



**LACONIA CITY COUNCIL MEETING
MAY 10, 2010
CITY HALL – CONFERENCE ROOM 200A
7:30 P.M.**

CALL TO ORDER:

Mayor Seymour called the meeting to order at the above date and time.

SALUTE TO THE FLAG:

Councilor Henry Lipman led the Salute to the Flag.

ROLL CALL:

City Clerk Mary Cote called the roll with the following Councilors present: Knytych, Lipman, Baer, Hamel, and Bolduc. Also present Finance Director Pam Reynolds.

ADOPTION OF MINUTES OF PREVIOUS MEETINGS:

- **Budget and regular meeting minutes of April 26, 2010**

Councilor Bolduc moved to accept the Budget and Regular meeting minutes of April 26, 2010. Seconded by Councilor Hamel. **Motion passed unanimously.**

CONSENT AND ACTION CALENDAR:

1. **Temporary Traffic Order 2010-04 Harley-Davidson Bike Week Road Tour**

Councilor Lipman moved to approve Temporary Traffic Order 2010-04 Harley Davidson Bike Week Road Tour. Seconded by Councilor Bolduc. **Motion passed unanimously.**

CITIZEN COMMENTS FOR MATTERS NOT ON THE AGENDA: NONE

INTERVIEWS: NONE

COMMUNICATIONS:

1. **Letter from Brandon and John Morin owners of "My Coffee House" requesting reduction in entertainment licensing fee for Motorcycle Week**

Mayor Seymour noted he had a previous conversation with John Morin with regard to his concerns. It was brought to the attention of the City Manager, at which time she stated she would delegate contact to Mr. Morin about his concerns. Mayor Seymour invited Mr. Morin to address the Council.

Mr. Morin explained that he has no problem paying the normal fee for his Entertainment License, which is \$100; however, he does feel it is unfair to charge a local merchant the increased fee of \$450 simply because it is Motorcycle Week. He is a local business owner, pays taxes, does all of his business in the City, and does not think it is right to be charged what traveling vendors are charged. Mr. Morin feels that if the City is really interested in the revitalization of Downtown, they would not charge this fee. Mr. Morin stated he is not making this point solely for himself, but for every business in Downtown. If the City wants to help Downtown, they will modify the fee for him.

Finance Director Reynolds offered to get statistical information from the Licensing Clerk with regard to the number of other local merchants that would be required to get the same licenses. It would then be presented to the Council at the next meeting with more detail.

Councilor Lipman stated the basis of the Licensing Fees are based on the type of events, and the planning that needs to go into the events, as well as the possible consumption of alcohol that may take place. When asked if alcohol would be served, Mr. Morin stated that he runs a coffee shop and alcohol would not be served, but this would be more of a large barbeque with a local band. Mr. Morin encouraged other merchants to look into doing these types of functions to bring more people into Downtown.

Councilor Lipman asked if Mr. Morin had taken into consideration his location, which is across from the Court Houses, and the noise that would be made. Mr. Morin stated he can and would control the volume.

Councilor Knytych stated that whatever the Council decides to do, it needs to be done uniformly. Along with this decision, it should be clearly defined as to a vendor that is transient and a local business owner using there property.

Councilor Baer asked if there would be any conflicts with the noise levels throughout the evening, referencing a request made by the Lobster Pound. Councilor Knytych clarified that the concern was with the ending time of the entertainment, and it has been resolved. Mr. Morin stated this entertainment would be done by 6:00 p.m.

Councilor Hamel recalled having local merchants come into the Downtown lot in prior years and waiving the fees for them. It was also noted that the deadline to submit to the Motorcycle Week Technical Review Committee has passed, therefore the site would need to be approved by the Council.

PRESENTATIONS: NONE

MAYOR'S REPORT:

Mayor Seymour will be scheduling a meeting for the Lakes Business Park. Councilor Lipman and Councilor Baer serve on that committee.

Mayor Seymour congratulated Councilor Lipman on his recognition given in Washington, D.C. for his efforts to support the hospitals and there associations.

