

MINUTES OF CITY COUNCIL MEETING

Somersworth, NH
March 5, 2018
7:00 P.M.

The meeting was called to order at 7:01pm by His Honor, Acting Mayor, David A. Witham, and upon roll call the following Council members were present: Pepin, Dumont, McCallion, Messier, Sprague, Cameron and Levasseur.

Councilor Sprague led the Pledge of Allegiance.

MINUTES OF THE PREVIOUS MEETING

MINUTES of the JOINT MEETING OF THE CITY COUNCIL & SCHOOL BOARD held on February 15, 2018.

Councilor Pepin, seconded by Councilor Messier, made a motion to accept the minutes. The motion passed unanimously. Councilors Sprague and McCallion abstained.

MINUTES of the PUBLIC HEARING ORDINANCE 3-18 held on February 20, 2018.

Councilor Pepin, seconded by Councilor Messier, made a motion to accept the minutes. The motion passed unanimously.

MINUTES of the PUBLIC HEARING ORDINANCE 4-18 held on February 20, 2018.

Councilor McCallion, seconded by Councilor Pepin, made a motion to accept the minutes. The motion passed unanimously.

MINUTES FOR CITY COUNCIL MEETING HELD ON February 20, 2018

Councilor Cameron, seconded by Councilor McCallion, made a motion to accept the minutes. The motion passed unanimously.

COMMUNICATIONS

A letter of resignation from Beth Poulin from the Historic District Commission was read by the Clerk.

MAYOR'S REPORT

Acting Mayor David A. Witham stated that Mayor Hilliard is in Washington D.C. attending a national conference of the American Israel Public Affairs Committee with fellow members of the New England Progressive Leaders Group. He will be returning Wednesday, March 7th weather permitting. The next Mayor's Community Forum will take place Saturday, March 17th from 9-10:30 at the City Hall. Included in this forum will be Ward 2 Councilor Kenneth Vincent and School Board Member Matthew Hanlon. The purpose of this forum is to foster dialogue and ideas in an informal setting with helping moving the Community forward.

To honor the contribution of one of the City's founding ethnic groups, the Irish. The national Irish flag will be flown this Friday at Citizen's Place this Friday at 4:30 and will continue to wave through St. Patrick's Day.

That concludes the Mayor's Report.

REPORTS OF STANDING COMMITTEES

Economic Development – Councilor Dumont updated that the Committee met on February 27th, during the meeting there was a presentation from Director Saunders on form based codes, which will remain on the agenda as we move forward. A few miscellaneous items were discussed. The Committee was made of an inquiry of a developer that has shown interest in the old police station.

Public Safety – Councilor Pepin updated that the Committee met on February 23rd, the meeting started off with speaking about postponing purchasing radio replacements for a year at the Fire Department. Chief Hoyle has no problem with postponing the purchase. We also spoke about fire station upgrades etc. Also, went over Councilor Witham's recommendation for a potential new site for the Fire Department. There was deep discussion on response times and traffic issues if it were to be put in downtown. Chief Hoyle is going to provide the Committee with a map of where calls are located within the City at the next meeting.

Councilor Witham thanked the Committee for entertaining his idea.

REPORTS OF SPECIAL COMMITTEES, CITY OFFICERS AND CITY MANAGER

Special Committees

Plaza Commission – Councilor Dumont stated that the Commission met on February 22nd, the Committee has thoroughly vetted the 6 or 7 considerations on the matrix. Right now the one thing on the matrix that is not an option to bring to Council is to do nothing.

Sustainability- Councilor Levasseur stated that it was the first time he met with them last month. They started to have a discussion on what their 2018 priorities are, will continue that at the next meeting.

City Manager's Report



CITY OF SOMERSWORTH *Office of the City Manager*

TO: Mayor Dana S. Hilliard and City Council Members
FROM: Robert M. Belmore, City Manager

DATE: Friday, March 2, 2018

**SUBJECT: City Manager's Report for Monday March 5, 2018
City Council Agenda**

New Business (under section 14 of Agenda)

Resolutions

- A. Resolution 25-18 To Discontinue the Hilltop Rehabilitation Capital Reserve Fund in Accordance with RSA 34:11-A.** This Resolution was passed in 2012; it established a Capital Reserve Fund for the purpose of Reconstruction or Rehabilitation of the former Hilltop School property. The Finance Committee met on February 12th and voted (3-1) to recommend the discontinuance of this fund. Attached is a copy of the original Resolution. By State Law, a Public Hearing is required prior to any vote. I suggest it to be scheduled prior to the next regular Council meeting on March 19th at 6:45 p.m.

