

## **PUBLIC HEARING – April 2, 2012**

Mayor Grenier opened the duly advertised public hearing at approximately 7:25 p.m. to receive public opinion regarding the following subject matters:

- Ordinance 2012-01 Amend ATV Ordinance to Allow Year-Round Trail Access.  
Rene Boutin, 20 Pisani Street, thanked Council for the work they are doing with the trails. He said he is all for it.
- Resolution 2012-09 Accepting Post-Issuance Tax Compliance Policies and Procedures – no comments

There being no one else wishing to speak for or against the above items, Mayor Grenier declared the public hearing closed at approximately 7:26 p.m.

## **CITY COUNCIL MEETING – MONDAY, April 2, 2012**

Mayor Grenier called the City Council Meeting to order at approximately 7:26 p.m. in the City Hall Council Chambers. The pledge of allegiance to the flag preceded roll call. Present: Councilors Remillard, Otis, Morgan Allain, Ducharme, Higbee, Rozek, Nelson and Th  berge. Also present: Pat MacQueen, citizens and the press.

### **Minutes, Previous Meeting**

Councilor Remillard moved with a second by Councilor Otis to accept the minutes of the March 19 Regular Meeting/Work Session; March 26 Work Session. So moved, the motion carried.

**Disbursements:** It was recommended by the Committee on Accounts/Claims to pay all bills start date 3/22/2012; end date 4/04/2012 for a total cash disbursement of \$936,530.96 Draft #1662 Councilor Remillard moved with a second by Councilor Otis to accept the disbursement summary and pay all bills as recommended by the Committee on Accounts/Claims. So moved, the motion carried.

**PUBLIC COMMENTS:** No comments.

## **UNFINISHED BUSINESS**

1. Council Committee Reports. No Reports.

## **NEW BUSINESS**

2. Ordinance 2012-01R1 amending the Code of Ordinances, Chapter 13 Streets, Article IV Parks & Recreation, Div. 2 Operation of Off Highway Recreational Vehicles, Section 13-112. Operation of ATV's OHRV's to allow use of the Connector Trail in conjunction with State trail use. (tabled 3/19/12) **Be it ordained by the City Council of the City of Berlin, as follows:**

The Code of Ordinances Chapter 13 Streets, Article IV. Parks and Recreation, Div. 2. Operation of Off Highway Recreational Vehicles, Section 13–112. Operation of ATV's OHRV's is hereby amended by deleting language in strikeout and adding:

### **Sec. 13-112. Operation of ATV's OHRV's**

No person shall operate an ATV~~OHRV~~, as defined by NH RSA 215-A:1, in or on any street, lane, bridge, alley, sidewalk or other public place in the city except as provided below:

In addition to the public trails at Jericho Mountain State Park, the following is an authorized municipal public ATV~~OHRV~~ trail within the City of Berlin:

ATV~~OHRV~~ Connector Trail - This authorized municipal trail runs where marked from the Jericho Mountain State Park to Route 110 and follows Route 110 southeasterly as it changes from Jericho Road to Wight Street and finally to Third Avenue. The trail continues to follow Third Avenue to Mannering Street and follows Mannering Street to Second Avenue to Hillside Avenue. The trail follows Hillside Avenue, for a short distance to just southwest of 4 Hillside Avenue (Valley Creek Eatery, Map 119, Parcel 261) where the trail crosses into the Dead River Park Dead River Park or alternatively, to York Street (determined by how the

trail is actually marked and signed) where it continues easterly to Cole Street. In the park the trail follows southeasterly to the southeast end of the Dead River Park. The trail then turns left onto Cole Street and follows a northeasterly direction to Mason Street where it follows Mason Street southeasterly to East Mason Street where it continues southeasterly to Hutchins Street where it follows Hutchins Street northeasterly to Success Pond Road where it follows Success Pond Road to the Berlin/Success line. This authorized municipal trail includes the section of East Mason Street from the RR tracks east of Hutchins Street to Hutchins Street. (Ord. 9-20-2010)

In places where the ~~ATV~~ Connector Trail authorized above follows City streets, the trail is so designated with ~~green diamonds on the pavement~~, ATVOHRV signage and markings, which must be obeyed by the ATVOHRV operator.

