



City of Taunton
Municipal Council Meeting Minutes

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Temporary City Hall, 141 Oak Street, Taunton, MA
Minutes, August 30, 2016 at 9:10 O'clock P.M.

Regular Meeting

Mayor Thomas C. Hoye, Jr. presiding

Prayer was offered by the Mayor

*Present at roll call were: Councilor's Marshall, Cleary, Borges, Dermody, McCaul
Quinn, Pottier, Carr, and Croteau*

Record of preceding meeting was read by Title and Approved. So Voted.

Communications from the Mayor:

Mayor Hoye thanked all of the City Departments that participated in the End of the Summer Celebration that was a replacement of Family 4th Night. For those that were able to stop by, it was a great night with great entertainment. He can't say enough about the City employees that stepped up and donated their time. The fireworks were fantastic. He stated that it was suggested that it be done at the end of the summer every year so that will be a discussion for another day because he knows that everyone likes the 4th of July as well. It was certainly a great night and was well attended. He spoke about the great time that was had and how they are trying to promote family oriented activities that everyone can enjoy. It was 100% done through donations. **Councilor Cleary made a motion to invite in the sponsors to be recognized. So Voted.** Mayor Hoye stated that the sponsors were: Bank Five; Silver City Galleria; Taunton Federal Credit Union; Jordan's Furniture; G. Lopes Company; Quality Beverage; Gay & Gay Attorneys; Silva Funeral Home; Attorney Orlando De Abreu; The Beta Group; Gatra and Brewster Ambulance. He thanked the sponsors again and stated that it could not have been done without their help.

Communications from City Officers:

Com. from Assistant City Solicitor stating that the Law Department recently assisted the Police Department with issuing an RFP for the procurement of Tasers. Captain Daniel McCabe previously determined that it would be most advantageous to the City to spread the cost of this over five years, with the requirement that the devices come with a warranty of at least five years. Councilor Cleary stated that he spoke to the Assistant City Solicitor and they are looking to purchase about 50 of them and the total cost over five years will be roughly \$100,000. He stated that they are looking to spread it out because he thinks that somebody in the police department received a grant for the first year's payment and will reapply for that grant a second year so it is a way to save money for the City. **Councilor Marshall made a motion to authorize the Mayor, as Chief Procurement Officer, to award and enter into a five year procurement term with the low bidder, TASER International, Inc. So Voted.**

Com. from Chad Morin, Taunton Fire Department requesting permission and to inform the Council of the intention of the Taunton Firefighters to conduct our annual Fill the Boot Drive for the Muscular Dystrophy Association. They will be at their usual locations around the City on Sunday morning (9/4) from 8am-4pm, and again on Monday 9/5 (Labor Day) from 8am-12pm as weather permits. **Motion was made to move approval. So Voted. Councilor Cleary made a motion to send a letter of appreciation to Chad Morin, a young firefighter who has stepped up and accepted a leadership position on this annual event and he would like him to know that his efforts are appreciated. So Voted.**

Com. from Assistant City Solicitor stating that a lawsuit was filed against the City by the contractor who constructed the sidewalk downtown, alleging that the City owed money under the contract. The City, through the Law Department, counterclaimed that the contractor owed the City money for failing to complete the project in a timely manner. He is pleased to inform the Council that the matter has been resolved, with the City retaining \$10,833.33 that otherwise would have been payable under the contract. **Motion was made to receive and place on file. So Voted. Councilor Croteau made a motion for a letter to be sent to the Law Department complimenting and thanking them for the \$10,833.33. So Voted.**

Com. from City Solicitor stating that by correspondence dated July 29, 2016, he informed the Municipal Council that a number of land acquisitions were necessary in order to successfully move forward with the Hart's Four Corners intersection improvement project. On August 2, 2016, the Municipal Council referred this matter to the Committee on Public Property. On August 9, 2016, he and the City Engineer met with said Committee to discuss these acquisitions along with two parcels on Stevens Street. Also, on August 9, 2016, the Committee on Public Property unanimously forwarded a positive recommendation to the Municipal Council to adopt the necessary Orders of Taking at the August 30, 2016 meeting with respect to all parcels. The Treasurer/Collector has reported that she received via wire transfer from the Mashpee Wampanoag Tribal Gaming Authority the total sum of \$776,460.00, which is the precise sum necessary to pay for all of these land acquisitions in accordance with the professional appraisals conducted. Accordingly, he respectfully requests that the Council votes to approve the enclosed Orders of Taking. **Motion was made to move approval. So Voted.** Mayor Hoye stated each one needs to be done on a roll call vote. The City Clerk asked the City Solicitor if she should just go right down the list. The City Solicitor stated that they put as many as they could into one instrument but there will actually be a total of, if they are all approved, 35 instruments recorded at the Registry of Deeds. He stated that on every Councilor's desk is the same spreadsheet that was passed out several weeks ago to the Committee on Public Property and it shows the 56 parcels. He stated some of them are temporary easements so they were able to put them all into one instrument of taking for the Hart's Four Corners project. It brought it down from 56 to 35. He stated that they are on the actual legal documents that will be recorded. He stated that the first 32 documents are permanent acquisitions for Hart's Four Corners; number 33 is a temporary acquisition at 57 Stevens Street; number 34 is a permanent taking at 57 Stevens Street and number 35 is all of the temporary easements for Hart's Four Corners put into one document. The City Solicitor stated that on the spreadsheet, numbers 55 & 56 are the 33rd and 34th

instrument because of parcels being combined. He stated that if they go to the end of the packet and were to take out the last one, which are all of the temporary easements for Hart's Four Corners; those would be the two immediately before that. He stated that PE-15 is the permanent acquisition of 230 sq.ft. and the one right before that is TE-17 which is a temporary easement of 3,654 sq. ft. **Councilor Marshall made a motion to approve all of the temporary easement takings provided on Schedule A dated 8/5/16. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-PUE-4. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-PUE-10. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-6-C. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-PUE-5. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-8-C. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-WM-1. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-PUE-1. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-9-C. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-1-C. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-2-C. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-3-C. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-PUE-9. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-4-C. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-PUE-7. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-PUE-8. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-5-C. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-PUE-2. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-WM-2. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-PUE-3. On a roll call vote, nine**

(9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-PUE-22. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-7-C. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-WM-4. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-16-C. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-13-C. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-PUE-14. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-HS-1. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-HS-2. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-PUE-13. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-PUE-12. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-PUE-11. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-15-C. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Councilor Marshall made a motion to adopt the order of taking for parcel 28-19-C. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor. So Voted. Motion was made to accept the recommendation for order of taking for parcel no. PE-15, this is the one parcel on Stevens Street. Edwin DeBrum, 57 Stevens Street stated that he runs a small business out of there and this easement would not allow him to run his big trucks out of his yard. He stated that it would put a small business out of business. Mayor Hoye stated that he knows that he has had discussions about possibly moving his driveway along with a few other things. He asked the City Solicitor if we didn't take this particular parcel tonight, would there be any detriment to anyone. He stated that he knows that Hart's Four Corners is imperative but this isn't part of that. The City Solicitor stated that the urgency is due to the Federal funding of the Hart's Four Corners project so there is not the same urgency with respect to the Stevens street parcels. The City Solicitor stated that it is actually two parcels. Mayor Hoye stated that one of them was temporary. **Councilor Marshall rescinded his motion and referred parcels TE-17 and PE-15 back to the Committee on Public Property for further discussion with the land owner, City Solicitor's Office and the consultant so they can get more information where there is no urgency regarding Hart's Four Corners. So Voted.** Councilor Marshall spoke about how tonight was the first real step toward moving forward with a permanent fix for Hart's Four Corners and is grateful for all the work that has been done. He spoke about how this is being done at zero cost to the City with the Tribe's contribution for all of these land takings, otherwise

the City would have had to come up with over \$771,000 to do this. In his opinion, this needed to be done whether the Tribe did it or not. He thanked the Tribe for holding up their end of the bargain that was agreed to as we move forward. He looks forward to Hart's Four Corners finally being fixed and being taken off SRPEDD's Top 10 Most Dangerous Intersection List in Southeastern Massachusetts. He thanked everyone who has been involved in this long process. Mayor Hoye stated that he agrees, it has been a long process. He is pleased, and he thanks the Mashpee Wampanoag Tribe and everyone who has helped out with this project. He stated that it will take a long time to complete. He is very excited about this project and Gordon Owen Riverway which is on the horizon as well. These are two intersections that have been promised for a long time. He spoke about the large amount of construction that is going on in the City. He stated that he has received complaints about it and he knows that it is difficult at times. He stated that he is proud of the things that are being done and this is another step in the right direction. **Councilor Cleary made a motion to invite the representatives of the Tribe that are present tonight into the enclosure to introduce themselves and give the Council an opportunity to thank them for their commitment to the City of Taunton. So Voted.** The representatives from the Tribe thanked the Mayor for his kind words and the Council for the progress that has been made.

