

A regular meeting of the Board of Aldermen was held Tuesday, October 12, 2021, at 7:30 p.m. in the aldermanic chamber and via Zoom teleconference which meeting link can be found on the agenda and on the City's website calendar.

President Lori Wilshire presided; City Clerk Susan Lovering recorded.

Prayer was offered by City Clerk Susan Lovering; Alderman-at-Large Michael B. O'Brien, Sr. led in the Pledge to the Flag.

Let's start the meeting by taking a roll call attendance. If you are participating via Zoom, please state your presence, reason for not attending the meeting in person, and whether there is anyone in the room with you during this meeting, which is required under the Right-To-Know Law.

The roll call was taken with 14 members of the Board of Aldermen present: Alderman Michael B. O'Brien, Sr., Alderman Patricia Klee, Alderman Richard A. Dowd, Alderman June M. Caron, Alderman Benjamin Clemons (via Zoom), Alderman Thomas Lopez, Alderman David C. Tencza, Alderwoman Elizabeth Lu, Alderman Ernest Jette, Alderman Jan Schmidt, Alderman Brandon Michael Laws (via Zoom), Alderman Skip Cleaver, Alderman Linda Harriott-Gathright, Alderman Lori Wilshire.

Alderwoman Shoshanna Kelly was recorded absent.

Mayor James W. Donchess, Corporation Counsel Steve Bolton, were also in attendance.

REMARKS BY THE MAYOR

President Wilshire

Mayor, did you wish to address the board this evening?

Mayor Donchess

Oh, yes. Thank you, Madam President.

I have just a few things I want to mention to you. First a brief update on the COVID status. We remain in a status of substantial community transmission right in the last most recent period. The positivity rate in Nashua has been 5.9%, which is similar to what it's been for a number of weeks now. It's up and down a little bit. The number of active cases is 178 right now and we have had about 337 cases per 100,000, that's one of the metrics, over the last 14 days. So since we're 90,000 or so, that means a little over 300 cases over the last 14 days. So we are in substantial transmission, but we do we are pretty stable over the course of the last several weeks. So Public Health Director Bobbie Bagley is watching all of this carefully as she always does and we will let you know if there are any significant changes either up or down as in the weeks or months ahead.

I wanted to mention some of the things Madam President that are on the agenda tonight. First, R-21-173 related to the paraprofessionals in our schools. This is a one-year contract that will get us through this current year. Paraprofessionals are a very critical component of the education that we provide in Nashua. Our goal is to have an excellent education for every student in every school every day and the paraprofessionals who assist the teachers with many different things are a very important part of achieving those objectives. They are certainly not overpaid. That's an understatement. They make only a very modest compensation and they deliver a very important product or service to the school. So I'm sure you're all aware of that and will vote in favor of this collective bargaining agreement.

Madam President, I did also want to mention the Master Plan, which is on the agenda for final approval tonight. This has been in the works for quite a long time. We had great participation from hundreds and hundreds of people across the city in every neighborhood of the city. It became apparent that we have many residents who love Nashua and have very deep feelings for our community and want to do everything they can to make it an even better place to live. We have a 23 member steering committee who helped to guide the efforts of our

staff, our consultants, as well as all of the residents who participated through online surveys, through polls, through one at least one in person meeting, through many internet posts, and Internet voting in many different ways. I want to thank on behalf of the City all of those who participated not only actively on the steering committee but also all of the residents who gave very valuable input. So through this joint community effort, we developed, I think, a very solid and forward looking imaginative plan. Six areas were reviewed, particularly six kind of subject areas. Each received separate conversation - land use and development, mobility and transit, housing, economic development, open space, and environment, and arts and culture. Leading goals were developed for each of those subject areas. The group also looked at areas of the city that were particularly subject to redevelopment and change. Those being Amherst Street, Amherst Street corridor, DW college property, Daniel Webster College property, central business district, downtown Main Street, East Hollis Street over towards Hudson, Northeastern Boulevard where there could be some very interesting changes, and of course the south end Daniel Webster Highway. As you look through it, you'll see that the vision of the group that was developed is that Nashua is committed to being a welcoming, diverse, and forward looking city that offers a variety of economic, housing, educational, and recreational opportunities throughout a vibrant and resilient community that provides a high quality of life. So again, I'd like to thank everyone involved. Amber Morgan and all of the people that were involved and provided such a valuable input. Also I would like to say that our next step is the preparation of the land use plan that will accompany or be as a follow on to the Master Plan.

Before I conclude, I wanted to pass on some rather sad news which I think all of you, or some of you, all of you are aware and that is that Community Development Director Sarah Marchant has decided to embark on the next stage of her career by taking a job up in Concord. She was very involved in the Master Plan and many, many other things that you're all aware of. She's been a very valuable asset for the city and we will have a great deal of trouble replacing her. Of course, we wish her well and congratulate her on her next journey but I did want to express personally on behalf of the Board of Aldermen and the residents of the city that she's made a very valuable contribution over seven years or so and we will, you know, definitely miss her in the months and years ahead. That's all I have Madam President.

RESPONSE TO REMARKS OF THE MAYOR

Alderman Dowd

I just like to echo my thoughts on losing Sarah Marchant. I worked with a very closely over the last few years and she has been outstanding in that position and it will be a huge loss but I wish her well and understand why she's making the move and wish her all the best.

President Wilshire

Anyone else?

Alderwoman Lu

Thank you. Over the weekend I - will let me just say when we embarked on the Master Plan, this Board voted on the Resolution R-19-183. On December 10 of 2019 when that resolution was voted on, it was an amended resolution because several members of this committee thought it was important to include a member from every Ward on that committee. Now I learned this weekend that this committee holds a member of every Ward except for Ward Six and this specifically fails the terms proposed in Resolution R-19-183. I'm deeply disappointed to learn this and I've been told by Mayor Donchess that they couldn't find anyone that would serve. If this indeed is the case, then I say look deeper. The Ward Alderman is an obvious resource to fill a committee seat. Was I contacted? No. I've spoken with several members of this administration today about this. No one can give me a reason why their difficulty to find a ward representative didn't spur them to contact the ward alderman. I just hope that this doesn't ever happen again and that people who may be attending those meetings or who may be privy to the membership because I should have noticed this. I should have brought this up when I learned it. But the membership was not on the city website. It's on other places and I was not aware until today. I just feel very disappointed that our Ward was overlooked in that way. Thank you.

President Wilshire

Anyone else? Responses to the remarks of the Mayor? Okay, recognition period,

RECOGNITION PERIOD – None

PRESENTATION - None

READING MINUTES OF PREVIOUS MEETINGS

There being no objection, President Wilshire declared the minutes of the regular Board of Aldermen and Special Board of Aldermen meetings of September 21, September 27, and September 28, 2021 be accepted, placed on file, and the readings suspended.

COMMUNICATIONS REQUIRING ONLY PROCEDURAL ACTIONS AND WRITTEN REPORTS FROM LIAISONS - NonePERIOD FOR PUBLIC COMMENT RELATIVE TO ITEMS EXPECTED TO BE ACTED UPON THIS EVENINGPresident Wilshire

Tonight we have Giovanna Bonilla. No, it looks like she's gone. Okay.

Adam Marcoux

Good evening. My name is Adam Marcoux. I'm President of the Nashua Teachers Union. I live at 4 Jolori Lane and I'm here to speak in favor of the Para-educator contract that is being presented tonight. The Mayor spoke highly of our Paras. Unless you've been a Para or worked with them, what they bring to our school District in our 17 or 18 buildings now is often overlooked or not seen. Without Paras, our District would not function. As a classroom teacher myself, I would not have survived teaching without the Para-educators that worked in my classroom with me on the grade level that I worked in within our building. These people often deal with some of our most challenging students because they make those connections - the one-on-one interactions. It's not because other people haven't tried. It's there's something special about the Paras in our District.

I'm grateful to have a contract going forward. This contract expired in June of 2020 and because of the various different things in place, including COVID-19 and the death of the Chief Negotiator for the union, this contract was held up significantly because of those things. It is a two year deal, but year one is long gone and year two is almost expired. So I'll be back hopefully before June looking for another approval. But I want you to know that while I support this contract fully, I will be back looking for a lot more money next time because our Paras are underpaid and underappreciated and you can go work at McDonald's, Burger King, Dunkin Donuts, the Camp Carwash on Amherst Street, and a variety of other places, including Walmart, Amazon, and any place pretty much else other than this District and make a significant amount of more money and you're not gonna get spit on or kicked and not because the kids are doing it maliciously, but because sometimes that's just how their body functions. These people understand that and work so well with them.

So while I'm happy to have a contract for them, we can't fill those positions because everyone else can't fill positions because everywhere else is making much more money than we are

Donna Graham, Legislative Affairs Manager

Thirty seconds.

Adam Marcoux

Thank you. I like your new light thing up there too. It's nice. Maybe the Board of Education can get that. So with that said, I thank the Budget Review Committee for their endorsement of this bill, or legislation, or whatever you call it and I look forward to the rest of the Board supporting it as well. Thank you.

President Wilshire

Thank you. Laurie Ortolano.

Laurie Ortolano

Laurie Ortolano, 41 Berkeley Street. I'd like to address the minutes that you approved tonight and the statements made by Attorney Bolton at the end of the meeting on September 28. I take exception with his analysis or discussion regarding the abatement and the property appeal that was won up at the BTLA. He said the Legal Department, myself met with her and her attorney and she basically adopted the position that she would not compromise, and that she would not settle for the exact amount, and that she would only settle for the exact amount that she claimed her assessment should be. This is wholly untrue.

Attorney Bolton knows that when we met that the city offered no value at all. They made no attempt to provide a number. On the record during the abatement with the Board of Assessors, I asked them if they would accept 592, take a KRT number for the sales value, and reduce it by the ratio of 94.8% and the Board said no. The Board of Tax and Land Appeals - Bolton says the Board of Tax and Land Appeals came in slightly less than the middle. This is a graph or diagram that shows the property assessment. The city asked for 2019 that the property of a market value of \$800,000. I asked through my appraiser they came up with \$598,000. The BTLA awarded \$650,000 and when you apply the ratio, the city wanted the assessment to be \$710,400. My appraiser had it set for \$531,000 and the BTLA gave \$577,000. I asked for \$592,000. When Attorney Bolton says as many as many times this is not a win for either side. This was a huge win for me. It was more than I really wanted. So I was very happy that I could get 2019 applied because if they had settled with me on the 2018 number, I would have never gotten the 2019 value. So to me this was a huge win and when Attorney Bolton says that the BTLA came in the middle, they were looking for a substantially higher number.

I would like and I'm going to submit to the record the 18 page decision from the Board of Tax and Land Appeal. The city appraiser used two sales that will really illegal use...

Donna Graham, Legislative Affairs Manager

Thirty seconds.

