



***CITY OF MONTPELIER
MONTPELIER, VERMONT***

Agenda for Special City Council Meeting
City Council Chambers, City Hall

Wednesday, April 16th, 2014
5:00 P.M.

- 1) 5:00 P.M. Goal-Setting Session 
- 2) 7:00 P.M. Call the Special City Council Meeting to Order by the Mayor
- 3) 14-103. General Business and Appearances
- 4) 14-104. Consent Agenda:
 - a) Approve the Minutes from the April 9th, City Council Meeting. 
 - b) Approve extending the City's three year contract with Lincoln Financial Group for employee short term disability, long term disability and life insurance benefits for one year to May 1, 2016.
 - 1) Lincoln Financial Group is offering to hold our short term disability rates and long term disability/life insurance rates (no increases) through May 1, 2016. This is a one year extension of our three year contract with no increases in premiums over four years. This continues a \$34,000 annual savings from our previous provider of these benefits.
 - 2) Finance Director's Recommendation: Extend the City's employee short term disability, long term disability and life insurance contract with Lincoln Financial Group by one year to May 1, 2016 so that we may take advantage of their offer to hold premium rates over a four year period.
 - c) Approve appropriating \$12,000 of the City's FY15 "Parking Fund - Alternative Transportation Reserve" as the local match needed for the State's bike and pedestrian master plan grant.
 - 1) The City was awarded \$12,000 for a Transportation Alternatives grant to produce a bicycle and pedestrian master plan for the city. This grant requires a \$12,000 local match.

- 2) During the FY15 Budget process, the City Council established an alternative transportation reserve using 5% of gross parking revenues. This reserve is projected to be \$47,943 in FY15.
 - 3) The Bike Committee is requesting that the alternative transportation reserve funds be allocated for this grant's local match.
 - 4) Recommendation: Approve the appropriation of \$12,000 of the City's FY15 "Parking Fund - Alternative Transportation Reserve" as the local match needed for the State's bike and pedestrian master plan grant.
 - d) Accept the bid proposal from Clark's Truck Center under the State's Contract for the 2015 Model 7400 SFA Dump Truck Chassis, for the price of \$49,373.40, and authorize the City Manager to execute all documents related to this purchase. 
 - e) Accept the quotation from Penn Valley Pump Company, Inc. of Warrington, PA, for a latest model double disc plunger pump for the price of \$22,440, and authorize the City Manager to executive all documents related to this purchase. 
 - f) Accept the quotation from Evoqua Water Technologies of Waukesha, WI, for a latest model waste gas burner for the price of \$20,583, and authorize the City Manager to execute all documents related to this purchase. 
 - g) Acting as the Liquor Control Commission, City Council Members may now consider the following:
 - 1) Annual renewal of Liquor Licenses (City Clerk will distribute list of applications at the meeting.)
 - h) Payroll and Bills
- 5) 14-105. Consideration of a request for City support of ***Citizens to Protect Berlin Pond's*** Agency of Natural Resources (ANR) Petition 
- a) This group is asking the City to write a letter to ANR in support of its petition for full protection.

- b) Recommendation: Brief presentation from Melissa Perley, President of ***Citizens to Protect Berlin Pond*** (which will help Council understand why they are asking for full pond protection); discussion; direction to Citizens Group/staff.

6) 14-106. Water/Sewer Rate Ordinance

- a) The Committee has been meeting for over a year to review rate structure revisions.
- b) Implementation of an “Equivalent Residential Unit” (ERU) system is being considered.
- c) An ERU system would serve to cover fixed costs and correct current inequities in the rate structure.
- d) Actual rates will be adopted in June.
- e) Recommendation: Receive report; provide direction to staff whether to proceed with the ERU system for June rate resolution.

7) 14-107. Update on State Street Reconstruction Project

- a) The State of Vermont will be reconstructing State Street within the next two years.
- b) The State and City have been working together on various design issues.
- c) Items under consideration include bike lanes, sharrows, angle parking, bulbouts and other amenities.
- d) Recommendation: Receive report; provide direction on decision point items.

8) 14-108. Presentation of Montpelier Alive's Vision for Downtown Improvement District Funds, 2015-2020

- a) Montpelier Alive Board Members will be presenting; attached are the following documents for review:

- i. Montpelier Alive's FY13 Marketing Schedule
- ii. Holiday Decorations FY14 DID Grant Request
- iii. Website Quote from Siren Marketing and Design
- iv. Recent Bench Invoice

- b) Recommendation: Receive presentation; opportunity for discussion; provide input and approve their Vision Statement/Plan.

9) 14-109. Carr Lot Public Process

- a) The City's development partner (Redstone) and architect (Gossens Bachman Architects) associated with the 1 Taylor Street Project have proposed a public participation process.
- b) Recommendation: Receive and provide feedback on the proposed public process. Provide direction to staff on the role of the Carr Lot Design Committee.

10) 14-110. Conceptual Discussion for Possible Parking and/or Housing Project

- a) Duane Wells has suggested that the City partner with him to construct a parking lot in the rear of the Blanchard Lot.
- b) This would involve land owned by the City and by Mr. Wells.
- c) The proposed surface lot could add approximately 75 spaces.
- d) Council Member Guerlain suggests that the project could be expanded to include an additional parking level and housing units.
- e) Recommendation: Discuss the potential project; provide direction to staff whether to pursue these ideas.

11) 14-111. Proposed Fireworks Ordinance – 1st Reading

- a) Background information is attached.
- b) Recommendation: Presentation by Fire Chief; opportunity for discussion; direction to staff, with or without amendments; set the date of the second Public Hearing for May 14, 2014.

- 12) 14-112. Council Reports
- 13) 14-113. Mayor's Report
- 14) 14-114. Report by the City Clerk
- 15) 14-115. Status Reports by the City Manager
- 16) *Adjournment*

Dear Secretary Markowitz and Commissioner Mears,

Filtration engineers at the Montpelier Water treatment plant have publicly stated that the current system is unable to detect or remove petroleum from Montpelier's drinking water, yet unrestricted access dramatically increases the risk of petroleum contamination. This access also increases the risk of human waste contamination, which would require increases in chlorine treatment that would dramatically degrade the exceptional quality tap water Montpelier has always enjoyed.

We, the undersigned, support the proposal from Citizens to Protect Berlin Pond to restore Berlin Pond to full protection as the best way to keep our drinking water safe.

NAME (please print) ☐ Volunteer	PHONE 	ADDRESS 	EMAIL _____@
NAME (please print) ☐ Volunteer	PHONE 	ADDRESS 	EMAIL _____@
NAME (please print) ☐ Volunteer	PHONE 	ADDRESS 	EMAIL _____@
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NAME (please print) ☐ Volunteer	PHONE 	ADDRESS 	EMAIL _____@
NAME (please print) ☐ Volunteer	PHONE 	ADDRESS 	EMAIL _____@

Citizens to Protect Berlin Pond

191 Vt. 441
Supreme Court of Vermont.

CITY OF MONTPELIER

v.

Richard BARNETT, Cedric Sanborn, Leslie
Sanborn and Natural Resources Board.

No. 11-067. | May 11, 2012.

Synopsis

Background: City brought action against boaters, who ventured out on **pond** in boat and were arrested, seeking a declaratory judgment that boating, fishing, and bathing were prohibited and a preliminary and permanent injunction, civil fines, and reimbursement of litigation expenses. The Washington Superior Court, Civil Division, Geoffrey W. Crawford, J., granted city a permanent injunction against boaters, which enjoined them from trespassing on the city's property surrounding **pond** and from boating, fishing, or swimming in **pond**. Boaters appealed.

Holdings: The Supreme Court, Dooley, J., held that:

[1] State, as public trustee of **pond**, was properly joined and then dismissed as a party;

[2] Board of Health order, prohibiting boating, fishing, and swimming in **pond**, ceased to be valid 50 years later when the legislature repealed both the authorization to create such orders and the prohibition on violating such orders;

[3] city charter's grant of power to acquire, construct, and maintain reservoirs as it might deem necessary for the benefit of the city, did not include the power to regulate boating, fishing, and swimming on **pond**;

[4] even if all of the village's powers were now vested in the city pursuant to transfer clause, these powers were insufficient to support city's regulations prohibiting boating, fishing, and swimming in **pond**; and

[5] city could strive to prevent indirectly the recreational use of **pond** by denying access to its lands that surround the **pond**, but it could not directly regulate use of the **pond** itself.

Reversed.

West Headnotes (22)

[1] **Appeal and Error**

🔑 Cases Triable in Appellate Court

Validity of city ordinances is a question of law and, therefore, subject to de novo review.

[2] **Declaratory Judgment**

🔑 State or state officers

Declaratory Judgment

🔑 New parties

State, which held **pond** in trust, was properly joined as a party in city's action, seeking a declaratory judgment that boating, fishing, and bathing in **pond** were prohibited, because protection of State's interest as public trustee might have been impaired, in its absence, by a decision in favor of the city, but once State, after being joined, refused to align its interests with either city or boaters, essentially avowing to the court that it did not have an interest that would be jeopardized by deciding the case in its absence, the basis for joinder was removed, such that State would be dismissed as a party. Rules Civ.Proc., Rule 19(a).

[3] **Water Law**

🔑 Title and rights held in public trust

Any regulation by the city of the use of **pond**, which was held in public trust by the State, had to ultimately be derived from, and limited by, the State's original power over the **pond**; according to the public trust doctrine, the State held **pond** in trust as a navigable public water, and scope of the city's authority to regulate **pond** was limited to the authority granted by the State.

[4] **Water Law**

🔑 Title and rights held in public trust

Water Law

🔑 Title and rights held in public trust

Public trust doctrine means that navigable waters and the land below them are held in common by the people of the State, and this trusteeship does not prevent regulation, but it does demand that regulation have a special public character, both in its aims and in its formation.

[5] **Water Law**

🔑 Title and rights held in public trust

Water Law

🔑 Title and rights held in public trust

Delegation of the State's role as trustee of navigable waters and the land below need not be disfavored, even though abandonment of the public trust would be.

[6] **Water Law**

🔑 Trust imposed on public waters in general

Water Law

🔑 Title and rights held in public trust

State could, compatible with holding **pond** in public trust, delegate certain authority to regulate its use to another body, such as city.

[7] **Water Law**

🔑 Trust imposed on public waters in general

Water Law

🔑 Title and rights held in public trust

Municipality may assume the state's authority to regulate public waters consistent with the public trust, but only where that authority has been conveyed to the municipality by the state, and this is true because the power of the municipality is limited to what has been granted by the state.

[8] **Municipal Corporations**

🔑 Powers and functions of local government in general

Municipal Corporations

🔑 Powers incident to execution of those granted

"Dillon's Rule" declares that a municipality has only those powers and functions specifically authorized by the legislature, and such additional functions as may be incident, subordinate, or necessary to the exercise thereof.

[9] **Water Law**

🔑 Trust imposed on public waters in general

Water Law

🔑 Title and rights held in public trust

City's regulatory authority over **pond**, which was held in public trust by the State, had to be based on an unambiguous grant of power over the **pond** by the State.

[10] **Water Law**

🔑 Trust imposed on public waters in general

Water Law

🔑 Title and rights held in public trust

City could not regulate the use of **pond** unless its authority derived from the State—as both trustee over public waters and as the source of municipal powers generally.

[11] **Water Law**

🔑 Public Uses Other Than Navigation

The 1926 Board of Health order, prohibiting boating, fishing, and swimming in **pond**, ceased to be valid 50 years later when the legislature repealed both the authorization to create such orders and the prohibition on violating such orders, and Board of Health orders did not fall within any of the provisions of the general savings clause. 1 V.S.A. § 214.

[12] **Statutes**

🔑 Repealing Statutes

When a statute is repealed, its repeal reaches back in time to eliminate any authority that existed under the statute.

1 Cases that cite this headnote

[13] **Administrative Law and Procedure**

🔑 Powers in General

Administrative Law and Procedure

🔑 Repeal

The repeal of the authority to issue orders or regulations normally repeals those orders or regulations already issued.

[14] **Water Law**

🔑 Public Uses Other Than Navigation

Water Supply Rule, which concerned what geographical area would be designated as a source protection area, did not concern what restrictions could be imposed in the area so designated, and thus, Rule was not a basis to conclude that Agency of Natural Resources (ANR) adopted boating, fishing, and swimming restrictions for **pond**, which restrictions were found in Board of Health order.

[15] **Water Law**

🔑 Public Uses Other Than Navigation

City charter's grant of power to acquire, construct, and maintain reservoirs as it might deem necessary for the benefit of the city, did not include the power to regulate boating, fishing, and swimming on **pond**, of which State was the public trustee; there was nothing unique or special about the charter language that suggested that city had a power unavailable to every other municipality in Vermont, and it would be long stretch to call **pond** a "reservoir" because, although city had the right to take water from **pond**, it did not own **pond**, and the power to regulate recreational use could not be found in the general power, whether directly or by implication.

1 Cases that cite this headnote

[16] **Municipal Corporations**

🔑 Powers and functions of local government in general

Dillon's Rule, declaring that a municipality has only those powers and functions specifically

authorized by the legislature, creates a presumption against finding a grant of power to the municipality, and this is especially true where the power in question would enable a municipality to restrict access to the public's natural resources.

[17] **Municipal Corporations**

🔑 Powers and functions of local government in general

Municipal Corporations

🔑 Powers incident to execution of those granted

Powers of a municipal corporation include both those powers granted in express words by statute and those powers necessarily or fairly implied in the powers expressly granted.

[18] **Municipal Corporations**

🔑 Construction of charters and statutory provisions

Where current language replaces older language as part of a charter revision, the older language can suggest a meaning that was supposed to be preserved, or it can provide a contrast and thereby suggest a difference in meaning, and thus, a phrase or clause will not automatically inherit the meaning of substantially more elaborate or explicit language that has been supplanted.

[19] **Water Law**

🔑 Public Uses Other Than Navigation

Even if all of the village's powers were now vested in the city pursuant to transfer clause, which preserved in the city the previously existing rights and privileges of the village, these powers were insufficient to support city's regulations prohibiting boating, fishing, and swimming in **pond**, which the State held in public trust; the authorization to purchase right to take water from **pond** could not be basis for city's authority to regulate other users of **pond**, nor did the power to inspect **pond** and initiate

legal actions to protect its water supply constitute the power to regulate the **pond's** use by others.

1 Cases that cite this headnote

[20] **Water Law**

🔑 Public Uses Other Than Navigation

Savings clause assured that ordinance, which made it illegal to trespass upon or injure a public resource controlled by the city and which was enacted prior to the revisions of city charter, continued to be valid law, not that resources controlled by the city at the time the ordinance was passed continue to be so controlled, and thus, savings clause did not resuscitate sufficient grants of power to authorize the city to regulate the recreational use of **pond**, which the State held in public trust, by others. 24 V.S.A.App. ch. 5, § 1402.

[21] **Municipal Corporations**

🔑 Construction of charters and statutory provisions

Under Dillon's Rule, which declares that a municipality has only those powers and functions specifically authorized by the legislature, a municipal charter is to be read as an exclusive list of enumerated powers.

[22] **Water Law**

🔑 Public Uses Other Than Navigation

City could strive to prevent indirectly the recreational use of **pond**, which the State held in public trust, by denying access to its lands that surround the **pond**, but it could not directly regulate use of the **pond** itself, and thus, city could not enjoin citizens from boating, fishing, and swimming in **pond**.

1 Cases that cite this headnote

Attorneys and Law Firms

****123** Glenn C. Howland of McKee, Giuliani & Cleveland, P.C., Montpelier, for Plaintiff–Appellee.

Oreste V. Valsangiacomo, Jr. of Valsangiacomo, Detora & McQuesten, Barre, for Defendants–Appellants.

