

The Claremont City Council held a meeting on Wednesday, July 25, 2012, in the Council Chambers of City Hall.

The meeting was called to order by Mayor Neilsen at 6:30 p.m.

Members of the Council present were:

At-Large Councilor Keith Raymond
Ward I Councilor Victor Bergeron
Ward III Councilor Nicholas Koloski
Assistant Mayor Andrew Austin
Mayor James Neilsen, IV
At-Large Councilor Christopher Irish
Ward II Councilor Roger Formidoni
At-Large Councilor Kyle Messier
At-Large Councilor Thomas Burnham

Also present were:

Guy Santagate, City Manager
Jane Taylor, City Solicitor

MAYOR'S NOTES

Stevens High School Student Council Update

None

Ms. Messier congratulated the 12U Baseball Team for winning the state finals. They went on to the New England Cal Ripken Baseball Tournament.

Ms. Messier talked about the Sullivan County Humane Society. They have fixed 183 cats in this community; 14 of them were feral. They can be reached at sullivanhumane@hotmail.com. Mayor Neilsen said they will have a grand opening soon. Mr. Raymond said they have a new location on Tremont Street.

Mr. Bergeron said the Design Charrette for zoning issues went well. It was a small turn out, but there was lots of good input.

Mr. Burnham said he was in Maine over the weekend and he saw Senator Jeanne Shaheen at her sister's restaurant and that Senator Shaheen was still excited about Claremont.

CITIZEN'S FORUM

Bernie Folta, Ward 3, talked about smarter government doing more, better, for less, through improved processes, assisted by the judicious application of technology and the basic material of staff and citizen "smarts." He said the original idea came from IBM Corporation. He has no financial interest in IBM. He talked about smarter cities and gave information about where to find this information. He talked about opening up government and that Claremont has a lot of potential. He would like to see more openness.

A motion was made by Mr. Bergeron and seconded by Mr. Koloski to suspend Council Rule 15 Limitation of Debate.

Voice vote: motion carried 9-0.

NEW BUSINESS

Resolution 2012-16 Enter Into Multi-Year Lease Purchase Agreement for Equipment for Parks & Recreation New Community Center – Public Hearing

Mr. Bergeron said the request for bids for this project on the City's website made it sound like we are asking for an additional \$350,000. He wants to know why we want to lease not purchase.

Mary Walter, Finance Director, said she goes out for rates to bring back to the Council. We typically do a lease/purchase for equipment and vehicles with a buyout at the end of the lease. We can pay them off with no penalty and there is a non-appropriation clause; if we don't have the money budgeted in the following year, the lease ends and the equipment is returned. \$380,000 has been budgeted in the bond for Furniture, Fixtures and Equipment. We had an unsuitable soils change order which left us with limited contingency money. Rather than take a chance, she would like to do a lease/purchase. If the money is not needed at the end of the project, then we would pay off the lease. The interest for 6 months is about \$2,700. We are not expecting any more change orders. This is not double dipping. To purchase this outright is fine, however she will ask Scott Hausler, Parks and Recreation Director, to purchase less equipment or less expensive equipment to keep money in the bond.

Mayor Neilsen asked about interest on the bond. Ms. Walter said she didn't know off the top of her head. Mayor Neilsen talked about paying interest on the bond and on the lease also. Ms. Walter said the interest on the lease would only be \$2,700 for a \$10 million project. Normally a project would have 5-10% in contingency, but we have 1.2%. The only room we have is in a design build concept is in Furniture, Fixtures and Equipment and the contingency. If Council wishes to purchase it outright, we can do that. Mayor Neilsen asked about the ad on the website and why it was requested that the first payment be in arrears. Ms. Walter said she wanted to know what the differences in rates were. This lease has the first year paid in advance; we normally do that with all of our leases. The difference in interest for paying the first year in advance versus paying it in arrears is \$27,000.

Mr. Irish said there is \$380,000 in the bank to buy equipment. He said we are borrowing twice for the equipment; with having the money in the bank and then leasing the equipment, the money left in the bank could be used for anything. He asked if that was the right thing to do for the City as that is not what was said to the taxpayers. He said he understood that leasing would allow for more contingency money.

Mayor Neilsen used an example of having a \$100,000 change order; using some of the \$380,000 to pay for it and then use the rest to pay as much of lease you can. Ms. Walter said there should be no more surprises on a design build project so when it is done, she will pay off the lease

Mr. Formidoni talked about the \$380,000 being in the bank at the end of the project and that it could be used to make early bond payments. Ms. Walter said she is not going to build a lease payment for this into next year's budget.

