after he had been to the city offices to talk about the variance. In the area where their house is located the right-of-way grew toward the house but the right-of-way got narrower on the rail line. Their right-of-way doesn't go into her living room. It gets very close to the house in that one segment, but it doesn't go through any buildings.

Ms. Coniff said it is 12 feet from her front door.

Ms. Brassard said when they queue they will not block a crossing. Whether it is a private crossing or a public crossing they will not block the crossing. They will pull the cars to it, split the train and stay on both sides of the crossing. Access to her house while the trains queue is still there. When their time hits out at New England Central's line they will just back up, couple up and head out with the trains. Access will be there. That is a federal requirement for railroads and there are also some state laws on blocking crossings. When you go and watch the other areas in Barre and Websterville that when they go through certain crossings they have people there to clear them.

Ms. Coniff asked what about the revenue for Montpelier.

Ms. Brassard replied there is no taxing authority or revenue source for the City of Montpelier with the railroad, but the state's lease with the railroad once it gets to a certain volume of movement and revenue to the railroad they start paying the state for the use of the line.

City Manager Fraser asked if it would be enough to pay off the several millions of upgrades. He understands the state is the property owner but it seems from a business decision they are talking about \$8 million in bridges, \$2 million in rail siding, how much do they have to move before the state makes any money?

Ms. Brassard said there are the revenue dollars and it is hard for them to project when they are going to land the next contract. There is the dollar volume. Also remember that every car that takes the granite out of here is replacing between one and six tractor trailer trucks depending on what goes in it. It is also the offset to the cost on the roads. They have looked at the rock that is actually being transported to Florida and what it would take to secure that on a trailer truck to drive it down, the maximum load took six trucks and the minimum was three. It is also important to note that this railroad does not just serve granite. It

will be the biggest user for a span of time. They are also looking at transporting some of the wind generation equipment via rail because it is too big to transport by truck and they have to transport it in pieces and pay to assemble it on site now. They are looking at some salt and sand movements and some volume bulk food quantities, lumber, calcium chloride and fuel. With the 280 trains it is the worst case scenario. That is if they land the entire 6 million ton contract. If that contract was all awarded to Rock of Ages and had to move under a short tight frame, that is the case. They have been advised that it is probably not possible to award it all to one supplier given the time in which they have to move that granite. They did their modeling based on if it all had to move within a short period of time.

Police Chief Facos said from a public safety standpoint he attended two meetings with the affected law enforcement jurisdictions about trespass. With all due respect to the history of rail inflation in this country in the mid to late 1800's we are also in a post 911, post Katrina era with a Presidential directive about how we respond to emergencies. Tomorrow they have a meeting with the state to go over emergency response planning. He has not had any discussion about evacuation plans for our school.

Our high school is going to be directly impacted. With a train if something were to happen, whether flooding, natural or man made cause, it could have a catastrophic impact to their ability to respond. That is a state and federal responsibility as well as a municipal responsibility. Tomorrow they are talking about their emergency response planning and coordination with the state for the evacuation of state employees as well as Montpelier residents in the event of an incident. He is concerned about that.

Mayor Hooper said last winter when they lost a water line on Taylor Street and thought the railroad bed was being undermined and informed the rail operator we had serious concerns about a train being brought over it they were told they would make that decision when they needed to. Our public safety people said not to bring a train across because it is dangerous. That's the sort of issue that is deeply concerning.

A representative from the Agency of Transportation said Chief Facos mentioned when they had their law enforcement meeting the response they said was that if they were advised of those sorts of seemingly uncooperative responses and the city makes them aware of those they are inextricably linked to the railroad and if these things are brought to their attention they can speak to the railroad about that. Sometimes there are tactics they can bring to bear that the state agrees with the city.

Mayor Hooper said the city has an emerging public safety issue.

Garth Genge said he wonders if the state is going to do any analysis of the economic impact of the trains on the city of Montpelier. He is talking about income and benefits to different entities and the impact on Montpelier as far as how it will affect the economics of the city.

Ms. Brassard said they have assigned staff to do the crossings for the different pieces which looks at Barre Street traffic coming out on to Main Street. Will it look at the entire city's traffic? No.

Mayor Hooper said that isn't the economic impact but the traffic analysis.

Vicki Lane from Berlin Streets said she has an item of housekeeping. What's in it for Montpelier? Are we just getting screwed again by the state? She lives on the other side of the river and on the wrong side of the railroad tracks. If her house catches on fire she has a fire hydrant right next to her house, if it catches on fire and the firemen can't get across to get the fire hydrant going and her house burns down is somebody going to build her a new house? Is somebody going to compensate her for the loss of six animals that are dearly loved by her? If she has a heart attack on this side of the street while shopping downtown and the ambulance can't get her up to the hospital, who is going to compensate her family for the loss of life? Is the state going to? No! She remembers when the state said we will compensate you to her father when Interstate 91 went through. Talk about screwing people, she knows what the state is going to do. They are going to say it isn't their problem. What if she is the woman who lives 12 feet from the railroad track and has the train cars going by two or three times a day? She works next to one of these railroad tracks. They have experienced those loaded rail cars going by. If there was anything on the walls it wouldn't be. She loves glassware. She has a lot of glassware in her house. If she was that woman, let me tell you somebody would be compensating her for the loss of that glassware as it fell off the shelves and the windows cracking along with the structural damage to the house as the cars go back and forth. When the railroad was built they didn't carry those kinds of weights. If you run those cars through this city with all of these old brick buildings, who is going to take care of those buildings when they fall? She cannot believe that the state screwed us again. Are we going to get more in pilot money? Is somebody going to give us more out of all of this lease money that the state is going to get? Are we going to get more in pilot money? Are her taxes going to go down? No. But there is going to be a state employee getting lots more money. It won't be the average Joe Blow who is working but somebody higher up. This is really ridiculous!

Assistant City Manager Hill said on the applicant eligibility it said this rail line and right-of-way was acquired back in 1980 by the State of Vermont following the abandonment by the Montpelier and Barre Railroad. As part of the Pioneer Street Bridge project, and it also became apparent during the preliminary alignment of the bike path is that the state cannot assure itself that they have acquired the reversionary rights. As part of the Pioneer Bridge project the city had to acquire reversionary rights through a certain portion of the Zorzi land and it still owns those reversionary rights. She understood that nothing could happen for the bike path until all of those reversionary rights were acquired. Have they been or will they have to be as part of the state's project? This was a case that ended up in federal court.

