

A special joint meeting of the Board of Aldermen and Board of Public Works was held Tuesday, May 31, 2016, at 6:30 p.m. in the City Hall Auditorium.

President Brian S. McCarthy presided; Legislative Manager Susan Lovering recorded.

Prayer was offered by Legislative Manager Susan Lovering; Alderman Ken Siegel led in the Pledge to the Flag.

The roll call was taken with 12 members of the Board of Aldermen present; Alderman Schoneman, Alderman Clemons and Alderwoman Melizzi-Golja were recorded absent.

The roll call was taken with 4 members of the Board of Public Works present; Commissioner Pappas was recorded absent.

Mayor James W. Donchess and Corporation Counsel Steven A. Bolton were also in attendance.

COMMUNICATIONS

MOTION BY ALDERMAN WILSHIRE THAT ALL COMMUNICATIONS BE READ BY TITLE ONLY MOTION CARRIED

From: Brian S. McCarthy, President, Board of Aldermen
Re: Special Board of Aldermen Meeting

MOTION BY ALDERMAN WILSHIRE TO ACCEPT AND PLACE ON FILE MOTION CARRIED

DISCUSSION

Update on the status of property acquisitions for the Broad Street Parkway.

Mayor Donchess

I wanted to meet with you just to update everybody about what is going on with respect to the funding for the Broad Street Parkway, particularly the reimbursement from the Federal Government for the federal earmark that was passed by Congress and designated for the is project. The Infrastructure Committee has been updated by John Vancor at various times and he will give you a more detailed explanation but in overview the history of the situation is that in the fall of 2010, the route of the parkway was changed from one that kind of skirted to west of the Millyard to one that directly entered into the Pine Street Extension. At the time that happened there had already been parcels acquired by the State of New Hampshire on the city's behalf for the original route and when the route was changed some of those parcels were no longer necessary for the new route; those being where the NIMCO Building is, a parking lot that is south of there and the area where the police training facility are which are all kind of on the western edge of the Millyard and then in the fall of 2014, the federal highway began to inform the city that they didn't regard these original acquisition expenses as being eligible for federal reimbursement because the parcels were not used ultimately for the road even though they had approved the change in the route via a Record of Decision in 2010 without raising this in any way as an issue. In any event, a whole group of people have been working on this ever since. First of all, Mayor Donnalee Lozeau was very involved, John Vancor has been very involved, Lisa Fauteux on behalf of the Board of Public Works, City Engineer Steve Dookran, our finance people; John Griffin and David Fredette as well as the Legal Department. This issue has been discussed by the city, the state DOT and federal highway. The underlying issue is if these \$5 or \$6 million of expenditures that were made in acquiring and moving and dealing with the issues pertaining to these now ineligible parcels, if those are eligible for federal reimbursement then we would not be able to use \$2 or \$3 million of the federal earmark that we had been granted by Congress. After many discussions and a lot of meetings with the state DOT and federal highway, although they remain in insisting that those parcels are not eligible we believe we have arrived at a solution that will enable us to use the entire federal earmark. In arriving to this point I want to add that we have had the help of

the Congressional Delegation and they have been very helpful. They contacted federal highway and discussed the problem which we believe has certainly been of assistance.

