

Memo

To: Mayor and Council
cc: Department Heads
From: Pat MacQueen
Date: August 17, 2009
Re: Manager's Report

Rt 110 Phase II (Alt. 4E) Public Hearing

This public hearing last Thursday evening at the BJHS seemed to go well. There was a reasonable turn out given the time of year and the number of hearings there have already been. The speakers all seemed to favor the City supported Alternative 4E route. Now there is just (we hope) one more public hearing to be held which is next Thursday August 27, 2009 at 7pm in the City Hall Auditorium. This is really a continuation of this last public hearing for the purpose of covering the environmental aspects of the proposed project. The draft Environmental Assessment/Section 4(f) Evaluation has been prepared and is available for public review at NHDOT in Concord. We have a copy here at City Hall and at the Library. The project is tentatively scheduled for advertising for bid in January of 2012.

Meeting with DES in Concord

On Thursday August 6, 2009, Mike Perreault, Henry Noel, Chris Dwinal of Wright-Pierce and I met with several DES wastewater officials in Concord to go over as many issues as we could with respect to the BOP sewer connection project. We have received the first installment from the BOP in the amount of \$1.125M toward their \$8.5M share of the total project.

Downtown 155B

After Superior Court Judge Michalik recused himself from dealing with the Downtown Fire 155B several weeks ago, we were greatly disheartened two weeks ago when we learned that Judge Desjardins on August 12th also recused himself. We are now expecting the order to be signed this week on the 19th by a third judge. Once that occurs, the twenty day period for the respondent to reply begins. We have been told by the respondent that there will be no response so we may begin the administrative actions a little earlier on this one than we have on other 155B's to streamline the process as much as possible.

Assistant Fire Chief Retirement

The Assistant Fire Chief Robert Goudreau has now given official notice of his plans to retire effective at the end of this month. Bob will have served with the Department for almost 34 years, 22 of which will have been as Assistant Chief. We have started developing the process for replacement of the position.

PT Building Inspector

Ron Devold has been hired to fill the part-time Building Inspector position. Ron is the retired Gorham Police Chief. This is a 20 hour per week position which will assist Joe Martin who has been doing housing, building, zoning, junk cars, sign code etc. Having Ron available will provide us with some very needed capacity and backup in this critical area for the City.

TIGER Grant

The TIGER Grant application for road paving in the area is rapidly coming together. Colebrook has been added to the list of Towns along with Gorham, Shelburne, and Milan which are participating with us. For a while we didn't think that NHDOT was going to be a participant, but they have now confirmed that they will be which is great because it connects Colebrook to us in a more coherent project.

A paving expert by the name of Joe Kindler of KMS Associates from Dublin, Ohio was here last week to drive and assess the roads in order to be able to come up with an estimated amount that we should be applying for. Tomorrow, Kelley Coyner, the grant writer will be here from Washington DC to go over as much of the project as we can go over with her in person.

Superior Court

The week before last Blandine Shallow and I attended Superior Court in Lancaster along with City Attorney Chris Boldt in a case brought by Legal Assistance on behalf of one of the former owners of a tax deeded property which the City had taken in the most recent rounds of tax deedings. We are expecting a ruling from the Superior Court judge at any time.

AVER Biomass Committee

Last Thursday, another meeting of the AVER Biomass Committee was held at WMCC. However, a quorum was not available for the meeting. Nevertheless, Jon Puress attended to make some suggestions to the Committee on how they might proceed in order to be of the most help to the City Council, including a slight rewrite of their purpose statement. Since there was no quorum, the Committee took no action, but Jon nevertheless made his presentation to the members present. The notes from that session are attached. The next meeting was scheduled for August 27, 2009 at 4pm at the College.

Right to Know Law Updates

In the event anyone didn't get it, we have the updated booklet on the Right to Know Law from the AG's office. It is over 100 pages and covers quite a bit of ground with respect to the law as it is interpreted today. If anyone doesn't have it and would like a copy, we can provide it digitally to you.

Riverfire

Planning meetings for the Riverfire Event have begun again for this year. The event is now always the first Saturday in October which is October 3rd.

INVITATION

- NOTICE -

ENVIRONMENTAL PUBLIC HEARING

BERLIN, X-A000(052), 12958B

NOTICE OF PUBLIC HEARING

The Commission, in accordance with RSA 230:14 and the Surface Transportation and Uniform Relocation Assistance Act of 1987, have set a **Public Hearing** thereon to be held at the **Berlin City Hall at 168 Main Street in Berlin, New Hampshire on Thursday, August 27, 2009, beginning at 7:00 pm.** This is a continuation of the August 13, 2009, public hearing and will cover the environmental aspects of the proposed project.

This public hearing is being held in accordance with the requirements of the Council on Environmental Quality and the National Environmental Policy Act of 1969 regulations and associated guidance documents with reference to providing environmental oversight and financial assistance to the City of Berlin.

THE BERLIN CITY HALL WILL BE OPEN ONE-HALF (1/2) HOUR PRIOR TO THE TIME OF THE PUBLIC HEARING FOR THE INSPECTION OF PLANS AND THE ENVIRONMENTAL DOCUMENTS BY ANY INTERESTED PERSONS.

On May 20, 2009, the Governor and Executive Council appointed: **Barbara Ashley, Dick Hamilton and David Woodward** as the Commission to conduct the hearing to determine whether there is the occasion for the laying out of this project.

