

PUBLIC HEARING – January 6, 2014

Mayor Grenier opened the duly advertised public hearing portion of the meeting at approximately 7:39 p.m. to hear public comments on the following subject matter:

Petition to Amend Pole and Conduit Licenses.

Mayor Grenier stated we will now conduct a hearing on a Petition to universally amend the pole and conduit licenses (agreements) the City Council or their agent has issued for poles and conduits in the public rights-of-way by gas and water companies to require payment of properly assessed property taxes and notify the City of additional attachers on the poles and conduits, as required by the New Hampshire law. The City Council received the Petition on December 16, 2013 from Michael Perreault. The Mayor did not read the petition out loud because of its length but stated that copies were available for public review.

Mayor Grenier asked Petitioner Michael Perreault if he wished to address the City Council and explain why the licenses and agreements need to be amended.

Mr. Perreault thanked the Mayor for the opportunity to explain that the amendments proposed are in the public good because they would change the licenses and agreements to comply with the requirements of New Hampshire law by referencing the statutory scheme which authorizes the city to tax entities with poles and conduits in the public rights-of-way and others using the rights-of-way. Additionally, the amendments would require the license holders and those with such agreements to notify the City of additional attachers on the poles and conduits who have perhaps avoided taxation until now. Properly assessing property taxes against all entities using the public rights-of-way is required under the law and is in the public good.

The law of New Hampshire is clear at this time that licenses such as those held by license/agreement holders are required by law to include a section requiring the licensee to pay properly assessed real and personal property taxes. Specifically, I point the City Council to the cases of *N.E. Tel. Tel. Co. v. City of Rochester*, 144 N.H. 118 (1999) ("Rochester I"), *Verizon New England, Inc. v. City of Rochester*, 151 N.H. 263 (2004) ("Rochester II"), *N.E. Tel. Tel. Co. v. City of Rochester*, 156 N.H. 624 (2007) ("Rochester III"). This requirement also covers others with agreements with the City to use the right-of-way, such as gas or water companies.

Additionally, RSA 72:23, I(b) currently requires that all leases or other agreements for the use or occupation of real property owned by the City "shall provide for the payment of properly assessed real and personal property taxes by the party using or occupying said property no later than the due date."

The law also requires that if the lease or person using or occupying the property fails to pay the duly assessed real and personal property taxes of the due date, the tax collector must notify the City and the City must terminate the lease or agreement. RSA 72:23, I(c).

The Petition to the City Council is to universally amend the licenses and agreements they have issued for conduits or poles or water or gas pipes in the public right-of-way to include these requirements and the requirement for the licensee to notify the City of additional attachers on the pole or conduit to conform to the law.

The Mayor asked if any of the current license and agreement holders and/or citizens if they wished to speak at this time. There was no one present but PSNH respectfully requested that the following letter be included in and made part of the record of the minutes of the public hearing of this matter on January 6, 2014. The City Clerk read the following letter into the record which appears verbatim: "Dear City Council: The undersigned is legal counsel to Public Service Company of New Hampshire ("PSNH"). PSNH has received your notice of a public hearing at which the City of Berlin will take up the matter of the universal amendment of existing pole and

conduit licenses in the City, to require the payment of properly assessed property taxes, and to require licensees to provide information pertaining to entities attached to their poles or conduits. This is to advise that, to the extent the proposed amendments seek to make language changes to the pole licenses of PSNH consistent with RSA 72:23, and the rulings of the New Hampshire Supreme Court in *N.E. Tel. & Tel. Co. v City of Rochester*, 144 N.H. 118 (1999) and *Verizon New England v. City of Rochester*, 151 N.H. 263 (2004), PSNH does not intend to raise a legal objection to the amendments. However, this should not be construed as a waiver of PSNH's rights to protest, seek an abatement of, or otherwise legally challenge as excessive or disproportionate the assessment by the City of Berlin of any incremental property tax upon PSNH's use or occupancy of the public right of ways in Berlin, and PSNH fully reserves all such rights.

