



City Council Recessed Meeting
Minutes
Tuesday, February 18, 2014
City Council Chambers
7:00 p.m.

1. The Mayor called the meeting to order at 7:00 p.m.
2. Roll Call. Councilor Bouchard, Mayor Bouley, Councilors Champlin, Coen, Grady Sexton, Herschlag, Keach, Matson, McClure, Nyhan and Shurtleff were present. Councilor St. Hilaire was late. Councilors Bennett, Todd and Werner were excused.
3. Agenda overview by the Mayor.

Items previously set for a March 10, 2014 public hearing *(Not previously distributed)*

4. Resolution modifying the Elderly Exemption Criteria for the City of Concord pursuant to the provisions of RSA 72:27-a; together with report from the Director of Real Estate Assessments.

Action: Councilor Nyhan moved to set this item for a public hearing in March. The motion was duly seconded and passed with no dissenting votes.

5. Ordinance amending the Code of Ordinances, Title II, Traffic Code; Chapter 17, Vehicles and Traffic, Article 17-4, Operation of Motor Vehicles; Section 17-4-1, Stop Required Before Entering a Through Street; Schedule V, Stop Intersections; and Schedule Va, Four-Way Stop Intersections; Regional Drive at Chenell Drive; together with report from the Traffic Engineer. (2-23)

Action: Councilor Shurtleff moved to set this item for a public hearing in March. The motion was duly seconded and passed with no dissenting votes.

Reports

6. Main Street Complete Street Project Update. (2-55) ***(Public comments received)***

Action: Mayor Bouley listed the names of individuals that submitted letters and emails to Council: Elyssa Paris, Sue McCoo, Pam Peterson, Amanda Perkins, Mike Cohen, Jerry and Donna Mark, Susan Phillips, Rosemary Heard, Rick Watrous, Gerry Carrier, Mike Herrman, Deb Samaha and David Dingman. He added that Council also received a survey.

Gene McCarthy, Consultant Team Project Manager-McFarland and Johnson, provided an overview of the bid history for the proposed project. He explained that they thought it made sense to look some of the key items that make up the bid to look at why some of the pricing was so much higher on the bids than what they had estimated in the engineers estimate. He pointed out that most of the items are very conventional items that are on every project done within the City of Concord or State of NH and that they have good information as to what these items typically cost in the highway construction field. He stated that, in most cases, the bids that the city is receiving are substantially higher than what they see day in and day out on bids for road construction. Mr. McCarthy stated that they have had discussions with the contractor and others to understand why and it came down to “risk” which is what they are seeing in the price and the reason that the city is only getting a single bid; they feel that they are assigning a great deal of risk in the way that the city has put this project together with some of the conditions and requirements. He stated that, moving forward, they are looking at a different approach so they can address the risk as much as anything else.

City Engineer Ed Roberge added that they also reached out to their federal highway partners immediately after receiving the second bid and were able to put together a detailed review of not only the plans but specifications prior to engaging in a conference call; in early February they conducted a conference call with members of the resource team out of D.C., Utah, Atlanta and Arizona, all members that come together to look at national projects such as this, to see whether there are any consistencies or issues that are found elsewhere. He pointed out that there are a few projects including a TIGER project out of Minnesota that is facing the same issues as the city; they bid it twice and it came in double the budget on both occasions. Mr. Roberge indicated that they are looking at what is the best approach to move forward and what options they have. He explained that through the conference call they were able to compare and look at different procurement options, one of which is a Construction Manager General Contractor (CMGC) approach to procurement which would allow them to reduce risk, improve cost control, foster innovation and optimize a potential construction schedule. He noted that the process is somewhat simple: solicit qualification statements from contractors; select a contractor based upon work history, bidding history, experience and price approach; sit down face to face with discussions; move forward to Council on a final contract. Mr. Roberge highlighted a proposed schedule, subject to federal highway approval, which includes: creating a new RFP for CMGC services in late February; a mandatory pre-proposal meeting in early March; proposals being due in late March; contractor selection in early April; work on scope, budget and schedule in mid-April; presentation to Council sometime in April; with the intention to begin construction in May 2014.