Without objection a Public Hearing will be scheduled for Resolution No 25-18 on March 19, 2018 at 6:45pm.

Other

- A. Discuss the Zoning Board of Adjustment Decision Made at the February 14, 2018 Meeting to Grant a Variance for the 20 Green Street Property (Requested by Councilor David A. Witham).** Attached are copies of the Zoning Board of Adjustment meeting minutes and memorandums outlining information in regards to the variance granted for this property.

City Manager's Items (under section 10 of Agenda)

A. Informational Items.

- 1. Mural on Constitutional Way.** Attached is a copy of information provided by the artist (Gordon Carlisle) who completed the Mural on the Constitutional Way business wall. He prepared this summary after meeting with Director Saunders and I to discuss the present failing condition. As you will read, the Mural's life expectancy was about 10 years as it was completed in 2008. The brick is flaking and falling onto the sidewalk and the building owner would like to begin repairs. Based on the artist's research and his subsequent recommendation, we will not be able to begin any Mural repairs. Staff will inform the owner that they are free to move forward with wall repairs.
- 2. Goal Setting Workshop.** Attached are copies of last year's Goal Setting Workshop's summary along with an Agenda and pre-meeting worksheet. Carl Weber will be facilitating the session with the assistance of other Primex staff.

3. **Council Workshop.** The Mayor has approved a City Council Workshop prior to the next regular Council meeting on March 19, starting at 6:00 p.m. The purpose of the meeting is to receive information from our Assessor on a City-wide property assessment revaluation and to discuss any potential change to the City's elderly exemption criteria.

B. Attachments.

1. City Attorney Certifications One (1)

NOMINATIONS, APPOINTMENTS AND ELECTIONS

Mayoral Nomination - For Council confirmation vote

A. Mayoral Nomination - For Council confirmation vote

- a. Matthew Gerding, as a member of the Historic District Commission, term to expire March 2021
- b. David McNicholas, as an alternate member of the Historic District Commission, term to expire March 2021

B. Mayoral Appointment -


- a. Shane Conlin as a member of Conservation Commission, term to expire March 2021

All nominations are laid on the table until the March 19, 2018 City Council Meeting.

NEW BUSINESS

Resolutions

Resolution No. 25-18 was read by the clerk.

	City of Somersworth – Resolution
	Resolution No: 25-18 <u>TO DISCONTINUE THE HILLTOP REHABILITATION CAPITAL RESERVE FUND IN ACCORDANCE WITH RSA 34:11-A.</u>

March 5, 2018

WHEREAS, the City Council adopted Resolution No. 12-13 to establish a capital reserve fund for the purpose of reconstruction or rehabilitation of the former Hilltop School property, and

WHEREAS, the City sold this property in December of 2017 to a private developer thereby making the purpose of this fund moot, and

WHEREAS, the Council Finance Committee determined no present need for said fund; recommending its discontinuance and moving the funds to the City's General Fund, and

WHEREAS, RSA 34:11-a grants the City Council the authority to discontinue a capital reserve fund and direct the Trustees of Trust Funds to pay all the moneys in said fund to the city treasury,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOMERSWORTH THAT the Hilltop Rehabilitation Capital Reserve Fund shall be discontinued in accordance with RSA 34:11-a and direct the Trustees of Trust Funds to pay all the moneys in said fund to the city treasury.

Note: RSA 34:11-a requires a public hearing, and the public notice for the public hearing must include a statement distinctly stating the reason(s) for which such reserve is to be discontinued.

Authorization	
<i>Sponsored by:</i> David A. Witham Martin Dumont, Sr. Martin Pepin	<i>Approved:</i> City Attorney

City of Somersworth – Resolution No. 25-18

History

First Read Date:	03/05/2018	Tabled:	
Public Hearing:	NA	Removed From Table:	
Second Read:			

Action

Councilor _____ moved for adoption, seconded by Councilor _____.