City Manager Fraser said the court case basically said because the city was relying on the state's right-of-way and the court ruled that the state hadn't properly obtained the right-of-way in 1980 and therefore the landowner was due more money. One of the hold ups with the bike path project was because the state had to go back and make sure they had properly acquired all of the right-of-ways. Are there issues with the landowners here? Does the state have all of the deeds?

Ms. Brassard said her understanding from their legal counsel is the state has the ability to go through and put the tracks back in and that has to do with the use of the right-of-way. In talking with John Dunlevy about this it had to do with what was being installed. To put the tracks back in met the original intent. The reversionary piece or clear title has to do with using it for other uses.

Mayor Hooper said the state's position had originally been that the railroad had been abandoned. It was her understanding they were going ahead with the design and engineering of the bike path with that understanding. This came up and the state said they were going to get the reversionary rights; they were going to purchase them.

Ms. Brassard said it would have been acquired as a railroad. When the railroads came through in the 1800's there were deals made with each individual property owner. When they do title search to determine what rights a specific property to cross the rail line and sometimes they end up back in reports from the 1800's to do this, and in some cases the deal cut with the owner was when that property is no longer used for rail use it reverts back to the owner. When you are looking at a bike path it's not a rail use so you would have to purchase the reversionary rights in order to use that right-of-way for something other than a railroad. If the state is coming through with a railroad we are back to the original purpose for which it was obtained in the 1800's. It literally requires each property to have a title search back to the 1800's.

Mayor Hooper said the property along Old Country Club Road the State of Vermont leases to the railroad.

Jim Nolte from Barre Street said the rail traffic issue seems to be with the businesses down the line. Maybe the legal counsel in negotiations needs to be applied there. He thinks he understands that VTTrans is helping us and the helping the business stream to get business. It seems so far we have been talking to the businesses more than to the communities. As a Barre Street resident this increased activity seems likely to reduce their property values on Barre Street and they have been seeing some nice improvements on that road. Wouldn't you think that would have a negative effect on those developments? It seems likely to impact development plans by the city for that end of town. Isn't it really the only place where we can grow as a city? Wouldn't the city get more money out of development of housing and business in that part of town rather than a rail line and a siding? There are some Central Vermont Community Land Trust buildings that are right on the line; they are very close. There are seven units and 14 or more people that live there, and that sounds like two earthquakes a day. Are there any railroad rights-of-way on the other side of Barre? Is it possible they are still not abandoned and that track could be replaced on the other side of the city.

Ms. Brassard said there are track rights and right-of-way that go all the way from Montpelier Junction up into Websterville. When you look in the Barre area there is no room for expansion within the right-of-way there. The only area that gets pretty wide is behind Main Street and it has three or four sets of tracks and there are going to be a couple of others put in there to allow the movement of these cars. When they are looking for a place to put the queuing if they land a larger contract, that is about the only place with that length. The question has come up a variety of times on some of those locations along Stone Cutters Way. On properties they have leased down there is a noise and vibration clause. There is not a whole lot they can do as far as mitigating that because she can't put cushions under the tracks. With regard to property values, they have seen it go both directions with train activity. They have seen some properties increase in value. It isn't always just commercial properties. They have seen where there are groups actually buying houses right next to the tracks.

Mayor Hooper said she would like to note there are representatives of the Condominium Association on Barre Street who came because it concerns some of the properties that are backing up immediately on the rail. A representative of Food Works was here and he is deeply concerned about the bike path and the possibility of the bike path being lost because that is part of their strategy for the redevelopment of that important property behind Cabot Creamery. Even though they haven't necessarily heard from everybody in the room or all of the

members of the community there are issues. She wanted to note there are other people who have similar sets of concerns that have been expressed here.

Early on there was a discussion of the potential impact on the historic downtown and a number of them has talked about the downtown. She particularly appreciates Jim's comment about the community because that is where a lot of them are coming from in terms of the impact on the community, both from an economic and social standpoint. She would like to have it in the record that the State Capitol we are talking about this being a use within a matter of yards from the State House with a number of cars going through. We are the largest historic district in the state of Vermont. The City of Montpelier has taken that obligation of having so many treasures in our community extremely seriously and has had ordinances and regulations in place for more than 20 years that protect the historic values of our community and have built upon that. We are a designated downtown which focuses very seriously on economic development, promotion of our community, organizational development of the community which is around the built environment but it is also around the economic and social environment we are trying to create. More recently we have become a Growth Center because we are deeply worried about our grand lists and our opportunities to grow but also a larger concern that we think growth and development as good Vermonters ought to be happening in our designated downtown and downtown cores so we are taking the obligation that goes from that. In fact, one of the major areas we have looked for and looked at in our growth center and all other efforts we have been engaged in was the development of Sabin's Pasture which is one of the last places you can put significant housing on within our community. We were so proud of the work that we had done with the Senior Center and the redevelopment of housing on Barre Street. The City Council has been incredible in its focus on redeveloping all of Barre Street and helping the Central Vermont Community Land Trust redevelop houses. Not just because we want to do houses but we believe in the neighborhood and what they are trying to create there. We want to create a community there. We have talked about the millions of dollars that the federal, state and local money that has been spent on Stone Cutters Way. We have been very successful with what we have done there. We have enlarged our grand list as a direct result of all of those efforts. She said this feels like this is a direct affront to that very long careful planned effort to make this a great community. While you might say these are indirect effects this is our future. We can't go somewhere else. We don't have an opportunity to move a mile in that or this direction. This is the only area that we have to go in, and we need help with this. We can't deal with having one of the highest tax rates in the state. We aren't paving the roads because we don't have a large enough grand list to support what we have to be doing not just for our 8,000 residents but for the 20,000 people who come in to Montpelier each day and who treasure what we are trying to

create. This isn't about us versus some industry that is trying to be creative. It's just about us wanting to participate and to protect the interest of all of Central Vermont but our primary interest is Montpelier. We have to stand up hard in arguing that those needs need to be protected. We need to think about how we are going to proceed and where we want to go with this. Thanks for coming and telling us about this project but also hope hearing what our community is saying about our deep concerns and working with us to find a way for all of these needs to be accommodated. We need that. We would like to be partners with the state in creating something that is better for all of us.