Mr. McCarthy indicated that night work became an issue for many of the contractors and that some were not willing to submit a night time bid because they had no interest in doing night work; reasons’ being is that it’s difficult to get sub-contractors who want to do night work and it’s difficult to get supplies at night such as concrete.

Carlos Baia, Deputy City Manager-Development, clarified that they are not recommending that the project be entirely during the day and that there will be elements of the project that will have to be at night such as paving and water works.

Mr. McCarthy indicated that every contractor read into was that they felt that the work zones were very small and felt that the city was looking at them to do a block or two at a time but they wanted to open up larger pieces during construction. He stated that within both of the original solicitations there was a stipulation that 75 percent of the existing parking had to be maintained within the work zone and they wanted to have a little more flexibility so that they could open up more of the street so they are able to get in and get their work done. In regards to snow melt, Mr. McCarthy explained that the way they had included snow melt in both bids it was considered an option and the contractors had to put together a design build and present all being predicated on having Concord Steam supplying the energy. He stated that they are now looking at this in a completely different way if Concord Steam is not supplying the energy. Instead of it being a constant flow, static kind of a system, it becomes more of an on demand system making it a different design and approach all together. Mr. McCarthy indicated that they have looked at multiple ways of generating the energy to run such a system and have landed on natural gas because it can provide the energy in the simplest most direct fashion. He explained that they came up with two different options: option A—sidewalk only from Centre Street to Hills Avenue; option B—sidewalk only from Centre Street to Perley/Storrs Street. He gave a breakdown of the costs for both options explaining that the estimate for “under the sidewalk” is more expensive for an on demand system because you would have to include insulation, more mechanical pieces, sensors, and it is broken into different zones so that it’s the most efficient system. The breakdown for estimated costs: option A totals approximately over \$2.5 million for capital costs (\$1.5 million for under sidewalks and over \$1.0 million for power plant) with operating costs of approximately \$90k to \$150k per year for gas only; option B totals approximately over \$3.9 million for capital costs (\$2.4 million for under sidewalks and over \$1.5 million for power plant) with operating costs of approximately \$145k to \$240k per year for gas only. He stated that there are additional costs over and above these estimates to maintain this system overall such as the cost for electricity and mechanical systems maintenance. (Full power point presentation copy on file at the City Clerk’s Office)

In reference to the snow melt system, Councilor St. Hilaire indicated that there is a community that used electrical elements instead of rubber tubing and inquired whether this had been considered. Mr. McCarthy responded that there was a vendor that had approached them a few times that has a system similar to this. He added that anyone can come to the table with this kind of a system.

Councilor Nyhan asked if there was an explanation as to why the bid cost went up \$300,000 in bid two as compared to bid one. Mr. McCarthy responded that the same people took a different look at the project and added significantly more costs to some of the items with an explanation that it was a lot about risk.

Councilor Coen stated that his biggest surprise was the term “risk” used on this proposed project explaining that he doesn’t think this project is totally unique and is not something that has never been done elsewhere. He indicated that the firm representing the city is looking at costs and giving advice; it appears that the firm was very shocked to hear about the risk factor. He stated that he can’t understand how the firm wouldn’t understand this from the

very beginning. He asked if a construction management type of project is being proposed. Mr. Roberge responded that it's a construction management general contract type of project delivery. Councilor Coen asked if the CMGC works for the city. Mr. Roberge indicated that to be correct. Councilor Coen questioned how many companies have approached them about the snow melt system and have given alternatives. Mr. McCarthy responded that there are three vendors who have been very active and have shown up to the pre-bid meetings asking questions and clarifications. He added that these vendors have laid out designs for the snow melt and presented them to contractors for consideration. In terms of "risk", Mr. McCarthy stated that it's hard for them to understand how a contractor is going to look at a job like this and in many cases, what they have heard from them, was a bit of a surprise because they didn't feel that this was something that was over and above what they would have normally done on a project such as this.