Ms. Messier said the three options are to: 1) lease/purchase and pay 6 months interest of \$2,700; 2) buy less equipment. She asked how much equipment will be purchased. Ms. Walter said the \$380,000 is for furniture, fixtures and equipment. Some of the office equipment and computers that are currently being used will be moved to the new facility. Furniture is needed for the waiting area, so \$350,000 will be spent on equipment and \$30,000 will be used for things such as the waiting area. Ms. Messier said 3) is if something unforeseen happened, Ms. Walter would come to the Council for more money. Ms. Walter said she would suggest less equipment or lower quality equipment. The intention is to not increase the tax rate for this other than what was stated at the time this started.

Mr. Koloski asked about the soils change order. Ms. Walter said it was approximately \$100,000. Mr. Koloski asked about swapping out of soils from the Rail Trail to the project. Ms. Walter talked with Hutter Construction about the deducts/credits; Mr. Koloski asked to make sure we get credit for the soils that were taken from the Rail Trail. Ms. Walter can check.

Mr. Bergeron asked about the first bond payment. Ms. Walter said the first interest only payment of \$167,000 was made this month. Ms. Walter said the leasing payment will be \$120,000. Mr. Bergeron said if we have to spend the money that is in the bank, then she will have to come back to Council for the \$120,000 payment. Ms. Walter said that could happen.

Mr. Raymond said when a building is at this stage, anything that can go wrong should be minimal. Ms. Walter said that's why she feels comfortable with this.

Mr. Formidoni pointed out that we are working with a small contingency amount. Ms. Walter said Council can approve this contingent upon coming to the Council for approval to spend the contingency. Mr. Bergeron said if that happens, Ms. Walter should come back to Council. Ms. Walter said she is not expecting any surprises, but this is just in case.

Ms. Messier asked if we pay a fee at the end of the lease to purchase the equipment. Ms. Walter said no. Ms. Messier asked if we get updated equipment throughout the lease. Ms. Walter said no. We can send the equipment back if funding is not approved next year.

Council Meeting

July 25, 2012

Page 146

Mr. Irish said he likes the idea of leasing, but with no connection to the bond. Typically we do not bond equipment because it will not last the length of the bond. He would like to keep the \$380,000 in the bond. Ms. Walter said we typically do not do this except as part of a \$10 million project; this is a unique situation. Mr. Irish would like to add into the language that any money left over will be used to pay for the lease. Ms. Walter said there is no intention of going over, she's just hedging her bet.

Mayor Neilsen asked if the equipment is covered by insurance as part of the lease or by the City's building insurance. Ms. Walter said we provide the leasing company with our insurance.

Mr. Koloski said as a businessman, he would hedge the funds and provide a safety net, but as a Councilor he cannot support this. Ms. Walter said it is okay to purchase it.

Mr. Austin said he prefers to buy things outright. He can't see the advantage of lease versus purchase. If it is a good product, there should be a warranty. Ms. Walter talked about the lease replacement schedule. Normally, equipment that will not last the length of the bond is not bonded, but this is part of a \$10 million project. Also, if there was a capital reserve, we could have used that for the equipment, but in this case there is no capital reserve. The equipment will be put into the lease schedule just like everything else. If Council wants to convert to paying for everything else outright, we currently have \$4.5 million in leased equipment in the CIP (Capital Improvement Program) that would have to have long-term debt or a huge capital reserve to pay for it outright. We won't get a better price by paying for the equipment with cash.

Mr. Burnham talked about RSA 33:3 Purpose of Issue of Bonds or Notes. He feels that since the money is in the bond to pay for the equipment, we should just pay for it. Ms. Walter said we are purchasing the equipment and that this is legal. Mr. Burnham feels if there is a problem with the project, the contractor should absorb the cost.

Mr. Koloski talked about federal earmarks. He asked if we are receiving federal funds for this project. He mentioned receiving something from Congressman Hodes in 2008. Scott Hausler, Parks and Recreation Director, said that the grant was given to the City through the Edward Byrne Memorial Justice Assistance Grant Program to be used for youth programs. Typically it is not used for brick and mortar projects. After we received the earmark, we had to write the grant. We originally wanted to use it for self-sustaining scholarships for youth programs, but we had to spend it all within three years or give it back. So, we created the Access for All Program to purchase equipment for programs, kayaks and scholarships. The money has all been spent for kayaks, open air cinema, scholarships, other recreational equipment and they worked with the schools for camps.

There was a discussion about the grant and Mr. Santagate said we can do a presentation on it in the future.

Mayor Neilsen asked if it was okay to discuss an outright purchase at the same time as the lease since they are listed one after the other on the agenda. There was no objection from the Council.

Mayor Neilsen opened the public comment.

Ms. Taylor suggested Council should make the motion. Mayor Neilsen said he didn't want anyone to feel that a decision had already been made, so Council would allow public comments for both issues.