Mr. John Vancor, Project Manager, Broad Street Parkway

I'd like to go back to last September when we provided an update to the Infrastructure Committee. At that time we were really just starting to get an understanding of where this was going. Federal highway and New Hampshire DOT had a very ostensive coordination effort. Federal highway was reviewing all of their records as far as the acquisition of the right-of-way goes. It's worth mentioning that when the city took over management of the Broad Street Parkway, New Hampshire DOT maintained all responsible for all acquisitions of the right-of-way, the city did not lead any efforts for the acquisition of any property needed. We had learned and the numbers that we presented at that time last September, we understood that they were concluding that \$8.4 million was the total that was going to need to be reimbursed, \$6.9 million was money that they were looking for the city to repay out of the Broad Street Parkway funds and the rest of that \$8.4 million was other unspent federal funds at the time so that is what we are worried about needing to have reimbursed in order to make sure, as we have always said that we wanted, all federal funds that were programmed for the Broad Street Parkway to be spent, we didn't want to leave any on the table. At the time, federal highway and New Hampshire DOT had done an evaluation and they felt that there was \$8.8 million still remaining in eligible expenses so from the way they looked at it well, if there's \$8.4 million that has to go back into the system but there's \$8.8 million they can reimburse it, it's going to be a wash and the city is going to get all of the money and all of the federal funds will be spent. We were very concerned and that's what we reported last September, we were afraid that there were different aspects that they weren't quite taking into account and that there analysis might have missed some things. We continued to work and in December we sat down with New Hampshire DOT, they agreed with us that in fact the \$8.4 million to be reimbursed really should be \$9 million and that the eligible expenses that remained at best would be \$7.3 million. Our concerns were well founded and in September DOT agreed with us that there would be a shortfall if we continued down this path of at least \$1.7 million and I think fair to say more than that, perhaps more than \$2 million. At that point we went through several months and the city was trying to do two things; one is reduce the \$9 million that would need to be reimbursed by reducing what would need to be repaid questioning the basis for the demand for repayment and at the same time also asking federal highway to look at their past decisions on what was reimbursable or not reimbursable to try to increase what they would allow to be used as reimbursable expenses; trying to get rid of that shortfall and frankly we came to an impasse. What has changed and what has given us some reason for optimism here is that there is a nationwide program that was started this year. Nationally federal highway is finding that many projects have unspent earmarked funds and they really want to clean the books on those. What they have proposed in 2016 is for state DOT's or municipalities to apply to repurpose federal funds that were earmarked for a particular project that wouldn't be spent. In repurposing they would like to see if there is an eligible project that those funds could go to. Therein is what we see as a solution to the problem to avoid having any federal funds that were supposed to be spent here in Nashua not spent and so what is really under consideration is at this point the state and federal highway are looking for the city to repay past expenditures in the amount of \$6.86 million. Carrying it through, in order to address that shortfall in eligible expenses that we can apply that to in order to get that money back to Nashua, discussion has been given to applying to repurpose \$4 million of that that could be used for paving and pavement rehabilitation on major city streets but the condition is that it would have to be a federally eligible road so generally an urban artillery road or numbered route; certainly there are streets in need. By doing that we can assure that there is enough breathing room in that that all of the federal funds will either be spent on the Broad Street Parkway or on paving Nashua streets or rehabilitating paving on Nashua streets.

Mayor Donchess

Attorney Leonard has been arguing with the federal lawyers for years on this. So they are looking for a check for \$6 million and we are immediately going to get almost \$2 million back so that would be a delay regarding the \$4 million. We get \$6 million and they give us \$2 million back in rough terms in eligible expenses and then we will repurpose a number of paving projects to become eligible to use the \$4 million, that's basically what you saying, correct?

Mr. Vancor

It's a little bit better than that in that \$2 million would come back immediately because we already have eligible expenses and we have the paperwork up. Another \$3 million would be reimbursed by the Broad Street Parkway and that would leave about \$1.9 million that we would get back until the paving. The reason for the discrepancy is it's not just the amount of the check that we need to get reimbursed using eligible expenses, there is also a couple of million dollars in unspent federal funds that hasn't been programmed for anything yet and we want to make sure we capture that as well.

Alderman Deane

So once we get all of this convoluted financial lingo all figured out, at the end of the day what is the net effect on the spending cap?

Mayor Donchess

I think there is no effect because this is all bonded money and it's being spent pursuant to this project. It's cap neutral.

Alderman McCarthy

I believe that everything that we have to pay is already authorized in the Broad Street Parkway.

Alderman Siegel

So what I am hearing is that we will immediately get some money back but we will have to put money out of our own funds out for some period of time and earmark it specifically for paving and at some point because we are hoping that we craft it such that it's eligible we will then be reimbursed for that so we are not putting out additional money for paving, we are just repurposing it and putting it towards arterial roads which we have been looking at anyway. Approximate timeframe, you'd expect a repayment schedule; what's typically the length of time we are looking at?