PSNH does, however, object to the proposed amendments to include the requirements or condition that the licensee (1) notify within 90 days of the date of amendment each attacher to the licensee's poles or conduit, by serving a copy of the petition, (2) submit to the City Clerk a complete list of attachers to each pole or conduit, listing the pole or conduit locations of each, and (3) update annually on or before May 1st, for changes which occurred in the prior period between April 1st and March 31st of that year, the information provided to the City Clerk, including the location of additional attachers, and any attachers that have removed or added new attachments. These requirements are not revisions required under RSA 72:23, or the New Hampshire Supreme Court cases interpreting that statute, in order to legally assess and tax either the facilities or equipment of the named licensee, or the use and occupancy of the public right of way by the named licensee. Furthermore, such other attachers, to the extent they may exist, are required to license or permit their facilities located within the public rights of way with the City of Berlin pursuant to RSA 231:159, et seq., just as PSNH is. Consequently, the identity of attachers utilizing the public rights of way, whether by attachment to existing utility poles, conduit or otherwise, should be obtainable from Berlin's own public highway licensing records. PSNH is not aware of any statute or other provision of law in New Hampshire which authorizes the City of Berlin to compel PSNH to provide this information as a requirement or condition of a pole or conduit license.

We also bring to your attention that, in accordance with the requirements of RSA 374:34-a, public utilities such as PSNH must provide non-discriminatory access to their distribution poles and conduit to certain third parties seeking to use them for attachment of their own lines, cables and appurtenances. Under existing regulations of the New Hampshire Public Utilities Commission (PUC 1303.08), such third parties are required to clearly label their attachments with owner identification. This affords another means by which the City may obtain its own information pertaining to attachers utilizing the public rights of way.

Under the above circumstances, PSNH maintains it is neither legally necessary, nor fair or reasonable, to require a licensee to provide or report to the City information about others using the licensee's poles or conduits licensed in the public right of way. Such a license amendment is not required in the public good." Signed: Christopher J. Allwarden, Senior Counsel, Legal Department.

There being no one else wishing to speak about the subject matter at this time, the Mayor declared this portion of the public hearing closed.

Mayor Grenier opened the other portion of the public hearing to the following:

- Ordinance 2014-01 Permits for Parades or Processions. No Comments
- Resolution 2014-01 Amend Welfare Guidelines. No Comments

There being no one wishing to speak for or against these other subject matters, Mayor Grenier closed the public hearing portion of the meeting at approximately 7:50 p.m.

CITY COUNCIL MEETING – Monday, January 6, 2014

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, Higbee, Rozek, Nelson and Theberge. Councilor Benski phoned to say she would not be present due to illness. Also present: James Wheeler and the press.

Minutes, Previous Meeting

Councilor Remillard moved with a second by Councilor Otis to accept the minutes of the December 16 Work Session and Regular Meeting. So moved, the motion carried.

Disbursements: Disbursement Summary Draft #1706 start date 12/17/2013 end date 1/6/2014 for a total cash disbursement of \$2,820,810.90. 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. Councilor Theberge stated there was a meeting with the Berlin/Gorham Police Department to discuss the use OHRV's on city/town streets. He will give Council a future update on their recommendations.
2. Ordinance 2013-10 Amend the Code of Ordinances, Chapter 15, Traffic & Vehicles, Article III. Stopping, Standing & Parking, Sec. 15-69. Prohibited at all times in designated places by adding "No Parking, Vehicles will be Towed" signs from a point 20 feet south from the southern edge of the driveway at 709 Western avenue where it meets the public road to a point that is 75 feet north of the northern edge of the driveway at 709 Western Avenue where it meets the public road.
(tabled 12/02/2013; re-tabled 12/16/2013)

Be it ordained by the City Council of the City of Berlin as follows: That Sec. 15-69. is hereby amended by adding the designation depicted below:

Sec. 15-69. Prohibited at all times in designated places.

