

**METHUEN CITY COUNCIL REGULAR MEETING  
GREAT HALL, SEARLES BUILDING  
June 1, 2009 - 7:00 p.m.**

Chair Deborah Quinn called the regular meeting of the Methuen City Council, scheduled for June 1, 2009 to order with all members present

ACCEPTANCE OF AGENDA

MOTION BY: Councilor Cronin to amend the agenda to take TR-09-33 out of order and place it after proclamations and correspondence Councilor Kannan included TR-09-46 as part of that amendment and placed it after contracts, seconded by Councilor Willette.

UPON VOTE: UNANIMOUS

MOTION BY: Councilor Cronin seconded by Councilor Kannan to accept the amended agenda.

UPON VOTE: UNANIMOUS

INVOCATION/PLEDGE OF ALLEGIANCE

Rev. Wilkes of St Andrews Church gave the Invocation. Everyone remained standing for the Pledge of Allegiance

ACCEPTANCE OF MINUTES

MOTION BY: Councilor Cronin seconded by Councilor Zanni to waive the reading and accept the minutes of previous meetings: May 18, 2009

UPON VOTE: UNANIMOUS

CORRESPONDENCE/PROCLAMATIONS None

**(Out of order)**

**TR-09-33** Resolution Allowing for Creation of a Reserve Fund at the Greater Lawrence regional Vocational Technical High School

MOTION BY: Councilor Zanni seconded by Councilor Kannan to approve.

Gary Hamilton Vocational school business administrator representing the Greater Lawrence Regional Vocational High School addressed the Council. He is asking the City of Methuen to approve along with the other three communities the establishment of the Capitol Improvement Fund. The law states a regional district school system can create such a fund and he believes there is a need for the fund. The school has completed a major renovation project four years ago for \$51 million dollars. There will be maintenance issues coming up and they would like to do what the sister schools have done and that is to establish a Capitol Improvements Fund in order to plan ahead and put internal funding, not asking for any additional funding from any of the other communities but we need the mechanisms and the approval of the other communities to establish this fund. This is a law and when we contacted the City of Methuen we referenced the law. We have appeared in front of the other communities (Methuen is the fourth) and we are asking for permission to establish this. We will be able to fund this through our internal budget mechanism and plan capitol improvements in the future. He does not anticipate any capitol improvements within the next five years but it will take time to build a balance. We will then deal with issues. We have a state of the art building (21st century) and are obligated to maintain it, taxpayer money built it. We are asking permission to get this approved.

Councilor Willette asked Solicitor Peter McQuillan if he was able to explore the issue of creating a stabilization fund approval with regard to the Methuen School department jointly with the City Council.

Attorney McQuillan stated that the issue regarding the Methuen School department has been withdrawn. The Vocational school is requesting something independent of any relationship between General Government and the school department in relation to our school department and a stabilization fund under 45B. It would be administered under the General Government. In this particular circumstance it would be administered by the Vocational school.

Councilor Willette responded they are not compatible legislative items.

Attorney McQuillan stated they are incompatible.

Councilor Willette said regarding the stabilization fund the Vocational school is running a deficit and when the stimulus runs out, to shore up the gap they would have a stabilization fund. Would this stabilization fund incur cost related to capitol improvements only?

Mr. Hamilton responded that is what the law would allow if they were lucky enough to build a balance. The law (chapter 71 sec16G1/2 stabilization fund for regional schools district) allows that they would have to go through a procedure and it would have to be a capitol improvement classified item and in order to withdraw money from the fund they would need the approval of their elected school board. In order to establish this fund we

need to go through the approval process for all (4) communities to get permission to establish it and in the future build up a surplus and spend it on capitol improvements. Councilor Willette asked if the legislation reflects that point. Capitol expenditures (only) are used through a stabilization fund. Councilor Willette's concern is to develop a stabilization fund and approve it, he would like to have accountability and transparency and a report included in their budget submitted to Council. Any reports submitted should include the City Council.

Attorney McQuillan stated the measure invokes the statute. By invocation of the statute they are bound by the terms of that statute. It is a self-contained measure.

Mr. Hamilton referenced the law, which is extensive and notes the many rules and regulations on how to establish this fund, how it is to be spent, and required votes. Their next step would be to establish a capitol improvements committee to study and prioritize recommendations. It will not have the ability to allocate, just make recommendations to the school board, which would require a 2/3 vote of the elected school board in order to, utilize the money for its CIP designations.

Councilor Willette asked that Mr. Hamilton speak to his superintendent and include a report to Council as part of their budget.

Mr. Hamilton responded absolutely. He will identify and come back in the future and keep (Council) apprised of how the fund is going and what (in the future) would be the first project. He will keep the Council completely informed.

Councilor Giordano asked of the four communities is Methuen the first to be approached?

Mr. Hamilton stated Methuen is the last. They have the approval of Lawrence, Andover and North Andover.

Councilor Giordano asked where is the money coming from?

Mr. Hamilton said the money would come internally built into their budget and donations. They will not add to the budget. This is a benefit to the communities. Their budget is in two pieces. Foundation budget (direct expenditures) and the Outside Foundation budget that include the costs of transportation, capitol and debt services. The latter is when they come to the communities and present the entire budget. There is flexibility for the communities to look at their portion of the budget and say "yes or no" or change it. That is where this would be and every year we would be accountable (to all communities) through that section of the Outside Foundation budget. That would be the time for the communities to scrutinize and ask questions. They believe that in the future they can establish this, fund it over a few years and plan capitol improvements and not have to add it onto the next years budget, that is not good planning and they do not want to do it that way. This is a mechanism to benefit the towns and not burden them adversely in any given year.

Councilor Cronin asked if the funding is coming from inside the budget, the city of Methuen pays considerably more than any other community including Lawrence directly from our budget that is \$900,000 more. If you are going to fund a Capitol Improvement through the budget it means Methuen will pay the bigger part of the cost. Councilor Cronin wants to be able to vote on some of these things. Councilor Cronin feels Methuen should have three members on the board not two because we are the biggest contributor out of our budget. It costs Lawrence \$900 dollars each student, it costs Methuen \$6,000 each student, bigger than anyone else. Councilor Cronin understands it is mandated by

the State but thinks Methuen should have more to say as to what goes on at that school. If the funding is from the formula they have now to determine who pays what Councilor Cronin has a problem with that. If it is not equal across the board, Methuen will be funding most of the Capitol Improvements and he has a problem with that.