Communications in the hands of Councilors:

Councilor Cleary wanted to remind everyone that there will be a commemoration on Sunday, September 18, 2016 at noon at the Vietnam Fountain on Church Green for the 50th Anniversary of the Vietnam War. He stated that anyone who served in the Vietnam War, even if they are not affiliated with any organization is eligible to receive a medal from the Veteran's Affairs Officer Francisco Urena. He is coming to the ceremony to award the medals individually. Councilor Carr asked if they would have to fill out an application to receive a medal. Councilor Cleary stated that they will not, it will be on the honor system. Council President Quinn stated that most of the Councilors go at some point during the weekend and wanted to point out that the vigil will run from noon on Saturday, September 17, 2016 to noon on Sunday, September 18, 2016 at which time they will hold the ceremony. She stated that it is a very nice ceremony and it would be good to get people there especially since this is the 50th Anniversary.

Councilor Cleary stated that an email was received regarding a local meeting on the South Rail which will take place on September 12, 2016 at BCC which is located in the Silver City Galleria. Mayor Hoye stated that the time has not been announced yet.

Petitions:

Petition submitted by Patricia and Daniel Macean, 333 County St., Taunton requesting a new Livery License for D&P Community Transportation, LLC located at 333 County St., Taunton. (1 Vehicle) **Motion was made to refer to the Committee on Police and License and the Chief. So Voted.**

Claim submitted by Kathleen Baran, 49 Mayflower Ave., Taunton seeking reimbursement for damages to her automobile from hitting a sewer cover in front of Cronin's Spa at 38 Adams Street. **Motion was made to refer to the Law Department. So Voted.**

Petition submitted by Taunton Municipal Lighting Plant proposing to place four (4) new sole electric manholes and conduits on Constitution Drive. **Motion was made to refer to the City Clerk to schedule a public hearing. So Voted.**

Petition submitted by Taunton Municipal Lighting Plant proposing to place five (5) new sole electric manholes and conduits on Route 140 North Bound interchange with Stevens Street in Taunton. **Motion was made to refer to the City Clerk to schedule a public hearing. So Voted.**

Petition submitted by Attorney William Rounds, 115 Broadway, Taunton on behalf of his client Louis Borges, Jr. for a special permit to allow a multi-family development containing eight (8) units to be located at 123 Hart Street, Taunton. **Motion was made to refer to the City Clerk to schedule a public hearing. So Voted.**

Petition submitted by Janice Alston, 13 Johnson St., Taunton requesting a NEW Grade 1 (4-6 dogs) Kennel License for personal uses dogs, not business use, to be located at 13 Johnson St., Taunton. **Motion was made to refer to the City Clerk to schedule a public hearing. So Voted.**

Committee Reports:

Motion was made for Committee reports to be read by Title and Approved. So Voted. Recommendations adopted to reflect the votes as recorded in Committee Reports. So Voted.

Unfinished Business:

Tabled for one week -Mulcahey School Westside Playground – Motion on Title/Control. Com. from the City Solicitor regarding land compromising Westside Playground/Mulcahey School contemplated transfer to School Department. Councilor Cleary asked for the City Solicitor to summarize what the letter says as it is four pages long. The City Solicitor stated that the bottom line is prior to being authorized to make a motion to transfer land that is under the charge of one City Department to another City Department you have to comply with M.G.L. Chapter 40 §15A. It requires a determination by the Board or Officer that presently has charge of the land that the land is no longer needed for the purpose for which it is under the care and maintenance of the department. Once that board or officer makes that determination, it notifies the Council. Then the Council is authorized by two thirds vote to transfer the land to another department. He stated that what is here is a long history of portions of what is now the entire campus of Mulcahey School being in charge of the Park and Recreation Commission. He stated that what needs to happen is sending a communication to the Park and Recreation Commission asking them under M.G.L. Chapter 40 §15A to make a determination that the particular land presently in their charge is no longer needed for playground purposes. He stated that it is his belief that they will do that, he spoke to Mrs. Greene at length about that. They may try to put some conditions on it but the sense that he gets is that they are not interested in impeding the school project. They are interested in making sure that there are recreational opportunities available to the citizens of the City. His recommendation is for the Council to send a communication to them asking them to make that determination and to notify the Council. When the Council receives that, the law would enable the Council to transfer the land to the School Department. **Councilor Cleary made a motion for the City Solicitor to work with the**

City Clerk to draft a letter to the Parks, Cemeteries and Public Grounds Department requesting for them to release the Mulcahey School property to the City. So Voted.

Mayor Hoye stated that we will get that done as soon as possible. Councilor Croteau wanted to point out that it was brought to the attention of the entire Building Committee. The Committee is presently engaged in a discussion and is at a stage called feasibility. He stated that this project cannot proceed to the next phase until a site is definite. He stated that at one time the Committee was hearing comments that this would have to be sent to Beacon Hill for a Home Rule Petition signed by the Governor into law. Feasibility cannot proceed to the next level until this is clarified. He stated that there was a concern on the part of the Building Committee. A recommendation was made by the Superintendent of Schools to refer this to the School Counselor, David Gay. It was researched by Atty. Gay and another individual who only deals with Title searches. It was determined because of the length of time that the land in fact is not under the jurisdiction of Park & Rec. He spoke about a similar situation on Norton Avenue. He stated that he has no personal objection to this being referred to Park & Rec; he just hopes that it doesn't have to go to Beacon Hill so we can get through the feasibility study. He stated that it is much more difficult dealing with the MSBA than it was with the School Department. He stated that he hopes it doesn't take longer than two weeks to clear this up. Council President Quinn stated that this has been a matter of contention and she respects Atty. Gay's opinion which was well researched. She respects the opinion of the City Solicitor and she would agree with Councilor Croteau that this should move quickly. She stated that it is more important that we get it right. Councilor Croteau stated that there is confusion here which goes back 20-25 years. There has been constant back and forth between the School Committee and Park & Rec because of the use of the ball fields when school is not in session during the summer. There was an agreement that Park & Rec would have jurisdiction. To make life simpler, the School Committee said that Park & Rec would have jurisdiction over the fields because the School Department didn't need it. The City Solicitor stated that there are two separate issues being discussed which are technical legal issues that do not come up that often. He stated that what we have here are two issues; one is whether or not this land is protected by Article 97 in the State Constitution which involves extensive deed researches to see whether or not there are any recorded instruments on the use of the land. He stated that it is a separate, totally different analysis as to whether or not M.G.L. Chapter 40 §15A applies to this situation, which it clearly does. He stated that he met with Atty. Gay about this before he wrote this letter and he indicated that he was not asked to look into the applicability of M.G.L. Chapter 40 §15A nor did he look at it. He looked at the other issue. For there to be an assertion that a determination was made that it wasn't under the jurisdiction of the Park & Recreation Commission is a totally separate issue that goes to §15A, it doesn't go with the Article 97 land issue which is what was looked at. There can be no rational argument to be made that the Park & Rec Commission hasn't had jurisdiction over some or all of the land. The records of the commission are extensive in that regard. Councilor Croteau asked if there could be a date certain. The City Solicitor stated that he has looked into the timeline for this and the deadline for the City to certify with the State that the land is available with no restrictions on it is January 30, 2017. There really can be no reasonable belief that this will not be done by then. The Park & Recreation Commission meets monthly and he spoke with Mrs. Greene today and she thought the next meeting will be held mid to late September. He stated that we want to get this done as soon as possible but the real deadline is the end of January and it will be met long before that. Councilor Croteau stated that he hopes that when they meet at the end of

September, the Council will then receive an answer so we can begin to move forward sooner than January. It will be a much more expensive school building than any we have built of that size and the longer it is delayed the more it will cost. He would like to have an answer by early October so the School Building Committee can move forward and complete the feasibility study.

