



**MUNICIPAL COUNCIL AGENDA
CHESTER R. MARTIN MUNICIPAL COUNCIL CHAMBERS
141 OAK STREET, TAUNTON, MA 02780**

~
October 23, 2012 – 7:00 PM

**INVOCATION
ROLL CALL
RECORDS**

HEARING: NONE

COMMUNICATIONS FROM THE MAYOR

APPOINTMENTS

- Re-appointment of William Tranter, 198 White Pine Drive to the Board of Registrar of Voters for a term of (4) years, expiring April 30, 2016.

COMMUNICATIONS FROM CITY OFFICERS

Pg. 1-2 Com. from Mayor Hoye – Taunton HOPE VI – HUD Section 108 Loan

Pg. 3-9 Com. from City Solicitor – Providing an update on the Sewer Betterment/I&I Fee Litigation

Pg. 10-11 Com. from Executive Director, Taunton Housing Authority – Submitting an approved conservation restriction for THA HOPE VI Revitalization Project (**SEPARATE PACKET**)

PETITIONS

COMMITTEE REPORTS

UNFINISHED BUSINESS

- That the Municipal Council take a vote for the approval of the SAFER Grant received by the Taunton Fire Department.

RECEIVED
CITY OFFICES OFFICE
2012 OCT 19 A 9:45
CITY CLERK

ORDERS, ORDINANCES AND RESOLUTIONS

Order for a first reading to be passed to a second reading

Ordered That,

The Mayor, as Chief Elected Official, and the Treasurer are hereby authorized to borrow \$2,000,000 for the purpose of providing funding to the Taunton Housing Authority (“THA”) to acquire property and assist with the demolition, clearance, and site preparation of the THA’s Fairfax Gardens HOPE VI project development and to issue one or more federally guaranteed notes therefore in accordance with Section 108 of Title I of the Housing and Community Development Act of 1974 as amended, 42 U.S.C s5308 (“Title I”), and Chapter 74 of the Acts of 1945 as amended, and to execute any other documents necessary to carry out this transaction.

Order for a first reading to be passed to a second reading

Ordered That,

In order to reduce interest costs, the Treasurer, with the approval of the Mayor, is authorized to provide for the sale and issuance of refunding bonds under G.L. C.44, Sec. 21A to refund all or any portion of the remaining principal of and redemption premium and interest on any bonds of the City outstanding as of the date of adoption of this Order, and for the payment of all other costs incidental and related thereto, and that the Mayor and the Treasurer are each authorized to take any and all other action necessary to carry out the purposes of this Order.

Further Ordered:

That the Treasurer is authorized to file an application to qualify under Chapter 44A of the General Laws any and all of the bonds or notes authorized to be issued pursuant to this Order, and to provide such information and execute such documents as may be required for such purposes.

Order for a first reading to be passed to a second reading

Ordered That,

\$3,676,200 is appropriated for the purpose of paying costs of various projects for the Taunton Municipal Light Plant in the approximate amounts as described below:

<u>Project</u>	<u>Approximate Amount</u>
115KV Switch Upgrade	\$ 110,000
Station #16 Upgrade	\$1,500,000
#9 Turbine Roof Repair	\$ 737,000
#8 Fuel Tank Containment Improvements	\$ 603,000
West Water Street Envelope Upgrades	\$ 600,000
55 Weir Street Roof Repair	\$ 126,200

And for the payment of all costs incidental and related thereto; that to meet this appropriation the Treasurer, with the approval of the Mayor, is authorized to borrow

\$3,676,200 under and pursuant to Chapter 44, Section 8(8A) of the General Laws, or pursuant to any other enabling authority, and to issue bonds or notes of the City therefore.

Ordinance for a second reading to be passed to a third reading

AN ORDINANCE

Chapter 4 - Buildings

ARTICLE III. Building Code

Be it ordained by the Municipal Council of the City of Taunton as follows:

Section 1. Article III of Chapter 4 of the Revised Ordinances of the City of Taunton, as amended, is hereby further amended by inserting after Section 4-43 the following new section:

4-44. Technology Fee Surcharge

There is hereby established a Technology Fee Surcharge of four percent (4%), which shall be in addition to the cost otherwise established by law on all permit fees, license fees, inspection fees, and enforcement levies charged by the Building Department and the Fire Department. The purpose of the Technology Fee Surcharge is to offset the cost to the city of the acquisition and maintenance of all equipment and software and the training and administrative expenses associated with an electronic permitting system.

