

**City of Keene**  
**New Hampshire**

**FINANCE, ORGANIZATION AND PERSONNEL COMMITTEE**  
**MEETING MINUTES**

**Thursday, April 25, 2019**

**6:30 PM**

**Council Chambers**

**Members Present:**

Mitchell H. Greenwald, Chair  
Carl B. Jacobs, Vice-Chair  
Thomas F. Powers  
Terry M. Clark  
Bettina A. Chadbourne

**Staff Present:**

City Manager, Elizabeth Dragon  
City Attorney, Thomas Mullins  
Parks Recreation and Facilities Director,  
Andrew Bohannon  
Asst. City Manager/IT Director, Rebecca  
Landry

**Councilors Present**

Councilor George Hansel

Chair Greenwald called the meeting to order at 6:30 PM. The Chairman began by apologizing to the Committee and Mayor for changing his mind at the last minute about his vote at the last Council meeting with reference to the parking kiosk. He stated he did not want to ruin eight years of good relationship because of a parking meter.

**1) Acceptance of Donation - Sumner Knight Chapel - Parks, Recreation and Facilities Department**

Parks Recreation and Facilities Director, Andrew Bohannon was the first to address the Committee. Mr. Bohannon stated this is an annual donation collected during the Easter Sunrise Service at the Sumner Knight Chapel.

Councilor Clark made the following motion, which was seconded by Councilor Powers.

On 5-0 vote, the Finance, Organization and Personnel Committee recommends that the City Manager be authorized to do all things necessary to accept the donation of \$161.00 and that the monies be used for the upkeep of the Sumner Knight Chapel.

**2) HG Johnson Real Estate - Fee Agreement - 560 Main Street - Froling Energy**

Chair Greenwald stated he is a real estate agent who has had a relationship with Mr. Johnson and even though this has nothing to do with realtor ethics he feels uncomfortable being part of this vote and asked to be recused from this vote. Vice-Chair Jacobs stated a committee member can be recused because of a conflict not because they are

uncomfortable with an item which at times he has experienced and did not feel this was grounds for recusal. The Chairman stated he was trying to do the right thing here. Councilor Clark stated being a realtor himself he understands the Chairman's issue but unlike other organizations realtors are held to a different set of standards and they have their own regulatory agency in New Hampshire but does understand what the Chairman is stating and does agree to the Chairman being recused.

A motion was made by Councilor Clark to recuse the Chairman from this item. The motion was seconded by Councilor Powers. The vote was 2-2 with Councilors Chadbourne and Jacobs voting in opposition. The City Attorney advised the vote does not carry. The Chairman remained on the Committee.

Mr. Johnson principal for HG Johnson Real Estate addressed the Committee and noted his agency has offices in Keene and Swanzey. He noted his agency provides all types of insurance to include commercial and industrial sites and are licensed in various states. He referred to some of the recent services in the area. He noted they assist companies to find the right location for their business. Mr. Johnson noted his agency also belongs to a number of local economic groups.

Mr. Johnson stated today he is before the committee to talk about the services provided to the City of Keene to relocate Froling Energy from Peterborough, NH to 560 Main Street, a property owned by the city and to have the fee agreement approved by this committee.

Mr. Johnson explained 560 Main Street which property consists of 30 plus acres was acquired by the city in 2009 and again in 2014 and both times his company was asked to submit a proposal, which was done in 2009 but not in 2014. He noted finding suitable land for industrial development is difficult and it has always been his goal to find a buyer for this property to keep with the comprehensive master plan objectives and goals.

Mr. Johnson went on to say he was first contacted by Mark Froling in September 2018 about a piece of property listed in Swanzey and during that conversation he called Mr. Froling's attention to the airport property and during this conversation he also called Mr. Froling's attention to the 560 Main Street property. At the same time, he also reached out to the City and spoke to the City Manager. Mr. Johnson then called the committee's attention to the email conversations he had with City Manager Elizabeth Dragon.

October 3, 2018 – He heard back from Ms. Dragon who had indicated the city was working on the airport property and had noted staff will be interested in meeting with any developer especially if the city could continue to use a portion of the property. Mr. Johnson noted at the very beginning he had indicated to the city he would be looking for compensation. He added in this email the Manager had indicated if a buyer was to be brought to the city a commission could be negotiated through a Purchase and Sales Agreement – he noted the Manager had negotiated that rate to 3%.