Orders, Ordinances and Resolutions:

Order for a second reading to be ordained on a roll call vote

Ordered That,

\$6,500,000 is appropriated for the purpose of financing the construction of various improvements to the City's water system, including without limitation the (i) the removal and replacement of the sludge collectors at the water filtration plant, (ii) improvements to the ventilation system in the main electrical and generator room, (iii) the rehabilitation of the water distribution system and (iv) remove and replace the underground fuel oil tank to be compliant with applicable regulations, including but not limited to the installation of water mains and or the cleaning and cement lining of water mains and water meter improvements; including the payment of engineering and legal services for planning, design, permitting, testing, bidding, construction administration, material testing and resident inspection services and all costs incidental or related thereto; including without limitation all costs thereof as defined in Section 1 of Chapter 29C of the General Laws; that to meet this appropriation the Treasurer with the approval of the Mayor is authorized to borrow **\$6,500,000** and issue bonds or notes therefor under Chapter 44 of the General Laws and/or Chapter 29C of the General Laws, or any other enabling authority; that such bonds or notes shall be general obligations of the City unless the Treasurer with the approval of the Mayor determines that they should be issued as limited obligations and may be secured by local system revenues as defined in Section 1 of Chapter 29C; that the Treasurer with the approval of the Mayor is authorized to borrow all or a portion of such amount from the Massachusetts Water Pollution Abatement Trust established pursuant to Chapter 29C and in connection therewith to enter into a financing agreement and/or a security agreement with the Trust and otherwise to contract with the Trust and the Department of Environmental Protection with respect to such loan and for any federal or state aid available for the project or for the financing thereof; and that the Mayor is authorized to enter into a project regulatory agreement with the Department of Environmental Protection, to expend all funds available for the project and to take any other action necessary or convenient to carry out the projects; and that the Treasurer is authorized to file an application with the Municipal Finance Oversight Board to qualify under Chapter 44A of the General Laws any or all of the bonds authorized by this order and to provide such information and execute such documents as the Municipal Finance Oversight Board may require for these purposes. **Motion was made to ordain. On a roll call vote, nine (9) Councilors present, nine (9) Councilors voting in favor.**

Order for a first reading to be passed to a second reading

Ordered That,

\$26,000,000 is appropriated for the purpose of financing the construction of various improvements to the City's wastewater system, including without limitation (i) the

development of a sewer capacity model and infiltration inflow (I&I) and a sewer system evaluation survey (SSES) update; (ii) the final environmental impact report (EIR) and comprehensive wastewater management plan (CWMP); (iii) a wastewater treatment plant capacity analysis (anti- degradation); (iv) for municipal separate storm sewer system (MS4) permitting and compliance activities; (v) for sludge transfer containers; (vi) sewer and drain improvements design; (vii) Sewer and drain improvement construction; (viii) main lift pump station design; (ix) for the main lift pump station design; and (x) WWTF Preliminary Design Report, including but not limited to the construction of the projects, the payment of engineering and legal services for planning, surveying, design, permitting, testing, bidding, construction administration, material testing, resident inspection services, and all costs incidental or related thereto; that to meet this appropriation the Treasurer with the approval of the Mayor is authorized to borrow **\$26,000,000** and issue bonds or notes therefor under Chapter 44 of the General Laws and/or Chapter 29C of the General Laws, or any other enabling authority; that such bonds or notes shall be general obligations of the City unless the Treasurer with the approval of the Mayor determines that they should be issued as limited obligations and may be secured by local system revenues as defined in Section 1 of Chapter 29C; that the Treasurer with the approval of the Mayor is authorized to borrow all or a portion of such amount from the Massachusetts Clean Water Trust established pursuant to Chapter 29C and in connection therewith to enter into a financing agreement and/or a security agreement with the Trust and otherwise to contract with the Trust and the Department of Environmental Protection with respect to such loan and for any federal or state aid available for the project or for the financing thereof; and that the Mayor is authorized to enter into a project regulatory agreement with the Department of Environmental Protection, to expend all funds available for the project and to take any other action necessary or convenient to carry out the projects; and that the Treasurer is authorized to file an application with the Municipal Finance Oversight Board to qualify under Chapter 44A of the General Laws any or all of the bonds authorized by this order and to provide such information and execute such documents as the Municipal Finance Oversight Board may require for these purposes. **Motion was made to approve the first reading and move to a second reading. So Voted.**

New Business:

Councilor Cleary stated that both of those resolutions referred to the Mass Water Pollution Abatement Trust and asked if it is low interest. Mayor Hoyer stated that it is and the rates do vary from time to time. It is extremely low interest and was taken into consideration when they did the new rate structure.

Councilor Borges made a motion that the Council meets in Executive Session next week to discuss a personnel matter in the Human Resource Department. So Voted.

Councilor Pottier spoke about a Facebook post regarding cemeteries and how a citizen stepped forward to Marilyn Greene. He stated that volunteers will work to clean off some of the older and more historic gravestones and markers in the City. He stated that

he believes that the Mayor and Mrs. Greene are in support of this. Mayor Hoye stated that it is very common and he will be bringing in Rick Tatonia in a couple of weeks to give him a citation. He has done work at cemeteries off of South Crane Avenue. A lot of them are in the woods out in the middle of nowhere and he has taken the time to restore the stones as best as he can and clean up the brush. He stated that Marilyn and her staff are always very accommodating in helping out.

Councilor Pottier asked if there is a status on the water project on Stevens Street. He stated that he knew that we were trying to get it done before the start of school. Mayor Hoye stated that he drove by there Saturday and there was quite a bit of paving to do. He knows that they were supposed to be paving today but he has not gone out there this evening. Councilor Carr stated that she was at the DPW today and a representative from the company doing the work stated that the road is slated to be completely done by tomorrow morning and there is a small portion beyond that is not fully completed but will be in the next couple days. Mayor Hoye stated that it is supposed to be swept and hopes that it is done so there are no problems tomorrow morning.

Councilor Pottier asked the City Clerk if we are all set for the primary on September 8, 2016. He asked if that is being advertised on the City's website. People are usually ready to vote on a Tuesday, and it is an unusual situation for it to be held on a Thursday. The City Clerk stated that it will be advertised in the newspaper and it can be put on the City's website.

Councilor Carr stated that regarding the gravesites, she did refer to the Mayor's Office about three or four months ago the grave of Elizabeth Pole and it needing some type of a new cover. Mayor Hoye stated that he will touch base with her this week.

Councilor Carr stated that she has spoken to the Police and Fire Chief about the last time that some kind of study was done on their departments to determine what actual man power, equipment, and facilities are needed and even whether they are located in the right parts of the City. She stated that when the SAFER grant was brought up a couple of weeks ago she voted no and part of her reasoning was that she didn't know for sure what we need for man power or what we should be looking for and whether there should be civilian call takers. Mayor Hoye stated that we haven't talked in detail regarding the 911 system, but they will be doing a quick analysis on that over the next month. There are some changes that have to be made and he does agree that the face of public safety has changed and how we respond with technology to emergencies. He stated that there are areas that can be improved upon and some of that takes capital expenses. He stated that the Capital Advisory Committee will be meeting sometime in September for an update on some of these projects. We do need some updated fire houses and police stations. It is a matter of finances. He agrees that the personnel should also be looked at. **Councilor Carr made a motion to refer to the Mayor's Office the possibility of an RFP for an audit of the Police and Fire Departments and what their current needs are. So Voted.**

Councilor Carr stated that the Mayor mentioned a couple of weeks ago that he has a committee working on the rebuilding of City Hall. She is not sure how often the committee meets. **Councilor Carr made a motion that the City Hall Building**

Committee submits an update to the Council at least quarterly on what is going on. So Voted.