Present: REIBER, C.J., DOOLEY, JOHNSON, SKOGLUND and BURGESS, JJ.

Opinion

DOOLEY, J.

***444** ¶ 1. Defendants appeal from a judgment ruling that the City of Montpelier may prohibit boating, fishing, and swimming in **Berlin Pond**, a public body of water located outside the City and used as the City's drinking water supply. The City contends that the restrictions are supported by both a state health order and the powers granted to the City by the State. The trial court agreed and issued a permanent injunction preventing defendants from engaging in the listed recreational activities and from trespassing upon land surrounding the **pond** that is owned by the City. For the reasons set forth below, the judgment enjoining defendants from boating, fishing, and swimming in **Berlin Pond** is reversed.

¶ 2. Although we are sympathetic to the City's significant concern for regulating the source of its drinking water, the City's powers are limited to those conferred upon it by the State of Vermont. After careful examination of the state statutes and the City's charter, we are unable to find any direct or indirect authorization for the City to regulate recreational use of **Berlin Pond**. On the contrary, the State has developed its own regulatory schemes to govern both public water sources and recreational use of public waters. Under neither of these schemes has the State prohibited the recreational uses at issue here. Our opinion today does not hold that recreational use of **Berlin Pond** must be permitted. We conclude only that valid regulation would require action by the State—either by direct regulation or by delegating such power to the City—and this has not yet occurred.

¶ 3. **Berlin Pond** is a natural body of water, roughly two miles long and covering approximately 256 acres. There is little development surrounding the **pond**, although Interstate Highway 89 runs just to ****124** its east. Despite the fact that it lies in the Town of **Berlin** roughly three miles outside the City

of Montpelier, **Berlin Pond** has supplied Montpelier with a gravity-fed water supply since 1884. The City's reliance on the **pond** for water dates back to the Village of Montpelier's purchase of the rights to take water from the **pond**, pursuant to authority granted in a charter amendment in 1872. See *445 *Lucia v. Vill. of Montpelier*, 60 Vt. 537, 538, 543, 15 A. 321 (1888). Presently, the water from **Berlin Pond** reaches about nine thousand users, including most residents and businesses within the City—not to mention this Court.

¶ 4. The water from **Berlin Pond** passes through two processes before it reaches the user. Since 2000, the water is first filtered at a new filtration plant constructed by the City. The filtration process removes particulate matter from the water, eliminating most of its turbidity. After filtration, the microorganisms in the water are nullified through chlorine disinfection.

¶ 5. This suit arises because Montpelier has taken steps to protect its water source. Over the years, the City has acquired almost all the land surrounding the **pond**. The only exception is an eighty-five-foot access strip that is owned by the Town of **Berlin**. The City has placed “no trespassing” signs around **Berlin Pond** and has posted the land around it against hunting and fishing. The City has a general trespass ordinance that reads: “It shall be unlawful for any person to trespass upon or injure public buildings, squares, commons, cemeteries, fountains, statutes [sic] or any other public property or resources owned by or under the control of the City of Montpelier.” Montpelier, Vt., Code of Ordinances § 13–1 (enacted 1972). Additionally, the City has passed an ordinance aimed at protecting the water supply, which states:

No person shall throw, put or place, or cause to be thrown, put or placed, in any public reservoir, or stream connected therewith, or waters in the city, any stone, dirt, ashes, shavings, stocks, garbage, rubbish or filth of any kind, nor shall wade or bathe or fish in or cause or permit a dog or animal to go into or swim in the water, nor skate on the ice of a public reservoir.

Id. § 3–332 (enacted 1970). According to the City, human activity in and around the **pond** threatens an increase in trash and waste including petroleum products that cannot be removed through filtration; the introduction of invasive plant and animal species including zebra mussels, which are not

currently in the **pond** and which can block water intakes; and an increase in turbidity because activity stirs up dirt and silt in the water. The City has few viable alternative water sources if **Berlin Pond** were to become contaminated. During the course of this litigation, the City added a further ordinance stating: “It shall be unlawful for any person to trespass, occupy, or enter upon the surface of **Berlin *446 Pond**, or any tributary thereof, or the lands adjacent thereto owned by the City of Montpelier without the permission of the City Council” *Id.* § 13–3 (enacted 2010).

¶ 6. We reiterate some of the facts above because they are central to the outcome of this case. **Berlin Pond** does not lie within the City of Montpelier; Montpelier does not abut the **pond**. Montpelier does not “own” **Berlin Pond**; it owns most of the land surrounding the **pond** and has a right to take water from the **pond**. As the following discussion explains, this is as much a legal statement as a factual statement, but it helps explain our decision.

¶ 7. Defendants Cedric and Leslie Sanborn own a local sporting goods store, and defendant Richard Barnett is employed at the store. Beginning in 2009, defendants **125 began to explore the possibility of using the **pond** for recreational activities. It was then—and continues to be—their belief that the State of Vermont has exclusive jurisdiction to regulate use of **Berlin Pond** under the public trust doctrine. They further believe that the State has not prohibited recreational use of **Berlin Pond**.

¶ 8. This latter belief derives from certain actions by the Water Resources Panel and the Agency of Natural Resources (ANR). The Water Resources Panel, a component of the Natural Resources Board (NRB), is a public body responsible for adopting water quality standards and rules for the use of public waters, which ANR is then responsible for administering and applying. See 10 V.S.A. § 1258. The Panel has classified **Berlin Pond** as a class A(2) public water supply.¹ See *id.* § 1252; Vermont Natural Resources Board, Water Resources Panel, Vermont Water Quality Standards § 3–03. According to the Panel's description, this classification covers “[w]ater managed for public water supply purposes to achieve and maintain waters with a uniformly excellent character and a level of water quality that is compatible with the following designated uses,” among which are swimming, boating, and fishing. Vermont Water Quality Standards § 3–03(A)(3), (4). Rightly or wrongly, defendants interpreted this description to mean that the State permits recreational use. The Panel's rules *447 for water use,

established pursuant to 10 V.S.A. § 1424, further encourage this understanding because, as discussed specifically *infra*, they place restrictions on the use of **Berlin Pond** that do not include restrictions on swimming, fishing, or boating.

¶ 9. On September 6, 2009, Cedric and Leslie Sanborn ventured out on **Berlin Pond** in kayaks. The Montpelier Police Department arrested them and charged them with four counts: intentional violation of a state health order in violation of 18 V.S.A. §§ 122, 130; intentional interferences with a protected drinking water source in violation of 10 V.S.A. § 1682; violation of Montpelier's above-described ordinance against misusing a reservoir; and violation of Montpelier's ordinance prohibiting trespassing on city property or resources. The Washington County State's Attorney eventually dismissed these charges. A few months later, in March 2010, Barnett obtained a permit from the Department of Fish and Wildlife (DFW), a division of ANR, to hold an ice fishing derby on **Berlin Pond**, and he began circulating advertisements for the competition.

¶ 10. These events prompted the City of Montpelier to initiate the present action against the defendants seeking a declaratory judgment that boating, fishing, and bathing is prohibited and a preliminary and permanent injunction, civil fines, and reimbursement of litigation expenses. The Washington Superior Court, Civil Division, initially ordered that the State—specifically NRB—be joined as a necessary party, which the City did. On April 16, 2010, the court held an evidentiary hearing on the request for a preliminary injunction. At the hearing, the defendants offered testimony of two DFW wardens who explained that the State has jurisdiction to regulate fishing and has not prohibited it on **Berlin Pond**. The City countered with testimony from the director of the City's public works department explaining the capabilities and limitations of the water treatment **126 system and testimony from a former municipal health officer describing the potential health impacts of recreational use.

¶ 11. Following the evidentiary hearing, the court granted the request for a preliminary injunction. At this time, the State, at its own request, was excused from the litigation, having taken a neutral position. At the hearing, the State had asserted that “[t]he state does not have a position on whether the City of Montpelier's restrictions are valid or not,” and in its limited court filings the State explained that “[v]iolation of state fish and wildlife laws *448 and/or a state permit are not at issue in these matters” and that the state statutes and rules “speak

for themselves; their legal effect is a question for the Court to decide.”

¶ 12. In August 2010, after denying summary judgment both to defendants and to the City, the court accepted a stipulation according to which the City's request for fines and reimbursement was dropped but its request for declaratory and injunctive relief remained before the court. It set a trial for December. At trial, neither side presented evidence beyond what was already in the record from the hearing on the preliminary injunction. On January 28, 2011, the court entered judgment in favor of the City. The court adopted its findings entered at the time of the preliminary injunction and, on that basis, granted the City a permanent injunction against defendants, which enjoined them from trespassing on the City's property surrounding **Berlin Pond** and from boating, fishing, or swimming in **Berlin Pond**. Defendants appeal.

[1] ¶ 13. The validity of the City's ordinances is a question of law and therefore subject to de novo review. See *In re Vill. Assocs. Act 250 Land Use Permit*, 2010 VT 42A, ¶ 7, 188 Vt. 113, 998 A.2d 712. In addressing this question, however, we accept the trial court's findings of fact as long as they are supported by the evidence. See *Whippie v. O'Connor*, 2010 VT 32, ¶ 12, 187 Vt. 523, 996 A.2d 1154.

I.

[2] ¶ 14. Before we reach the merits, we address the one procedural issue raised by defendants. Defendants argue that, because the State holds **Berlin Pond** in trust, the trial court erred in dismissing the State as a party. Defendants contend that, because they are attempting to vindicate the public's rights that are held in trust by the State, the State is the real party in interest, not defendants. In making this argument, defendants rely on Vermont Rule of Civil Procedure 17(a), which reads, “Every action shall be prosecuted in the name of the real party in interest.” Rule 17(a) does not apply here. It pertains to the party bringing the suit. See 6A C. Wright et al., *Federal Practice and Procedure* § 1542, at 469 (3d ed. 2010) (“[T]he term directs attention to whether plaintiff has a significant interest in the particular action plaintiff has instituted, and Rule 17(a) is limited to plaintiffs.”). The City is the plaintiff in this suit, and defendants do not contend that the City is not a real party in interest.

*449 ¶ 15. The applicable rule is Rule of Civil Procedure 19. The State was properly joined as a necessary party defendant under Rule 19(a), which provides:

A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to **127 protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest. If the person has not been so joined, the court shall order that the person be made a party.

The relevant portion is clause (2)(i). As discussed below, the State has an interest in **Berlin Pond** as public trustee, and protection of that interest might have been impaired in its absence by a decision in favor of the City. It was therefore proper that the trial court ordered the State to be joined as a party. And it was equally proper for the court subsequently to dismiss the State. After being joined, the State refused to align its interests with either party, essentially avowing to the court that it did not have an interest that would be jeopardized by deciding this case in its absence. This removed the basis for Rule 19 joinder, so there was no error in dismissing the State.

II.

[3] ¶ 16. In addressing the merits, we begin from the premise that any regulation by the City of the use of **Berlin Pond** must ultimately be derived from, and limited by, the State's original power over the **pond**. This premise is based on the confluence of two longstanding legal principles: the public trust doctrine and Dillon's Rule. According to the public trust doctrine, the State of Vermont holds **Berlin Pond** in trust as a navigable public water; according to Dillon's Rule, the scope of the City of Montpelier's authority to regulate **Berlin Pond** is limited to the authority granted by the State.

¶ 17. State trusteeship over navigable waters has a lengthy and somewhat mythic pedigree dating back to Roman and English law. *450 The first oft-cited origin lies in Justinian: "By the law of nature these things are common to mankind—the air, running water, the sea, and consequently the shores of the sea. No one, therefore, is forbidden to approach the seashore" Institutes bk. II, tit. 1, § 1 (T. Sandars trans., 1st Am. ed. 1876). Glimmers of this idea of common trusteeship are found in the Magna Carta, which, among other things, placed constraints on the crown's authority over navigable waters and fisheries. See, e.g., H. Sun, *Toward a New Social-Political Theory of the Public Trust Doctrine*, 35 Vt. L.Rev. 563, 570 (2011) ("In England, thanks to the Magna Carta, the public trust doctrine was included as part of English common law in order to restrict the Crown's proprietary control over certain natural resources."). The extent to which these early conceptions prohibited private ownership is an open question, see P. Deveney, *Title, Jus Publicum, and the Public Trust: An Historical Analysis*, 1 Sea Grant L.J. 13 (1976) (contesting the modern public trust doctrine's history in Roman and English law); see also J. Huffman, *Speaking of Inconvenient Truths—A History of the Public Trust Doctrine*, 18 Duke Envtl. L. & Pol'y F. 1 (2007) (similar), but it is clear that natural resources including navigable waters were considered to be at least initially common property subject to certain public rights. As the U.S. Supreme Court has explained, this idea became part of American common law: "[W]hen the [American] Revolution took place, the people of each state became themselves sovereign; and in that character hold the absolute right to all their navigable waters and the soils under them for their own common use, subject only to the rights since surrendered by the Constitution to the general government." *Martin v. Lessee of Waddell*, 41 U.S. (16 Pet.) 367, 410, 10 L.Ed. 997 (1842); see also *Ill. Cent. R.R. v. Illinois*, 146 U.S. 387, 452, 13 S.Ct. 110, 36 L.Ed. 1018 (1892) **128 ("It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties."); cf. 1 V.S.A. § 271 (stating that English common law is the law of Vermont if "applicable to the local situation and circumstances" and "not repugnant to the constitution or laws").

[4] ¶ 18. Since 1777, the public trust doctrine has been entrenched in the Vermont Constitution, which reads:

The inhabitants of this State shall have liberty in seasonable times, to hunt and fowl on the lands they *451 hold, and

on other lands not inclosed, and in like manner to fish in all boatable and other waters (not private property) under proper regulations, to be made and provided by the General Assembly.

Vt. Const. ch. II, § 67; see also R. Brooks, *Speaking (Vermont) Truth to (Washington) Power*, 29 Vt. L.Rev. 877, 885 (2005) (“This provision has been [taken] to establish a public trust in Vermont’s natural resources which is now recognized in her statutes and regulations.”). As explained, the public trust doctrine means that navigable waters and the land below them are held in common by the people of this state. *Hazen v. Perkins*, 92 Vt. 414, 419, 105 A. 249, 251 (1918) (“Being public waters according to the test afforded by the Constitution, the grants of land bounding upon the lake pass title only to the water’s edge, or to low-water mark if there be a definite low-water line. The bed or soil of such boatable lakes in this state is held by the people in their character as sovereign in trust for public uses for which they are adapted.” (citations omitted)); see also *State v. Cent. Vt. Ry.*, 153 Vt. 337, 344, 571 A.2d 1128, 1131 (1989) (explaining that *Hazen* “stands for the proposition that the legislature cannot grant rights in public trust property for private purposes”). We have explicitly applied this principle to **Berlin Pond** itself: “**Berlin Pond** being public ... its waters [and] the land beneath them ... belong to the people in their sovereign character, and are held for the public uses for which they are adapted.” *State v. Quattropani*, 99 Vt. 360, 363, 133 A. 352, 353 (1926). This trusteeship does not prevent regulation, but it does demand that regulation have a special public character, both in its aims and in its formation. See J. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 Mich. L.Rev. 471, 558–60 (1970) (describing the role of the public trust doctrine as one of “democratization” whereby the courts “thrust[] decision making upon a truly representative body”).

