

Memo

To: Berlin City Council
From: Jim Wheeler, City Manager
Date: 4-3-2017
Re: City Manager's Report

1. The yearly Rabies Clinic was held on Saturday, April 1st at the Recreation Center for cats and dogs. I'd like to thank Elaine Riendeau and Lise Barrette who gave up a Saturday afternoon to register 75 dogs.
2. The annual Eggstravaganza will be held Saturday, April 8th beginning at 9:30 a.m. at the Recreation Center. This event is an Easter Egg Hunt for children ages 2 to 10. The event is free; however donations are always accepted.
3. The Public Works Department has taken delivery on its new JCB backhoe loader.
4. Paul Croteau Settlement Update - The settlement agreement between the City & Paul Croteau was finalized on February 24, 2017. See attached. The agreement covers all three of his properties on Route 110 and is structured to bring all three back into compliance with the City's Zoning Ordinance. Mr. Croteau met with Michel Salek & Pam Laflamme last week to go over the timeline in the agreement to keep it moving and on track. Mr. Croteau is aware he has several things that need his careful attention and he is currently working with staff to complete these items.
5. David Walker, Plant Manager at Burgess Biopower, notified us of their plan for their annual spring outage. The outage is expected to last through Sunday April 9th. The plant is expected to go back on-line early Monday morning. Today they are conducting vacuuming and de-clinkering operations (which may contribute some noise).
6. The 2016 Tax Liening process was completed by the Finance and Tax Collection Office on March 31, 2017. The total lien amount for 2016 is \$722,668.59. The last 4 years amounts were as follows:

2013 Lien	\$795,496.96
2014 Lien	\$830,132.69
2015 Lien	\$713,700.89
2016 Lien	\$722,668.59

168 Main Street
Berlin, NH 03570
603-752-7532
www.berlinnh.gov

7. Vachon and Clukay has notified us that they have completed the FY2016 municipal audit. They will be scheduled at an upcoming City Council Meeting to review the audit.
8. On Tuesday March 28th, the House Finance Committee recommended the biennial budget plan contained in HB 1 and HB 2. The plan will be voted upon by the full House on Wednesday, April 5th. The budget contains \$25,000,000 of municipal aid for property tax relief. If this budget is approved the City of Berlin is estimated to receive an amount of \$196,459 (see attached distribution sheet provided by the NHMA).

In addition, the budget plan calls for an increase the Highway Block program which would increase the City's allocation by an estimated \$90,000.

COOS, SS

THE STATE OF NEW HAMPSHIRE

CITY OF BERLIN

SUPERIOR COURT

PKC

v.

PAUL K. CROTEAU

Docket No. 214-2014-CV-00077

STIPULATION AND SETTLEMENT AGREEMENT

NOW COME the Parties, City of Berlin (the "City") and Paul K. Croteau (the "Defendant") and enter into this Stipulation and Settlement Agreement (the Agreement") on this 30th day of January, 2017. The Parties recite and agree as follows:

WHEREAS, the City initiated a zoning enforcement action against the Defendant, alleging that the Defendant violated the City's zoning ordinance and applicable state statutes by, *inter alia*, creating and suffering a junkyard on Defendant's property on Jericho Road in Berlin, New Hampshire. Specifically, the City alleges that the Defendant created a junkyard on the properties shown as Lots 11 and 14 on Map 105 located on Jericho Road, Berlin, NH ("the Properties"); and,

WHEREAS, the Defendant also owns Lot 44 on Map 121, which he uses as a primary residence, and Lot 3 on Map 107; and,

WHEREAS, the Defendant denies the City's allegations; and,

WHEREAS, the Defendant has come into compliance with respect to his use of the Properties as of July 29, 2016, removing all junk from the Properties; and,

NOW, THEREFORE, the Parties enter into the following Agreement whereby all outstanding claims or causes of action will be resolved in the following manner: PKC

CLERK'S NOTICE DATE

2-24-17

CC: Hilson
Ward

1. Stipulation of Judgment: The parties stipulate to judgement in favor of the City. The Defendant is permanently enjoined from violating the City Zoning Ordinance or RSA 236:114. Judgment is further entered against the Defendant for the entirety of the City's attorney's fees and for a civil fine pursuant to RSA 676:17 in the amount of \$190,000.

2. Five Thousand Dollars (\$5,000) of the attorney's fees and expenses referenced in Paragraph One hereof shall be payable by the Defendant on or before May 1, 2017.