Councilor Shurtleff noted that it was mentioned that the CMGC lowers the risk to the contractor inquiring whether it would increase the risk to the city. Mr. Roberge replied that it shares that risk noting that part of that risk may be the schedule. Councilor Shurtleff questioned whether the Council was overly optimistic in the design that was put out to bid. Mr. Roberge responded that they have only one bidding team and haven't seen competition yet so that is what's puzzling them. He indicated that they need competition on this before they can say this isn't priced correctly.

Councilor Keach stated that he's becoming increasingly skeptical of the firm McFarland & Johnson in regards to their advice. He noted that he's not prepared to sit through for a third surprise and really wants to know what concrete steps will be taken to change this so that the city attracts more contractors and really creates a competitive environment for this project to go forth. Mr. McCarthy replied that this is one reason they are suggesting a CMGC and more flexibility giving the contractors more access to a work zone. Councilor Keach asked if daytime construction would change the project significantly. Mr. McCarthy replied that he feels that they'll get a lot more competition because there were several contractors that had no interest in doing this at night.

Councilor Champlin echoed Councilor Keach's concerns in regards to this being a surprise. He asked how broadly they casted the net for the bids noting that the bids received came in locally. Mr. McCarthy responded that it went beyond locally pointing out that firms from Massachusetts came to the pre-bid meetings. Councilor Champlin indicated that the thought of daytime construction is extremely troubling to the downtown merchants and questioned whether there is a possibility that some of the construction could be done at night. Mr. McCarthy responded that that opportunity still exists noting that some of the contractors may want to do both.

Councilor McClure asked why a CMGC wasn't proposed originally. Mr. McCarthy responded that they looked at this as an appealing project and felt that they would get a lot of interest in doing this project. Councilor McClure noted that it had been mentioned that Mr. McCarthy's firm has done a number of snow melt systems and inquired as to where those are located and how successful they have been. Mr. McCarthy noted that they are a little bit

different than Main Street; one is at an apron at a local airport done with a geothermal system and a heliport in Massachusetts done using steam. In regards to the snow melt system, Councilor McClure noted that it was indicated that it was going to add quite a bit of time, under options two and three, to the project and inquired whether there is an estimate as to how much time it will add. Mr. McCarthy replied that they haven't looked at how much time it would take to install the elements. He noted that it would still allow downtown to function but it just means that before they can pour the final concrete surface there is a lot more that they need to do underneath.

Councilor Herschlag pointed out that a large majority of people who have taken the time to comment don't feel the project should move forward without the snow melt system. He stated that the snow melt options appears to be a very expensive option and very expensive to maintain. He asked if they had looked at an alternative where the city would be the utility of choice for the downtown buildings and the waste product from that plant would heat the sidewalks. Mr. McCarthy responded that they have not been asked to look at something like this. Councilor Herschlag inquired whether this is something that would make sense to look at before the city makes a commitment to move forward; to compare costs and to see if it's a viable option. Mr. Roberge replied that he is not prepared to answer that question this evening because it's such a broad scope that creates a much larger consideration for this project. Councilor Herschlag asked who was going to be involved in this new bidding approach inquiring whether the consultants will be involved in the process. He noted his concern that the community and the previous Council voted on components of this project that the stakeholders, the Complete Streets Committee, and staff all recommended and what Council is being asked to do this evening is to allow staff, the consultant and the contractor to determine what components of this project should or shouldn't remain. He stated that he is not comfortable with this without hearing from the public and what is important to them. He asked if there was going to be the opportunity for the public to comment.

Mayor Bouley stated that he disagrees with the premise that they are saying what should or shouldn't be there. He noted that the Council could decide this evening that it's over or, from what he read in the memo, Council can give Administration the ability to go forth with this process to have a discussion with the contractors and then come back to Council to inform them of what they were able to come up with for a reasonable budget. He noted that Council would look at it, put it out for a public hearing, and after testimony and full debate the Council would decide whether this is something they want to move forward with or not. He added that there would also be another public hearing and discussion for the funding of the proposed project.

Councilor Herschlag stated his concern with consultants and staff talking to contractors without guidance from the Council. He feels that it makes more sense to understand what's important to the community before the negotiations start.