Bernie Folta, Ward 3, said he had a number of points. He asked what the consequences are for being over on the project and then he said it would be to come back to Council for more money. He asked why the City did not choose to have a larger contingency. He wished for a CPA (Certified Public Accountant) opinion. He was curious if there was a list of equipment that would be purchased. He understands that the intent is to buy out the lease if there is money left from the bond. He talked about the issue between capitalizing and creating asset value, versus leasing which is a form of expensing. He said the confusion should be straightened out in reference to the CIP which is going to the Planning Board.

Mr. Formidoni said to Mr. Folta's comments that a lease of this type can be treated as a capital purchase and it would look the same on the financials. Ms. Walter said the auditors look at it that way and GASB also requires it.

Joe Osgood, Ward 2, said he has a problem with a multi-year lease and that he would prefer the resolution specify the number of years of the lease. He disagreed that a 3-4 year lease is a capital investment. He said nothing was budgeted for consumables and a three year lease is a consumable. The New Community Center budget should include a three-year lease for replacement equipment.

Bob Picard, Ward 2, asked in reference to a previous statement that leasing was better because the technology changes so fast, once we lease it, can we change out the equipment. Ms. Walter said we would own the equipment and once it was paid off, we could trade it in. Mr. Picard believes it should not be bonded, however, if there is an overrun, that should come back to the Council to pay it.

Heather Irish, Ward 3, talked about a personal business loan for equipment and if she had to make a second lease payment for her equipment, her business would fail. If the money is sitting in an account, it will be used for something else and then we still have to pay \$120,000 each year for the next three years. She suggested purchasing the equipment now and then looking at a lease in 3-5 years.

Cynthia Howard, Ward 2, said she doesn't believe in leasing when the money is designated in the bond. She said we shouldn't spend any more money because the cost of the New Community Center will increase. She suggested that we should ask for donations.

Mayor Neilsen closed the public comment.

Mr. Formidoni asked for a clarification in reference to Mr. Osgood's statement that after three years we would have another lease payment. Ms. Walter said the equipment will be on a three-year schedule because the bond money has to be used within three years. The equipment is on a 5- or 10-year replacement plan. Mr. Formidoni said whether it is leased or purchased, it will last the same number of years.

Mr. Koloski asked what scaling down or buying a different variation will do to the project. Mr. Hausler said research was done to determine the equipment choice. We will do the best we can to fill the building with what we need.

Mr. Bergeron disagreed with Ms. Walter that we don't need to buy less equipment, but if she needs to come back to Council for cost overrun, then do it and let the Council find the money. Buy what you need. Ms. Walter asked what happens if Council says no; at that point, you can't cut anywhere. Mr. Bergeron didn't believe that if there were a real need, Council would object.

Mr. Raymond said to hold the contractors' "feet to the fire." The original intent was to purchase equipment so let's do that.

Mr. Koloski said he wouldn't downgrade the equipment.

Ms. Messier said this has been a great discussion. She will oppose a multi-year lease. If something happens, come back to the Council.

Mr. Burnham agreed with Ms. Messier. This is a design build and if they can't do it, it is their fault. Purchase the equipment.

Mr. Irish read from Roberts Rules about reconsideration.

Motion to Purchase Equipment for Parks and Recreation New Community Center

A motion was made by Mr. Irish and seconded by Mr. Raymond to reconsider the purchase of the equipment for Parks and Recreation New Community Center. The Claremont City Council hereby authorizes the City Manager or his designee to purchase equipment and furnishings for the Claremont Savings Bank Community Center in an amount not to exceed \$350,000.00, said sum to be taken from the funds raised and appropriated by Resolution 2011-22, as approved September 27, 2011.

Ms. Taylor referred Mr. Irish to Council Rule 32 Reconsideration.

Ms. Messier read Council Rule 32 Reconsideration into the record.

A motion was made by Mr. Burnham and seconded by Mr. Austin to suspend Council Rule #32.

Mr. Irish withdrew his motion to reconsider. Mr. Raymond withdrew his second.

Roll call vote on motion to suspend Council Rule 32: motion carried 9-0.

A motion was made by Mr. Irish and seconded by Mr. Raymond to reconsider that the Claremont City Council hereby authorizes the City Manager or his designee to purchase equipment and furnishings for the Claremont Savings Bank Community Center in an amount not to exceed \$350,000.00, said sum to be taken from the funds raised and appropriated by Resolution 2011-22, as approved September 27, 2011.

Roll call to reconsider: motion carried 9-0.

A motion was made by Ms. Messier and seconded by Mr. Raymond that the Claremont City Council hereby authorizes the City Manager or his designee to purchase equipment and furnishings for the Claremont Savings Bank Community Center in an amount not to exceed \$350,000.00, said sum to be taken from the funds raised and appropriated by Resolution 2011-22, as approved September 27, 2011.