Mr. Johnson stated he had responded by sending in an agency fee agreement and that he would discuss the issue with his client and get back to the Manager.

He had also written back and noted he had a client interested in the airport land or the 560 Main Street property and arranged for a meeting at his office on Elm Street – at that point he had also asked about the commission agreement.

The Manager responded by saying she needed the City Attorney to review the fee agreement.

Mr. Johnson stated the City Attorney in turn drafted a Facilitation Agreement using the information he had provide in his agreement. Mr. Johnson stated he transposed this information on to his letter head and dropped it off at the Manager's office requesting a signed copy be returned – which he noted was not returned. In the meantime, there were conversations between the Manager and Mr. Johnson regarding terms in the agreement, specific location for the property and she added Council might have to approve this Agreement.

October 11, 2018 – He reiterated the meeting at his office to the Manager and noted he was hoping for city representation at this meeting and introduced Mark Froling in the email. He added he had received confirmation of the buyer's attendance at this meeting.

Attendance at the meeting included the City Manager, Med Kopczynski, Rhett Lamb, Jack Wozmak, Mark Froling and Mr. Johnson. At the close of the meeting was when the Manager gave Mr. Johnson the fee agreement the city had prepared.

After the meeting Mr. Johnson emailed the Manager indicating Mr. Froling's interest in the property which the Manager responded to in a positive manner.

At the meeting it was also agreed Mr. Froling would work with Mr. Lamb on certain issues which Mr. Johnson stated it made sense to him because of Mr. Lamb's knowledge of the property. Mr. Johnson went on to say Mr. Froling was still interested in the airport property as he felt the City was not quite sure how they felt about the 560 Main Street property. Mr. Johnson stated he always made sure the dialogs between the parties were continuing.

November 20, 2018 – Mr. Johnson heard from Mr. Froling indicating he had met with the city today to formalize the intent asking Mr. Johnson to write up the agreement for the entire 38 acre lot. After which time Mr. Johnson stated he prepared a purchase and sales agreement on a standard commercial real estate form but then felt a letter of intent would be better. He forwarded a draft of the letter of intent to Mr. Froling.

The Chairman asked Mr. Johnson whether he had a purchase and sales agreement or a listing agreement which is signed between the city and Mr. Johnson. Mr. Johnson stated he has a letter of intent signed on November 29, 2018 by Froling Energy which was delivered to the Manager the next day and the Manager took this under advisement. Mr. Johnson stated the reason he is going over this information is to show the amount of time he spent on this item.

He went on to say the next thing he heard was that the city had arranged a meeting with DES and the Manager included Mr. Johnson at this meeting and asked if he could be at the meeting a little early to go over a few things.

Councilor Clark asked Mr. Johnson if he was a buyer agent for Mr. Froling. Mr. Johnson stated he doesn't have any buyer agent relationship with Froling Energy. He went on to say he was before the Committee to have the city sign a Fee Agreement. Councilor Clark went on to say the real estate business in the State of New Hampshire Real Estate Commission requires a Brokerage Disclosure Form at the first meeting and asked whether this was completed and who it was completed with. Mr. Johnson stated this document is not required for a commercial transaction and noted what is required is a Facilitator Agreement. The Councilor asked whether Mr. Johnson has a Facilitator Agreement. Mr. Johnson stated he has the one prepared by the city – but it was noted there is no signed copy of this agreement. The Councilor pointed out there have been seller agreements the city has signed in the past with Mr. Johnson but that does not seem to be the case with this transaction. Mr. Johnson recalled an Agreement with the city for 471 Old Homestead Highway.

Chair Greenwald stated there are procedures that need to be followed for this type of transaction and asked the City Attorney to review this with the Committee. Attorney Mullins stated that he is not well versed in real estate transfer practice but his understanding is that there needs to be a written agreement in place between parties. He noted his involvement was to review the agreement the City Manager had forwarded to him which he had concerns about. At that point he did advise that Council approval would be required for this Agreement to be signed.

He went on to say the other issue he had with the agreement is that it was pretty generally written and did not refer to a particular piece of property and if it was signed it would be a facilitator agreement for any piece of property in the city. He hence made significant changes to it.