Mr. Hamilton said the Outside foundation is calculated differently. 88% is calculated out of the Foundation Budget, which is the State formula. The State evaluates Cities and towns under the ability to pay and that is what drives that. It is not an even playing field. Councilor Cronin said that we should send a message back to the State that we do not have the ability to pay anymore. We do not have that ability when everyone else is paying less than half that money.

Mr. Hamilton said the second point that his school has control on is the Outside Foundations that is not based on the State formula. That is based upon enrollment, based upon the original agreement back in 1963 when Greater Lawrence Technical School was formed. The greatest amount of students (to this day) comes from Lawrence with the second highest coming from Methuen and the two Andover's have the lesser. That was the case in 1963 and is the case now, although Methuen has picked up in numbers this year adding thirty-nine students (up) this year. That is how it was originally set up and that is the reason for the seven committee of 3-2-1-1. If it were going to be changed in the future it would be a change in the way the Charter was originally set up.

Councilor Cronin stated that he understands it is nothing the school district is responsible for. The (State) department of education changed the original agreement and states Methuen will pay more than Lawrence, and that is a problem.

Mr. Hamilton responded that is correct and was changed in 1993 and was called "Ed Reform". A new formula was put in Statewide and that is the one that the school has built their budget.

In reference to the (internal) Outside Funding, Mr. Hamilton stated that when they put together the outside costs, student transportation, (our) bonded debt, capitol ect. That money (around 5 million dollars) is downsized with the reimbursements that we are receiving 85% of the bonded debt from the State. There is a reimbursement for regional transportation applied. The internal funding is their own excess in deficiency (cities call it free cash) and the school pledges a portion to the outside budget every year. Mr. Hamilton stated that they have and will intend to pledge a greater amount to lower that down rather than putting in for seed money for capitol improvement projects. That is what he refers to for Greater Lawrence internally funding it. It is there but they are also putting up some funding on top of the two State reimbursements to bring the assessment down before they apply the percentages that are dictated currently by the enrollment.

Councilor Cronin asked how much money are they (school) putting in on a yearly basis.

Mr. Hamilton responded \$60,000 dollars. It will take at least five years at \$60,000 to build up a reasonable balance to fund these capitol improvements such as technology, infrastructure relative to servers and wiring.

Councilor Leone stated that he understood that the stabilization fund is not being funded through the budget but Councilor Cronin was told that it will be funded through a contribution through their free cash. Free cash (to his knowledge) is left over at the end of the budget year. The answer is that the contribution to the stabilization fund will come from the budget.

Mr Hamilton stated “yes” part of it would come from the budget if they do not get donations or other sources. Technically they are putting it in and matching it with free cash. In twenty-two years they have exceeded the cap only once and refunded money back to the communities.

Councilor Leone said that Methuen is the last community to deal with the (Vocational) budget.

Mr. Hamilton stated Lawrence is normally the last one. Methuen is usually third. Councilor Leone’s concern is that the budget is approved, goes through the cycle and end up with free cash that goes into the stabilization fund and the committee (Vocational) spends the money without any oversight from the communities that provided the budget. Councilor Leone sees less transparency than he would like. He does not know how to solve that problem but it seems like Methuen’s opinion does not carry much weight because they (Vocational) already have the approval they need.

Mr. Hamilton stated they have three votes but they want to be up front with Methuen and wants the support of Methuen. Their free cash has to be certified by the department of revenue and they have rules and regulations. If the committee uses any part of the funding source for the up coming budget (2010) Foundation or non Foundation a portion of the free cash is taken after it is certified and pledge it. It has to be acknowledged to the department of revenue, approve and allow them to do that. Only then are they able to certify the free cash with a total of 5% of the budget or more and that portion goes back to the community. Under 5% which is inclusive of a pledge towards the budget, regardless of usage, it is discounted and you get a lower figure.

Councilor Leone said that this year and the next few years until this funding situation sorts itself out they will be using free cash to off set the increased expenses rather than create a piggy bank, now is not the time to do this. It may have been a good time a year ago but what is happening with the State and Chapter 70 funding and Chapter 90 funding and other aid cuts, now is not the time to take \$60,000 dollars a year and putting it aside.

Mr. Hamilton said he was asked for a figure and that was the plan figure but that is flexible because at any given time our committee can be cognizant of what is being said and say no funding next year for capitol improvement, they can budget zero.

Councilor Leone stated that if they are planning to make a contribution it should be disclosed to us (council) in the budget when we are deliberating. It is a known figure and we should know that number.

Mr. Hamilton stated it would be.

Councilor Lahey said that there is approval from three communities.

Mr. Hamilton said for the fund yes.

Councilor Lahey said that if Council votes against this reserve fund it would not be thrown out the window...correct?

Mr. Hamilton responded correct.

Councilor Lahey stated that with all that is being said, our vote will not have an impact on the outcome of what is going to happen.

Mr. Hamilton responded correct, there are three out of four votes. It does have (some) impact because every year they come hat in hand with a budget. The Outside Foundation which contains this component is in Council hands every year.

Councilor Lahey is stating he is voting no against this but it will mean nothing.

Councilor Willette stated the budget is a legal document, presented to council and we vote on it. The school department had municipal charge backs as part of their budget. That was a part of transparency. Councilor Willette asked the Solicitor if Council could require this as part of their budget?

Vote on it and know what is being charged backed and how they are using that stabilization fund. Could we include this as a mandatory element of their budget? Attorney McQuillan said that he would want to review the statute and consult with the auditor. If there were any accounting ramifications he would defer to the Auditor's office.

Councilor Zanni stated there are many questions raised and comments given and the way this is going there is not a lot of support. Councilor Zanni understands the reasons for a stabilization fund but rather than have this not approved he would motion to table until we get some of the answers from the solicitor and also have a better opportunity to digest some of the information.