Mr. Bergeron asked for language about coming back to Council for cost overruns. Council agreed that has to be done anyway.

Mayor Neilsen opened the public comment.

Bernie Folta, Ward 3, talked about another risk point. There have already been two change orders and theoretically there could be another. He asked what the probability is of that.

Ms. Messier thanked Ms. Walter for always trying to protect the City. Mayor Neilsen echoed her comment. He agreed with Mr. Bergeron and Mr. Raymond that if there is an overrun, to bring it back to the Council.

Mr. Koloski said we should look at the big picture; we are building a large project and on top of his other duties, Mr. Hausler is overseeing this project. He thanked Mr. Hausler.

Roll call vote: motion carried 9-0.

Use of E-mail by Public Officials

Mayor Neilsen said Council got a legal opinion from the City Solicitor stating that the remedy for sending e-mails back and forth among Councilors was to read them into the record and he would read them in chronological order.

June 30, 2012, 2:27 p.m., from James Neilsen to All Councilors, Mr. Santagate and Dorée Russell, Clerk to the Council.

Council Meeting
July 25, 2012
Page 150

Dear Council,

Since my election as Mayor it has been the practice of the city manager to construct the monthly city council agenda and then have Doree forward it to me for review.

Once in a while I would call to get something explained to me as to why it was on the agenda and sometimes I would ask for something to be removed.

I had already asked Guy to NOT put on the agenda the issue about going to a fiscal year on the July agenda because I am going to be away on vacation and would like to be involved in any discussion that is had on this issue.

I did not receive a copy of July's agenda and yet I have had a few inquiries as to why the new community center is requesting a multi year lease for the purchase of equipment?

I recall that there was money included in the bond for purchase of equipment and I also remember the promise that the citizens would not see an increase in their taxes as a result of the new community center bond.

I will be sending a separate e-mail to Guy to have this item taken off the July agenda if it is on it. As I said I have not received a copy of the agenda yet so I don't know what is on it.

Thank you,

Jim

June 30, 2012, 2:32 p.m., from Mayor Neilsen to Mr. Santagate and Ms. Russell

Guy,

I did not receive a copy of July's agenda for review and I have had questions about a possible lease request by the new community center for equipment purchases.

I'm disappointed that I was not sent a copy or had discussion about the July agenda and respectfully request this item, if on the agenda, be removed.

Thank you,

Jim

July 2, 2012, 11:44 a.m., from Kyle Messier to all Councilors, Mr. Santagate and Ms. Russell

Jim:

Please understand that this email is not intended to circumvent 91-A and I would appreciate it if you would make this public, as I do not believe these discussions should be taking place out of public view.

First, I want to address your concerns that the preliminary agenda was not forwarded to you. All you had to do was to pick up the phone to learn why Doree did not send you a copy of the preliminary agenda. It took me one minute to learn that she was out on vacation last week, and therefore would probably not be sending anything out until her return to work today. She is very efficient and certainly did not drop the ball.

To your concerns relative to the fiscal year change: it took only a quick phone call to learn that the fiscal year change is NOT on the agenda because you specifically asked that it not be put on the agenda. In fact, Mr. Santagate did not include it on the agenda because you told him that you were going to be away on vacation. Strangely, for some reason, you told him you wanted to hold off notifying anyone of your vacation. My question to you is, when did you plan on publically notifying everyone that you would be absent from the July meeting? Further, since you will not be participating in this meeting, why are you worrying yourself with all of the specifics of the agenda? I assume that you have notified Mr. Austin, who should be working with the administration on setting the agenda, since, in all likelihood, he will be running the meeting. Further, it is my understanding that the agenda can change up until 48 hours prior to the actual meeting, depending on the needs of the city. So, despite everyone's diligent planning, it could change slightly before we meet anyway.

Also, you expressed a concern relative to the agenda item: Enter into a multi-year lease/purchase agreement for equipment for the parks and rec department. Again, this is not complicated. The council already voted on a bond that appropriated \$380,000 for equipment. An RFP has gone out to begin the process of lease/purchasing this equipment in the amount of \$350,000, presumably withholding \$30,000 for any unforeseen issues. After leasing for 3 years, the city will own the equipment which is the most cost effective way to purchase this equipment. It is my understanding that the community center will need equipment before it can open. As with any multi-year contract, before the money is expended, it must come back to the council for final approval, because of the non-appropriation clause. You also surely know that this is still up to the council. In other words, the council could still vote NO on approving this expenditure. Have you taken a public position on this expenditure? I know you want to participate fully in the decision making. Do you plan on making arrangements to call in and cast your vote?