Section 2. All ordinances or parts thereof inconsistent herewith are hereby repealed. This Ordinance shall become effective immediately upon passage.

NEW BUSINESS

Respectfully submitted,



**Rose Marie Blackwell
City Clerk**

City of Taunton Office of the Mayor

Thomas C. Hoye, Jr.
Mayor

Alyssa Gracia
Assistant to the Mayor



141 Oak Street
Temporary City Hall
Taunton, MA 02780
Tel. (508) 821-1000
Fax. (508) 821-1005

Gill E. Enos
Budget Director
October 23, 2012

Council President Ryan Colton
Members of the Municipal Council
City Hall - 141 Oak Street
Taunton, MA 02780

Re: Taunton HOPE VI – HUD Section 108 Loan

Dear Council President Colton and Members of the Municipal Council:

Enclosed please find a municipal order authoring the Treasurer to borrow \$2 million from the U.S. Department of Housing and Urban Development (HUD) to be used as a source of funding for the Taunton Housing Authority's (THA) HOPE VI revitalization project. The order will also allow for the Mayor to sign all necessary documents required by HUD.

As you are aware, the THA received a \$22 million HOPE VI grant from HUD in May 2011. As part of their HOPE VI grant application submitted in November 2010, a funding commitment from the City was necessary to demonstrate local support for the project and to strengthen the competitiveness of the application. Due to the limited local funds available, former Mayor Crowley provided the THA with a commitment from the City to use a portion of our Community Development Block Grant (CDBG) funds annually to pay for a \$2 million HUD Section 108 loan. I have enclosed a copy of this commitment letter for your review. Following the successful HOPE VI award, the city's Office of Economic and Community Development submitted a formal application for Section 108 funds to HUD in November 2011. After several months of review, HUD officially approved the Section 108 on September 21, 2012. Along with this approval of the Section 108 loan, the City will also receive a \$1 million Brownfield Economic Development Initiative (BEDI) grant. This is a grant that does not need to be repaid and will be used for soil remediation at Parcel 6A.

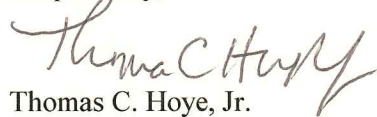
A City of Firsts
First Woman Town Proprietor- First Female Entrepreneur
First to Fly Liberty & Union Flag- First Major Silver Manufacturing Center

The City's \$2 million commitment of Section 108 funds helped leverage a significant amount of resources, including the \$22 million HOPE VI grant, a \$1 million BEDI grant, and approximately \$50 Million in private equity, which will be used to revitalize two troubled sites in Taunton – Fairfax Gardens and Parcel 6A, and help to provide job opportunities and stimulate the local economy.

Please note that the repayment for the Section 108 loan will not directly impact the municipal budget, since only CDBG grant funds from HUD will be used to pay the Section 108 HUD loan. Therefore, we will be using federal HUD funds to repay federal HUD funds. In addition, no other city source of funds or city property will be pledged as collateral for this loan.

Thank you for your attention to this matter.

Respectfully,



Thomas C. Hoye, Jr.
Mayor

Cc: Mr. Kevin Shea, Executive Director, OECD
Ms. Colleen Doherty, Executive Director, THA



City of Taunton

LAW DEPARTMENT

141 Oak Street
Taunton, Massachusetts 02780
Phone (508) 821-1036 Facsimile (508) 821-1064



Thomas C. Hoye, Jr.
MAYOR

Jason D. Buffington
CITY SOLICITOR

Daniel F. de Abreu
ASST. CITY SOLICITOR

October 16, 2012

Honorable Mayor Thomas C. Hoye, Jr.
Members of the Taunton Municipal Council
141 Oak Street
Taunton MA 02780

RE: Sewer Betterment/I&I Fee Litigation

**Macdonald et al. v. Hoye et al.
Bristol Superior Court, Docket Nos. BRCV2010-00848, 00849, 00850**

**Macdonald et al. v. Colton et al.
Bristol Superior Court, Docket No. BRCV2012-00959**

Dear Mayor Hoye and Members of the Municipal Council:

I write at this time to provide you an update as to the above-referenced cases.