Discussion

Voting Record		YES	NO
Ward 1 Councilor	Pepin		
Ward 2 Councilor	Vincent		
Ward 3 Councilor	Dumont		
Ward 4 Councilor	McCallion		
Ward 5 Councilor	Messier		
At Large Councilor	Witham *		
At Large Councilor	Sprague		
At Large Councilor	Cameron		
At Large Councilor	Levasseur		
TOTAL VOTES:			
On / / . Resolution No. 25-18		PASSED	FAILED

Resolution 25-18 will remain in first read until the March 19, 2018 City Council Meeting.

Councilor Levasseur asked Manager Belmore what the balance of that fund is currently at. Manager Belmore responded with an estimated amount of \$25,000.00.

Other

- A. Discuss the Zoning Board of Adjustment decision made at the February 14, 2018 meeting to grant a variance for the 20 Green Street property (Requested by Councilor David A. Witham)

Councilor Witham asked for it to be added to the agenda. He stated that at the recent Zoning Board of Adjustments meeting the property was granted two variances. The first is to allow auto repairs and the second is to allow auto sales. He stated that there are 5 criteria that are needed in order for the ZBA to grant variances. The 5 criteria are; the variance will not be contrary to the public interest, the spirit of the Ordinance is observed, substantial justice is done, the values of surrounding properties are not diminished, and literal enforcement of the provisions of the Ordinance would result in unnecessary hardship. This Council took action a number of years ago to not allow service stations and automotive repair facilities in the downtown business district. He believes it goes back somewhere into 1995-1998 in which the zoning Ordinance was changed to not allow automotive sales. He asked this to be added to the agenda because he thinks it has been the Council's intent in the spirit of the Ordinance not to allow automotive repair facilities in the downtown area. Other repair facilities in the downtown area have been problematic for code enforcement prospective, with many violations. Many of which we need to go to court to rectify the situation. When Council changed the Ordinance he believed that it was to not allow these types of places in the downtown area. He looks at a zoning board to grant relief from the zoning Ordinance, but at many times in terms of the boundary lines, encroachment into set back areas, the size of signage are the sorts of things that he thinks where the spirit and the intent of the Ordinance. He had a discussion with the City Manager and asked if there was anything we could do about it after the ZBA had already made a decision, the Council can appeal that decision. He did read the minutes from the ZBA meeting, he read from the minutes "the board voted to approve the variance for auto repair. They added that using the building as auto repair garage would not diminish property value. Using the garage as it is intended is appropriate and it meets substantial justice that is not contrary to the spirit of the Ordinance." So they state those 5 things but they don't tell how they meet those 5 things they just reiterated what I already reiterated. He believes that the motion needed to have a lot more meat on the bones with explanations as to why. I will stop and allow for other Councilors to weigh in.

Councilor McCallion stated that he was very surprised that decision was made because wasn't it that we just passed where we accepted past taxes for years. He thinks that if the owner of the building stated he was going to open it back up as a garage he wouldn't have accepted it. He thought it was part of the sale. He remembers it as Profile Garage as a kid, he would take one car in and one car out he kept that place immaculate. There were never 5 or 6 cars in the parking lot at any time it was clean and well kept. As far as auto sales, there is no way that could be in the spirit of the Ordinance. He would want to do an appeal on that as well.

City Manager Belmore stated that the City had no choice but to sell the property back to the prior owner. That was his statutory right to do that provided he came up with the full amount of owed backed taxes, penalties and interest. As far as an appeal, we would need to engage City Attorney. His understanding in talking to Director Saunders is that you would ask for a rehearing of the ZBA and if you were not granted a rehearing you would have to consider going to superior court. So there would be certain cost to the City for litigation. He did buy it back and is currently marketing it. Councilor Witham stated that he would rather spend money doing that then chasing property maintenance issues in the court system.

Councilor Messier stated that he is not going to support one way or another until we have clear legal advice from what the City Attorney would say. It seems to be in this process that now it has been through the ZBA, does this go through the planning board for a site plan? Is there another step involved? If we didn't want that to be a garage then we as a City could have purchased that and then we could have had control. But people have that right if they own property. If you take that right away think about how that legal ramification may be.

Councilor Sprague has a series of questions on how we got here. He understands what Councilor Messier is saying. What he believes is that this use is not permitted in that zone; it has been a garage for years past. He believes that if you stop that business use for more than 1 year then that right to use the business to run in the same manner goes away in an area that has since been rezoned. The hang up he has is that he went in front of the ZBA to get the use back and he thinks it has been longer than a year, the owner is not going to be using it as a garage but someone is. Not sure how the automotive selling variance passed. We are trying to clean up the downtown area for various reasons. Way back when in 1998-2000, these rules were put in place because there was some hemorrhaging.