So, not to worry, Jim. Please enjoy your vacation and know that your counterparts on the council will take care of business in a most responsible manner. I missed a few meetings while undergoing chemotherapy and understand the feelings of being disconnected from the proceedings. Please feel free to contact me at any time.

Council Meeting
July 25, 2012
Page 152

FYI: in the interest of full disclosure, I will be reading our email exchange into the record at our next city council meeting.

July 2, 2012, 2:10 p.m., from Mayor Neilsen to all Councilors, Mr. Santagate and Ms. Russell

Dear City Councilors,

In light of the most recent e-mail from city councilor Kyle Messier, I would ask the each of you go online and read the City Code.

Under Part II - City Code, Appendix A City Council Rules And Regulation

I have attached Rule # 49

I am asking each councilor to read this rule. I think it is clear that councilor Messier violated this rule and I request that she tender her resignation immediately.

Each councilor should have a very clear understanding of what Right to Know is and the penalty is for violating it.

Jim Neilsen

Mayor

July 2, 2012, 3:35 p.m., from Ms. Russell to Mayor Neilsen

Hi Jim,

Attached is the 7/11 Council agenda for your information. I was on vacation last week, so wasn't able to send it until today.

Dorée

July 2, 2012, 4:09 p.m., from Mayor Neilsen to Mr. Santagate and Ms. Russell

Guy,

Doree just sent me the Agenda that had got posted but never sent to me. I am instructing that the item for the multi year lease to purchase equipment be removed and put on the August Agenda.

Thank you,

Jim

July 2, 2012, 4:58 p.m., from Mr. Irish to all Councilors, Mr. Santagate, Ms. Taylor and Ms. Russell

Councilor Messier (and all Claremont City Councilors) - I can't believe the email I just read actually came from a fellow elected official.

I am offended by the manner in which a City Councilor once again feels the need to question and criticize our dually elected Mayor in a public forum for simply doing his job. However, why didn't you just pick up the phone and call the Mayor with your questions as you advised him to do? I think your tone is very sarcastic and condescending. Not just to the Mayor, but to our body as a whole and the citizens of Claremont who support us and the Mayor. I can't believe the complete lack of respect for the Council, our process, and the Mayor that you are demonstrating by sending the email. This is a complete violation of our Oath of Office, Code of Conduct and Council Rules. Not to mention, you talk about a City employee's job performance. You just can't do that.

In reading your email, I became curious. How do you know what was said between the Mayor and City Manager regarding the Mayor's vacation? How do you know so much about the private conversations between the Mayor and City Manager? Also, you said you made a phone call on the fiscal year issue, who did you call on City staff to discuss a Council agenda item? How is it you have so much information on the request for equipment for the community center when no one else on the Council has been given that information yet? It seems pretty clear to me given your own words that you have been meeting privately with the City Manager or City staff outside the view of the Council and more importantly, outside the view of the public discussing the Mayor and Council agenda items.

However, the bigger issue here is what you have done regarding your desire to talk about agenda items to the entire Council outside public view; you deliberately and specifically talk about two agenda items to the entire Council, in this email. You have created a non-posted, illegal meeting, a violation of not only 91-A, but also possibly Council Rules and the City Charter. Also, given your own wording, it is my belief that you have been having private meetings with the City Manager and staff on these same agenda issues outside the view of the Council and the public. Again, I believe a violation of 91-A, Council Rules and more importantly, the City Charter. How many times have you met with the City Manager or staff privately on agenda items? What other agenda items have you discussed? Who else has been with you when you met with him? These are absolutely questions the public has the right to know.

The bottom line, you have just included all of us in another non-posted, illegal meeting and I believe it's clear that you have been working directly with City staff to circumvent the Mayor's authority and this Council and I will have no part of it. Asking the Mayor to

Council Meeting

July 25, 2012

Page 154

make your email public or bringing it up in public at the next Council doesn't change that fact. Right now, it's illegal and what you are doing is wrong.

For all of the reasons I have listed, both ethical and legal, it is my opinion that Councilor Messier has violated our Oath of Office, our Code of Conduct, our Council Rules, State Statute 91-A, and our City Charter. I absolutely agree with the Mayor that Councilor Messier should resign immediately. It would be hard for me to understand how anyone on this Council could possibly turn a blind eye to this behavior from Councilor Messier or any other sitting Councilor. I'm sure we all remember a previous Councilor who was removed from office for much, much less egregious behavior? This is no longer a Council or political issue, it's a legal issue and the law and our Charter will dictate the process and the consequences.

July 2, 2012, 5:08 p.m. from Ms. Russell to Mayor Neilsen

Jim,

Here is a copy of the revised agenda with Resolution 2012-16 Enter Into Multi-Year Lease Purchase Agreement for Equipment for Parks & Recreation – Public Hearing removed.