Laurie Ortolano

...and I knew it. Mr. Gardner - the Board found merit in the taxpayer's criticism of using her own property to create an assessment. Additionally, the BTLA said the use of 51 Berkeley Street was wrong. It was more than double the size. The lot was 2.14 acres compared to a third and that property had sold for \$1.15 million. In light of these substantial differences, Mr. Gardner's testimony regarding the reasons why...

Donna Graham, Legislative Affairs Manager

Your time is up.

Laurie Ortolano

...selected this property as the sale comparison was not credible. I want the facts on the record...

President Wilshire

Your time is up.

Laurie Ortolano

Can I submit this?

President Wilshire

You can submit it. Yes. You can hand it to Alderman Tencza and he'll make sure we get it. Thank you.

Laurie Ortolano

Thank you.

President Wilshire

Thank you. Anyone else on Zoom that wants to give a public comment? Not seeing anyone, we'll move along.

Alderman O'Brien

Points of order, Madam President. If I may? Since we received communication after the agenda, do we have to vote to accept that communication?

President Wilshire

What the communication?

Alderman O'Brien

The communication that Ms. Ortolano has provided.

President Wilshire

If you want to make that motion, go ahead.

Alderman O'Brien

I'm allowed to make the motion?

President Wilshire

Sure.

Alderman O'Brien

Thank you Madam President.

MOTION BY ALDERMAN O'BRIEN TO ACCEPT A COMMUNICATION FROM MS. ORTOLANO AFTER THE AGENDA WAS PREPARED, BY ROLL CALL

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Klee, Alderman Dowd, Alderman Caron,

Alderman Clemons, Alderman Lopez, Alderman Tencza,
Alderwoman Lu, Alderman Jette, Alderman Schmidt, Alderman Laws,
Alderman Cleaver, Alderman Harriott-Gathright, Alderman Wilshire

14

Nay:

0

MOTION CARRIEDCOMMUNICATIONS REQUIRING FINAL APPROVAL

From: Tim Cummings, Economic Development Director
Re: Communication on Overnight Parking

President Wilshire

Okay, so Director Cummings is asking us how we want to proceed on the overnight street parking program expansion. He's looking for us to give him some direction on that.

Alderman O'Brien

Thank you, Madam President. I'll start this off. Many of us did go to the meetings and they did take an area that was involved, particularly in the downtown. Is it complete? The answer is no. I mean, many people that have extenuated (inaudible) my colleague Ward 3 and different other areas. It didn't encompass all of Ward 3. It was just basically an area. But let's look what the intention is to do. The attention is to give what happens let's say within that geographical area of Cedar Street? What happens on Cedar Street can that be applied to Tolles Street? And the answer possibly could be, you know, as far as like some of the parking and everything. So I'm not against this. This would increase the area and I hope I'm focused on what I think of that, you know, talking about what we heard in the Committee. But I'm not against this. The only thing is I just wonder if it would come with an extra cost that Mr. Cummings mentioned that it would increase the scope of the company that is doing this study.

President Wilshire

I don't recall that.

Alderwoman Lu

Could I just ask Alderman O'Brien to just clarify what it is that you you're saying needs to be increased in scope? I wasn't clear on what you...

Alderman O'Brien

Well you had the opportunity – all Aldermen had the opportunity, particularly the downtown - the ones that are affected by this. You had the opportunity. There was a meeting upstairs at the auditorium and if I'm correct, that's what we were talking about here. What it is, it didn't go all the downtown wards. So it took a section of the city. So increasing this will be looking at – there was questions by some of the home aldermen - there was two meetings. The first one I attended was a stakeholders meeting and then there was a second meeting opening it up to the ward aldermen. It seems to favor somebody or Ward aldermen they wanted - well how come you're not bringing in my whole complete ward?

The intention was just to have like a focus on this. Like I said, we are paying the contractor to come in to take a look this. And again, I'm all in favor of expanding this. You know what I mean to look at it to get a good fair understanding of it.

Alderwoman Lu

May I follow up?

President Wilshire

Sure.

Alderwoman Lu

Thank you. Thank you Alderman O'Brien. So my understanding of the letter from Mr. Cummings is that the part of the parking study that has to do with overnight parking has been completed. Now Desman was going to look into many issues for parking in Nashua, including whether we have sufficient downtown parking, whether we should change our manner of charging for parking but it was my understanding that the overnight parking part is completed and the question is would we like to address it now that it's completed?

Alderman O'Brien

Well I would very caution you because you and I have had this direct conversation before. I'm under the impression that this is not completely done. This is a phased in type of program that's going. Since the city's inception of 1673 according to the city seal, there's been no overnight parking that I know of in the City of Nashua. When we incorporated as a City of Nashua in 1853, there still was no overnight parking. So this is the first time.

The trouble at hand is you got to look at this within certain neighborhoods. What was traditionally a two and a half story frame building, which had two families in it with you know maybe dad had the car. Mom may not have driven as was popular in past years. There was two cars enabled to be entered into the driveway. Now from what I understand, motor vehicle registers more cars and we have parking spaces in the City of Nashua. So this causes a problem. So to say that the parking issue is complete, it is not. What needs to be done is in phases. We're going to have to look into zoning of it, deciding which areas are going to have maybe on one side of the street not both. There's a whole complex issues right down to what are we going to do about trash removal? Are people/citizens going to remove their car on trash day? Are we going to have one area every week where everybody collectively put their buckets? So there's a lot more questions that need to be addressed before this program really comes running out.

Alderman Klee

Thank you, Madam Chair. I think I'd like to try to see if I can clarify some things. The parking study was originally put together only to look at the downtown parking and so on. When COVID happened, they added the overnight parking study. That portion actually has finished. There was a meeting not too long ago that they took the downtown area and kind of added a couple streets to it for the parking study, not the overnight parking stuff.

The overnight parking study has been done and the report that we got did in fact talk about creating zones, etc. I believe that's the portion of the parking study that Director Cummings is asking us to move forward with.

Alderman O'Brien

That's correct.

Alderman Klee

Not the - so in my Ward, part of the parking study that won't be finished until February does include streets like Locke because they added that to it. They added some streets that go up to Amherst Street. It was not just the downtown parking study. They kind of added some (inaudible). In that respect for me to be able to sit down

with my constituents and create an overnight parking for Locke Street and so on, we can still create it. We can still work for it but we really can't ask for approval until that study is being done. As far as other Wards are concerned or other parts of Ward 3 such as maybe Rancourt, Pennichuck, we could discuss overnight parking because the remainder of this parking study that is due to be finished in February won't affect them. So I think that we can look towards certain areas of being able to approve an overnight parking study.

I think the biggest impact will be on Ward 4 and part of Ward 3 that we really can't make a decision on. But I think we can go forward with trying to come up with a plan for zoning of different neighborhoods. So I have met with some people from French Hill when we've talked about the need to talk to all the neighbors and try to create zoning. But they're also aware that we have to wait for the full parking study to be done to find out how many spaces would truly be available but it doesn't stop us from finding out who wants it, or who needs it, and then being able to move forward.

Rancourt - just using as an example, Pennichuck, some of those streets over there, we could create zones now and if the Board went forward with approving some type of zoning. As far as cost is concerned, I do think that there will be a cost to it. That would be a cost of staffing to Economic Development because they would have to help develop all of these zones, maintain these zones, monitor the zones, and so on. That will take more (inaudible).

So my colleague is right here in that respect so that I do believe there'll be indirect costs. Alderman Lu as well is correct that we're talking two different studies here. This one here is for the overnight, which the downtown parking study would not affect your Ward, although it could because you're on the edge of the downtown. So I take that back, but perhaps not Ward 1 for Alderman Schmidt or something like that. But it would affect Alderman Lopez as well as parts of myself. Thank you.

Alderman Clemons

Thank you very much, Madam President. I'm going to have a very different point of view. I've always been the type to look at these situations individually. It's the way I prefer to do it. I don't believe that we needed to study for this. I think we should have had overnight parking in this city years ago and so my hope is that we can start expanding this as soon as possible and getting as many streets as we can to have overnight parking. Thank you.

Alderman Lopez

We've had an overnight parking program. It was a pilot program when I first became Alderman and was adopted as a program. During that period, we had a process for individuals on the street asking their Aldermen if their streets could be added to it and amending that program repeatedly. And particularly Ward 3 added a lot of individual streets to the program. The way that it worked is somebody who is living on a street that's identified by Fire, Police, and DPW as being wide enough and, you know, safe enough to have the parking spaces, spaces are allowed on that street based on where they can be safely put and then the addresses in that area are also authorized to apply for it. So you may live on a street where you can get parking permits but you may have to park on the street next door if your street is too narrow but in a point where there aren't accessible streets reasonably nearby, that street wouldn't necessarily be approved.

As a process when I became Alderman and as I was Alderman and through work with the Infrastructure Committee, we explored that. We expanded it. We confirmed it in a semi-final form and then work stopped. Like we didn't continue looking at that. We didn't look at additional options and several years past. We began to talk about doing a study when a number of constituents signed a petition about two years ago, maybe three now, on the back of a parking ticket because like most of Eighth Street had been ticketed and they objected to that. When that was brought before the Infrastructure Committee, it was tabled and the argument was made that it we needed to do a study because if you put overnight parking on one street then adjacent streets might be affected and adjacent streets to that might be affected. It was considered part of the downtown. The definition of downtown was expanded to include all the number streets. So we had a lot of conversation about having a study but still several months passed before it actually took place.

Then the study was authorized, I want to say last year and the study was presented upon recently at the Infrastructure Committee meeting and my objections throughout the process of the parking study was that we were doing a city wide. Do we want overnight parking? Do we not want overnight parking, which was largely a question nobody had asked any of the outer Wards? Nobody had proposed overnight parking in those areas and they largely objected to it because in areas that are suburban where they have enough room to pave their driveway and they have a large enough property that it makes sense to do, that they can park in their lot in their driveway. In the more urban areas where there isn't a lot of land available where residents typically build up or have to, you know, have multiple people per unit, you don't just have an unlimited number of parking spaces and driveways. So they need on-street overnight parking.

So this is a major issue for Ward 4 but it's not a major issue for other Wards necessarily. Some of the other wards did identify during that citywide evaluation that they do want to have additional on-street overnight parking and some of what was proposed by the study once they completed it was a new process. So instead of people on the street just asking their Aldermen who then confirms it with DPW, Fire, and Police and then authorizes either the spaces that are available or if there's extra capacity at least the ability to apply for an overnight parking permit, the process that they recommended is very different where there has to be a commitment on the neighborhood level to a number of years in advance. Like we will get permits over the next five years. There has to be a certain percentage of neighbors in that area that are specifically interested in it and if you don't have the percentage of people on that street, you can take the half of the street that has the higher percentage and then move to the next one. That's where my concern is. The process that was proposed in the overnight parking study is very convoluted and to me is counterintuitive.

