



CITY OF DOVER

CITY COUNCIL - MINUTES

DRAFT

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Wednesday, July 23, 2008**
Meeting Time: **7:00pm**

1. MOMENT OF SILENCE

2. PLEDGE OF ALLEGIANCE

Councilor Weston led the Pledge of Allegiance.

3. ROLL CALL

Present: Mayor Myers, Councilors Callaghan, Cheney, Dede, McCusker, Scott, Weston.

Also Present: City Manager Joyal, City Attorney Krans, and City Clerk Lavertu.

Councilor Cheney filled in as Deputy Mayor.

Absent: Councilor Trefethen

Vacancy: Ward 1 Councilor

4. PROCLAMATIONS – AWARDS

Mayor Myers read the proclamation for George Bandouveres into the record and presented it to Councilor Weston and her family.

Councilor Weston read a brief statement to the Council.

5. APPROVAL OF AGENDA

Mayor Myers asked the Council if they had any changes to the Agenda.

Councilor DeDe asked to add the Solid Waste Advisory Committee Report to the Consent Calendar.

Councilor Cheney made a motion to substitute in whole 12.C.3. She referred the Council to the substitution on their desks.

Mayor Myers also added the Appointment Committee Report to the Consent Calendar.

Councilor Callaghan made a motion to accept the Agenda with the changes; seconded by Councilor Weston.

Vote: 7/0.

6. CITIZEN'S FORUM

Citizens are invited to speak on any issue pertaining to the business of the City of Dover.

Statements shall be limited to five minutes.

Jillian Lurvey, 12 Cedarbrook Drive: She said she was 11 years old. She referred the Council to her street where there are many children who play outside. She said there are around 25 houses on the street and one is an at-home child care center. She said the reason she was present was to ask the Council for a "Slow, Children" sign at the end of Cedarbrook Drive, to make it safer. She said there was once a sign, but since the road was repaved it was never replaced. She presented the Council with a petition, which was signed by her neighbors on the street for the sign to be replaced.



CITY OF DOVER

CITY COUNCIL - MINUTES

DRAFT

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Wednesday, July 23, 2008**
Meeting Time: **7:00pm**

Mayor Myers thanked Jillian Lurvey and said he will follow up with the Transportation Advisory Committee on this issue.

Edward Bleiler, 28 Isaac Lucas Circle: He told the Council to tell Doug Steele to put up a sign tomorrow morning, and stop the bureaucracy. He said he had to jump through hoops to get the Agenda for this meeting. He said he read the figures provided to the Council by the City Manager on July 9, 2008 indicating the end of the year's budget. He said the report shows that the City collected \$1 million more in revenues and spent \$800,000 less in expenditures, making \$1.8 million in surplus. He asked why the City Manager takes away the motherhood from the citizens of Dover, meaning taking away the Teen Center and the Jenny Thompson Pool. He asked why the doom and gloom from Councilor McCusker when the City has a huge surplus. He asked why the citizens have to be told that the City has to cut services. He asked why the City Manager wasn't aware of these surplus funds. He said it was time for the Council to obtain an explanation from the City Manager. He said he was willing to be corrected if his statements were incorrect. He spoke on the recent cable bills he has been receiving, and being charged a franchise fee of 3.3%, which is more than the 2.75% that he understood the contract called for. In addition, Comcast is depriving the people of the religious channel, as well as Channel 57 and 58, requiring some people to purchase a special box to get these channels. He felt that Comcast should not use their 10-year monopoly to extract additional funds from those that they serve in Dover, and that an explanation is deserved to the citizens of Dover. He spoke on road maintenance and said he noticed that Middle Road, Back Road, and Isaac Lucas Circle are beginning to fall apart in very rapid fashion. He said it was due to lack of maintenance. He said these roads were rebuilt within the last five years, and if something isn't done in the very near future they will have to be rebuilt again. He said it was his suggestion that some of the surplus money goes towards crack sealing those roads to preserve them for the future. He spoke on the report that he requested from the City Manager on the repairs to the Butterfield Gym. He said the citizens have not been made aware of the total costs. He again requested this report from the City Manager as soon as possible. He spoke on the parking for the Children's Museum, which opened this week, and asked how many spaces are reserved for the Children's Museum.

Mayor Myers, seeing no one else wishing to speak, closed the Citizen's Forum.