Council Member Weiss said he has attended many of the bike path committee meetings. On June 29, 2009, once the easements are obtained by the municipalities they will quit claim them to the state and the state will lease the railroad land to the municipalities. The other reading is an agreement related to the railroad work on the project between the city, town and state will detail the scope and responsibility of each party. The agreement is needed before the project receives a right-of-way certificate. The bike path in Montpelier now is dead and it is dead for these reasons. Reversionary rights have not been obtained. Reappraisals have not been obtained. Wetland permits have gone and been deleted. Act 250 requires a new permit. Construction general permits have expired. Operational storm water permits have expired and the categorical exclusion has expired. There is nothing left gentlemen that is viable no matter what the railroad does or what the city can create for this bike path to become a reality. Any response you choose to make will be appreciated, and if there is none thank you.

A representative from the Agency of Transportation said they have been on hold for roughly 18 months waiting to see what was going to come of this proposed rail project, and in that time some of those permits have expired.

Mayor Hooper said add to that the \$600,000 that has been spent in state and local money to support the bike path development to obtain the permits that have expired to do the work that hasn't been able to be carried forward, etc.

Ms. Brassard said to clarify the land is railroad right-of-way. The property that the state acquired when they purchased is railroad right-of-way. Railroad right-of-way is controlled by the Surface Transportation Board on its uses. They have the ability to move it out of rail use on an interim basis, which is what the bike path would be. Any leases they have, even when you look at the Lamoille Valley Rail Trail, the Mississquoi, all say if rail chooses to come back here and lay a line all other uses are gone. The rail has priority, and that is back to the 1800's. When we talked about the indirect impact, the indirect impact reference she made was not to the trains coming through the city but to the actual alignment of

this piece and the changing of it from one side of the river to the other. That change is going to have minimal indirect impact to the historic district. They all recognize that the volume of traffic coming through the city is a major impact.

Council Member Jarvis said the location has major impact as well.

City Manager Fraser said they are required under section 106 to look at the historic impact which is an obligation for federal funding. Certainly, they are concerned about the historic district, but a lot of the concern they heard tonight has to do with the areas outside the historic district, particularly the open parcel of Sabin's Pasture that the city spent nearly ten years wrestling with what to do with it. Those are all areas that don't necessarily fall within the designated historic district so they wouldn't be required for Section 106 review. Relocating a rail is going to derail many plans and efforts, time and expense and decisions that the city has made over the last decade. It really is a game change here. There is a huge amount of federal and state money going into upgrade these lines to benefit businesses. They don't begrudge businesses doing well but they don't see what is being offered to compensate for these kinds of losses, whether it is home values, business losses, etc.

Council Member Weiss said they asked what the Council could do. Mr. Fraser said sometime back this Council approved the engagement of an attorney to investigate the city's rights regarding the railroad.

City Manager Fraser said they had made contact with an attorney but haven't done much work.

Council Member Jarvis said part of the Council's frustration is the lack of information. They are so frustrated because they don't understand what the city's options are. One of the things she would really like to know is who makes the decisions? For instance, let's say there isn't the money available right away to upgrade the Shaw's bridge. Therefore, the decision is made that in order for the loads to come through you have to do twice as many cars with spacers. Who makes the decision about how many cars can go through and how long the intersection is blocked? Where does the city have input in that? Do we need to go to the Federal Transportation Board? Can we talk to the state? Are their hands just totally forced by the railroad? The Council feels like they are saying to us we're just doing what we have to do because the railroad is coming through. The state must have some power here in this whole situation. Where do we get in here? How do we make sure that someone is looking out for how long the intersections are closed or what the evacuation plans are for the high school which is right next to the railroad line? It's really confusing for the city to hear about the state looking to spend millions and millions of dollars at a time when

the state is in a deficit. Who is making the decision about prioritizing the spending of money that the state doesn't have on projects that will benefit so few? She told Trini she was very confused about what she means by saying if "we" land a larger contract. She keeps saying this isn't about the state. Do you have power, or don't you have power?

Ms. Brassard replied there are multiple phases on the Corps of Engineer projects. They did assist with the testing of the rock from the perspective of helping them line up an entity that could do the crushing the way the feds wanted it and to secure the results of it to take to their lab. When they put a project together and look at it the Northeast Materials Group works with the railroad and works with a general contractor who is overseeing the project for the Corps of Engineers to put together what that spec looks like. Where the state gets involved is the volume they are transporting and what the limits are on the bridges and determine if the railroad's plan for moving it through meets any restrictions that are on the bridges. Until the bridges are at a level where they can say they are safe they look at their plans for moving them. Generally, what the railroad will present are enough spacers to make sure the load is safe to come across the bridges.

Council Member Jarvis asked if that decision was totally divorced from what that would look like having that number of cars in a row.

Ms. Brassard said when you look at the rights of a railroad it is a very tough spot and the state is in as tough a position as the city is. A railroad has the right to access those tracks 24/7 and they can put as many cars as they want over those tracks in that time period. We cannot restrict access, time, any of it. When they hear of issues with them, like not walking the train through or their dispatcher being wise to public safety folks, they can get involved then. They have requirements they have to meet for FRA which have to do with crossings, rates of speed, track, evaluations, etc. Other than that the state really doesn't have any ability to govern the operations of a railroad. They have been working on getting them to provide information on what they are looking at and what they are doing in advance enough so they can pass it on to folks. When they finally knew when the trains were going to start rolling, where they were going to be going and what was happening we engaged all of the other safety folks and did talk to them about trespassing issues. They also included them in the information they got out to the schools and the information that went out to the community so they would know when the trains would start rolling and know where they were going to be. Maybe one of the places for the Council to start to get a better understanding of rail is to see people who specialize in different areas of rail and see if they can get some technical assistance for the city and tell you what the powers of the railroad are.

Council Member Jarvis said that would be helpful because they don't understand that.

Mayor Hooper said she appreciated that offer and that may be very useful. She would like her own information that we have developed on our own. She would very much like to pursue the idea of getting independent legal counsel with some expertise in the area of rail to explain clearly to the city what its options are and making sure that what happens is in the city's best interest.