When the study was presented, the company that managed it and was making the recommendations was very frank and said that almost nobody that they've had as customers has actually adopted all of their recommendations. I remember Alderman Jette had a particular interesting soundbite because he said well I wish we'd have known that before we hired you. So that's my concern is, is the study is done. I do want to move forward with overnight parking 100% because I think it's an urgent need in Ward 4 but I'm not confident in the process that is being proposed and in the amount of time that it would take to adopt that process because the neighborhoods who, in my mind, precipitated this and spoke most loudly in favor of it have had their motions tabled for almost the duration of my term in the Infrastructure Committee and very likely would just get no answer before the end of this entire two-year process. So I'm not enthusiastic about that.

I'm not averse to the idea of coming up with a good system that is a sound system that is effective for all the people affected, but I'm not sure that that's what was presented and I'm not sure that's the direction we're going. As it is right now, the system that I see is four wards where it is relevant you can approach your Ward Alderman or any Alderman. They can approach the at-larges, indicate the need, and then that Alderman is responsible for coming up with the legislation and then having the rest of the committee vet it but that's not the process that's being proposed. That's where my concerns lie.

Alderman Klee

Thank you, Madam Chair. I do agree with Alderman Lopez in respect of that. We cannot take all the recommendations to give someone permission for five years and we don't open it up again for five years. I kind of found that a little bit hard to handle. But I do think that we can take the plan and we can work with it. I think we can create something. As I said, I have been working with constituents, talking to them, getting ideas. They liked the idea of it but I don't believe there is a one size fits all for a ward. I don't think there's a one size fits all within my own Ward. I think we do need to create these zones. I do think we need to start doing some work. I have been willing to work with my constituents to go door to door and literally ask them, do you have a need? Do you have a want? It's a lot of work. I've already had a couple meetings. One I had to cancel suddenly, but I do think, in general, it's a good idea but I do think it needs to be tweaked. I do agree with Alderman Lopez that we can't adopt it as is but I do think it should go to the Infrastructure Committee. I think that it should be worked out there sooner than later. The year is almost up and as Alderman Lopez has said, he's got a lot of people that have been waiting for a long time to get a positive or negative rather than just sitting in limbo. So thank you,

Alderman Jette

Thank you. I read Director Cummings' communication was being a request that this conversation begin and he's planning on coming to the Infrastructure Committee. So I don't think we – we have nothing before us to act on tonight. If it's in order, I would move that we refer this to the Infrastructure Committee.

President Wilshire

That's in order. Okay.

Alderwoman Lu

Thank you.

President Wilshire

We're going to refer this to the other committee so.

Alderwoman Lu

I just wanted a clarification about these zones that Alderwoman Klee has described. Are those not the zones where you pay a different amount of...no, that's not - it's not zones for prices per hour of parking?

Alderman Klee

I apologize for shaking my head Alderwoman Lu. No it's overnight parking zones. So in other words, for instance, when I was looking at the French Hill area and I was looking at Locke and Whitney, and I kind of made this very long, trying I mean, rectangle, and I said that would be too far for a mother with a baby to have to go all the way to the end by Chandler if she lived over by Orange Street. So I said we would take that and create a block. That would be a zone.

Alderwoman Lu

Okay I see.

Alderman Klee

So right now the way that the overnight parking works is if you get an overnight parking permit and you live on West Hollis, you could park over on Locke Street or Whitney. What this would do is you would have a parking permit or your zone not anywhere in the city, which is what it is now. So perhaps in my area, maybe going from Pennichuck to Brinton that might be too big too so we might have to make smaller bites of it. But it would be talking to those neighbors. Do you want it? As Alderman Lopez had mentioned, you may take one street and only 25% of the people want it. So you'll look okay 25% of the people want to hear, can we create parking? No one is guaranteed a parking space in front of their home because that would be illegal. But we could maybe guarantee them a parking within that zone. So if 20 people want it, can we find 20 parking spaces? No, we can only find 10, then it might be a lottery. We'd have to figure out how 20 people will get down to 10 people. Those are all the little things that we have to work out.

Alderwoman Lu

Thank you. That's the zone. Okay. Thank you.

Alderman Klee

You're welcome.

President Wilshire

Okay, we will move this to the Infrastructure Committee and we'll move on our agenda.

PETITIONS - None

NOMINATIONS, APPOINTMENTS AND ELECTIONS - None

REPORTS OF COMMITTEE

Planning and Economic Development Committee 09/20/2021

There being no objection, President Wilshire declared the report of the September 20, 2021 Planning and Economic Development Committee be accepted and placed on file.

Committee on Infrastructure 09/22/2021

There being no objection, President Wilshire declared the report of the September 22, 2021 Committee on Infrastructure be accepted and placed on file.

Budget Review Committee 09/27/2021

There being no objection, President Wilshire declared the report of the September 27, 2021 Budget Review Committee be accepted and placed on file.

CONFIRMATION OF MAYOR'S APPOINTMENTS - None

UNFINISHED BUSINESS – RESOLUTIONS

R-21-143

- Endorsers: Mayor Jim Donchess
- Alderman Thomas Lopez
- Alderman-at-Large Brandon Michael Laws
- Alderwoman-at-Large Shoshanna Kelly
- Alderman Patricia Klee
- Alderman Jan Schmidt

PROPOSING AN AMENDMENT TO THE CITY CHARTER RELATIVE TO THE MANNER OF APPOINTMENTS TO THE NASHUA BOARD OF POLICE COMMISSIONERS

- Tabled at Board of Aldermen August 10th meeting

R-21-165

- Endorsers: Mayor Jim Donchess
- Alderman-at-Large Michael B. O'Brien, Sr.
- Alderman Patricia Klee
- Alderman Skip Cleaver

AUTHORIZING THE CITY OF NASHUA TO ENTER INTO COMMUNICATIONS TOWER LEASE AGREEMENT

Given its second reading;

MOTION BY ALDERMAN O'BRIEN FOR FINAL PASSAGE OF R-21-165, BY ROLL CALL

ON THE QUESTION

Alderman O'Brien

Thank you, Madam President. As I hope we all remember, this has dealings with the potential cell tower that's going to look like a light stanchion that's going to be in Holman Stadium. We are very fortunate to have a good legal team. They worked with the provider on this and with that we're going to get some on this particular post some new additional lighting and at a better cost. So it's a win/win for the city and this type of thing. Also too if it increases a cell phone coverage for our constituents in that area, that's another win/win. So I urge you all to support this. Thank you.

President Wilshire

Any discussion?

Alderman Klee

Thank you again, Madam President. I agree with Alderman O'Brien in that it is a win/win situation and having it in Ward 3, it's a real big boon for us. So I would like to see this passed as well.

President Wilshire

Further discussion? Seeing none, would the Clerk please call the roll?

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Klee, Alderman Dowd, Alderman Caron, Alderman Clemons, Alderman Lopez, Alderman Tencza, Alderwoman Lu, Alderman Jette, Alderman Schmidt, Alderman Laws, Alderman Cleaver, Alderwoman Harriott-Gathright, Alderman Wilshire	14
Nay:	0

MOTION CARRIED

Resolution R-21-165 declared duly adopted.

R-21-170

Endorsers: Mayor Jim Donchess
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Patricia Klee
Alderman Richard A. Dowd
Alderman-at-Large David C. Tencza
Alderman Skip Cleaver
Alderman Jan Schmidt
Alderman Linda Harriott-Gathright
Alderman-at-Large Lori Wilshire
Alderman-at-Large Brandon Michael Laws
Alderman Thomas Lopez

RELATIVE TO THE APPROVAL OF THE IMAGINE NASHUA 2021 MASTER PLAN

Given its second reading;

MOTION BY ALDERMAN TENCZA FOR FINAL PASSAGE OF R-21-170 BY ROLL CALLON THE QUESTION

Alderman Tencza

Just briefly, Madam President. To echo what the Mayor was saying before just thank you to the committee members, everyone who came out. We may have benefited that so many of the meetings were virtual and it was at a time when people had time. So although it's been 20 years since the city has developed a Master Plan, I think we can all be very happy with the outcome, with the participation, and I think this will serve as well into the near future and hopefully we're back here in 10 years with a slight update to this plan we're putting forth tonight. Thank you.

President Wilshire

Thank you. Alderman Lopez.

Alderman Lopez

Yeah, I want to echo what Alderman Tencza said. I guess we're echoing each other today. I want to underscore it as very important that we continue to update this as it goes because we let this one get out of date very much so the plan didn't really reflect what Nashua's needs were when the Zoning Board and the Planning Board were trying to use it. So it's important for us to do our due diligence and make sure that I guess our future due diligence and make sure that this stays up to date. It was a huge undertaking to update it and make it what it is today, which is wonderful and I really appreciate all the work that went into it. But we don't actually have a crystal ball so we can't see the future, so we need to stay nimble as a city and make sure that we're recognizing the needs of our constituents as they present themselves.

President Wilshire

I did attend many of the meetings and I was so impressed with the participation, and I agree with Alderman Tencza and I think I spoke to Director Marchant about the captive audience. The amount of people who were able to Zoom in and participate in this I thought was tremendous. I'd also like to thank Community Development, especially Amber Morgan for her leadership in Chairing this Committee so thank you very much - and everyone who worked on it. It's great and Matt back there to shaking his head. Yeah. Further discussion?

Alderman Klee

Thank you again, Madam President. I just want to echo the words from everybody and I really would like to thank the community for coming out. I hate to say that anything good came out of COVID but I do believe that something good came out of COVID and there was more participation than ever before. People didn't have to leave their homes they could do it. Through Director Marchant and in Amber's guidance, we had the - and Matt and everybody. I hate to keep naming people and forget somebody but we had the online polling where people could literally just put a pin in a map and say what they wanted or what there was an area and I had a lot of constituents that called me asked questions. So I know that Ward 3 was quite involved in and so on. So I do want to thank everybody's working and all your ideas. They were phenomenal and the community came up with some brilliant idea. So thank you.

Alderwoman Lu

I want to just reiterate that it's baffling to me that one Ward would not be included in membership and that no one that was involved in this committee recognized it or thought it was important to in order to rally that particular Ward while having an actual resident appointed. I cannot monitor the appointments and whether they comply with the resolutions that we vote on. I've brought up in the past that it seems when a committee appointment is required to be a Nashuan or it has certain restrictions or qualifications that are required, I don't understand where the accountability sets for that. There's a reason for them for these appointments to have characteristics that are described in our ordinances.

I'm told that the committee that approves the Mayor's selections is not tasked with ensuring that the qualifications are being met. So I assume that our Legal Department is. I don't know who the Mayor is using to keep these appointments proper, but they didn't treat Ward 6 properly and I'm just baffled that nobody thought to give me a call. Thank you.

