

## **Public Hearing – February 4, 2013**

Mayor Grenier opened the duly advertised public hearing portion of the meeting at approximately 7:49 p.m. to hear public comments on the following subject matter:

Resolution 2013-04 Authorizing a \$1 M Rural Development Loan for Godfrey Dam

There being no one wishing to speak for or against the subject matter, Mayor Grenier closed the public hearing portion of the meeting at approximately 7:49 p.m.

## **CITY COUNCIL MEETING – Monday, February 4, 2013**

Mayor Grenier called the Regular City Council Meeting to order at approximately 7:50 p.m. in the City Hall Council Chambers. The pledge of allegiance to the flag preceded roll call. Present: Councilors Remillard, Otis, Morgan Allain, Benski, Higbee, Rozek, Nelson and Théberge. Also present: Pat MacQueen, Linda White, Corinne Cascadden, Bryan Lamirande, BHS FCCLA Advisor Linda Lafleur, Richard Lafleur, Students and the press.

### **Minutes, Previous Meeting**

Councilor Remillard moved with a second by Councilor Otis to accept the minutes of the January 21 Regular Meeting/Work Session; January 28 Work Session. So moved, the motion carried.

**Disbursements:** Disbursement Summary Draft #1683 start date 1/24/2013; end date 2/06/2013 has a total cash disbursement of \$935,589.25. Councilor Theberge moved with a second by Councilor Nelson 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
2. Resolution 2013-04 authorizing and providing for the incurrence of indebtedness for the purpose of providing a portion of the cost of consultant services to provide best design solutions, competitive bidding, constructing, and/or improving, its water supply system transmission pipe line from Godfrey Dam to the Ammonoosuc Treatment Plant facility to serve an area lawfully within its jurisdiction to serve. (tabled 1/21/13) **Resolved by the City Council of the City of Berlin as Follows:**

WHEREAS, it is necessary for the City of Berlin (herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of up to One Million Dollars (\$1,000,000.00) pursuant to the provisions of New Hampshire Statutes Annotated: and  
WHEREAS, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) In the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association: NOW THEREFORE, in consideration of the premises the Association hereby resolves:

1. The City Council for the City of Berlin Water Works (the "City") hereby appropriates the sum of up to \$1,000,000 for a water supply infrastructure improvement project including, among other things, improvements to transmission pipeline (the "Project"); Up To \$1,000,000 of such sum to be raised through the issuance by the City of \$1,000,000 of its bonds or notes under and pursuant to the terms of the Municipal Finance Act, RSA 33, as amended (the "Bonds"), such Bonds to be sold to the United States Department of Agriculture, Rural Development or as otherwise determined to be in the best interests of the City by its Mayor, City Manager and Treasurer; the proceeds of the Bonds to be used, among other things, to pay off the outstanding principal amount of funds loaned to the City by the State Revolving Loan Fund. In accordance with the terms of the Letter of conditions; the Mayor,

the City Manager and Treasurer being hereby authorized to sign all documents and to take such other steps as are necessary to effectuate the intent of the foregoing; and all actions heretofore taken consistent with the foregoing; and all actions heretofore taken consistent with the foregoing hereby being ratified and confirmed.

2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983 (c) ).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including and "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenances, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of facility will be permitted.
11. To acquire and maintain such insurance and fidelity bond coverage as may be required by the Government.
12. To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof as required by the Government, to provide

the Government a copy of each such audit without its request, and to forward to the Government such additional information and reports as it may from time to time require.

13. To provide the Government at all reasonable times access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the Association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.
14. That if the Government requires that a reserve account be established, disbursements from that account(s) may be used when necessary for payments due on the bond if sufficient funds are not otherwise available and prior approval of the Government is obtained. Also, with the prior written approval of the Government, funds may be withdrawn and used for such things as emergency maintenance, extensions to facilities, and replacement of short lived assets.
15. To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain USDA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the Association or public body.
16. To comply with the measures identified in the Government's environmental impact analysis of this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.