Mayor Bouley noted his disagreement indicating that Council has received a significant amount of input through letters and discussions with constituents. He indicated that it's going to be a good discussion and that they don't know what the price is so the question is

whether they want to give staff and the consultants the flexibility to find that out. He noted that if Council chooses not to then they are done and can move on. He stated that he's personally not comfortable with not having heated sidewalks and if they are not able to get them he is skeptical as to whether or not he wants to move on with the project. He noted that he feels that this is one of the key components to this project.

Councilor Coen noted that there is a cost difference for doing day work versus night work and the other two components that they are talking about that adds the cost and the risk is the parking issue at the 75 percent and the scope of the work zone. He questioned whether there is any idea as to what type of monies they are talking about in regards to these. He stated that one thing that he didn't hear is that the project itself, the materials and the design of the project, wouldn't be looked at but if they are costly then he feels strongly that they have to look at it. Mr. McCarthy stated that the intent, as they move forward, is that the fundamental aspects of the project would not alter and that the first bid that they get from this contractor would be to build exactly what they have designed and laid out.

Councilor Champlin noted that he feels that the heated sidewalks are a critical component of this project. He inquired as to why it is that the current situation with Concord Steam couldn't support heated sidewalks. He further questioned as to the disadvantages of geo thermal or other innovative techniques. Carlos Baia, Deputy City Manager-Development, stated that the last conversations that he had with representatives from Concord Steam were in January and at the time the parties representing the company indicated to him that the south end plant was no longer going to be a reality. He noted that the company was looking at a backup plan that was somewhere between a \$40 to \$50 million project that would involve renovating their existing facility and still producing a modicum of electricity; the representatives told him that there was a one in four chance of this happening. Mr. Baia explained that the representatives indicated that there was a third option which would be a basic renovation of the existing plant and that this option would not have a connection to Main Street. Mr. McCarthy added that they did look at geo thermal and the biggest issue that they found is that it requires a significant amount of wells and tens of thousandths of feet of drilling. He added that the news from Concord Steam is very recent and it hasn't been part of the scope to look at anything beyond. Mr. McCarthy noted that when they looked at geo thermal it would be higher in terms of capital costs and they would have to do a study. He stated that it would be less to operate but trying to find a location to drill is difficult and could require hundreds of wells in order to produce the energy necessary for this snow melt system.

Councilor Nyhan inquired as to the estimated electrical and maintenance costs for the gas fired snow melt system. Mr. McCarthy responded that they haven't had enough time to put these costs together.

Councilor Herschlag indicated that it is his understanding that there are some forms of pre-fab pieces for the heated sidewalks. He inquired whether this has been looked into. Mr. McCarthy responded that there is a firm in New Hampshire that has a system similar to this but to date they haven't had a chance to look at them because the whole idea of no Concord

Steam is fairly recent. Councilor Herschlag inquired whether anyone has talked to any other communities, such as ones in Michigan, that have done what Concord is looking to do. Mr. Roberge responded that he has communicated with representatives from Holland, Michigan. He noted that it's supported by hot waste energy from a manufacturing plant close to their Main Street and added that they are successful in using tubing elements as opposed to the plate elements.

Councilor Matson noted that it was mentioned that another cost is maintenance and, with this being another type of a system with a lot more mechanical elements, inquired whether there was any more information about longevity for the system or costs of maintenance. Mr. McCarthy responded that they haven't been able to look at it in that much detail; the answer is that there is more because there are valves, sensors and a control center. Mr. Baia suggested that the Council give staff direction. He stated that if they are told to look at a gas fired system they would start doing that research and direct the consultant to get those numbers because at this point they have been operating on the premise of the Concord Steam connection.

Councilor St. Hilaire referenced comments made blaming McFarland and Johnson for not foreseeing the high prices received in the two bids. He stated that this was semi unfair because no one could predict paying three times the price to lay a piece of curbing. He wants to make sure that they get back to the vendors and get them down to a reasonable price.

Councilor Herschlag reminded staff and the consultants that, in the grant application, 20 percent of the cost that the city is paying is from the private sector. He reiterated that he feels that, before Council gives guidance this evening, it's important to hear from the downtown community. He referenced the Downtown Complete Streets Project Advisory Committee report noting that many recommendations from the committee have not been addressed yet.