The ATVOHRV Connector Trail shall not be open and usable until it is properly marked and signed as determined by the Police Chief.

ATVOHRV users in the City must abide by all State and City laws when on designated trails on City streets and must abide by all motor vehicle traffic laws. However, underage State certified ATVOHRV operators may ride the trail on City streets if and only if accompanied closely by a properly motor vehicle licensed adult. (Ord. 9-20-2010)

The speed limit for ATVOHRV operators when operating on the designated trail on City streets is 25 mph.

ATV's OHRV's must yield to pedestrians at all times. (Ord. 9-20-2010)

ATV OHRV operators, when operating on the designated trail on City streets, shall ride single file in traffic in the paved travel lane (not gravel or paved shoulders).

ATV OHRV operators shall not leave the designated trail within the City except as may be specifically otherwise provided herein. A specific exception shall be that an ATV OHRV operator may leave and return in the shortest possible route to the designated trail at the intersection of East Mason and Hutchins Streets ~~to cross the intersection~~ to travel no more than two blocks to the fueling or other service facilities across that intersection, and further that an ATV OHRV operator may leave and return in the shortest possible route to the designated trail at the intersection of Cole and York or Cole and the Dead River Park to travel no more than a block and a half to the fueling and other service facilities at the intersection of Green and Pleasant Streets. (Ord. 9-20-2010)

~~Under no circumstances will any part of the ATV Connector Trail on a city street be open and used by any ATV operator when there is snow on the street pavement, and under no circumstances will any part of the ATV Connector Trail on a city street be open and used by any ATV operator when the State opens the in-town snowmobile trails.~~

The Berlin ~~ATV~~ OHRVConnector Trail will be closed when the Bureau of Trails declares that the snow machine trails are no longer useable. The connector trail will re-open on May 23, or a re-open date set by the State Trails Bureau.

All ATV's OHRV's operating on designated trails on City streets must have working head and tail lights.

Complaints regarding ATV OHRV use of these trails shall be received by the Traffic Safety Committee, who may recommend changes to the Council. The Council shall have the power to change the times of such ATV OHRV use by vote without amendment to this ordinance. This Ordinance shall be in full force and effect from and after passage.

Councilor Theberge moved with a second by Councilor Remillard to remove the ordinance from the table at this time. So moved, the motion carried.

Councilor Theberge moved with a second by Councilor Morgan Allain to amend the ordinance as presented (replace the word ATV with OHRV throughout the ordinance). So moved, the motion carried.

Councilor Theberge moved with a second by Councilor Morgan Allain to have the ordinance read, as amended, for a second time by title only. So moved, the motion carried.

Councilor Theberge moved with a second by Councilor Morgan Allain to have the ordinance read, as amended, for a third time by title only. So moved, the motion carried.

Councilor Theberge moved with a second by Councilor Morgan Allain to pass the ordinance, as amended. So moved, the motion carried and Mayor Grenier declared the ordinance, as amended, now passed.

Mayor Grenier thanked all involved for developing an ordinance that works with the City of Berlin.

3. Resolution 2012-09 accepting the Post Issuance Tax Compliance Policies and Procedures attached and naming the City Manager as the Coordinator of such policies. (tabled 3/19/12)  
Resolved by the City Council of the City of Berlin as Follows:

-Whereas, the City of Berlin, New Hampshire (the "Town") from time to time, on a tax-exempt basis, issues (i) bonds and bond anticipation notes to finance capital projects, (ii) tax anticipation notes to pay the City's maintenance and operation expenses and (iii) municipal leases to finance the lease-purchase of certain equipment, all pursuant to the provisions of New Hampshire RSA Chapter 33, as amended;

-Whereas, the federal income tax laws included in the Internal Revenue Code of 1986, as amended (the "Code"), require that issuers of tax-exempt debt comply with certain post-issuance requirements set forth in the Code;

-Whereas, for purposes of maximizing the likelihood that the City complies with such requirements of the Code, the City Council desires to adopt the Post-Issuance Tax Compliance Policies and Procedures, attached hereto as Exhibit A. Now therefore, be it resolved by the City by the City Council as follows:

-VOTED: That the Post-Issuance Tax Compliance Policies and Procedures, attached hereto as Exhibit A are hereby approved.