**MOTION BY:** Councilor Zanni seconded by Councilor Cronin to table with condition to bring it forward at the budget discussions when the Vocational school budget is before Council. Councilor Zanni agreed.

**UPON ROLL CALL:** 6-yes 3-no (Clr Lahey, Clr Pappalardo, Clr Leone)

#### PUBLIC PARTICIPATION

Thomasine Corbett, Ronald Kilgore 2 Mystic Street is before Council to request a guardrail in the front of their property. There is a sign but it is inadequate because it is far from the house. Recently a driver went onto the property and took out her front stairs, missing two of her children by five minutes. Ms Corbett has submitted pictures to Councilor Pappalardo. Ms Corbett is looking for some relief.

Mr. Kilgore stated it is protecting his property but also the citizens of Methuen. It is a matter of when someone is going to get killed. The guardrail will not prevent a head on car but will help deflect it. They are also asking for a reflective surface be added to the guardrail to make it more visible at night.

Chair Quinn said that she would give the request to Chief Lavigine.

Councilor Pappalardo did speak to these residents and asked that they get copies of the pictures and the police report to Councilor Zanni. Mr. Kilgore had been before Council one year ago asking for relief, whether a guardrail is the answer this needs to be assessed. The pictures show that it is quite damaging.

Steven DiLeo, 36 Davis Road. Mr. DiLeo spoke of the tragic death of his son Timmy DiLeo when the gate fell on him at the Tenney school September 3,2007. Mr. DiLeo responded to the settlement with the City of Methuen with comments and concerns. This was devastation to the family and parents; Timmy was a precious promising eleven-year-old boy loved beyond measure. This was an accident waiting to happen. No one meant for this to happen and he realize that. Mr. DiLeo describes how the four boys decided to go to the school and trade cards and he felt that going to the schoolyard would be safe for them. He will forever regret giving permission for the boys to go because he did not know there was a sixteen hundred pound gate leaning against the wall at a steep angle with nothing to break its fall. Mr. DiLeo is stating that the City of Methuen has taken

responsibility for leaving an unsafe situation and the family is grateful to the Mayor, Solicitor, and City Council working on behalf of the City to help the family. Everyone has been wonderful. Although no one wanted this to happen, no one has been held accountable for the gate being left there for such a long period of time. He is not placing guilt or blame but somebody did not do their job. This shows a lack of accountability. On the anniversary of Timmy's death, flowers were placed at the sight of the accident (dumpster area) and the next day the flowers were gone. Mr. DiLeo called the Principal because he was upset at this and was told no one knew how the flowers disappeared. This is again a situation of no one being held accountable. Mr. DiLeo is not looking to blame but is looking for correction. His point is not to look back and cause further pain and guilt but to be constructive and look ahead for the good of the City, but to have accountability in the public work place. Mr. DiLeo stated that to his knowledge the safety checks that were put in place by the City Council (as a result of his son's death) are not being taken seriously. Last year there was one paragraph saying there are no safety concerns. The school's report was more in depth but did not mention the dumpsters were still out of the enclosure and in his opinion the dumpster area is still unsafe. The dumpsters remain out and three heavy gates still swing and the wall is severely cracking. His opinion is the dumpster enclosure should be taken down. There is an absent of safety concerns in the safety report. And this is another case of avoiding accountability. Chair Quinn stated that City Council would bring his concerns to the School department, the Mayor and the DPW director.

Mr. DiLeo expressed how thankful he and his family are to the many people, neighbors, workers, friends, city employees, local businesses, teachers and classmates who were and continue to be a great source of strength to his family. The love shown is a bright light in the midst of such a dark time and a testimony to the goodness in people and the love of God.

Chair Quinn stated that Council would bring all of his concerns to the appropriate people. She understands how hard it was for Mr. DiLeo to come here tonight and appreciates his efforts and if any good comes out of this it is that the City will be safer as we go forward and she thanked Mr. DiLeo for coming before Council.

Councilor Zanni said that one concern is the issue of the dumpster and that is to make sure the school side issue is dealt with more in depth. Having Mr. DiLeo's wife place flowers at the site and to have the flowers taken away, there is no excuse for that.

Councilor Zanni's suggestion would be to have a designated area so the family can go at any time to place flowers at the site where the accident occurred. The school system should be able to do this and Councilor Zanni is more than willing to help do this.

Mr. DiLeo said that he would be leery of having a memorial at the dumpster site because of the safety issues that have not been addressed.

Councilor Zanni said it would not be a memorial but would be a site that we can work on and set up something that would be agreeable to the family.

Councilor Pappalardo said that they are already in the process, she has spoken to the Mayor, the Superintendent who is in the process and Councilor Pappalardo has spoken to Peter and they are in the process of bringing something to the school not by the dumpster area but maybe in the front of the school some type of a memorial that all of the city council will be involved with. We are in the early stages. The report on the safety issue was due out as of May 31<sup>st</sup> and should be getting it in the next week (or so) and

unfortunately Mr. DiLeo is right there are a lot of issues that was not put into that safety report last year. As far as she is concerned the school did a better job than the city side did. She had to send it back to the Mayor and ask him for another report because she thought it was ridiculous and she is hoping this year that it comes out a little bit better that it did last year. Mr. DiLeo is correct we need to really look at the issues, the safety issues because there are a lot of them.

Councilor Lahey stated that Mr. DeLeo is a better man than he because this was an accident that should not have happened, an accident waiting to happen; he would want the people responsible to be accountable. This is not just about money. It is being personally responsible and accountable and Councilor Lahey thinks the city dropped the ball on this and sends his deepest apologies to him and his family and thanked him for coming before council.

Jack Burke 49 Canobieola Rd. Mr. Burke thanked the mayor for withdrawing Danielian Way because it is protected land that the city cannot sell. Tonight's agenda has three resolutions accepting land and he would like to know why we are accepting land. This land is currently taxable. He understands they are small plots but it is money coming into the city. Mr. Burke stated that the owners of the land do not live in Methuen and would suggest that TR-09-28 Hampshire Rd is land that is landlocked. He is asking that council constitutionally protect this land if they take it. TR-09-34 is an order of taking. What is the public benefit for taking this land? Mr. Burke sees this as taking land and giving it away so that Wheeler Street can be straightened, this is asking for increased traffic. The owner relied on traffic studies conducted at three other similar restricted development projects located in Massachusetts stating that the buildings placed there are going to generate 800 plus traffic visits per day. The state has said that number is low. It will be 1360. No one has done a real study of the area and there is no idea on how much traffic will be generated. As a citizen he gets no benefit from the city taking this land and selling it to another party. The people who will benefit are Toll Bros and Brox industries. He sees no benefit to the citizens of Methuen.

