

**City Manager's Report**  
**City Council Meeting**  
**Tuesday, September 15, 2009**  
**City Hall at 7:00 p.m.**

**TO: Mayor Walter Ash Jr. and Honorable Members of Belfast City Council**

**FROM: Joseph J. Slocum, City Manager**

**DATE: Friday, September 11, 2009**

**Non Agenda Items:**

Recouping City funded repairs to a formerly dilapidated home.

Many years ago the City invested in excess of \$80,000 into a private home within the City that was clearly a health hazard. The person who owned the home has since died and a lawyer has been appointed by the court to act as the executor of the estate with the power to sell the property. The property has been thoroughly examined for condition and was placed on the market for sale. An agreement of sale was signed but it fell through because of the poor condition of the septic system. There was a time where I felt there would be sufficient assets from the proceeds of the sale to repay the City in full for its investment. Today, based upon the additional knowledge relating to the septic system I no longer think that will be the case. We will do everything we can to re-secure every dollar of City money that we can from this property. However, the likelihood is that we will not receive 100% repayment. If you have any questions please let me know.

**11.A Confirm the City Manager's appointment of Norman W. Gilmore, III as Facilities Caretaker.**

I wanted to specifically address this appointment because I'm asking that you approve a variance from our existing personnel rules which generally allow a new employee to get two weeks of vacation pay only after serving their first full year with the city. Mr. Gilmore is a veteran employee of the City of Belfast with more than 20-years of dedicated service. About a year ago he left city employment in good standing to pursue another opportunity. It was precisely because of his skill level and hard work ethic that we contacted him and encouraged him to return to City employment and apply for the position of Facilities Caretaker. He worked initially on a temporary basis and then formally applied for the position once it was posted. There are provisions in the personnel code that allow a person to leave employment in good standing and return to that same job without having to go through the formal application process. In those instances the employee has in the past re-secure the level of their former existing benefits based upon years of service with the City. When Mr. Gilmore left the City a year ago, he was earning five weeks vacation a year based upon his longevity of service. We have been very pleased that the Council created this position and up and proudly report that Mr. Gilmore has exceeded our highest expectations in every way thus far. Our personnel code does not speak to a situation where an employee leaves City employment in one area and then returns and takes a position in another all together area. Given this gap, I have negotiated with Mr. Gilmore and I ask you to appoint him as Facilities Caretaker and provide him with three weeks vacation retroactive to July 1, 2009. I have discussed this with him and he is content with this proposed arrangement.

### **11.B Discussion and action on committee appointments.**

There are a number of open seats up for appointment. The Council meeting will start at 6 p.m. so that the Council may interview candidates.

### **11.C Discussion on surface drainage options and responsibilities in Belfast.**

I am not asking for council resolution of this complicated issue at this meeting. Rather I seek to provide information to you for you to think about so that you can eventually help me understand whether we need to change our practices or change our responsibility for drainage issues on private property in Belfast.

Last year we had a large increase in the amount of complaints about residential drainage. The number of complaints directly correlated with the increasing number of rain events, the volume of rain that actually falls within a 24 hour period, the amount of rain that falls in an hour, whether or not snow melt is an issue and whether or not the ground is already saturated by pre rain conditions.

Citizens have stepped forward and asserted that it is the City's responsibility to address residential drainage issues from a variety of viewpoints:

- The City has allowed people to build homes or expand homes in the City, which has shifted drainage onto other lower adjacent property owners.
- The City has allowed landscaping, fill additions, installation of underground drainage systems and such- for existing residential structures which they contend has had the effect of shedding one neighbor's drainage problems onto another-who is usually downhill and in a lower lying portion of that same hill.
- When the rain-washes down the street and there is no curb- it washes out the dirt, grass etc. leaving exposed stone and a ditch.
- The City ditch alongside the street is too deep.
- The City culverts are too small or more recently- too large.
- The City ditch has grass in it.
- The City storm drains are not deep enough to let basement water drain by gravity into them.
- The water comes over the curb.
- There are no storm drains or not enough storm drains on our street or in our area.
- City plows push sand with snow into ditches.

What is the City's responsibility here... legally, politically or financially?

First, I know of no legal obligation of any municipality to drain private property. Storm drains are not installed to drain neighborhoods- they are installed to take water away from the roads in those neighborhoods so that the ground water does not undermine the surface of the road. When you see alligator cracks in a road then you are looking at a road with far too much water underneath it.

