

## **CITY COUNCIL MEETING – Tuesday, September 6, 2022**

### **Regular Meeting**

Mayor Grenier called the Regular City Council Meeting to order at approximately 8:02 pm.

#### **a. Pledge of Allegiance**

#### **b. Roll Call**

Present: Mayor Grenier, Councilors Morgan, Eastman, Higbee, Robert Theberge, Remillard, Roland Theberge, and Morency

Absent: Councilor Berthiaume

Also present: City Manager Phillip Warren, Jr, Chief Daniel Buteau, Librarian Ann Brungot, City Clerk Shelli Fortin, Tom McCue, Micah Bachner, Jan Zicha, and Lisa Connell, Berlin Daily Sun.

**c.** Councilor Remillard moved, with a second by Councilor Morgan, to accept the minutes of the August 15, 2022 Regular Meeting and Work Session. So moved, the motion passed.

### **Disbursements:**

Disbursement Summary Draft #1920 start date 08/16/2022 end date 09/06/2022 for a total cash disbursement of \$1,533,591.47. Councilor Roland Theberge moved with a second by Councilor Higbee to accept the disbursement summary and pay all bills as recommended by the Committee on Accounts/Claims. So moved, the motion passed.

### **PUBLIC COMMENTS**

Paul Martineau of 211 Church Street stated he was concerned about the proposed heating system on Main Street and asked if this was something that was already decided. Mayor Grenier advised it was. Mr. Martineau asked who the company contracted to do the work would be hiring, and if they would be from out-of-town or local. Mayor Grenier advised the City will have to put the project out to bid, and that permitting will not be done until the end of 2023 or beginning of 2024. Mr. Martineau asked if the money could be used for something else and was advised it cannot be. Mr. Martineau stated that he would like to apply for work and was advised that it will be advertised.

### **UNFINISHED BUSINESS**

#### **1. Council Committee Reports**

There were no Council committee reports.

### **NEW BUSINESS**

#### **1. Resolution 2022-30 Stop and Yield Intersection at Grafton and Cheshire Street (1<sup>st</sup> read)**

Councilor Remillard moved, with a second by Councilor Morgan, to table the Resolution and schedule a public hearing for September 19, 2022. So moved, the motion carried.

#### **2. City Manager's Report**

1. Riverwalk is proceeding well. Paving has begun, grading and seeding will commence. The area will be finished enough to accommodate the Riverfire and Wingzilla events later this year.

It is anticipated that construction will end later in October and will recommence in early 2023. This schedule will allow for long lead time items to be received – there are a few items that have long lead times. The project should be 100% complete in early 2023 – the area will be usable during the winter. It is requested that, during construction, users of this area stay on the walking paths and not the newly seeded grass and loamed areas – there have been instances where people have walked through newly graded areas, causing the area to be re graded.

2. The I/I – building demolition project is complete. Closure documents are being completed and final disbursements should be forthcoming. The project went well, all former house lots have been fenced off and seeded and look great. These lots, consistent with the grant, cannot be sold or used for any purpose other than open space.
3. At the staff lever a discussion has been held regarding the Capital Improvements Program framework. Presently there is no threshold for capital improvements and there are many items included that are not truly a capital improvement, which generally is an item with an intended life of more than five years and of a certain minimum cost, usually between \$50,000 and \$100,000. Another item missing from the plan is the demonstration of relevance of the capital item requested and the master plan – most items on the plan are directly related to the master plan. Due to the way the CIP and budget are assembled any change this year would be difficult. My question for thought – would the council like the plan and process analyzed and changed or should it be left as is? I am willing to take on the analysis and change if the council is in favor. It would require a change in how we budget for some items, moving them from the CIP to a department budget but it would not result in a bottom line increase in the total amount budgeted on any given year. (emphasis added), it would just re allocate spending for the fiscal year.

Mayor Grenier noted that the Capital Improvement Plan cost is overwhelming and they have no plan to implement 30% of it, as our community has so many needs that we are left trying to figure out how to fund them. City Manager Warren advised that he could create one document which would list everything for the next 6 years, including debt service. City Manager Warren advised that many items are included in the CIP that should be in the annual budget. Councilor Eastman agreed that the CIP is a wish list that has been passed down, but many items should be included in the department budgets. Mayor Grenier stated that a different approach makes a lot of sense. City Manager Warren advised it would be a multi-year process.

Councilor Roland Theberge suggested that plastic fencing be installed on the unfinished areas of the Riverwalk. City Manager Warren will request this.