City Treasure Ann Guastaferra was asked to come forward to answer questions. Ms Guastaferra stated that the property on Danielian Way was sent to conservation, building inspections, engineering and assessor's office for their opinion. She pulled the deed and it had no restrictions. There was a resolution TR 91-132 for Council accepting Danielian Way stating that there be no transfer of sale except by authorization of the town council and that's as far as it went. Mr. Burke had said that TO-94-26 was protected space. Looking at the map, there was a typo error on the resolution. The resolution is declaring constitutional open space for Venice Road. Ms Guastaferra referenced a map with lot 101. The parcel on the other side is the Danielian Way has no relevance to that property. She believes the error was a typo on the resolution. She handed out the map to council and said she will speak to the solicitor to amend that resolution. The property is between two properties and the abutter requested that it be declared surplus. The property on Orange Avenue and Savin Ave and Hampstead Road are all requests by the owners to gift them to the city. The city can accept them as gifts of lands and they are taken off the tax rolls there are four out of the five that has a tax lean on. If we accept this, and when the deed is prepared, the owner (if we ask) can pay for the recording fees. If they do not pay for

this she will petition the department of revenue to take them over as land of low value because they are worth less than \$19,000 dollars. If she does that there is a preparation fee to the department of revenue to the city and the city needs to pay the recording fees. One way or another the city will own it both by taking the requests and voting for it. The one that cannot be done like that is Jeffery Town, he has paid his taxes, there is no tax lean on that property but the other four do have a tax lean. We can continue them on as a receivable, petition the commissioner for the department of revenue to take these as land of low value at a cost to the city. Her recommendation would be to accept them, because in the future there are some properties that abutters would like for their land to purchase. Councilor Cronin stated he is not interested on voting these until the taxes are paid. Once the taxes are paid he would be willing to take them and if the abutting property owners want to purchase and add to their properties, we can sell them at a nominal fee. Ms Guastaferrero said that if they do not pay the taxes (and they have not) and there is a tax lean on them now, they will probable continue to not pay the taxes. She will then go to the department of revenue and petition for land of low value. There is a process to go through and a fee to record the deed at a cost to the city.

Gerald McCall – 165 Hampshire Rd. Spoke on the six road materials/pvc pipe contracts that total 6.1 million dollars. He asked if these contracts went out to open bid and why could they not have been banded together and gone out to open bid.

City Auditor Thomas Kelly stated they went out to open bid based on what the spec's called for, they all came in together, there was a bid opening in the Great Hall. Mr. Kelly will research the process and get back to Mr. McCall.

Mr. McCall is glad to see the open bid process.

Mr. Kelly said there has always been an open bid procedure.

Mr. McCall spoke on the resolution regarding the restriction of time on public participation. He supports this 150%. He conducted a survey of the surrounding communities and none of them have a restriction on time.

Regarding the Toll Brothers development. There are 240 units with two cars per unit, three or four people per unit .7 million gallons of sewerage per day. Where is all of this going to go. We have a restriction of how much Dracut can discharge into our system.

Mr. McCall questioned the traffic study and was there one. He does not think that Chapter 79 emanate domain Mass law was an appropriate use for this process. Methuen should not have negotiated with Brox Industries. The only one to benefit from this is Toll Brothers. Mr. McCall thanked the Council for their time.

## PUBLIC SERVICE

### GRANTS:

### LICENSES:

Livery License – Teambuild Inc DBA Nursecare Transportation – 75 Swan Street, Methuen MA (renewal)

MOTION BY: Councilor Cronin seconded by Councilor Zanni to approve

**UPON VOTE: UNANIMOUS**

Flea Market Application – Smartypants Academy – 148 Merrimack Street Methuen

MOTION BY: Councilor Cronin seconded by Councilor Pappalardo to approve.

**UPON VOTE: UNANIMOUS**

CONTRACTS

C-09-19 Sealcoating Inc – Pavement Recycling/Road Sealing AMT: \$1,810,200

C-09-20 Benevento Asphalt Corp – Bituminous Concrete AMT: \$ 1,745,900

C-09-21 Sealcoating Inc. Random Crack Sealing AMT: \$1,745,900

C-09-22 Concord Winwater Works Co – PVC Pipe and Fittings AMT: \$117,970.00

C-09-23 Brox Industries Inc. Bituminous Concrete Cold Patch \$121,500.00

C-09-24 Murray Paving & Reclamation – Bituminous Concrete Pavement Reclamation AMT: \$165,240.00

C-09-25 Brox Industries Inc Bituminous Concrete & Cold Patch \$ 503,500.00

Councilor Cronin asked what budget are these coming out of, 09 or 2010?

City Auditor Tom Kelly responded 2010

Councilor Lahey stated that Mr. Kelly gave him a figure of appropriation of \$892,000 and that is what we are getting for Chapter 90 money

Mr. Kelly said that is correct for fiscal year 2010.

Councilor Lahey stated that given our economic situation being what it is, could we take some of the Chapter 90 money. Instead of doing seal-coating and filling cracks, we can get by one year without that and put some of that Chapter 90 money into doing projects that might have come out of the general budget. There is quite a list that shows projects, equipment, and materials that we could be buying that could come out of Chapter 90.

Councilor Lahey will motion to table the contracts for further investigation to find out if we can use a good chunk of this money to offset some of the things that we will be spending. Have the Mayor and DPW director get some of this \$892,000 dollars to use for money that may be coming out of our general funds.

MOTION BY: Councilor Lahey seconded by Councilor Cronin to table all contracts.

UPON ROLL CALL: 5- yes 4-no (Clr Kannan, Clr Willete, Clr Zanni, Clr. Quinn)

**(out of order)**

**TR-09-46** Resolution Providing for a Partial Waiver of Fees as Contained in Chapter 8 of the Methuen Municipal Code.

MOTION BY: Councilor Zanni seconded by Councilor Giordano to adopt.