City Manager Belmore stated that there were 2 parts to this business property; the first part was the City made a decision that 12 or more months has lapsed, therefore that use can no longer exist because it has been zoned out. So in order for you to reestablish the use you need to get a variance. They brought it to the ZBA for an appeal on that decision and the ZBA said that we do not overturn that decision; we affirm the City's decision. So then the only way to reestablish that use was to acquire a variance. So now they have reestablished that use and they can move forward and market the property for that use.

Councilor Sprague followed up with now that right goes to the seller of that land. If someone comes in and wants to put an auto repair place there, do they then have to go in front of the planning board for a site review? Manager Belmore responded yes that is his understanding.

Councilor Dumont watched the ZBA meeting. He thought the ZBA performed as it was designed to. The other piece is that the arrearage in taxes occurred not because of the applicant or owners inability to pay. He didn't pay because of health reasons and believed that he was going to be ill and unable to survive. When he had the opportunity to have a future, he decided he wanted to buy it back. He is concerned about making this case a big issue. Anyone buying that property has to pass through all boards for approval. No

one at the meeting was there to speak against this during the ZBA meeting and he believes that played a part in the decision that the ZBA made.

Councilor Witham stated we don't want all these auto repair shops in the downtown area, which is why we created this zoning change. He believes that the auto sales part has been "sugar coated." To his knowledge there have never been auto sales at that location.

Councilor Pepin agrees with Councilor Dumont on fringing on people's right. He never remembers it being auto sales in any form ever it has always been a garage. Selling of cars upset him, he is on the fence on this one.

Councilor McCallion stated that the reason why no one shows up at the ZBA is because they are renters, the letters were sent to the landlords. He believes that they need to look further into the auto sales piece. He believed that the auto repair shop needs at least two bays and it currently only has one, doesn't see it to be a viable business. He believes we need an appeal on the auto sales.

Councilor Levasseur stated he has heard everyone saying that it has been an auto repair garage for years. He thinks that moving forward it being an auto repair garage isn't what may be best for the public. He hears all too often talk about Somersworth having an image problem. He mentioned Rouleau's Garage has turned from an auto repair garage into a junk yard.

Councilor Witham stated we have to make a decision tonight because it is our last meeting before that 30 day appeal comes into play.

Councilor Cameron stated she knows it as always being a garage for many years. She has heard the City has made it difficult for businesses in the past years. She thinks they need to look into the auto sales piece.

Councilor Dumont made a point of clarification naming one person in attendance at the ZBA meeting that supported moving forward with the variances was Mr. David Francoeur, who is a major property owner within the City. The other piece is who goes in the building as a business owner, which we have no control over.

Councilor Sprague stated that we are getting outside on what we do here. We can't decide whether the business is viable or not, it is not for us to determine. What we should be talking about is whether we are upset about the way a land use board approved the variance for something it is not zoned for. The auto repair place part he is undecided on a determination, the auto sales part he is not.

City Manager stated he is not trying to give the Council any legal advice. The land use boards make decisions based on the information they are provided in the hearing. They are making a judgement call based on those facts. Usually in order to ask for a rehearing you have to provide either new information that they were not provided when they made their decision or have to provide your argument that their decision was unreasonable based on the information provided. One of the facilities mentioned earlier the City does put these facilities on notice and for the most part they are compliant. The one mentioned did comply and has been perceptive in the past.

Councilor Witham had spoken with at least 1 zoning board member. He feels they did not justify the 5 criteria fully. The ZBA stated that it met the spirit of the Ordinance, but felt it was not articulated. The ZBA minutes were read “using the building as a repair garage would not diminish property value, using the garage as it is intended is appropriate, and meets substantial justice, and is not contrary to the spirit of the Ordinance. Saunders asked if the Board wanted to restrict the number of cars. Brooks and Maskwa stated that they wanted to defer to the Planning Board for judgement on restrictions. Variance passed 4-0” There was zero discussion with regards to the 5 criteria for auto sales.

Councilor Levasseur stated that the reason why abutters were not notified was because they were mostly renters, he feels like we need to reach out to the renters and let their voice be heard.