Councilor Keach noted that Councilor St. Hilaire's point is well taken but indicated that he doesn't want to do this a third time.

Councilor Shurtleff asked if staff had figures of what is paid per year for sidewalk snow removal in downtown. Mr. Baia responded that the amount is approximately \$82,000 per year. He clarified that even with heated sidewalks there would still be a modicum of snow removal that would need to be done.

Referencing the committee report, City Manager Tom Aspell indicated that it notes that the committee unanimously recommends, in conjunction with the Community Development Finance Authority grant received of approximately \$500,000, that a special assessment district include all the downtown area taxes and properties to raise 20 percent of the private funds necessary. He stated that there has been public input in regards to this project.

Councilor Herschlag stated that his point wasn't that there wasn't public comment; it's that they are looking to change this project significantly and he feels that before they do this that people have the opportunity to tell the Council what they think.

Mayor Bouley indicated that in one of the letters received it states “three years of daytime construction will be a disaster” and asked staff if the project will be a three year construction period. Mr. Roberge responded that they do not anticipate a three year construction period. He noted that he had indicated that it would be 60 weeks which would place the construction in two seasons. Mayor Bouley recalled that if they started in May it would go through to November and begin again in April to be completed by June. Mr. Roberge indicated that is what they are anticipating.

Councilor Nyhan moved to reject the sole bid received on the project. The motion was duly seconded and passed with no dissenting votes.

Councilor St. Hilaire moved to recommend that staff look at design builds for a gas system and an electric system if it’s not including a plant. He asked that staff bring back their findings and pricing to the Council. The motion was duly seconded.

Councilor Coen indicated that he would feel more comfortable if this was broadened to any systems.

Councilor St. Hilaire amended his motion to broaden it to include any systems. This amendment was seconded.

For clarification, City Manager Aspell indicated that they would be looking at the system sitting down through the construction manager process; if there is a system they can come up with but nobody wants to build, they will dismiss that system.

Councilor Keach noted that he has spoken to people in the energy business that are skeptical of the \$1 million price tag for the power plant and asked staff to look into this for cost savings.

Councilor Herschlag asked if they are only looking at a stand-alone system as opposed to a combination system that may also offer heating for the buildings downtown. Mr. Aspell replied that he has no thoughts about the city being involved in heating any buildings downtown. Councilor Herschlag inquired as to who is going to pay for the operating costs of the snow melt system. Mr. Aspell responded that that’s a City Council policy discussion.

Councilor McClure indicated that she has concerns about spending the amount of money that’s estimated for a stand-alone system. She noted that she would like to see some caution given when looking at these different systems; that they are looking at something that is cheaper than what’s been estimated. Mr. Aspell responded that the only way to approach this is to place a dollar limit on it.

Councilor Nyhan noted his concerns about the cost but indicated that he is very interested in exploring what the alternatives may be.

Councilor St. Hilaire suggested looking at what the numbers are first before deciding what they are going to cap or cut.

Councilor Herschlag noted his concerns with making a decision in regards to deadlines of the project.

Mayor Bouley noted that the way he understands the motion is for staff to come back after looking at all the systems so that they can feel comfortable as to whether this is the right thing to do for the cost. He stated that it's important that staff comes back with some options so that the members of the public can hear what those are and have something to respond to. He indicated that they are not going to move one way or another until they hear from the public.

City Manager Aspell indicated that he envisions staff sitting down and talking to the contractors. The contractors are going to come up with, as part of their package, their system for doing the snow melt system. He stated that they are not going to ask contractors to come up with two or three different methodologies in doing this; these are going to be packages that come in.

Mr. Baia noted that the idea is to come back with that package but as part of that conference and negotiation period, they would be looking at the different alternatives that contractors would be looking at.

Mr. Aspell clarified that they will be bringing back one system so Council wouldn't be choosing between three systems.