Dick Doherty spoke on behalf of Saint Monica Church; he is on the building committee. St Monica was before the Mayor a few weeks ago and asked for the possibility of waiving the fees on a project involving the school, the church, rectory and convent. The new roof at the church has been started, it is eleven years old and was partly done wrong. They are also doing 192 windows at the school and the third floor of the convent. The projects are taking six months to get going; they are asking that council waive the fees. This would be a big help for Saint Monica's. They are spending close to \$250,000.00 to do these renovations.

METHUEN CITY COUNCIL REGULAR MEETING

Councilor Giordano is looking for a number on the fees.

Mr. Doherty said the total fees would be around \$4,000.00 between the building, plumbing and electrical. The roof permit was \$950.00. The windows were \$1,000 plumbing and electrical will be another \$2,000.00.

Councilor Giordano stated that Council did this for St. Ann's and the Presentation of Mary.

Councilor Willette asked when the project would begin. If approved when will the project commence.

Mr. Doherty said the roof has already been started because of the weather. The school will not be started until school gets out June 22. They want to start on the convent soon and would like an answer today so the guys can go and get the permits.

Councilor Willette stated that his problem is there is a facility that was granted a full waiver of fees. St. Ann's home was given a partial waiver. Councilor Willette would support a full waiver. Councilor Willette does not like penny pinching on projects that benefit the entire community with catholic charities who do educational work. Based on his recollection the previous administration gave a full waiver to a certain facility. We need to correct the legislation in the future.

Councilor Willette motioned to grant a full waiver.

Councilor Leone stated that the prior administration gave them (St. Ann's) what they asked for. They were happy with the fifty per cent they got. If St Monica's asked for one hundred per cent waiver he will vote for one hundred percent waiver.

Councilor Willette stated they are operating under the current system. We need to change that system. We should change the rules and do 100%.

Councilor Cronin said they have already paid for the roofing permit \$950.00 this could also be considered a partial waiver. Councilor Cronin would vote on any remaining permits outstanding and waive those fees.

Councilor Pappalardo is all for this and waiving the fees. The question was has this been done before and she wants everybody to be on the same playing field. St Ann's had come before council and she would like everyone to get the same opportunities.

Councilor Zanni said that on the order before council providing for a partial waiver it should read that it be resolved the city council grants full waiver on the remaining permits. What St Ann's requested was given. For the future Councilor Zanni cannot see why we cannot grant full waivers for these certain facilities.

**MOTION BY:** Councilor Willette to amend for a full waiver of fees seconded by Councilor Kannan.

**UPON VOTE:** UNANIMOUS

**MOTION BY:** Councilor Zanni seconded by Councilor Giordano to adopt the main motion as amended

**UPON VOTE:** UNANIMOUS

**OTHER OFFICERS AND COMMITTEE REPORTS**

OLD BUSINESS

RESOLUTIONS

TR-09-23 Resolution Providing for Alternate Selection of Services Providers (Clr. Pappalardo, Clr Cronin, Clr. Giordano)

MOTION BY: Councilor Pappalardo seconded by Councilor Giordano to adopt

**UPON ROLL CALL:** 5 yes 4 no (Clr Quinn, Clr Zanni, Clr Leone, Clr Kannan)

TR-09-28 Resolution Accepting a Gift of Land – Hampshire Road

MOTION BY: Councilor Zanni seconded by Councilor Kannan to adopt

Councilor Giordano asked if there is a lot of land that comes back to the town. Is this an easy way for people to avoid paying taxes and get rid of land they do not want.

Ms Guastaferra said there is a statute for land of low value. Every year that value is adjusted for deflation. Years ago there was a lot of land taken for low value in small stripes (garden stripes) but there is not many now.

Councilor Lahey said we cannot force them to pay taxes but he would like to change the word gift. This is not a “gift”. He will vote to accept these “gifts” because it does not make sense not to accept them.

Ms Guastaferra said that if this were approved tonight she would be able to go back to the owners and charge them the recording fees. If we do not do this the city is “on the hook” for the recording fees.

Councilor Leone stated that we have alternatives. We do not have to take the land for the tax title, we can let it sit and accumulate taxes.

Ms Guastaferra stated that every piece of property except for Hampshire Road is leaned. She does not have to foreclose but it keeps the receivable on the books.

Councilor Leone asked when anyone is looking for any kind of permit (building, remodel) there is a checklist that needs to be signed off. Treasure/tax collector is on that list and if Ms Guastaferra does not sign off on the checklist (taxes are not paid) the person cannot get the permit. Whether its taxes owed on the parcel they want the permit for or another parcel in their name. If we accept these we can accept these with the condition that they pay the back taxes. In one case it’s a couple of hundred dollars in other cases its several thousand. We can accept this with conditions that back taxes are paid and they pay the recording fees. If they do not want to do that the tax bill will accumulate.

Ms Guastaferra said that on these properties there would never be a building permit applied to them.

Councilor Leone said that the owners might apply for a permit somewhere else. He is willing to vote this but would want the back taxes paid.

Ms Guastaferra clarified that Council will accept the properties that will deed them to the city. If they come before the city for a permit the taxes on these properties must be paid.

Councilor Cronin said he would second that if it were an amendment to the resolution.

Councilor Kannan stated the biggest chunk of money comes from the Hampstead street property. That was a developer. Why can’t we demand the \$4,200 dollars?

Ms Guastaferra stated that the problem is with Sullivan Reality (the owner) that sold to the developer. In the deed there is some discrepancy as to an area of land being included

in the whole area. The assessors took a look and it was not included in the deed. The abutter wanted to buy the land for an addition, went to zoning and got a variance and no longer needed the land of 4,000 sq feet. One day one of the abutters will want to buy it but Sullivan Reality feels he does not own it (he does own it) and he will not pay. The property has been leaned at the registry and that is the best we can do legally at this point. Councilor Kannan said that we could then sell it to one of the neighbors to pay off this debt.

Ms Guastafarro responded yes.