Councilor McCaul stated that Mayor Hoye touched base on the pond at Memorial Park last week. He asked if there any updates on what is going on there because he has received phone calls about it. Mayor Hoye stated that wild geese are capable of flying to another location to drink. The larger issue is the problem at the park that has gone on for the last couple of years with this year being worse due to the drought. He stated that the DPW Commissioner had G. Lopes out there last week with the excavator and hit water at about 5 feet which isn't too bad. He stated that we have to make a decision and it will cost a little bit of money to dredge it, clean it out and get water that way. It is probably the better way to go about it or to tap a well which would feed the system as well. It has to be decided what the best course of action is and what the costs will be. He stated that he has received a couple of calls but not an overwhelming amount. The Canadian geese are the domesticated geese at this point which are actually a hindrance to the park because they make a mess. They have taken up home there and are not endangered. There are plenty of water sources around in the general area and they know where they are. He spoke about some of the other waterways that have been affected by the drought. He wants to beautify Memorial Park and do some work out front. He stated that the neighbors call quite often and he really wants to approve recreational activities in the City. He stated that he wants to make Taunton a place where people can enjoy these areas. He spoke about what is happening this year at Hopewell Park and about a lot of great things going on in the City.

Councilor Cleary asked the City Clerk what was done with Kenneth Goulart's letter regarding the double pole situation. He asked if the Council voted to send a letter. The City Clerk stated that the double pole situation was with the Clerk of Committees. **Councilor Cleary made a motion to send a letter of appreciation to the TMLP and Comcast for the progress that they have made regarding the double poles. Also, to send a letter to Verizon questioning their lack of progress. So Voted.** Councilor Croteau stated that is why he asked for that report periodically because the last report we had several months ago showed the same statistics. The number of double poles owned by Verizon is several times higher than that of TMLP or Comcast. He would agree with the motion especially to the part of sending letters to these people and asking them for explanations. He stated that Verizon was here a couple of years ago saying that there were eight double poles when in fact there was ten times more than that. He stated that it has been historically Verizon that is the problem. Councilor Carr wanted to let Councilor Cleary know that it was on their desks but never discussed. She stated that Verizon had about twelve more poles than last time.

Council President Quinn stated that on Thursday, September 8, 2016, as Councilor Pottier pointed out, there is a local primary election that has been kind of low key. She stated that there are absentee ballots available and people can vote at City Hall for the primary. The City Clerk stated that they can vote up until noon on Wednesday, September 7, 2016.

Meeting adjourned at 9:10 P.M.

A true copy:

Attest:

A handwritten signature in cursive script that reads "Rm Beachwell".

City Clerk

RMB/SJS

CITY OF TAUNTON
MUNICIPAL COUNCIL
AUGUST 30, 2016

THE COMMITTEE ON FINANCE AND SALARIES

PRESENT WERE: COUNCILOR GERALD CROTEAU, CHAIRMAN AND COUNCILORS
CARR AND CLEARY

MEETING CALLED TO ORDER AT 5:42 P.M.

1. MEET TO REVIEW THE WEEKLY VOUCHERS & PAYROLLS FOR CITY DEPARTMENTS

MOTION: MOVE APPROVAL OF THE PAYROLL WARRANT IN THE AMOUNT OF \$1,039,283.61. SO VOTED.

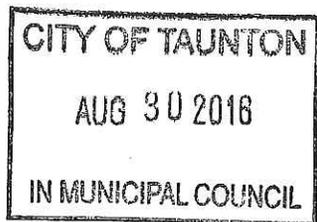
MOTION: MOVE APPROVAL OF THE SPECIAL SCHOOL WARRANT IN THE AMOUNT OF \$151,152.02. SO VOTED.

MOTION: MOVE APPROVAL OF THE INVOICE WARRANT IN THE AMOUNT OF \$1,172,618.33. SO VOTED.

MOTION: TO SEND A NOTE TO THE CITY SOLICITOR AND RISK MANAGER REGARDING A BILL IN THE WARRANT FOR AN AUCTIONEER IN THE AMOUNT OF \$27,000. IT IS UNDERSTOOD THAT THIS IS FOR THE SALE OF SOME PROPERTIES THAT THE CITY OWNED. REQUEST WAS MADE TO MATCH THAT \$27,000 UP WITH WHAT THE CITY GOT FOR SELLING THE PROPERTIES - THE RANGES - WHAT THE CITY ACTUALLY GOT. ALSO, ANSWER TO THE QUESTION OF WHY THE CITY EMPLOYED AN AUCTIONEER. SO VOTED.

MEETING ADJOURNED AT 5:45 P.M.

RESPECTFULLY SUBMITTED,



Colleen M. Ellis

COLLEEN M. ELLIS
CLERK OF COUNCIL COMMITTEES

REPORTS ACCEPTED, RECOMMENDATIONS ADOPTED.

Rm Beachwell

CITY CLERK

CITY OF TAUNTON
MUNICIPAL COUNCIL
AUGUST 30, 2016

THE COMMITTEE OF THE COUNCIL AS A WHOLE

PRESENT WERE: COUNCIL PRESIDENT JEANNE QUINN AND COUNCILORS CROTEAU, CARR, POTTIER, MCCAUL, DERMODY, BORGES, CLEARY AND MARSHALL

MEETING CALLED TO ORDER AT 6:10 P.M.

1. MEET TO HEAR CONCERNS OF NEIGHBORS REGARDING COMMERCIAL OPERATIONS AT 120 BERKLEY STREET

The residents in the area of 120 Berkley Street were able to voice their concerns to the Council.

The first person to speak was Catheryn Rodriguez of 152 Berkley Street. She also owns 158 Berkley Street. She said that she has lived there for over 50 years and the last 3 years have been a nightmare with this company. They have worked at all hours of the day and night. She has called the Police, and the Police have told her they have a special permit. She would like to see that special permit because she does not believe they have one. They disturb the peace and she cannot get anybody out there. She also said that she has had DEP come down there and they are doing their enforcement action. She said there is no relief from this, you cannot stay in your house and not breathe the air because of the dust. There are children and elderly people in the neighborhood. You cannot sleep and they get no relief from this. Nothing ever changes. She also said that trucks leave the site at midnight and come back at 2 a.m. It is not fair to the residents, they get no relief. She provided some pictures.

MOTION: PICTURES ARE TO BE PART OF THE RECORD.

The Council President noted that this is not a public hearing.

Councilor Croteau said whether or not this is a public hearing, the Clerk of Committees is here taking minutes and he asked that those documents, whether or not it is a public hearing, be included in the minutes.

THE MOTION WAS VOTED ON AND SO VOTED.

Councilor Croteau asked why the City Solicitor was not present at this meeting.

The Council President said she believes he was going to be here.

Councilor Croteau said he is also going to be making a motion at some point that Mr. Workman be allowed whatever time necessary to present the result of all the research he has done especially addressing the issue of permits.