Alderman Lopez

I cannot speak for all the other Alderman but I will say I don't entirely trust all of the at-large Aldermen to remember Ward 4 because you're all representing the whole city instead of the individual ones. So nobody called me to let me know that there was nobody on Ward 4. I went through the list. I asked the Mayor about it. The Mayor identified somebody who was definitely in June's Ward and then I gave him a list of candidates. So Aldermen Caron sorry.

So I will say that we all do our responsibilities differently but if anybody from Ward 4 is listening and you reach out to me, whenever I see things like this where I want to make sure that Ward 4 is fully represented and that our perspective is heard, it does help to have a list of people so maybe everybody listening should reach out to your local Ward Alderman if you're interested in volunteering or being involved or anything like that. Then as Ward Aldermen, we can make sure that our residents are heard and are on these committees and on these boards.

President Wilshire

Anyone else? Motion before us is for final passage of Resolution R-21-170 by roll call. Would the Clerk please call the roll?

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Klee, Alderman Dowd, Alderman Caron, Alderman Clemons, Alderman Lopez, Alderman Tencza, Alderman Jette, Alderman Schmidt, Alderman Laws, Alderman Cleaver, Alderwoman Harriott-Gathright, Alderman Wilshire	13
Nay: Alderwoman Lu	1

MOTION CARRIED

Resolution R-21-170 declared duly adopted.

R-21-172

Endorsers: Mayor Jim Donchess
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Richard A. Dowd
Alderman Thomas Lopez
Alderman Linda Harriott-Gathright
Alderman-at-Large Brandon Michael Laws
Alderman Skip Cleaver
Alderwoman-at-Large Shoshanna Kelly
Alderman-at-Large Lori Wilshire

AUTHORIZING THE MAYOR TO ENTER INTO A SECOND AMENDMENT TO CONCESSION AGREEMENT WITH GRANITE DIAMOND, LLC

Given its second reading;

MOTION BY ALDERMAN HARRIOTT-GATHRIGHT FOR FINAL PASSAGE OF R-21-172 BY ROLL CALL

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Klee, Alderman Dowd, Alderman Caron,
Alderman Clemons, Alderman Lopez, Alderman Tencza,
Alderman Lu, Alderman Jette, Alderman Schmidt, Alderman Laws,
Alderman Cleaver, Alderman Harriott-Gathright, Alderman Wilshire

14

Nay:

0

MOTION CARRIED

Resolution R-21-172 declared duly adopted.

R-21-173

Endorsers: Mayor Jim Donchess
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Richard A. Dowd
Alderman Thomas Lopez
Alderman Linda Harriott-Gathright
Alderman-at-Large Brandon Michael Laws
Alderman Skip Cleaver
Alderman-at-Large Shoshanna Kelly
Alderman-at-Large Lori Wilshire

APPROVING THE COST ITEMS OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE NASHUA BOARD OF EDUCATION AND THE NASHUA TEACHERS' UNION, LOCAL #1044 AFT, AFL-CIO, UNIT B PARA-EDUCATORS FROM JULY 1, 2020 THROUGH JUNE 30, 2022 AND RELATED TRANSFERS

Given its second reading;

MOTION BY ALDERMAN DOWD FOR FINAL PASSAGE OF R-21-173, BY ROLL CALLON THE QUESTIONAlderman Dowd

Yes this was unanimously approved at the Budget Committee. It was stated in several instances that the Paras are a huge, huge asset to the city, and to the teachers, and to the students. These Paras. as was stated underpaid based on everything that's happening and the job they perform. So I would ask that we get unanimous approval. Thank you.

President Wilshire

Further discussion, Alderman Lopez.

Alderman Lopez

I just would like to say that I would not be where I am today without paraprofessionals. I appreciate all their help over the years. I never bit or spit or anything like that but I definitely had my challenges to work through. I would also say that they are increasingly critical to our school performance and needs as we see more adverse childhood experiences piling up - not just from the opioid crisis and from, you know, increases in domestic violence but from the blockbuster year that was 2020 and, you know, 2021 is shaping up to be. We need to make sure that our staff are supported. We need to make sure that they're equipped to do the things they need to do in order to help our children be successful and that includes making sure paying that we're paying them a living wage.

Alderman O'Brien

Thank you, Madam President. I just want to say that I am so happy to vote for this. In the past of my time on

the Board, the past Board President Brian McCarthy could not vote for this because his wife like my wife, Diane, worked as a Paraprofessional. My wife worked up at the Broad Street preschool for over 20 years. She did not get a pension because the hours that she worked with did not count as a full-time job in the preschool environment. Her duties there was to assist the teachers because these were special needs kids. They needed a lot of attention. The teachers had to do work and sadly another issue that's out there is sometimes teachers kind of sit down and just do the paperwork. So who fills the void and does the work? It's the Paras. The work that my wife did even into potty training some of the kids that came up. So as they moved on and perhaps maybe hopefully they went to Harvard or somewhere else, they can have their potty training experience from my wife. That's her educational legacy. But the thing is to have qualified people to do this at such a low rate of pay - I was very fortunate in my occupation to do the wife and it's what we both agreed to. Yeah she could have gone out – she's college educated. She could have done something else but my daughter was born with Cerebral Palsy so we understand the needs. Our daughter received a good education because of the Paraprofessionals. So I can speak highly. I'm very happy to give my vote for this. This is one that I think the first time so that I could do so and it gives me such pleasure to do it. Thank you Madam President.

President Wilshire

Thank you for sharing your story Alderman O'Brien. Further discussion?

Alderman Cleaver

I'd just like to mention that we need to raise the pay over the next year or so. The next contract should do much better for these people. They do an outstanding job.

President Wilshire

They do. Thank you. Anyone else? See no one, would the Clerk please call the roll.

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Klee, Alderman Dowd, Alderman Caron, Alderman Clemons, Alderman Lopez, Alderman Tencza, Alderwoman Lu, Alderman Jette, Alderman Schmidt, Alderman Laws, Alderman Cleaver, Alderwoman Harriott-Gathright, Alderman Wilshire	14
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Nay:	0
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MOTION CARRIED

Resolution R-21-173 declared duly adopted.

President Wilshire

Thank you to all the Paras. out there.

UNFINISHED BUSINESS – ORDINANCES - None

NEW BUSINESS – RESOLUTIONS

R-21-174

Endorsers: Mayor Jim Donchess
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Patricia Klee
Alderman Richard A. Dowd

Alderman June M. Caron
Alderman Thomas Lopez
Alderman-at-Large David C. Tencza
Alderman Jan Schmidt
Alderman Skip Cleaver
Alderman Linda Harriott-Gathright
Alderman-at-Large Lori Wilshire

RELATIVE TO THE ACCEPTANCE OF \$25,000 FROM THE STATE OF NEW HAMPSHIRE, DEPARTMENT OF SAFETY, STATE HOMELAND SECURITY GRANT PROGRAM INTO FIRE GRANT ACTIVITY "2020 HOMELAND SECURITY GRANT PROGRAM"

Given its first reading; Assigned to the HUMAN AFFAIRS COMMITTEE by President Wilshire

R-21-175

Endorsers: Mayor Jim Donchess
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Patricia Klee
Alderman Richard A. Dowd
Alderman June M. Caron
Alderman Thomas Lopez
Alderman-at-Large David C. Tencza
Alderman Jan Schmidt
Alderman Skip Cleaver
Alderman Linda Harriott-Gathright
Alderman-at-Large Lori Wilshire

RELATIVE TO THE ACCEPTANCE OF \$300,000 FROM THE STATE OF NEW HAMPSHIRE, DEPARTMENT OF SAFETY INTO POLICE GRANT ACTIVITY "FY2022 OPIOID ABUSE REDUCTION INITIATIVE (OARI) GRANT"

Given its first reading; Assigned to the HUMAN AFFAIRS COMMITTEE by President Wilshire

R-21-176

Endorsers: Mayor Jim Donchess
Alderman-at-Large David C. Tencza
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Patricia Klee
Alderman Richard A. Dowd
Alderman June M. Caron
Alderman Thomas Lopez
Alderman Jan Schmidt
Alderman Skip Cleaver
Alderman Linda Harriott-Gathright
Alderman-at-Large Lori Wilshire

RELATIVE TO THE ACCEPTANCE OF \$128,781.82 FROM THE FEDERAL DEPARTMENT OF HOMELAND SECURITY INTO FIRE GRANT ACTIVITY "FY2020 ASSISTANCE TO FIREFIGHTERS GRANT" AND AUTHORIZING THE TRANSFER OF MATCHING FUNDS

Given its first reading; Assigned to the HUMAN AFFAIRS COMMITTEE by President Wilshire

R-21-177

Endorsers: Mayor Jim Donchess
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Richard A. Dowd
Alderman Thomas Lopez
Alderman Skip Cleaver
Alderman Linda Harriott-Gathright

RELATIVE TO THE SUPPLEMENTAL APPROPRIATION OF \$250,000 OF FY2021 ASSIGNED FUND BALANCE INTO FUND #6500 "PROPERTY & CASUALTY SELF INSURANCE FUND"

Given its first reading; Assigned to the BUDGET REVIEW COMMITTEE and SCHEDULE A SPECIAL BOARD OF ALDERMEN PUBLIC HEARING ON MONDAY, OCTOBER 25, 2021 at 7:00 p.m. by President Wilshire

R-21-178

Endorsers: Mayor Jim Donchess
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Patricia Klee
Alderman Richard A. Dowd
Alderman Jan Schmidt
Alderman Skip Cleaver
Alderman Linda Harriott-Gathright
Alderman-at-Large Lori Wilshire

CHANGING THE USE OF FUNDS FOR A COMMUNITY DEVELOPMENT CAPITAL IMPROVEMENTS PROJECT FROM MASTER PLAN TO LAND USE CODE UPDATE

Given its first reading; Assigned to the BUDGET REVIEW COMMITTEE by President Wilshire

NEW BUSINESS – ORDINANCES - None

PERIOD FOR GENERAL PUBLIC COMMENTMichael O'Connor

So Michael O'Connor, 42 Berkeley Street. Good evening. I'm here to comment on the assertions made by Mr. Bolton at your last Board meeting after he interrupted Alderwoman Lu's remarks. Mr. Bolton downplayed the July 14th Superior Court ruling, which was clearly in favor of Mrs. Ortolano. Alderwoman Lu had attempted to discuss the ruling against the city. Mr. Bolton started his interruption asserting untrue and then quibbled over meaningless distinctions and various other grievances.