Council Member Sheridan moved the Council instruct the City Manager to have the attorney he has talked to go into active mode and start looking into all of the questions. Council Member Weiss seconded the motion.

Council Member Golonka said he would like to ask in the motion that they explore all avenues to the Vermont Transportation Board in regards to appealing the use of discussion.

A representative from the Agency of Transportation said the Surface Transportation Board trumps everybody.

Mayor Hooper said all avenues including the Surface Transportation Board and also the State Transportation Board and any other avenues in helping to insure that the city's interests are weighed equally with others.

Council Member Sherman said she would like to include the Congressional delegation who has secured earmarks for projects that will be severely compromised by this.

Mayor Hooper said they are looking at legal action as opposed to talking to our representatives.

Assistant Public Works Director McArdle spoke about the application for the new alignment through Sabin's Pasture and he wonders what their crossings might be. The alignment of the tracks seems to landlocked the property.

Mayor Hooper called for a vote on the motion. The vote was 6-0, motion carried unanimously.

10-265. Zoning Process Workshop.

- a) The City Council and Planning Commission will discuss the process for moving forward with the zoning changes required by the Master Plan.

b) Recommendation: Discussion.

City Manager Fraser said the city just had a very successful Master Plan adoption. As we move into the zoning process there was a situation the last time around with zoning where the Planning Commission was doing its good work and the Council didn't agree with the work and everybody left the table feeling badly and not appreciated. The Council members felt bad. Gwen and he had a conversation about how they could prevent this from happening and talk about it in the beginning. Tonight they hoped the Council and the Planning Commission could talk to one another about what works and a way to communicate about what each other is doing. Tonight they want to talk about the process they would go through and meet again on November 8<sup>th</sup> and start talking about the actual substance.

Planning Director Hallsmith said what kind of process are we going to engage in as we move through the zoning. There are a couple of questions. One is the question Bill has raised which is the one that occurs between the City Council and the Planning Commission. The second is the process that we engage in as a larger group with the whole community. Without really understanding how the City Council had envisioned being involved she drafted how they would be engaged for the whole community. The open question is what kind of structure would be useful to make sure we accomplish exactly what Bill said, which is to have all of the Council Members feel involved and engaged enough and own it enough so that by the time we get the end of what is a long difficult and technically complicated project we are all in agreement instead of being at odds with each other. One model they used as part of the enVision process that was moderately successful was to have a steering committee that was comprised of a few members of the Council, members of the Planning Commission and Chairs of all of the enVision committees that really oversaw the process as they went forward. That is one model. Another model could be having regular check-ins with the City Council every three months or so when they all meet and discuss what we have been meeting with committee members, what kinds of issues have arisen, what challenges they are facing and get the Council's input on that. Both of those could work together. All she is doing is opening the question for how the Council would like to be engaged in it and what they think we should do to help facilitate that.

Mayor Hooper said she believes what they are talking about is a fundamentally different zoning ordinance than what they see today. It is fundamentally changing it in rather exciting ways and it needs the Council's engagement because of that.

Planning Director Hallsmith said the Master Plan calls for actually changing it substantially.

Council Member Hooper asked if there was any template of what we might expect the final zoning to look like as opposed to what we have now.

Planning Director Hallsmith said the simplest one page description of the direction they are taking is in the Master Plan right adjacent to the future land use map where we talk about three different types of tools they will use. We will look at developing neighborhood development standards. We will look at having a low density rural area, a historic design district and a smart growth district. There will be essentially those goals encapsulated in the zoning – looking at our historic design area and developing tools that can help enhance and improve that area; looking at the smart growth district and engaging the tools that can help us achieve the goals of expanding housing in the city which has been an important objective of the City Council and is the goal of the growth center designation; and also looking at neighborhoods individually to try and make sure they are engaged in the process and try to incorporate their interest in the plan. The neighborhood development standards she feels are likely to look something like what are known in the planning world is form based codes which are very clear guidelines for how development occurs in neighborhoods that tries to reflect the neighborhood character. They tend to be used a lot these days in zoning because they simultaneously give developers some really clear guidelines to follow and also enable neighborhoods to have a real voice in their development.

They have developed a survey as a starter that they would go into the neighborhoods and ask them to complete the survey on the kinds of development they can envision in their neighborhood, both on a residential scale looking at density issues and looking at commercial kinds of developments that might be compatible with the neighborhood. There is a team working on this that includes the Regional Planning Commission because there was a grant that enables us to hire them to help us with the process. At the All Board meeting that is scheduled for November 8<sup>th</sup> at Noble Hall Lounge there will be another presentation on some of those tools. The tools are all up to us to shape and develop to our standards as well. These are some of the approaches they are considering as they move forward.

Council Member Jarvis said what she sees as the biggest potential pitfall is her fear that this body is not going to understand what direction we are going in until we are part way there. Her request would be that right up front they get as much information as they can about the policy shift they are talking about. She would love to hear the pros and cons. She would like someone from Smart Growth Vermont to come in and talk to them. Her personal concern going forward is

that with their Growth Center designation that we have thereby lowered the jurisdictional area for Act 250 purposes. She really needs to be assured that we know what we are doing in terms of picking up the slack there.

Planning Director Hallsmith said they have a specialist coming in on the 8<sup>th</sup> of November.

Council Member Sherman said it would be nice to have some samples of completed zoning regulations that followed that process.

Planning Director Hallsmith said what they have is similar to that. There is a study that the city of Washington, D.C. did that compared form based codes and performance zoning with the hybrid mix of the two and described what the goals are with each type of zoning and where it works and doesn't work. It has some sample cities that have used the different techniques and it is very useful. She has circulated it to the Planning Commission.

Mr. Bloch said there are the two Vermont models of Newport and St. Albans as well.

Mayor Hooper said she heard about the Newport one which is pretty spectacular and all of 28 pages long.

David Borgendale said he thinks he may be one of the last few Planning Commission Members that went through the last go around. In terms of what happened it is really critical that there be pretty frequent check-ins between the City Council and the Planning Commission about the direction they are taking because his view of what happened last time is there was a divergence of ends and goals between the Planning Commission and the City Council. Those issues need to be checked in on and hammered out as the process occurs and not ending up with everybody being unhappy. The one thing that is essential is continuing communication and check-in points.

Council Member Golonka asked what timeline they are looking at.