When signs are erected, or other markings made, giving notice thereof, no person shall park a vehicle at any time upon any of the following streets or parts of streets longer than necessary to load or unload passengers or commodities: "No Parking" shall be from a point 20 feet south from the southern edge of the driveway at 709 Western Avenue where it meets the public road to a point that is 75 feet north of the northern edge of the driveway at 709 Western Avenue where it meets the public road. This Ordinance shall be in full force and effect from and after passage.

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

Councilor Remillard moved with a second by Councilor Higbee to amend the ordinance by removing: "No Parking Vehicles Will be Towed on either side of the driveway at 709 Western Avenue" and replaced with the following language: "No Parking shall be from a point 20 feet south from the southern edge of the driveway at 709 Western Avenue where it meets the public road to a point that is 75 feet north of the northern edge of the driveway at 709 Western Avenue where it meets the public road." So moved, the motion carried.

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

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

Councilor Remillard 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.

3. Ordinance 2014-01 Amending the Code of Ordinances, Chapter 15 Traffic and Vehicles, Article I. in General. Sec. 15-11. Permits for Parades and Processions. (tabled 12/16/2013)
Be it ordained by the City Council of the City of Berlin as follows:

That Sec. 15-11. is hereby amended by adding the designation depicted below.

Sec. 15-11. a) No procession or parade containing twenty-five or more persons, or ten or more vehicles, excepting the military forces of the State of New Hampshire and of the United States shall occupy, march or proceed along any street except in accordance with a permit issued by the City Clerk who shall have first coordinated the activity with the Police Chief and Fire Chief. The permit shall be issued on condition that the sponsor or promoter of the procession or parade is in full compliance with the N.H. RSA, Chapters 105:9 or 105:9a and all other applicable provisions thereof. No materials of any kind are permitted to be thrown, ejected, spewed or discharged from any float, object or moving vehicle involved in a parade or procession without prior approval of the City Council. This ordinance shall be in full force and effect from and after passage.

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

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

Councilor Nelson moved with a second by Councilor Higbee to read the ordinance a third time by title only. So moved, the motion carried.

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

4. Resolution 2014-01 Amend the City of Berlin Guidelines for the Administration of General Assistance (Welfare Guidelines). (tabled 12/16/2013)
Resolved by the City Council of the City of Berlin as follows:

Whereas the City of Berlin adopted specific guidelines on January 3, 2005, revised such guidelines March 19, 2007, and March 15, 2010 so as to be in compliance with State Statutes regarding the administration of General Assistance; and

Whereas these Guidelines must be updated to be in compliance with the Constitution and New Hampshire Statutory law. Now therefore, be it resolved: That the Guidelines for the Administration of General Assistance, as adopted on January 3, 2005, revised March 19, 2007 and March 15, 2010 are hereby amended as stipulated in the attached document. Be it further resolved that these amendments shall be incorporated into the text of the guideline document and be used to administer the General Assistance Program of the City of Berlin. This Resolution shall be in full force and effect from and after passage.

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

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

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

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

NEW BUSINESS

5. Vote on the Petition to Amend Pole Licenses and Agreements to use the public Rights-of-Way.

Councilor Remillard moved with a second by Councilor Morgan Allain to grant the Petition to Amend Pole Licenses and the Agreements to use the public rights-of-way.

Councilor Higbee, as a point of clarification, asked if we were asking PSNH to go beyond what the law requires. Mayor Grenier said that other than having Sansoucy and his staff go out there to count every single pole which they do every five years, we are asking the utilities to give a report every year on additions/deletions to their poles like we ask the Board of Assessors to do through their contract. We are asking the utility, seeing they have the information at their fingertips, to help the City record any additions/deletions to their real property and rights to the City is how the Mayor determines the request. The City Manager concurred and said it is not an unreasonable request although it might be an issue that needs to be worked through. The motion resulted in unanimous affirmative votes including Mayor Grenier who declared the motion passed.

6. City Manager's Report
\$1M Grant Expended

I am pleased to report that the \$1M grant which the City acquired as part of a grant/loan package from the Rural Development Administration in 2002 has been completely expended on the Hutchins St. Sewer Upgrade project. A requirement of the grant/loan package was that all loan money had to be expended before the grant could be utilized.