Councilor Nyhan noted that in order to encourage as many open competitive bids as possible he hopes that staff communicates to the would be contractors that having a gas fired or other alternative fuel sourced heating system isn't a mandatory requisite part of this project. He stated that they want competitive bids on every other phase of this project and doesn't want to exclude someone because they think the city has to have this in the bid.

Councilor St. Hilaire's motion passed with no dissenting votes.

Mayor Bouley pointed out that there are other issues that Administration has asked for: flexibility in day work; expansion of work area; and parking within the work zones. Councilor Bouchard moved approval to give the flexibility. The motion was duly seconded.

Councilor Nyhan noted that, in addition to those items just mentioned, he encourages staff when speaking to would be contractors to explore every other aspect of this project that has a significant dollar value associated with it. He stated feels that there are plenty of alternative cost savings in this project that can be discussed when sitting down with contractors.

Mayor Bouley indicated that he heard Mr. McCarthy say that they were going in with the attitude that they wanted to stay as close to the original design as possible given that they can get a price which is much more consistent to where it is thought they should be.

Councilor Nyhan indicated that he would supplement what he said only by the fact that, during the course of discussion, if not probable then vendors may make suggestions and there may be opportunities for discussion that could be brought to the Council's attention in which they may want to engage.

Councilor Keach wanted to reassure the public that until they actually appropriate the dollars, this project doesn't move forward. He noted that this evening's vote doesn't mean it's going forward but it allows the city and staff additional flexibility to hopefully come back with a more reasonable number.

Councilor Coen noted his agreement with Councilor Nyhan with the contractors having the opportunity to make suggestions for reducing the costs but still keep the quality of the project.

Councilor Herschlag noted his agreement with Councilors Nyhan and Coen.

Councilor Champlin hoped that staff and the consultants, when negotiating with prospective contractors, also keep in mind ways to address the downtown merchants concerns over parking and disruption of day time construction.

Mr. Baia stated that they would do everything possible, within the perimeters, to keep the downtown going.

Councilor St. Hilaire is hearing Councilors asking for flexibility to cut things out of the project but he is still not willing to concede that's what should be done to get the project done. He noted his concerns with paying two to three times more for some items; he feels that they are not sending the right message to any potential contractor to say that this Council is willing to start cutting stuff out and pay three times as much for everything that others don't pay for.

Councilor Champlin noted that if they heard one thing during the process to come to this point it was that in order for it to be worthwhile this project needed to have a "wow" factor. He stated that if they dilute this too much then they are not making any progress at all.

Councilor Herschlag noted that if day work, expansion of the work area, loss of parking without replacement parking is something that they are going to give contractors the option to look at in order to make this more affordable then he can't support this. He stated that he feels this would be disruptive and would have a negative impact on downtown businesses.

Mayor Bouley noted his support of the motion stating that he is not personally excited about some of these but, at this point in time, doesn't see the harm in giving the flexibility to have

the discussion. He hopes staff is successful in coming back with something that's much like what they have today but coming in at a more reasonable cost.

Councilor Bouchard's motion passed with one dissenting vote.

In terms of the snow melt system, Mayor Bouley indicated that there were two options presented with one going to Hills Avenue and one going to Perley Street. He asked if staff would consider something to Concord Street when looking at the options.

Mayor Bouley clarified that it will be a very public process with public testimony and full Council discussion and a Council decision whether or not to move forward with the project.

New Business

Comments, Requests by Mayor, City Councilors

Councilor Coen asked the City Manager to explain the process of plowing the streets. City Manager Aspell noted that crews are out plowing this evening. He indicated that they are now facing the problem with streets becoming too tight between the snow banks and cars parked on the side of the streets. He stated that they have posted those "no parking at any time" and will be towing cars if they are parked on those streets. As of February 8th, the city is approximately 95 percent spent on the snow budget. He listed off all the streets that are posted as no parking due to a snow emergency.

Mayor Bouley thanked downtown and all the merchants that shovel in front of their stores.

Comments, Requests by the City Manager

Adjournment

The time being, 8:52 p.m., Councilor Keach moved to adjourn the meeting. The motion was duly seconded and passed with no dissenting votes.

A true copy; I attest:

*Michelle Mulholland
Deputy City Clerk*