7. PUBLIC HEARINGS

- A. RESOLUTIONS: NONE
- B. ORDINANCES: NONE

8. CITY MANAGER'S REPORT

City Manager Joyal said the Whittier Street Bridge has been closed this week to finish up the repairs to the deck on Whittier Street, and should be done by the end of the week. He said they will be coming back because he needs a piece of equipment that allows the workers to get underneath the bridge. He said he expects there will be another closure in a few weeks. He said the weight restrictions are still in effect, but maintained that the bridge is still safe to use. He said they were just trying to preserve the bridge another four years, when he hopes to get



CITY OF DOVER

CITY COUNCIL - MINUTES

DRAFT

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Wednesday, July 23, 2008**
Meeting Time: **7:00pm**

funding from the State to replace it. He spoke of Channel 22, Dover's Cable Access Channel, and the need for a part-time camera operator. He said he received notice today from the Department of Justice that they have received budget clearance, which means the City has received approval on what we plan to do with the money, however, there are still more layers of approval to go through, but the City should receive final notice in a few weeks. He said in the meantime the Teen Center is open. He referred to the comments made during the Citizen's Forum. He told Ms. Lurvey that he will forward the sign request to the Transportation Advisory Commission, and he doesn't expect there to be a problem in having the sign replaced. He spoke on the surplus that appears to exist, and said he explained that at the last meeting. He said he would defer to the Council on whether they wanted him to explain it again. He spoke on the Comcast contract and said the renewal agreement allows for 3% increase on gross revenues. He said the City performs an auditing process at the end of the calendar year to make sure the residents are being billed properly. He said the City has no control over what is broadcast. He said Federal law trumps much of the local control in regulating rates and channels. He said he addressed the issue of the repairs to the Butterfield Building last week, and he doesn't have a final bill from the contractor. He said he would get that information out as soon as he does get it. He said there is a provision in the Children's Museum contract that allows parking in the Henry Law Parking Lot. He said the Henry Law Trust says that the parking is to be used for Henry Law Park and for building facilities, which includes the gym building, pool and anyone using the park.

Mayor Myers asked the Council if they had any questions.

Councilor Callaghan referred to Page 2 of 2, Specialized Legal Counsel, \$62,220.07. He asked the City Manager what that meant.

City Manager Joyal said it was an internal review that he conducts as part of his evaluation of legal services. He said they are trying to bring more work in house, and only sending out specialized legal work.

Councilor Scott said he has received calls about Comcast requiring the citizens to pay something additional for three channels. He asked the City Manager to look into it to see what can be done. He said calling it a federal problem was ducking the issue. He asked why the Agenda was different this week on the website.

City Manager Joyal said to Councilor Scott that he wasn't trying to duck the issue, but the situation is that the federal law trumps the ability of cities and towns to control many activities of the cable system. He said the Council can petition the federal legislators to take a position on this issue. He also said he could invite Comcast representatives to a Council meeting.

Councilor Scott said he understood the pressures on the City Manager, but felt that the City signed a 10-year contract with Comcast and should have some pressure that the City can bring to bear to say that this is unfair.

City Manager Joyal said there is a provision in the agreement for customer service issues, and the Council can request a Comcast representative to come to a public hearing and address those issues.

Councilor Scott said that would be good idea.

City Manager Joyal referred to the agenda process, and noted that we are going through a streamlining process. He said when you click on "Agenda" it brings you to the list of City Council meetings. Pick the meeting you want and you get the agenda packet, which you can download onto your computer. He said he was trying to eliminate the duplication of producing



CITY OF DOVER

CITY COUNCIL - MINUTES

DRAFT

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Wednesday, July 23, 2008**
Meeting Time: **7:00pm**

several different documents. He said the intent was to make it user friendly by bringing everything to one place and one file.

Councilor Callaghan said he thought it was a good idea to have a Comcast representative come to a meeting. He said he would be asking them why the changes are being made now, when the federal regulations don't go into effect until next year. He said there is a government agency that allows citizens to get two converter boxes per street address.

Councilor Cheney said she also received calls about Comcast. She agreed with having a Comcast representative come to a meeting. She spoke on the Teen Center and asked if it was fully operational now with a full-time director.

City Manager Joyal said yes, it was now fully operational.

Councilor Cheney asked for a brief explanation on the surplus in the budget.