-VOTED: That the City Council hereby names Patrick MacQueen, the City Manager as the "Coordinator" under the Post-Issuance Tax Compliance Policies and Procedures and that the City Manager has accepted such nomination.

-VOTED: That this resolution shall take effect from and after its adoption.

This Resolution shall be in full force and effect from and after passage.

## **CITY OF BERLIN, NEW HAMPSHIRE POST-ISSUANCE TAX COMPLIANCE POLICY AND PROCEDURES FOR TAX-EXEMPT OBLIGATIONS**

The purpose of this Post-Issuance Tax Compliance Policy and Procedures is to establish policies and procedures in connection with tax-exempt bonds and notes (the "Bond" or "Bonds") issued by the City of Berlin, New Hampshire (the "Issuer") so as to maximize the likelihood that all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds are met.

### **1. Compliance Coordinator:**

- a) The City Manager ("Coordinator") shall be responsible for monitoring post-issuance compliance.
- b) The Coordinator will maintain a copy of the transcript of proceedings in connection with the issuance of any tax-exempt obligations. The Coordinator will obtain such records as are necessary to meet the requirements of this policy.
- c) The Coordinator shall consult with bond counsel, a rebate consultant, financial advisor, Internal Revenue Service ("IRS") publications and such other resources as are necessary to understand and meet the requirements of this policy.
- d) Training and education of the Coordinator and his/her staff will be sought and implemented upon the occurrence of new developments and upon the hiring of new personnel to implement this policy.

### **2. Record-Keeping.**

- a) Financing Transcripts. The Coordinator shall confirm the proper filing with the IRS of an 8038 Series return, and maintain a transcript of proceedings for all tax-exempt obligations issued by the Issuer, including but not limited to all tax-exempt bonds, notes and lease-purchase contracts. Each transcript shall be maintained for as long as the Bonds are outstanding, plus three (3) years after the final

redemption date of the Bonds. Said transcript may be maintained in electronic format and shall include, at a minimum:

- 1) Form 8038s;
- 2) minutes, resolutions, and certificates;
- 3) certifications of issue price from the underwriter, if applicable;
- 4) formal elections required by the IRS;
- 5) trustee statements, if applicable;
- 6) records of refunded bonds, if applicable;
- 7) correspondence relating to bond financings;
- 8) reports of any IRS examinations for bond financings;
- 9) documents related to governmental grants associated with construction, renovation or purchase of bond financed facilities, if applicable; and
- 10) publications, brochures, and newspaper articles, where applicable.

b) Modification to Financing Documents. The Coordinator shall determine if there is any "significant modification" to bond documents resulting in reissuance under Treasury Regulations §1.1001-3, in consultation with bond counsel and any other legal counsel and financial advisor. The Coordinator shall retain proof of filing new Form 8038 and relevant documentation plus final rebate calculation on pre-modification bonds.

3. Proper Use of Proceeds. The Coordinator shall review the resolution authorizing issuance for each tax-exempt obligation issued by the Issuer and shall:

- a) obtain a computation of the yield on such issue from the Issuer's financial advisor;
- b) create a separate Project Fund (with as many sub-funds as shall be necessary to allocate proceeds among the projects being funded by the issue) and a separate Cost of Issuance Fund as necessary to allocate proceeds to Bond issuance costs into which the proceeds of the issue shall be deposited, as applicable;
- c) review all requisitions, draw schedules, draw requests, invoices and bills requesting payment from the Project Fund;
- d) determine whether payment from the Project Fund is appropriate, and if so, make payment from the Project Fund (and appropriate sub-fund if applicable);
- e) maintain records of the payment requests and corresponding records showing payment;
- f) maintain records showing the earnings on, and investment of, the Project Fund;
- g) ensure that all investments acquired with proceeds are purchased at fair market value;
- h) identify bond proceeds or applicable debt service allocations that must be invested with a yield-restriction and monitor the investments of any yield-restricted funds to ensure that the yield on such investments does not exceed the yield to which such investments are restricted;
- i) maintain records related to any investment contracts, credit enhancement transactions, and the bidding of financial products related to the proceeds; and
- j) monitor and maintain records of the reimbursement of costs previously expended by the Issuer to ensure that such reimbursement occurs not more than 18 months after the later of (i) the dates of the expenditures or (ii) the date the project/asset was placed in service (but not more than 3 years after the original expenditures were paid) except with respect to those expenditures for which the Issuer obtained a certificate of licensed engineer/architect to the effect that (I) at least five (5) years was necessary to complete the construction of the part of the project for which such expenditures were required; and (II) such expenditures shall be reimbursed not more than five (5) years after the date that the original expenditures were paid.