Nevertheless, most municipalities, including Belfast, have traditionally allowed residential property owners to drain their property into existing municipal ditches and storm drains which has contributed to the expectation that the city should have these resources everywhere for everyone, and that these drains will handle all storm water and storm events.

Ditches are part of the drainage problem in Belfast. Like many communities we have filled them in over time and constrained our ability to remove water to the size and configuration of the underground culverts, which have replaced them. Ditches are the most effective drainage system there is. People just don't like the looks of them and they don't like to have to cross them. As we have eliminated ditches we have worsened our ability to drain water away.

What do Belfast ordinances say about drainage requirements for property owners?

First, Belfast has a regulation Chapter 102, Article IX Section 102 -1124 that reads:

“Surface water runoff shall be minimized and detained on site if possible. If it is not possible to detain water on site, downstream improvements to the channel may be required to prevent flooding. The natural state of watercourses, swales, floodways or rights-of-way shall be maintained as nearly as possible. The storm water design shall be for a 50-years storm, that is, the largest storm which would likely to occur during a 50 year period.”

This is a standard for storm water management that is applicable for both residential and nonresidential uses. To comply with this standard one needs to hire an engineer who can mathematically calculate the storm water capacity of an existing area and then identify the amount of additional water runoff that would occur from the new development on the property. A homeowner would then be required to ensure that the amount of new runoff would not exceed a 50-years storm. For Belfast Maine a 50-year storm event is 5.5 inches in a 24-hour period. This Belfast zoning ordinance “standard” has been in effect since 1985.

This standard has not been strictly imposed upon any construction of a single or duplex residential development within the city since 1985, mostly because of the cost and difficulty associated with requiring all individuals to use engineering services for improvements to their property. It has however been imposed at every development that requires site plan review which is essentially everything larger than single or duplex construction.

If the house is already in place- there is no requirement under Belfast ordinances that the home owner secure building or construction permits when they bring fill onto their property or add in drainage improvements to their properties. Hence, every existing residential property in the city- outside of the

“shore land zone”, which has changed the surface of its property and related drainage-, has not needed a permit to do so.

The catch is that while they’re not required to get a permit –they are nevertheless required to comply with Sec. 102 –1124 recited above. This is a fact that they may likely be aware of. In fact it has been very rare when a residential property owner has used civil engineering services to consider storm water concerns.

The problem our ordinance creates is a lack of an obligation to secure a permit coupled with a reasonable likelihood that property owners were not aware of their legal obligation to spent thousands of dollars to hire engineers to calculate the impacts of their storm water runoff. We likely have a lot of properties would be pretty surprised if we knocked on their doors and told him to remove the thousands of dollars in improvements that were made years ago until they spend even more money to comply was what is essentially a very hard if not onerous compliance standard. The vast majority of properties out of compliance with this standard involve homeowners were not obligated to get permits in the first place but nevertheless were required to observe standards that is hard to believe they were even remotely aware of. As a practical matter, in most cases, the cost of standard compliance through the cost of individual engineering analysis would likely have been greater than the cost of the actual work.

Would Belfast today pass a law that requires a citizen to spend thousands of dollars on an engineer in order to drop 10 yards of fill into their back yard for which no permit is required?

I would tend to doubt it.

Did the City just let people flagrantly violate the ordinance?

I don’t think so particularly when most situations never required permits in the first place.

Did we snoop around to see who was doing what and when over the years?

I think that’s unlikely given the amount of staff and the amount of work that has gone on in Belfast since 1985.

Do I think the ordinance creates legal liability for the City?

No- I do not for a host of reasons including the unique immunities that all municipal entities enjoy under the Maine Tort Claims Act.

What are the political concerns?

We have a number of citizens who want their property to be drier and they are looking to the City to resolve the issue.

Can they sue their neighbor?

Sure, but they don’t want to or they couldn’t afford to if they did want to sue them.

What's the answer then?

- Do what we can to maintain existing drainage and improve upon it where we need to, based upon road considerations alone- OR.
- Commit as a City to a policy of providing private property drainage throughout Belfast. Once we start to help one neighborhood we would be politically obligated to do the same for any other. We can identify the 10 or 15 worst areas in the City, prioritize them and attack them at a rate of about 1 per year for the next 15 to 20 years. I would suggest minimum annual budget allotments of \$100,000 per year based upon brief conversations with an engineer. We are talking- digging, hauling, pipe laying, and catch basin construction. Backfilling with proper fill and in most cases- repaving the street where we tore it up.