The second speaker was Claire Travers of 158 Berkley Street. She said that this is their second petition. Since 2013 they have asked for the same thing, time and time again and nothing ever gets down. They would like some action and relief. She understands that the Department Heads are monitors and they should be monitoring, they should be reporting to the Council and the Mayor, City Solicitor and the Council - everyone has the right to enforce this, and she does not understand why nothing has been enforced. All they want is enforcement, they need something to be done, that is all they are asking for. Mr. Joe O'Brien of 0 Jerome Street spoke next. He said that in 2015 after many sleepless nights, he went to 120 Berkley Street and asked to speak to Mr. Gil Lopes. He was told he was not there. He left a written note with his name, phone number etc. and listed 3 bullet points and asked to meet with Mr. Lopes directly on three issues he had at the time. One was speeding; one was trying to get the trucks to avoid Berkley Street and

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THE COMMITTEE OF THE COUNCIL AS A WHOLE – CONTINUED

another one that he could not remember. He was told that his note would be given to Mr. Lopes. He expected to hear from Mr. Lopes, but instead heard from a Mr. Mark Hampston. He explained to Mr. Hampston that he is pro-business, admired the company, they were a model company and had a ton of goodwill, and everyone recognizes the good the Lopes Companies have done. He further said that they exchanged a number of e-mails. Since Mr. Lopes has taken over the company, it has exploded beyond all recognition. The number of trucks increased from 8 to 32 and the amount of business they do went through the roof. He also said that he got nowhere, the situation is getting worse, he has witnessed clouds of dust due to the operation of this business. What matters to the company is money. He also said that the company is working without a permit.

Next a Cheryl Calfina of 24 Beacon Street spoke. She said her property is very close to the plant. She said she has not heard of the group that was present today. She also said that she has Mr. Mark Hampston's cell number and e-mail address. The issues that she has had she has spoken to Mr. Hampston and believes she was heard and was respected. Not that she got her way or did not get her way, she was heard. The issues she has are the hours of operation, the silt and the cracks in her ceramic tile floors and some type of barrier between her property and the plant. In 2012 she did purchase one of the properties that was built by Lopes Construction. She has built a \$17,000 garage to protect her vehicle. She does not open her windows. She sleeps with earphones. She does not use the outside space at all. She tried to sell her home and when she was not able to sell it, she rented it out for 2 years until she purchased a loan through the VA and was told she has to reside in the home. She further said yesterday was the first time she had the experience of sitting down and talking to Lopes, she felt listened to and felt respected. Some of the concerns she brought to them were the first time that they had heard these concerns. When somebody tells her they are willing to work with her and do something, she takes it at face value that it is what they are willing to do. She also said that they have done nice things for her as well, when she built the garage, they poured the foundation, they also keep the lot adjacent to her very nice. She is not saying there are not issues; you cannot deny the issues that are going on. She feels that the issues are resolvable.

Mr. Charlie Farrell of 44 Pratt Street spoke next. He said the issues are the hours of operation, the dust and the noise. When the crusher is running it is like an earthquake. It is affecting the health and sleep of the residents. It is not a healthy environment. He also said that there are things that can be done to the crusher to alleviate the noise.

Attorney Thomas Workman of 180 Berkley Street then addressed the Committee. He said that he represents several of his neighbors and friends in the Weir area; they are much larger than just Berkley Street. Many of his friends live on Plain Street, Beacon Street and on Pratt Street and Jerome Street and the streets surrounding, so these are all people whose interest he hopes he can represent this evening to the Committee. He said that this is not a new problem. He went to the Earth Removal Board and obtained a copy of the file for the pit at 120 Berkley Street. In that file there were some interesting documents and pieces of information. One of them was a petition from members of Pratt Street outlining the problems and difficulties. He made a copy of the

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THE COMMITTEE OF THE COUNCIL AS A WHOLE - CONTINUED

petition and provided it to the Council. What the people on Pratt Street said back in the 1970's was that they had severe vibration problems, they had dishes falling out of their cupboards, paintings and pictures falling off their walls, they had collapsed plaster – and he happens to know his neighbor had the plaster in one of her bedrooms collapse from the vibrations. He has retaining walls that have collapsed, and he has a new concrete walkway in front of his house that is 6 months old that is now cracked, and he had it done by professional people who do professional concrete work. This is because of the vibration. They have had trees fall down. If you drive along Berkley Street or Pratt Street you will notice that many of the trees are down because the vibrations are so severe that the trees can't grow. It undermines the root systems and those trees are falling down. Some have actually fallen on houses. Luckily no children or adults have been hurt, but it is a severe problem.

Attorney Workman said what he read in the paper today was that a Lopes Company spokesman said "prove it". He continued saying that he is not here to prove anything other than to say that the City of Taunton has an Ordinance that requires a permit for earth removal. That permit has been in place since 1980, and the City Clerk was kind enough to get him the actual Ordinance that was passed in 1980 by the Council and that Ordinance exists through today's date. That is the Ordinance that they are working with. He also was able to go to the Library and obtain the Ordinances from 1912. There have been Ordinances for excavation since 1912, so this is nothing new. The Ordinance that was passed in 1980 said *that existing operations were required to obtain a permit* so there is no grandfathering for permits. Grandfathering is a term in the law that is used to talk about zoning. It is not a term used to talk about permits, so when someone tells him they have a grandfathered permit he does not know what they are talking about because there is no such thing as a grandfathered permit. The Council is very clear when they passed the Ordinance, which said *existing businesses must obtain a permit*. After that Ordinance was put in place, there were cease and desist letters served by the Board of Health and served by the Earth Removal Board upon the business. It was not Lopes at that time, it was McCabe Sand and Gravel, but it was the same business that is operating now at 120 Berkley Street. Those cease and desist letters said they did not have a permit, you are required to have a permit, so they were to cease and desist operations or they may apply for a permit. This did not happen once, it happened twice. After they did not obtain a permit 8 years later, they got another cease and desist from the Department of Health saying that they were still operating the business after they got a cease and desist and after they did not have a permit. The last permit that existed for 120 Berkley Street expired in 1981. He knows that this was not the responsibility of the Lopes folks, he knows that they were not there at the time, but he suggests that there is a severe problem for the City, and that when people don't have permits and they are required to have them, how do you follow up on that, other than residents coming to the Council saying they do not have a permit and they are required to have a permit. The permitting Ordinance is very clear. It says *a person who removes earth products or who relocates earth products must have a permit*. That is the law of the City. It requires a permit if you are doing removal or if you are relocating earth products. So, if you are bringing stone in, crushing it, and bringing concrete out, that is relocating earth

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THE COMMITTEE OF THE COUNCIL AS A WHOLE - CONTINUED

products. That requires a permit. You cannot do that without a permit. That is what is happening, but legally you are not allowed to do that. You are operating outside the law if you are doing that without a permit. A permit is required.

Attorney Workman also wanted to speak about the zoning issues. Certainly someone who is doing business prior to the passage of the zoning laws has the right to continue that business because they were doing it before the zoning laws were passed. But there are a couple of catches with that. There is a leading case on this grandfathering concept in a case called Bridgewater vs. Chuckran. Mr. Chuckran was running a concrete distribution business just like our friends at 120 Berkley Street. He was operating a small business, then that business grew, just as the business has grown in the last 3 years at 120 Berkley Street. The Supreme Judicial Court said you can't do that, you are not grandfathered. The business you are operating today is not the same as the business you were operating before.

Attorney Workman said that he knows members of the Council have heard over the years that in the past the 120 Berkley Street business was operating 8 trucks. He said he believes Councilor Croteau has heard that represented to him in the past and Attorney Workman said he sees him nodding his head yes for the record. 32 trucks are operating today, that is four times the volume. The equipment did not change. When the people tell us today it is the same equipment, they are right. The equipment that used to be adequate to run 8 trucks is now supplying product for 32 trucks. How do you magically make those pieces of equipment work for 32 trucks? You run them four times as long. So, instead of running things for 1 shift, you run 3 shifts and you do that for 6 or 7 days a week and that is what is happening today.

Attorney Workman said he asked his secretary to pull the Ordinances for every town and city in the Commonwealth of Massachusetts and to go through those to see whether or not there were Earth Removal Ordinances, and if those Ordinances also specified the hours of operation. She located a number of those and Attorney Workman provided a copy to the Committee.

MOTION: DOCUMENT TO BE PART OF THE RECORD. SO VOTED.