[5] [6] ¶ 19. In this light, delegation of the State’s role as trustee need not be disfavored, even though abandonment of the public trust would be. Compare *Cent. Vt. Ry.*, 153 Vt. at 347–48, 571 A.2d at 1133 (“[S]tatutes purporting to abandon the public trust are to be strictly construed; the intent to abandon must be clearly expressed or necessarily implied; and if any interpretation of the statute is reasonably possible which would retain the public’s *452 interest in tidelands, the court must give the statute such an interpretation.” (quoting *City of Berkeley v. Superior Ct. of Alameda Cnty.*, 26 Cal.3d 515, 162 Cal.Rptr. 327, 606 P.2d 362, 369 (1980))), with *Elliott v. State Fish & Game Comm’n*, 117 Vt. 61,

69, 84 A.2d 588, 593 (1951) (“[R]egulations, proper in the sense that they complied with constitutional requirements, might be made by the Legislature through a delegation of the power to make such regulations to a body or person given jurisdiction by the Legislature over matters pertaining to fish and game”). Thus, the State may, compatible with holding **129 **Berlin Pond** in public trust, delegate certain authority to regulate its use to another body, in this case the City of Montpelier. A main question before us is whether such a delegation has occurred here.

[7] [8] ¶ 20. A municipality may thus assume the state’s authority to regulate public waters consistent with the public trust but only where that authority has been conveyed to the municipality by the state. This is true because the power of the municipality is limited to what has been granted by the state. John Forrest Dillon, for whom that principle is named, famously described this idea while Chief Justice of the Iowa Supreme Court: “Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control.” *City of Clinton v. Cedar Rapids & Mo. River R.R.*, 24 Iowa 455, 475 (1868). We have adopted Dillon’s Rule, declaring that “a municipality has only those powers and functions specifically authorized by the legislature, and such additional functions as may be incident, subordinate or necessary to the exercise thereof.” *Hinesburg Sand & Gravel Co. v. Town of Hinesburg*, 135 Vt. 484, 486, 380 A.2d 64, 66 (1977); see also *E.B. & A.C. Whiting Co. v. City of Burlington*, 106 Vt. 446, 460–61, 175 A. 35, 42 (1934) (“A municipal corporation is a creature of the Legislature, and it possesses only such powers or rights as are expressly granted to it by the Legislature, or fairly implied in or incident to those expressly granted because necessary to carry the latter into effect.”). For better or worse, this rule expresses the liberal commitment to the state as the centralized source of political power. See G. Frug, *The City as a Legal Concept*, 93 Harv. L.Rev. 1059 (1980) (tracing Dillon’s Rule and the “powerlessness” of modern cities to liberalism’s hostility toward decentralized forms of power). In practice, Dillon’s Rule *453 operates as a canon of construction requiring that grants of power to municipalities be read as limited to those clearly enumerated. See *Valcour v. Vill. of Morrisville*, 104 Vt. 119, 130, 158 A. 83, 86 (1932) (“[I]f any fair, reasonable, substantial doubt exists concerning [a grant of power,] it must be resolved against the [municipality], and its power denied.”).

[9] [10] ¶ 21. In this case, Dillon's Rule means that the City of Montpelier's regulatory authority over **Berlin Pond** must be based on an unambiguous grant of power over the **pond** by the State of Vermont. In this way, Dillon's Rule is consonant with the public trust doctrine. Cf. *Hunters, Anglers & Trappers Ass'n of Vt., Inc. v. Winooski Valley Park Dist.*, 2006 VT 82, ¶ 7, 181 Vt. 12, 913 A.2d 391 ("If the Legislature has delegated sufficient authority to the District to satisfy the demands of the Vermont Constitution, it follows that the District needs no further legislative approval under Dillon's Rule."). Both the public trust doctrine and Dillon's Rule support the proposition that the City of Montpelier cannot regulate the use of **Berlin Pond** unless its authority derives from the State—as both trustee over public waters and as the source of municipal powers generally.

¶ 22. Implicitly accepting this starting point, the City essentially makes two distinct arguments to show that the State has authorized a prohibition on activities in and around **Berlin Pond**. The first relies on a 1926 order by the state Board of Health that prohibited boating, fishing, and bathing in **Berlin Pond**. The City contends that the content of this order is still in force today. Second, the City argues that the State granted it the power to regulate **Berlin Pond** when it ratified the city charter and that therefore its regulation is a proper exercise of delegated authority. We consider each of these arguments in turn.

III.

¶ 23. The City's first argument is that the State has itself prohibited boating, fishing, and bathing in **Berlin Pond**. This argument traces the prohibition on recreational use of **Berlin Pond** back to a state health order, which, according to the City, has since been implicitly reaffirmed by ANR in approving the City's Source Protection Plan. We reject this argument. Although there clearly was for many years a state health order prohibiting recreational use of **Berlin Pond**, that order is no longer valid and has not been implicitly adopted by ANR.

*454 ¶ 24. The prohibition on recreational use of **Berlin Pond** has a long history. As early as 1911, this Court upheld a prosecution for bathing in **Berlin Pond**, in violation of a 1903 state Board of Health order. *State v. Morse*, 84 Vt. 387, 80 A. 189 (1911). The Board of Health at the time had recommended putting in place a filtration system but had issued an order prohibiting bathing, among other things, until

a filtration system was installed. *Id.* at 390, 80 A. at 190. This Court concluded that the Board's prohibition "was not only a wise but a valid exercise of the police power, lawfully delegated to the Board." *Id.* at 400, 80 A. at 194.

¶ 25. In a similar vein, on June 8, 1926, the Board of Health issued the following order regarding **Berlin Pond**, which restated its previous orders:

Boating, fishing and bathing in the waters of **Berlin Pond**, of its tributaries for a distance of one-half mile from their mouths, of the outlet of **Berlin Pond** to the Montpelier Reservoir, and of the Montpelier Reservoir are hereby prohibited.

That same year, this Court was again called upon to review a criminal prosecution for violating a Board of Health order, this time for boating on **Berlin Pond**. *Quattropiani*, 99 Vt. 360, 133 A. 352. We again affirmed the conviction, concluding that the prohibition clearly fell within the Board's realm of authority, see *id.* at 362, 133 A. at 353 ("That the public health is a proper subject for police power protection, and that that power can lawfully be delegated to the State Board of Health, are both unquestioned and unquestionable."), and that the prohibition had some rational basis, see *id.* at 364, 133 A. at 354 ("We cannot say that as matter of law this order was unreasonable and arbitrary."). In short, in 1926, the Board of Health had authority over public drinking water and had imposed a valid prohibition on boating, fishing, and swimming.

¶ 26. Although the 1926 prohibition has not been explicitly repealed, the entire statutory scheme that authorized the order has been eliminated. The 1926 order was made under the authority of a law granting the Board of Health the authority to issue orders prohibiting activities judged to potentially pollute a source of water. See 1917 G.L. § 6313; see also *Quattropiani*, 99 Vt. at 362, 133 A. at 353. The law at the time further provided that "[a] person who violates a rule, regulation or order made under the *455 provisions of this chapter shall be imprisoned not more than one year or fined not more than five hundred dollars." 1917 G.L. § 6322. Subject to minor amendments and reorganization, these provisions continued largely intact until 1989. See 1947 V.S. §§ 7462–7475; 18 V.S.A. §§ 1201–1214 (repealed 1989). In particular, the law continued to recognize the authority of the Board of Health to issue orders pertaining to public water supplies and continued to impose criminal ****131**

penalties for the violation of such orders. See 1947 V.S. §§ 7468, 7475; 18 V.S.A. §§ 1207, 1214 (repealed 1989). These provisions were repealed in 1989, when the basic source protection processes in existence today were created—the only difference being that the authority that has been vested with ANR since 1991 was at that time vested with the Vermont Department of Health. See 1989, No. 105, §§ 1, 5. Compare 18 V.S.A. §§ 1231–1239 (repealed 1991), with 10 V.S.A. §§ 1671–1679. The 1989 law makes no reference to authority to issue orders nor does it impose penalties for violation of orders.

[11] [12] [13] ¶ 27. We conclude that the 1926 Board of Health order ceased to be valid in 1989 when the Legislature repealed both the authorization to create such orders and the prohibition on violating such orders. The common law rule is that when a statute is repealed its repeal reaches back in time to eliminate any authority that existed under the statute. See *Gilman v. Morse*, 12 Vt. 544, 552 (1840) (“As a general rule the repeal of a law puts an end to that which was created directly by the law itself.”); *Wieslander v. Iowa Dep’t of Transp.*, 596 N.W.2d 516, 522 (Iowa 1999) (“The repeal of a statute typically destroys the effectiveness of the statute, and the repealed statute is deemed never to have existed.”); 1A N. Singer & J. Singer, *Sutherland Statutes & Statutory Construction* § 23:34, of 552–53 (7th ed. 2009) (“Repeal of a statute ... destroys the effectiveness of the repealed act in futuro and divests the right to proceed under the statute. Except as to proceedings past and closed, the statute is considered as if it has never existed.”). This rule applies to a grant of regulatory authority, meaning that the repeal of the authority to issue orders or regulations normally repeals those orders or regulations already issued. See *United States v. Fortier*, 342 U.S. 160, 161–62, 72 S.Ct. 189, 96 L.Ed. 179 (1951) (per curiam) (holding that repeal of statutory authority to impose price restrictions operated as a repeal of restrictions already in place); *Osborn Funeral Home, Inc. v. La. State Bd. of Embalmers*, 194 So.2d 185, 188 (La.Ct.App.1967) (“[T]he *456 authority purportedly conferred by the former statute upon defendant board to adopt the rules and regulations assailed by plaintiff no longer exists.... Therefore, the rules and regulations [of the board] have no basis for their existence and, in fact, no longer exist or have any pertinence.”); *In re Brown*, 903 A.2d 147, 151 (R.I.2006) (holding that repeal of the governor’s power to issue orders to place questions on the ballot meant that orders issued prior to the repeal of the governor’s authority were no longer binding); *S.C. Dep’t of Natural Res. v. McDonald*, 367 S.C. 531, 626 S.E.2d 816, 819 (Ct.App.2006) (“[T]he question is whether the repeal of ... the statute referenced during the promulgation ... operates as a repeal of the regulation itself. We hold that it does.”). In accord with this principle, the repeal of the authorization to create health orders removed the authority upon which such orders rested. Holding to the contrary would leave orders in effect that no body save the Legislature itself could modify or eliminate.

¶ 28. Against this backdrop, nothing suggests a legislative intent to leave the orders in place. The Legislature has adopted a general savings clause that creates a designated set of exceptions to the common law rule, in particular for individual rights or liabilities created under the repealed statutory regime. See 1 V.S.A. § 214. The Board of Health orders do not fall within any of the provisions of this general savings clause. Had the Legislature specifically intended to leave prior orders in effect after the 1989 act, it could have communicated this by appending a **132 specific savings clause to the act repealing the Board’s authority—something that is conspicuously absent from the act’s transition provisions. See *Sumner v. Cummings*, 23 Vt. 427, 433 (1851) (“The legislature, by repealing the statute without any saving of actions pending, have really let the action fall”); *Hansson v. Ariz. State Bd. of Dental Exam’rs*, 195 Ariz. 66, 985 P.2d 551, 553–54 (Ct.App.1998) (interpreting the lack of a savings clause or grandfather clause as evidence that the legislature intended to abolish a board’s previous authority). The Legislature has availed itself of such savings clauses elsewhere. See, e.g., 19 V.S.A. § 6(b) (“The transportation board is successor to the public service board, the highway board, and the aeronautics board in the regulatory and quasi-judicial functions related to transportation. It may enforce all orders of those boards which remain in effect.”). Furthermore, the repeal of the penalty for violating such orders confirms that *457 the Legislature no longer considered the Board’s orders to be a source of prohibitions. We thus conclude that the Legislature’s intent in the 1989 changes was to entirely replace the old regulatory scheme—including the old Board of Health orders—with a new permitting scheme. As a result, the 1926 Board of Health order no longer operates to prohibit boating, bathing, or swimming in **Berlin Pond**.

¶ 29. The City has not directly argued contrary to our conclusion. Instead, it argues that later legislation preserved or restored that order, a subject we address next. The City argues primarily from the 1991 legislation that transferred jurisdiction over public water supplies from the Department of Health to ANR. See 1991, No. 71, §§ 1–1a (describing the

act's purpose of transferring jurisdiction over the public water supply program). In the course of this transfer of authority, the Legislature included the following transitional provision: "Existing rules for public water supplies adopted under Title 18 shall remain in effect as rules adopted under 10 V.S.A. chapter 56 until superseded by rules adopted by the secretary of natural resources under this chapter." 1991, No. 71, § 9(a). With regards to the 1926 Board of Health order, the trial court held that "[t]he savings provision left it in force until superseded by the adoption of new rules by ANR."

¶ 30. ANR did promulgate a new set of rules, known collectively as the Water Supply Rule. See Water Supply Rule, 12 Code of Vt. Rules 12 030 003, available at <http://www.michie.com/vermont>. Section 16 sets forth the rules protecting public water supplies from contamination. The central provision is that public water supplies are required to have a "source protection plan" approved by ANR, the purpose of which is to identify potential sources of contamination in a specific area, known as the "source protection area." See *id.* § 16.1. Both of these terms of art figure into the question of whether the State—in particular ANR—has adopted the 1926 health order.

¶ 31. According to § 16.2.2 of the Water Supply Rule, the source protection area is: "(a) the area approved by the Secretary; (b) the 3,000 foot fixed radius circle assigned by the Secretary prior to September 24, 1992; or (c) the area approved by the Vermont Department of Health prior to July 1, 1991." The trial court concluded that subsection (c) means that "the 1926 Health Board order lives on through its incorporation into the current Water Supply Rule" and that "the 1926 Health Board order remains in effect through its adoption."

*458 ¶ 32. This conclusion was incorrect. Subsection (c) of § 16.2.2 includes an additional sentence that reads, "These approvals **133 do not include restrictions imposed by the Board of Health in Health Orders." This sentence was an amendment that came into effect only in December 2010. This language was erroneously overlooked by the trial court apparently because it was added after the court issued its preliminary injunction. The court's findings and analysis for the preliminary injunction became its findings and analysis for the permanent injunction so that the court missed the amendment to the regulation.

¶ 33. There are broader reasons why the 1991 legislation did not have the effect claimed for it. The transitional provision

protected "[e]xisting rules." 1991, No. 71, § 9(a). Even if the Board of Health order could be viewed as a "rule," it was not "existing" when the 1991 legislation was enacted. To preserve the 1926 order, there had to be such transitional language in the 1989 legislation, but there was not. By 1991 it was too late.

[14] ¶ 34. Moreover, the regulatory regime that replaced the regime in effect in 1926 adopted a different approach. It required a permit to operate a public water system or public water source and regulated the holders of permits. See 18 V.S.A. § 1233(c) (as added by 1989, No. 105, § 1, and repealed by 1991, No. 71, § 7). There is nothing in the legislation to suggest that it gave power to operators, whether private or public, to regulate the activities of persons in or on public water sources.² Thus, the rule on which the City relies—§ 16.2.2 of the Water Supply Rule—concerns what geographical area will be designated as a source protection area, not what restrictions can be imposed in the area so designated. Thus, even if the 2010 language had not been added to § 16.2.2(c), the regulation would not be a basis to conclude that ANR adopted the 1926 order restrictions.

*459 ¶ 35. This analysis also responds to the City's additional argument that the 1926 order lives on through its source protection plan, if not through the source protection area designation. In 2005, ANR approved the City of Montpelier's source protection plan. The plan includes the following discussion of recreational use and the 1926 order:

Boating, fishing, and bathing in **Berlin Pond** and the tributaries within one-half mile of the tributary mouth is prohibited by a State Board of Health order dating back to 1926. Since recreational use is not currently allowed, it has not been identified as an existing PSOC [potential source of contamination]. However, it should be noted that if recreational use is permitted in the future, it will cause a significant risk to water quality. For example, motor boating can have a considerable impact due to the discharge of fuel and oil from inefficient engines. The chemicals and substances associated with motor boating and other recreational activities could have an

adverse effect on the water quality of
Berlin Pond.