3. The balance of the civil fines and attorneys fees, costs and expenses (if any) referenced in Paragraph One hereof will be held in abeyance provided the Defendant does not violate any provision of the City's Zoning Ordinance or state statute with respect to the use of any of his properties, including but not limited to the Properties and the property designated as Lot 44 on Map 121. To the extent the Defendant violates the City's Zoning Ordinance or state statutes regulating the use(s) of his property, or violates any obligation arising hereunder, the entire amount of the fines and fees shall become immediately due and owing, without limitation to any other remedy the City may have. Should the Defendant reoffend or violate any provision of this Agreement, the City may enforce this agreement by filing a motion for imposition of the monetary penalties imposed hereunder, and/or to obtain an injunction seeking specific performance and/or an injunction under RSA 676:15, with a hearing to be held on the matter via offers of proof.

4. The Defendant expressly acknowledges that and understands that this enforcement action is the most recent in a significant history of zoning violations on the part of the Defendant and resultant enforcement actions by the City of Berlin. The Defendant acknowledges and understands that there will be no further compromise in the future should he fail to adhere to the provisions of the City's Zoning Ordinance, applicable state statutes, or the obligations arising hereunder. PKC

5. Fencing. The Defendant agrees to meet with the Berlin Planning Department within thirty (30) days of the execution of this Agreement to propose appropriate fencing for the garage lot located at 149 Jericho Road, Berlin, NH (Map 105, Lot 14). Said fencing shall be wooden stockade fencing six (6) feet in height, with 2 ½" to 3" spacing between vertical boards, supported by 2 1/2" sch. 40 galvanized metal vertical posts or 4x4 pressure treated wooden posts embedded in concrete at eight (8) foot spacing. The fencing shall reasonably run along the front and both side lot lines, running along the side lot lines until the topography begins its sharp incline and hits the tree line. The fencing shall be re-stained or painted no less often than once every three (3) years, and otherwise maintained in near-new condition, with any broken sections repaired within two (2) weeks of becoming damaged. Following approval of the fencing, the Defendant shall have thirty (30) days thereafter to erect the fencing to the Planning Department's specifications.

6. Stipulation not a license or approval. The Defendant understands and acknowledges that this Agreement, and the requirement that he erect fencing on the Properties, is not an express or tacit authorization to conduct any use which is not compliant with the City Zoning Ordinance, applicable state statutes, and otherwise does not constitute any approval from any relevant land use Board or authority. To the extent the Defendant wishes to engage in commercial activity on the Properties or any property within the City, it is incumbent on the Defendant to ensure that his use(s) of the Properties comply(ies) with the provisions of the City's Zoning Ordinance and applicable state statutes, and that he otherwise has obtained the necessary land use approvals for any particular use he is contemplating. Without limiting the foregoing, to the extent the Defendant ever engages in any business associated with the repair, parking, maintenance or storage of any motor vehicles on the Properties, the Defendant agrees to maintain a manifest of make, model, vehicle identification number, and registration number of any vehicle

P&C

entering onto the Properties, including the date the vehicle entered and exited the Properties and the identification of the party from whom the vehicle was acquired and to whom the vehicle transferred. The manifest shall be reviewable on demand by the City, its officers and agents.

7. Bond. The Defendant agrees to obtain a performance bond beginning May 1, 2017 at his sole cost ensuring the faithful performance of the Defendant's obligations arising under this Agreement and under the Berlin Zoning Ordinance and similar state land use statutes or regulations. Said bond shall be payable to the City upon the Defendant's default on the obligations arising under this Agreement, the Berlin Zoning Ordinance, or similar state land use statutes or regulations, and contain the necessary provisions to ensure the City is noticed on any event of default, non-payment, or cancellation. The Defendant must maintain said bond for a period of no less than five (5) years.

8. Other Properties. This Agreement and the foregoing recitations are not an express or tacit approval of any current conditions found on any other properties owned by the Defendant. Such other property(ies) are excluded from the City's express finding of compliance, and are still subject to the Stipulation reached in the case docketed Berlin v. Croteau, Berlin District Court Docket No. 423-2010-CV-00071. That stipulation, which was reduced to a final court order, remains in full effect.

