

**REGULAR MEETING OF FEBRUARY 4, 2019**

Regular Meeting of the City Council was held in the City Council Chamber, Room 219, City Hall, on Monday evening, February 4, 2019.

CALL TO ORDER

Council President Scott Joseph Graves called the meeting to order at 7:30 o'clock p.m.

CALL OF THE ROLL

City Clerk Alan Agnelli called the Roll of Members. Eleven (11) Councillors were present including President Scott Joseph Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, Elizabeth Kazinskas, and James Walsh.

OPENING PRAYER

President Graves led the Council in reciting the Opening Prayer.

PLEDGE OF ALLEGIANCE

President Graves led the Council in reciting the "Pledge of Allegiance".

OPEN MEETING RECORDING & PUBLIC RECORDS ANNOUNCEMENT

President Graves announced to the assembly that the Open Meeting Recording and Public Records Announcement is posted at the entrance to the Chamber, and that any person planning to record the meeting by any means should identify themselves.

READING & ACCEPTANCE OF MINUTES

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, it was voted viva voce, eleven (11) yeas, President Scott Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, Elizabeth Kazinskas, and James Walsh, to waive reading and to accept the Minutes of the Regular Meeting of January 22, 2019.

COMMUNICATIONS FROM THE MAYOR**APPOINTMENTS****#10052**

Reporting for the Finance Committee, Councillor James Walsh informed the Council that the Committee voted, by a 2 to 1 majority, to recommend that the City Council confirm the appointment. He said that Mr. Gerry has been a member of the Zoning Board of Appeals for a

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number of years and that the Mayor feels that he is fit for reappointment, based on his qualifications and experience.

Councillor Walsh then moved to confirm the Mayor's Appointment of Michael Gerry to the position of Member, Zoning Board of Appeals, for term expiring January 17, 2022.

Councillor Ronald Cormier seconded the motion.

On the motion, Councillor Edward Gravel stated that he would vote against the appointment, "only because of a recent vote cast at the Zoning Board of Appeals where a measure that this Council voted on voted down. It was nearly overturned by the Zoning Board." Continuing, he said, "It's concerning to me when this Council of 11 made the choice not to approve this change that wasn't supposed to happen in South Gardner. They were able to make an appeal to the Zoning Board and it nearly passed, so I think we're treading on light water here. Real light." Concluding, Councillor Gravel added, "And, I just don't think that that should be happening if this Council makes a decision in the best interest if the City."

Councillor Ronald Cormier, a member of the Finance Committee, informed the Council that in Committee, the Council's role of confirming appointments as opposed to appointment was discussed, as well as the City Council's role in voting on the solar overlay district Ordinance.

Continuing, Councillor Cormier said that all individuals in the community have a legal right to appeal to the Zoning Board of Appeals and, if [they are] aggrieved, there is another appeals process. The Council may nor may not agree with rulings by the ZBA, but that they decide on the merits that they have before them, he said. Concluding, he said that the Council President explained to the Finance Committee that the ZBA has to decide within certain legal parameters; however, the Council President did not agree that the ZBA decided the case within the legal parameters. "Not everyone agrees with every decision that the Council has made," he added.

Councillor James Walsh informed the Council that the three-member Zoning Board of Appeals was considering a 'use variance', and approval of a variance must be unanimous. "It is hard to get a variance because the standard for changing the uses within established zones is difficult, and [is] intended to be difficult," he said. The standards used by the ZBA in making their decisions are different – the votes are different, and the requirements are different, he added.

Continuing, Councillor Walsh stated that City Council was divided on its vote on the solar overlay district Ordinance, where some Councillors voted in favor, including him, and others in opposition. He said that he was criticized for his position, but he believes that he acted in the best interest of the City.



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Concluding his remarks, Councillor Walsh said that to make a decision on a nominee that has served the City for many years, based on one vote, “I think would be a signal to those who may want to serve, in these or other positions within the City, [that] if you make the wrong vote, then the Council might not like it and [then] not be reappointed. I don’t think that that is a good signal to send. I think that Mr. Gerry has served honorably and effectively through the years; [therefore] I will support the motion to confirm.”