4. Arbitrage/Rebate Compliance and Timely Expenditure of Proceeds. The Coordinator shall review the No Arbitrage and Tax Certificate (or equivalent) (the "Certificate") for each tax-exempt obligation issued by the Issuer and the expenditure records provided in Section 2 of this policy, above, and shall ensure that the Issuer takes the following actions:

- a) monitor and ensure that proceeds of each such issue are spent within the temporary period set forth in the Certificate;

- b) if at the time of issuance, it appears that that the Bonds will qualify for the small issuer exception to the rebate requirement, the Coordinator will monitor the amount of subsequent tax-exempt obligations issued or proposed to be issued in the calendar year in which the Bonds closed to ensure that the Issuer does not exceed the \$5 million or \$15 million threshold, as applicable, in such calendar year;
- c) if at the time of issuance, based on reasonable expectations set forth in the Certificate, it appears likely that the issue will qualify for an exemption from the rebate requirement, the Issuer may defer taking any of the actions set forth in subsection (c) below. Not later than the time of completion of construction or acquisition of the project, and depletion of all funds from the Project Fund, the Issuer shall make a determination if the expenditure of the Bond proceeds qualified for an exemption from the rebate requirements based on spending within a 6 month, 18 month or 2 year period after issuance. If a rebate exemption is determined to be applicable, the Issuer shall prepare and keep in the permanent records of the issue a memorandum evidencing this conclusion together with records of expenditure to support such conclusion. If the transaction does not qualify for rebate exemption, the Issuer shall initiate the steps set forth in (c) below;
- d) if at the time of issuance it appears likely that arbitrage rebate calculations will be required, or upon determination that calculations are required pursuant to (b) above, the Issuer shall:
  - i. engage the services of expert advisors (each a "Rebate Service Provider") to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds, or else shall ensure that it has adequate financial, accounting and legal resources of its own to make such calculations, and, prior to each rebate calculation date, cause the trustee or other financial institution investing bond proceeds to deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider;
  - ii. provide to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;
  - iii. monitor efforts of the Rebate Service Provider;
  - iv. assure payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed;
  - v. during the construction period of each capital project financed in whole or in part by Bonds, monitor the investment and expenditure of Bond proceeds and consult with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months or 2 years, as applicable, following the issue date of the Bonds;
  - vi. retain copies of all arbitrage reports, trustee statements and other documents as required herein; and
  - vii. in lieu of engaging an outside Rebate Service Provider, the Issuer may make a determination that it has sufficient capabilities using its own personnel, supported by its regular accounting and legal advisers, to be able to make the required rebate calculations. Such determination shall be evidenced in writing with specific reference to the personnel and advisers to carry out the calculations, and such written determination shall be maintained in the records of the bond transaction.

5. Proper Use of Bond Financed Assets.

- a) The Coordinator shall maintain appropriate records and a list of all bond financed assets. Such records shall include the actual amount of proceeds (including investment earnings) spent on each of the bond financed assets.
- b) With respect to each bond financed asset, the Coordinator will monitor and confer with bond counsel with respect to all proposed:
  - i. management contracts,
  - ii. service agreements,
  - iii. research contracts,
  - iv. naming rights contracts,
  - v. leases or sub-leases,
  - vi. joint venture, limited liability or partnership arrangements,
  - vii. sale of property, or
  - viii. any other change in use of such asset.