CITIZEN REQUESTS TO COMMENT ON CURRENT AGENDA ITEMS: NONE

PUBLIC HEARING:

- **Impact Fees**

Mayor Seymour opened the Public Hearing at 7:45 p.m. by reading notice of the Public Hearing which was posted in the Laconia Daily Sun. Planning Director Shanna Saunders was asked to briefly review her prior presentation on Impact Fees.

Director Saunders reviewed the Planning Boards recommendation to impose an Impact Fee at 25% of the suggested rate. It was emphasized that the percentage would need to be reviewed on a yearly basis. Several weeks ago, the final presentation was made, and the Council requested additional information from professionals in the community as well as the consultant, Bruce Mayberry, who assisted the Planning Board with this process. Director Saunders explained to the Council that the Planning Board is looking for the Council to give some direction with regard to the percentage fee, which would allow the final draft of the ordinance to be presented.

Russ Thibeault, Applied Economic Research

Mr. Thibeault reviewed his background and experience with Impact Fees, as well as there implementation throughout New England. At this time, Mr. Thibeault does not do feasibility studies on Impact Fees, but refers them to Bruce Mayberry.

In Mr. Thibeault's experience, he has found that Impact Fees are rare in this area, but are common and accepted in communities south of Concord. There is a concern that Impact Fees will slow the rate of growth within a community, but it has shown that Impact Fees are present in some of the fastest growing communities in the State. At this stage of the process, there is always resistance from developers.

Mr. Thibeault explained the basic concept of the Impact Fee is to have the developer pay the cost of the facilities that they create the need for. The Fees are not used to slow or create growth; they are simply a means of revenue for the community to accommodate the capital facilities necessary to support the additional growth. The burden is taken off of the other taxpayers currently within the community and placed on the developer creating the need.

After reviewing the building permit data for the last five years, during which time the number of residential units averaged 100 per year and using the proposed fee schedule, had the fees been put into place in 2005, there would be approximately \$1 million dollars now. The percentage being proposed at this time is low compared to other communities, with some communities being close to or exceeding \$9,000.

Mr. Thibeault also noted that there are often exemptions placed into ordinances for elderly and work force housing, and it should be carefully defined within the ordinance.

Councilor Lipman asked if Mr. Thibeault had any insight into the effects the Impact Fees may have in construction employment. Mr. Thibeault does not think the Fees are high enough to cause problems in that aspect; when someone is building a \$300,000 house, for example, the \$2,000 fee is not going to have a large impact.

Councilor Lipman further asked if there are classic mistakes made when adopting these types of ordinances. Mr. Thibeault feels that the biggest error is not having a good study done to support the Fee Schedule, and in this case that has been done. Another area to avoid would be having too many unjustified exemptions. If you give a particular class of development a break, you should be prepared to have a class not given the break challenge the ordinance. Some communities faced difficulties by trying to have developers make improvements in addition to the payment of Impact Fees, and that does not appear to be the case here. It was also noted that there are very specific guidelines for the use of the Impact Fees, and if the ordinance is drafted with respect to the guidelines, the City will be in good shape.

Councilor Knytych asked if pre-existing provisions made to developments already in place would become void if the Impact Fees were adopted. Mr. Thibeault referred to a similar situation in the City of Concord, in which case any work done as a condition of the development would be credited toward the fees due for that development. Director Saunders will look into the statutes relating to Off Site Exactions, as some of them are required to allow the development to function correctly, rather than support Capital Expenditures which is the purpose of the Impact Fees.

Bruce Mayberry, BCM Consulting LLC

Mr. Mayberry is the consultant who performed the study for the City.

Mr. Mayberry began by explaining the different classes of fees, and how overlapping fees could exist in developments requiring specific modifications.

Councilor Hamel asked if the additional site specific work, such as a side walk or road widening, can be charged in addition to the Impact Fees. Mr. Mayberry's response was that in most cases, this is permissible. It was noted that assessing the Fees at 25% of the total, the roads portion of the Impact Fee is only \$280, and this is not nearly enough for any widening projects or added sidewalks.