Councilor Remillard moved, with a second by Councilor Morgan, to accept the written and oral City Manager's Report and CIP proposal and place it on file. So moved, the motion passed.

### 3. Mayor's Report

#### a. Letter requesting Exemption for the Disabled

TO: Berlin NH City Council

Upon adoption of the exemption by a town or city, under the procedures in RSA 72:27(a), any person who is eligible for benefits under Title II or Title XVI of the Social Security Act is entitled to an exemption under this section. The claimant must reside in the homestead and have been a resident of the state for at least five years. Effective 2008, Pursuant to RSA 72:37(b), in NH there is an Exemption for the Disabled. RSA 72:37(b) is stated as follows:

I. Upon its adoption by a city or town as provided in RSA 72:27-a, any person who is eligible under Title I or Title XVI of the federal Social Security Act for benefits to the disabled shall receive a yearly exemption in an amount to be chosen by the town or city.

I-a. Upon the adoption of this paragraph by a city or town as provided in RSA 72:27-a, a person who is eligible under Title II or Title XVI of the federal Social Security Act on his or her sixty-fifth birthday shall remain eligible for a yearly exemption either in the amount of the exemption applicable under paragraph I or the amount of the elderly exemption granted to the person under RSA 72:39-b, whichever is greater.

I-b. Upon the adoption of this paragraph by a city or town as provided in RSA 72:27-a, any person who at any time previously was eligible under Title II or Title XVI of the federal Social Security Act for benefits to the disabled, but who is no longer eligible for such federal benefits due to reasons other than the status of that person's disability, shall be eligible for the exemption under paragraph I or I-a, or both as may be applicable, provided that the person submits an affidavit from a physician licensed in New Hampshire that attests to the fact that the person continues to meet the criteria for disability that are used under Title II or Title XVI of the federal Social Security Act.

II. The exemptions in paragraph I and I-a may be applied only to property which is occupied as the principal place of abode by the disabled person. The exemption may be applied to any land or buildings appurtenant to the residence or to manufactured housing if that is the principal place of abode. Nothing in this section shall preclude a qualified applicant from earning an income.

III. No exemption shall be allowed under paragraph I or I-a unless the person applying for an exemption:

(a) Had, in the calendar year preceding said April 1, a net income from all sources, or if married, a combined net income from all sources, of not more than the respective amount determined by the city or town for purposes of paragraph I or I-a. Under no circumstances shall the amount determined by the city or town be less than \$13,400 for a single person or \$20,400 for married persons. The net income shall be determined by deducting from all moneys received, from any source including social security or pension payments, the amount of any of the following or the sum thereof:

- (1) Life insurance paid on the death of an insured.
- (2) Expenses and costs incurred in the course of conducting a business enterprise.
- (3) Proceeds from the sale of assets.

(b) Owns net assets not in excess of the amount determined by the city or town for purposes of paragraph I, excluding the value of the person's actual residence and the land upon which it is located up to the greater of 2 acres or the minimum single-family residential lot size specified in the local zoning ordinance. The amount determined by the city or town shall not be less than \$35,000 or, if married, combined net assets in such greater amount as may be determined by the town or city. "Net assets" means the value of all assets, tangible and intangible, minus the value of any good faith encumbrances. "Residence" means the housing unit, and related structures such as an unattached garage or woodshed, which is the person's principal home, and which the person in good faith regards as home to the exclusion of other places where the person may temporarily live. "Residence" shall exclude attached dwelling units and unattached structures used or intended for commercial or other nonresidential purposes.

(c) Has been a New Hampshire resident for at least 5 years.

IV. Additional requirements for an exemption under paragraph I or I-a shall be that the property is:

- (a) Owned by the resident;
- (b) Owned by a resident jointly or in common with the resident's spouse, either of whom meets the requirements for the exemption claimed;
- (c) Owned by a resident jointly or in common with a person not the resident's spouse, if the resident meets the applicable requirements for the exemption claimed; or
- (d) Owned by a resident, or the resident's spouse, either of whom meets the requirements for the exemption claimed, and when they have been married to each other for at least 5 consecutive years. RSA 72:37(b).

In 1986, the City of Berlin adopted a resolution, under RSA 72:37, authorizing the Board of Assessors to grant an exemption for the Legally Blind. The blind exemption amount granted is \$15,000.00; which is deducted from the total assessed value. In 2008, Pursuant to RSA 72:37(b), the State of New Hampshire established an Exemption for the Disabled. To date, the City of Berlin has not adopted RSA 72:37(b). Nodisability exemption exists in the City of Berlin.