As you will recall, on or about July 16, 2010, Attorney John Holgerson, of the Taunton law firm of Gay & Gay, P.C., filed three lawsuits against the City of Taunton. In addition to being the Plaintiffs' counsel, Mr. Holgerson is also an owner of one of the affected parcels, and in fact his wife (but not he) is one of the named Plaintiffs.

These lawsuits centered around two issues: sewer betterments and I&I Fees. First, Mr. Holgerson essentially claimed that the City could not legally assess more than one-third of the cost of the sewer expansion projects to the property owners (even though many of them actually petitioned the City for the projects and acknowledged a 100% cost). Second, he claimed that the City's I&I Fee ordinance was illegal.

On February 1, 2011, the Bristol County Superior Court (a) rejected the Plaintiff's claim that the City's planned sewer assessments were unlawful, and (b) nullified the City's I&I

Fee ordinance because it found that the ordinance was unlawful. The Plaintiffs then appealed the first part of the decision and the City appealed the second part of the decision. On October 5, 2011, while the appeal was pending, the Superior Court ruled that the City had to stop collecting the I&I Fees, that it had to issue refunds of I&I Fees already collected from some of the Plaintiffs, and that it had to pay more than \$300,000 in other I&I Fees collected to the Court to be held in escrow, pending the ultimate outcome of the cases.

In January 2012, the Hoye administration took office and Assistant City Solicitor Daniel F. de Abreu and I filed our appearances with the Court on behalf of the City and started handling the further litigation of these cases. In February 2012, the Massachusetts Appeals Court heard oral argument, and the City was ably represented at this hearing by Attorney de Abreu.

On August 9, 2012, the Massachusetts Appeals Court entered a very favorable decision for the City. In that decision, the Appeals Court (a) affirmed the Superior Court's decision pertaining to sewer betterments, and (b) vacated the Superior Court's nullification of the City's I&I Fee ordinance. On August 16, 2012, upon motion of the City, the Superior Court lifted the previous prohibition and allowed the City to start collecting the I&I Fees again.

The Plaintiffs then filed an application for further appellate review with the Supreme Judicial Court, which essentially asked the highest court in the Commonwealth to hear the case and overturn the Appeals Court ruling. The City fought this request, and on September 27, 2012, the Plaintiffs' application for further appellate review was denied.

On October 9, 2012, the Superior Court entered final judgment in the cases, which judgment is decisively in the City's favor. On October 15, 2012, the City received a check from the Bristol Superior Court in the amount of \$360,685.59. In connection with these cases, enclosed you will find copies of the following:

1. The \$360,685.59 check;
2. The Supreme Judicial Court ruling denying the application for further appellate review;
3. The final Superior Court judgment.

Apparently undaunted by the above, Mr. Holgerson filed another lawsuit on September 4, 2012 against the entire Municipal Council, the Assessor, the Treasurer/Collector, the City Auditor, the DPW Commissioner, and the City of Taunton. In this latest lawsuit, Mr. Holgerson again asks the Court to stop the City from assessing sewer betterments and again asks the Court to declare that the City's I&I Fee ordinance is unlawful.

The City will obviously continue to fight this latest lawsuit on the same issues by the same Plaintiffs represented by the same attorney. Within the context of the latest lawsuit, the Plaintiffs filed a motion for a preliminary injunction. This is a legal maneuver, usually made at the beginning of the case, which asks the Court, pending the outcome of the case, to order the other party to do or refrain from doing a certain thing.

In this latest case, the Plaintiffs asked the Court to enjoin the City from assessing any sewer betterments on any of the Plaintiffs' properties, even though the work is virtually completely finished. On September 13, 2012, a hearing was held on this request at the New Bedford Superior Court before Judge Moses. On September 14, 2012, Judge Moses denied the Plaintiffs' motion for a preliminary injunction, finding that the Plaintiffs "have failed to establish a reasonable likelihood of success on the merits and further, that the granting of the subject preliminary injunction would not be in the public interest."