City Manager Joyal said he didn't have the numbers in front of him. He said the numbers provided in his report were as of July 1, and not all of the transactions have been posted. He said the numbers were operation expenses, compared to operative non-tax revenues. He said the difference is not the number that is going to be rolled over into the General Fund, but he does expect it to be a positive amount. He said the actual surplus number should be available in a few months to the Council, and that also might change after the audit is completed in December.

Councilor Weston spoke on the parking at the pool and the need to reserve some spaces.

City Manager Joyal said Sergeant Spiedel and Bruce Woodruff are looking into it.

Councilor Scott asked if the report on the surplus could be available in August.

City Manager Joyal said he would let the Council know as soon as he gets the numbers.

Councilor Callaghan made a motion to accept the City Manager's Report; seconded by Councilor DeDe.

Vote: 7/0.

9. MINUTES

A. MINUTES FROM – JULY 9, 2008

Councilor Cheney made a motion to approve the minutes; seconded by Councilor DeDe.

Vote: 7/0.

10. MAYOR'S REPORT

He said he had the honor of going over to WTSN to be with Paul LeBlanc on his final broadcast. He said he did a few ribbon cuttings for the Dover Chamber of Commerce. He said most of the Council took a tour last week of the Children's Museum. He said it was fantastic. He said he felt it was going to be a wonderful addition to the community. He thanked Superintendent O'Connor for the tour of the new Dover School SAU offices. He said he felt the renovations were great and should support their needs for many years to come.

Councilor DeDe made a motion to accept the Mayor's Report; seconded by Councilor Callaghan.

Vote: 7/0.



CITY OF DOVER

CITY COUNCIL - MINUTES

DRAFT

Meeting Type: Regular Meeting
 Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
 Meeting Date: **Wednesday, July 23, 2008**
 Meeting Time: **7:00pm**

11. UNFINISHED BUSINESS

- A. ORDINANCES IN THE 2ND READING - NONE
- B. ORDINANCES IN THE 3RD READING - NONE
- C. RESOLUTIONS - NONE

12. NEW BUSINESS

- A. CONSENT CALENDAR
 - 1. TAG PERMIT – GREAT BAY FIGURE SKATE CLUB
 - 2. PARADE -- DOVER YOUTH TO YOUTH
 - 3. PARADE – ST. JOHN’S METHODIST CHURCH
 - 4. **RESOLUTION RE: APPOINTMENT OF WARD 1 MODERATOR**
SPONSORED BY MAYOR MYERS BY REQUEST
 - 5. **RESOLUTION RE: BOOK AND MEDIA PURCHASE FOR LIBRARY**
SPONSORED BY MAYOR MYERS BY REQUEST
 - 6. **RESOLUTION RE: WILLAND POND EDUCATION**
SPONSORED BY COUNCILOR CALLAGHAN
 - 7. **RESOLUTION RE: WILLAND POND ENGINEERING STUDY B08063**
SPONSORED BY COUNCILOR CALLAGHAN

COMMITTEE REPORTS

- | | |
|---|--|
| 1. Appointments Committee | 8. City / School Joint Service Committee |
| 2. Arena Committee | 9. Solid Waste Advisory Committee |
| 3. Arts Commission | 10. Transportation Advisory Committee |
| 4. McConnell Center Committee | 11. Joint Building Committee |
| 5. Planning Board – submitted | 12. Recreation Advisory Board |
| 6. Cable Franchise Negotiations Committee | 13. COAST Bus |
| 7. School Board Liaison | |

Councilor Cheney made a motion to adopt the Consent Calendar; seconded by Councilor Weston.

Mayor Myers asked the Council if they had any items they would like pulled for further discussion.

Mayor Myers said he would like to pull the Appointments Committee Report.

Mayor Myers asked for a roll call vote on the remaining items of the Consent Calendar.

Roll Call Vote: 7/0.

Councilor DeDe asked to pull the Solid Waste Advisory Committee Report.

Mayor Myers said it was the consensus of the Council to allow that.

Mayor Myers said the Appointments Committee met on July 9, 2008 and unanimously supported the reinstatement of the following members: Martin Sullivan, Arena Commission; Jeffrey Johnson, Arts Commission; James O’Neill, Economic Loan Review Committee; Richard Thorpe, Recreation Advisory Board; Frank Lanford, Zoning Board of Adjustment; Earle Goodwin, Trustee of the Trust Fund; Gary Gilmore, Solid Waste Advisory Committee; Robert Carrier, Recreation Advisory Board; Harvey Turner; Arts Commission.