The City of Berlin adopted a resolution, under RSA 72:39(a), authorizing the Board of Assessors to grant an exemption for the Elderly aged 65 years or older. The City of Berlin authorized the Board of Assessors to grant only a deferral for the disabled under RSA 72:38(a). A deferral also exists for the elderly, in addition to the stated exemption status. By definition, a deferral is merely a postponement of your payment for property tax bills and not an exemption.

Disability, under Title II or Title XVI of the Social Security Act, comes in many limiting forms; which includes the blind. It is discriminatory to select only one preferred infirmity for exemption status in the jurisdiction while offering all others only a deferment; which is an interest-bearing payment delay in the form of a municipal loan via real property lien.

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Petitioner seeks adoption of RSA 72:37(b) as a real property tax Exemption for the Disabled in the City of Berlin.

Signed this 22<sup>nd</sup> day of August 2022.

Respectfully submitted,

J. Thompson

Mayor Grenier stated that this request would have an unknown impact on the rest of the taxpayers in the City and stated he would defer to the City Manager. City Manager Warren advised that there is no database to tell us how many homeowners would be eligible under this law. Mr. Warren advised that if the Council chose to adopt this, they would have to choose an amount to deduct from the assessed value similar to the elderly and blind exemptions. Mayor Grenier suggested that this be tabled to discuss at a later date.

Councilor Remillard moved, with a second from Councilor Morgan to table the communication from J. Thompson in reference to an Exemption for the Disabled to discuss at a later date.

Councilor Robert Theberge noted his concern of the negative impact that this would have, and that until studied further it would be irresponsible to act on the request tonight.

So moved, the motion carried.

b. Letter re: Public Works Snow and Ice Control Policy

TO: Berlin NH City Council

On February 8, 2022, Berlin Mayor Paul Grenier made a personal phone call to newly hired Chief of Police Danial Buteau. The call was recorded by police as made by Mayor Paul Grenier directly to the Chief. The call was not made through the police station call center. Mayor Grenier was concerned about a pile of snow next to Ms. Thompson's residence. No snow removal had

occurred during 2022. The accumulation was from the entire snow season. An officer responded. No fine was imposed. Ms. Thompson re-shoveled the area after the officer left. Prior to 9am, the following morning, Berlin City Works re-cleared the road. Three days later, the officer returned and issued a \$50.00 fine. Trial ensued. Mayor Grenier voluntarily presented as the State's witness. The fine was upheld by the Court.

On February 9, 2022, Mark Lapointe sent Petitioner a Warning Letter stating, in part, "Please modify your clean-up procedures to be in compliance with the City Ordinance... The Ordinance contains penalties for non-compliance and we ask for your cooperation so that we do not have to invoke these penalties."

On February 11, 2022, Petitioner hand-delivered a City of Berlin PW Work Order to the City Manager's Office. The work order sought snow removal. The City did not respond. Snow removal did not occur.

On February 11, 2022, Petitioner was handed a \$50.00 fine, by police, for the 2/8/22 incident.

On February 18, 2022, Petitioner faxed to (603) 752-8586 a City of Berlin PW Work Order to the City Manager's Office. The work order sought snow removal. The City did not respond. Snow removal did not occur.

On March 4, 2022, Petitioner faxed to (603) 752-8586 a City of Berlin PW Work Order to the City Manager's Office. The work order sought snow removal. The City did not respond. Snow removal did not occur. Snow removal did not occur in 2022.

On the upper portion of Strafford Street, Snow removal did not occur in 2019. Snow removal did not occur in 2020. Snow removal occurred once, in 2021, at the end of the season. Snow removal did not occur in 2022. The City appears to wait for Spring and snow melt to occur.

Snow plows have plowed snow on, and against, Petitioner's foundation wall both on Strafford Street and on Burgess Street without consent. Snow plows have blocked both Petitioner's egresses with snow over the past three years, as the plow does not remove the snow to a pile, but passes through the street leaving excessive debris from prior plowed streets; which blocks both the stairwell and driveway completely. Improperly, home-owners are then responsible for clearing the street to access real property each time this occurs.

In February 2022, Petitioner removed snow on the street, blocking her driveway, and shoveled the snow to the left of her property on the street. City Works re-cleared the road and issued a warning. Police issued a fine.

Had snow not blocked the egress and/or the snow been removed by the City, the incident would not have occurred. Streets and sidewalks are owned and operated by the City. Home-owners should not be responsible for clearing snow on the street. Home-owners should be allowed continual access to real property. Egresses should remain cleared at all times.