- c) Section 141 of the Code sets forth private activity tests for the purpose of limiting the volume of tax-exempt bonds that finance activities of persons other than state and local governmental entities. These tests serve to identify arrangements that actually or reasonably expect to transfer the benefits of tax-exempt financing to non-governmental persons, including the federal government. The Coordinator shall provide to the users of any bond financed property a copy of this Compliance Policy and other appropriate written guidance advising that:
    - i. "Private business use" means use by any person other than the Issuer, including business corporations, partnerships, limited liability companies, associations, non-profit corporations, natural persons engaged in trade or business activity, and the United States of America and any federal agency, as a result of ownership of the property or use of the property under a lease, management or service contract (except for certain "qualified" management or service contracts), "naming rights" contract, "public-private partnership" arrangement, or any similar use arrangement that provides special legal entitlements for the use of the bond financed property;
    - ii. No more than 10% of the proceeds of any tax-exempt bond issue (including the property financed with the Bonds) may be used for private business use, of which no more than 5% of the proceeds of the tax-exempt bond issue (including the property financed with the bonds) may be used for any "unrelated" private business use – that is, generally, a private business use that is not functionally related to the government's purposes of the Bonds; and no more than the lesser of \$5,000,000 or 5% of the proceeds of a tax-exempt bond issue may be used to make or finance a loan to any person other than a state or local government unit;
    - iii. Before entering into any special use arrangement with a non-governmental person that involves the use of bond financed property, the Coordinator will consult with bond counsel, provide bond counsel with a description of the proposed non-governmental use arrangement, and determine whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond financed property; and
    - iv. In connection with the evaluation of any proposed non-governmental use arrangement, the Issuer will consult with bond counsel to obtain federal tax advice in whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond financed property, and, if not, whether any "remedial action" permitted under §141 of the Code may be taken as means of enabling that use arrangement to be put into effect without adversely affecting the tax-exempt status of the Bonds.
  - d) The Coordinator shall maintain a copy of any such proposed agreement, contract, lease or arrangement, together with the response by bond counsel with respect to said proposal for at least three (3) years after retirement of all tax-exempt obligations issued to fund all or any portion of bond financed assets;
  - e) The Coordinator shall consult with bond counsel and other legal counsel and advisers in the review of any change in use of bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the Certificate;
  - f) The Coordinator shall confer at least annually with other personnel responsible for bond-financed or refinanced assets to identify and discuss any existing or planned use of bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the Certificate; and
  - g) To the extent that the Coordinator discovers that any applicable tax restrictions regarding use of bond proceeds and bond-financed or refinanced assets will or may be violated, the Coordinator shall consult promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified bonds, if such counsel advises that a remedial action is necessary.
6. Bank Qualification. If the Bonds are issued in a par amount of \$10 million or less and designated by the Issuer as "bank qualified" under Section 265(b)(3) of the Code, the Coordinator will monitor the amount of subsequent tax-exempt obligations issued or proposed to be issued in the calendar year in which the Bonds closed to ensure that the Issuer does not exceed the \$10 million threshold in such calendar year.
7. General Project Records. For each project financed with tax-exempt obligations, the Coordinator shall maintain a copy of all material documents relating to capital expenditures financed or re-

financed by tax-exempt proceeds, until three (3) years after retirement of the tax-exempt obligations or obligations issued to refund those obligations including (without limitation), the following:

- a) appraisals, demand surveys or feasibility studies,
- b) applications, approvals and other documentation of grants,
- c) depreciation schedules,
- d) contracts respecting the project, including construction contracts,
- e) purchase orders,
- f) invoices,
- g) trustee requisitions and payment records,
- h) documents relating to costs reimbursed with Bond proceeds, and
- i) records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds, including a final allocation of proceeds.