Planning Director Hallsmith said with a change like this it does take time because we want to engage the community in a meaningful way. She was looking at the first phase of the project being what they had engaged the Central Vermont Planning Commission to do. That grant started in September and it will be done in August. That is looking at boundaries and seeing where we might change the boundaries of the zoning districts and looking at some of these tools we were discussing to give us a good sense of what those tools could be. From then on in they need to complete the ordinance revisions so she was anticipating another 6

months after the completion of the Phase 1 with the Central Vermont Regional Planning Commission. She is thinking a total of eighteen months to two years. Any major policy change does typically require that type of time frame. This really careful consideration of what we want to accomplish with our land use policy does take longer.

Mayor Hooper said just the mention of the process in her mind raises questions. The Regional Planning Commission is developing information on boundaries. That feels like something we should be deeply involved in.

Council Member Weiss said in the process he has a request. Consider that zoning is the tip of the iceberg and you come up with a new ideal plan. But the process that an individual has to go through in this city is horrendous based upon the zoning. They have to go to a zoning administrator, a building inspector, possibly a technical review person, follow a building code, and go to a Design Review Committee and a Development Review Board. One could spend a lifetime trying to get a simple project approved and he would hope as they are developing the process maybe they could tuck in there a subheading on the processes of the administration of zoning. According to the charter you have a right to do that.

Bethany Pombar said she likes the idea around establishing milestones and that we are all on the same page of what they are and approximate timelines. She is wondering about the process to create those milestones and making sure they are touching base at the places they feel they need some input. She wonders how they would feel about creating a joint committee to get this started about what those milestones are and propose a process to the Council and Planning Commission about what that might look like.

Council Member Jarvis said they haven't made a decision about the first step. Are we shifting from the way we have been doing things to a new way?

Planning Director Hallsmith said they have made that decision. The goals in the Master Plan are pretty clear there. The shift in zoning is one of the very clear strategies we have. The All Board meeting provides a good opportunity to come up with some milestones and come up with the first steps in the process. They can lay out very clearly what the goals are and what they want. She wants to let Council Member Weiss know that she certainly hears his complaint about the process, and we administer it. We administer something that we are required to administer in the way it was laid out and they have done their best within the constraints of that program to make it a lot easier on applicants to get through the process. They have changed the schedule of the DRC and the DRB. They have changed the zoning process for applications so you can actually come in

now with a simple application and leave the same day with your zoning permit. That didn't actually used to be the case if it doesn't require other levels of review. They share his goals of making the zoning process much more user friendly, but to do that we have got to change the zoning bylaws. The zoning bylaw the way it is written you need a slide rule or computer program to figure out a sign size. They actually do share common goals and the Planning Commission has put in a lot of thought into the form that might take. At the November 8<sup>th</sup> meeting they do plan to outline that clearly and that would be a good opportunity to come up with some of the milestones.

Mr. Borgendale said one they are going to end up with more zoning zones than we have right now, probably a lot more. They are going to be neighborhood oriented and the really difficult first challenge is going to be defining neighborhoods and figuring out how we handle transitions from one neighborhood to another. Once they get that done then they start figuring out the technicalities of how to implement the plan for that neighborhood. Defining those is going to be very important work and that will probably be the first major milestone.

Planning Commission Member Aloisi said the Planning Commission is open to many different types of new ways of zoning and one of the first steps is City Council and the Planning Commission getting on the same page about which direction that is and getting input from the entire community about which direction they want to go in, too.

Council Member Weiss said the first step is the meeting they are having right now. The second step will take place on the 8<sup>th</sup> of November, and the third step will be asking the Planning Commission to come back to a Council meeting in December and report in detail the results of what happened on November 8<sup>th</sup>.

Bethany Pombar echoed what Missa said. They have all struggled to wrap their heads around this new format that is pointed to in the Master Plan. They wanted to do due process in looking at that model in relationship to other models and figure out how it best fits our city and what it allows us to do. It is going to be a crucial step for them to articulate that well so as they try to engage the citizens of Montpelier in that process we can explain that.

Council Member Sheridan asked who was going to design the surveys for the neighborhoods.

Planning Director Hallsmith said there is a draft that the Central Vermont Regional Planning Commission has done. The neighborhood surveys and neighborhood meetings don't include giving the neighborhoods a key to the lock

so they can lock the door and keep everything out. There are policy goals around growth that we have already established. We do have goals for zoning.

Council Member Sheridan asked if the surveys were going to come back to the Planning Department. Who sees them first?

Planning Director Hallsmith said they would have an introductory meeting where they would give out the surveys. The second meeting would be when they would bring them back to a neighborhood meeting that those on the planning and zoning team would attend and collect all of the information. The third meeting would be where they would articulate what they have received from them.

Mayor Hooper said one of the issues they are going to struggle with is that a lot of this design is around having highly functioning intact neighborhoods who are participating.

John Bloch said they have gone to the furthest extreme possible in putting everything in writing. What we don't realize is until 250 years ago the primary means of communication were drawings or pictures. Gwen has tried to use pictures and graphics.

Planning Commission Chair Moorman said it may be helpful at the outset of the process to isolate from the Master Plan the goals we have adopted that drive our zoning revisions and at the same time we have already started to identify some potential goals on top of that. He has heard from citizens in town they want more straight forward manageable zoning regulations they can understand and follow. He will personally lobby for that on the Planning Commission in their efforts to rewrite the zoning regulations. He isn't sure that is the goal that is explicit in the Master Plan but is certainly one they should strive for. Let's have a clear picture from the outset of what our drivers are in the Master Plan and identify other drivers outside of the Master Plan they want to focus their attention on. In terms of communication he is hearing that City Council would like to meet periodically to discuss this. They definitely need to engage the neighbors and some of the Council Members were very active in that process.

Tim Heney said he likes what he is hearing. Process versus results is really important so laying out some goals for this up front is critical. Other things that might drive the process and timeline is if there is grant money involved or higher bodies in the federal and state government that creates a weird dynamic in terms of conversation.

Council Member Weiss said in terms of timelines is this something that may have to be voted on at the March meeting?

Council Member Sheridan replied no. Citizens don't vote on the zoning.