There is, therefore, no legal impediment to the City beginning the process of assessing these sewer betterments, a process that I believe will be commencing in the near future. Please know that this case will continue to be vigorously defended by the Taunton Law Department.

I would also like to take the opportunity to publicly commend Assistant City Solicitor de Abreu for all of the exceptional work that he has contributed to this case and many other matters. He is truly a credit to the City of Taunton.

Please feel free to contact me directly with any further questions that you may have.

Very truly yours,

Jason D. Buffington, Esq.
City Solicitor

Enclosures

- cc: DPW Commissioner Fred Cornaglia
- Assessor Barry Cooperstein
- Treasurer/Collector Wendy Graves
- City Auditor Ann Hebert

6.

VERIFY THE AUTHENTICITY OF THIS MULTI-TONE SECURITY DOCUMENT. CHECK BACKGROUND AREA CHANGES COLOR GRADUALLY FROM TOP TO BOTTOM.

COPY-BAN CAPTURE WITH FRAUD PROTECTION

2192863

5-7515
0110

Sovereign Bank, N.A.

PART OF THE SANTANDER GROUP

OFFICIAL CHECK

Memo: Docket#BRCV2010-00848-A

*****360,685.59

10/12/2012

Branch: 0176

Void If Amount Over *****360,685.59

PAY TO THE
ORDER OF ***City of Taunton***

Drawer: Sovereign Bank, N.A.

Janice Ann... [Signature]
AUTHORIZED SIGNATURE

DRAWEE: SOVEREIGN BANK, N.A. ISSUED BY: SOVEREIGN BANK, N.A.

Security Features Included Details on Back

⑈ 2192863 ⑆ ⑆ 011075150 ⑆ 98500936889 ⑆

7.

Supreme Judicial Court for the Commonwealth of Massachusetts

John Adams Courthouse

One Pemberton Square, Suite 1400, Boston, Massachusetts 02108-1724

Telephone 617-557-1020, Fax 617-557-1145

Jason D. Buffington, City Solicitor
141 Oak Street
Taunton, MA 02780

RE: Docket No. FAR-21065

LOIS MACDONALD & others

vs.

CITY OF TAUNTON & others (and two companion cases).

Bristol Superior Court No. BRCV2010-00848

A.C. No. 2011-P-1186

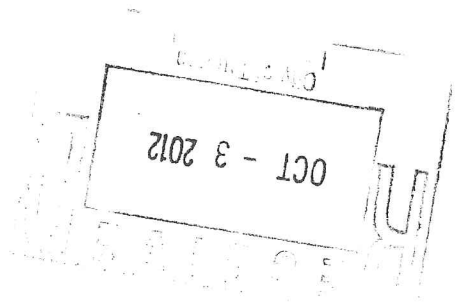
NOTICE OF DENIAL OF F.A.R. APPLICATION

Please take note that on 09/27/2012, the above-captioned Application for Further Appellate Review was denied.

Susan Mellen, Clerk

Dated: September 27, 2012

To: John L. Holgerson, Esquire
Jason D. Buffington, City Solicitor



8.

Commonwealth of Massachusetts
County of Bristol
The Superior Court

CIVIL DOCKET# BRCV2010-00848

RE: **Macdonald et al v Hoye, Jr., Mbr. Com on Dept. of Pub. Wks/Taun. Mun.
Council et al**

TO: Jason D Buffington, Esquire
P. O. Box 1228
9 Leonard Street
Taunton, MA 02780-

NOTICE OF JUDGMENT ENTRY

This is to notify you that a judgment in the above referenced action has been entered on the docket. A copy of the judgment is enclosed.

Dated at Taunton, Massachusetts this 9th day of October, 2012.

Marc J. Santos, Esq.,
Clerk of the Courts

Commonwealth of Massachusetts
County of Bristol
The Superior Court

9.

CIVIL DOCKET# **BRCV2010-00848**
Appeals Court # 2011-P-1186

LOIS MACDONALD, ET ALS

VS

PUBLIC WORKS OF TAUNTON MUNICIPAL, ET ALS.