The City Manager added she had indicated right at the beginning this is something which would need to be reviewed and approved by the City Council. She went on to say her first contact was in October and this is when the Fee Agreement was sent to her.

October 10, 2018 – Manager responded she would need Council approval and this is something she reiterated as a facilitator agreement is not something the city is familiar with. She agreed Mr. Johnson had spent a lot of time working with Mr. Froling but when Mr. Froling retained the services of Sheehan and Phinney to complete the transaction the first Letter of Intent (LOI) which was never executed had expired. Because of the complicated issue with Brownsfield contamination on this property and the need for protection and liability Mr. Froling continued with Sheehan and Phinney. She stressed before the city even stepped into the meeting on October 12 she had indicated to Mr. Johnson she will not be able to obligate the city without Council approval

Councilor Powers clarified when the potential sale was introduced to City Council, Sheehan and Phinney were representing Mr. Froling. The Manager agreed.

Councilor Jacobs clarified there was never an LOI or a Fee Agreement executed between the City and Mr. Froling and the law firm drafted a document. Mr. Johnson in response stated from day one until two weeks ago he was led to believe he would be paid a commission and the Council was waiting to approve sale of this piece of land. Mr. Johnson questioned why he would be working on a project he wasn't going to be paid for and felt the city should have advised him in the very beginning he was not going to be compensated for his work. As far as Sheehan and Phinney coming into this project, Mr. Johnson stated in commercial real estate when there are issues that come up such as the environmental issues with a property, a broker can only do so much and this is what happened and this would have been his recommendation. He stated his role was being a facilitator to make sure everything was moving forward with this project. He expressed his disappointment of not being compensated for his work.

Chair Greenwald stated another way this could have been addressed is for the buyer to have compensated Mr. Johnson and noted this is the reason for the Agency Disclosure Form which outlines the different type of compensations. Mr. Johnson stated he should have been advised to approach the buyer and noted this is something he was told half way through the project and questioned why the buyer should be responsible for paying him. He stated the LOI calls for the city to compensate Mr. Johnson. Chair Greenwald stressed this was not signed, to which Mr. Johnson reiterated he should have been told by the city he was not going to be compensated for his work.

Councilor Clark stated when a broker signs a buyer agreement he or she agrees to do their best for that buyer in the same manner the Council is appointed by the citizens to represent their best interest; he noted this is not Council's money it belongs to the citizens of Keene. He added proper procedures were not followed and wasn't sure how the Committee could vote to approve a fee agreement. Mr. Johnson referred to a conversation he had with the Airport Director who requested Mr. Johnson bring him a buyer, but could not give a price for the property in question.

The City Manager stated Mr. Johnson does have a valid point and the city should set a procedure for sale of city property going forward. Ms. Dragon agreed Mr. Johnson did bring Mark Froling to the table but stressed she had been up front with Mr. Johnson in that she could not enter into any agreement with him until Council approves such an agreement and when the sale got complicated another firm got involved. The Chairman stated in the meantime if there is to be any discussion about any other sale of city property there needs to be a listing agreement, agency agreement, etc., such as would be done with any other real estate practice. The City Attorney stated the issue here is that only the Council can approve any sale of property; staff needs approval to even to discuss a sale of property, this can only occur after council approval has been obtained.

Councilor Powers pointed out the city has sold many properties in the past and felt people who come to the table need to be prepared and the city did its best to move the sale along

and if assumptions were made, he felt it wasn't on the part of the city. He also stated when Mr. Froling came before the council expressing interest in purchasing the property Sheehan and Phinney was his representatives.

Mr. Johnson noted there are buyer agreements and seller agreements but there is nothing out there for a facilitator and this is what was drafted by the City Attorney. He felt he did the right thing but did not feel the city held up its end of the bargain, but noted he also understands there is policy in place that needs to be followed. Councilor Clark apologized because he did not feel the city followed proper procedure and felt things could have been handled better. He agreed Mr. Johnson did work very hard on this transaction – however, what Mr. Johnson does not have in place is a signed agreement with the city.

The Chairman asked for public comment.