Dorée

July 2, 2012, 6:25 p.m., from Ms. Messier to all Councilors, Mr. Santagate, Ms. Russell, Matt Camara, Eagle Times

Dear Mayor Nielsen:

I have just finished reading the council rules, specifically rule number 49. Help me understand where you are coming from. I would have to say that you either have not read the rules yourself or that you need a refresher on how to interpret them. Your call for my resignation is nothing short of ludicrous. You apparently do not understand your role, your responsibility, nor your authority. With your call for my resignation in mind, I would say that you are the one that is way out of line, not I.

My email was in response to your email, which you sent out to the entire council. As it spoke to the issue of the upcoming meeting agenda, which is allowed, I responded to the email with the proviso that my communiqué was not intended to violate RSA 91A in any way and that I would be making my statements public. In addition, I closed my email stating my intention to read our emails into the record at our next meeting, which I still intend to do.

Just so you know, it is my belief that city business should not come to a screeching halt just because one of us on the council goes on vacation, the mayor included. We have an assistant mayor, duly elected by the people, just for this reason.

Most importantly, I am offended by your outrageous accusations and I look forward to setting the record straight at the next meeting. You apparently believe that you have sufficient grounds to call for my resignation, and take this extraordinary action. When you go so far as to accuse an elected official of illegal behavior, then the resulting response and outcome must be aired and dealt with in public. I take your accusations seriously and I am prepared to answer your charges in public at the next meeting.

Again, so that I am crystal clear, I intend to read these latest statements contained herein, into the record at the next city council meeting.

Kyle Messier

July 2, 2012, 6:49 p.m., from Mr. Irish to all Councilors, Mr. Santagate, Ms. Russell and Matt Camara, Eagle Times

Kyle,

You just don't get it.

One, you brought up two Council Agenda items and talked about them specifically. That constitutes an illegal meeting. You weren't talking about the agenda, you were talking about the items and specific information about them that should be brought up in public. Not via a email to the entire Council. And clearly, you have information that the rest of the Council does not have. How is that possible?

Finally, you can't email the entire Council and under the guise of "I'm not trying to surcomvent 91-A, I'll go public next week". As soon as you sent the email it became an non-published meeting between us all. The meeting between us all has already happened, whether or not the emails get publicized and whether or not you bring it up next Wednesday. And by the way you can't because it's not on the agenda. You can't make up the rules as you go here.

You have violated more than just Rule 49 as far as I am concerned. Some of them per our Charter could be considered criminal at which point it is no longer a Council issue, but an outside legal issue.

Also, it's odd to me that you have copied in Matt from the Eagle on your email?

July 3, 2012, 12:06 p.m., from Mr. Irish to all Councilors, Mr. Santagate, Ms. Taylor, Ms. Russell and Mr. Camara

Councilor Messier and Fellow Councilors,

What is not to understand? We were all given the same information and same warning from Jane Taylor after what happened with Councilor Formidoni's email.

Read it for yourselves. It doesn't matter the topic, it doesn't take a quorum to respond.

As you can see, it doesn't even take a response via email, just "an expectation of a response". You don't even have to open the email. And I believe there is precedence on all this.

Clearly Councilor Messier started a non-published meeting with her first email and like it or not, we have all been participating in it ever since. The Mayor's initial email didn't request a response or give any expectation of a response as the agenda is his responsibility and within the scope of his duties, not ours. Council Messier made it our business and a non-published meeting when she responded to all of us instead of just responding to the Mayor which would have been the proper and respectful thing to do. Take into account that she discussed actual agenda items in detail and it makes it that much worse.

As far as any debate that it's a non-published meeting. It doesn't say "may be considered", it says "**shall be considered deliberations and shall occur only at meetings noticed in accordance with RSA 91-A and council rules.**"

So the question is, are we all now guilty of violating the City Code and subject to removal from office? Unless I'm wrong and someone can show me where Councilor Messier legally posted the meeting at City Hall, etc. in accordance with RSA 91-A prior to sending the email?

Either way, although only 3 of us have taken part in the email trail by responding, if only two more of you are talking about it (and you know you are) we clearly have a quorum discussing it outside the view of the public. This is what it is, you cannot defend it.

49. - E-mail and other communications between meetings

Communications between meetings or a series of communications, **involving more than one (1) council member which requests a response or raises an expectation of a response involving a quorum or more of the council or of any council committee or sub-committee are prohibited. Such communications shall be considered deliberations and shall occur only at meetings noticed in accordance with RSA 91-A and council rules.**

July 16, 2012, 1:44 p.m. to Ms. Taylor and Mr. Santagate

Dear Ms. Taylor,

Per city council rule number 11, I am requesting a written legal opinion on the e-mail exchanges that took place between June 30th and July 6th.