The City argues that “the incorporation of the 1926 Order into the City’s Source Protection Plan maintains its vitality as arguably the cornerstone of the Plan itself.”

****134** ¶ 36. Consistent with our analysis above, we view the plan’s language as a statement of what the City believed was the state of the law. Placing that statement in the plan does not make it so. The ANR Water Supply Rule requires public community water systems to have an approved source protection plan. Water Supply Rule § 16.1. That plan has to contain “a management plan for the risks from the potential and actual sources of contamination.” *Id.* § 16.2. The plan must be “directed towards controlling existing potential sources of contamination and, where possible, reducing risks of potential contamination.” *Id.* § 16.2.5. There is no suggestion, however, that the plan itself gives the operator some special power to regulate the activities of persons who might use source waters for recreation or other purposes. The techniques for management of source waters suggested in the rule are notification of landowners in the source protection area of the existence of the plan, education efforts of various types, purchase of land or conservation easements, creation of buffer zones, and adoption of zoning ordinances. *Id.* None of these support the City’s argument. ***460** Perhaps the City might use a restrictive zoning ordinance if the **pond** were within the territorial limits of the City, but the City has no zoning power over uses in another municipality.

¶ 37. The limits of the public water supply regulatory legislation are understandable because the Legislature created another source of law to regulate activities on the surface of navigable waters. In 1970, the Legislature authorized the Water Resources Board³ to regulate use of public waters. 1969, No. 281 (Adj.Sess.), § 13 (adopting 10 V.S.A. § 1103, now 10 V.S.A. § 1424). Under the legislation, the successor to the Water Resources Board—the Water Resources Panel of the NRB, 10 V.S.A. § 1422—can define areas of public waters on which certain uses may be conducted and define the uses in those areas. *Id.* § 1424(a)(1), (2). The Panel shall “attempt to manage the public waters so that the various uses may be enjoyed in a reasonable manner, in the best interests of all the citizens of the state” and “[t]o the extent possible” shall “provide for all normal uses.” *Id.* § 1424(c).

¶ 38. The Panel has adopted specific rules for **Berlin Pond**. See Vermont Water Resources Panel, Vermont Natural

Resources Board, Vermont Use of Public Waters Rules, Appendix A, at A–18. Consistent with the general rules, the rules for **Berlin Pond** restrict the speed of motor boats and prohibit the use of personal watercraft, aircraft (during the summer), and internal combustion motors. *Id.* It does not prohibit boating generally or fishing or swimming. The rules, however, contain a footnote specific to **Berlin Pond** that provides that “[r]estrictions adopted by authorities other than the Natural Resources Board may also apply—for example, restrictions on recreational uses established by the state or a local board of health to protect public water supplies.” *Id.* at A–84. The City argues that this footnote represents recognition by the Panel that the Board of Health order is in effect. Even if the Panel had the power to make the Board of Health order effective, we find the statement equivocal at best. It reflects the existence of this controversy, rather than an opinion on how the controversy should be resolved.

¶ 39. The record reflects that in 2007 the City filed a petition with the Water Resources Panel seeking an amendment to the **Berlin Pond** rule to prohibit swimming, ****135** fishing, and boating. The ***461** Panel rejected the petition as incomplete, stating that the petition “does not state actual rules that you wish the Panel to promulgate ... [or] state why a rule change is necessary.” For reasons not specified in the record, the City did not correct the defects, and the petition died. Thus, the rules regulating the use of **Berlin Pond** continue to have no prohibition on the activities in issue in this litigation.

IV.

¶ 40. Although the State has not itself prohibited recreational use of **Berlin Pond**, it may have delegated to the City of Montpelier the authority to make such prohibitions. The City’s second main argument is in this vein. There are two possible sources of this power: the City’s charter and the general statutes.⁴ See *Lawton v. Town of Brattleboro*, 128 Vt. 525, 529–30, 266 A.2d 816, 819 (1970); City of Montpelier Charter, 24 V.S.A.App. ch. 5, § 101. The City relies upon the former and contends that, by ratifying the municipal charter and various amendments thereto over time, the Legislature has authorized the City to regulate the use of **Berlin Pond**.

¶ 41. We discern three possible arguments in favor of such authorization, each deriving from a provision in the current municipal charter: (1) that the current charter provision granting the power to maintain reservoirs, when interpreted in light of the historical charter provisions, should be read

to include an authorization to regulate recreational use of **Berlin Pond**; (2) that the transfer of the Village of Montpelier's rights to the City transfers the authorization for such regulation; and (3) that the City's ordinances are valid under the charter's savings clause as an exercise of power granted under a prior version of the charter. Before addressing these arguments, however, a brief description of the relevant historical revisions in the Montpelier charter is necessary.

A.

¶ 42. In 1870, the Legislature amended the charter of Montpelier—then a village—authorizing it to “purchase the right to *462 take water from the outlet of **Berlin pond**.” 1870, No. 240, § 1. Fourteen years later in 1884, the Legislature amended Montpelier's charter to create a board of water commissioners. 1884, No. 212, § 1. The Legislature granted this board power to “enter upon any land adjoining **Berlin pond** or adjoining the reservoir, from which water is taken to the village of Montpelier,” *id.* § 3, and empowered it “to commence such legal proceedings, either at law or in equity, in the name of, and for the benefit of said village, as shall prevent any person or persons from adulterating the waters of said reservoir, stream or **pond**, or rendering the waters thereof unfit for domestic use,” *id.* § 4.

¶ 43. Ten years later, the City of Montpelier was incorporated when the town and village merged. See 1894, No. 166, § 1. In addition to preserving rights granted to the village, the 1894 charter specifically granted the city council the power “[t]o make all regulations and ordinances for preventing the corruption and for the protection of the water supply of the said city and for the protection from injury of any dam, reservoir, aqueduct, pipe, hydrant, or source of supply of water connected with any water plant now owned or hereafter acquired by said city.” *Id.* § 21(25). The charter also granted the power “[t]o provide **136 a supply of water for the protection of the city against fire and for other purposes, and to regulate the use of the same; and to establish and maintain reservoirs, aqueducts, water pipes, hydrants or any other apparatus necessary for such purposes, upon, in and through the lands of individuals and corporations, on making compensation therefor” *Id.* § 21(24). In 1900, the Legislature further added that the City “may construct and maintain such aqueducts and reservoirs as they may judge best.” 1900, No. 162, § 2. These provisions were all retained in almost exactly this form until 1975. See, e.g., 1955, No. 329, Title III, § 17.

¶ 44. The current version of the City's charter comes largely from a comprehensive revision that was approved by a voter referendum in 1974 and validated by the General Assembly in 1975. This revision largely eliminated the previous language. The relevant current provision is the clause in the “General powers” section that states: “Such corporation ... may acquire, construct, and maintain such dams, aqueducts, reservoirs, and sewage disposal facilities as it may deem necessary for the benefit of the city.” 24 V.S.A. ch. 5, § 102. Two other clauses in the current charter also have indirect significance by potentially keeping alive *463 prior grants of power. One clause in the charter—an updated version of the same language present in the 1894 incorporation—transfers to the City of Montpelier the rights of the former Village of Montpelier. *Id.* § 1406. Second, a saving clause exists, which ensures that ordinances lawfully established under previous versions of the charter remain valid. *Id.* § 1402.

B.

[15] ¶ 45. The first question is whether the current charter's grant of power to “acquire, construct, and maintain such ... reservoirs ... as it may deem necessary for the benefit of the city” includes the power to regulate boating, fishing, and swimming on **Berlin Pond**. We conclude that it does not.

[16] ¶ 46. To begin with, Dillon's Rule creates a presumption against finding a grant of power to the municipality. *E.B. & A.C. Whiting Co.*, 106 Vt. at 461, 175 A. at 42 (“The general rule is that the charter of a municipal corporation is to be strictly construed against it; the presumption being that the Legislature granted in clear and unmistakable terms all that it intended to grant.”); see also *Valcour*, 104 Vt. at 130, 158 A. at 86 (“[I]f any fair, reasonable, substantial doubt exists concerning [a grant of power,] it must be resolved against the [municipality], and its power denied.”). This is especially true where the power in question would enable a municipality to restrict access to the public's natural resources. The Constitution affords citizens a right “to fish in all boatable and other waters (not private property) under proper regulations, to be made and provided by the General Assembly.” Vt. Const. ch. II, § 67; cf. also 10 V.S.A. § 1679(e) (creating a defeasible presumption that ANR rules for water use shall “allow for human activity within the watershed of a public water source”). Although this right is far from absolute, it is not so infirm as to permit regulation where there is not a clear authorization from the Legislature.

¶ 47. Second, the language employed is essentially the same as that applicable to any municipality under 24 V.S.A. § 3301 (“A municipal corporation is hereby authorized and empowered to construct, maintain, and repair ... [a] reservoir”). Thus, there is nothing unique or special about the charter language that suggests that Montpelier has a power unavailable **137 to every other municipality in Vermont.

*464 ¶ 48. Most importantly, the language is far from an unambiguous authorization to regulate uses of **Berlin Pond** by others. We would stretch the meaning of “maintain” beyond any reasonable limits to hold that the word includes the power to regulate the actions of others. The word connotes merely keeping something, and insofar as it involves action, it connotes taking positive steps to keep something in good condition—as one would by engaging in routine repairs or upkeep. See, e.g., Oxford English Dictionary (3d ed. 2010) (“To pay for the upkeep of; to keep (a ship, garrison, etc.) supplied or equipped; to keep (a light) burning by supply of fuel; to keep (a road, a building, etc.) in repair; to take action to preserve (a machine, etc.) in working order.”).

¶ 49. Moreover, it would be an equally long stretch to call **Berlin Pond** a “reservoir” for the City of Montpelier. As discussed above, the City has the right to take water from **Berlin Pond**; it does not own **Berlin Pond**. Whether used to refer to a man-made facility or a natural body of water, the word “reservoir” means a place in which water is stored. Compare *id.* (“A lake or large pool, natural or man-made, used to store water for public and industrial use, for irrigation, etc.”), with Webster’s Third New International Dictionary (2002) (“a place where water is collected and kept in quantity for use when wanted; esp: an artificial lake in which water is impounded for domestic and industrial use, irrigation, hydroelectric power, flood control, or other purposes”). Nothing in the record indicates that the City has a right to store water in **Berlin Pond**. Consistent with the understanding that **Berlin Pond** is not the City’s reservoir, earlier versions of the charter were explicit in distinguishing **Berlin Pond** from the reservoir where water is stored. See 1884, No. 212, § 3 (authorizing the water board to enter upon “any land adjoining **Berlin pond** or adjoining the reservoir, from which water is taken to the village of Montpelier, or adjoining the stream connecting said reservoir with **Berlin pond**”). The 1926 Board of Health order was also explicit on this point because it prohibited “boating, fishing and bathing in the waters of **Berlin Pond**, ... of the outlet of **Berlin**

Pond to the Montpelier Reservoir, and of the Montpelier Reservoir.”⁵

[17] *465 ¶ 50. We recognize that the settled law grants a municipality such implied powers as are necessary to exercise the explicitly granted powers. “The powers of a municipal corporation include both those powers granted in express words by statute and those powers necessarily or fairly implied in the powers expressly granted.” *Gade v. Chittenden Solid Waste Dist.*, 2009 VT 107, ¶ 13, 187 Vt. 7, 989 A.2d 491; see also *Hunters, Anglers & Trappers Ass’n of Vt.*, 2006 VT 82, ¶ 23, 181 Vt. 12, 913 A.2d 391 (Burgess, J., concurring) (“Dillon’s Rule not only limits municipalities to ‘those powers and functions specifically authorized by the legislature’ as argued by plaintiff in this instance, but is also authority for the implied ‘additional functions as may be incident, subordinate or necessary to the exercise’ of such express powers by the municipality.” (quoting *Hinesburg Sand & Gravel Co.*, 135 Vt. at 486, 380 A.2d at 66)). Thus, even if the regulation of recreational use of a public water supply is not within the meaning of “maintain ... reservoirs,” it may be a power implied by, **138 or incident to, or necessary to, the authorized power.

¶ 51. This is not, however, the case here. Our analysis above reaches the conclusion that the power to regulate recreational use cannot be found in the general power whether directly or by implication. Nor could we find that the regulation power is somehow incidental to the power specified in the charter. This leaves only the argument that the power to regulate recreational uses is necessary for Montpelier to maintain a reservoir or more generally to use **Berlin Pond** as its water supply. Although witnesses for the City testified to why the City wants to prohibit swimming, boating, and fishing in **Berlin Pond**, they did not try to prove, and the superior court did not find, that the prohibition was necessary for **Berlin Pond** to be used as a water supply. Indeed, the Vermont Water Quality Standards on which defendants rely seems to be a complete answer to such a claim because it provides that use of a source for public water supply is compatible with the recreational uses in issue here.⁶ Vermont Water Quality Standards § 3–03(A)(3), (4). We have answered above that we do not believe that the City’s permit to operate its *466 public water system is dependent on it prohibiting the recreational uses of **Berlin Pond**. Further, the City has the option of initiating state rulemaking by filing a request with the Water Resources Panel.⁷ As discussed above, the City started this process, but did not complete it. To the extent that the City did not go through with the process under the

mistaken belief that the 1926 Board of Health order is still in effect, this decision removes that misconception.

¶ 52. Before concluding our analysis of whether the current charter authorizes the City to prohibit swimming, boating, and fishing in **Berlin Pond**, we must address one additional argument from the City. The City argues that however it is worded, the relevant charter provision must be interpreted as the continuation of a long line of charter provisions concerning the City's water supply. According to this argument, the current charter's grant of power to "maintain ... reservoirs" is but the most recent incarnation of a longstanding regulatory authorization. Thus, the current power to "maintain reservoirs" should be read as the extension of previous language: the 1884 authorization for "such legal proceedings ... as shall prevent any person or persons from adulterating the waters of said reservoir, stream or **pond**, or rendering the waters thereof unfit for domestic use," 1884, No. 212, § 4; the 1894 authorization "[t]o make all regulations and ordinances for preventing the corruption and for the protection of the water supply of the said city," 1894, No. 166, § 21(25); and the slightly amended 1955 authorization "[t]o make and enforce all regulations and ordinances for preventing the corruption of and for the protection of the water supply of the City," 1955, No. 329, Title III, § 17(XXXVIII). The City's argument is that the current provision is the most recent iteration of these older provisions—which were supplanted over time in the process of comprehensive revision ****139** —and carries the same general legislative intent.

