



CITY OF DOVER

CITY COUNCIL - MINUTES

Meeting Type: Special meeting
Meeting Location: Council Chambers, City Hall
Meeting Date: **Wednesday, January 6, 2010**
Meeting Time: **7:00 pm**

1. CALL TO ORDER

2. MOMENT OF SILENCE

3. PLEDGE OF ALLEGIANCE

Pledge of Allegiance was led by Councilor Nedelka

4. ROLL CALL ATTENDANCE

Present: Mayor Myers, Deputy Mayor Trefethen, Councilor Carrier, Councilor Cheney, Councilor Cruikshank, Councilor Garrison, Councilor Hooper, Councilor Nedelka, Councilor Weston.

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

5. PUBLIC HEARINGS -NONE

6. CITIZEN'S FORUM

Citizens are invited to comment on the subject matter of the Special Meeting. Statements shall be limited to five minutes.

Edward Bleiler, 28 Isaac Lucas Circle: It is my understanding that you are going to remove Councilor Cheney from the Joint Building Committee. I certainly hope that you will reconsider this resolution and let her remain in her seat because I believe this resolution is illegal. You should do unto others as you would have them do unto you. This is the first time this action has been done in the history of Dover to my knowledge. I If you go ahead with this resolution I believe you will have to answer to it in the future. This is not the way to do things and is a miscarriage.

Ray Bardwell, Spur Road: Would like to reintroduce myself to this current City Council. Resident member of the Joint Building Committee. Would request that you put a line item in to reimburse me for the patent on the parking lot- I will look for my bonus.

Don Medbury, 3 Cover Bridge Lane: Good evening; I was distressed that a move was made to replace Councilor of Ward 5 as Chair of JBC. I was impressed with the Monday night meeting and they are all qualified people. Councilor Cheney's resume was very diversified. She is competent. If move is on way to remove my Councilor is there a reason? Is she incompetent? I don't think so. Small towns/small cities should leave out the politics. Run City with logic and common sense. Don't replace good people. We need good people. If no real good reason, which I would like to know what the reason is, how did this evolve? Councilor Cheney is a high vote getter, is in her third term. And ran a good clean campaign. My New Years resolution is to be more calm, mild, and positive about the City coming together. Ward 5 will stand behind Councilor Cheney.

Doug DeDe, 143 Locust St: What has escaped some: there are no vested positions that we hold. The Councilor picked by straw poll has a great deal of construction experience. I believe



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that is why the choice was made. The 2 people picked are very well qualified. Pick the best person for the job and vote your conscience.

Suzanne Medbury, 3 Cover Bridge Lane: We are well served by Ward 5 Councilor Cheney. She is thoughtful, has children in the schools, and does her research. Will served having her on any committee. She is always responsive.

Jerry Lynch, Lincoln Street: I watched the process of choosing people. Know how you select people: not by qualifications.

Richard Callaghan, 32 Horne Street: Do not believe it is in the purviews of the City Council to make this change. This could be an issue without the authority to do so.

7. UNFINISHED BUSINESS-NONE

8. NEW BUSINESS

a. RESOLUTION: APPOINTMENTS TO JOINT BUILDING COMMITTEE-HORNE STREET SCHOOL

Sponsored by Mayor Myers

Motion to adopt by Deputy Mayor Trefethen; seconded by Councilor Weston. Mayor Myers explained that the two names were brought forward and placed on resolution based on general consensus. Councilor Cheney stated that she gave a legal opinion to the City Council and City Attorney and read the following into the record:

To whom it may concern: This office represents Catherine Cheney, a Dover City Councilor who is a duly appointed member of the joint Building Committee established pursuant to RSA 199:3. I am informed that there is a plan to remove my client from the Joint Building Committee and replace her with one or more so called ex officio members. In my opinion this would be a violation of state law and could subject the City of Dover to civil liability. As a general rule, any person appointed to any office or position established by statute in New Hampshire serves until his or her term ends, unless he or she resigns or is removed in strict compliance with applicable law. See *Williams v. Dover*, 130 N.H. 527 (1988). Otherwise, it is a violation of law to remove an appointed person before the end of that persons term. See *Silvia v. Botch*, 120 N.H. 600 (1980). Wrongful removal entitles the aggrieved person to bring suit for reinstatement and to recover attorneys fees. *Silva v. Botsch*, 121 N.H. 1041 (1981). RSA 199:3 provides for the filling of vacancies on a joint Building committee, but does not provide for removal and does not establish a limit to members term. However, RSA 199:4-a provides for the dissolution of a Joint Building Committee. The clear import of these statutes is that, once appointed, a members term continues until the committee is dissolved upon completion of the tasks specified in RSA 1994-a. In other words, members of a Joint Building Committee are not political appointees who serve at the pleasure of elected officials. There is not provision in RS Ach 199 for elected or appointed municipal officials to serve as ex officio of a Joint Building Committee-mark A. Stull. A second legal opinion was read into the record:

Dear Catherine: you have asked me whether the City may oust you from you position on the Joint Building Committee before the Committee dissolves upon completion of construction of the



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school. The Joint Building Committee has been established pursuant to RSA 199:3. Once the committee is established, the statute does not provide for the removal of members. The City Council may only appoint a new member to an already established committee if a vacancy arises on the committee, pursuant to RSA 199:3,II9(c). Because there is no vacancy now, the Council should not appoint a new member. Moreover, the conditions that must be present for the City Council to remove you from office have not been met here. Pursuant to section C11-5 of the Dover City Charter, the Council could only vote to remove you from your office on the Committee if the Ethics Commission had sent the Council a recommendation for your removal. The Ethics Commission has not done this, so the Council has no authority to remove you. It is therefore my opinion that the City should not remove you from the Joint Building Committee and should only appoint a new member if a representative of the Council vacates a position on the Committee- Benjamin King.

Motion by Councilor Nedelka to recess for legal consultation ;seconded by Councilor Cruikshank-passed 8/1 with Councilor Cheney opposed. 7:24 pm/reconvened 7:45 pm.

Motion by Councilor Weston to have another recess; seconded by Councilor Nedelka-passed 6/3 with Mayor Myers, Councilor Hooper and Councilor Cheney opposed. 7:45pm/reconvened 8:17pm.

Resolution passed 8/1 roll call vote with Councilor Cheney opposed.

b. RESOLUTION: ADOPTION OF FY 2011-2016 CAPITAL IMPROVEMENTS PROGRAM

(To be referred to public hearing on January 13, 2010)

Sponsored by Mayor Myers by request

Motion to move to public hearing by Deputy Mayor Trefethen, seconded by Councilor Hooper – passed 9/0

c. RESOLUTION: APPROPRIATION FOR FY2011 CAPITAL IMPROVEMENTS PROGRAM AND AUTHORIZATION FOR BONDING

(To be referred to public hearing on January 13, 2010)

Sponsored by Mayor Myers by request

Motion to move to public hearing by Deputy Mayor Trefethen, seconded by Councilor Garrison – passed 9/0

d. RESOLUTION: APPROPRIATION FOR 2011 CAPITAL IMPROVEMENTS PROGRAM-NON-DEBT FINANCED PROJECTS

(To be referred to public hearing on January 13, 2010)

Sponsored by Mayor Myers by request

Motion to move to public hearing by Deputy Mayor Trefethen, seconded by Councilor Weston – passed 9/0

e. RESOLUTION: REAUTHORIZATION OF GENERAL FUND CIP APPROPRIATION FOR ENERGY EFFICIENCY PROJECTS AND AUTHORIZATION FOR BONDING



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9. ADJOURNMENT

Motion to adjourn by Deputy Mayor Trefethen; seconded by Councilor Weston—passed 9/0

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