On the motion, on recommendation of the Finance Committee, it was voted vive voce, eight (8) yeas, James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Karen Hardern, Christine Johnson, Elizabeth Kazinskas, and James Walsh; three (3) nays, President Scott Graves and Councillors Edward Gravel and James Johnson, to confirm the following Appointment received from the Mayor:

MICHAEL GERRY to the position of Member, Zoning Board of Appeals, for term expiring January 17, 2022.

Worcester, ss.

February 7, 2019

Then personally appeared **MICHAEL GERRY** and made oath that he would faithfully and impartially perform the duties of Member, Zoning Board of Appeals, according to law and the best of his abilities.

Before me,

/s/ Faith A. Glover, Assistant City Clerk

ORDINANCE

#10053

On a motion by Councillor James Johnson and seconded by Councillor Edward Gravel, it was voted vive voce, eleven (11) yeas, President Scott Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, Elizabeth Kazinskas, and James Walsh, to refer the following Ordinance to the Public Safety Committee for study and report:

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 312 THEREOF, ENTITLED “ANIMALS,” BY DELETING AND REPEALING § 312-2F.

Be it ordained by the City Council of the City of Gardner as follows:

Section 1. The Code of the City of Gardner is hereby amended by deleting and repealing Subsection F of § 312-2, Responsibilities of owner or keeper, of Chapter 312, Animals.

Section 2. Effective date.

This ordinance shall become effective on passage and publication as required by law.

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PETITIONS, APPLICATIONS, COMMUNICATIONS, ETC.**#10054**

Reporting for the Finance Committee, Councillor Ronald Cormier informed the Council that the Committee voted to recommend adoption of the Measure, saying that the property is in poor condition and the hope is to sell the property and to return it to the tax rolls.

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, on recommendation of the Finance Committee, it was voted *vive voce*, eleven (11) yeas, President Scott Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, Elizabeth Kazinskas, and James Walsh, to adopt the following Measure:

DECLARING SURPLUS FOR PURPOSE OF DISPOSAL
LAND AND BUILDINGS AT RYAN STREET

VOTED: To declare surplus for the purpose of disposal, in accordance with prevailing General Laws, all land and buildings at 174 Ryan Street, further identified on the City of Gardner Assessor's Map as M32-00011-00012, to establish as a minimum amount of \$1.00 to be paid for any conveyance of said property, and to authorize the Mayor to convey said land, or part thereof, for such amount or a larger amount, and upon such other terms as the mayor shall consider proper in accordance with this Vote.

Presented to Mayor for Approval – February 5, 2019

Approved – February 5, 2019

MARK P. HAWKE, Mayor

#10055

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, it was voted *vive voce*, eleven (11) yeas, President Scott Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, Elizabeth Kazinskas, and James Walsh, to place on file *A Notice from the Contributory Retirement Board Relative to a Meeting to Determine a Cost-of-living Adjustment for Retirees and Survivors* and that anyone interested in attending the meeting should do so.

REPORTS OF STANDING COMMITTEESFINANCE COMMITTEE**#10007**

Reporting for the Finance Committee, Councillor James Walsh informed the Council that the Committee considered the Ordinance and found it to be well-drafted and suitable; however, the difficulty that the Committee observed was a concern as to whether there were still appointees/members of the Municipal Grounds Commission. The Committee inquired of the

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Mayor and learned that of the five members of the Commission, the most recent appointments were made in 2008 for three year terms, and all expired in 2011. "And why it is that there have not been any new appointments or reappointments to the Commission?" he asked of the Mayor. "The Mayor is unclear," he added.

Continuing, Councillor Walsh reported that the Finance Committee agreed that the Ordinance should be advanced, but that the Committee should ask the Mayor if he would consider new appointments or reappointments. Therefore, he said, there would be an active Commission in place in the event that the Council passes the Ordinance and then be able to administer its provisions.

Concluding, Councillor Walsh stated that the Finance Committee recommends sending the Ordinance to First Printing, as well as to authorize the Council President to correspond with the Mayor requesting that he consider appointments to the Municipal Grounds Commission.

Councillor Walsh moved to authorize the Council President to correspond with the Mayor requesting that he consider appointments to the Municipal Grounds Commission and to Order the following Ordinance to First Printing:

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 156 THEREOF, ENTITLED "MUNICIPAL GROUNDS COMMISSION," TO ADD PROVISIONS RELATING TO A COMMUNITY BANDSTAND COMMITTEE.