Strafford Street is listed as "Priority 7 - Remaining Streets" on the existing Snow Removal Schedule. The sidewalks are not cleared, but used by the city to deposit snow on the upper portion of Strafford Street. There is no sidewalk access on the upper portion of Strafford Street. Egresses are repeatedly blocked by snow plows on the upper portion of Strafford Street. The aforementioned incident would not have occurred but for the City's refusal to remove snow left behind by the plows.

Home-owners should not be penalized for shoveling and clearing snow the city refuses to remove. Home-owners should not be penalized for clearing snow on the street owned and operated by the city. Home-owners should not be penalized for clearing snow on the street in order to enter and exit real property. Home-owners should not be penalized for cleaning-up snow, left on the street, by its city plow drivers. Home-owners should not have to clear the street, or sidewalk, as both are owned by the city, which means home-owners are not responsible for street snow clearing and/or sidewalk clearing. Snow removal should occur consistently throughout the City and not just on certain streets. Snow clearing should not block egresses. Snow removal should occur after each storm.

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Petitioner seeks the addition of Strafford Street to be included in the Public Works Snow & Ice Control Policy Statement and Operating Procedures [Revised 2017-2018] for mandatory snow clearing, and mandatory snow removal, of both the sidewalks and street on Strafford Street in the City of Berlin.

ATTACHED:

- 02111/22 Fax Log
- 02/11/22 PW Work Order
- 02118/22 Fax Log
- 02/18/22 PW Work Order
- 03/04/22 Fax Log
- 03/04/22 PW Work Order

Note: For the purpose of privacy and confidentiality, Petitioner requests this document not be filed, posted, and/or placed in, on, any public arena, site, and/or meeting minute schedule.

Signed this 25<sup>th</sup> day of August 2022.

Respectfully submitted,

Name withheld by request

Mayor Grenier requested that this item be tabled, as the petitioner did not want to provide their name for the record.

Councilor Remillard moved, with a second by Councilor Morgan, to place the letter in reference to the Public Works Snow and Ice Control Policy on file. So moved, the motion carried.

c. Letter requesting Horse Signs on Cates Hill Road

Dear: Traffic Safety Committee

We are Daniel, Lynn, and Melinda Cotnoir we live at 177 Cates Hill Rd, in Berlin. We would like to ask for three (3) signs to be put up on Cates Hill that say "Caution Horses Slow Down".

We would like one near the cemetery there is an opening of a trail that we come out or in there.

We would like one near our house, as people speed around the corners and come up the hill very fast with loud trucks, cars, ORV, and dirt bikes. They think it is funny to scare the horses in their pasture.

We would also like one that would be seen down by the sharp curve across from Mrs. Godbout that would be seen by people coming around the corner and from the dead end coming from Ray Lacasse's house.

We are trying to get our horses used to traffic so they do not spook when we meet an ORV while riding in the trail or on the road. It is difficult when loud cars, trucks, and ORV rev their engines on the stretch in front of the horses pasture. This causes them to spook and get out of the pasture and onto roads and neighbors lands, causing an even bigger issue of them in traffic and possibly an accident.

Speaking of riding in the road, horses do have the right of way. Many times we go back home via the road as sometimes it is shorter to go home or the bugs in the woods are unbearable. The tree limbs on the side of the road are very much over grown and make vehicles go over the yellow line so their cars don't get scratched. With the horses, we are taller so we have to ride more in the road so we don't get pushed off the horses by the limbs. I did call Dawn at Public Works Dept. to explain this but she said that they cannot cut private property trees or limbs unless it was a view problem. I believe having to move out of your lane into the oncoming traffic is very dangerous in a vehicle or on a horse. This is why we would like some signs to go up warning people that there may be horses being ridden in the road.

Thank you,

The Cotnoir Family

Councilor Remillard moved, with a second from Councilor Morgan, to remand the letter from the Cotnoir family to the Traffic and Safety Committee for review and to send a letter to the Cotnoirs advising them of same. So moved, the motion carried.

d. Letter of Resignation from Steven Griffin for Library Trustees

Dear Mayor Grenier,

Although I was duly elected to be a Trustee of Library in the City of Berlin, I must ask that you accept my resignation in that position as my health is not at all what I anticipated it would be at this time.

I sent a letter of resignation to the librarian earlier this year as it appeared that I would not be able to serve.

The good news here is that there are very many qualified individuals to take my place. The City of Berlin has seen a major twist and turn as people are proud of their properties and are willing to be a solver of the problems rather than to be the reason we have problems. I take that as you're being a driving force in that regard.