Mr. Bradford Hutchinson of 304 Marlboro Street felt Mr. Johnson spent a lot of time trying to market a piece of city property and had expectation for his efforts. Mr. Hutchinson felt Mr. Johnson worked for the best interest of the citizens of Keene. He felt the city should be paying Mr. Johnson from the funds it gets from the sale of the property or that he should be paid directly from the buyer. He felt Mr. Johnson's fee was reasonable and added Sheehan and Phinney came in after Mr. Johnson had made the effort to bring the buyer to the city.

Ms. Dragon stated she wants it known the city did not mishandle this item; Mr. Johnson was never assured a fee what was said all along is that she would bring the 3% Agreement to the Council for its consideration as part of the overall Purchase and Sales Agreement.

Councilor Hansel addressed the Committee next and stated what he understands from what is being presented is that Mr. Johnson's request for a fee falls under a finder's fee as he did bring the deal to the table. The Councilor agreed that even though there is no signed agreement the city is obligated to treat companies they deal with well just like any other business and as the city would want its citizens treating each other. He hoped the committee would figure out a way to compensate Mr. Johnson with a finder's fee which he felt was an appropriate compensation.

Councilor Chadbourne stated from Mr. Johnson's presentation she understands the reason Mr. Johnson was referring to the several discussions he had with the city was to point out the amount of work he had put into this item. She noted the city has also gained a new business adding this property back onto the tax rolls. She went on to say things probably should be done differently in the future. She agreed with Councilor Hansel's suggestion that the 3% fee could probably be considered a finder's fee; she added she is in favor of building good relationships but agreed she is not a realtor and does not understand real estate contracts.

Councilor Jacobs stated his concern is when this document was put on the table in October there was some notion it should be presented to the Council – he questioned

why it didn't it come before the Council. Ms. Dragon stated in October there was no deal with a buyer and the fee agreement was going to be brought forward as part of the Purchase and Sales Agreement. She added the first LOI was for the entire 38 acres. It was not until sometime in January when DES got involved, did Sheehan and Phinney bring forward a proposal for the ten acres (portion of the 38 acres) which allows to city to maintain the remainder of the property for municipal use. Councilor Jacobs stated it seems like there was a verbal agreement for payment based on the notion of a sale taking place rather than an agreement between the parties.

Councilor Chadbourne stated her concern also is a realtor being in the business and knowing the protocols and she is not encouraging bad practice; but there was a lot of effort and a lot of discussion.

Chair Greenwald agreed there was a lot of work put into this item but there are a lot of violations of real estate practice which makes him uncomfortable the real estate commission looking into this. He added the Council represents the public and felt the other party could have also compensated Mr. Johnson. Mr. Johnson asked the Chairman to provide him with an example of a violation he is referring to. The Chairman stated the lack of an agency agreement is a violation. Mr. Johnson stated as he had indicated earlier, this was a professional fee agreement and hence there is no agency law that applies here to act as a facilitator. He referred to correspondence from the Manager inviting Mr. Johnson and the buyer to a meeting with DES dated December 7, 2018, and asking Mr. Johnson to meet 30-45 minutes before hand to discuss questions that will be posed by DES. Mr. Johnson stressed the city included him in these discussions. He added he takes exception when the Chairman says there was a violation because there was no violation.

Councilor Clark stated the city cannot conduct business with a representative of someone they are not actually representing; Mr. Johnson has repeatedly indicated he had no agreement with the buyer. Mr. Johnson felt it was the staff who led him down a "primrose path". Attorney Mullins in response to that stated the City Manager and the Attorney were very clear this document could not be signed without Council approval but this does not mean the Council could not authorize a payment if they chose to do so. Councilor Powers stated the city did not hire anyone to sell this property – there is no contract and felt the city is not obligated to pay a bill it did not contract for.

A motion was made by Councilor Powers to accept this item as informational. The motion was seconded by Councilor Clark.

Mr. Hutchinson addressed the Committee again and stated when city employees email Mr. Johnson, include him in meetings, the city is creating an agreement to work with Mr. Johnson even though no signed formal contract is in place. He felt numerous city employees working with Mr. Johnson suggests there was intent to create a contract. He went on to say Mr. Johnson is working for the public in this regard and felt as a result he should be compensated regardless of whether the monies come from taxes or the sale of this property.

Councilor Jacobs asked if this matter is voted as informational then what happens to the suggestion Mr. Johnson be paid a finder's fee. He agreed it was the responsibility of Mr. Johnson to provide a signed agreement but on the other hand felt there was some loose behavior on the city's part as well. Councilor Chadbourne asked whether an amendment can be made on the motion. The Attorney stated a motion can be made to amend the motion on the floor.