CITY OF DOVER

CITY COUNCIL - MINUTES

DRAFT

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Wednesday, July 23, 2008**
Meeting Time: **7:00pm**

Councilor Cheney made a motion to accept the Appointments Committee Report; seconded by Councilor Callaghan.

Vote: 7/0.

Councilor DeDe read the report on the Solid Waste Committee and the new practices at the Recycling Center into the record.

Councilor DeDe made a motion to accept the Solid Waste Committee Report; seconded by Councilor Cheney.

Mayor Myers said for clarification that accepting the Report did not mean acceptance of the new rates, which will come before the Council in a resolution.

Vote: 7/0.

B. RESOLUTIONS

1. RESOLUTION RE: ENERGY PERFORMANCE CONTRACT

SPONSORED BY MAYOR MYERS BY REQUEST

Councilor Cheney moved for its adoption; seconded by Councilor DeDe.

City Manager Joyal said this was following up on the Workshop from last week. He said he had representatives attending from American Development Inc. (ADI), which is the consulting firm that the City has engaged to represent the City's interest in the RFP process. He said John Rizzo will explain to the Council what his firm is assisting the City with, and the process that brought us to this point. He said he would also like to introduce Jim Cotton from Johnson Controls, to basically advise the Council what the proposal is that he is asking the Council to authorize.

Mr. Rizzo, President of ADI, said the City hired his firm a few months ago. He said he had his engineers go through all of the City and School facilities to evaluate whether performance contracting was something the City should entertain. He said the evaluation came up with a project size of roughly \$2.3 million, of which \$1.5 million was for the City. He said they developed a request for proposals, and on May 21, 2008 the request for proposals was advertised. On June 21, 2008 they had a walk through with five vendors. On June 30, 2008 they had three vendors who responded to the request for proposals. On July 14, 2008 those three vendors were evaluated based on their proposals and interviewed. He said Johnson Controls was selected. He said Johnson Controls' first step will be to do an in-depth audit of all the facilities, and come back to the Council in a few months with a performance contract.

Councilor Callaghan asked if the audit would cost the City money if the City did not enter into a performance contract.

Mr. Rizzo said it would cost \$0.05 per square foot, which is a relatively low price. He said it would prevent the City from using their findings without using Johnson Controls. He said it works out to be \$25,000.

Councilor Callaghan asked what happens if Johnson Controls decides that it doesn't want to work with the City.



CITY OF DOVER

CITY COUNCIL - MINUTES

DRAFT

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Wednesday, July 23, 2008**
Meeting Time: **7:00pm**

Mr. Rizzo said that ADI is working for the City and they are going to evaluate Johnson Controls. He said ADI's initial walk through eliminates the risk that they won't go through with it.

Councilor Callaghan asked if the City was still responsible for the money if that were to happen.

Mr. Rizzo said that has not happened, but he felt if they walked away that the City wouldn't have to pay.

Councilor Cheney said this Resolution states that the City is going to get a formal detailed energy contract afterwards. She asked if that was the contract that the City will enter into with Energy Supplier Company (ESCO).

Mr. Rizzo said it was two different contracts. One is for the detailed energy audit, and then once that is completed the City will enter into an Energy Services Agreement. He said there was an Energy Audit Contract that will take a few weeks to develop. This Resolution allows a letter of intent to proceed.

City Manager Joyal said the Council, by authorizing a letter of intent, is allowing the potential expenditure of \$25,000 if the Council decides the guarantee is not good enough. He said a decision will be made by the Council after the investment grade audit is done and the recommendations from that are assembled. He said a separate contract will be developed at that time.

Councilor Cheney said the City did get some energy savings measures from the regular audit completed by ADI. She said the Council didn't finish going through the documents from ADI and what these different contracts entail. She said she was having difficulty supporting going ahead with another audit, when the City already has something to work with. She said she would like to have more information.