Councilor Hamel asked if the collected Fees can be used in any area of the City, or if they need to be used in the specific area of the development or business from which the fee is collected. For example, if Fees are collected to make road repairs, can the Fees be used on any area of the City, whereas the roads of the City need to be traveled more heavily to access the locations. Mr. Mayberry explained that the Fees collected can be used for the support of the purpose of the fee; if the roads accessing the development, or the main arterial roads to the City, need to be upgraded due to the new development, then they may be used for such.

Councilor Hamel inquired into the ways funds could be spent for other areas, such as the Police and School portion of the Impact Fees, if there are no plans to build an additional facility. Mr. Mayberry noted that there is a situation in the City of declining enrollment, and at the time of the study the City was funding a new Middle School project which caused the five year costs of the kindergarten through eighth grade program to be \$35 million. The Middle School was built to support additional growth within the community, therefore the fees collected could be used to make payments on debt service, such as the bond, associated with the Middle School.

Councilor Hamel asked if Fees collected for Fire and Police could be used to hire additional personnel needed or repairs to existing facilities which may be necessary to support the additional growth from the development. Mr. Mayberry explained that it cannot, however the Fees may be used to pay debt service.

Councilor Hamel further clarified that he would like to know what other ways the collected Fees can be used after the debt service has been paid on the facilities accommodating the growth. Mr. Mayberry explained the money can be saved for six years, and be used toward improvements to the facilities. The money cannot be placed into the General Fund by statute. Councilor Hamel asked if the definition of facility included police cruisers, with a response it does not. Councilor Hamel explained his concern is that if they are collecting the Impact Fees with no plan to build a facility and the City acting as a “bank” and returning the funds after six years; it would be better to have a use of the funds. Director Saunders noted that vehicles were included for Fire apparatus, as they are considered a facility. It was also mentioned that the Council has the authority to amend the ordinance on a yearly basis, and if it is realized that it is not necessary to collect certain portions of the Impact Fees, the ordinance can be modified to reflect that. This would also be situation if it was found that a new facility would be needed within the next six years and a portion of the Impact Fees needed to be added or increased.

Mr. Mayberry based his study on the assumption of the City reaching a population of 19,500.

Councilor Lipman asked Finance Director Reynolds how the fees for already completed Capital Projects are brought into the scenario, and how that does affect the current Tax Cap procedures. Finance Director Reynolds explained her understanding is that, for example, if the Impact Fee is collected for the Schools the funds could be used toward a portion of the principle and interest payment for this year on the issued bond. A transfer would be done from the Impact Fee Fund as revenue which would be off set with debt, allowing the amount of money to be raised by taxes to be lower.

Councilor Lipman expressed his surprise at the fee associated with Recreation on the Fee Schedule in comparison to other areas. In terms of water quality and management, Councilor Lipman inquired as to how the funds may be used to support community need associated. Mr. Mayberry stated that if the purpose was for general clean up of the area, such as the present milfoil concerns, then it would not be appropriate to use the collected Impact Fees as that is not there purpose. Councilor Lipman asked if the purchase of a harvester for the removal of milfoil would qualify. Mr. Mayberry does not believe it would be, as the harvester is not a Capital Facility and is not defined in the statute. The harvester is no considered a Recreation Facility, and it is more for maintenance and cleaning of the open area. Councilor Knytych stated he believes the increase in milfoil can be caused from the placement of a new development and an increase in population from such development. Mr. Mayberry again stated it cannot be used from the Recreation portion of the Impact Fees collected. It would be a more appropriate to have a system development charge through the Water Department.

Councilor Lipman asked Mr. Mayberry to address how ordinances typically handle changes in Impact Fees. It was explained that the ordinance established the procedures, and the community should enable the Planning Board or Council to do an Impact Fee review as frequently as annually, at which time they can make adjustments if they see a need to do so. Conditions should be researched that could cause change, such as new debt service and additional Capital Improvement needs that may be necessary.