[18] ¶ 53. Although the revised charter is a continuation of the previous charters, see 24 V.S.A.App. ch. 5, § 1408 ("The ***467** provisions of this act, so far as they are the same as those of acts hereby amended, shall be construed as a continuation of such acts, and not as new enactments."), we reject the contention that the relevant history here can wholly transfigure the current charter provision. Although a history of predecessor provisions can provide useful insight into legislative intent, it can cut in both directions. Where current language replaces older language as part of a revision, the older language can suggest a meaning that was supposed to be preserved, or it can provide a contrast and thereby suggest a difference in meaning. Compare *Town of Cambridge v. Town of Underhill*, 124 Vt. 237, 240, 204 A.2d 155, 157 (1964) ("When changes ... come about only as a result of a revision, caution is required in determining whether or not any substantive change in the law was intended."), with *Diamond v. Vickrey*, 134 Vt. 585, 589, 367 A.2d 668, 671

(1976) ("It is well settled that, in interpreting amendatory language in a statute, we are guided by the rule that the Legislature intended to change the law."). Thus, a phrase or clause will not automatically inherit the meaning of substantially more elaborate or explicit language that has been supplanted. Here, the phrase "maintain ... reservoirs" cannot plausibly be considered as merely clarifying or updating the far more explicit authorization "[t]o make and enforce all regulations and ordinances for preventing the corruption of and for the protection of the water supply of the City." See *State v. Thompson*, 174 Vt. 172, 178, 807 A.2d 454, 460 (2002) ("We presume that the Legislature intended to change the meaning of a statute when it amends it, but we will recognize clarification of the law where the circumstances clearly indicate it was intended."). This is especially clear because the "maintain ... reservoirs" language was always present alongside the authorization "[t]o make and enforce all regulations and ordinances for preventing the corruption of and for the protection of the water supply of the City," and the latter provision was simply removed. Compare 24 V.S.A.App. ch. 5, § 102, with 1955, No. 329, Title III, § 17(XXXVIII). Therefore, insofar as it provides any guidance here, the history of the charter revisions actually confirms the conclusion that the City's power to maintain reservoirs does not include the power to regulate recreational use of **Berlin Pond**.

¶ 54. For the above reasons, we hold that the current charter language does not empower the City to prohibit boating, ***468** fishing, or swimming in **Berlin Pond**.⁸

****140 C.**

¶ 55. Having concluded that the present municipal charter language does not directly include the power to regulate the recreational use of **Berlin Pond**, it remains to be seen whether it might nonetheless preserve the previously granted powers and thereby indirectly include the powers in question. Two significant clauses in the City's charter—the transfer clause and the savings clause—retain authority from prior charters. We conclude, however, that neither source of residual authority can ground the City's prohibitions on recreational activities.

[19] ***469** ¶ 56. The transfer clause preserves in the City the previously existing rights and privileges of the Village of Montpelier. In existence since 1894, it reads, "All rights, privileges, and franchises heretofore granted to the Village of

Montpelier, by any act of the legislature, or existing under any law, or by virtue of any contract relating to the water works formerly possessed by said village, [are]⁹ hereby confirmed under the City of Montpelier.” 24 V.S.A.App. ch. 5, § 1406. This transfer clause appears to convey to the City of Montpelier those rights that were granted to the village, which would include those powers concerning **Berlin Pond** contained in the 1870 and 1884 charter amendments. See *ante*, ¶¶ 42–43. These amendments allowed the village to purchase the right to take water from **Berlin Pond**, and they created a village water board, which was entitled to enter on the lands surrounding **Berlin Pond** and initiate legal proceedings to protect the village water supply against adulteration.¹⁰ See 1884, No. 212; 1870, No. 240, § 1.

¶ 57. Even if all of the village's powers are now vested in the City, they are nonetheless insufficient to support the City's **141 regulations at issue in this case. The first of these powers—the authorization to purchase the right to take water from **Berlin Pond**—cannot be the basis for the City's authority to regulate other users of **Berlin Pond**. Nor does the power to inspect **Berlin Pond** and initiate legal actions to protect its water supply constitute the power to regulate the **pond's** use by others. Certainly, the power to inspect the **pond** does not bring with it the power to regulate uses of the **pond**. Probably, the most support the City can find is in the village power to bring suits to *470 “prevent any person or persons from adulterating the waters of said reservoir, stream or **pond**, or rendering the waters thereof unfit for domestic use.” 1884, No. 212, § 4. We cannot conclude, however, the power to bring lawsuits includes the power to create prophylactic regulations, like those in issue here. If the City believes that a user is rendering the water unfit for public water supply purposes or is adulterating the water, the section authorizes litigation to stop the conduct. It does not authorize a broad prohibition on all conduct that might, in extreme cases, lead to adulteration or unfit water.

[20] ¶ 58. We also conclude that appeal to the savings clause is ultimately unavailing. The savings clause—part of the 1975 revisions—states:

The passage of this act shall not affect any ordinance, resolution, or by-law lawfully enacted, ordained, and established under the provisions of the acts hereby amended by this act, and not inconsistent with the provisions of this act, but the same shall be and

remain in full force and effect until repealed, altered, or amended.

24 V.S.A.App. ch. 5, § 1402. This is significant here because both ordinances on which the City relies, § 3–332—which makes it a crime to pollute, bathe, or fish in a public reservoir—and § 13–1—which makes it illegal to trespass upon or injure a public resource controlled by the City, were enacted prior to the 1975 revisions of the charter.¹¹ See Montpelier, Vt., Code of Ordinances § 3–332 (enacted 1970); *id.* § 13–1 (enacted 1972). As a result, these ordinances were passed when the municipal charter still contained the authorization “[t]o make and enforce all regulations and ordinances for preventing the corruption of and for the protection of the water supply of the City.” See 1955, No. 329, Title III, § 17(XXXVIII). Even if the current charter language does not presently authorize the City to make regulations governing the use of **Berlin Pond**, the existing ordinances may have been valid as exercises of the power “[t]o make and enforce all regulations and ordinances for preventing the corruption of and for the *471 protection of the water supply,” and may continue to prohibit the defendants' proposed conduct.

¶ 59. The difficulty with this argument is that we cannot conclude that the ordinances protected by the savings clause prohibit the recreational use of **Berlin Pond**. Ordinance 3–332 purports in part to control activities on a “public reservoir.” As discussed above, we cannot find **Berlin Pond** to be a Montpelier public reservoir. Further, as defendants argue, § 3–332 does not explicitly forbid boating.¹² The City counters that boating and fishing are prohibited indirectly because they involve **142 trespass upon a City resource in violation of § 13–1. To the extent that the City means trespass on the land surrounding **Berlin Pond** owned by the City, we agree with the City's point. To the extent that the City is arguing that the trespass is on **Berlin Pond** itself, we cannot agree. Under § 13–1, the public resource must be “owned by or under the control of the City of Montpelier.” As we have said on multiple occasions in this decision, the City does not own **Berlin Pond**; it has only a right to take water from it. Thus, to agree with the City's claim, we must find that **Berlin Pond** is under the control of the City of Montpelier. As a matter of state law, this claim is unsupported. As we discussed above, the usage of the surface waters of **Berlin Pond** is under the control of the Water Resources Panel of the Natural Resources Board. It is also unsupported under the current charter as we have also discussed above, even though it may have been supported by the former charter. The savings clause assures that § 13–1 continues to be valid law, not that

resources controlled by the City at the time the ordinance was passed continue to be so controlled.

[21] ¶ 60. The same conclusion is also dictated by the limitation on the savings clause to saving only those ordinances that are “not inconsistent with” the current charter. 24 V.S.A.App. ch. 5, § 1402. Given our conclusion that the current charter does not grant the City the power to regulate the usage of **Berlin Pond**, see *supra*, part IV.B., we conclude that the City’s ordinances are inconsistent with the current charter insofar as they are interpreted to regulate use of **Berlin Pond**. This understanding of “inconsistent” is derived from Dillon’s Rule. Nothing in the *472 charter directly prevents or forbids the regulation of **Berlin Pond**. In this sense, ordinances are not inconsistent with the charter—there is no contradiction between the two. Under Dillon’s Rule, however, a municipal charter is to be read as an exclusive list of enumerated powers. See *Welch v. Town of Ludlow*, 136 Vt. 83, 87, 385 A.2d 1105, 1108 (1978) (“In Vermont, where we have no home rule constitutional provision, a town has only those powers specifically authorized by the Legislature.”). In this light, the City’s ordinances as applied to recreational use of **Berlin Pond** are inconsistent with the City’s current charter because they involve the exercise of a power that is not enumerated therein.

¶ 61. For these reasons, neither the transfer clause nor the savings clause can resuscitate sufficient grants of power to authorize the City to regulate the use of **Berlin Pond** by others. Assuming—without deciding—that the City was historically granted the power to make such regulations as would preserve the **pond** from contamination, that grant of power no longer exists to support the application of the City’s present ordinances to regulate recreational use of **Berlin Pond**.

¶ 62. In summary we hold that the City of Montpelier does not have the power under its charter to prohibit swimming, fishing, or boating on **Berlin Pond**. Since the City does not have such power under state law or under the charter, the decision of the superior court enjoining these recreational activities was in error.

V.

¶ 63. Although the above discussion answers all the issues raised on appeal by defendants, we comment upon one remaining issue. The City filed a rebuttal brief which appears

to claim that the City’s real power to protect the quality of the water in **Berlin Pond** lies in its ability to prevent trespass on the lands surrounding the **pond**. As we stated earlier, the City owns almost all of the land surrounding **Berlin Pond**. Although defendants claimed at trial that they intended to reach **Berlin Pond** over the land owned by the Town of **Berlin**, the superior court issued an injunction against trespassing on the land owned by the City. In defendants’ docketing statement on appeal, they suggested that “Montpelier has no authority to enact ordinances that are enforceable beyond its boundaries.” The City, in response, framed the question as *473 whether it was “authorized to regulate public access to and use of its potable water supply.” Defendants’ brief, however, never addressed the portion of the injunction concerning trespass and accordingly its validity is not before us. See V.R.A.P. 28(a)(1) (requiring appellant’s brief to contain a statement of “the issues presented for review”). As a result, this portion of the City’s protection of **Berlin Pond** remains intact.

[22] ¶ 64. The disposition of this case leaves a state of affairs that admittedly represents an awkward intermediate result. The City may strive to prevent indirectly the recreational use of **Berlin Pond** by denying access to its lands that surround the **pond**, but it may not directly regulate use of the **pond** itself. This may be unsatisfactory to the City, which the trial court found faced the possibility of irreparable harm from recreational use of the **pond**. However, “[n]o arguments drawn from convenience can confer upon the corporation powers not granted. If more powers are needed more must be asked for.” *Hutchinson v. Pratt*, 11 Vt. 402, 413 (1839). Our decision reflects the fact that, under the laws of this state, the recreational use of **Berlin Pond** is a matter of state concern requiring a resolution at the state level. See *Sax, supra*, at 560 (“Frequently [in public trust cases], judicial intervention takes the special form of moving decisional authority from one constituency to another. In taking such action, a court might hold, for example, that a matter is of state-wide interest and must be approved by the state legislature, rather than by a municipal or county agency.”). Accordingly, our decision places the ultimate resolution of this matter with the state government. Cf. *Cent. Vt. Ry.*, 153 Vt. at 346, 571 A.2d at 1132 (“[T]he state’s power to supervise trust property in perpetuity is coupled with the ineluctable duty to exercise this power.”). We determine only that the City’s current powers are limited to preventing trespass upon its property.

*The judgment enjoining defendants “from boating, fishing, and swimming in **Berlin Pond**” is reversed.*

Parallel Citations

49 A.3d 120, 2012 VT 32

Footnotes

- 1 Somewhat confusingly, the NRB appears to use the designation A(2) for suitable public water supplies and A(1) for ecological waters, although 10 V.S.A. § 1252 defines the classifications in the reverse order. Nomenclature aside, the point is that the NRB's classification describes management compatible with recreational uses where possible.
- 2 10 V.S.A. § 1679(e) provides that "[r]ules, standards and criteria" adopted with respect to source protection areas "shall allow for human activity within the watershed of a public water source, provided that such human activity does not constitute a public health hazard or a significant public health risk." There is nothing in the rules implementing this section. We infer that ANR has not found an instance where human activity within the watershed of a public water supply is a public health hazard or a significant public health risk. We need not reach whether this section gives ANR the power to restrict such human activity or to authorize the water supply operator to do so.
- 3 The Water Resources Board has been replaced in this regulatory scheme by the Water Resources Panel of the NRB. See 10 V.S.A. § 1422(2).
- 4 In 2010, the City adopted a specific ordinance on **Berlin Pond** Protection as ordinance 13.3. Unless authorized by the charter or a state statute, the ordinance alone cannot give the City the power to regulate usage of **Berlin Pond**.
- 5 It is not clear whether there currently is a Montpelier reservoir. In its preliminary judgment ruling, the superior court found that "[t]here is no 'back-up' reservoir or municipal well," although this may be a reference to source rather than to storage.
- 6 In fact, the water quality could meet only a lower standard, called Class B, and be "acceptable for public water supply with filtration and disinfection." 10 V.S.A. § 1252(a). That classification is "[s]uitable for bathing and recreation." *Id.*
- 7 Initiating rulemaking at the state level would not be a form of delegated authority. The Panel can delegate authority to regulate usage of public waters to a municipality but only if the municipality "is adjacent to or ... contains the water." 10 V.S.A. § 1424(f). The City does not meet these requirements with respect to **Berlin Pond**.
- 8 Although this is a complete answer to the issue under the current charter, there is an additional reason why the City cannot prohibit fishing. The Legislature has made a clear statement that municipalities are not generally authorized to regulate fishing. Title 24, § 2295 states:

Except as otherwise provided by law, no town, city or incorporated village, by ordinance, resolution or other enactment, shall directly regulate hunting, fishing and trapping or the possession, ownership, transportation, transfer, sale, purchase, carrying, licensing or registration of traps, firearms, ammunition or components of firearms or ammunition.... The provisions of this section shall supersede any inconsistent provisions of a municipal charter.

This statute makes clear that a municipal charter cannot be the source of authority to regulate fishing. If Montpelier has the authority to prohibit fishing, the source must be found in the statutory phrase, "[e]xcept as otherwise provided by law." The only possible source appears to be 10 V.S.A. § 5201(a). See *Hunters, Anglers & Trappers Ass'n of Vt.*, 2006 VT 82, ¶¶ 9–13, 181 Vt. 12, 913 A.2d 391. This statute allows an "owner, or a person having the exclusive right to take fish ... upon land or the waters thereon" to post that fishing is prohibited. In *Hunters, Anglers & Trappers Ass'n of Vermont* this Court held that a municipality that owned land could post it against hunting under § 5201(a) despite the prohibition of 24 V.S.A. § 2295. 2006 VT 82, ¶¶ 9–13, 181 Vt. 12, 913 A.2d 391. That holding does not control here. As we have noted in the text, the City is not the owner of **Berlin Pond**. There is nothing in the record that suggests that the City has the exclusive right to take fish from **Berlin Pond**. Under these circumstances 10 V.S.A. § 5201(a) does not apply and, therefore, the limitation on the City imposed by 24 V.S.A. § 2295 does apply.

The City addressed this point in a rebuttal brief and does not appear to contest it. The brief quotes a statement made by its counsel at the hearing: "Again, nothing in this case has involved a City attempt to regulate hunting or fishing directly; it's access that's prohibited." The point is that the City prohibits fishing only by preventing access to the **pond** over its lands.
- 9 The Vermont Statutes Annotated has "and" here—as do the versions available online from the Legislature and the City—leaving the sentence as not a sentence. This appears to be a transcription error as the first appearance of this language in the 1894 incorporation of Montpelier as a city uses "are" as do more recent revisions. See 1955, No. 329, Title XVI, § 7; 1894, No. 166, § 1.
- 10 A weakness of the City's argument is that the water board no longer exists. The City asserts that the water board is now the city council, but we find no evidence that this is the case. On the contrary, it appears that the water board ceased to exist when Montpelier was incorporated as a city in 1894. While this coincides with the creation of the city council, it does not follow from the transfer clause that the city council inherited the powers of the water board. The transfer clause asserts that the rights and privileges of the village

transfer to the City; it does not assert that the rights and privileges of obsolete village officers transfer to the new city council. Despite this weakness, we will assume that the powers of the water board can be exercised in some way by the City under the transfer clause.

11 The City added specific protections for **Berlin Pond** in § 13.3 in 2010. This ordinance provision was enacted after the adoption of the current charter and is not protected by the savings clause.