On 4-1 vote, the Finance, Organization and Personnel Committee recommends accepting this item as informational. Councilor Chadbourne voted in opposition.

Attorney Mullins noted City Council still has the opportunity to discuss this item next week.

### **3) Subdivision and sale of a portion of 560 Main Street**

Ms. Dragon stated this item is in reference to the sale of ten acres of property to Froling Energy from the City to 560 Main Street LLC for an agreed upon price of \$250,000. Ms. Dragon went on to say this property will be use to accommodate Mr. Froling's rapidly growing business from Peterborough to Keene which is a bio mass contracting business. The first phase will be to build the facility and the next phase will be to construct an office area and a boiler showroom. Mr. Froling as part of this agreement has agreed to the city's use of the salt shed which is located on this first ten acres for the next three years giving time for the city to relocate this salt shed. Ms. Dragon stated the buyer is anxious to move forward with this sale.

Councilor Powers noted the background notes indicate the Finance, Organization and Personnel Committee authorized the City Manager but it was actually the City Council that authorized the City Manager. Ms. Dragon agreed. The Councilor further stated the Manager stated it was ten acres but the background notes indicate nine acres. Ms. Dragon clarified it is approximately nine acres and noted the map attached (which the committee did not have) according to the GIS map looks like it is about 8.9 acres; this will depend upon the location of the liquid waste disposal site and the boundary line is drawn in such a way to not include this site and it is indicated as approximately 8.9 acres until the survey is completed. Councilor Clark hoped this item goes forward as the city can then become the Silicon Valley for renewable energy industry. Councilor Jacobs agreed this is an exciting opportunity for the City

Councilor Jacobs made the following motion, which was seconded by Councilor Chadbourne.

On 5-0 vote, the Finance, Organization and Personnel Committee recommends that the City Council authorize the City Manager to do all things necessary to execute a subdivision and sale of a portion of City owned property located at 560 Main Street to 560 Main Street LLC for the agreed upon price of \$250,000.

**4. Ed and Kathleen (Kennedy) Burke - Beauregard Trust Property and 0 Chapman Road**

Attorney Mullins indicated the Burkes have requested this item be place it on more time

Councilor Chadbourne made the following motion, which was seconded by Councilor Jacobs.

On 5-0 vote, the Finance, Organization and Personnel Committee recommends this item be placed on more time.

**5. Relating to the Human Rights Committee Ordinance O-2019-08**

Mr. Bohannon addressed the Committee and noted this Ordinance exists in the city but with a different title; the proposal is to change the Martin Luther King/Jonathan Daniels Committee to the Human Rights Committee. Mr. Bohannon stated this ordinance updates the name change but this ordinance will continue to embody what Martin Luther King and Jonathan Daniels brought to Keene. Mr. Bohannon went on to say new members have been brought into this committee this year.

Mr. Hutchinson stated he appreciates the name change but by broadening the ordinance to include human rights if there are human rights violations occurring in the city the council will now have the obligation to have oversight over human rights violations. He went on to say human rights violations are committed on a daily basis in this city which he felt the Council is subsidizing and stated he will be following this item very closely.

Attorney Mullins in response stated the city was very careful about not calling this body the Human Rights Commission which is something that is established by the state which has authority to address those statutory rights that are violated. The duties of this city committee which is a legislative body is to “educate, promote, celebrate, encourage, and reassure” and the council is not assuming any duties to correct or enforce any violations that occur and encouraged anyone who feels their rights are being violated to contact the State Human Rights Commission in Concord. Councilor Chadbourne noted one of the individuals on this Board is Dottie Morris who lives in Keene.

Councilor Clark stated it was important to note Martin Luther King and Jonathan Daniels made this happen and felt this name change only embodies the greater diversity Keene is starting to see.

Councilor Chadbourne made the following motion, which was seconded by Councilor Clark.

On 5-0 vote, the Finance, Organization and Personnel Committee recommends the adoption of Ordinance O-2019-08.

FOP Meeting Minutes  
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The meeting adjourned at 8:10 PM.

Respectfully submitted by,  
Krishni Pahl, Minute Taker