8. Advance Refundings. The Coordinator shall be responsible for the following current, post issuance and record retention procedures with respect to advance refunding bonds:

- a) Identify and select bonds to be advance refunded with advice from internal financial personnel, and a financial advisor;
- b) The Coordinator shall identify, with advice from the financial advisor and bond counsel, any possible federal tax compliance issues prior to structuring any advance refunding;
- c) The Coordinator shall review the structure with the input of the financial advisor and bond counsel, of advance refunding issues prior to the issuance to ensure (i) that the proposed refunding is permitted pursuant to applicable federal tax requirements if there has been a prior refunding of the original bond issue; (ii) that the proposed issuance complies with federal income tax requirements which might impose restrictions on the redemption date of the refunded bonds; (iii) that the proposed issuance complies with federal income tax requirements which allow for the proceeds and replacement proceeds of an issue to be invested temporarily in higher yielding investments without causing the advance refunding bonds to become "arbitrage bonds"; (iv) that the proposed issuance will not result in the issuer's exploitation of the difference between tax exempt and taxable interest rates to obtain an financial advantage nor overburden the tax exempt market in a way that might be considered an abusive transaction for federal tax purposes; and (v) that the proposed refunding complies with applicable State law.
- d) The Coordinator shall collect and review data related to arbitrage yield restriction and rebate requirements for advance refunding bonds. To ensure such compliance, the Coordinator shall engage a rebate consultant to prepare a verification report in connection with the advance refunding issuance. Said report shall ensure said requirements are satisfied.
- e) The Coordinator shall, whenever possible, purchase SLGS to size each advance refunding escrow. The financial advisor and/or bond counsel shall be included in the process of subscribing SLGS. To the extent SLGS are not available for purchase, the Coordinator shall, in consultation with bond counsel and the financial advisor, comply with IRS regulations.
- f) To the extent the Issuer elects to purchase a guaranteed investment contract, the Coordinator shall ensure, after input from bond counsel, compliance with any bidding requirements set forth by the IRS regulations.
- g) In determining the issue price for any advance refunding issuance, the Coordinator shall obtain and retain issue price certification by the purchasing underwriter at closing.
- h) After the issuance of an advance refunding issue, the Coordinator shall ensure timely identification of violations of any federal tax requirements and engage bond counsel in attempt to remediate same in accordance with IRS regulations.

9. Continuing Disclosure. The Coordinator shall assure compliance with each continuing disclosure certificate and annually, per continuing disclosure agreements, file audited annual financial statements and other information required by each continuing disclosure agreement. The Coordinator will monitor material events as described in each continuing disclosure agreement and assure compliance with material event disclosure. Events to be reported shall be reported

promptly, but in no event not later than ten (10) Business Days after the day of the occurrence of the event. Currently, such notice shall be given in the event of:

- a) Principal and interest payment delinquencies;
- b) Non-payment related defaults, if material;
- c) Unscheduled draws on debt service reserves reflecting financial difficulties;
- d) Unscheduled draws on credit enhancements relating to the bonds reflecting financial difficulties;
- e) Substitution of credit or liquidity providers, or their failure to perform;
- f) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of the bonds, or material events affecting the tax-exempt status of the bonds;
- g) Modifications to rights of Holders of the Bonds, if material;
- h) Bond calls (excluding sinking fund mandatory redemptions), if material, and tender offers;
- i) Defeasances of the bonds;
- j) Release, substitution, or sale of property securing repayment of the bonds, if material;
- k) Rating changes on the bonds;
- l) Bankruptcy, insolvency, receivership or similar event of the Issuer;
- m) The consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- n) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

10. Due Diligence and Remedial Actions. In all activities related to the Issuer's Bonds, the Coordinator and his/her staff will exercise due diligence to comply with the Code provisions governing tax-exempt obligations. The Issuer is aware of (a) the Voluntary Closing Agreement Program (known as "VCAP") operated by the IRS which allows issuers to voluntarily enter into a closing agreement in the event of certain non-compliance with Federal tax requirements and (b) the remedial actions available under Section 1.141-12 of the Income Tax Regulations for private use of bond financed property which was not expected at the time the Bonds were issued.

11. Periodic Review. The Issuer will monitor compliance with the guidelines contained in this policy as well as any other covenants not specifically included herein and will review and update these guidelines at least annually and whenever necessary due to change in law or circumstances.

Councilor Nelson moved with a second by Councilor Otis to remove the resolution from the table at this time. So moved, the motion carried.

Councilor Nelson moved with a second by Councilor Otis to have the resolution read for a second time by title only. So moved, the motion carried.