Mr. Vancor

We would expect the repurpose paving project to be done in 2017 and it would be a reimbursement just the same as what's been going around the Broad Street Parkway normally which is after the work is done, the city pays for the work, submits through New Hampshire DOT to federal highway and then gets the money back so it's a matter of a couple of months after the work is done.

Alderman Siegel

So we can repurpose this money that we didn't spend on the Broad Street Parkway and get the roads that we probably care a little bit more about paved, at least some of my constituents care about them.

Mr. Vancor

That sounds accurate.

Attorney Bolton

I think one of the points that may not have been emphasized quite enough is that these paving projects are already engineered because it was anticipated that city money would be spent on them. What this repurposing of federal funds will allow is for the most part federal funds will be substituted for what would have been city funds and that's even over the next year or so.

Alderman Moriarty

Going back a step, in general how is the Broad Street Parkway working and I will rephrase by saying that roughly \$30 million is city and \$30 million is federal. Is there some account somewhere that the federal money goes into that this is all being spent out of? The total is like \$80 million or something, right?

Mr. Vancor

In total, federal funds came into the project through a few different sources; there were the original earmarks and then there was some additional grants but about \$44.8 million in total in federal funds from the beginning of time was what was envisioned and at the time the city took over or when the bond was authorized, the DOT had reported that there was \$30.5 million in federal funds remaining and so there is never a time when they take that \$30.5 million and put it into an account per se and it's sitting there ready to take. It's a case where New Hampshire DOT programs it as we move along and each contract is programmed for so much and it depends on the cash flow of the funding and when it's available; much more so than we realized when we started out. It's really reimbursement as the work goes and eligible construction work is completed and the city puts in for reimbursement. That's been proceeding and it was proceeding very well until this came up and basically they are holding \$2 million of eligible reimbursements until this gets resolved. That's the \$2 million that would come back immediately. In total of the \$30.5 million that was remaining when the city took over the project, we are looking at, once this repayment is made, if it's made, we are looking at \$9 million that we need to recapture; the \$6.8 million that they are looking to the city to write a check for and then the remaining unspent money is \$9 million in total. That's what we need to get reimbursed.

Alderman Moriarty

Okay, so let me ask again, as we go along, the checks that are written for the Broad Street Parkway, what account are they drawn from?

Mr. Vancor

Checks to pay contractor's you mean?

Alderman Moriarty

Yes.

Mr. Vancor

I don't know the specific accounts.

Mayor Donchess

David Fredette, the City Treasurer is here.

Mr. Fredette

Mr. Fredette's statements were inaudible.

Alderman McCarthy

Expenditures where we haven't been reimbursed yet; are those coming from bond proceeds or out...

Mr. Fredette

From bonds.

Alderman McCarthy

So we did let some of the bonds up front to get enough cash in the account to do that.

Mr. Fredette

Mr. Fredette's response was inaudible.

Alderman Moriarty

Okay so I understand that so let me go a little bit further. Remind me again, so the amount is \$80 million and we are paying less than half so if we are paying less than half then we don't have the ability to sort of spend our money twice. Let's say we have a \$60 million project and they are paying half, we spend \$30 million and they reimburse \$30 million and then we spend \$30 million again. That equals \$60 million but if it's an \$80 million project and we are bonding \$35 million we could spend \$35 million but we don't have any money left to spend out of the bond fund because it's already been spent. Is the federal government push greater than half of the total amount of the project?

Alderman McCarthy

I think the part that is missing there is the total budget that was expended is less than what the estimates were and therefore the amount that we are getting in reimbursements plus what we had for the bond authorization comes to less than the total of the project plus what we wind up having to pay them.

Alderman Moriarty

Okay so that's half the answer but is the total amount that the federal government paying less than how much we bonded, total?

Alderman McCarthy

The net effect is going to be that we are essentially repurposing the bonds to pay for pavement because we are going to pay for a part of the parkway that we didn't expect to pay for and the feds are going to pay for paving in return in the same amount.