Councilor McCallion stated that the ZBA keeps going back to let the planning board restrict the number of cars. If they come through the planning board and it’s not within the zone, but they have a variance how is that handled?

City Manager stated they are now allowed to do it. The City would hold a Public Hearing and certain site plan requirements would be discussed. Some examples of those are lighting, fencing, a buffer, vegetation, and hours of operation etc. There are certain restrictions and or conditions that can be put in place.

Councilor Witham stated this was a robust discussion regarding land use matters which are important. If this filters down to the ZBA about being more diligent in those 5 criteria and having an explanation for each and every one, then that helps him and is part of an educational process. Certainly the parachute in all of this is the fact that it does have to go in front of the planning board. If this body wants to take no action beyond this conversation tonight then there is the planning board as the parachute.

Councilor Sprague asked can we split the question; can we appeal just one variance? The reason being is because the auto sales part drives him insane. This is what happens, I’m repairing cars I have 3 or 4 there on site to stock out for parts, the City comes in and says that you can’t have unregistered vehicles on the property their response is they are for sale. That is how they are going to get around it. The minutes do not dictate any discussion that was had during the ZBA meeting regarding the variances.

Councilor Witham deferred to the City Manager on the question as to whether we can split up the appeals.

City Manager stated yes, one was not conditioned on the other. He would think they stand alone and could be voted on separately.

Councilor Witham without further conversation we will take a majority vote.

First question: *Does the City Council want to appeal the decision of the ZBA to allow an auto repair garage at the 20 Green Street property? Question failed with a vote 3-5. Councilors McCallion, Witham and Levasseur voted yea. Councilors Pepin, Dumont, Messier, Sprague, Cameron voted nay.*

Second question: *Does the City Council want to appeal the decision of the ZBA to allow for auto sales at the 20 Green Street property? Question passed with a vote 5-3. Councilors McCallion, Witham, Sprague, Cameron and Levasseur voted yea. Councilors Pepin, Dumont, and Messier voted nay.*

City Manager is directed to move forward with an appeal on the auto sales variance.

CLOSING COMMENTS BY COUNCIL MEMBERS

Dumont - complimented the staff in the developmental area for the meeting of bankers that took place last week in the Council Chambers. Attendance and comments made were great. Also would like to wish the Somersworth High School boys basketball team good luck Wednesday night.

McCallion – He attended the hockey game last weekend before the playoffs and it was their senior night, hats off to all the parents and volunteers. Good luck to the boys basketball team.

Messier – Couple of things, pothole season is upon us and hopefully we have a plan for that. Regarding the Franklin St property that was in foreclosure, thinks we have sold it to someone, would like the status on that. Concerning the issue with mural on Constitutional Way, he remembers back when that came up, he asked who is going to maintain that in the future, a lesson learned. Potholes again he drives down Main St a lot there are also a few manhole covers that need to be looked at on River St they are tipped and doesn't want to see them flip.

Sprague – Just wants to make a comment holistically about land use boards. It baffles him how the zoning board can be very lazy about a busy downtown area allowing an auto sales garage variance is granted. But to someone who owns a house down on Coles Pond Rd for instance and wants a variance for a deck that hangs two feet over the property line. They will make such a disturbance over that, send code enforcement out. The only people see that are golfers and our zoning board will make sure that is on their agenda to not grant. Something that is downtown and gets traffic with an estimate of 1,000 cars per day they seem to have no problem with that. But to have something that gets no traffic only golf carts, they hemorrhage. Try to figure it out, I cant. He thinks the Mayor needs to do some replacements on the zoning board.

Cameron – Wants everyone to put on your calendar April 18th for the cultural dinner. We will be getting fliers out and presale tickets soon. Also had the opportunity to attend the Somersworth High School boys basketball playoff game last Saturday, and wish them well Wednesday night weather permitting. Go Toppers!

Levasseur – Wanted to remind everyone there is an Indonesian Cultural Night March 9, 2018 6-9pm at the CTC. There will be a ribbon cutting as well.

ADJOURNMENT

Councilor Cameron, seconded by Councilor Dumont, made a motion to adjourn. The meeting adjourned at 8:12 pm. Councilor Sprague opposed.

Kelly Gagne, Deputy City Clerk

David A. Witham, Acting Mayor