12 Defendants also attack the fishing prohibition under 24 V.S.A. § 2295. As discussed *supra*, n. 8, we agree that the fishing prohibition violates 24 V.S.A. § 2295, a point the City apparently concedes.

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CITY COUNCIL GOALS 2013-2014

Adopted May 22, 2013

STATUS REPORT April 2014

Goal: ***Balance and control municipal budgeting, taxes and services relative to current population and grand list tax base.***

Steps:

- Continue long term budget projections including development scenarios. *Not completed*
- Set a budget target, focus budget discussions on policy and services, not line items. *Done, budget adopted and approved by voters*
- Complete plan to implement debt and fund balance policy after we receive the annual audit. *Not completed*
- Further explore inter-municipal and intra-municipal agreements as well as the possibility of merged services to find efficiencies. *Regional Public Safety Charter approved. Initiatives to share water service with Berlin unsuccessful thus far.*

Goal: ***Maintain all city streets, bridges, sidewalks and other infrastructure (parks, rec paths, etc.) in (at minimum) fair or good condition as per appropriate rating indices.***

Steps:

- Maintain commitment to the “steady state” funding plan adopted in 2013 to improve streets and sidewalks. *Funding Plan was approved again. Work being completed as per new funding.*
- Explore ways to remove all dual utility poles in Montpelier. *Ongoing.*

Goal: ***Support the work of the Parking Committee in an effort to alleviate parking pressures in Montpelier.***

Steps:

- Review and balance alternatives between adding parking and reducing parking demand. *Council has supported committee requests. City is following up on parking options.*
- Explore the long-term viability of the Circulator bus. *Funding was included in budget.*

Goal: ***Provide and receive comprehensive, accessible and useful information to and from constituent groups about the City government and the community.***

Steps:

- Re-vamp city website to make it more user-friendly; provide clear and easy-to-find information for residents AND for potential residents and potential businesses. *Work has begun but is behind schedule.*
- Expand use of social media to communicate city's message while continuing traditional communications methods. *Ongoing. Police, Sr Center, Clerk have developed a Facebook presence.*
- Provide adequate staff and volunteer support to maintain communications efforts once they have started. *Ongoing.*
- Target appropriate information messages to specific audiences. *Ongoing.*
- Gather contact information from residents. *Has not been started.*
- Gather information from the community about City services. *Council has asked for a recommendation for surveying citizens.*

Goal: ***Create a hospitable environment for residential growth.***

Steps:

- Monitor zoning process to assure that regulations will help promote new housing. *Monitoring being done by staff, no council involvement. Zoning Consultant hired to assist Planning Commission*
- Follow-through with recommendations of Barriers to Housing Committee. *Incorporated into zoning process. Consider public investment in infrastructure to generate housing. No progress.*

Goal: ***Maintain an environment that is hospitable for businesses to thrive throughout Montpelier.***

- Adopt an economic development strategy. *Outline has been prepared, will be presented to Council on May 14*
- Change narrative and present Montpelier as business friendly through brochures, communications and marketing. *Ongoing, Active citizens group working on these issues.*
- Maintain an active role in upper floor development. *Ongoing. Negotiations occurring.*
- Establish Economic Development and Business Recruitment/Retention as municipal priorities. *Has recently geared up. Options to be presented in the near future.*
- Explore the Montpelier Business Loan Fund and other tools the City has to promote economic development. *Has been reviewed, No formal steps taken.*
- Review Water rates. *Presentation to be made next week, rates to be formally considered in June.*

Goal: *Become a nationally known bike and pedestrian friendly city.*

Steps:

- Support the work of the Bike Committee. *Council approved a designated funding stream. Contract for Bike/Ped Master Plan recently approved.*

Goal: *Make significant progress on three major outstanding capital projects: District Heat, Transit Center and Montpelier Bike Path.*

Steps:

- Acquire the Carr Lot and ensure that it is out to bid by the end of the calendar year. *Carr Lot acquired, Development partner selected, committee in place, project moving forward/*
- Maintain the Bike Path schedule. *On schedule.*
- Complete the District Heat project. *Construction complete, mini system operating. Full operation to begin October 1.*

Goal: *Proactively explore energy initiatives.*

Steps:

- Explore reenergizing the North Branch dam. *Conclusion was that this was not feasible.*
- Pursue photovoltaic initiative. *Proposals being considered now.*

Goal: *Support and promote a vibrant downtown.*

Steps:

- Work to ensure that the Farmers' Market stays downtown. *Lease renewed, continued discussions, possible inclusion in One Taylor St project.*
- Support groups that come to the City Council with downtown initiatives. *Ongoing.*
- Explore the periodic closure of State Street. *Work was started but postponed.*
- Successfully implement the Downtown Improvement District. *DID approved, grants awarded, restructuring of process in place.*

**City of Montpelier
Department of Public Works
Memorandum**

To: William J. Fraser, ICMA-CM, City Manager
From: Todd C. Law, P.E., Director
Date: April 15, 2014
Subject: Council Goal Setting concerns/ goals for Public Works Department

With the diversity of the divisions in the Public Works Department, there are a few significant items to discuss as they pertain to the goals and concerns to future regulatory and policy decisions that will have an impact on Public Works resources and budgets.

Much of the regulatory work is established for drinking water and wastewater treatment that is found within our operating permits for each system. There are items at each for each system that are of concern:

Water system:

Our aging infrastructure has taken a beating this year. We have had multiple leaks due to differing factors on old and new pipe segments. With the existing debt from the construction of the water treatment facility and replacement of a significant amount of very important water mains, it is not feasible to begin replacement of the water mains in desperate need of it. Our operating permit has placed a requirement on the Department that we will have to perform a hydraulic analysis of the system and perform fire flow evaluations of the undersized pipes. Another condition of the water system permit to operate is to remedy the untreated water users in the Berlin Corners area. We have a preliminary design for a treatment system that we believe will meet the requirements of the water supply division, but have been awaiting the word from the Berlin Water committee as to the construction of the water system that would provide a means of connecting the users to an approved source at a fraction of the cost for providing the point of use treatment.

The water plant is now 14 years old and the process and controls are in need of maintenance above the normal preventative maintenance our staff performs regularly. There are also outdated primary logics controls (PLCs) that automate the plant processes and will soon not be supported by the manufacturer and more importantly will not be able to interact with the next upgrade of the Supervisory Controls and Data Acquisition (SCADA) system, which are critical to the operations of the plant. The costs for upgrading the PLCs are estimated to cost between \$50-60,000 which will be needed in the next year to two years. We have begun rehabilitation of the system pumps, with the Central Vermont Medical Centers pumps still to occur for \$15-20,000.

Wastewater system:

The wastewater treatment facility has seen a significant amount of upgrades over the past few years, which has made some improvements to the processes. There is still a significant amount of moving parts, including pumps, blowers, etc that will be in need of replacement due to the expected lifecycle of the equipment. We are continuing to maintain and replace parts as they fail, but some of the process equipment is 1960's vintage and parts are hard to find.

The collection system in certain areas has also exceeded its expected life. We have been performing closed circuit television inspection of these lines and have a list of necessary replacement projects for the near future. As in the water system, we will evaluate, prioritize and design some of these segments for inclusion in the capital program as monies become available.

The wastewater collection and, specifically, within the Combined Sewer Overflow (CSO) portions of the system is being evaluated as the elimination projects have not met the requirements of the 1272 Order portion of the Wastewater Discharge Permit. Therefore, we will be required to determine how we will reduce the inflow and

infiltration of stormwater to comply with the order. This will be a difficult endeavor and some of the initial indications point to roof drains tied into the sanitary sewer, possible utility conflicts that might be significantly reducing flow capacities and direct inflow (catch basins or storm pipes) to the sanitary sewer system.

Streets:

We have begun sweeping our streets and will begin cleaning catch basins in the next few weeks with the receipt of our new sweeper/ catch basin cleaner. We are also planning to hire an intern to finish up the catch basin inventory so that we can do an inspection annually to determine to prioritize our cleaning and make a more proactive effort towards repairs and maintenance. This will be complete a great deal of our utility mapping, which was a major focus in past years goals for public works in our endeavors to increase our infrastructure management capabilities.

With the significant increase in paving monies, our crews will be busy doing the preparatory work for each of the road segments chosen, along with the other normal maintenance items. This will make it necessary to contract more of our maintenance such as a significant portion of the crosswalk markings that our staff typically performs. We will need to increase funding to the line striping budget to allow for additional monies to perform these and pavement marking for bike lanes, etc.

Building Maintenance:

We need to ensure that we continue to keep our eyes on the Capital Needs Assessment (CNA) for our buildings so that we allocate funds to maintain our buildings so that they do not fall into disrepair.

2014 Montpelier Fire and Emergency Service Priorities and Concerns

Performance Measures (previous 12 months):

- Average response time to emergencies in Montpelier= 3:30 from notification.
- Flood monitoring was completed 100% of days by river gauge reporting.
- Fire pre-plan inspection completed 82% of days.
- 100% of Firefighters are certified at Firefighter 1 or above.
- 100% of Firefighters certified EMT 14 certified Advanced EMT.

2013-2014 Accomplishments:

- Reconfigured ambulance billing by contracting with Barre City and eliminating one FTE.
- Reduced staff by eliminating the administrative assistant and reassigned administrative duties.
- A day along city-wide table-top to better prepare and evaluate the city's COOP.
- Reevaluated and redeveloped the city's COOP.
- First-ever in the Northeast fire/police active shooter tactical training with MPD at Union Elementary School.
- Completed Local Emergency Operation Plan.
- All Firefighters completed new state EMT transition course making MFD 100% compliant with the new State regulations.

2014-2015 Priorities:

- Continue to evaluate ambulance revenue.
- Developing new performance based employee evaluations.
- Continue awareness training to reduce job related injuries.
- Review and evaluate sprinkler ordinance
- Develop fireworks ordinance.
- Active recruitment for call firefighters.
- Participate as needed in Regional Public Safety Study Group.
- Maintain staffing levels, training and equipment maintenance within budget expectations.
- Continually review organizational structure to ensure the MFD fulfills our mission with optimal efficiency.
- Encourage staff professional development.

Looking ahead:

- Will need to replace Ambulance #1 in FY16 budget. \$150,000 (re-chassis)
- Equipment replacement: hose, air bottles, small tools, etc. can be accomplished within budget.
- Concerns with City's hydrants water supply.
- Review of plans and training for weather related events.
- Building efficiencies: doors and windows.
- Possible solar installation on MFD roof.

Vehicle Status Report

Vehicle	Make/Model	Expected Replacement	Number of Service Years
Engine #1	2001 International	Replace FY21	20yrs.
Engine #2	2013 E-One	Replace FY38	25yrs.
Tower	1998 Sutphen	Replace FY23	25yrs.
Ambulance #1	2006 Ford	Replace (re-chassis) FY16	10yrs.
Ambulance #2	2010 International	(re-chassis) FY20	10yrs.

Proposed Fireworks Ordinance

The City currently does not have an ordinance for the sale and use of fireworks. The availability of consumer fireworks has increased the use within the City leading to complaints from some residents. Consumer (class C) fireworks over the years have become larger, more powerful, and in my opinion more dangerous.

Additionally, an NFPA March 2014 decision (attached) will allow the unrestricted sale, and storage of fireworks in the city.

I would propose an ordinance include the following:

- Fireworks shall not be used within 150' of any building, street, or public area.
- Fireworks shall not be used if all debris cannot be contained on the owner's property.
- Any person using fireworks in the City shall be at least 21 years old, and the consumption of alcohol or drugs shall be strictly prohibited.
- An on site inspection by the Fire Department shall be completed before a permit will be issued.
- All fireworks displays shall be completed by 11:00 pm
- A fireworks permit display request must be made at least 15 days in advance of the display.
- The sale or storage of fireworks shall be in an area properly protected by a sprinkler system per the NFPA.

After completion, and approval of an ordinance the Fire Chief will rewrite the Fireworks Display Permit to include the restrictions of the ordinance.

Other options for consideration:

- A strict no use within the City except by a licensed, insured, trained professional. (Ma. And Conn. have this law)
- Only allowed on specified days.
- Fireworks displays will only be allowed in a designated area.

Vt. Division of Fire Safety

In Vermont all Fireworks (not including sparklers and other novelty smoke devises) are illegal except for permitted, supervised public fireworks displays.

A permit for a display is required by the chiefs of police and fire departments of the municipality in which the display is to be held and shall be of a character, and so located, discharged or fired as in the opinion of the fire department shall not be hazardous to property or endanger any person or persons.



City of Montpelier, Vermont
"The Smallest Capital City in the United States"

DATE: April 9, 2014

TO: William Fraser, City Manager
City Council Members

FROM: Sandra J. Gallup, Finance Director

SUBJECT: Recommendation to extend the City's employee short term disability, long term disability and life insurance contract with Lincoln Financial Group by one year to May 1, 2016 so that we may benefit from their offer to hold premium rates over a four year period.

When we moved our short term, long term disability and life insurance to Lincoln Financial Group in May, 2012 we experienced substantial savings over our previous provider (UNUM – annual savings of \$34,000). The three-year contract guaranteed no increases in premiums for long term disability and life insurance for 3 years. The short term disability rates were guaranteed for 2 years (ending May 1, 2014) with a third year maximum increase of 15%. As Tim Ayer of Noyle W. Johnson, our broker, negotiates new rates for short term disability, Lincoln Financial Group is offering to hold our short term disability rates and long term disability/life insurance rates (no increases) through May 1, 2016. This is a one year extension of our three year contract with no increases in premiums over four years.

After two years of experience with Lincoln Financial we are pleased with both their service and products.



Montpelier
Community Justice
Center *restoring relations*

March 24, 2014

Dear Montpelier City Councilors,

Thanks for the interest in learning about major Montpelier Community Justice Center (MCJC) concerns or priorities for you to consider as you set your goals for the upcoming year.

The MCJC is interested in prompting dialogue and consideration about Montpelier becoming a “restorative city” – a city that adopts an intention to use restorative practices as the default throughout its systems. This designation has been adopted in Whanganui, NZ; Halifax, Canada; and in the cities of Hull and Leeds in the UK. After Kathy Fox, a researcher and professor of criminology at UVM, returned from New Zealand last year, where she had been on a Fulbright scholarship studying their criminal justice and restorative justice practices, she approached the MCJC with the suggestion that Montpelier would be an ideal city to incorporate widespread restorative practices and take on the identify of being a restorative city.

A restorative city emerges as the intention is set to use restorative practices not only in resolving adult and youth justice offending but also in schools, governance, the business community, neighborhood groups, etc. Ultimately the hope is to apply a restorative approach to as many areas of community life as possible in order to build a strong human infrastructure and ensure an engaged, vibrant and just community where all citizens, including the most vulnerable ones, feel a sense of belonging and ownership.

A restorative approach to civic life includes these and other elements:

- Resources for people that help them resolve conflicts and promote problem solving in creative ways that encourage feelings of fairness, safety, and inclusion;
- Opportunities for people to take active responsibility for actions that harm or rebuild relationships and to make choices that avoid infringing upon another person’s basic human rights;
- Practical and unique ways for advancing core democratic ideals, such as all voices being heard and treated with equal respect;
- Support for individuals, families, and the community to make important decisions about issues that affect their lives where professionals and government facilitate rather than impose solutions.

My hope is that the City Council is interested to learn more about the concept of a restorative city with the possibility of pursuing this designation as a goal. I would be happy to provide more information and come to a Council meeting to discuss this idea.