Bill Jolley from Parkside Drive said after reading the entire Master Plan he wants to congratulate Gwen and her team. He understands the goals. He assumes by adopting the Master Plan they have essentially adopted the goals. In order to accomplish those goals there are going to be a lot of factors which are out of the city's control and some are going to be external factors. The global economy, national economy and Vermont economy is just one. There are certainly hundreds of other factors that in order to accomplish the goals are going to be out of zoning regulations. He sees a lot of ideology in reading the Master Plan. He would like to see a little more balance between the ideologies of what the future could look like in Montpelier versus what the practical situation is.

Mayor Hooper said Gwen eluded in her memo about pulling together in addition to the neighborhood groups was targeting business owners and specific areas of the community. She would suggest adding to that people with experience going through the process. It sounds like the Planning Commission is offering to meet periodically with the Council. Council Members were in agreement.

10-266. Second Public Hearing/Informational Session on proposed Charter changes.

- a) On September 8<sup>th</sup> the City Council filed proposed Charter changes with the City Clerk 10 days prior to the first public hearing as required by statute.
- b) By statute the first public hearing must be held at least 30 days prior to the date when the Charter changes will be voted upon. The first public hearing was held on September 22<sup>nd</sup>; in this case the first hearing was held 40 days prior to the municipal election scheduled for November 2, 2010.
- c) Amendments have been proposed for Titles III, V, XI, XII and XIII of the City Charter.
- d) These amendments would provide for appointment of the City Treasurer rather than election, formally change the name of the Zoning Board of Adjustment to the Development Review Board, eliminate the Board of Auditors, authorize the city to operate and sell heat and electricity, authorize creation of an energy assessment district and confirm an earlier vote to merge with Berlin Fire District #1 for the provision of water.

- e) The proposed Charter amendments will be addressed in three separate ballot items.
- f) Unlike the first hearing which is designed to take public comment for the purpose of either changing the proposal or discontinuing it, the second hearing is designed by the Council to explain the proposal to the voters and to allow for public discussion about the pros and cons of the proposal.
- g) Recommendation: Conduct the Public Hearing/Informational Session.

Mayor Hooper opened the Public Hearing at 10:25 P.M.

City Manager Fraser said the first Charter change is to convert the Treasurer position from elected by the public to appointed by City Council, eliminating the elected Board of Auditors and officially changes the name from Zoning Board of Adjustment to the Development Review Board. He noted that in last week's Bridge

they published all of the Articles in their entirety with an explanation of what was proposed.

Thomas Weiss from Liberty Street said he is confused on what he is actually being asked to vote on for Article I. Article I gives some general guidance as to what he is voting on but it doesn't refer to any document he can refer to and look back on in the future to determine what they voted on and was it submitted to the General Assembly. What he is voting on doesn't say he is actually voting on that document, and that concerns him.

City Manager Fraser said the statute requires the Charter language be filed with the City Clerk and that is what they vote on. The Council voted to enact language and filed it with the Clerk and that is the language that is being considered. Once it has been filed with the Clerk the Council can't change it again.

Mayor Hooper closed the Public Hearing on Article I at 10:32.

10-267. Public Hearing/Informational Session on Article 2 of the Special City Warning for November 2, 2010.

- a) **Article 2** reads: Shall the merger of Berlin Fire District No. 1 and the City of Montpelier approved on March 5, 2002 be confirmed?

- b) This hearing is also designed to discuss, and take public comment, regarding this Article.
- c) Recommendation: Conduct the Public Hearing/Informational Session.

Mayor Hooper opened the Public Hearing on Article II relating to the Berlin Fire District.

City Manager Fraser said the city attorney told this is technically not an amendment to the Charter although the merger will become an add on to the Charter. Because it is a merger of inter-municipal operations it requires approval. The city has already approved an operating agreement with Berlin and an inter-municipal agreement with Berlin Fire District No. 1 to operate and merge the assets to make them part of the city's water system . What Thomas Weiss is here to talk about is that there was a plan of merger filed. He has a question about the 2002 vote.

Thomas Weiss said he went to the City Clerk's Office last week to get information and received the sample ballot and received information about the Articles the voters are voting on. What he received was a handout that had some documents on Articles I and Article III, but there is nothing on Article II which is on the confirmation of the merger. He went back to the 2002 City Report and Article XI in the warning for that city meeting said, "Shall the City of Montpelier and Berlin Fire District No. 1 merge into the City of Montpelier under the terms of the plan of merger approved by the Montpelier City Council on September 12, 2001 and by the Berlin Fire District No. 1 Committee on October 21, 2001?" He tried to find out what document that was they voted on in 2002 and the City Clerk could not find any minutes of the meeting on September 12, 2001. He checked back issues of the Times Argus and there was indeed a meeting warned for September 12, 2001 which included as an Executive Session to discussion the Berlin Fire District issues. He tried to find reports of the Council meeting in the Times Argus and didn't find anything. He went back and found out that was the day after September 11, 2001 and the City Council had postponed its meeting. Therefore, there is no document that the City Council approved on September 12, 2001 so there was no document they could have truly voted on for March 5, 2002. What surprises him is that in the four months between when the meeting was held on whatever day it had been forgotten that there was no meeting on September 12<sup>th</sup>. Furthermore, he went to the City's internet site and found a 5-page document. The first 2 pages are an interlocal agreement plan of merger and no date of when it was drawn up. That is what is there as being information what they are supposed to be voting on Tuesday. The third page is an addendum dated February 27, 2002 so they can't be voting on that because it

isn't the document approved on September 12<sup>th</sup>. The last two pages are an interlocal agreement signed June 11, 2003 and June 10, 2003 by the two parties.

That refers to things that happened on or after the meeting in March 2002. Maybe those first two pages are what they voted on but it's not clear from the record. There not having been a meeting on September 12<sup>th</sup> there isn't anything they actually voted on.

Then he went back to the bill that was introduced in 2003 to the General Assembly to see if it had a text of what they voted on. What he found there was the bill contained an amendment to the City Charter that was never presented to the city voters to vote on. It contained an amendment to Section 5. They were never warned for a motion on the Charter change as to the text and the language this is not the language in the first 2 page document he was just describing. It is the same with the bill that was introduced this past January. It had the same Charter change and the same disconnect with any of the other documents that he has been able to find.