Councilor Nelson moved with a second by Councilor Otis to have the resolution read for a third time by title only. So moved, the motion carried.

Councilor Nelson moved with a second by Councilor Otis to pass the resolution. So moved, the motion carried and Mayor Grenier declared the resolution now passed.

4. Communication from Laura Jamison re: Farmer's Market

Laura Jamison, WREN Berlin Farmers Market Coordinator, is officially requesting a Road Closure Permit for Pleasant Street. The purpose of the closure is to allow vendors to set up for a WREN coordinated weekly event for a Local Works Berlin Farmers Outdoor Marketplace. The event would run from June 28 until September 20, 2012 from 3:00–7:00 pm. The road closure would actually be from 1:30 pm until 8:00 pm for set up and take down of their stands. Wren would provide their own roadblocks on Pleasant Street from York Street to Green Street and would place signs around town to advertise the event.

Councilor Remillard moved with a second by Councilor Otis to allow Wren to close Pleasant Street from York to Green Streets from 1:30 – 8:00 pm from June 28 until September 20 for a Farmers Marketplace, as requested. So moved, the motion carried.

5. City Manager's Report.

**Property Sale Bids and Demolitions**

The properties on Western Ave, - 790, 661 and 653 - to be demolished have all been awarded for the demolition to All-Metals Recycling (AMR) which was the low bidder in the amount of \$11,500 for all three. This was put out in two bid packages and AMR was low bidder on both of them. Eight bidders bid and the high bid was \$101,900 for all three. The abatements have been completed on all but one of the buildings and so the demolitions should occur in the next couple of weeks.

Specifications for the demolition bids for 735 and 729 Second Ave and 483 School Street are being finalized will be put out to bid next week.

**Rite Aid Block Final Demolition**

The abatement work is now apparently complete and happily, the demolition of the remaining Penney's building has begun and should be finished this week. This demolition has opened up great views of the Albert Theater and District Court buildings from Pleasant Street. The vacant lot should be quite a bit more appealing to potential developers than the blight that has sat there for several years.

**Insurance RFQ**

We have put out a Request for quotes for most of the types of insurance that the City carries. These are health insurance, property liability insurance, workers compensation and unemployment compensation insurance. The proposals will be due in early March but after most of the health insurance figures for July 1, are finalized by the vendors. Council will remember that Primex which currently underwrites most of the City's health insurance will be transferring that to the new NH Interlocal Trust as of July 1<sup>st</sup>. Little should change with this transfer as the actual carrier is still Harvard-Pilgrim.

**Anti-degradation River Study RFQ**

Henry Noel, WWTF Supervisor has also developed an RFP for an anti-degradation river study of the Androscoggin River. It will study the river in the area of the WWTF plant as part of our overall effort to respond to the EPA order we have received. We have been working with our Engineer Wright Pierce and NH DES on this particular project. The study of the river will involve taking samples of the river both above and below the plant over an extended period of time to determine the impact of the plant effluent on the river itself. The information from the study will be used to support the City's request for change (increase in design flow from 2.6MGD to 3.0MGD) to our National Pollutant Discharge Permit (NPDES) which needs to be renewed two years from now.

**Fire Training in Berlin**

Over this past winter, Firefighter 1 training classes were held in Berlin at the Berlin Fire Station. This offered 120 hours of Firefighter 1 training for firefighters from throughout the north country and the state; two were from Berlin. The classes were held Mondays, Wednesdays and Saturdays with one weekend at the Fire Academy in Concord. There were 15 different instructors over the course of the class.

**Highway Safety Grants**

Attached are five letters received from the NH Highway Safety Agency indicating that the following five Highway Safety grants have been approved for the Berlin Police Department:

- OHRV Patrols
- Red Light Running Patrols
- Berlin Enforcement Patrols
- Berlin Bicycle Enforcement Patrols
- Berlin Sobriety Checkpoints

Each year these grants essentially provide the BPD with overtime funds to fund these enforcement efforts.