City Manager Joyal said the City is looking at an opportunity, with Mr. Rizzo's expertise in this field, to engage a company to come in and do an engineering audit of all the City's facilities and identify where energy can be saved. He said in order to save money, the City needs to spend money to improve facilities and equipment. He said that once the audit is completed and they come up with their list of recommendations, we will go through that list and decide which ones are feasible, which ones have sufficient payback, and which ones benefit the City. At that point a performance contract will be assembled. He said that will come to the Council. He said the contract includes the guarantee that those savings will be realized, and the financing is part of that contract. He said it could be done with a lease arrangement with Johnson Controls, an entity that they work with, the City could do it through bonding, or the City could do it with an appropriation with funds that are on hand. He said there were many different ways to fund the project. He said the City needs to know where the measures are going to be implemented.

Councilor Cheney said this was a 10-year contract and a lot of things could happen. She wanted more information on what happened with the last contract, and what the City saw for savings. She said the City has a few suggestions in the current audit and the market is volatile now. She spoke on the issue of a floor rate that protects the ESCO if utility rates drop during the contract term.

City Manager Joyal said the bottom line is if this contract is done correctly an energy performance contract can guarantee that if the City does certain things, they will pay for themselves and the City will save energy.



CITY OF DOVER

CITY COUNCIL - MINUTES

DRAFT

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Wednesday, July 23, 2008**
Meeting Time: **7:00pm**

Mayor Myers asked Mr. Rizzo how long he had been in this business.

Mr. Rizzo said he has been in this business since 1986.

Mayor Myers asked Mr. Rizzo how long ADI stays with the City going through the complete audit that Johnson Controls will be doing.

Mr. Rizzo said they are involved all the way through, up until the first year of construction, and on a quarterly basis after construction. He said ADI is there until the City says they don't need help anymore. He said the energy audit by Johnson Controls costs \$25,000, but has a \$75,000 value.

Councilor Scott asked how the fluctuations of energy costs enter into this contract.

Mr. Rizzo said if energy costs go done, the City wouldn't be in an over budget problem. The guarantee is based on stipulated rates. He said the benefit of the lower cost does not go to Johnson Controls.

Councilor Scott asked Mr. Rizzo what he considered a good target for a return on the City's investment.

Mr. Rizzo said in aggregate with all the difference conservation measures it would have to be 8 years in order to be financed. He said Johnson Controls will list that and the Council can select which measures the City wants.

Councilor DeDe said the questions he was hearing were premature speculation. He said this Resolution was to potentially spend \$25,000 for Johnson Controls to initiate an investment grade audit. He said it was appropriate to be concerned about the future contract, but not tonight.

City Manager Joyal introduced Jim Cotton from Johnson Controls. He referred the Council to the handouts that Mr. Cotton will walk them through.

Mr. Cotton thanked the Council. He first wanted to address Councilor Callaghan's concern, that if Johnson Controls decides that it isn't worth it to proceed, then there will be no cost to the City of Dover. He introduced himself as the Regional Manager for Johnson Controls. He introduced Brad Parsons, Account Executive. He asked Mr. Parsons to give his presentation and said they were available to answer questions. Mr. Parsons made his presentation to the Council.

Mr. Cotton said Johnson Controls has engineers that will make recommendations to the City that will guarantee a reduction in kilowatts hours, therms of gas, and gallons of oil consumption.

Councilor Scott said he wanted to compliment the City Manager on the selection of Johnson Controls. He referred Mr. Cotton to Page 4, a list of City facilities, and asked him to rate them as to which ones have the most potential.

Mr. Cotton said that was identified in the RFP document that was issued.

Councilor Scott said he felt that the Ice Arena was number 1, Wastewater was number 2, and the indoor pool was number 3.

Mr. Cotton agreed. He said after that it was based on the square footage of the building and times of operations.

Councilor Scott asked if the first three represented half of the savings.

Mr. Cotton agreed.

Councilor Scott said that since we are in a recession that might last a long time, that the City consider doing half and see what results the City gets.



CITY OF DOVER

CITY COUNCIL - MINUTES

DRAFT

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Wednesday, July 23, 2008**
Meeting Time: **7:00pm**

Mr. Cotton said it was better to look at the broad scope of buildings and aggregate savings. He said the audit will have line by line, building by building, recommendations. Mayor Myers asked Mr. Cotton, if Johnson Controls recommends 20 changes to City Hall and only 14 make sense to do because of the payback, then will that become the scope of the final contract?

Mr. Cotton said that was correct.