We, the Commission, hereby give written Notice to said Petitioners and the owners of land over which said highway may pass, and to all others interested by posting a like copy in at least two (2) public places in the said City of Berlin, and leaving a like copy with the City Clerk and Tax Collector of the City of Berlin at least fourteen (14) days before the said day of hearing.

Interested landowners, local officials and highway users are welcome and will be given the opportunity to express their comments relative to the environmental resources impacted by the proposed project. The hearing testimony will be recorded.

This project may impact wetlands and floodplains.

Maps, plans, the environmental studies and other pertinent information developed by the Department, along with written views received as a result of the coordination with other agencies, are available at the Department of Transportation at the John O. Morton Building, 7 Hazen Drive, Concord, New Hampshire for inspection and copying. It is suggested you call Donald Lyford, Project Manager, at (603) 271-2165 in advance for an appointment.

A Draft Environmental Assessment/Section 4(f) Evaluation has been prepared and is available for public review. Copies are available at the Department's headquarters, the city offices and public library.

Written statements and other exhibits may be submitted to the Chairman of the Commission, c/o William J. Cass, Director of Project Development, NH Department of Transportation, PO Box 483, Concord, NH 03302-0483, up to ten (10) days after the date of the hearing for inclusion in the official record.

This project will impact properties eligible for the National Register of Historic Places and may impact wetlands and floodplains.

This project is tentatively scheduled for advertising for bid in January 2012.

Any individuals needing assistance or auxiliary communication equipment due to sensory impairment or other disability, should contact William J. Oldenburg, PE, Bureau of Right-of-Way, NHDOT, PO Box 483, Concord, NH 03302-0483 - TDD access: Relay NH 1-800-735-2964. Notification of the need for assistance must be made no later than 7 days before the hearing. This project will be administered according to the requirements of Title VI of the Civil Rights Act of 1964 and related statutes to ensure nondiscrimination.

(Signed by George N. Campbell, Jr.)
Commissioner

August 13, 2009

EFSEC meeting at WMCC, 4PM

Members Present: Paul Cusson, Steve Griffin, Scott Coulombe, Max Makaitis, Dick Huot, Tom McCue, Barry Kelley

Others Present: Tony Harp, Citizen; Barbara Tetreault, Berlin Daily Sun; Pam Laflamme, City Planner; Barry Needleman, attorney for Laidlaw BioPower, LLC; Patrick MacQueen, City Manager; Jon Peress, attorney for Berlin City Council

A quorum was not present, so Chair Makaitis asked Jonathan Peress, Counsel for the Berlin City Council to address the group convened.

Attorney Peress reviewed the following items with the committee:

The City Council's role in the EFSEC process

- EFSEC statute contains specific provisions regarding the Council's role as the governing body of the host community: repository for information on the project including application (162-H:7);
- Assist SEC in assessing the merits of the proposal and its conformance with the statutory criteria for approval, especially with regard to the orderly development (e.g., land use and related impacts) of the region 162-H:16; party of right
- Notably Laidlaw stated that the intention of this Committee is to make recommendations to the City Council to assist the City Council in reaching agreement regarding stipulations for use in the EFSEC proceeding

Review Relevant SEC Process Information

Attorney Peress relayed that the City Council appreciates the willingness of Laidlaw, AVER and this Committee to expend the time and effort in pursuit of addressing the needs and concerns of the City and its residents and asked me to provide some suggestions regarding how this process can be structured and implemented.

He also shared that as stipulation is a legal term, he wondered if was appropriate for the committee to be working on "stipulations" before an actual application is submitted to the EFSEC.

Stipulation – "an agreement between parties in a judicial proceeding relating to the business before the court."

- a) Business before the SEC – What is it? An application.

SEC Statute: describe in detail the type and size of each major part of the proposed facility;

- identify the preferred choice and any other choices (i.e., alternatives) for the site of each major part of the facility;
 - describe in reasonable detail the impact of each major part of the proposed facility on the environment;
 - describe in reasonable detail the applicant's proposal for studying and solving the environmental problems (162-H:7)
- b) How easy is it for the public and the professionals in the committee to assess and understand the impacts of the facility on aesthetics, historic sites, air and water quality, the natural environment, and public health and safety (162-H:16)
- not very easy: special counsel for the public is appointed for each proceeding; (162-H:9)
 - special counsel and the SEC may employ consultants and conduct reasonable studies and investigations to assess and understand those impacts.
- c) What does this mean to this Committee – Attorney Peress suggested that the appropriate stipulations require a full understanding of the all of these impacts, based on a complete application, interrogatories (i.e., questions and discovery) and studies.

Attorney Peress told the committee that it is for this reason that stipulations in SEC proceedings occur after the information proffered by the applicant is reviewed, studied, digested and subjected to critical analysis.

Attorney Peress then reviewed the Statement of Purpose with the committee, see attached for his suggested revisions. The committee reviewed his revision and Mr. Makaitis stated that it would need to be reviewed by the full committee. There was a brief discussion about the scope of the committee and how much work should be done by the committee before any application is submitted to EFSEC. Mr. Kelley said that the committee should focus on the issues that matter to the community such as a riverwalk, traffic routes, noise issues, etc.

The committee also reviewed the suggested revisions from Ms. Stuart. Mr. Makaitis will rework the statement of purpose and it will be reviewed at the next meeting.

Mr. Harp asked to speak and was acknowledged. He indicated he had great interest in being a part of the committee.

Ms. Tetreault shared her thoughts about making the meetings more accessible. Mr. Makaitis stated he would send an invite to the public for the next meeting which will be held on Thursday August 27, 2009 at 4PM at the White Mountains Community College.