Alderman Moriarty

Right, I get that but if at any point the federal government's share is more than half of the total cost then we don't have enough money in our bond account to spend it twice.

Alderman McCarthy

If the federal government's share is less than what we have bonded...

Alderman Moriarty

I will start over; did we bond an amount that is at least as much as the federal government share?

Alderman McCarthy

The bond plus the federal government reimbursements will cover the cost of the Broad Street Parkway project plus whatever amount in paving; \$1.7 million it sounds like.

Alderman Moriarty

It's still not quite what I am looking for. In order to get reimbursed we have to spend the money first so if the federal government's share is greater than the amount we bonded then we don't have an ability to spend just bond funds in order to get reimbursed with the federal government money. The federal governments share \$40 million and our bond is \$35 million, once we have spent our \$35 million, we don't have \$5 million available.

Alderman McCarthy

We do because we've been reimbursed for some of the earlier expenses already. Look at it this way, we bonded \$30 million; we put \$30 million in the bank, we spent \$10 million, we sent the federal government a bill for \$10 million and they gave us back \$10 million and at that point we still have \$30 million in unencumbered cash and we now have \$50 million instead of \$60 million in expenses anticipated. So at that point what we need back from the federal government is less than half of the project. We essentially do spend our cash more than once and get reimbursed for it more than once.

Alderman Moriarty

Right and that allows us to go through the project but now we are at the end of the project where we have spent all of the \$30 million twice already.

Alderman McCarthy

We haven't spent our \$30 million yet.

Alderman Moriarty

But we did not bond enough money to cover the federal share.

Alderman McCarthy

Yes, the project is substantially under the budget that the bond was based on.

Alderman Moriarty

So then we did bond enough money; the amount we bonded is greater than the total federal share, is that true?

Alderman McCarthy

No, it doesn't have to be because we were paid back enough of the federal share. The point we are at now is that there is a few million in expenses left on the Broad Street Parkway but there is perhaps \$10 million or \$15 million left in the bond authorization because we only spent \$20 million of our money in the process of building it.

Mayor Donchess

So in the end we will spend more than we thought on the Broad Street Parkway but on the other hand we will get a lot of paving; in the end we come out even. For whatever we spent more than anticipated on the Broad

Street Parkway we will get that equal amount of paving on these repurposed projects. We will come out even and if this works out, we in a way are better off because had this not occurred the Millyard parcels that we acquired, NIMCO and the like, we would have had to sell those and give the money to the federal government.

Alderman McCarthy

I assume that this means that we own the police training facility.

Mayor Donchess

This means that there is no obligation to pay the federal government with respect to any of these parcels that have been ruled ineligible. So the NIMCO parcel; there are other legal problems with respect to that with the current occupant but the NIMCO parcel, the police training facility and the large parking lot that is adjacent and city owned, near Bagshaw owned by Steve Bonnet. Those parcels will be owned by the city free and clear and we can dispose of those as we wish under this scenario which we would have been able to do had this problem not arisen. Is that clear?

Alderman Siegel

So just to reiterate, we had an overhang and the federal government wanted their money back. We figured out a difference purpose and it turned out to be paving and so rather than give the federal government back money we managed to use the federal government money to pay for local municipal paving rather than paying for that local municipal paving out of strictly local municipal tax payer dollars, is that correct?

Mayor Donchess

Correct.

Alderman Siegel

So, the entire United States of America is helping to pave part of Nashua.

Mayor Donchess

I mentioned this at the beginning but let me reiterate that this has been a team effort over a long period of time and there have been a lot of city employees involved; public works, finance, legal and of course John Vancor who led the effort. This has been a successful result as a result of people working very hard to come up with a creative solution over quite a long period of time so I would like to thank everyone who helped in hopefully making this a reality.

ADJOURNMENT

**MOTION BY ALDERMAN DEANE TO ADJOURN
MOTION CARRIED**

The meeting was declared adjourned at 7:00 p.m.

Attest: Susan K. Lovering, Legislative Manager