Councilor Cheney said she still had concerns. She said the brief audit that was completed has return on investments listed already. She doesn't know if the \$25,000 was in the budget. She wanted to review the City's current usage. She said the money back guarantee thing just sounds too good. She asked if there was a guarantee if the price went down.

Mr. Cotton said Johnson Controls guarantees a reduction of consumable units. He said that consumption has a current commodity price. He said that is built into the contract, to get an idea of cash flow for the job.

City Manager Joyal said the Council can stipulate the rate. He said that analysis can be done after the audit is completed and they look at the measures.

Councilor Callaghan said he is convinced that this is a good idea. He understood Councilor DeDe's comments of it just being a \$25,000 audit, but he felt the Council needed to see the performance contract.

City Manager Joyal said the Council will see the audit in 60-90 days, and the Council won't see the contract until the audit is completed.

Councilor Callaghan said there must be a boiler plate or generic contract to look at first. Councilor Weston said her understanding is that this Resolution was just for the audit and she fully supports it. She said the audit has to be completed before a performance contract.

Councilor DeDe read the last whereas in the Resolution, "This \$25,000 will only be paid if the City Council decides, after reviewing the audit, not to proceed with a performance contract."

Councilor Scott said he was enthusiastic about doing something. He said he agreed with Councilor Callaghan that the Council should see the template contract.

Mayor Myers said we have a representative working for the City on contracts. They have \$2.86 billion in energy guarantees. He said the worst case scenario is the City pays \$25,000 to have an investment grade audit done on 14 buildings, where the City's staff could do the upgrades. He said he is looking at the bigger picture and he supports this Resolution.

Councilor Cheney said she would like to know more about the contract and bonding. She made a motion to table this Resolution for two weeks; seconded by Councilor Scott. Vote: 3/4; Failed. Councilors Callaghan, Cheney, and Scott voted in favor.

Councilor Cheney said she would not support this tonight.

Mr. Rizzo said the boiler plate contract would not help, because it is very complicated and time consuming.

Councilor Callaghan said there must be general terms and conditions.

Mr. Cotton said the boiler plate contract doesn't get into the guarantees, because that is built for each project. He said the Council would be disappointed with the boiler plate contract.



CITY OF DOVER

CITY COUNCIL - MINUTES

DRAFT

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Wednesday, July 23, 2008**
Meeting Time: **7:00pm**

Councilor Scott said he would vote no tonight. He said the Council moves too quickly without understanding, and as a result Dover has the highest bonded debt in the State. Councilor McCusker thanked the presenters and said he appreciated their time. He said he felt confident with Mr. Rizzo's representation for the City.

Mayor Myers asked for a Roll Call Vote on the Resolution.

Vote: 4/3; Passed. Councilors Callaghan, Cheney, and Scott opposed.

2. RESOLUTION RE: RELEASE OF CITY ATTORNEY CORRESPONDENCE JULY 9, 2008

SPONSORED BY COUNCILOR CALLAGHAN

Councilor Callaghan moved for its adoption; seconded by Councilor Cheney. Councilor Callaghan said he wanted the letter released, because he believed the information in the letter could be important to several other people. He referred to the background information he gave the Council, and that some of it was not put on the Resolution. He said it explained that this information can be useful to all people who serve on boards and commissions. He said he didn't see any reason to keep the letter confidential. He asked the City Manager why the language was omitted in the Resolution.

City Manager Joyal asked the City Attorney to answer the question.

City Attorney Krans said a confidential document is confidential until the Council decides to release it. He said the proper way to refer to the document is by date and not by what is contained in the document.

Councilor Callaghan said it was his opinion that it wasn't giving away information, and wished he had been contacted. He read the passage that was omitted.

Mayor Myers cautioned Councilor Callaghan not to mention the confidential document until the Resolution has been passed.

City Manager Joyal apologized to Councilor Callaghan, because he hadn't seen the Resolution before it went on the Agenda, but said he agreed with the City Attorney. Councilor DeDe asked the City Attorney to comment on the appropriateness of releasing this information.

City Attorney Krans said he didn't have a problem with the Council releasing it, but he felt it could involve future litigation.

Councilor DeDe said he shared the City Attorney's opinion, and that this particular letter should remain confidential. He asked Councilor Callaghan if he consulted with the City Attorney before drafting the Resolution.