Sincerely,
Yvonne Byrd, Director

2012-13 Advertising Budget

2012 budget

#REF!	budget JULY	budget AUGUST	budget SEPT	budget OCT	budget NOV	budget DEC	budget JAN	budget FEB	budget MAR	budget APRIL	budget MAY	budget JUNE	15000 TOTALS BUDGET
Newspapers													0
Mont. Bridge					150								150
Seven Days						750							750
Stowe/Valley/Waterbury					200	200		200					600
Times Argus					100								100
Kids VT Magazine													0
World			235							235			470
Magazines													0
Exit 89			200						200				400
Vermont Life			200				200						400
Yankee	?												0
BTV (7 Days)		215			250			250			250		965
Vermont Weddings.com													0
Vermont Vows													0
RADIO													0
Nassau Broadcast/Frank													0
WCVT - Radio VT													0
WDEV - Radio VT													0
WNCS - The Point													0
WVPR - Public Radio					1000								1000
WGDR - Goddard													0
Graphic Design													0
Gowri Savoor	35				770				200				970
Brice McIntosh	?									200			200
Carrie Baker Stahler	35				125	300		200					625
Dana Dwinell-Yardley	25					250						200	450
INTERNET													0
ViewBoost App		360											360
website development													0
Printing													0
cap. Cash													0
brochures		3000											3000
Distribution													0
PP&D ??		3025											3025
Vermont Visitor Centers		925											925
MISC													0
GMTA Bus					65	65	65	65	65	65			325
	JULY	AUGUST	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APRIL	MAY	JUNE	14,715

went over.

**Holiday Decorating Committee Proposal to the
Downtown Investment District (DID) Committee
July 26, 2013**

Who We Are

The Holiday Decorating Committee was formed in January 2013 by members of the Montpelier Business Association. Its members are Pinky Clark (Delish), Liz Walsh (The Drawing Board), Claire Benedict (Bear Pond Books and Rivendell Books) and Karen Fox-Williams (Woodbury Mountain Toys). The committee was formed in response to what we felt were insufficient decorations in downtown Montpelier during the 2012 holiday season. Our goal is to make downtown a bright, sparkling place during the holidays in order to improve the appearance during a very dark month and attract customers to the many great shopping options in Montpelier.

Our Project & History

In the past, the holiday decorations were funded and installed by a combination of City, Montpelier Alive, and private efforts. The result of this is that some areas of downtown are consistently decorated (to different degrees), and some are not decorated at all. We hope to improve upon that with our project.

Previous to 2012 there has been a decoration over the intersection of State & Main Streets as well as a lighted holiday tree on the La Brioche patio. Without these decorations we felt that downtown did not have a well-lit or festive look. Our project will bring these elements back as well as add more, creating a bright, cohesive look throughout the Designated Downtown that will be eye-catching to pedestrians and drivers as soon as they enter the downtown core.

The area we have focused on is:

- State Street from Julio's/Asiana House to Main Street, both sides
- Main Street from The Drawing Board and the tattoo parlor to The Main Street Grill, both sides
- All of Langdon Street

In recent months we have met with the staff at the Church Street Marketplace for ideas and recommendations and found that immensely helpful in our planning. We have also been soliciting donations and estimates for lights, decorations, and labor costs. Where possible, we have focused on local vendors with pricing always our primary concern.

We had a number of ideas on our "wish list" for this project that are not in our proposed budget. We felt that they were not of primary importance but perhaps something the DID Committee can consider next year. They include wrapping

some of the larger existing trees around town in lights, expanding the area that we decorate to include the entries to town, and having a Phase 2 of lights after the holidays that would not be associated with the holidays but would bring light and brightness to the town during the dark winter months.

Why DID?

We feel that our project fits in perfectly with the goals and objectives of the DID. It will improve the streetscape of downtown Montpelier during a key shopping season. It has always been the objective of the Montpelier Business Association to make downtown Montpelier a welcoming and attractive place to shop during the holidays instead of on-line or in a mall. Our local retailers rely heavily on revenue from the holiday season to keep our heads above water during the more lean winter months. A bright and appealing streetscape will help to attract shoppers and keep downtown looking vibrant. Merchants and landlords who fund the DID will see a direct benefit when their storefronts are decorated. Furthermore, the project will be immediately noticeable to everyone who comes through downtown and will make a strong showing of how DID money is being used.

Budget Breakdown

1. Fresh Garland for 60 lamp posts	\$770
2. Artificial pre-lit garland for storefronts	\$12,780
3. Installation of all decorations <i>by Barrett's Tree Service of S. Burlington</i>	\$12,840
4. LED Lights for Holiday Tree at City Center	\$2600
5. LED Lights for Holiday Tree at Jacob's lot	\$1560
6. Repair Peace Dove ornament for intersection	\$200
TOTAL	\$30,550

Budget Explanation

1. This decoration is standard each year for downtown at the most affordable price we have found
2. This one-time investment will be able to be re-used each year.
3. This estimate is for full professional installation and de-installation services. We are currently consulting with the City of Montpelier to assist in installation in order to bring this amount down. At the time of submitting this proposal, we do not have a firm commitment from any City departments.
4. This decoration is standard each year for downtown. The tree is donated by Morse Farm
5. This is a 2013 addition to our downtown décor. It will brighten and make festive a usually undecorated part of the core downtown. Morse Farm will donate the tree.
6. This is an estimate; the price may come in lower

List of Existing Assets

Lights: we currently own LED lights from previous years which will be used on the holiday trees.

Dove: we are planning on repairing the “Peace Dove” intersection center piece used in previous years.

Storage: we plan to use local basements to store the pre-lit faux garland for merchants

Electricity: the project will use the City’s electricity for the lights on the street posts, holiday trees and the intersection center piece. The artificial garlands will be plugged into the buildings they are installed on and the electricity costs borne by those owners

Coordination: the Holiday Decorating Committee will coordinate with the purchase of supplies, installation and de-installation and storage. Montpelier Alive will provide volunteers as needed.

Promotions: Montpelier Alive will coordinate a press release and promotions around this new display. It will be featured as part of the general holidays as a reason to come downtown and support our local businesses.



Our Vision for Investing Downtown Improvement District Funds 2015 – 2020

Our Vision

Montpelier is already a special place to live, work, and visit. Our vision is to enhance the Montpelier experience, whether you are here for a day or for a lifetime. Toward this end, we will take significant steps to beautify the downtown and make it easier for visitors and new residents to navigate our classic New England city. These efforts will also serve to enhance the historical beauty that exists in Montpelier without putting further burden on the owners of these classic structures.

Within the next five years, DID funds will be used for streetscape improvements and marketing efforts. Specifically, Montpelier's street furniture will be upgraded; downtown will be decorated for both summer and winter months; and new signage will be installed to inform, direct, and advise. On the marketing front, DID funds will be used to increase our promotion of Montpelier to draw more visitors from Vermont, New England and beyond. This will be achieved through a professionally-led, collaborative branding process that will allow us to create and distribute targeted and strategic outreach and communications; and to implement a web/mobile portal that will become the main source of information about Montpelier (exclusive of its municipal functions).



Marketing activities will include not only the new tourism-oriented website reference above, but also printed brochures, paid and earned media, and promotional activities such as festivals and community and arts events. It is our vision that Montpelier Alive will become increasingly successful at drawing people to downtown Montpelier where they will enjoy all that our small city has to offer, including our locally-owned shops and restaurants, our historical downtown, our talented arts organizations and their many productions, and our natural assets such as Hubbard Park. As more people visit and enjoy Montpelier, the more vibrant our downtown will become.

Community Input

Montpelier Alive will present this draft vision and the resulting budget at a public meeting in April or May of 2014. A final vision statement and budget will then be presented for Council approval by May 31, 2014, allowing Montpelier Alive to order streetscape supplies so they are in place by the beginning of fiscal year 2015. Montpelier Alive will hold a public forum each year to revise this vision and finalize each year's budget request.

All meetings for focus area projects of the DID will be noticed in the *Times Argus* and on the bulletin board of City Hall. They will be held in accessible spaces, with agendas and minutes provided. Anyone interested in a personal notification should sign up with the Montpelier Alive ED.

Montpelier Alive can give updates to City Council quarterly, or as requested. Final project reports shall be available following the close of the fiscal year. Budgets and plans for the following fiscal year projects shall be approved by City Council prior to any work done.

The upcoming branding process will help to clarify each stakeholder's role in promoting Montpelier. Several public meetings will be part of this process, allowing for a well-informed open-minded dialog about our city.

Community and Arts Grants are an opportunity for ongoing community dialog. By creating a grant program structure, we hope to encourage and support creative new ideas from various stakeholders throughout the downtown community.

Implementation

Montpelier Alive's core workforce is a volunteer group of active citizens, led a volunteer Board of Directors, a paid Executive Director, and active volunteer committees. We draw on local talent as needed to support our projects and programs.

Working with downtown stakeholders, Montpelier Alive aims to improve the quality of the pedestrian experience, to support our existing businesses, improve the quality of life for our residents, and to encourage individuals and entities to invest in Montpelier. We have phased our approach over five years, starting with the foundations of creating a community brand in conjunction with The City of Montpelier, The State of Vermont, and regional and local stakeholders to ensure that everyone who will use the brand in the future has a voice in its development. We will also concentrate on improving upon long-neglected streetscape projects in our first several years. Once our branding strategy and streetscape improvements are established, we will focus on strategic and sustainable marketing initiatives that bring partners together, and capital improvements that are informative, well-designed, and built to last.

The Designated Downtown, the Downtown Improvement District, Montpelier's historic, civic, and business districts all overlap and will work in concert to focus on two main areas: physical environment and marketing and promotions. We will work with community groups to ensure that everyone who can benefit from our efforts has an opportunity for input.

Below are the two areas of focus for DID-funded projects through 2020, assuming that the assessment rate remains stable. Following that is a sample and best guess timeline for implementation. We assume an amount of risk—the unknown and unforeseeable opportunities or setbacks that may occur, possibly causing our timeframes to shift. We suggest that each year be detailed before approval, but only outlined before such time.

As existing goals are accomplished, new DID-funded projects may include programs not listed here.

Focus Area: Pedestrian Experience – Streetscape

To maximize our walkable downtown and truly advance Montpelier towards establishing itself as a bike-friendly and multi-modal city, Montpelier Alive will focus on the following tiered level projects:

Flower Plantings (Summer): Since adding 50 new planters in 2013, we will continue to plant them annually for the summer season, and look for opportunities to expand the impact of the program while keeping it sustainable. We are exploring other planting projects such as hanging

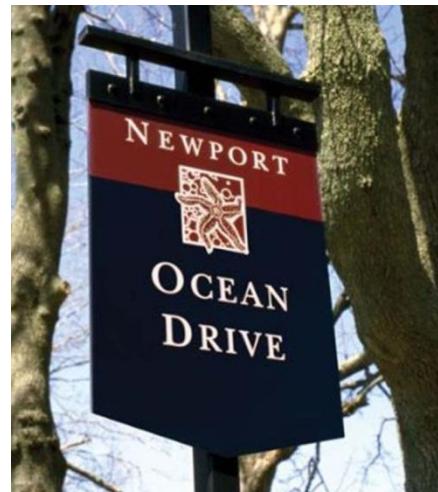


flower baskets and permanent garden sites within the downtown. Any new planting initiatives will likely take place in the latter portion of the 5 year plan (phased). Accomplishable within 5 years, this project is led by Montpelier Alive's Flowers Committee, in cooperation with the City of Montpelier's Department of Public Works and private landowners.

Benches (Summer): Within the first few years, we plan to replace worn benches with more durable benches, installed at existing and newly identified sites, so that the majority of the Designated Downtown has appropriate resting areas. The first three years require more purchases to make up for several years of no purchases, and the following years' funds are for maintenance. This portion of the project is led by Montpelier Alive's Design Committee, in cooperation with the City of Montpelier's Department of Public Works.

Holiday Decorations (Winter): We will continue to purchase holiday decorations during the entire five-year plan, and will display them radiating outward from the intersection of State and Main to eventually encompass the majority of the Designated Downtown. This project will also explore a transitional decorating scheme in the post-holiday season to continue welcoming visitors during those long, snowy months. Accomplishable within 5 years, led by the Montpelier Business Association, in cooperation with the City of Montpelier's Department of Public Works, the Montpelier Fire Department and private contractors.

Wayfinding (Year Round): Taking the creative assets resulting from the Montpelier Branding project, we plan to design a sign plan for downtown and the gateways into downtown to lead travelers into the historic/business district, towards points of interest, and to inform them of the amenities, assets, and activities currently available. We will phase installations of these new signs. The first year will be planning and design, with installation occurring mid to late in the phased plan. This will be a large capital project that we anticipate will be funded through a number of channels, including the DID assessment funds. Projects will be a mix of permanent signs ("Welcome to Montpelier"), and changeable temporary signs (event announcements). Planning, design, and initial installations are accomplishable within five years, and further installations will depend upon available funds. This project will be led by Montpelier Alive's Design Committee, in cooperation with the Department of Public Works and The State of Vermont.



Focus Area: Marketing and Promotions

This will consist of managing and maximizing our branded assets and strategic outreach.

Brand Identity: Once the branding identity, market study and brand strategy have been completed this year (Fall of 2014), we will establish “brand officer” duties to accomplish short and long term goals, including a sustainable long-term funding mechanism for marketing activities. Development will occur within the first year, and implementation throughout all 5 years. Led by Montpelier Alive’s Promotions Committee.

Marketing Strategy Implementation: Using the branding assets and following recommended outreach strategies, we plan to develop and distribute branded materials that inform and attract travelers to Montpelier. These can include, but are not limited to: tri-fold maps/brochures, advertising campaigns, welcome packets, and quarterly calendar announcements. In the first year, we will rebrand our existing campaigns, like the tri-fold brochure racked at Welcome Centers. The following years, other materials will be designed and distributed on a phased timeline. Other strategic campaigns may include video, radio, or digital productions or will be focused around events that attract visitors to downtown, like the Green Mountain Film Festival. This will be led by Montpelier Alive’s Promotions and Economic Development Committees.

Visitor’s Website:

Using the branding assets and accompanying market analysis, we will issue an RFP to create the phased design of a tourism website that will be inclusive of as many of our community sectors as possible: the arts, hospitality, retail, services, and leisure, among others. We anticipate that the first year will be planning and design with a limited use launch.

Subsequent years will feature enhancements as they are developed (i.e.: events calendar featuring events from local arts and venues, itinerary planning for local attractions, tour scheduling, and a video about downtown Montpelier to be shown on the website and at the Visitors Center). This project is intended to be open to all interested parties, and will be designed with sustainability in mind. This website project may outlast the five year timeline, depending on the functionality that the group wants to build (the more complex, the longer it will take). Led by Montpelier Alive’s Promotions Committee.



Community and Arts Grant Program: In order to encourage groups with exciting new ideas to develop and implement programs, festivals and events that promote and enhance the vibrancy of downtown Montpelier, we plan to set aside funding each year to grant to community and arts groups. Through this fund, events like Bike Town could take place without overstressing Montpelier Alive’s volunteer committees, and the grants would open opportunities to outside groups and collaborations. Guidelines will be developed to align with DID funding’s priorities. This will be led by Montpelier Alive’s Promotions and Festivals Committees.

Administration

Administration expenses are factored in on a per-project basis. Projected administrative expenses are defined as additional costs incurred above and beyond Montpelier Alive's regularly budgeted annual administrative expenses. Administration is anticipated to change based on the need to manage and support DID projects listed in this document. This may include drafting RFP's, coordinating stakeholders, comparative cost research, ordering, invoicing and billing, administrative approvals, coordinating volunteers, and reporting on efforts and outcomes.

Administrative costs for a tourism website in year 1 are higher than other projects because they are anticipated to include targeted in-depth interviews with various stakeholders in the downtown including The State of Vermont, inns and hotels, arts organizations and event organizers (like Lost Nation Theater and the Green Mountain Film Festival), restaurants, and businesses to ensure that the website serves the needs of all groups throughout downtown as well as collection and formatting of content from those various stakeholder groups.