Thank you for helping me in this situation. Perhaps I can serve in some other capacity in the future if my health takes a better turn.

Sincerely,

Steven D. Griffin

Councilor Remillard moved, with a second from Councilor Morgan, to accept the letter of resignation and to allow the City Clerk to advertise for a replacement on the Library Trustees for the remainder of the term. So moved, the motion carried.

e. Letter re: Traffic at WMCC

Mayor, City of Berlin NH  
Chief of Police, City of Berlin NH  
Governor, State of NH

Sirs,  
Today I had cause to write an email to the head of security at White Mountain Community College. I have attached it below. I have sent a copy via email to the State Police HQ in Concord. I was unable to find email addresses for the rest. Anything you can do to help would be appreciated.

Thanks,

Rick

Sir,

My name is Rick Cleaves and i live at 2069 Riverside Drive, Berlin NH

I am not sure if I have found the right spot, but a complaint needs to be lodged about the chronic problem of people leaving and entering your facility in full throated violation of existing state and municipal traffic and noise violations. If I were to call the police every time an offense occurred, WMCC would be declared a public nuisance under the municipal statute due to inordinate use of police time: Berlin code 10.5-36.

Every day school is in session on campus, and times when it is not, multiple vehicles leave and enter the north entrance while violating the law by driving recklessly and spinning tires with their foot through the floor of their exhaust modified vehicles. The conduct and noise, the exceptionally and intentionally loud volume, is an egregious affront to the taxpayers in the neighborhood. This happens multiple times a day as they leave at 10am and return, then again at lunch, and then again when school gets out at 3:30... especially in the 3:30 time frame. I actually have begun to wonder if it isn't faculty or staff included in the melee, since it has happened on days without classes in ones and twos as opposed to five or eight vehicles. If there are 180 school days, your people commit multiple offenses on 150 of them. The one time i walked out on my porch to see what was going on, I got the screw you burnout from five or six vehicles, and then someone came back at 10:30pm and was doing burnouts in an attempt at intimidation a la KKK nightriders. I actually expect retaliation for writing this letter.

I point your attention to the violations of Berlin municipal code chapter 10.5 sections 3 g- 1,2 and 4, and section 3 h.

Why has the WMCC administration tolerated this for the three years I have been here? As a NH Native I know not to move somewhere and start complaining right off so I waited. Hoping the school would do the right thing but alas. I have lived in:

Farmington  
Manchester  
Auburn  
Dover  
Lee  
Concord and now  
Berlin

I have attended both the NH Technical Institute in Concord and UNH Durham. Never in my life have I experienced a situation where a school indulged their students running rough shod over their community. It is unfathomable.

This would not be happening in front of your house, the Mayors house, the Chief of Police's house, any state trooper's house or the Governor's house.

The simple solution is a talk with people at orientation, a sign that says "please leave quietly"... "it's the law"...or possible "or meet our judges" a sign I have seen in Manchester. That and a camera, with footage that gets reviewed daily until behavior is changed. Alternatively, you could hire a police officer in an extra detail capacity to manage your problem for you.

I have to ask what is your product - Delinquents, domestic terrorism in the night or professional development.

I very much dislike complaining. I don't really want to see expensive fines because some idiots are going through their wild and wooly days.

Wouldn't everybody be better served if it just stopped.

Help... Please.

Regards Richard Cleaves

Ps. If this notice has not reached the responsible administrator, I would be grateful! if you could forward it to the right party. Thank you.

Councilor Morency moved, seconded by Councilor Remillard, to forward the letter to Dr. Charles Lloyd at WMCC and to the Chief of Police.

Councilor Morency commented that all that is missing is communication between the school, school security, and the Police Department.

So moved, the motion carried.

#### **4. Public Comments**

There were no public comments.

#### **5. Council Comments**

Councilor Higbee noted that he and Jan Zicha recently traveled to Coaticook to discuss the Night Train from Montreal to Boston project. Jan Zicha also spoke, noting that he has studied this as a volunteer for the last three years. Mr. Zicha noted that now is the time to expand Amtrak service, and that the City could send a letter to Amtrak requesting to bring service here. Mr. Zicha noted that a train station in Berlin would be a good business development opportunity.

#### **6. Adjournment**

On a motion by Councilor Higbee, seconded by Councilor Morgan, the Council voted to adjourn the meeting at 8:54 pm. So moved, the motion carried.

A True Record, Attest:

Shelli Fortin  
City Clerk

Note: Minutes are unofficial until they have been accepted by the Council by motion.