State statute requires that notice of the meeting shall specify the sections to be amended with the text of the amendments, and that wasn't done in 2002 and he doesn't see it being done here. They are being asked to approve a merger which is going to lead to a Charter change but they are not being asked to vote on a specific Charter change that is going to be presented to the General Assembly. Even if Article II passes on Tuesday we will still have to vote a Charter change before we can present a bill to the General Assembly to change the Charter. He concludes the attempt by the city to amend its Charter on this issue is based on false premises because it is based on a document the City Council could never have approved because they didn't meet on that day. Subsequent attempts are all based on that. That is his concern as to why Article I and also Article II don't reference a specific document they are voting on. If confusion happens in the future how do they know exactly what they voted on? He thinks they should ignore whatever vote comes out and start over and do it right.

Mayor Hooper said she just asked for the drafting of the last Charter change and asked them to pull up whatever they did before. She assumed it was proper and they just copied what they had done before and obviously didn't have the benefit of the research that Mr. Weiss did.

City Manager Fraser said this just came to his attention late this afternoon. He knows that was scheduled for September 12<sup>th</sup> and he is interested in the piece about the amendment. He's right; they voted on the merger and not on the Charter amendment so all they are talking about this time is the plan of merger.

Mayor Hooper said what the bill actually said, could it have been that the Legislature changed whatever they presented?

Mr. Weiss said in 2003 the bill was introduced by Brooks and Kitzmiller. Whether the bill as it came out was what they dealt with in the Legislature or not he doesn't know. There was one hearing held on it and the committee decided not to take any action.

City Manager Fraser said Mr. Weiss is right. They shouldn't be putting forth a Charter amendment they didn't vote on.

Mayor Hooper said they are going to have to research this and figure out what the right thing to do is.

Mayor Hooper closed the public hearing at 10:45 P.M.

10-268. Public Hearing/Informational Session on Article 3 of the Special City Warning for November 2, 2010.

- a) **Article 3** reads: Shall voters amend Title XI, Sections 1 and 22; Title XII, Sections 10-12; Title XIII, Section 1 and Sections 3-20; for the purpose of authorizing operation of a district energy system, sale of energy and creation of an energy improvement assessment district.
- b) Again, this hearing will provide an opportunity to discuss, and hear public comment, regarding this Article.
- c) Recommendation: Conduct the Public Hearing/Informational Session.

Mayor Hooper opened the public hearing at 10:46 P.M.

Mr. Weiss said this is the same issue in that it refers to a specific document. In other charter changes that the city has warned since starting in 2002 it refers to a document that is trackable.

Mayor Hooper closed the public hearing at 10:50 P.M.

10-268A. Montpelier Energy Advisory Committee Update.

Council Member Weiss said the Montpelier Energy Advisory Committee as appointed by the Council has been very faithful in its duties and met last night to

hear a presentation about the proposals which had been submitted regarding the biomass project. Technically, there are only three proposals but each of the proposals has its own subset because the bidders could provide alternative

methodologies. Through Gwen's presentation the Advisory Committee by consensus because they don't vote agreed with Gwen that they needed a technical third party person to advise in terms of technicality and economics. He would like to ask Gwen to make a brief presentation on what is being requested and then ask the Council if they will vote to support it.

Planning Director Hallsmith said there is a proposal from McMillan Company that involves several choices and alternatives including a city only possibility if the state didn't want to cooperate with us which is another form of energy generation that can be done with hot water instead of steam. There is another proposal from Pizagalli which also has a couple different alternatives. Both of these alternatives do have the no city or state money option in them and would be private financing. He also has proposed a different burn technology which is known as suspended combustion which is done with dust instead of wood chips which means there is a lot less storage space needed on site. It's a smaller plant. There is a proposal from Dew Construction, Inc. They didn't propose any substantial alternatives but they do have several phases of the project that need to be evaluated in terms of their financial impact.

There is a lot to think about. If she was qualified to do the technical and economic review of all of these proposals she could have made one and be on the bidding team as well. Harold Garabedian is doing a great job as Project Manager, but they do need some outside technical assistance. They did receive a proposal from a firm that she met at the Public Works Conference in Washington that does what they call value engineering where at this stage in the process they look very carefully at all of the proposals and try to come up with the best alternative for the city. Most of us have heard value engineering is a kind of a derogatory term for cost cutting and quality lessened, but in this case it might be that the suspended combustion alternative is a really good one and we would want to see what that would price out for the local only option. There might be some type of mix of the different technologies that we might see as the best value and approach for the city. What she is proposing is they put out an RFP for a firm or a team of firms to help us with the review and that could also potentially act on the city's behalf with change orders and the commissioning agent process, which is the process that happens at the end of the construction phase to make sure we got what we said we were going to get in the first place. She anticipates that the cost of that would be somewhere between \$30,000 and \$60,000. They do still have the money in their budget for the feasibility study, design and permitting phase. Because they haven't been spending a lot of money

while the bidding process has been underway we are ahead of the game in terms of what they had anticipated their cash flow would be. They have the money that the voters have authorized to spend on this phase. They need to do it quickly because we need to get the information back by the middle to end of

January if we are going to have any vote on it in March. She is asking for the Council's okay to write and submit the RFP and when we get all of the proposals the Council will have another chance to look at what they are and make the decision.

Council Member Sheridan said he and Tom both said what if technology changes and we are already seeing an alternative offered on day one. We are talking years in the future, and this is what he is afraid of. Five years down the road somebody is going to say we should have built another system.

Council Member Sherman moved the Council authorize Gwen to send out an RFP to hire her third party technical person to help decide which way to go. Council Member Weiss seconded the motion.

Mayor Hooper called for a vote on the motion. The vote was 6-0, motion carried unanimously.

Planning Director Hallsmith said the other thing the Energy Committee recommended is to have a series of two presentations by all three proposals. The first presentation would just be an orientation to their proposals. These are complex proposals and having them explain it to us is a great idea. She tentatively has looked at the dates in November of the 16, 17 & 18 starting at 4:00 in the afternoon. This would not be their formal interview and likely they won't bring their whole team to that presentation, but if we have questions they could be answered in the second presentation which would be the formal interview? They would wait until they have this consultant on board to run the second presentation. November 16, 17 & 18 look like good days for the Energy Committee and for everybody to have these first rounds of presentations.