The provisions hereof and the provisions of all instruments incidents to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instrument, shall be binding upon the Association as long as the bonds are held or insured by the government or assignee. The provisions of sections 6 through 16 hereof may be provided for in more specific detail in the bond resolution or ordinance; to the extent that the provisions contained in such bond resolution or ordinance should be found to be inconsistent with the provisions hereof, these provisions shall be construed as controlling between the Association and the Government or assignee. This resolution shall be in full force and effect from and after passage.

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

Councilor Nelson moved with a second by Councilor Morgan Allain to have the Resolution read a second time by title only. So moved, the motion carried.

Councilor Nelson moved with a second by Councilor Morgan Allain to have the Resolution read a third time by title only. So moved, the motion carried.

Councilor Nelson moved with a second by Councilor Morgan Allain to pass the Resolution at this time. So moved, the motion carried and Mayor Grenier declared the Resolution now passed.

## **NEW BUSINESS**

### **3. City Manager's Report City Manager Recruitment**

The deadline for City Manager applications was Friday February 1<sup>st</sup>. We have received 41 applications. Carl Weber and Rick Alpers from Primex will be here next Monday to go over things for the next step in the process which will be the ranking of the candidates by the subcommittee of the Council.

### **Department Budget Meetings**

Meetings have been held with most all the City Departments on their proposed budgets as the first step in beginning to put together the proposed FY 2014 annual operating budget.

### **Housing Matters**

554 Hillsboro (Sport-About Charlies) is complete until the spring when the final loaming and seeding will be done and the retaining wall completed.

The demolition of 115 Mason is out for bid. Bids are due on Thursday February 14, 2013.

Asbestos Inspection Survey have been completed on 432 and 325 Burgess, 3 Glen Avenue and 124.5 Norway. All came back with excessive asbestos and the abatement of that will be bid next week.

The Berlin CDBG Neighborhood Program closed out on January 18<sup>th</sup>.

The first Neighborhood Stabilization Program will close out at the end of March with all the rehabs completed. The demolition of 115 Mason, for which bids will be opened on February 14<sup>th</sup>, will complete the demolition portion of the grant.

Unfortunately, there is no new NSP funding available and we forewent the next CDBG Neighborhood Revitalization Program to allow Notre Dame to go forward. Nevertheless, we have applied for EPA Brownfields Assessment funds and Target Assessment Brownfields funds for 121 Main Street.

### **Jericho Warming Hut Summer Review**

Attached is a very interesting Visitor Analysis of ATV's that this past summer visited the White Mountain Ridge Runners Snowmobile Club Warming Hut that they built. This was put together by Assistant Trail Master, Larry Gomes. Based on this he is estimating that Jericho Park was visited by around 10,000 visitors and he is confident that it will continue to grow and become one of the biggest attractions in the North Country.

### **Chlor-Alkali Superfund Site**

Attached is a letter from the Director of Site Remediation and Restoration of the USEPA-New England, Region I, James T. Owens which after study has made the determination that the groundwater in the vicinity of the Site is medium use and value.

While I am not clear on what "medium use and value" mean, hopefully, this designation will help to reduce any future confusion regarding the development of the properties surrounding the Superfund Site.

### **LGC Change of Leadership**

It is noteworthy that the Leadership of the Local Government Center has changed with former NH DRED Commissioner George Bald taking a leave from his current position with Cate Street Capital to take a six-month stint as Interim Executive Director of the Local Government Center. As the Council is aware the recent past has been a difficult time for LGC due to its continuing dispute with the Secretary of State's Office over how it has determined and held its reserves primarily for its health trust. The issue actually started when John Andrews was still the Director and when he left Maura Carroll took over and had to deal with what has been a difficult time and terrible publicity for the LGC. Hopefully, George Bald taking over will help to get the LGC back to the very respectable advocate for municipalities which it has always been.