Councilor Lipman asked if Mr. Mayberry has seen a cap on the rate of increase placed in an ordinance. Mr. Mayberry has not seen a dollar amount fee limitation, but he has seen a limit on other ways fees are

determined. For example, some communities charge an Impact Fee for Schools based on the square footage, not to exceed 3,000 square feet. Director Saunders reiterated to the Council that the Fees are collected at the time the Certificate of Occupancy is issued to the developer as a one time fee. Any developers in the midst of building now will not be issued the Impact Fees. Councilor Lipman wanted to make sure that this was not perceived as making a tax outside of the Tax Cap on a select area of the community, which can be done with the drafting of the ordinance.

Councilor Knytych asked if Capital Improvements that may arise from the restoration of Weirs Beach can be funded through Impact Fees under the Recreation portion. Mr. Mayberry stated that if it is part of the long term Recreation plan, there is potential to use the funds, but the reclamation of Weirs Beach was included in the initial study.

Councilor Lipman suggested that the ordinance be brought to the Council to review, as it is his understanding that a draft of the ordinance amendment has begun.

Patrick Wood

Mr. Wood expressed his views with regard to the proposed Impact Fees at this time. The economy is struggling at this time, and adding an additional charge for someone to improve their business at this particular time is not good business sense.

Mr. Wood stated it would be critical to see the ordinance changes before asked for a response to the proposed changes. Reports have been made as to what the changes will be, but no structure has been designed or laid out to the people or Council for review.

Continuing, Mr. Wood read the statute defining a facility and expressed his concern with “after the fact” Impact Fees which will be used to recoup past Capital Investments, which may not be a legal use of collected Impact Fees. Specifically of concern to Mr. Wood, the school enrollment has been consistently declining and the reports submitted, which project to the year 2030, project the total enrollment to be 2,055. The current capacity of the buildings we currently have in place is 2,600, so an additional need is not portrayed in the report. More interesting to Mr. Wood is that the capacity of the schools in 1991 was 2,975 and the capacity has been reduced with the renovations completed, therefore if we have reduced the capacity, there is no impact from additional population. The only reason for an Impact Fee in the School area would be to pay down the existing bond faster, and the legality of that should be looked at.

Mr. Wood also expressed his objection to a Fire Apparatus being defined as a Capital Facility. It has never been decided and no case law exists stating it is acceptable.

The Road portion of the report for maintenance of arterial roads within the City is also questionable, in Mr. Wood's opinion. For example, if the Messer Street Bridge needs to be reconstructed, that would be an acceptable use of the Impact Fee, but not resurfacing of roads is not a feasible use of the collected Impact Fees.

With regard to the Library portion of the Impact Fees, Mr. Wood feels that paying for the existing bond may not be legal. The purchase of books cannot be included as a cost associated with Impact Fees.

Mr. Wood stated the community should be made aware of what the future Capital Improvement plans are, and what they are being asked to pay for. It is the opinion of Mr. Wood that this is selective taxing

of property owners, and may not be fair. Mr. Wood asked the Council to hold off on making any decisions until some answers are given.

Councilor Lipman advised that it is important to have a high quality infrastructure within the community. It is the Councilors understanding that Mr. Wood is trying to make sure that if something is implemented, it has the right balance and is not targeted taxation.

Mr. Wood noted that the development that has taken place over the last few years has been on land that can support the development. Some of the development we are seeing currently is being done on land that can not be easily developed and carry an increased cost.

Councilor Baer stated that throughout the State, there are 75 communities currently assessing Impact Fees, with no problems or issues arising. The Planning Board has spent a lot of time on the proposed structure, and she is not clear as to where the concern arises that the City is not doing the right thing. Mr. Wood stated that his concern is that he has not been able to research the various towns assessing Impact Fees, therefore he cannot make comparisons. Mr. Wood also expressed his concern with the idea of using Impact Fees collected to pay down debt service previously occurred. Councilor Baer stated that there have been several communities that have done such with no challenge from the communities. Mr. Mayberry stated that he is confident that Impact Fees can be used to recoup the costs of bonds. Councilor Baer noted that in the Town of Londonderry, \$1 million has been collected and used to pay down the bond debt for the new High School built five years ago.