Councilor Pappalardo asked what development is on the deed?

Ms. Guastafarro said Shannon Estates.

Councilor Cronin stated he would not vote this acceptance unless they pay the tab. That is why he will support councilor Leone's amendment.

Councilor Zanni asked how long the Derry New Hampshire owners (Hampshire Road) have not paid their taxes?

Ms Guastafarro stated they are up to date.

Councilor Zanni asked how long the property that owes \$4200 has been delinquent?

Ms Guastafarro stated there was an issue with that because it was over assessed and it has been four years. Orange and Savin is just this fiscal year at present.

Chairman Quinn asked if this would be in the best interest of the city to do this.

Ms Guastafarro said she would not bring this before council if she thought the taxes would be paid. The next step would be land of low value, go to the department of revenue and take them for the city or let them sit on the books with a receivable (not a good thing to do) for years and years.

This gives us the opportunity to sell to the abutters at some point and the city could recoup the taxes. Hampshire road is wet abuts the Spicket river and would probably be preserved for conservation. It would be her recommendation to accept them.

Councilor Leone asked if the city requires taxes be paid before a permit can be issued can we do that under the authority of State law? Councilor Leone does not have a problem with accepting the land but he does have a problem accepting it as a mechanism for the owner to give up the responsibility of paying the taxes. That is why we have the State law and regulations as a no pay no permit. Councilor Leone does not know Mr. Sullivan but if he comes in for a permit on another project this will absolve him on the taxes and he will get his permit. Councilor Leone feels the taxes should be paid first. If he was over assessed Mr. Sullivan had thirty days to apply for abatement he did not do that. It is not up to the city to fix his omission. He understands Ms Guastafarro is trying to clean up the books and make the land available to the abutters but the individual has the obligation to pay the taxes before we take the land.

Chairman Quinn stated each commodity is different in their own way.

Ms Guastafarro said if the city solicitor agrees she can flag the account.

Councilor Pappalardo asked if we go to the department of revenue to record the fees, approximately how much would it cost?

Ms Guastafarro said each one would cost \$125.00 dollars

Councilor Pappalardo stated that on the one that owes \$4200 dollars, the city will pay \$125.00 that would be to our benefit. The other pieces we would break even on those.

Councilor Pappalardo feels Councilor Leone is right and we should not take property when people owe taxes and she will vote yes on the amendment.

Councilor Leone stated the amendment would apply to Hampstead Street only.

**UPON VOTE:** 7 yes 2 no ( Clr Giordano, Clr Cronin)

TR-09-29 Resolution Accepting a Gift of Land – Hampstead Street

MOTION BY: Councilor Leone seconded by Councilor Cronin to adopt.

MOTION BY: Councilor Leone to amend as follows: to accept with condition that all back taxes be paid. Seconded by Councilor Cronin

**UPON VOTE:** UNANIMOUS

MOTION BY: Councilor Leone seconded by Councilor Cronin to adopt main motion as amended

**UPON VOTE:** UNANIMOUS

TR-09-30 Resolution Accepting a Gift of Land – Orange Street and Savin Avenue

MOTION BY: Councilor Zanni seconded by Councilor Lahey to adopt

**UPON VOTE:** 6-yes 3-no (Clr Cronin, Clr Pappalardo, Clr Giordano)

TR-09-32 Resolution Accepting a Gift for the City of Methuen’s Police Department

MOTION BY: Councilor Cronin seconded by Councilor Lahey to adopt

Chief Lavigne stated this is the donation of a motor vehicle that will be used by the police and will not be an addition the fleet. This is a donation, no cost to the city. It has been checked out and is in good working condition.

Councilor Zanni noted that it is a model 2000 vehicle and the timing chain needs to be repaired at a cost of \$500.00 dollars.

Chief Lavigne said the work has not been done yet.

Councilor Zanni said that the car was checked out in February sitting and what kind of condition is it in today?

Chief Lavigne was told that it was checked by DPW in February and is in good condition.

**UPON VOTE:** UNANIMOUS

TR-09-34 Resolution Authorizing Order of Taking – Proposed Right of Way – New Portion of Wheeler Street Methuen MA

MOTION BY: Councilor Zanni seconded by Councilor Lahey to adopt.

Councilor Pappalardo asked city solicitor Peter McQuillan a question referencing the indemnity and hold harmless agreement on the second page of the document (attached) number 4. Councilor Pappalardo asked for an explanation of that part of the document. Attorney McQuillan explained that during the prosecution of this work, if it is done by the city and during the course of the work we (city) cause an injury in excess of one hundred thousand dollars the city accepts responsibility for that excess over and above the statute. The work **will** be done by Toll Brothers.

Councilor Pappalardo stated that Methuen has nothing to do with the contracting, construction, the work, nothing our employees are going to be involved in. Is that correct?

Attorney McQuillan stated that is correct and the agreement states Toll Brothers will prosecute the work totally and at their cost and at their expense.

Councilor Pappalardo asked of the three insurance policies that the city has because we are self-insured would that cover the dollar amount in this agreement of one million dollars.

City Auditor Thomas Kelly stated we are self insured on workers comp and health insurance. We would be liable up to one hundred and fifty thousand per employee. If they should exceed that then the excess insurance kicks in, the answer is yes.

Councilor Pappalardo noted the comprehensive general liability we do not have. Our people will not be working, will not be doing any of this but it is still in the contract.

Mr. Kelly answered correct.

Councilor Pappalardo said that she does not know what the policy will cost us. Mr. Kelly told her it would be very expensive

Mr. Kelly stated that policy was dropped years ago because of budget issues. We have asked the insurance to provide what the premium would be and was told it was very high.

Councilor Pappalardo asked where does this leave us in this agreement?

Attorney McQuillan stated that under the city ordinance when we contract with any entity we would require under Chapter 7-5 that they have to provide to us a certificate of workers comp and other related insurance, we are also a public liability and that would apply here and the insurance would have to be maintained by Toll Brothers upon completion of the work.

Councilor Willette stated that Toll Brothers provides luxury homes. Was this project initially construction of luxury homes?

Attorney Copani stated this has been a process to get to where we are now. Initially when he petitioned for a zoning change the issue was if they would set units aside to affordable housing. That got negotiated out. The other component was that there be a contribution to off site improvements and a contribution to the town.