JUDGMENT AFTER RESCRIPT

This action was appealed to the Appeals Court for the Commonwealth, the issues having been duly heard and the Appeals Court having duly issued a rescript affirming the Judgment of the Superior Court,

It is **ORDERED** and **ADJUDGED**:

JUDGMENT after rescript: ". . . The part of the judgment that declares that Taunton's sewer assessments and interest charges comply with statutory law is **AFFIRMED**. The part of the judgment that nullifies Taunton's removal fee system is vacated."

Dated at Taunton, Massachusetts this 9th day of October, 2012.

By the Court (McGuire, J.)



Marc J. Santos, Esquire, Clerk of Courts

TAUNTON HOUSING AUTHORITY

30 OLNEY STREET - SUITE B
TAUNTON, MASSACHUSETTS 02780-4141



EQUAL HOUSING
OPPORTUNITY

COMMISSIONERS

JULIANN CARDIN
F. ROGER HOFFMANN
ARTHUR LOPES
ALAN PELLETIER
NANCY PINA

TEL. (508) 823-6308
FAX: (508) 822-3460
TDD: 1-800-439-2370
www.tauntonhousing.com

EXECUTIVE DIRECTOR
COLLEEN M. DOHERTY

October 18, 2012

Council President Ryan Colton
Members of the Taunton Municipal Council
141 Oak Street
Taunton, MA 02780

Re: THA HOPE VI Revitalization Project – Conservation Restriction Approval

Dear Council President Colton and Members of the Taunton Municipal Council:

Enclosed please find a conservation restriction that has been accepted and signed by the Taunton Conservation Commission for 9.6 acres of land associated with the Taunton Housing Authority's HOPE VI redevelopment project. The Taunton Housing Authority and Trinity Taunton Nine Limited Partnership are granting this restriction to the City of Taunton through its Conservation Commission for conservation purposes, assuring that this land will remain in its natural, scenic and undeveloped condition in perpetuity.

The Taunton Conservation Commission reviewed the draft restriction in March of this year and agreed to be the grantee of this restriction on March 19, 2012. I have enclosed a copy of the Conservation Commission's acceptance for your records.

As a matter of process, I respectfully ask that the Taunton Municipal Council vote to approve and accept this Conservation Restriction pursuant to section 32 of Chapter 184 of the General Laws of Massachusetts.

We truly appreciate your assistance.

Sincerely,



Colleen Doherty
Executive Director

Cc: Michael Mattos, Director of Real Estate Development, THA

11.



City of Taunton, Massachusetts
**CONSERVATION
COMMISSION**

*15 Summer Street
Annex Building
Taunton, Massachusetts 02780*

*Phone 508-821-1095 Fax 508-821-1665
www.ci.taunton.ma.us*

Conservation Commissioners

*Brian Marques, Chair
Steven Turner, Vice Chair
Debbie Botellio
Renwick Chapman, PE
Ernest Enos
Marla Isaac
Neil Kelly*

March 19, 2012

**Misty-Anne Marold, Review Biologist
Natural Heritage Endangered Species Program
1 Rabbit Hill Road
Westborough, MA 01581**

RE: NHESP # 11-30036; DEP SE 73-2488

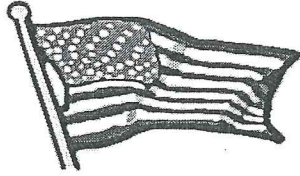
Dear Ms. Marold,

The Taunton Conservation Commission has read and approves the draft of the Conservation Restriction for the Fairfax Gardens Hope VI Revitalization Project.

The Taunton Conservation Commission agrees to be grantee of the Conservation Restriction and to uphold the conditions of the Conservation Restriction as set forth by the Natural Heritage Endangered Species Program.

Sincerely,

**Brian Marques, Chair
Taunton Conservation Commission**



OCTOBER 23, 2012

HONORABLE THOMAS C. HOYE, JR., MAYOR
COUNCIL PRESIDENT RYAN C. COLTON
AND MEMBERS OF THE MUNICIPAL COUNCIL

RECEIVED
CITY OF TAUNTON OFFICE
2012 OCT 19 A 9:44
TAUNTON, MA
CITY CLERK

PLEASE NOTE: **THE FOLLOWING COMMITTEE MEETINGS HAVE BEEN SCHEDULED FOR TUESDAY, OCTOBER 23, 2012 AT 5:30 P.M. AT THE TEMPORARY CITY HALL AT MAXHAM SCHOOL, 141 OAK STREET, TAUNTON, MA. 02780, IN THE CHESTER R. MARTIN MUNICIPAL COUNCIL CHAMBERS**

5:30 P.M.