During this talk over of Alderwoman Lu facilitated by President Wilshire, Mr. Bolton appeared to have been triggered when the Alderwoman has stated the Legal Department was admonished in the ruling. I quote, "The Judge did say that the city, not the Legal Department, the city was dilatory in providing those documents." Okay, the city was admonished but let's remember that the job of Mr. Bolton is to represent the city. So I guess the record should show our unadmonished Legal Department served our admonished city poorly. I will quote a few excerpts from the clear court ruling. "It is undisputed that the city first informed the plaintiff that the requested files were unavailable due to the corruption of the tape backups nine months after her initial request. The city's actions or inactions shows that it was disregarding the discovery request or misleading the plaintiff about the availability of responsive documents. The city has not demonstrated substantial justification for their conduct. The court notes and admonishes the city for its objection. The court finds the city's objections to go against the underlying facts. The court also finds the tone of the city's objection concerning. The court is concerned about the city's candor and if the city attempted in good faith to resolve the dispute. The stark contrast between the objection and the city's position of the hearing is striking."

I respectfully submit the five page ruling for your minutes. You would think a Superior Court questioning the city's candor in good faith would be a worthwhile topic for this Board. One wonders why President Wilshire cut off discussion of the ruling. The Board should consider a line in the February 9, 2016 Telegraph article which reported the Mayor's intention to nominate Mr. Bolton for the City Attorney. The Mayor said...

Donna Graham, Legislative Affairs Manager

Thirty seconds.

Michael O'Connor

...I quote, "His team will carefully comply with State Right-to-Know laws and maintain open and transparent government." I request this Board and/or the Mayor instruct Mr. Bolton that he should facilitate that stated

intent and stop his questionable legal stratagems that result in the admonishment of a city by a Superior Court. Thank you - for the minutes.

President Wilshire

Laurie Ortolano. You can hand it to Alderman Tencza. We'll make sure it gets into the minutes.

Michael O'Connor

Thank you.

Laurie Ortolano

Laurie Ortolano, 41 Berkeley Street. The September 28 meeting was very disappointing for me because this Board does not follow Mason's Rules. Over and over again, I have watched Alderpeople – Aldermen and Alderwomen get interrupted and cut off by Attorney Bolton when he becomes inflamed by something that doesn't agree with him. In the 2016 letter that my neighbor just referenced, it said Bolton's tenure on the Board was marked by criticism for what some described as his autocratic leadership style. Further in the article, it says Donchess described declined to address the criticisms of Bolton's temperament while Aldermen but noted that the City Attorney would not be involved in any as an elected board member. It's a totally different role for him as City Attorney. He is not a legislator or an advocate for anything, but simply represents the city's interest.

All too often, I think Attorney Bolton takes the floor away from the body that's here. I went out and I've done plenty of door knocking and not long ago, President Wilshire, you stated that the citizens deserve better. I can tell you this week door knocking I had people comment about that meeting on the 28th and said we deserve better, and this chamber needs to change. It's just not right what's going on here. Citizens are knocked down. Elected officials are knocked down by this unruly belligerence that's allowed to exist in this chamber. It needs to stop and I hope this election brings some of that about.

I'm very concerned about the misrepresentations Attorney Bolton stated about my legal case. He gets the floor for an extended period of time. I have a timer that runs for three minutes and cuts me off. I don't know why you don't ask him to submit on the record something in writing so we're all able to see it. I think he missed there's been 110 filings on my Right-to-Know case. Utterly absurd for him to characterize that every motion for summary judgment was I lost was actually wrong.

Donna Graham, Legislative Affairs Manager

Thirty seconds.

Laurie Ortolano

There were a number of summary judgments submitted that Judge Temple simply said take them into the trial to be decided. They weren't judged against or for. They were just requested to be brought into the court. So it's just very disappointing to see how the city operates against its citizens and this elected body is just not doing the job it should do for us. Thank you.

Beth Scaer

Yes, yeah, Beth Scaer, 111 East Hobart Street. Yesterday was the one year anniversary since Mayor Donchess and Alderman Jan Schmidt had my save women's sports flag removed from the citizen's flagpole on the Nashua City Hall Plaza. Yesterday was also the running of the Boston Marathon. The lead man, the lead male winner finished in two minutes and almost 10 seconds. The lead female winner finished in almost two minutes and 25 seconds. I mean, 25 minutes and so that was a 15 minute difference. Since the difference between the first and fifth male runner was about one minute and 10 seconds, there were likely hundreds of

men finishing before the first woman crossed the finish line. If we allow men to participate as women in women's sports, women's sports will be dead. Mayor Donchess and Alderman Schmidt should let me put my flag back. You should let me be out, have that flag out there to defend what women - to defend women's rights to our own sports. Thank you.

President Wilshire

I don't see anyone else online with their hands raised. So we're going to move on. Remarks by members of this Board.

REMARKS BY THE MEMBERS OF THE BOARD OF ALDERMEN

Alderman Schmidt

Thank you, Madam President. I just wanted to thank the League of Women Voters and Nashua Public Library for two forums that they've already accomplished. The next one is October 21st. That will be the Board of Education candidates. It's very interesting to visit. I know the last one had over 90 people watching off and on during the comments. I think it's something we should do in a democracy - make sure we know whose running. Thank you very much.

President Wilshire

Anyone else?

Alderwoman Lu

I'd like to offer the move to accept the written comments.

President Wilshire

We'll do that after we do comments, okay?

Alderwoman Lu

Sure.

Alderman Cleaver

Belatedly, I'd like to thank Director Marchant for all her work she's done. A short time that I've been able to work with her, I've been very impressed with her professionalism, and her abilities, and her dedication. So thank you to her and best of luck in Concord.

Alderman Tencza

So I'll also thank Director Marchant for her service. I think she was a real asset to the city and I know that Concord will have a great, great new employee up there. Certainly that's a community where there are a lot of different things that can be done like here in Nashua. A little different community though, so thank you for service. Thanks for everything she did for the Master Plan, and with housing, and Riverfront development, and every other project that she has her fingerprints on here in Nashua. So she will be missed. Thank you,

Alderman Lopez

I can't thank Director Marchant enough for all the things she's done. When I first started as Alderman and you know, as a major priority for my Ward to gain input on planning and economic development issues and that stuff. She was the Director not only of the Planning Department but at the time she was covering the economic

development while we're looking for a candidate. She was a wealth of knowledge, of information. She has worked tirelessly to create improvements to the bus system - expanded service for transportation. The Rail Trail East, I think, is gonna be largely a result of her vision and the leadership that she saw with her staff. So I'm very appreciative of everything she's done and I can only imagine that the work that she does in Concord will also continue to benefit us in some way.

I also wanted to make an announcement about an event coming up this Saturday, October 16th in what looks like an unholy alliance. The Oompah in the Park and Duck Derby have been combined. So I mean, you gotta go see that. The Duck Derby is the Rotary's fundraiser and then Oompah in the Park is a cultural celebration for Oktoberfest. Family friendly events. It's from 11 am to 5 pm at Le Parc De Notre Renaissance Francaise and Bicentennial right on bridge on Main Street. So everybody should definitely come out and check it out.

President Wilshire

Anyone else?

Alderman Klee

Thank you, Madam President. I, too, would like to thank Director Marchant for all that she's done. When I first became an Alderman, I went to the Mayor and they don't we need to do something in the French Hill? Locke Street sidewalks are horrible and I was seeing people with baby carriages and people with mobility issues having to go out into the streets because it was lack of tip down and so on. The Mayor said that maybe we could scrape together \$100,000 for the sidewalk and I took a walk with Director Fauteux who said that would get me probably about the size of this room. That was not going to do any good. The Mayor worked with Director Marchant, Ms. Chizmas, Public Works, and so on and through all of them, especially Community Development, we were able to get a grant that will hopefully soon, fingers crossed, we'll start working on that project and so on. But Director Marchant has been such a great asset, I think, for the city. You bring a problem to her, she helps.

One of the things that she's been able to help me with the past year was I am a member up in Concord on the Municipal and County Government Committee. We get a new Bill and the first person I run to is Director Marchant and said will this help or hurt the City of Nashua? I have my opinion, but I want to go directly to the person that I know and I trust the most that will be able to help us and she gives me information and so on. So I have one more year left on that Committee. You couldn't have stayed for one more. Thank you so much, but you'll be up in Concord. I'll hunt you down. Thank you.

Alderman O'Brien

Thank you, Madam President. I would like as well to wish Sarah Marchant. Sarah I would really like to wish you well and your new endeavors up there. Concord is a small place and hopefully we'll get to bump into each other.

But I look over the time. We in Nashua are very fortunate to have some great Division Directors. Unfortunately, we can't go putting stars on their forehead enough, you know, but we're very fortunate to have these good, excellent Division Directors that really keep what's going on the wheels of the city turning in the positive direction and Sarah you were one of them. I enjoyed my time whether it be working on the dam, you know, the hydroelectric to other different things - rail and commuter rail issues and everything else. You have left your fingerprints on a lot of projects that have been in the city and even though you'll be gone, some of these projects will develop and keep going. I'm so glad that you were you know part of it and directed us through it. I would like to say not that it was a greatest things that we ever were together but I did enjoy our time together working in changing the umbrellas down on Main Street. That is not necessarily a highlight, but I did enjoy it. A lot of projects that you were very positive with so I wish you the best of luck and good luck in your future endeavors, enjoy, take care.

President Wilshire

I, too, would like to thank you Director Marchant for all the work you've done for the city. You have set certainly left your impact here and I'm sure you'll do the same in your new job because that's who you are. So thank you very much. You'll be missing.

Alderwoman Lu

I fail to also want to thank you very much Ms. Marchant and you're so responsive to questions and emails and I really appreciate that. Alderwoman Klee brought up, you know, how helpful you've been and it made me realize that that is a really important part of our work is being able to have access to people. I would be remiss not to say with candidates running for office that a risk that you do run is that you may be on board where the legal office will not answer a question in order to help you make a vote. The difference between, you know, someone who is willing to do their job and someone who is not makes a huge difference to elected officers. So thank you

Alderman Tencza

Madam President I apologize. I didn't mentioned this before but we should also mention that this Friday the Brian McCarthy Foundation is holding its annual charity event and fundraiser. I was waiting for the two board members on that side of the room to maybe mention it but Friday night at Boston Billiards. You can participate online with their auction as well as the events if you're able to come Friday night. So please support that charity in memory of President McCarthy. Thank you.

President Wilshire

Thank you Alderman Tencza.

Alderman O'Brien

Thank you, Madam President. Again, I'm sorry. I was so enthralled in saying goodbye to Ms. Marchant. I forgot but tomorrow night to Fire Department is going to have their award ceremony and I know it's in conflict. You know it's like everything else, just pick a date and everything it appears on that date. It's going to be for the people who studied hard and we're very fortunate in my family. My son is going to receive his Lieutenant's promotion tomorrow night, but it will also be for the new firefighters that are coming on board and we welcome them. I know they're full of the good traditions to follow in this department to put the fires out and also, too, will be awards for firefighters who went above the call of duty and they will be recognized appropriately. So it will be tomorrow night and I think it's at Nashua High North auditorium. Thank you and it starts at 7pm.