Be it ordained by the City Council of the City of Gardner as follows:

Section 1. Chapter 156-3 of the Code of the City of Gardner is hereby amended by adding the following:

B. There is hereby established under this Section the "Community Bandstand Committee" which shall exist and be operated hereunder for the purpose of implementing seasonal programs to be conducted in the City's parks including but not limited to summer musical concerts and other community entertainment events at the Bandstand located in Monument Park, as well as at the City's other parks, at the City's other municipal grounds and at other appropriate locations in the City. The Community Bandstand Committee shall consist of no less than three (3) members, one of whom shall be a member of the Municipal Grounds Commission, to carry out the purposes of this Section 156-3B. All members shall be appointed in accordance with Section 156-1A.

C. The Community Bandstand Committee may receive donations and gifts of property, both real and personal, in the name of the City to further the purposes as set forth in Section 156-3B. Upon receipt of any such donation or gift the Community Bandstand Committee shall provide each such gift or donation to the Treasurer, who shall deposit same into an account to be created and named the "Community Bandstand Committee Program Fund." All funds in

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such Community Bandstand Committee Program Fund shall be used for the purposes set forth in Section 156-3B.

D. Revise the former (present) 156-3B to 156-30.

Section 2. Effective date.

This ordinance shall become effective on passage and publication as required by law.

Councillor Ronald Cormier seconded the motion.

On the motion, Councillor Edward Gravel informed the Council that the Bandstand has continued to operate and that the Mayor will sign all contracts for the City for the bands performing this summer.

Councillor Walsh said that the City Council must be assured that there is a functioning Commission, since it has been 8 years since the terms of the current Commission members expired. Further, he said that it is his understanding that it has been 6 years since the Commission last held a meeting, even though the Commission is required to meet monthly, in accordance with the Ordinance. He concluded by saying that if there are no new appointments filed by the Mayor and the indication is that there is no functioning Commission at the time that the Ordinance is ready for passage, then he would vote against the Ordinance.

On the motion, it was voted viva voce, eleven (11) yeas, President Scott Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, Elizabeth Kazinskas, and James Walsh, to authorize the Council President to correspond with the Mayor requesting that he consider appointments to the Municipal Grounds Commission and to order the following Ordinance to First Printing:

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C. The Community Bandstand Committee may receive donations and gifts of property, both real and personal, in the name of the City to further the purposes as set forth in Section 156-3B. Upon receipt of any such donation or gift the Community Bandstand Committee shall provide each such gift or donation to the Treasurer, who shall deposit same into an account to be created and named the "Community Bandstand Committee Program Fund." All funds in such Community Bandstand Committee Program Fund shall be used for the purposes set forth in Section 156-3B.

D. Revise the former (present) 156-3B to 156-30.

Section 2. Effective date.

NOTE: An earlier version of the Ordinance amendment was inadvertently published. The final version, above, was ordered to be published.

#10008

Reporting for the Finance Committee, Councillor Ronald Cormier informed the Council that the *Measure Authorizing Acceptance of Donations and Gifts for Use by the Community Bandstand Committee for Musical Concerts and Other Entertainment Events* would be addressed at the time that the Council considers passage of the Municipal Grounds Commission Ordinance amendment (#10007).

Leading to a motion, Councillor Edward Gravel stated that he would like to strike "and other entertainment events" from the Title because donations and sponsorships for the Bandstand are intended for "Concerts in the Park."

President Graves explained that the Measure is currently in Finance Committee and has not yet been reported out or discharged.

Councillor James Walsh noted that the Measure is required to be reported out of Committee and "on the floor" in order to be open for debate and for some action, before it can be amended.

Councillor Ronald Cormier added that the matter was discussed in Committee and it was agreed that language in the Measure would have to be amended before passage.

There being no objections, the Finance Committee was granted more time to report on *A Measure Authorizing Acceptance of Donations and Gifts for Use by the Community Bandstand Committee for Musical Concerts and Other Entertainment Events*.