Please explain the difference between what kind of e-mail exchanges are allowed and what are not allowed and then apply that standard to the attached e-mails.

I believe that you already have them but I have attached them just in case.

I would request that the council get this information before the meeting on the 25th.

Thank you,

Jim

Mayor Neilsen said Council received a legal opinion. The remedy for the violation was to read the e-mails to the public. He asked Councilors what they wished to do.

Mr. Bergeron said he doesn't agree with the City Attorney or Mayor Neilsen's assessment that the whole Council is responsible as only three Councilors were communicating. He is here to end the nonsense that Council is being ridiculed by the public. He talked about the Mayor's responsibility. He said that three people misused the law and Council Rules.

A motion was made by Mr. Bergeron and seconded by Mr. Burnham that Mayor Neilsen, Ms. Messier and Mr. Irish apologize to the citizens for errors in judgment and if this occurs again they will face removal from the Council.

Mayor Neilsen agreed with Mr. Bergeron that they need to recognize their errors, apologize and move forward. He apologized to Ms. Messier for the e-mail he sent and he said he would not send multiple e-mails anymore.

Ms. Messier said since the last meeting she has heard from citizens and she thanked them for their concerns and support. Her emotions got in the way of good judgment. She was upset that the Council can't seem to move forward. She was upset about the delay of an important agenda item. Council has spent the last seven months mired in the past, reviewing past Council decisions. All Councilors were elected to ask questions. To make accusations then ask questions results in outrageous headlines and is not good for the City's reputation. She talked about Mayor Neilsen and Mr. Irish calling for her resignation after she had hit "Reply to All" in her e-mail which, again, put the City in the headlines. She thought it was ironic that they would call for her resignation and now they want to move forward. She talked about the ruling that three Councilors put the whole City Council in jeopardy and if it were egregious enough to call for her resignation, she doesn't see what changed. She is prepared and willing to step down if

Council Meeting

July 25, 2012

Page 158

Mayor Neilsen and Mr. Irish are willing to step down. She is willing to do that as well as apologize. She would like to move on.

Mr. Irish said he was embarrassed by his own words. He apologized and said that his emotions got the best of him. He said there has not been enough respect for the people or the positions. Councilors need to be able to ask questions and move forward. He said he had forgotten who he represented, the people. He said he was prepared to resign if it is the will of the Council for all three to resign. He said it would be a good thing for Claremont if there were nine new Councilors or an election where whoever wants to run again can get re-elected.

Mayor Neilsen said both legal opinions stated the remedy was to read the e-mails into the record, apologize, not do it again and move on. He said he would not step down; he is not a quitter. He said he has faults and that he would apologize when he was wrong. He will not accept Ms. Messier's and Mr. Irish's resignations. He said he saw people with conflicting opinions have a discussion, a solution was voted on and everyone is leaving as friends. He said this is a turning point for the Council and between now and the end of the year, Council can do some productive things for Claremont.

Mr. Austin said he felt bad about the poor communication with Mayor Neilsen and Mr. Austin felt like he was forced to make a decision about the petition from the Parks and Recreation board about the equipment. In the future, he said Mayor Neilsen needs to work better with others to make things run smoothly.

Mr. Burnham talked about the NH Local Government Center Guidebook for New Hampshire Elected City Officials and that Councilors should read it. He talked about complaints received from citizens and that Councilors have a job to do and that is to represent the citizens. He would not accept anyone's resignation, if given.

Mr. Koloski said there has been talk of a divided Council and he hopes that is so, because he doesn't think there should be predetermined notions before Council meetings. He said he doesn't want any resignations. We have a lot of City business to discuss. To the Mayor, he said that speculating to the paper prior to Council discussions is not good for the Council/City. If something is happening, the meeting is the place to bring it up. He said he has a lot of respect for the Mayor. He doesn't think a motion is needed to do what is expected.

Mr. Bergeron disagreed about the attorney's remedy; the remedy is up to the Council. He disagreed with Mr. Koloski, the motion is needed.

Mr. Raymond accepted the apologies from all three and he would like to move on.

Mr. Irish agreed with the motion, but did not want to have names in it; it should cover all Councilors. Mr. Bergeron said that it's a warning to all.

Mayor Neilsen opened the public comment.

Council Meeting

July 25, 2012

Page 159

Carolyn Towle, Ward 1, said at the last meeting, she put the Council to task to solve this and to get the City back in action. She is hopeful with what she has seen tonight and she thinks they are back on task.

Bernie Folta, Ward 3, talked about sunshine. The press is the public and headlines are part of the public process. He said Claremont has a reputation of wanting to sweep things under the rug which is not healthy. What is healthy is to air it out, resolve it and move on. He said there are no rules about construction of the agenda. He recommended Council draft agenda construction rules. He talked about Councilor vacancies and how they are replaced. He said we need to institutionalize a rule for that.