MOTION BY ALDERWOMAN LU THAT CORRESPONDENCE RECEIVED EARLIER THIS EVENING BE ACCEPTED AND PLACED ON FILE, BY ROLL CALL

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Klee, Alderman Dowd, Alderman Caron, Alderman Clemons, Alderman Lopez, Alderman Tencza, Alderwoman Lu, Alderman Jette, Alderman Schmidt, Alderman Laws, Alderman Cleaver, Alderwoman Harriott-Gathright, Alderman Wilshire	14
Nay:	0

MOTION CARRIED

Committee announcements:

Alderman Tencza

Next Tuesday, October 19, the Planning and Economic Development and Infrastructure we'll be meeting jointly. We'll actually be meeting upstairs in the auditorium so we can facilitate the conversation.

President Wilshire

Any other committee announcements? Seeing none.

ADJOURNMENT

MOTION BY ALDERMAN O'BRIEN THAT THE OCTOBER 12, 2021, MEETING OF THE BOARD OF ALDERMEN BE ADJOURNED, BY ROLL CALL

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Klee, Alderman Dowd, Alderman Caron, Alderman Clemons, Alderman Lopez, Alderman Tencza, Alderwoman Lu, Alderman Jette, Alderman Schmidt, Alderman Laws, Alderman Cleaver, Alderwoman Harriott-Gathright, Alderman Wilshire	14
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Nay:	0
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MOTION CARRIED

The meeting was declared adjourned at 8:53 p.m.

Attest: Susan K. Lovering, City Clerk

Laurie A. Ortolano Trust

v.

City of Nashua

Docket Nos.: 29472-18PT & 29699-19PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” tax year 2018 and 2019 assessments of \$651,900 (land \$159,100; building \$492,800) on Map 47/Lot 56, located at 41 Berkeley Street, a single-family home on 0.34 acres (the “Property”). For the reasons stated below, the appeals for abatement are granted.¹

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; Tax 201.27(f); Tax 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property’s assessments were higher than the general level of assessment in the municipality for each tax year. Id. The board finds the Taxpayer carried this burden.

¹ The board held a separate hearing for each appeal on April 6, 2021, noting without objection that it would take official notice of the testimony and documents presented in each hearing; the board did so to avoid duplication of testimony and to promote judicial economy.

Due to the ongoing pandemic, the hearings on the merits were held using Cisco’s Webex platform. Board members Michele E. LeBrun, Albert F. Shamash and Theresa M. Walker heard and decided these appeals.

The Taxpayer, represented by Attorney Richard Lehmann in the 2018 appeal and by Laurie Ortolano, Trustee, in the 2019 appeal, argued the assessments were excessive because:

- (1) the “Taxpayer Appraisals” (see Taxpayer Exhibit No. 3 in the 2018 appeal and Taxpayer Exhibit No. 1 in the 2019 appeal) estimate the market value of the Property was \$593,600 and \$596,000, respectively, as of the April 1, 2018 and April 1, 2019 assessment dates;
- (2) the “City Appraisals” (see Taxpayer Exhibit No. 4 in the 2018 appeal and Taxpayer Exhibit No. 2 in the 2019 appeal) overestimate the market value of the Property for the reasons stated at the hearing and in a written review of that appraisal by the Taxpayer’s appraiser (see the “Taxpayer’s Review Report,” Taxpayer Exhibit No. 5 in the 2018 appeal and Taxpayer Exhibit No. 3 in the 2019 appeal);
- (3) the Taxpayer’s exhibits and the testimony at the hearing support a finding the City and its assessing staff were biased and inconsistent in how they assessed the Property and responded to the requests for abatement;
- (4) the City’s actions in response to Ms. Ortolano’s questions and public criticisms of the City’s assessing staff and its assessing practices undermine the credibility of its arguments in defense of the assessments;
- (5) the original asking price and negotiated selling price of the Property in 2013 and 2014 have no relevance because Ms. Ortolano testified under oath the Taxpayer “overpaid” and made a “mistake” in paying \$725,000 for the Property in January, 2014;
- (6) the City’s Board of Assessors did not respond to the Taxpayer’s tax year 2019 abatement application because the Taxpayer appealed the prior year abated assessment; and
- (7) the appeals should be granted and the assessments abated based on the market value estimates in the Taxpayer Appraisals adjusted by the levels of assessment.

The City, represented by Steven A. Bolton, Corporation Counsel, and Celia K. Leonard, Deputy Corporation Counsel, argued the assessments were proper because:

- (1) the Property was sold to the Taxpayer in January, 2014 for \$725,000, was originally listed for sale with an asking price of \$800,000 (rounded) and the \$725,000 sale price is a good indication of the Property's market value;
- (2) Ms. Ortolano did not dispute the \$725,000 sale price and did not apply for an abatement in any tax year prior to 2018;
- (3) the City Appraisals (Municipality Ex. A in both the 2018 and 2019 appeals) estimate the market value of the Property was \$750,000 as of the April 1, 2018 assessment date and \$800,000 as of the April 1, 2019 assessment date and these estimates by Vern J. Gardner, Jr., a certified general appraiser who testified in support of his analyses and value opinions at the hearing, are indicative of the proportionality of the assessments;
- (4) there are "irregularities" and "deficiencies" in the Taxpayer Appraisals and the person who signed them, Peter E. Stanhope of the Stanhope Group, LLC, did not attend the hearings and it is not clear how much, or how little, of their content was developed by him rather than by an associate (David Michaud) who also did not attend the hearing or testify;
- (5) Ms. Ortolano's many criticisms of the City's employees and its assessing contractor, as well as its assessing methodology, do not have merit and are not relevant to the Taxpayer's claims for abatements; and
- (6) the City, through its Board of Assessors, abated the tax year 2018 assessment, no further abatements are warranted and the appeals should be denied.

The board has responded to the City's "Request for Findings of Fact and Ruling of Law" (the "Requests") for each tax year in Addendum A to this Decision.

The parties agreed the level of assessment was 94.8% in tax year 2018 and 88.8% in tax year 2019, the median ratios calculated by the department of revenue administration. (Cf. 2018 Request No. 6 and 2019 Request No. 4.)

Board's Rulings

Based on the evidence and arguments presented and using its judgment and experience,² the board finds: the assessment in tax year 2018 should be abated to \$592,500 based on a market value finding of \$625,000 adjusted by the City's 94.8% level of assessment; and the assessment in tax year 2019 should be abated to \$577,200, based on a market value finding of \$650,000 adjusted by the City's 88.8% level of assessment. The appeals are therefore granted for the following reasons.

To obtain property tax abatements under RSA 76:16-a, taxpayers have the burden of proving by a preponderance of the evidence that they are paying more than their proportional share of taxes. This burden can be carried by establishing the property at issue is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the municipality. See Porter v. Town of Sanbornton, 150 N.H. 363, 367-8 (2003). (Cf. 2018 Request No. 1 and 2019 Request No. 1.)

In these appeals, the Taxpayer has the burden of proving the market value of the Property was materially less than \$687,700, rounded (\$651,900 / 0.948) and \$734,100, rounded (\$651,900

² In arriving at a judgment regarding proportionality, the board applies its learning and experience in taxation, real estate appraisal and valuation. See RSA 71-B:1; see also RSA 541-A:33, VI. Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experience. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979) (use of judgment in selecting valuation methodology and assumptions). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

/ 0.888), for tax years 2018 and 2019, respectively. The board finds the Taxpayer carried this burden.

The following facts are generally undisputed. Constructed circa 1924, the Property is a large, single-family residence on a 0.34-acre lot and, while some portions of the residence are outdated, the Property is well maintained. The immediate neighborhood (“North Nashua”) consists of larger, colonial and/or Victorian style single-family residences that are generally considered very desirable.

There is no dispute the Taxpayer acquired the Property by warranty deed recorded in January, 2014 for \$725,000, after it was listed with a professional broker with an asking price of \$799,999 and was on the market for approximately six months prior to going under contract. (Cf. “Exhibit A” to the City’s Requests for Findings of Fact and Rulings of Law.)

The City contends the \$725,000 sale price is persuasive evidence of the Property’s market value in 2018 and 2019. The City’s appraiser used the January, 2014 sale as a comparable in both his 2018 and 2019 appraisals and, in his final reconciliation, placed a significant amount of weight on it.

The Taxpayer disagrees for a number of reasons. Ms. Ortolano testified it was a “cash” purchase (with no supporting appraisal for financing or other purposes) and that she ‘overpaid’ for it.

The board finds, in certain circumstances, the sale price can be a good indication of market value. (Cf. 2018 and 2019 Request Nos. 10 and 8, respectively, in Addendum A.) As noted above, the January, 2014 purchase was a cash transaction not supported by an appraisal or other independent indicator of value. These facts and the ample, much more recent market value

evidence, support a finding the 2014 sale price is not a reliable indicator of the Property's market value in tax years 2018 and 2019.

In making market value findings, the board examines the quality and probative value of the evidence presented and not necessarily the sheer quantity or volume of documents and testimony submitted, especially when not germane to the focus of each appeal. The Taxpayer submitted 48 admitted exhibits in the 2018 appeal and 24 admitted exhibits in the 2019 appeal. The City presented ten admitted exhibits in each of the two appeals. The Taxpayer presented the testimony of Laurie Ortolano and did not call its appraiser as a witness. The City presented the testimony of its appraiser, Vern J. Gardner, Jr.

As is typical in appeals involving residential properties, both appraisers utilized the sales comparison approach to value. In reviewing the evidence as a whole, the board finds deficiencies in both appraisals and therefore makes its own market value findings, independent of each appraiser's specific market value estimates.

With respect to the Taxpayer's evidence, the board finds its appraisals ostensibly prepared and signed by Peter E. Stanhope of The Stanhope Group, LLC did not adequately adjust for improving market conditions between the date of sales and the effective dates of the appraisals (April 1, 2018 and April 1, 2019). Since neither Mr. Stanhope nor his associate who worked on the appraisal testified, they were not available for cross-examination or questions from the board regarding their work and value estimates. An appraiser's absence lessens, to some extent, the weight the board can give to his or her value estimates.

The City's appraiser, Mr. Gardner, did testify at length and was subject to extensive cross-examination. As discussed above, there are reasons to question use of the 2014 sale price.

Further, the board finds he used at least one comparable sale that was inappropriate and its inclusion skewed the resulting market value opinion substantially.