Councilor Callaghan said he had not.

Councilor McCusker said he did discuss the two lines he wanted to read into the record with the City Attorney.

Mayor Myers cautioned Councilor McCusker.

Councilor McCusker said the first line states at the beginning of the letter, before the body of the letter, "Confidential, subject to Attorney/Client privilege." The envelope that he had received the letter in is clearly stamped "Confidential." He said the two-page letter is watermarked with the Councilor's name on it. He also read the opinion of the City Attorney, the last line of the letter states, "I do not advise the release of this letter



CITY OF DOVER

CITY COUNCIL - MINUTES

DRAFT

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Wednesday, July 23, 2008**
Meeting Time: **7:00pm**

due to the potential of future litigation in this area.” He said he has no reason to doubt the City Attorney. He said he would not support this.

Councilor Scott said he was concerned about two things with this. First, he felt the City Attorney should not have the power above a Councilor to block a Resolution. Second, he said this Resolution refers to an RSA and he didn’t understand what was confidential about that. He said it referred to Section 8 of the New Hampshire Constitution.

Mayor Myers cautioned Councilor Scott.

Councilor Scott said he would support this Resolution.

Councilor Cheney said she would support this Resolution, because it is the right thing to do. She did a Resolution a few years ago that opinions not be marked confidential unless under 91.A. She read the explicit exceptions into the record. She called the Oversight Commission, and they were confused why there would be an opinion. She says the Council received an unsolicited opinion and were told not to release it because of a possibility of a lawsuit. She said she would be glad to support this.

Councilor DeDe said the Council once again could have Councilor Cheney reciting all these reasons why everything should be released, but the reality is when an Attorney gives information to a client that is automatically confidential. The Attorney does not have the right to expose that information. He said the Attorney/Client privilege trumps anything that Councilor Cheney said and has been brought up before to Councilor Cheney. He said her previous Resolution was passed unanimously, because only the Council as a body can release that information. He said the Attorney, who has more legal knowledge than anyone at this table, has said this one shouldn’t be released. He said as a responsible Council it behooves the Council to support the City Attorney’s position.

Councilor Weston said she reviewed this and she supports this Resolution.

Councilor Dede asked Councilor Weston if she had a chance to talk with the City Attorney on this issue.

Councilor Weston said she hadn’t.

Councilor Dede made a motion to table the Resolution so Councilors who haven’t had a chance to talk with the City Attorney were able to do so; seconded by Councilor McCusker.

Mayor Myers asked for a vote on tabling the Resolution.

Vote: 3/4; Failed. Mayor Myers, Councilors DeDe, McCusker voted in favor.

Councilor Callaghan said he understood and agreed with Councilor DeDe that everything the City Attorney says to the Council should be confidential. He said he would hazard a guess that the City Manager has read the memo and he was not an addressee to the memo. He said the Council still has a need to discuss this and decide whether or not it is fair or just to keep it from the public, or if there is any harm done by releasing it. He said in this particular incident, referring to Councilor McCusker’s statement about the final sentence, he has an issue with that, because this was an unsolicited memo. He said the Council doesn’t have anywhere to go to talk about the contents of this letter. He asked if there should have been an Executive Session. He said the contents of the memo should not cause any harm and is of interest to the City’s boards and commissions.



CITY OF DOVER

CITY COUNCIL - MINUTES

DRAFT

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Wednesday, July 23, 2008**
Meeting Time: **7:00pm**

Councilor Cheney said it was very explicit in the law that he could not have held a Public Session [sic] to discuss this subject matter because it is not covered by 91.A. She said you cannot have a Public Session [sic] to discuss a law that is law. She said it should be public record. She said she supports this Resolution.

Mayor Myers asked for a Roll Call Vote on the Resolution.

Roll Call Vote: 4/3; Passed. Mayor Myers, Councilor DeDe and McCusker opposed.

3. RESOLUTION RE: COCHECO RIVER AND THE RIVER PROTECTION PROGRAM SPONSORED BY COUNCILOR CALLAGHAN

Councilor Callaghan moved for its adoption; seconded by Councilor Scott. Councilor Callaghan said this Resolution was put forward as a request from Representative Tom Fargo. He said Mr. Fargo was told that it would be better if the community leaders adopt this process of being part of this management system group. He felt putting this committee together is going to be a positive thing for Dover. He said he felt it was something that the Council should support.