Joe Osgood, Ward 2, agreed with Mr. Koloski that Council should never always agree with everything. All are doing a good job. He asked that when they leave Council chambers, they do it as City Councilors.

Jim Neilsen, Ward 2, echoed Mr. Osgood. He said all Councilors ran unopposed except for the Mayor because no one wants the job, it's tough. He applauded the Council for serving on behalf of the community.

Jerome Goggin, Ward 1, cautioned each one about making inflammatory statements. They don't help our City, they degrade it. Last Saturday, he went to the Design Charrette and he enjoyed it. He is so pleased to see intelligent people turn out. This gives the opportunity to promote Claremont, but inflammatory statements hurt the City. He hopes it will stop and we get on with the business of Claremont.

Cynthia Howard, Ward 2, asked if Councilors had a copy of the NH Constitution and if they have read it. Copies can be gotten in Concord. She read Part 1, Article 8, Accountability of Magistrates and Officers; Public's Right to Know. She said the e-mail discussions were not open to the public, so they violated the law. Councilors are not above the law. As a citizen, she asked that they all resign.

Heather Irish, Ward 3, said it was clear that none violated the spirit of RSA 91-A; they made mistakes. To have the three resign would not hurt her personally, however each brings something to the table. This is a good Council for Claremont. We don't need a "yes" Council. She thinks there are a lot of positive things coming in the future. Councilors have to respect the voters and each other and she expects each to respect the others opinions.

Roger Carroll, Ward 3, said it was disappointing to have three respected people violate the law. He said Mayor Neilsen stepped over the line by asking Ms. Messier to resign. He doesn't think kicking people off the Council is a good idea; that is the last resort. He doesn't think resignations are a good idea either. He gave credit to Mr. Bergeron for saying two weeks ago that if they are going to do this, Mayor Neilsen and Mr. Irish should be here also. He said if the motion is passed as stated, Council is boxing itself in. He gave kudos to the Councilor for sitting there.

Paul Bonneau, Ward 1, said he approved of the way meeting was held and hopefully this will continue.

Mr. Koloski said he will vote no on the motion. By putting in the names, it allows the others to get a free pass. All nine should be held to the same standard. The motion should cover all.

Mr. Irish said he didn't regret what was said. He feels good about the meeting and the apologies. He asked to not have any actionable item in the paper tomorrow. He would like to move on.

Mr. Bergeron said he would take off the last sentence. This was originally in the paper, so the apologies need to be in the paper.

Mayor Neilsen agreed with Mr. Bergeron.

Mr. Burnham agreed to the change in the motion.

A motion was made by Mr. Bergeron and seconded by Mr. Burnham that Mayor Neilsen, Ms. Messier and Mr. Irish apologize to the citizens for errors in judgment.

Mr. Formidoni doesn't think the motion needs to be done as the action has already been done. Mr. Koloski agreed. This looks like it is being demanded that it be done which is not how it happened.

It was agreed the three named Councilors would abstain from voting.

Roll call vote: motion carried 4-2 (Messrs. Koloski and Formidoni voted no) and 3 abstain (Mayor Neilsen, Ms. Messier and Mr. Irish).

CITY MANAGER'S REPORT

None

Mayor Neilsen said that he and Mr. Santagate talked about agenda setting and how Councilors get the agenda, how to get items on the agenda and whether or not to change the process. This will be discussed at the next Council meeting.

FUTURE AGENDA ITEMS AND DIRECTIVES

Mr. Burnham asked if Councilors can get a copy of the agenda earlier than they have been.

Mr. Bergeron asked to put back on the agenda the change of the budget cycle.

Mr. Bergeron would like an explanation of why Claremont is the hardest city (according to the newspaper) to get information from.

Ms. Messier asked about the “grant” from Congressman Hodes.

Police Chief Alex Scott said in reference to CALEA (Commission on Accreditation for Law Enforcement Agencies, Inc.) that they had completed the on site assessment; they held a public hearing last night; the assessors left today; Chief Scott was confident in November that they will achieve full accreditation. He gave credit to Bill Wilmot, Captains Chase and Casey. They have to comply with 188 standards. He looks forward to coming back to the Council in December with the plaque.

Mr. Koloski said the Council is proud for what the Police Department has been able to accomplish.

CONSULTATION WITH LEGAL COUNSEL

None

Ms. Messier reminded Councilors that Local Government Center is putting on a Local Officials Workshop on September 29.

ADJOURNMENT

At 9:24 p.m., a motion was made by Mr. Bergeron and seconded by Mr. Burnham to adjourn.

Voice vote: motion carried 9-0.

Respectfully Submitted,

Dorée M. Russell
Clerk to the Council