### **AVRRDD Annual Report**

Attached is the Waste District Annual Report. The big news for member municipalities is that the annual district apportionment for each member town is finally being reduced to little or nothing. These former costs are now being covered by income from the Mt. Carberry Landfill Budget which is great news.

### **NHDOT 10 Year Transportation Plan**

North Country Council has notified us that Commissioner of NH DOT will be making a presentation on the Future of New Hampshire Roads at the Mt. Omni Hotel on Monday February 11, at 4pm. This is also a meeting of the NCC Transportation Advisory Board. This doesn't work very well with our Council schedule, but it is an opportunity to speak to the Commissioner about transportation in the North Country.

### **Legislative Matters**

HB 623 SAG Public Hearing Set: A legislative hearing has been set for this issue which the City has taken a strong stand in favor of this Thursday, February 7<sup>th</sup> at 11am in LOB Rms 210-212. It would be great if any Councilors were planning to be in the Concord area on Thursday to express city support for that bill which would re-appropriate deferred state 20% money for water and wastewater projects undertaken by municipalities. We will be sure to send copies of our prior letters of support to the House Finance Committee Chairman, Mary Jane Wallner.

### **PWD Report and Manager's Time-keeping available for public review in City Manager Office.**

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

4. Mayor's Report - Proclamation: FCCLA Week February 10-16.

Mayor Grenier stated that after Councilor Ducharme resigned, no replacement was made to fill her position as the Ward 2 Councilor on the Airport Authority. Since the City Charter still reads four wards, he asked Council to fill this position. Councilor Benski said she is willing to fill the vacancy. That said, Councilor Rozek moved with a second by Councilor Nelson to appoint Councilor Benski to the Airport Authority. So moved, the motion carried.

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

5. Public Comments:

Corinne Cascadden, School Superintendent, reported that they are working diligently to align their budget for a zero percent increase. A public hearing on the proposed school budget will be Thursday, 6:00 pm. Ms. Cascadden thanked Council for recognizing the FCCLA Students tonight.

Linda White, Housing Coordinator for the City of Berlin, explained as a follow up to why she believes it is in the City's best interest to put properties out to public bid and by properties it means land with homes/buildings. In rereading the Master Plan and Housing and Community Development Plan adopted by the City Council, it encourages positive investment in Berlin. It expands the potential buyer base, creating a fair and more competitive bidding process. It allows those individuals who have not previously owned a property, to invest as a first-time home buyer and build "sweat-equity." When you sell properties to abutters only, there are some challenges like the identification of what is an abutter. The city ordinance states that an abutter is any person whose property adjoins or is directly across the street or stream from the land under consideration by the land use board. When we are dealing with land and the ability to merge that property, it limits us to the properties directly adjoining. The problems with putting out properties to abutters only is that it eliminates every potential investor outside of Berlin, it eliminates potential investors who live in Berlin but do not presently own properties. Ms. White was challenged when a property owner who was an abutter wasn't interested in purchasing the abutting property but had a lease/purchase agreement with their renter. Even though the renter wanted to purchase the abutting property, they were not considered the abutter since they only had a lease/purchase agreement at the time and weren't actually the owner. Another issue is the small percentage of actual abutters that may have interest, ability and financial capability to purchase and improve a home or property. We have young investors coming in looking to invest as first time homebuyers who are able to purchase and do the necessary improvements. Ms White wanted Council to be aware of all the facts to make it a wise move for Council to put these properties out to general bid. It would be in the best interest for Berlin in terms of gaining that tax base back for those properties and for moving them quickly.

6. Council Comments: No comments.

7. Adjournment:

There being no further business before the Mayor and Council at this time, Councilor Rozek moved with a second by Councilor Nelson to adjourn the regular meeting. So moved, the motion carried and Mayor Grenier declared the regular meeting closed at approximately 8:14 p.m.

A True Record, Attest:  
Debra A. Patrick, CMC  
City Clerk