Kevin Morrisette

Mr. Morrisette echoed that he would like to see the draft of the ordinance as well, as he feels that each time he asks a question, he is given a different answer.

Mr. Morrisette asked if current subdivisions are exempt from Impact Fees. Mr. Mayberry explained that the subdivision will be exempt for four years on any undeveloped lots. After the four years, the Impact Fees may be assessed.

Mr. Morrisette explained a scenario for an approved subdivision he has off of Elm Street. In the first year of the development, he is being taxed on Current Land Use for each lot. Over a four year time frame, he is going to pay the City taxes on vacant lots, as well as the owner of any developed lots that are sold, and he is going to be charged Impact Fees after four years on any lots he hasn't developed and sold yet. The people who purchase the home in the new development are also going to be paying more than other taxpayers simply because they have a new home.

It was also mentioned that Impact Fees are putting the contractor at a disadvantage to the surrounding communities and competitors because the Impact Fees are putting them at a disadvantage.

Linda Harvey, Laconia Area Community Land Trust

Ms. Harvey stated her understanding of the Impact Fee schedule. It is not her understanding that Impact Fees are not locally used within Belknap County. For the type of developments she has done for affordable housing, they could not have been completed has an Impact Fee been assessed. In most cases the projects are barely being completed with the available funds, and regulatory caps exist preventing any additional spending.

Ms. Harvey requested the Council consider a provision for the developers making affordable housing in accordance with the vision of the Master Plan.

Councilor Lipman noted that the Council is not intending to adopt the Impact Fees this evening. With that said, it would be important to get more information from the Planning Department. This should include a draft of the ordinance with the 25% assumption, clarity on the grandfathering of existing developments, if other permitting fees are in conflict with the Impact Fee schedule, how Current Land Use taxes may be taken into consideration, and if there should be an exception for affordable housing projects. Councilor Knytych conquered.

Councilor Hamel asked Director Saunders to also clarify exactly what type of buildings or developments will be subject to the Impact Fees.

Tobias Paddock, Planning Board Member

Mr. Paddock made comments as a member of the Planning Board, and not on behalf of the Board.

It was clarified to the Council that many of the questions being asked this evening are the same questions the Planning Board asked when researching and discussing the Impact Fees and the schedule. The City is unique in comparison to other communities because of the expected services that come with the location. The overall goal is to add to the quality of the environment and community. This Impact Fee schedule was not recommended without thought as to the fairness on those directly impacted, and the model presented was carefully thought out.

Councilor Knytych thanked the Planning Board and Director Saunders for the considerable amount of time they have put into this project.

Councilor Lipman clarified the requests of the Council for the Planning Board, and Director Saunders is in understanding of the request.

Mayor Seymour closed the Public Hearing at 9:22 p.m.

COMMITTEE REPORTS:

1. **FINANCE: (Lipman, Hamel, Baer) (No report on any item in committee)**
 - a) WOW Trail Fund
 - b) Special Item Budget Requests Procedural Review

2. **PUBLIC SAFETY: (Baer, Knytych, Lahey) (No report on any item in committee)**
 - a) Fair St./Court St. traffic problems and accidents

3. **GOVERNMENT OPERATIONS & ORDINANCES: (Knytych, Bolduc, Lahey) (No report on any item in committee)**
 - a) Energy Committee
 - b) Amendment to Zoning ordinance re Drug Treatment Facilities
 - e) Proposed Amendments to City Charter

4. **PUBLIC WORKS: (Bolduc, Baer, Lahey) (No report on any item in committee)**
 - a) Ordinance Amending Chapter 221, Vehicles and Traffic/Parking on Sublawns
 - b) Oak & North Main St. Intersection
 - c) No parking on Messer St.

5. **LAND & BUILDINGS: (Hamel, Lipman ,Bolduc) (No report on any item in Committee)**
 - a) Repair & maintenance of City Buildings

Councilor Bolduc would like to know why the parking on Messer Street has not been brought back to the Council for review. At this time, the Public Works department is still working on the concerns, and will return to the Council with there findings as soon as possible.