Attorney Workman said this document is a chart that shows Ordinances for different towns and the hours of operation that they have. The 2 red lines at the bottom represent the hours that were operated by McCabe, the top red line, which operated from 7:30 to 4:00 p.m. The bottom line represents the hours by Lopes operating from 4:00 a.m. to 2:00 a.m. Those are the hours that they operate today.

Attorney Workman said he has gone outside at 2:45 a.m. and has heard the plant running and he believes that when they say the plant runs from 4:00 a.m. to 2:00 a.m. that is when the trucks may be leaving, but they load the trucks prior to that or trucks come back to be cleaned after that. What you will see is that no one in the Commonwealth permits operations before 7:30 a.m. No one allows operations prior to 7:30 a.m. He further said he thinks when you talk about the Aggregate folks their hours were regulated and they did not get to operate from 4:00 a.m. or from 5:00 a.m. The operations then stop at different times in the evening, but no one is allowed to operate after 10:00 p.m. He also said the City Ordinances are silent on hours of operation, there are no provisions in the Ordinances that regulate that, but what does regulate that are

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THE COMMITTEE OF THE COUNCIL AS A WHOLE – CONTINUED

the regulations of the Commonwealth. The Commonwealth of Massachusetts has some Ordinances which kick in, which talk about noise pollution and disturbing the peace. Those Ordinances do not permit the levels of sound that are coming from the 120 Berkley Street address. This is not his opinion; it is the opinion of the Department of Environmental Protection, because they have cited the folks at 120 Berkley Street for operation outside of the regulatory requirements. What the DEP requires is that the sound not exceed 10 decibels above the normal level of sound. If you look at what you are able to enjoy currently when you sleep at night it is about the same level of sound that the Library might have. The ordinary continuous sound coming from 120 Berkley Street at the closest neighbor which is what the regulations required to be measured is 75 decibels. 10 decibels is the limit. So, you are not allowed to make sound louder than 40 decibels, and they are making sound at 75 decibels. That is 75,000 times greater amount of energy – 75,000 times more energy – that is the level of disturbance that the people are receiving from there. One resident, Cathy Rodriguez has told him that she has measured 150 decibels, which is about the level you would hear if you stood next to an aircraft taking off at the airport. The sound level is so loud that when they attempt to meet in Cathy Rodriguez's back yard there are times they have to stop talking and wait for the sound to abate before they can communicate. They cannot hear one another. They are suffering both from noise and vibrations. The vibration is doing damage. Attorney Workman continued stating that he attempted to meet with Mr. Lopes to talk about this. A week ago, he received a telephone call asking if he would meet with Mr. Lopes to talk about the problems on Monday morning. On Friday or Saturday he received an e-mail which said that Mr. Lopes does not want to meet because he heard that Attorney Workman wanted to talk about damage that he and his neighbors have suffered that they deny having anything to do with. Mr. Lopes won't meet with him. He further said that the folks at Lopes know that he represents members of the community, but despite that there was a letter that went out to his clients saying to come and meet with them at Lopes. As an attorney, you should know that you don't ask someone to come to a meeting who is represented by an attorney. He is hoping that the person who sent that letter did not know there was an attorney and did not know that Attorney Workman was representing them because if he did that is an ethics violation. You cannot do that.

Attorney Workman said they have vibration, sound, pollution of the air. The pollution of the air is coming from the particulates that are being emitted into the air. They are coming from two things. The DEP considers that sound is an air pollutant. They classify that as air pollution. DEP considers that the 120 Berkley Street address is polluting the air through sound and also polluting the air through particulates. The DEP has made measurements and have sent a certified letter to the folks at Lopes saying that they are not in compliance and to fix this. Attorney Workman's conversation with the DEP indicates that nothing has been done to correct it. They have been ordered to provide daily and monthly summaries of particulate issues and nothing is being measured, nothing is being provided.

Attorney Workman said in meeting with the City Engineer earlier this week there were 4 ponds located on the McCabe site. One is behind his house. Now there is a pile of

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THE COMMITTEE OF THE COUNCIL AS A WHOLE - CONTINUED

rubble where the pond used to be. As everyone knows, you cannot fill in wetlands without a permit, and the conservation folks have told him that you cannot fill in wetlands. When they looked at the satellite maps, they looked at the 1 pond that still exists. It is absolutely full of garbage. Then he found out from his neighbor that this is where the 120 Berkley Street facility dumps their concrete, into the pond at the end of the day. When they bring their trucks back they dump their concrete into the pond. There is a witness to that. He further said that it is not just the concrete; it is the chemicals that are in the concrete. That is polluting the ground water. So there is pollution of water, pollution of air, pollution of noise, pollution that is knocking down their structures, knocking down their ceilings from the vibrations. Those are the things people in the neighborhood are tolerating.

Attorney Workman said he would contend to you that if the Council knew that this was going on and someone came to them and asked for a permit to do those things, he is convinced that the Council would say no. He is convinced that if someone brought them a permit application and these are the things that the permit seeker wants to do, they would all vote no. But there is no permit, there is no permit application. That, he contends, is the problem.

Attorney Workman said comments have been made to the Police Department that they have a permit. He continued saying that he always tells his clients not to lie to the Police. That is itself a crime. You can be arrested and you can go to jail for filing a false Police report. You cannot tell the Police Department that you have a permit if you don't have a permit, and these folks don't have a permit. They are telling the Police that they have a permit and can operate whenever they want to operate, and in fact what they have shown the police is a letter from the Zoning Commission that was obtained that says zoning has nothing to do with the situation, and that is true. This is not a zoning problem, it is a permit problem. They do not have a permit to operate and they are required to have a permit.

Attorney Workman said that he read in the paper today that Lopes said that no one has told them that they have to have a permit. As an attorney, he tells his clients that ignorance of the law is no excuse.

They do not have a permit, they are required to have a permit - so what do you do about that? In the past when they haven't had a permit - and not these folks but the predecessors at this site - there have been cease and desist letters that have issued. Those letters say stop your operation immediately, but, we will cut you a break, you can apply for a permit. He is not asking that the City shut down the business and put people out of work, he is asking that the City enforce the requirement that a permit be obtained, and that permit needs to be discussed in front of the Council so they can make an informed decision about whether or not to grant that permit. He is confident that if folks came to the Council to ask for a permit to operate from 4:00 a.m. to 2:00 a.m. the Council would say no.

Attorney Workman said the City Engineer tells him that there are only 2 people doing sand and gravel work in Taunton, one is Aggregate and one is Lopes. These are the two operations. Aggregate has a permit. They have sound deadening equipment that they have installed, they have dust controlling equipment that they have installed which

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THE COMMITTEE OF THE COUNCIL AS A WHOLE - CONTINUED

means they have water sprays and as the dust is generated water is sprayed on it and that water causes the powdered dust to come out of the air and fall to the ground. That equipment exists at 120 Berkley Street but it has been disabled. The DEP asked why, and they did not get an answer. It is not being operated.

Attorney Workman also noted that you can go to the Lopes website and one of the pictures that they have is of a concrete truck being loaded with the concrete and the dust coming out of the back of the truck.

He again stated that there is water being polluted, air being polluted, sound pollution and he knows that, or hopes that, the Council would not issue a permit for someone to do that type of activity in our community.

He said Mr. Lopes may be a great guy, but this is not how you do business. You do business with a permit. That is what the City of Taunton says you have to have – you have to have a permit. The terms of that permit have to be discussed by the City Council who can look to what is being asked for, listen to the concerns of the citizens then put a permit in place. The violation of that permit then has consequences. When the permits were being issued back in the 70's and 80's, there was a bond that was required. That bond was required because if there were operations that caused damage or harm, you had recourse. A citizen could come to this body.

Attorney Workman said that one of the interesting things he found is that the Commonwealth in their wisdom when they passed the statute that says towns may make Ordinances into different areas, one of the areas that you can make an Ordinance is to require fence around any permit where they are doing either earth removal or sand and gravel type work. So, Aggregate could be required to put a fence around their operation and the Lopes folks could be required to put a fence around their operation, but this does not exist today. If you go to the back of his property there used to be a 100 foot straight down chasm into the pit. Recently that has been filled up and the gravel actually goes up above the top of that berm because he believes they are gearing up for other business.