Councilor Willette asked if there was a small universe of homes? There was a recession and Toll Brothers were cutting back across the country

Attorney Copani stated there is approval for 240 units and that was always the case. This has taken years to get here and Councilor Willette was one of the first councils to deal with this. This is a 76-acre parcel of land and with four dwelling units per acre times 80 acres that comes to 320. Three hundred units could be put on a 75-acre site approximately. Toll Brothers came in under that before any density bonus or portability component. At the time there were several proposals before council in order to meet the ratio of affordability housing. This has gone through two other councils before they came up with the final approvals. One proposal was to select 10% and make them affordable. The other option was not to make any affordable but to make a contribution to the town and the final proposal that got approved was the last that is the 240 units (60 less) and the trade off was a contribution to the town.

Councilor Willette said his concern is the different proposals submitted to the city. He was contacted at first but why was there so much secrecy behind this. We are talking about something that was initially a proposed order of taking a portion of Wheeler Street with no background documentation and no information presented to Council attention. Councilor Willette supports fifty-five and older housing, he would hate to vote against this because he supports the concept but does not understand the secrecy behind this.

Attorney Copani stated there was no secrecy, he had been before the Community Development Board many times and it is the City Council who has the authority to

approve a zoning change in the town. He started with the city council to have that district re-zoned from industrial to MB. The pre granting authority was the Community development Board. Those meetings were published in the newspaper and he appeared on a regular basis to community development that paid for an outside consultant to review the project and make recommendations. They worked with all Boards and engineers, the fire department, we are improving the sewer system and Attorney Copani does not think there was any degree of secrecy. Council was not involved because all the other city boards were involved (at the time) in this project.

Councilor Willette stated that when he was approached in the past about the fifty-five plus project he agreed with it because there had to be an affordability component to this. This is the final stage of the process and he has not received one call on this issue and would have been upset that there was a sacrifice of affordability that could have counted toward 40B.

Attorney Copani stated that City Council did take a vote (on record) and those were the conditions city council voted. When city council voted to change the zoning in that district they voted with certain conditions. One condition was fifty-five and older. Another condition was the outside improvements with one million dollars paid to the city for the offsite improvements. These were all subject to a vote of the city council.

Councilor Leone stated when this was discussed during the re-zoning phase he remembers the council made a condition with the approval that they would direct traffic towards Route 110, away from route 113. Council approved re-zoning for 240 units with the condition that Toll would rebuild the section of Wheeler Street and give the city a cash contribution.

Attorney Copani noted at that time it was fifty-five and older.

Councilor Leone said they went to the planning board, zoning board and conservation all agendas were given to council, no secrets. The Planning Board and Toll suggested that the traffic consultant thought the portion of Wheeler Street should be straightened to direct the traffic to route 110. If we allow the eminent domain swap Wheeler Street will go straight out to Rt-110. If we do not do this Wheeler Street stays the same and it makes it more difficult to direct the traffic to Rt-110 but the project goes forward.

Councilor Lahey recalls meeting as groups of three in the Mayor's office with Attorney Copani and Toll Brothers and he remembers the concerns of affordable housing. The idea of affordable housing was made clear that it would not be affordable. People who needed housing could not afford the price of their affordable housing so he jumped on the condition to a cash contribution to the city.

Attorney Copani said that fifty-five and older is unique because they already have a home and are selling to down scale or lateral move. The affordability on a fifty-five or older is complicated for a developer to sell because not many are first time homebuyers or qualify for the affordability component.

**UPON VOTE:** 8-yes 1-no (Clr Willette)

TR-09-35 Resolution Allowing for Creation of a Reserve Fund at the Methuen School Department (**WITHDRAWN**)

TR-09-36 Resolution Authorizing Expenditure from the Edwin J. Castle Fund.

MOTION BY: Councilor Cronin seconded by Councilor Pappalardo to adopt

**UPON VOTE: UNANIMOUS**

TR-09-37 Order Authorizing a Borrowing to Pay Judgment

MOTION BY: Councilor Cronin seconded by Councilor Zanni to adopt.

Councilor Pappalardo asked if after tonight and the thirty days, they get paid.

City Auditor Thomas Kelly stated yes after the thirty-day grace period

Councilor Pappalardo asked after the thirty days how long would it take.

Mr. Kelly said it would take one week

**UPON ROLL CALL: UNANIMOUS**

Consideration of Appointments – None

ORDINANCES - None

### **NEW BUSINESS**

#### **RESOLUTIONS**

1. TR-09-38 Resolution Amending the Rules and Procedures of the City Council of the City of Methuen – Rule XI – Public Participation (Req of Clr Cronin, Clr Lahey)

MOTION BY: Councilor Cronin seconded by Councilor Pappalardo to adopt for first read.

Councilor Cronin said he had a request from a constituent to extend the time to ten minutes.

Councilor Giordano said it has always been the discretion of the Chairman. We have never had a problem. If some one is out of line then it is the discretion of the Chairperson.

Councilor Cronin said that is the problem if someone goes over the time limit then it has to be a vote of the council.

Councilor Lahey said as chair he did not keep track of the time. Councilor Lahey suggests that when a person gets up to speak, the secretary keeps track of the time and when the ten minutes are up she let's the chairman know. There is no discretion of the Chair if council wants to extend the time they would vote to extend.

Councilor Kannan feels the five-minute time limit is currently working, speakers can speak on any issue they want and it serves for a council to keep the meeting going. There was an exception tonight but no one would have interrupted that speaker. No one was ever told they could not speak for any period of time. If for some reason the Chair does stop someone there are rules in place to have the time extended. Councilor Kannan agrees with the five-minute limit.

Councilor Willette feels the time limit is working and six years on the council he has never seen a chairperson limit the time a person speaks unless it became a personal attack.

Chair Quinn read the council rule pertaining to time limit. In part it states that any person of Methuen has the right to speak during a specific time on the agenda. Each speaker

shall limit his time to five minutes per discussion unless a councilor by a 2/3 vote will allow the extensions of the time.