**Legislative Policy Process**

HB 1460 Defined Contribution Pension Plan. Currently, the State Retirement System to which municipalities belong is a defined benefit plan meaning that the benefits are defined in advance and whatever they are determined to cost is what the state and municipalities have to pay for the retirement plans. Because benefits have been mindlessly added to the plan over the years, the costs of the plan grew dramatically

leading to a huge unfunded liability in the plan. The State Legislature is now trying to deal with that difficulty and one of the approaches proposed in HB 1460 is to switch from the current defined benefit plan to a defined contribution plan. Under this approach, which more and more states and employers have been switching to, the public employer pays a known amount toward the plan and then the benefits of the plan must fit within whatever those payments are. This certainly makes great sense except for the fact that according to NHMA, there are some very significant up-front costs involved with making this switch. NHMA is rightly advocating that this needs to be studied and fully understood before making another leap of faith without having the actual cost in hand.

HB1658 TANF CAP. TANF (Temporary Assistance to Needy Families) provides state assistance to certain categories of needy families, very often single mothers with their children. This bill as introduced in the house was intended to limit TANF increases as a result of a supported mother have additional children while on the TANF support. However, because the state welfare law requires that municipalities support through local welfare any indigent person who doesn't have other means of support, most times when the state attempts to cap or cut back on some sort of public assistance for itself, it very often means that cost simply gets passed down the chain to localities who again by state law must find funds to support such families. This is not something municipalities get any choice about. It is required by state law. For these reasons NHMA opposed the original bill and also opposed an amendment provision to HB 1658 which was aimed at welfare fraud but also would have mandated that TANF payments not be increased during eligibility of a particular family for any reason. This latter section on no increases for any reason was dropped but the fraud provisions were retained by the House Finance Committee, and so it sounds as though the bill as it stands at the moment should not be too objectionable.

PWD Monthly Report and City Manager's Timekeeping available for review in the City Manager's Office.

Councilor Remillard asked where All-Metals Recycling comes from. The City Manager replied they are from Morrisville, Vermont. We take the low bidder and we had amazing bids lately and fortunately haven't been burned yet.

Councilor Nelson moved with a second by Councilor Otis to accept the City Manager's Oral and written report and place it on file. So moved, the motion carried.

6. Mayor's Report:

Mayor Grenier read a letter he received today into the record from Jackie Reardon, 444 Madison Avenue. Ms. Reardon, a lifelong Berlin resident, is diametrically opposed to the closure of the Health Department's visiting nurse program. She asked the Mayor and Council not to take away those jobs. On another matter, Ms. Reardon takes exception with the belief that the citizens do not take recycling seriously. She challenged why the city does not require the businesses to recycle as well which would bring in additional revenue. She knows that some Public Works employees have taken recycling and placed it in the regular garbage trucks. Ms. Reardon concluded that she knows some of the Public Works crew and appreciates the hard work that they do overall.

-Appointment: North Country Council Transportation Advisory Committee. Mayor Grenier nominated Beverly Raymond to the North Country Council Transportation Advisory Committee to represent the City of Berlin for a two year appointment with a term set to expire 4/30/14.

Councilor Nelson moved with a second by Councilor Theberge to accept Ms. Raymond as the City's representative to the NCC Transportation Advisory Committee. So moved, the motion carried.

Mayor Grenier reported that HB 1238 that went to Concord two times was tabled by the House since proponents of the bill had no votes to move it forward so it got killed. The Mayor vowed he would keep on top of this since it would affect the city.

Councilor Ducharme moved with a second by Councilor Morgan Allain to accept the Mayor's Report and place it on file. So moved, the motion carried.

7. Public Comments: No comments.

8. Council Comments:

Councilor Nelson asked the City Manager if we have provisions in the Welfare Department to prevent or track welfare fraud like the state does or are we too short of time or staff to do it.

The City Manager replied it is possible that the Welfare Guidelines address the issue of fraud. Our Welfare Office is a one-on-one process and we never disburse cash so it would be much more difficult for fraud to occur at the City level. He will ask the Welfare Officer about it.

9. Adjournment:

There being no further business before the Mayor and Council, Councilor Remillard moved with a second by Councilor Otis to adjourn the regular meeting. So moved, Mayor Grenier declared the regular meeting adjourned at approximately 7:50 p.m.

A True Record, Attest:

Debra A. Patrick, CMC

City Clerk