Attorney Workman said that in about 1976 McCabe Sand and Gravel sent a letter to the Earth Removal Board, which is included in the packet he provided, that said they are *no longer using the Berkley Street facility for sand and gravel operations. We will be grading it and seeding it in the near future.* When a business informs a City that they are no longer operating this business and they are going to be grading it and seeding it, grading and seeding is the final step in the use of a piece of property. To thereafter come back and tell you that they are grandfathered and that they should be able to continue operating, the operation of that plant stopped when they informed the City that they were no longer intending to use that property for its intended purpose. You cannot stop using it and come back 25 years later and say OK – now we want to claim we are grandfathered. It does not work that way.

Attorney Workman said they would very much like to resolve this with the Council and through the permitting process. He is asking the Council to enforce the requirement that a permit be issued. There needs to be something done about the zoning issue because you cannot claim that you are grandfathered if you are operating 8 trucks back then and you are operating 32 trucks now. That is not proper grandfathering, and it is

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THE COMMITTEE OF THE COUNCIL AS A WHOLE – CONTINUED

not something that any business can do. This may be an appeal to the Zoning Board, he is not sure. Perhaps the City wants to initiate that. He is asking the Council to consider this permitting issue and require that a permit be obtained and that the terms of that permit be carefully considered by the Council, and an appropriate permit be issued. Councilor Borges noted that Attorney Workman mentioned that DEP cited the owners of this property, and asked when that was.

Attorney Workman said it was February 12, 2016 and it references observations that were made.

Councilor Borges asked, relative to the pond being filled with concrete, was that reported to the Conservation Commission?

Attorney Workman said he did report it today, and that he spoke to the Conservation Agent. It was brought to their attention because back in 1975 there was a letter from the Conservation Commission to the 120 Berkley Street owners at that time saying there are wetlands involved here, you will need to communicate with the conservation folks about the wetland issues and the operation at this site. He knew that there was an issue with wetlands there from that letter that was in the Earth Removal Board's file.

MOTION: THAT THE DOCUMENTS PASSED OUT AND REFERRED TO BY ATTORNEY WORKMAN BE PART OF THE RECORD, INCLUDING THE PETITION THAT WAS ATTACHED TO THE PACKET. SO VOTED.

Melissa Kingsbury of 11R Pratt Street spoke to the Committee and said that she is compelled to remind everyone that outside of the residents now who are all living with this, last winter it was voted to turn the Walker School into 65 units for the elderly, and they are directly across the street from this business.

Councilor Cleary asked what the current hours of operation are in the short term, until the Council gets a chance to revisit this.

Attorney Workman said he can tell from his experience that the hours of operation start as early as 4:00 a.m., even now. He has heard the plant operating at 4:00 a.m. He has heard the plant operating at 2:45 a.m. two weeks ago which wakened him. It was also said that they have been operating until 8:00 p.m. and lights have been seen at 2:00 and 3:00 a.m.

Councilor Quinn said that representatives of the Lopes Company were here to observe and take notes, and her hope is that the Council will get some kind of a response within the next couple of weeks to some of the concerns of the neighbors, hours of operation, how it works, what their current hours of operation are, whether that was actually an operation at 2:45 a.m. or just a sound. Obviously there have been a number of issues addressed by some of the neighbors and some of the Councilors, and the hope here is that the Council can get the residents happy and the business happy, and that is not always an easy thing to do.

A resident asked if there was a way that they could agree to hours until the next meeting.

Councilor Quinn stated that as city Councilors, they have no authority to do that at this point.

It was asked why the representatives of Lopes Company were not speaking tonight, and it was said that they were here to listen and take notes on the concerns and issues

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THE COMMITTEE OF THE COUNCIL AS A WHOLE – CONTINUED

stated.

Councilor Croteau said that he is prepared to make a motion to require the company to file for a permit by a date certain. However, only after everyone has had, including Lopes Corporation, the opportunity to speak. He will, before the evening is over, make a motion that this Council require that Lopes file a permit application just as Aggregate did.

Councilor Borges said that the Council heard a lot tonight and she would like to get more clarification on some of this permitting, the permitting issue, so she would not be comfortable supporting that without going back and looking up this information herself. The Council heard a lot of things regarding the hours of operation, the dust, the vibration, DEP cited them, etc. So, she would like to hear from the owner, who is not here today, on some of the ways that they would look to remediate some of this or to take action to make it better. She feels that the Council should give this a few weeks and get some of these answers, and hear from them.

Councilor Cleary said that he is not in a position to vote on that motion because he feels that the Council needs to hear from the City Solicitor. He would like direction regarding making the Lopes Company get a permit.

Councilor Pottier said that it sounds as if in addition to the City Solicitor, there are a lot of different organizations in the City that might touch some of these issues, so he made the following motion:

MOTION: TO HAVE A COPY OF THE MINUTES, A TAPE OF THE MEETING OR A CD OF THE MEETING IF IT IS AVAILABLE, AND ANY INFORMATION THAT ATTORNEY WORKMAN WAS ABLE TO COME UP WITH, AND TO REFER THAT TO THE CITY SOLICITOR, ZONING ENFORCEMENT, PLANNING, CONSERVATION COMMISSION, BOARD OF HEALTH, EARTH REMOVAL BOARD AND ALSO AS A COURTESY A COPY OF ALL THE INFORMATION, IN ADDITION TO THIS HEARING, TO THE BUSINESS OWNER TO HAVE HIM GET BACK TO THE COUNCIL AT A TIME CERTAIN. ALSO THE CITY SOLICITOR AND DEPARTMENT HEADS TO GET BACK TO THE COUNCIL IN SO FAR AS A COURSE OF ACTION IN WHAT THE COUNCIL IS ALLOWED TO DO.

The Motion was seconded by Councilor Cleary.

Councilor Croteau said in his opinion if we are looking for clarification, clarification will come forth in ample amounts once a request for a permit is filed. And if people are questioning whether the Council has the authority to require a permit, this group could this evening vote a cease and desist order. If you have the authority to vote for a cease and desist order; you sure have the authority to require a permit by a certain date. He is concerned that this not get buried in Committee, and now when you start talking multiple committees, the quickest way to stop something is to bury it in a Committee. Councilor Pottier said that he did not mention this to any other Committee, he mentioned this to Department Heads, and also, he has no reason to doubt Attorney Workman when he said that they do not have a permit, the business owner contend that they have a permit, someone on the city side could probably track to see if there is an effective permit within some time frame – a week or two. He is not talking about and no

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one suggested burying this in Committee.

Councilor McCaul said that part of the motion he would stand with his colleague in seat Number 7 about certificates and permits, but bottom line, the residents call the Police Department, and the Police Department says they have a permit to operate. It is very simple to let them show us the permit. He would like to see the permit. The gentlemen here right now must have a copy of their permit to show the Council. He would like to know where it is and asked the representatives of the Lopes Company to see the permit.

Attorney John Zajac, who was present as a representative of the Lopes Company said that it is not their contention that they have a permit. The operation of a concrete redimix plant at that location is a pre-existing non-conforming use to Taunton Zoning. That has been found by the Zoning Board in past hearings conducted by McCabe. So there is no contention that the operations of the redimix concrete facility there has a permit. That has not been their contention nor have they made that representation to the Police or anyone else. If the Police have communicated that, it was a miscommunication between perhaps them, Lopes advising the Police that they had the right to operate a redimix concrete facility there, and how it was communicated to the neighbors.

Councilor McCaul, as a point of clarification, said that last year he got together with the residents, and that Mr. Zajac also mentioned to him that they had a permit to operate – that is the word said to him – that there was a permit. If there is a permit, he wants to see it. He asked to have added to the above motion that the Council see the permit. Also, the DEP submitted a letter to Mark Hampston in February of 2016. He had 30 days to submit information to Mass. DEP. He would like to know if this information was given to DEP.