Mr. Gerald McCall was recognized from the audience his comments were inaudible. Councilor Zanni stated that when he was chairman there was never a point where someone could not go beyond the five minutes. We want to keep the meeting moving smoothly. If someone wants to go beyond five minutes it is the discretion of the Council Chair.

**UPON ROLL CALL: Failed** 4-yes 5-no (Clr. Kannan, Clr. Leone, Clr Willette, Clr. Zanni, Clr Quinn)

2 TR-09- 39 Resolution Establishing a Robert A. Norman Estate cemetery Perpetual Care Trust Fund

MOTION BY: Councilor Cronin seconded by Councilor Zanni to adopt for first read.

**UPON VOTE: UNANIMOUS**

3. TR-09-40 Resolution accepting a Gift for the Purchase of Breathalyzers for the Methuen Police Department

MOTION BY: Councilor Cronin seconded by Councilor Zanni to adopt for first read.

Councilor Pappalardo asked that the Council send a thank you letter to Mr. Cena, this is a wonderful thing he has done for the City of Methuen.

**UPON VOTE: UNANIMOUS**

4. TR-09-41 Resolution Accepting a Fire Department Private Grant from 3M Touch Systems

MOTION BY: Councilor Cronin seconded by Councilor Zanni to adopt for first read.

**UPON VOTE: UNANIMOUS**

5. TR-09-42 Resolution Providing for the Adoption of Fiscal Year 2010 General Government Budget

MOTION BY: Councilor Zanni seconded by Councilor Leone to adopt first read.

Councilor Giordano asked why council is voting this because they have no budget they have no numbers

Councilor Cronin requested that council set a special meeting on June 8<sup>th</sup> for an executive session to discuss negotiations. Councilor Cronin feels that because of the many negotiation and the time constraints the Mayor has not been able to give council the budget but was told we could get it by next week.

Councilor Pappalardo stated that the Mayor should have brought council members (three at a time) into his office and let council know what is going on, there are no figures yet but will be gotten shortly. Council has not heard anything from anybody and we are the last to know and she is upset about that.

Mr. Kelly said that every day the numbers out of the State are changing. The House the Senate there is not a number yet that we know we are getting for our cherry sheet. It is going down 1.7 million; the Mayor is in negotiations with the unions that are on going.

Mr. Kelly anticipates this will be done within the week and there will be a budget in front of the city council and we will go to workshops and discuss the operation of the

budget. It is no fault of the Mayor, it is a time consuming process (he is going through) but at the same time we are not getting the right numbers out of the state.

Councilor Pappalardo feels this is not a good situation, we are in horrible times but we are always the last to find out anything and she feels that the Mayor should have given council some type of a heads up. What he was doing what he wasn't doing and that is all she is saying.

Councilor Quinn stated there are no numbers to give to council when we get them there will be discussions at the workshops.

Mr. Kelly said that the Mayor is in negotiations.

Councilor Pappalardo said that she did overhear (at the police station) the Mayor tell Councilor Lahey that he was going to bring all of them (council) in (a few at a time) to go over things but that has never happened, that is all that she is saying.

Council Zanni stated that he did make an appointment with the Mayor a week ago, spoke with him and was brought up to date regarding negotiations and budget issues. Every councilor can do that. If there are concerns every councilor has the opportunity to go in and speak with the Mayor.

Councilor Giordano stated that the council represents the people and he agrees with Councilor Pappalardo that some councilors were called. He never received a call.

**UPON VOTE:** 7-yes 2-no (Clr Pappalardo, Clr Giordano)

6. TR-09-43 Resolution Providing for the Adoption of the Fiscal Year 2010 School Department Budget

**MOTION BY:** Councilor Zanni seconded by Councilor Leone to adopt first read.

Councilor Willette asked that Council send a letter to the Superintendent. Last year he posed a question regarding the person who was let go that was enforcing residency of students in our school system. In terms of saving money, with an influx of out of town students, there is no enforcement. This could be a money saving proposition to reinstate that person. Councilor Willette asked if anyone else would like to sign on and if this (truant officer) is not done he will vote against the school budget.

Councilor Leone stated he would also sign onto the letter.

Councilor Quinn asked for a show of hands and stated the entire council will back him on this issue.

Councilor Pappalardo stated that on the vote taken before the school budget, she was not listening properly and would like to vote "no" on the General Government budget.

(recorded as a no vote)

**UPON VOTE:** 7-yes 2-no ( Clr Pappalardo, Clr Giordano)

7. TR-09-44 Resolution Providing for the Adoption of the Fiscal Year 2010 Greater Lawrence Regional Vocational Technical High School Budget

**MOTION BY:** Councilor Zanni seconded by Councilor Cronin to adopt first read

**UPON VOTE:** UNANIMOUS

8. TR-09-45 Resolution Providing for the Adoption of the Fiscal Year 2010 Sewer and Water Enterprise Fund Budget

**MOTION BY:** Councilor Zanni seconded by Councilor Kannan to adopt first read.

**UPON VOTE:** 7 yes 2- no ( Clr Pappalardo, Clr Giordano)

**ORDINANCES**

1. TO-09-05 Special Ordinance Changing the Meeting Date from July 6,2009 to July 13,2009 (Req. of Clr. Giordano) (EPA Requested)

MOTION BY: (EPA) Councilor Leone seconded by Councilor Cronin

Councilor Giordano said that July 4<sup>th</sup> is on a Saturday and this will allow people to take a 4<sup>th</sup> of July vacation

UPON VOTE: 8-yes 1-no (Clr Kannan)

MOTION BY: (Main Motion with EPA) Councilor Cronin seconded by Councilor Lahey

UPON VOTE: 7-yes 2-no (Clr Kannan, Clr Zanni)

ANY OTHER BUSINESS FOR THE GOOD AND WELFARE OF THE COMMUNITY  
REQUEST OF COUNCIL

ADJOURN

MOTION BY: Councilor Zanni seconded by Councilor Cronin to adjourn.

UPON VOTE: UNANIMOUS

Meeting was adjourned at 9:35 pm

Diane Lasonde/Council Secretary

I do hereby certify that a meeting of the Methuen City Council of which a quorum was present the forgoing minutes were unanimously approved on July 13,2009.