In making its own market value findings, the board notes the parties' respective appraisers (Stanhope and Gardner) used seven comparables in their 2018 valuations and six in their 2019 valuations. The board reviewed this sales evidence in considerable detail. Prior to making any adjustments, the comparable sales utilized in the 2018 Taxpayer Appraisal ranged from a low of \$559,900 to \$650,000; after adjustments, these comparables provide a value indication range of \$587,600 to \$597,900. (See 2018 Taxpayer Exhibit No. 3, p. 59.) In the 2018 City Appraisal, the comparable sales ranged from a low of \$650,000 to a high of \$1,150,000; after adjustments, the comparables provide a value indication range of \$648,100 to \$979,550. (See 2018 Municipality Exhibit A, p. 8.) In comparison, the highest sale price utilized by the Taxpayer's appraiser for tax year 2018 was \$650,000, which is close to the lowest sale price utilized by the City's appraiser.

One comparable, 4 Elliot Street, which sold in February, 2018 for \$650,000, was utilized by each appraiser in both their 2018 and 2019 appraisals. Another comparable, 51 Concord Street, which sold in September, 2019 for \$667,000, was utilized by both appraisers in their 2019 appraisals. (See 2018 Taxpayer Exhibit No. 3, 2019 Taxpayer Exhibit No.1 and Municipality Exhibit A in the 2018 and 2019 appeals.)

The board finds these two sales, when adjusted to account for differences in market conditions, lot size, gross living area, quality of construction and other physical characteristics provide the best basis for arriving at a reasonable indication of the market value of the Property. Weighing all of the evidence, including the testimony of Ms. Ortolano and Mr. Gardner, the board finds the Property had a market value of \$625,000 as of the April 1, 2018 assessment date.

For 2019, the board looked at the evidence to determine if there were any changes in the market from the prior year. Mr. Gardner testified he used an adjustment of 2.4% to account for increasing market values in the relevant timeframe. The Taxpayer's appraiser did not use any adjustments. Considering the City's equalization ratios indicate market values generally increased 6% from 2018 to 2019, the board finds an adjustment of 4% is well supported. Applying this adjustment, the board finds the market value of the Property, as of April 1, 2019, was \$650,000.

In making these market value findings, the board also placed some weight on Taxpayer Exhibit No. 28, a sales analysis prepared by KRT Appraisal, the City's contracted assessing firm. According to the Taxpayer, and not disputed by the City, this document was prepared in response to the filing of the Taxpayer's 2018 abatement application. KRT utilized three comparable sales (45 Berkeley Street, 4 Elliot Street and 38 Berkeley Street) in its analysis. After making what KRT considered appropriate adjustments, KRT arrived at three market value indications of \$624,470, \$688,567 and \$617,425, respectively, and a median indication of \$624,470. -

Below are additional considerations that led the board to make its own independent market value findings. In this respect, the board did not find Mr. Gardner's much higher market value estimates to be credible for several reasons. To begin with, Mr. Gardner utilized the January, 2014 sale of the Property in both his appraisals and placed significant weight on it in his final reconciliation of value, even when this sale price was not supported by other, more recent market sales and despite Ms. Ortolano's sworn testimony that the 2014 sale price was above market value. Mr. Gardner presented no evidence to refute this testimony or to explain precisely why the 2014 price was relevant in 2018 and 2019.

When questioned regarding his use of the 2014 sale as a comparable, Mr. Gardner cited “USPAP” (the Uniform Standards of Professional Appraisal Practice), and explained that he was required to do so. The board finds merit in the Taxpayer’s criticisms of his reasoning. USPAP Standards Rule 1-5 requires appraisers to “analyze all sales of the subject property that occurred within the three (3) years prior to the effective date of the appraisal.” Additionally, The Appraisal Foundation publishes advisory opinions (“AO”s) regarding specific USPAP requirements, and AO-1 relates to the sales history of a property. It states:

The requirement for the appraiser to analyze and report sales history and related information is fundamental to the appraisal process. Just as the appraiser must analyze the details of pending and recent sales of comparable properties, the appraiser must also take into account the various factors associated with all pending and recent sales of the subject property itself. This is not to say that the agreed price in a pending or recent sale of the subject property is necessarily representative of value as defined in the report, but the appraiser’s failure to analyze and report these facts may exclude important information from the sales comparison approach.

USPAP does not require, however, that an appraiser must, or even should, utilize a prior sale as a comparable sale, especially in this instance when the sale occurred four years prior to the date of the 2018 appeal and where there is ample, much more recent sales available to develop a credible opinion of market value.

In addition, Mr. Gardner used the sale of 51 Berkeley Street in both of the 2018 and 2019 appraisals. According to his own reports, this property contains more than double the gross living area of the Property (6,067 square feet compared to 3,016 square feet) on a much larger lot (2.14 acres compared to .15,000 square feet) and it sold in June, 2017 for \$1,150,000. This sale price is 59% higher than the sale price of any other comparable sale utilized by either appraiser or by KRT. In light of these substantial differences, Mr. Gardner’s testimony regarding the reasons why he selected this property as a sale comparable was not credible.

In brief, the board finds Mr. Gardner's use of the prior sale of the Property and the sale of 51 Berkeley Street to be questionable at best. Mr. Gardner would have arrived at much lower market value conclusions had he not chosen to use those sales as comparables.

Mr. Gardner also testified he did not utilize the sale of 45 Berkeley Street that sold in July, 2017 for \$559,900. Ms. Ortolano testified this is the "sister" to her Property: i.e., designed by the same architect and similar in age, size, quality, condition, location. Mr. Gardner testified he did not use it because it was a "private sale" and therefore was "not arm's-length." Mr. Gardner, however, is mistaken in his belief that private sales are always not arm's length and therefore their sale prices do not represent market value. So-called "private sales" are those that are not listed on a multiple-listing service; non-arm's length sales are those that are sold between parties that have some sort of relationship and the resulting sale price does not represent market value. The board finds the use of 45 Berkeley Street as a comparable is reasonable and, when appropriate adjustments are made, generally supportive of the board's market value findings.

The City placed some emphasis on the fact the Taxpayer did not appeal the assessments on the Property for the years it owned the Property prior to tax years 2018 and 2019. The board can place no weight on this fact because assessments are annual events and a taxpayer's decision not to challenge an assessment through the abatement and appeal process is not probative of the proportionality of the assessment or a taxpayer's agreement with it.

Finally, Ms. Ortolano testified at some length regarding her belief that the City's abatement process was flawed and that City employees were biased against her. The board finds that although there is an ongoing, contentious relationship between the Taxpayer and the City that is well-documented, both in the pleadings and the news media, the issues before the board center on whether the Property was disproportionately assessed in 2018 and 2019 based simply

on the probative market value evidence presented by the parties. Whether or not the City acted in an arbitrary manner or in bad faith, as the Taxpayer contends, such contentions are not sufficient to satisfy the Taxpayer's burden of proving the Property was disproportionately assessed. [See Porter v. Sanbornton, 150 N.H. 363, 371 (2003); cf. 2018 Request No. 1 and 2019 Request No. 1.] For these reasons, the board has limited its findings directly to the issue of proportionality.³

For all of these reasons, the board finds the Taxpayer met its burden of proving the assessments were disproportional in tax years 2018 and 2019. The appeals are therefore granted.

If the taxes have been paid, the amount paid on the value in excess of \$592,500 for tax year 2018 and \$577,200 for tax year 2019 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the City undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the City shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; Tax 201.37(a). The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; Tax 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the Decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only

³ The voluminous record includes an accusation of "potential perjury" made on the Taxpayer's behalf by its attorney in the 2018 appeal after the close of the hearing on April 6, 2021. On April 22, 2021, he filed a "Petition to Reopen Case or in the Alternative for a Rehearing" with the board. As discussed in the board's May 14, 2021 Order in the 2018 appeal, the City filed an "Objection" resulting in the board's denial of the petition for the reasons detailed in that Order.

allowed in very limited circumstances as stated in board rule Tax 201.37. Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:3 and RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Anne M. Stelmach, Clerk
Per Order of the Board

ADDENDUM A

**RESPONSES TO THE
CITY'S REQUEST FOR FINDINGS OF FACT AND RULINGS OF LAW**

The City's "Requests" for tax years 2018 and 2019 are replicated below, in the form submitted and without any typographical corrections or other changes. The board's responses are in **bold face**. With respect to the Requests, "neither granted nor denied" generally means one of the following:

- a. the Request contained multiple requests for which a consistent response could not be given;
- b. the Request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the Request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the Request was irrelevant; or
- e. the Request is specifically addressed in the Decision.

A. The Tax Year 2018 Requests

1. Under Porter v. Sanbornton, 150 N.H. 363 (2003), in an abatement appeal, the assessment methodology is irrelevant. The only issue is proportionality, i.e. the relevant facts are: 1) the assessment of taxpayer's property; 2) the fair market value of the taxpayer's property; and, 3) the citywide equalization ratio of assessment to market value as determined by the Department of Revenue Administration. Id. at 367-368.

Neither granted nor denied.

2. The subject property is a single-family residence located at 41 Berkeley Street, Nashua, NH, Tax Map 47, Lot 56 ("Property").

Granted.

3. The Property was assessed for \$681,900 for tax year 2018.

Granted.

4. Taxpayer filed an abatement for tax year 2018.

Granted.

5. The City's Board of Assessors granted an abatement and revised the Property' tax year assessment to \$651,900.

Granted.

6. The equalization median ratio for tax year 2018 in the City was 94.8%.

Granted.

7. Based on the 2018 median ration [sic] of 94.8%, the indicated market value of the revised assessment for the Property for tax year 2018 was \$687,658 ($\$651,900 / .948$).

Granted.

8. The tax rate for tax year 2018 was \$21.21.

Neither granted nor denied.

9. The City's expert report prepared by Vern J. Gardner, Jr. MAI, SRA, estimates a market value of \$750,000 as of April 1, 2018.

Granted.

10. In determining the market value of property, the New Hampshire Supreme Court has repeatedly found that the purchase price is the best indicator of fair market value. See Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988); see also Berthiaume v. City of Nashua, 118 N.H. 646 (1978) and Porrvu v. City of Nashua, 118 N.H. 632 (1978).

Neither granted nor denied.

11. The Property was listed for \$799,999 on June 4, 2013. See Exhibit A, MLS listing.

Granted.

12. The Taxpayer purchased the Property on January 3, 2014 for \$725,000.

Granted.

13. The single-family housing market in Nashua was rising from mid-2013 through at least 2019.

Neither granted nor denied.

14. Taxpayer presented no credible evidence that its purchase price of the Property was not indicative of fair market value. See Society Hill at Merrimack Condominium Assoc. v. Town of Merrimack, 139 N.H. 253, 255-256 (1994).

Denied.

15. Taxpayer has not claimed economic hardship or an inability to pay and has not filed for a tax deferment or any exemption.

Granted.