Councilor Quinn said that if Councilor McCaul wanted to, he could make that as a separate motion.

Councilor McCaul said this should be part of the motion.

Councilor Quinn said she does not think it is really tied into the motion.

Councilor Pottier said that the Council does not have any jurisdiction over DEP, and that Councilor McCaul could make it as a separate motion if he wanted to.

Councilor Pottier then said, what he will add to the Motion is to include Attorney Zajac's explanation or his thought in so far as the needing of a permit to the City Solicitor to opine on as part of the other motion he made, at a date certain. If it can be done in two weeks, two weeks would be fine.

Attorney Zajac said he believes two weeks would be enough time. He further said he would be seeking a small point of clarification from Council. they have heard talk about a redimix concrete facility and about an earth removal. He is trying to understand or to separate those two and see if the Council is suggesting that they may have the right to operate a redimix facility but not an earth removal, and that may require a separate permit – that the earth removal is a separate issue from the redimix concrete, or are they talking about the entire operation either having or not having a permit.

Councilor Pottier said, on that, it could be added to the items referred to the City Solicitor. He would just as soon filter it all through the city Solicitor and those other

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Department Heads that he mentioned in the Motion to get back to the Council, offering their expertise. Now, after that, the Council could either then move upon their recommended course of action or the Council can vote that they don't. If they do and that does not give remediation to the neighbors they can sue the City, the City has been sued before. Hopefully they will have good grounds for whatever the Council decides in two weeks or whatever the date is, but again, the expertise in so far as the myriad of issues that Attorney Workman brings to the floor is outside his purview and he is certainly more comfortable having the input of our hired experts in the City, being the City Solicitor and those other Boards and members that were discussed earlier. Councilor Croteau said that he was contacted one evening in the last couple of months, and was told there had been an incident at 120 Berkley Street. The Police had been called and that Policeman had an e-mail, a document, from Kevin Scanlon. That document had been sent to the Police Department as well as the City Council. The Policeman was stating that the document made reference to a permit and it allowed the operation to go on as it was. Councilor Croteau called Kevin Scanlon, and he said that the document in question he had given to the Council in December had nothing to do with the complaint and what was taking place at 120 Berkley Street. He told Mr. Scanlon that this is what the Police were saying, and that it was up to him but if he were Mr. Scanlon he would send an e-mail or whatever to the Chief of Police so they are not using a document that does not apply to the situation. He feels that there needs to be some communication from the Council to all the Department Heads.

Councilor Cleary said, as a point of information, that this is what the Motion says.

COUNCILOR POTTIER ADDED TO THE MOTION TO SEND THE MINUTES TO THE POLICE CHIEF, THE FIRE CHIEF, AND DPW.

THE MOTION WAS VOTED ON WITH COUNCILORS QUINN, CARR, POTTIER, MCCAUL, DERMODY, BORGES, CLEARY AND MARSHALL VOTING IN FAVOR. COUNCILOR CROTEAU VOTING IN OPPOSITION. MOTION CARRIES.

Councilor Marshall said, for him he thinks there are 2 major issues that they need to come to some understanding on. One is the grandfathering of the redimix concrete business at 120 Berkley Street, whether that is still in existence or not. The second issue that Attorney Workman raised this evening is whether or not that type of operation requires an Earth Removal Permit. Historically at 120 Berkley Street it required an Earth Removal Permit because they were removing virgin ground and mining it for the operations to make concrete. That has since stopped. He thinks that is why in the McCabe letter that Attorney Workman provided, it says pit # 31. That does not reference 120 Berkley Street, it references pit #31. If you have had any experience with the Earth Removal Board the permits are granted by the size and the scope of each permit. You could have several permits for different sites within one property location. He would like to get this answer from the City Solicitor's office – does a redimix concrete operation that is not removing virgin material require an Earth Removal Permit. Attorney Workman stated tonight that if it removes or relocates earth products it does. That is his interpretation, but Councilor Marshall would like to hear from the City Solicitor on the City's interpretation on whether or not that requires an Earth Removal

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Permit. The question is whether one is required for this type of operation. Attorney Zajac said that is the clarification that they are looking at and he believes that the finding will be that redimix concrete has been grandfathered with a preexisting nonconforming use and does not require an Earth Removal Permit.

Councilor Marshall made the following Motion:

MOTION: TO REQUEST AN OPINION FROM THE CITY SOLICITOR'S OFFICE THAT (1) IF THE REDIMIX CONCRETE IS A GRANDFATHERED NONCONFORMING USE AND (2) IF AN EARTH REMOVAL PERMIT IS REQUIRED FOR THAT TYPE OF CURRENT OPERATION.

On the Motion, Councilor Croteau asked to have included in the Motion information as to the labeling of the permit that Aggregate Industries applied for. Aggregate Industries was here not very long ago and they wanted to extend their operation hours to cover some time on the weekend – Saturday and Sunday – so somehow or another someone convinced Aggregate Industries that they had to apply for a permit. The Council did grant the permit but not for the number of hours that they wanted.

COUNCILOR MARSHALL AGREED TO ADD TO THE MOTION TO ASCERTAIN THE TYPE OF PERMIT THAT WAS GRANTED TO AGGREGATE INDUSTRIES.

Councilor Carr said that she looked at the City Ordinance and it does say in Section 14-35 that *pursuant to the provisions of General Laws Chapter 4, section 21-17 the removal or relocation of all earth materials within the City is hereafter regulated or prohibited as herein provided.* It should not be too difficult to figure out whether they need a permit or whether they don't.

THE MOTION WAS VOTED ON AND SO VOTED.

Councilor Carr had a question for the people at 120 Berkley Street and she asked if they did receive the letter from DEP outlining the health issues at the plant and if they did answer it or if they intend to.

Attorney Zajac said they did receive the letter, and that the letter actually does not address issues of noise or dust. They have responded to it, more than that response required them to hire a company to prepare reports, which they have done and are in the process of doing that.

Councilor McCaul said in reference to the letter they received, he would feel comfortable to submit to the Council what findings they had and what they can show that they were in compliance to what they were asking for.

Councilor McCaul made the following motion:

MOTION: THE DEP LETTER THAT LOPES RECEIVED AND THE ANSWERS GIVEN BACK TO DEP BE PROVIDED TO THE COUNCIL.

Councilor Quinn said that she is fine with that, but to understand that the Council has no jurisdiction over the DEP issues.

Attorney Zajac said he will address this.

THE MOTION WAS VOTED ON WITH ALL NINE COUNCILORS VOTING IN FAVOR. SO VOTED.

A resident of 701 Winthrop Street then spoke. He said there has been a lot of talk about permits, but the things being talked about with Lopes is really the Clean Air Act which was passed in 1974. In 1983 the Federal Government gave the responsibility for

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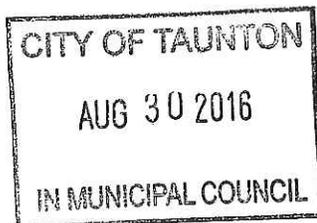
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implementing the Clean Air Act to the States and the Cities, and you can use the Fire Department, the Police Department, the Health Department, anything that you need to see that these laws are followed. Everything talked about tonight has been a problem with the Clean Air Act. Permits are another thing, but it is a complete program with the Clean Air Act.

MOTION: TO REFER THIS TO THE CITY SOLICITOR. SO VOTED.

Councilor Croteau said everything that was discussed this evening is not entirely related to the Clean Air Act. These people are also questioning being able to sleep, questioning the hours of operation, not just the dust and the problems with the environment. They are also questioning the vehicle traffic and the speed and all the rest that goes in to it with those big trucks.

MEETING ADJOURNED AT 7:50 P.M.



RESPECTFULLY SUBMITTED,



COLLEEN M. ELLIS
CLERK OF COUNCIL COMMITTEES

REPORTS ACCEPTED, RECOMMENDATIONS ADOPTED.



CITY CLERK