§ We also need to consider ordinance standards that establish more practical approaches to managing storm water.

- The City could propose the creation of a storm water master plan similar to what was done for the sewer in 1999.

There are definitely residents who have neighborhood drainage impacts where the roads themselves are just fine and hence we would not ordinarily install catch basins and drainage systems along those roads because there is no benefit to the road itself. This means if we chose #1 above then there would be residents who have drainage problems on their property, which will not benefit from option #1 above.

This is an issue that could be as much as 50 years in the making. I can understand why there has been hesitancy to fix it long ago. I am prepared to move in whatever direction the Council chooses. I look forward to your thoughts and I understand this will take some time to think over.... that is why I am not looking for Council action at this time.

#### **11.D Second final reading on proposed zoning amendments affecting parking requirements.**

This is a matter that the Council has discussed in several meetings. The major issue appears to deal with the parking requirements related to restaurants. Wayne Marshall will be at the meeting to discuss any additional concerns or questions you may have.

#### **11.E Council consideration of a policy statement regarding the location of political signs relating to elections.**

City Planner Wayne Marshall has been charged by the Council to return to this meeting with a proposed policy in line with prior discussions. He will have an attached memo to this item in your packet.

#### **11.F Discussion on hiring a full-time Economic Development Director for Belfast. (Anderson)**

Over the past four to five months, Jan Anderson and I have talked about the possibility/advantages of the City of Belfast pursuing a dedicated, full time Economic Development Director. We talked about the scope of the work an Economic Development Director might engage in and how the position might enhance the job and business opportunities for many aspects of our diverse City of economy. She wanted to know, in the light of the challenges facing KWRED, what my feeling today is about our investment in economic development. Now she would like the City Council to take up the question.

As you know, Belfast has engaged in many economic development pursuits since the demise of the chicken industry. In the 80's and 90's we paid EMDC to give us a full-time employee to help re-position Belfast economically. More recently, since 2006 we have created and funded with other communities KWRED, supported the work of the Chamber of Commerce, donated to the Hutchinson Center expansion, the YMCA, the Downtown Business Group, the Friday night gallery art walks and performances, and other attractions that contribute to economic development. Each activity contributes to economic development but do we need an overall strategy and a day-to-day director of that strategy?

In today's fragile economic climate, perhaps it's time to take an even more assertive approach to retaining and possibly expanding our existing businesses, attracting new businesses, and supporting the entrepreneurs in the community who are the driving force behind much of our economic activity. I look forward to your thoughts and to this discussion.

**11.G Council discussion and possible action on the next step process following the September 8<sup>th</sup> and 10<sup>th</sup> public hearings on the proposed land use sections of the new Belfast Comprehensive Plan.**

The Council scheduled a special City Council meeting for Thursday, September 17, 2009 to discuss their thoughts following the public hearings held this week on this matter. Wayne Marshall, City Planner, will have an attachment to this agenda item in your packet.

**11.H Update the status of Belfast Bridge, LLC / Wakeag Landing Project.**

Wayne Marshall, City Planner will have an attachment to this packet to discuss the city's efforts to further secure its rights and entitlements under agreements relating to this project. He will provide you with an update at the meeting to discuss this with you.

**11.I Discussion and action on Two Franklin Street Renovations bid opening.**

On the second floor of the police station building the City has two tenants who help pay for the City's acquisition and renovations of that building. One tenant at the end of their five-year lease elected not to renew. We have been most fortunate in attracting a new 10-year lease tenant but that will require certain renovations to the existing space. In order to negotiate a lease with this prospective new tenant we needed to know what the cost of the renovations were and how we were going to recoup that expense within the terms of the new negotiated lease.

At this time I ask the Council to accept the bids as submitted for the proposed work. I recommend that we award the bid to Whitecap Builders of Belfast.

I also ask that the Council give the City Manager the authority to sign a contract for this work based upon any negotiated lease, which will fully reimburse the City for these costs. The lease would also provide the City with sufficient monthly rent payments that are equal to or greater than the amount it would have been paid if the additional five-year lease had not ended.

I do not wish to disclose the name of the new tenant until the negotiated lease is executed but I can assure you that they are one, which is acceptable to the Police Department and our other tenant at the building.

That's the report for now. I will have some additional things for you at the meeting that I will bring up under communications. Have a safe and enjoyable weekend.