Mayor Myers said it seems like something to support on the surface. He asked the City Manager or City Attorney about the potential for any restrictions or obligations to abutters along the river.

City Manager Joyal said he sent out a fact sheet about it last week. He said his understanding of it is that there would not be any restrictions or obligations.

Mayor Myers asked if there would be any costs.

City Manager Joyal said there was a requirement of appointing someone.

Mayor Myers said it was an advisory committee and that's a great thing to do.

Vote: 7/0.

4. RESOLUTION RE: REPROGRAM CIP APPROPRIATION FROM HORNE ST SCHOOL PROJECT (TO BE REFERRED TO PUBLIC HEARING ON AUGUST 13, 2008) SPONSORED BY MAYOR MYERS BY REQUEST

Councilor Cheney made a motion to refer this Resolution to a Public Hearing; seconded by Councilor Dede.

Vote: 7/0.

5. RESOLUTION RE: DOVER ENERGY ADVISORY COMMITTEE (TO BE REFERRED TO PUBLIC HEARING ON AUGUST 13, 2008) SPONSORED BY MAYOR MYERS BY REQUEST

Councilor Cheney made a motion to refer this Resolution to a Public Hearing; seconded by Councilor Dede.

Vote: 6/0. Councilor Callaghan was absent from the Council Chambers.

C. ORDINANCES IN 1ST READING -

1. ORDINANCE RE: CHAPTER 166 VEHICLES AND TRAFFIC (TO BE REFERRED TO



CITY OF DOVER

CITY COUNCIL - MINUTES

DRAFT

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Wednesday, July 23, 2008**
Meeting Time: **7:00pm**

PUBLIC HEARING ON AUGUST 13, 2008)

SPONSORED BY MAYOR MYERS BY REQUEST

Councilor Cheney made a motion to refer this Ordinance to a Public Hearing; seconded by Councilor Dede.

Vote: 6/0. Councilor Callaghan was absent from the Council Chambers.

2. ORDINANCE RE: CHAPTER 166 VEHICLES AND TRAFFIC NO PARKING AT ANYTIME (TO BE REFERRED TO PUBLIC HEARING ON AUGUST 13, 2008)

SPONSORED BY MAYOR MYERS BY REQUEST

Councilor Cheney made a motion to refer this Ordinance to a Public Hearing; seconded by Councilor Dede.

Mayor Myers said the Ordinance says it was sponsored by Councilor Trefethen by request.

Vote: 6/0. Councilor Callaghan was absent from the Council Chambers.

3. ORDINANCE RE: REZONING K-6 FROM ETP TO R-40 (TO BE REFERRED TO PUBLIC HEARING ON AUGUST 13, 2008)

SPONSORED BY COUNCILOR TREFETHEN AND COUNCILOR SCOTT

Councilor Cheney made a motion to refer this Ordinance to a Public Hearing; seconded by Councilor Dede.

Mayor Myers said there was a public hearing where all abutters were notified by certified mail. He said Councilor Trefethen would tell the Council that there were no controversies or concerns of any substance.

Vote: 6/0. Councilor Callaghan was absent from the Council Chambers.

4. ORDINANCE RE: RESTRICTING RESIDENTIAL USES IN THE B-3, O AND UMUD DISTRICTS (TO BE REFERRED TO PUBLIC HEARING ON AUGUST 13, 2008)

SPONSORED BY COUNCILOR TREFETHEN

Councilor Cheney made a motion to refer this Ordinance to a Public Hearing; seconded by Councilor Dede.

Vote: 7/0.

D. COUNCIL CORRESPONDENCE

LETTER FROM CLAUDETTE COLOKATHIS

Councilor Cheney made a motion to accept the letter and place it on file; seconded by Councilor Weston.

Vote: 7/0.



CITY OF DOVER

CITY COUNCIL - MINUTES

DRAFT

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Wednesday, July 23, 2008**
Meeting Time: **7:00pm**

13. COUNCIL MATTERS OF INTEREST

Councilor Callaghan asked to refer the letter from Claudette Colokathis to the Transportation Advisory Committee.

Mayor Myers said he did distribute the letter through appropriate channels.

14. ADJOURN

Councilor Callaghan made a motion to adjourn at 10:00 pm; seconded by Councilor Weston.
Vote: 7/0.