LIAISON REPORTS: NONE

MANAGER'S REPORT:

Finance Director Reynolds spoke on behalf of City Manager Cabanel.

The Council will be presented with the annual adjustments to the City's fee schedule in the near future. Everyone except for Code Enforcement and the Sanitary Sewer will be remaining the same. The Code Enforcement fee will not be a large change; however the Sanitary Sewer fund changes will be based on the needs of the Winnepesaukee River Basin and will include a three year layout.

NEW BUSINESS:

1. Proposed demolition of Tremont St. houses for Fire Station renovation/expansion project

Councilor Lipman had requested this item be addressed, as they are located in Ward 3 and are of concern to the surrounding property owners. At the time the houses were acquired by the City, it was not the intention to have the buildings be in the condition they are. It would be in the best interest of the City to remove the buildings.

Finance Director Reynolds noted that the actual demolition of the building is not the largest expense, but the unknown abatement that may be involved has the potential to cause greater expense. It is the suggestion to commit to one piece of property at a time with the unknown abatement costs.

Councilor Hamel motioned to move \$40,000 from 01-431-343-0000 to 01-477-401-0012 for the teardown and abatement of the properties owned by the City of Laconia on Tremont St. Seconded by Councilor Bolduc. **Motion passed unanimously.**

2. Temporary Traffic Order 2010-05 Reconstruction of Pleasant St.

Assistant Public Works Director Luke Powell explained the necessity for the traffic order to accommodate the pavement reclamation project. Assistant Director Powell reviewed each section of the proposed changes to traffic flow, as well as his communication with Wilkinson-Beane-Simoneau-Paquette Funeral Home.

Councilor Knytych moved to accept Temporary Traffic Control Order 2010-05 Reconstruction on Pleasant Street. Seconded by Councilor Bolduc. **Motion passed unanimously.**

Councilor Lipman asked Assistant Director Powell for an update on the proposed changes to Oak & Main Streets. Assistant Director Powell explained that they have narrowed the project down to three proposals submitted, and a committee meeting will take place in the near future to select one. Councilor Lipman asked when the project may be scheduled to start. Assistant Director Powell anticipates starting the project in the fall, with the utility relocation being a challenge.

UNFINISHED BUSINESS:

1. WOW Trail
2. Master Plan
3. EPA Update
4. Sewer & Water Master Plan
5. Single Stream Recycling/Concord Co-Op

NOMINATIONS, APPOINTMENTS & ELECTIONS:

COUNCIL COMMENTS:

Councilor Hamel asked for clarification on Temporary Traffic Order 2010-04 Harley Davidson Bike Week Road Tour with regard to Hanover Street. In prior years, it has been closed and is not highlighted on the presented diagram.

Councilor Hamel has heard that the Public Works Union has agreed not to take COLA or Step increases this year. Councilor Hamel expressed his thanks to the unions that have made this agreement thus far.

Mayor Seymour acknowledged the amount of time Councilor Lahey has spent to make changes to SB 450.

Councilor Baer asked if the passage of the new revenue rates and retirement changes have already been calculated into the proposed budget. Finance Director Reynolds replied that any changes will be an additional hit to our budget.

NON - PUBLIC SESSION:

Councilor Lipman moved to enter non-public session according to RSA 91-A:3, II:

(a) The dismissal, promotion or compensation of any public employee, or the investigation of any charges against him, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted; and (d) Consideration of the acquisition, sale or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.

Seconded by Councilor Bolduc.

On a roll call vote of the Council, it was voted to enter into non-public session at 9:48 p.m.

On motion of Councilor Bolduc and seconded by Councilor Hamel, it was voted to come out of non-public session. Councilor Bolduc moved to seal the minutes for two years, seconded by Councilor Hamel. **Motion passed unanimously.**

ADJOURNMENT:

On motion of Councilor Bolduc, seconded by Councilor Hamel, it was voted unanimously to adjourn at 10:20 p.m.

A True Record Attest:

Mary A. Cote
City Clerk