16. RSA 76:16, I(a) requires Taxpayer show “good cause” for abatement and “good cause” is not boundless. See Barksdale v. Town of Epsom, 136 N.H. 511, 515 (1992).

Granted.

17. Taxpayer has not satisfied its burden and a further abatement is not warranted.

Denied.

B. The Tax Year 2019 Requests

1. Under Porter v. Sanbornton, 150 N.H. 363 (2003), in an abatement appeal, the assessment methodology is irrelevant. The only issue is proportionality, i.e. the relevant facts are: 1) the assessment of taxpayer's property; 2) the fair market value of the taxpayer's property; and, 3) the citywide equalization ratio of assessment to market value as determined by the Department of Revenue Administration. Id. at 367-368.

Neither granted nor denied.

2. The subject property is a single-family residence located at 41 Berkeley Street, Nashua, NH, Tax Map 47, Lot 56 ("Property").

Granted.

3. The Property was assessed for \$651,900 for tax year 2019.

Granted.

4. The equalization median ratio for tax your 2019 in the City was 88.8%.

Granted.

5. Based on the 2019 median ration [sic] of 88.8%, the indicated market value of the assessment for the Property for tax year 2019 was \$734,122 ($\$651,900 / .888$).

Granted.

6. The tax rate for tax year 2019 was \$21.76.

Neither granted nor denied.

7. The City's expert report prepared by Vern J. Gardner, Jr. MAI, SRA, estimates a market value of \$800,000 as of April 1, 2019.

Granted.

8. In determining the market value of property, the New Hampshire Supreme Court has repeatedly found that the purchase price is the best indicator of fair market value. See Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988); see also Berthiaume v. City of Nashua, 118 N.H. 646 (1978) and Porrvu v. City of Nashua, 118 N.H. 632 (1978).

Neither granted nor denied.

9. The Property was listed for \$799,999 on June 4, 2013. See Exhibit A, MLS listing.

Granted.

10. The Taxpayer purchased the Property on January 3, 2014 for \$725,000.

Granted.

11. Taxpayers presented no credible evidence that its purchase price of the Property was not indicative of fair market value. See Society Hill at Merrimack Condominium Assoc. v. Town of Merrimack, 139 N.H. 253, 255-256 (1994).

Denied.

12. The single-family housing market in Nashua was rising from mid-2013 through at least 2019.

Neither granted nor denied.

13. Taxpayers has not claimed economic hardship or an inability to pay and has not filed for a tax deferment or any exemption.

Granted.

14. RSA 76:16, I(a) requires Taxpayer show “good cause” for abatement and “good cause” is not boundless. See Barksdale v. Town of Epsom, 136 N.H. 511, 515 (1992).

Granted.

15. Taxpayer has not satisfied its burden and an abatement is not warranted.

Denied.

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Richard J. Lehmann, Esq., Lehmann Major List PLLC, 6 Garvins Falls Road, Concord, NH, 03301, Taxpayer Representative; Steven A. Bolton, Esq. and Celia K. Leonard, Esq., City of Nashua, 229 Main Street, Nashua, NH 03061, Counsel for the Municipality; Laurie A. Ortolano Trust, 41 Berkeley Street, Nashua, NH 03064, Taxpayer; and Chairman, Board of Assessors, PO Box 2019, Nashua, NH 03061.

Date: June 11, 2021

Anne M. Stelmach, Clerk

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
No. 2020-CV-00133

Laurie Ortolano

v.

The City of Nashua

ORDER ON PLAINTIFF'S MOTION FOR DISCOVERY SANCTIONS

The plaintiff, Laurie Ortolano, has brought a petition in which she seeks access to records from the City of Nashua's (the "City" or "Nashua") assessing department (the "Department"). Currently pending before the Court is the plaintiff's motion for discovery sanctions. On July 9, 2021, the Court held a hearing on the plaintiff's motion. After consideration of the evidence, arguments, and the applicable law, the Court finds and rules as follows.

Facts

The facts forming the basis of the plaintiff's motion are not in dispute. (See July 9, 2021 Hr'g at 10:20 (City conceding that the facts are not in dispute); but see City's Obj. ¶ A ("The plaintiff's motion is rife with unsupported and inflammatory allegations, conjecture, and hyperbole unworthy of a motion before this Court."). On July 20, 2020, the plaintiff propounded a request for production to the City for "[a]ll emails sent by Kim Kleiner from August 9, 2019 through to September 30, 2019." (Pl.'s Mot. Disc. Sanctions at Ex. 2.) Nearly one month later, on August 18, 2020, the City responded stating, "[t]he City is still searching and the City will update its responses when search is complete." (Id. at Ex. 3.) After receiving no further response from the City, a meet and confer was scheduled between the parties. (Id. ¶ 11.) On October 6, 2020, the parties

met to resolve the discovery dispute. (Id. ¶ 12.) During this meeting, the City informed the plaintiff that it expected to produce the responsive emails within 30 days. (Id.) After not receiving any documents for over two months, the plaintiff filed a motion to compel on December 9, 2020. (Pl.'s Mot. Disc. Sanctions ¶ 13; see also Court Index # 68.) On December 21, 2020, the City objected to the production of the documents, asserting that the emails were not relevant to the plaintiff's claims. (Pl.'s Mot. Disc. Sanctions ¶ 14; Court Index # 73.) On January 25, 2021, the Court held a hearing on the motion to compel. (Pl.'s Mot. Disc. Sanctions ¶ 15.) On March 25, 2021, the Court issued an order requiring the City to produce "only those emails sent by Director Kleiner during the requested time period which relate to the plaintiff, plaintiff's Right-to-Know request, or the production of related documents." (Pl.'s Mot. Disc. Sanctions ¶ 17; see also Court Index # 96 at 4.) On April 15, 2021, the City produced documents and a privilege log to the plaintiff in accordance with the Court's order, in which for the first time, nearly nine months after the plaintiff's original request, the City informed the plaintiff that documents could not be produced because "the City's tape backups are corrupt between April 2019 through October 2019." (Pl.'s Mot. Disc. Sanctions ¶¶ 19–20.)

Analysis

The plaintiff now moves for sanctions against the City arguing that "[e]ither (1) During the time between the [request for production] on July 20 and the filing of the motion to compel on December 9, the City did not take any action to retrieve Kleiner's emails and was making misleading statements when asserting that they were 'working on it'; or (2) The City simply took no action whatsoever until many months after the initial discovery request, and thus acted in a dilatory and delay-inducing, vexatious manner."

(Id. ¶ 34.) Accordingly, the plaintiff asks “[t]hat the [C]ity be ordered to pay plaintiff’s attorney’s fees associated with her attempt to obtain discovery of the emails in question.” (Id. at Prayer 5.)¹

The purpose of discovery “is to narrow the issues of litigation and to prevent unfair surprise by making evidence available for both parties to evaluate it and adequately prepare for trial.” Burse v. Bursey, 145 N.H. 283, 286 (2000). Accordingly, “[t]he [C]ourt may impose appropriate sanctions against a party or counsel for engaging in discovery abuse.” N.H. Super. Ct. R. 21(d)(1); see also Daigle v. City of Portsmouth, 131 N.H. 319, 325 (1988) (“The imposition of discovery sanctions is a matter left largely to the discretion of the trial court.”). “Sanctions are appropriate in part to deter parties from disregarding discovery requests, and to compensate others for costs associated with a party’s failure to act in accordance with such requests.” Daigle, 131 N.H. at 326 (cleaned up). “Action or inaction by a party may provide the basis for the imposition of sanctions.” Id. “Upon a finding that discovery abuse has occurred, the court should normally impose sanctions unless the offending party or counsel can demonstrate substantial justification for the conduct at issue or other circumstances that would make the imposition of sanctions unfair.” N.H. Super. Ct. R. 21(d)(1).

Here, it is undisputed that the City first informed the plaintiff that the requested files were unavailable due to the corruption of the tape backups nine months after her initial request. During this time, the plaintiff relied on the City’s statements that it was “still searching” and would produce responsive documents. Moreover, the City’s lack of candor, or lack of action to discover the corruption of the files, led the plaintiff to file a

¹ In her motion, the plaintiff asked for addition relief, however, during the hearing, the plaintiff withdrew her additional prayers for relief. (Hr’g at 10:18--19.)

motion to compel the documents at issue. The Court was required to hold a hearing to determine the discoverability of the documents. The City's actions, or inaction, shows that it was disregarding the plaintiff's discovery request, or misleading the plaintiff about the availability of responsive documents. Under these circumstances, sanctions are appropriate to compensate the plaintiff for the costs related to discovering the documents at issue.

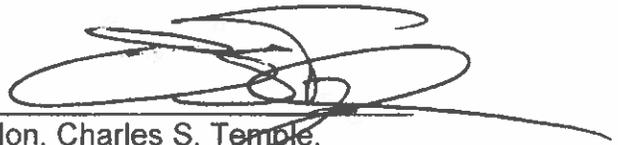
Additionally, the Court finds that the City has not demonstrated substantial justification for the conduct at issue or other circumstances that would make the imposition of sanctions unfair. Indeed, the Court notes and admonishes the City for its objection to the plaintiff's request for sanctions. The Court finds the City's objection to go against the underlying facts, which the City admitted were uncontested at the hearing. The Court also finds the tone of City's objection concerning. (See, e.g., City's Obj. ¶ A ("The plaintiff's motion is rife with unsupported and inflammatory allegations, conjecture, and hyperbole unworthy of a motion before this Court."); id. ¶ U ("The plaintiff's behavior in filing this frivolous motion arguably meets the definition of obdurate and obstinate".)) Moreover, the Court notes that at the hearing the City represented that it was unclear when the City discovered the emails were unobtainable, (hr'g at 10:22), however, in its objection the City stated that "[e]arly on in the process it was discovered that the emails from the month of September 2019 were unobtainable due to file corruption[.]" (City's Obj. ¶ T). The Court is concerned about the City's candor and if the City attempted in good faith to resolve the discovery dispute over the documents at issue. See N.H. Super. Ct. R. 21(f) (requiring the parties to make "a good faith effort to resolve informally a dispute concerning discovery.") The stark contrast between the

objection and the City's position at the hearing is striking. (See hr'g at 10:23–24 (Attorney Bolton characterizing the objection at the hearing as follows: "It was a little over the top. Maybe more than a little, in response.")

In conclusion, the Court awards the plaintiff with reasonable attorney's fees associated with her attempt to obtain discovery of the emails in question. As a result, the plaintiff's motion for discovery sanctions is GRANTED. The plaintiff shall file an itemization of attorney's fees with appropriate redactions for attorney-client privilege and work product purposes by August 1, 2021. Any objection to this itemization shall be filed by August 15, 2021.

So ordered.

Date: July 14, 2021



Hon. Charles S. Temple,
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 07/14/2021