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COMMITTEE OF THE WHOLE**#10051**

President Graves informed the Council that an Informal Meeting of the Committee of the Whole would be scheduled for Tuesday, February 19, 2019 at 7:00 p.m. to discuss *An Ordinance to Amend the Code of the City of Gardner, Chapter 600 Thereof, Entitled "Vehicles and Traffic," Article V, Parking Meters.*

NEW BUSINESS

On a motion by Councillor Nathan Boudreau and seconded by Councillor Christine Johnson, it was voted viva voce, eleven (11) yeas, President Scott Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, Elizabeth Kazinskas, and James Walsh, to consider New Business.

ANNOUNCEMENTS and COMMENTARY

Referencing Calendar #10051, Councillor James Boone informed the Council that he decided to conduct a Google search and asked "What is the role of a subcommittee?" He said, that "a congressional subcommittee in the United States Congress is a subdivision of a United States congressional committee that considers specified matters and reports back to the full committee. "So," he said, "just putting that out there before our next meeting."

Councillor Christine Johnson informed the Council that the Public Welfare Committee recently met with the School Department concerning the status of the current School Department Budget; the scheduled FY2020 Budget meetings; and, plans for the new elementary school. She said that the City needs a new elementary school and noted that Elm Street School was constructed for use as a High School and that Waterford Street School was constructed on a swamp. "So," she said, "it will be good to have a new school, but as Council President Graves stated, 'We need an elementary school that our community can afford'."

Councillor Elizabeth Kazinskas announced that the *Friends of the Library Used Book Sale* is schedule for Friday, February 22 and Saturday, February 23.

Councillor Elizabeth Kazinskas informed the Council of her concurrence with Councillor Christine Johnson's report concerning the Public Welfare Committee's recent meeting with School Department officials. She said that she is impressed with the School Department administrators and School Committee members and that she is looking forward to working with them to see the new elementary school constructed.

Referencing the Council's action on Calendar #10052, President Graves informed the Council that he "usually agrees to not hold someone to a single vote," and "as Councillor Walsh said,



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Councillors are disagreed with all the time,” adding that when the Council considers complex legislation, the votes “are hardly ever unanimous.” “On this issue,” President Graves continued, “the State law on ‘use variances’ is so clear-cut, you have to show one of three things to obtain a ‘use variance’ – something unique about the shape of the land that doesn’t affect any other land in the area; topography; or soil conditions; or, something so unique about the particular parcel – so unique that unless a ‘use variance’ is granted, it cannot be used. Obviously, they are not able to show that.”

Continuing, President Graves stated, “So, that vote is ultra-important. [ZBA Chairman] Ray LaFond cast his vote based on State law, which saved the day for the City of Gardner. Otherwise, a precedent would be established,” and “if precedent was established based on that vote, [then] anyone could come in [to] request a variance, and then obtain a variance based on some assertion that it is better that the land be used for a solar farm as opposed to a development, which is not a consideration under State law.”

Continuing, President Graves said, “We avoided establishing a precedent – which [the ZBA’s decision] is much different than the decision that faced the City Council.” “If the precedent was set, then it would be nearly impossible to deny the applicant a ‘use variance’ for any reason, in my opinion,” he added. He concluded his remarks by saying that he ordinarily defers to the Mayor on appointments; however, in this instance, he could not support confirming Mr. Gerry’s appointment.

Commenting on Councillor Christine Johnson’s report of the Public Welfare Committee’s recent meeting with School Department officials, President Graves said that his “words at that meeting weren’t well received” by certain attendees. Paraphrasing, President Graves said that he stated at the meeting, “We need the best school in this City that the taxpayers can afford,” which “was interpreted by some ‘as having a bad attitude’ and that ‘the City Council has a bad attitude’.”

Continuing, President Graves stated that he “speaks for himself and not for the City Council,” unless he discloses “that he speaks for the City Council.” “So,” he said, “this is the attitude that we’re all going to be facing down the road,” adding “This is what was presented to me: ‘You choose the school that you want first and worry about how to pay for it after.’” “I’m sorry,” he said, “that that is not the way I will ever do business. Some will expect us to pick the school first and worry about how to pay for it later.”



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CLOSING PRAYER

President Graves led the Council in the Closing Prayer.

ADJOURNMENT

On a motion by Councillor James Johnson and seconded by Councillor Edward Gravel, it was voted viva voce, eleven (11) yeas, President Scott Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, Christine Johnson, James Johnson, Elizabeth Kazinskas, and James Walsh, to adjourn at 7:59 p.m.

Accepted by the City Council: *February 19, 2019*