Hutchins St. Reconstruction Project out to Bid

The reconstruction project slated for the next construction season is currently advertised for bid. The most detailed estimate to date, not including construction monitoring, is \$363,000. Bids will be received and opened on January 30, 2014.

Food Coop Grant Application Successful

The City has been successful in acquiring the \$12,000 CDBG planning grant from CDFA for studying a food coop. The grant will be used to hire a consultant to determine whether Berlin can support a food cooperative and if so, how large of a store, how many employees, the expected revenues, etc.... WREN will be taking the lead and the City will support them by doing the administrative work for the project, which should be minimal at best. We received the grant in early December. We plan to put out RFP's later this month and hope have the feasibility work completed by summer.

City has received Updated Insurance Certificates for Designated Trails

The City has received the updated insurance certificates for \$1M in liability coverage from the State for designated trails in the City as well as across airport property.

State Assessing Standards Board

The Assessing Standards Board will hold a public forum on **Friday, January 31, at 9:00 a.m.**, to accept public comment on the *DRAFT Assessing Reference Manual for Taxpayers, Selectmen and Assessors*. This manual prescribes the standards to be used in assessing and assigning tax values in the communities throughout the State. The manual was first drafted in 2008. The current DRAFT is the first revision of this manual. I will be reviewing the manual and will consider attending the public comment session.

NHDOT Commissioner Clement to Present on Block Grant Program at NHMA

New Hampshire Department of Transportation Commissioner Christopher Clement will present an update on the status of highway infrastructure needs and funding at NHMA's office on January 17th at 11:00 am. His presentation will focus on explaining the extent of our state's transportation infrastructure funding deficiencies, the impact on municipalities, and the legislative proposals to address these needs. Specific topics, including time for questions and answers, will include:

- Distinction between the highway fund and the turnpike fund
- Road and bridge conditions
- I-93 funding
- Implications for municipal block grant funding.
- Legislative proposals to address long-term highway needs

This presentation will be held in conjunction with a meeting of the Municipal Managers' Association, but it is open to all municipal officials from NHMA member municipalities.

Legislative Update

Following are several proposed legislative citations taken from the NHMA Legislative Bulletins 1 and 2 for the New Year, 2014. Additional explanation has been added in bold where appropriate.

HB 1346 requires that 100 percent of funds appropriated to the highway fund, net of highway block grant aid, shall be allocated to the department of transportation and used for the construction, reconstruction, and maintenance of public highways. Rep. O'Flaherty of Manchester; PW.

HB 1455-LOCAL (relative to) the authority of municipalities to make agreements with renewable energy facilities for payments in lieu of taxes. Rep. Rappaport of Colebrook; ST&E. **[removes the requirement to equalized properties that are operating under a PILT]**

HB 1590-LOCAL permits owners and lessees of certain renewable generation facilities in unincorporated places to enter into agreements with counties to make a payment in lieu of taxes. Rep. Theberge of Berlin; ST&E. **[deducts the revenue collected under the PILT from the total amount of County appropriations to be funded by taxes]**

HB 1573-FN eliminates regional planning commissions and requires that all municipal planning board members, other than ex officio members, be elected. Rep. Cormier of Alton; M&CG.

January/February 2014 Town and City Issue

Attached is a copy of the cover of the most recent issue of Town and City. The issue contains an article on the use of CDBG funds. The cover photo is a picture of Mayor Paul Grenier in front of the Notre Dame building. This project is cited in the article as an affordable

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

Councilor Remillard asked where the Assessing Forum will be held. Mayor Grenier said at DRA.

Councilor Theberge asked if the Hutchins Street construction will start sooner than later this year. The City Manager replied that it will dovetail work completed by the sewer contractor which should be around May.

7. Mayor's Report - No Report

8. Public Comments – No comments

9. Council Comments – No comments

10. Adjournment:

There being no further business before the Mayor and Council at this time, Councilor Rozek moved with a second by Councilor Higbee to adjourn the regular meeting. So moved, the motion carried and Mayor Grenier declared the regular meeting closed at approximately 8:12 p.m.

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