THE COMMITTEE ON FINANCE & SALARIES

1. MEET TO REVIEW THE WEEKLY VOUCHERS & PAYROLLS FOR CITY DEPARTMENTS
2. MEET TO REVIEW REQUESTS FOR FUNDING
3. MEET TO REVIEW MATTERS IN FILE

PLEASE NOTE:

A "MEETING" OF THE ENTIRE MUNICIPAL COUNCIL, AS SAID TERM IS DEFINED IN MASS. GEN. L. C. 30A, §18 MAY OCCUR CONCURRENTLY WITH THIS COMMITTEE MEETING

THE COMMITTEE ON POLICE AND LICENSE

1. MEET WITH THE POLICE CHIEF AND DETECTIVE SMITH ON THE FOLLOWING CONSTABLE APPLICATIONS:
 - A. GEORGE MONIZ, 21 FRUIT STREET, TAUNTON - RENEWAL
 - B. TODD CASTRO, 325 WORCESTER STREET, TAUNTON - RENEWAL
 - C. PATRICIA DESILVA, 161 LOTHROP STREET, TAUNTON - RENEWAL
 - D. LORRAINE FREDETTE, 48 BELMONT STREET, TAUNTON - RENEWAL
 - E. RICHARD SPEARIN, 272 HARRIS STREET, TAUNTON - RENEWAL
 - F. PRISCILLA MILOT, 103 PROSPECT HILL STREET, TAUNTON - RENEWAL
 - G. CONSTANCE MISH, 50 PINE STREET, TAUNTON - RENEWAL
 - H. RICHARD TORRES, 24 TANIA DRIVE, EAST TAUNTON - NEW
 - I. JEREMY MATTHEWS, 65 SHERBONNE STREET, EAST TAUNTON - NEW

PAGE TWO

MUNICIPAL COUNCIL COMMITTEE AGENDA - CONTINUED

2. MEET WITH THE POLICE CHIEF AND DETECTIVE SMITH ON THE PETITION OF SEAN MOORE, 114 VERNON ST., MIDDLEBORO FOR RENEWAL OF JUNK COLLECTOR'S LICENSE FOR OLD COLONY SCRAP, INC., 655 W. WATER STREET, TAUNTON
3. MEET WITH THE POLICE CHIEF ON THE NEW PETITION FOR SECOND HAND ARTICLE LICENSE FOR ECO ATM, INC., OF SAN DIEGO CA. FOR A VENDING STYLE MACHINE TO COLLECT USED SMALL ELECTRONIC EQUIPMENT AT THE SILVER CITY GALLERIA, 2 GALLERIA MALL DRIVE
4. MEET WITH THE POLICE CHIEF ON THE PETITION FOR A NEW BILLIARD TABLE LICENSE FOR AMF BOWLING CENTERS, INC. D/B/A AMF TAUNTON LANES, 555 WINTHROP STREET, TAUNTON - 1 TABLE
5. MEET TO REVIEW MATTERS IN FILE

PLEASE NOTE:

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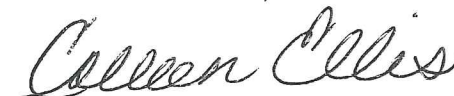
THE COMMITTEE ON SOLID WASTE

1. MEET TO REVIEW AND APPROVE THE HYBRID AGREEMENT AS PRESENTED TO THE SOLID WASTE COMMITTEE
2. MEET TO REVIEW MATTERS IN FILE

PLEASE NOTE:

A "MEETING" OF THE ENTIRE MUNICIPAL COUNCIL, AS SAID TERM IS DEFINED IN MASS. GEN. L. C. 30A, §18 MAY OCCUR CONCURRENTLY WITH THIS COMMITTEE MEETING

RESPECTFULLY,



COLLEEN M. ELLIS
CLERK OF COUNCIL COMMITTEES