10-269. Second Public Hearing to consider amendments to the Water/Sewer Ordinances and Resolution to increase the ON/OFF fee for after hours; to add a hydrant use fee; to clarify the customer's responsibility for a sprinkler service; and to remove the language regarding the City performing service connections.

a) Public Works staff is recommending ordinance and resolution changes as part of the rate adjustments for review and comments; their objective is to obtain

concurrence to a list of recommendations outlined in a memo from Public Works Director Todd Law dated June 9, 2010.

- b) The first public hearing was held on October 13, 2010.
- c) Recommendation: Further discuss the proposed ordinance amendments and adoption, with or without additional changes; endorse the Resolution which has been finalized since the first public hearing.

Mayor Hooper opened the public hearing at 11:00 P.M., no one came forward to comment and the public hearing was closed.

Motion was made by Council Member Sheridan, seconded by Council Member Weiss to adopt the proposed ordinance amendments and the Water and Sewer Resolution. The vote was 6-0, motion carried unanimously.

#### 10-270. Committee Structure

- a) City Council Member Andy Hooper requested that this item be placed on the agenda. He feels it is time to review a list of “city” committees, who is on them, who the Council or staff representative is, how often they meet, are minutes kept, etc.
- b) Staff prepared a list for Council review.
- c) Recommendation: Review and discuss the list; possible direction to staff.

Council Member Hooper said this is a wonderful document.

#### 10-271. Reports by City Council

Council Member Sherman said she gets lots of comments from people about parking on and around College Street. There is a person on Arsenal Drive who is very upset about all of the traffic and the parked cars on College Street so she can't see when she drives out. The same is true with Emmons Street. There is a family there who are unhappy about traffic and small children and possible collisions and thinks there should be more traffic control at the corner of Woodrow and Emmons. The sidewalk stewards are out there and are going to quickly report sidewalk problems and they also want monitoring progress. At

the Transportation Advisory Committee meeting last night the wonderful lady from Green Mountain Transit was talking about the Montpelier Circulator and many chins were dropping open as to how Montpelier got this wonderful opportunity. Meredith said that Montpelier would be paying \$40,000 and if they did not pass that on Town Meeting Day that funding would be available for other towns and they licked their chops.

Council Member Jarvis said she wanted to appeal to the humanity of Jim and Andy to come to the Board of Civil Authority meetings. Their absences mean more work for the rest of us. The rest of the Council are coming every Thursday night and it is putting a strain on her family.

Council Member Golonka said he noticed that Bev Hill is here and it is her birthday tomorrow. Happy Birthday, Bev.

10-272. Mayor's Report:

Mayor Hooper reported that the Seniors did their kick-off reception. It was very nice. She is impressed with what they are organizing to make this fundraiser successful. Jane Osgartharp is in charge of that.

The Board of Civil Authority is working extremely hard and it is a large burden on the people who routinely attend.

The sculpture that is called "The Conversation" that had been over at the Inn at Montpelier because it was privately owned. It had been donated by Montpelier Alive and the City of Montpelier and others helped to secure the funding and moved it over to the Court House. That is a very neat addition to that area.

At one of these junctures we need to talk about revenue raising. She thinks they need to look at local options taxes. We need to put that on the agenda. The Capital Improvement Committee met this evening and there are huge needs that are being unmet and we have to do something.

She had the pleasure of attending the twice a year meeting that the Community Justice Center convenes with the residents of the areas surrounding Dewey Hall at the Vermont College of the Fine Arts. You will recall that was put in place because there was some really unhappiness between the former property owner and how that was being used and the residents. There have been several nice meetings. Bev Hill, Judy Gibson and Yvonne Byrd were present from the city. A lot of residents and representatives from the College of the Fine Arts were present. There were representatives of NECI, including a Student Council

Representative. There was just a lovely relationship with lots of compliments and a lot of good problem solving. They are all working hard at that and being good community members. It's a nice example of what the Community Justice Center is doing that makes the community a good place. The Vermont College of Fine Arts said that parking is a huge issue.

Council Member Jarvis said there has been a dramatic change in the last six months.

Mayor Hooper said more NECI students are up there and VCFA is being successful and expanding so it's not surprising that more is going on. The parking situation is going to need to be figured out but she would suggest that the Circulator serving that area could be a huge part of that. It is apparent that GMTA knows that and knows where some of the densities are and the service needs and that was the reason for putting it up there. Both NECI and VCFA said they would like to be part of the discussion about the Circulator serving the area because of the needs that they have. It is an interesting issue in terms of how they meet the needs of the community.

10-273. Report by the City Clerk-Treasurer.

The General Election is next Tuesday and any help she could get would be most appreciated. They will have close to 1,000 absentee ballots that will need to be opened and counted.

10-274. Status Reports by the City Manager.

City Manager Fraser said they are going to have a follow up meeting with the school which is arranged for November 17<sup>th</sup>. That is to talk about the Recreation Department. He attended the ICMA Conference last week in San Jose. He spoke with several consultants. He talked with the survey folks and they are excited to come back in 2011.

They are very close to working out a situation with access. Our lease extension expires Friday. The property is leased to Shaw's right now so any change they make needs to change the lease.

They have some good news regarding Scott Construction. We were insured and then our insurer brought an action against Scott who responded with a counter claim and we asked them to defend us. They sent us basically an approval of that. It's turned in to what is called a Reservation of Rights. They will defend

the case, but if the judgment comes to be something that isn't covered they are reserving their rights not to cover the payment because it has been proved not to be the cause. He spoke with the city's attorneys today and they advised we sign this and do it. This is not uncommon. They aren't that worried about the exposure. For example, we are not covered by any loss brought about by fraud, dishonesty or bad faith and that is one of the things they have alleged. The court

would say we would have to do that and then the judgment against wouldn't be covered by the League for our defense. The attorneys said we should sign this but it should be in the record with the Council's okay for him to sign it.

Mayor Hooper said if this is adjudicated and the court finds that in fact the city was engaged in fraudulent bad activities then we would not be covered.

Consensus of the council was to move forward.

Adjournment:

After motion duly made and seconded by Council Members Jarvis and Hooper the City Council adjourned at 11:20 P.M. Motion carried unanimously.

Transcribed by: Joan Clack

Attest: \_\_\_\_\_  
Charlotte L. Hoyt, City Clerk