9. Future Access. The Defendant agrees that the City and its officials shall have access upon reasonable prior notice to inspect the Properties in the future. Twenty four (24) hours' notice shall be reasonable prior notice. *PKC*

10. Miscellaneous.

(a) **Binding Effect.** This Agreement supersedes all other agreements relating to the subject matter herein, and shall be binding upon, and inure to the benefit of, the Parties hereto, their respective heirs, successors, assigns, legal representatives, executors and administrators. This Agreement shall constitute the entire, exclusive agreement between the Parties with respect to the matters referred to herein. Each party further represents and warrants that he/it has full authority and competence to enter into this Agreement.

Notwithstanding the foregoing, this Agreement does not void or abrogate any prior judgments or agreements in past zoning cases between the Parties, which remain in full force and effect.

(b) **Governing Law and Forum.** This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New Hampshire, without reference to conflict of laws principles.

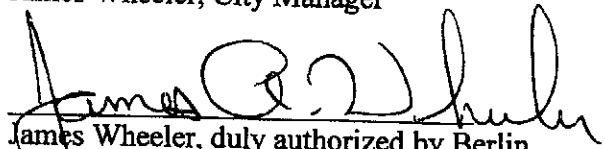
(c) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

8. Acknowledgment of Assistance of Counsel. All Parties acknowledge that they have reviewed and entered into this Agreement with the opportunity to seek and heed advice and assistance of counsel, and that this agreement shall not be construed against either party as the drafter.

9. Agreement to Submit to Court. The parties agree to submit this Agreement to the Coos County Superior Court for review and approval, reducing this Agreement to a final, unappealable order on the merits. PAC

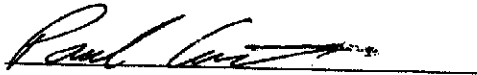
CITY OF BERLIN
James Wheeler, City Manager

By:


James Wheeler, duly authorized by Berlin
City Council

PAUL K. CROTEAU

By:



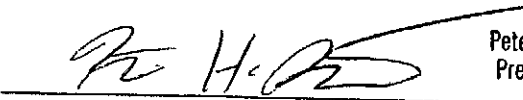
Paul K. Croteau

SO ORDERED.

Date:

2/22/17

By:



Peter H. Bornstein
Presiding Justice

, Presiding Justice

PfC

House Finance Recommendation for \$25,000,000 Municipal Aid in FY 18 and FY 19
Distributed on a Per Capita Basis

Municipality	2016 Population Estimates	Percent of Population	Estimated Share of \$25,000,000
Totals	1,336,792	100%	\$25,000,000
Acworth	896	0.067026%	\$16,756
Albany	737	0.055132%	\$13,783
Alexandria	1,666	0.124627%	\$31,157
Allenstown	4,244	0.317476%	\$79,369
Alstead	1,946	0.145572%	\$36,393
Alton	5,327	0.398491%	\$99,623
Amherst	11,309	0.845981%	\$211,495
Andover	2,382	0.178188%	\$44,547
Antrim	2,645	0.197862%	\$49,466
Ashland	2,092	0.156494%	\$39,124
Atkinson	6,759	0.505613%	\$126,403
Auburn	5,397	0.403728%	\$100,932
Barnstead	4,663	0.348820%	\$87,205
Barrington	8,933	0.668242%	\$167,061
Bartlett	2,798	0.209307%	\$52,327
Bath	1,108	0.082885%	\$20,721
Bedford	22,641	1.693682%	\$423,421
Belmont	7,331	0.548402%	\$137,101
Bennington	1,463	0.109441%	\$27,360
Benton	380	0.028426%	\$7,107
Berlin	10,505	0.785837%	\$196,459
Bethlehem	2,589	0.193673%	\$48,418
Boscawen	3,966	0.296680%	\$74,170
Bow	7,743	0.579222%	\$144,806
Bradford	1,675	0.125300%	\$31,325
Brentwood	4,824	0.360864%	\$90,216
Bridgewater	1,102	0.082436%	\$20,609
Bristol	3,073	0.229879%	\$57,470
Brookfield	712	0.053262%	\$13,316
Brookline	5,263	0.393704%	\$98,426
Campton	3,404	0.254639%	\$63,660
Canaan	3,959	0.296157%	\$74,039
Candia	3,903	0.291968%	\$72,992
Canterbury	2,397	0.179310%	\$44,828
Carroll	776	0.058049%	\$14,512
Center Harbor	1,082	0.080940%	\$20,235
Charlestown	5,107	0.382034%	\$95,509
Chatham	338	0.025284%	\$6,321
Chester	4,991	0.373357%	\$93,339
Chesterfield	3,606	0.269750%	\$67,438