Administrative expenses do not and will not include compensation of any volunteer or Montpelier Alive board member.

About Montpelier Alive

Montpelier Alive is an organization of business owners, professional people, political leaders and civic-minded community members dedicated to making Montpelier a vibrant and profitable place to live, work, visit, and do business. We cultivate valuable cultural, social and natural attractions to make Montpelier the best small capital in America.

Montpelier Alive is part of a network of designated downtowns across the state and country that strive to preserve this historic town by making a dynamic and diverse community center for residents and visitors alike. We strive to be the voice of the citizens and businesses of Montpelier.

Timeline

First Year Projects:

- Benches, Flower plantings, holiday decorations, wayfinding signage plan (implementation, if timeline allows)
- Establish brand officer, strategic marketing plans for the next five years, and plan and design Visitor's website, strategic marketing
- Community and Arts Grants

Second Year Projects:

- Continuation of: benches, flower plantings, holiday decorations, and signage implementation and installation
- Implement pre-identified marketing strategies and continue website project
- Community and Arts Grants

Third Year Projects:

- Continuation (if necessary) of benches & holiday decorations
- Continue plantings and sign plan installation

- Implementaion of marketing strategies and website project
- Community and Arts Grants
- Methods of sustainability for all projects should be developed by year-end.

Fourth Year Projects:

- Continuation (if necessary) of benches & holiday decorations
- Continue plantings and sign plan installation
- Continuation of marketing strategies and website project
- Community and Arts Grants
- All projects at this point should have strategies for sustainability

Fifth Year Projects:

- Sign Plan final installation, holiday decorations
- Continue marketing strategies and website in final phase, promotional video
- Community and Arts Grants
- At this point, we should be ready to evaluate our progress and make recommendations for future uses of the Downtown Improvement District funds

Measuring Success

Projects will adhere to the guidelines for DID set forth by the committee in September 2013, specifically considering the goals and priorities. Project reports shall be made available after completion, and where measurable data can be collected, they shall also be reported.

First Year Budget – Overview and Detail

Streetscape

Benches:	\$8,000
Flowers:	\$3,000 ¹
Holiday Decorations:	\$10,000
Wayfinding Signage:	\$10,000

Marketing and Promotions

Branding:	\$3,000 ¹
Marketing:	\$15,000 ²
Visitor's Website:	\$20,000 ¹
Community and Arts Grant	\$6,000

Total Expense: \$75,000

Benches: \$8,000 total for summer 2015

- Purchase: \$7200 - based on current estimate, about 5 benches
- Admin \$800

Please refer to recent invoice, attached

¹ To be spent only upon receipt of PILOT money.

² Only \$12,000 to be spent until PILOT money is received.

Flowers: \$3,000 (no changes) for summer 2015

- Purchase: \$2,700 - based on previous year's purchase
- Admin: \$300

Holiday Decorations: \$10,000 (additional purchases and contracted services) for 2014 holiday season

- Contracted Services: \$4,000, for installation and removal of tree, lights, and garland
- Purchase: \$5,000
- Admin: \$1,000

These numbers are supported in FY14 DID grant request, attached.

Wayfinding Signage: \$10,000 (new project) – FY15

- Contracted Services/Purchase: \$8,500 - this will depend on responses to RFP bids for downtown sign plan. This can also/alternatively be used as match for a grant that will add more funds.
- Admin: \$1,500

Community and Arts Grant: \$6,000 (new project) – FY 15

- Grants: \$5,000
- Administration: \$1,000

Brand Manager: \$3,000 (new project) – FY15

- Contracted Services: \$3,000 - based on current/existing contracts in other communities.

This should require almost no administration.

Marketing: \$15,000 (additional to programmatic marketing) – FY15

- Contracted Services: \$6,245 - graphic design and brochure distribution
- Media purchases: \$7,255 - This will be dependent upon recommended strategies resulting from the branding process, so this combination of contracted services + media purchases may be altered.
- Admin: \$1,500

Please refer to Montpelier Alive's FY13 Marketing schedule, attached.

Visitor's Website: \$20,000 (new project / Phase 1) – FY15

- Contracted Services: \$16,500, to include:
 - Project Manager: \$3,500
 - Designer: \$5,000
 - Developer: \$8,000
- Technology Costs: \$500 - ongoing / monthly expense
- Admin: \$3,000

It's possible these services are bundled in response to an RFP.

Please refer to quote from Siren Marketing+ Design, attached.

TOTAL DID EXPENSES FOR FY15 (projected): \$75,000

Potential Future Budgets

Second Year

Benches:	\$8,000
Flowers:	\$3,000
Holiday Decorations:	\$10,000
Branding:	\$3,000
Marketing:	\$15,000
Visitor's Website:	\$16,000
Community and Arts Grants:	\$17,500
Banners:	\$2,500

Third Year

Benches:	\$8,000
Flowers:	\$6,000
Holiday Decorations:	\$9,000
Branding:	\$3,000
Marketing:	\$15,000
Community and Arts Grants:	\$17,000
Visitors Website:	\$10,000
Banners:	\$7,000

Fourth Year

Benches:	\$2,000
Flowers:	\$8,000
Holiday Decorations:	\$7,500
Branding:	\$3,000
Marketing:	\$18,500
Visitors Website:	\$10,000
Community and Arts Grants:	\$17,000
Banners:	\$3,000
Promotional Video:	\$6,000

Fifth Year

Benches:	\$2,000
Flowers:	\$10,000
Holiday Decorations:	\$7,500
Branding:	\$3,000
Marketing:	\$22,500
Visitors Website:	\$10,000
Community and Arts Grants:	\$17,000
Banners:	\$3,000

You have received this Quote per your request from Belson Outdoors (belson.com).
 If you are having trouble reading this email? [View it in your browser](#) or go to
<https://www.belson.com/Secure/Request.aspx?OrderID=98879&Key=2809.07169410636>

Quote # WQ 98879

Here is the Quote as per your request. The 'Shipping' total has been applied.
 To place an order, simply click 'Submit Order Confirmation' below.
 Please print this page for your records.
 Customer Order Confirmation is **required** to process order.



111 North River Road
 North Aurora, IL. 60542
sales@belson.com

Toll Free: 1-800-323-5664
 Phone: 1-630-897-8489
 Fax: 1-630-897-0573

QUOTE # WQ 98879

Model #	Description	Lbs	Quantity	Unit Price	Unit Total
PB6-HER	Heritage Bench, 6' Recycled Plastic Resinwood With Powder-Coated Cast Aluminum Frame CEDBF (Cedar Seat/Back with Black Frame)	140	9	\$645.00	\$5,805.00
PB6-HERBACK	Heritage Bench, No Back, 6' Recycled Plastic Resinwood With Powder-Coated Cast Aluminum Frame CED (Cedar) Seat BF (Black) Frame	90	2	\$430.00	\$860.00

Subtotal	1,440	Subtotal	\$6,665.00
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☐ (Illinois Only) Tax	\$0.00
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Shipping	\$627.00
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Grand Total	\$7,292.00
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Customer Order Confirmation is required to process order.

Your Order will not be shipped without your "Order Confirmation"

Bill To:

Ship To:

First Name* Linn Perkins

First Name Linn Perkins

Last Name* Syz

Last Name Syz

Company Montpelier Alive

Company Montpelier Alive

Address* 39 Main Street

Address* 39 Main Street

Address

Address

City* Montpelier

City* Montpelier

State* VT

State* VT

Zip Code* 05602

Zip Code* 05602

Country USA

Country USA

Phone* 802-522-2200

Phone 802-522-2200

Fax

Fax

Email linnsyz@comcast.net

Email linnsyz@comcast.net

To inform the Montpelier Alive DID Budget for FY15, I've put together the following estimate for Phase 1 of the Montpelier Tourism Website. Our initial assumption is that Phase 1 will develop all of the architecture and CMS structure for a final website and will plan for eventual integration of more complex functions like integrated hotel and itinerary bookings, but the final product for this phase will be a fully functioning non-commerce website. These ranges assume the website contains roughly 10 pages, no e-commerce integration, an interactive map, event calendar and business listings.

Phase 1

Task	Party	Cost Range
Discovery & Information collection	Consultant, Project Mgr., E.D., Team	\$1,800 – \$4,600

This is your chance to survey members, gather the team for input, and brainstorm with the community to ensure that the website is serving their needs. This is an extremely important piece to ensure that design and development are serving your audiences in a specific and targeted way to make the most of the website consultant's design and development time. Depending upon the team, this can take up to 80 hours.

Website Design - look, feel and user interface	Consultant	\$6,000 – \$9,500
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Includes: integration of graphics and aesthetics as developed by Montpelier Branding process, layout of home page and subsidiary pages, identification of necessary photography and additional graphics, and revisions. Depending upon the team, this can take roughly 45 – 75 hours.

Website Development	Consultant	\$8,200 – 18,750
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The actual coding to create the site - Includes: identification of the best CMS system, Information architecture, wireframes and sitemap, revisions and refinement, CMS development, refinement, testing and launch. Depending upon the team, this portion can take anywhere from 70 to 150 hours.

Training	Consultant, Brand Manager, E.D.	\$500 - \$1000
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Ongoing Costs	Consultant	roughly \$50/ month
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There will be ongoing hosting and update/support costs for any website.

Total cost range estimate for Phase 1 of the Montpelier Tourism Website	\$16,500 – \$33,850
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These costs are subject to the functions of the website as laid out in the RFP and through the Discovery period.

Prepared by Carrie Baker Stahler, Siren Marketing & Design, March 6, 2014.



Montpelier Police Department

Memo

To: William Fraser, City Manager

From: Chief Anthony J. Facos

Date: April 7, 2014

Re: Police Department concerns and goals

PARKING: For the next three fiscal years, the Parking Division is planning on the staged implementation of "smart meter" technology. Due to initial costs and operational fees, it is anticipated that the department will need to phase-in a limited number of these meters at a time. The location of where the new meters will be installed shall be determined by parking usage and recommendations from the Parking Committee. Funding for this project will initially come from the anticipated revenue increase from parking rates. By the nature of their operation, the new meters should create additional revenue and staff efficiencies. This may accelerate the rate of expansion for new meter installations.

POLICE: The police station is at an age where there has been an increase in facility operational costs, specifically with its HVAC system. Other facility costs include carpet replacement, flood/moisture mitigation related to the foundation drains and waterproofing (back side by retaining wall). Concrete and front entrance area repairs as well as the potential redesign and replacement of stucco light post at base of the stairs.

Technology replacement/upgrades are a serious concern due to the fact that many needs cannot be identified at the time of annual budget preparations. Examples of tech systems include the video/audio recording system (which also provides monitoring and alarm response for City Hall), and physical access and security systems. Storage of digital media and our own computer system, supported by the City's IT staff, will require more challenges--both fiscally and for their strategic management.

DISPATCH: Thanks to a series of Homeland Security grants, MPD's communications system will be state of the art, and the core system should last for the next seven to ten years plus. This system should be completed and operational by August 1, 2014.

There is an identified need to add one full-time dispatch supervisor (non-union position), and the cost for this staff person will be covered by contractual revenue from Capital West. This will be a focal point of contract negotiations that will occur this calendar year. The current contract will expire at the end of FY15.

Montpelier Senior Activity Center
FY15 Goals and Priorities for Consideration of City Council

Drafted after receiving input from Advisory Board and Staff of MSAC

Prepared by Janna Clar, Department Head, 4/7/14

*First of all, as a reminder, here are our already published **FY 2015 Priorities for MSAC**, as listed in our FY15 Budget Summary:*

- *Maintain existing in-demand programming and develop new programming to address special needs such as those related to retirement-transition and living with dementia*
- *Maintain (through operating budget) and enhance (through capital projects funded by MSAC endowment) our facility for optimal functionality, enjoyment of members, and the use by the public.*
- *Maintain existing partnerships and facilitate new partnerships with community organizations in order to fulfill the mission of MSAC, including the possibility of adding new community sites for MSAC programming.*
- *Improve outreach to supporting towns and seniors that have not yet been reached by MSAC services and opportunities.*
- *Develop fundraising initiatives, to include long-term goals and exploration of options.*

New list of issues/concerns/priorities/purchases/policies/etc. for consideration, per the request of City Manager:

1. How can we make MSAC (and overall city services) as accessible and effective as possible to meet the needs of residents with memory loss and/or mental health issues.
 - a. We have already begun to discuss the mental health side in department head meetings, and CJC is considering hosting a roundtable or other event
 - b. MSAC is looking at programming to best serve the population with memory loss and their caregivers)
2. There are considerable inefficiencies in the way facilities/properties of the various departments are managed.
 - a. For example, when we at MSAC have plumbing or electrical problems, we are currently “on our own” to find, communicate with, hire, and pay contractors, as are most other departments, which costs more and takes up valuable staff time.
 - b. Might the City consider creating a facility management position and/or citywide contractor service contracts?
3. With the possibility of the Senior Center being merged in the near future with the Recreation Department, we are looking ahead to our future comprehensive facility needs.

- a. With the growing senior population and growth in senior center participation rates, we may outgrow our facility, and Rec has a tired facility. I believe there are already some feasibility studies happening (?)
 - b. Is it time to start talking about the future renovation of their facility and/or a new facility (purchase or construction) that will meet the recreational and programming needs of the city?
 - c. One option to consider including is a future facility is a City-owned (but not necessarily city-managed) indoor swimming pool that will be senior-friendly, family-friendly, a resource to our schools, accessible, etc. There is anecdotal evidence to suggest the city residents would get behind this and support it.
- 4. There is a great likelihood that we will be looking to establish a “Friends of MSAC” non-profit 501c3 fundraising organization, for which we will seek Council and City input and approval.
 - a. More and more as time goes on, the MSAC budget will rely on diverse revenue streams, including fundraising and grant-writing.
 - b. Long-term fundraising, planned giving, and future endowment savings will be better accomplished by a private group.
 - c. Establishing a non-profit arm will allow us to access certain funding streams only available to non-profits (some foundations and banks, for example, won’t fund municipal events/organizations).
 - d. We are also looking at establishing a reserve fund with the Vermont Community Foundation, which would provide investment management services as well as other services and benefits.



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Mayor John Hollar

City Council Members:

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Jessica Edgerly Walsh
Tom Golonka
Thierry Guerlain
Justin Turcotte
Anne Watson

William Fraser
City Manager

Jessie Baker
Assistant City Manager

MEMORANDUM

To: Mayor Hollar & City Council Members
From: William Fraser, City Manager
Jessie Baker, Assistant City Manager
CC: Erik Hoekstra and Larry Williams, Redstone
Re: 1 Taylor Street – Carr Lot Design Committee Role
Date: April 11, 2014

We propose the following role and decision making structure for the future development of 1 Taylor Street:

- ***What is the role of staff in guiding the implementation of this redevelopment project?*** The City Manager is charged with implementing the policy decisions of the Council. To that end the City Manager will negotiate all agreements and bring them to the Council for final approval. Additionally, the City Manager or his designee will staff the 1 Taylor Street Design Committee, provide city support to the public process, and coordinate all activities between the developer, the architect, the committee, and the Council.
- ***What is the role of the 1 Taylor Street Design Committee in advising the development process?*** On November 5, 2013 the Council appointed then called Carr Lot Design Committee to "guide design decisions for the Carr Lot Transit Center Project." The Committee will continue to meet biweekly to advise the developer, architect, project manager, and city on design decisions and the public process concerning the multi-modal transit center and the bike path project. The Committee will make recommendations on use and design. All final recommendations and designs will be presented to the Council for consideration including decisions on site use, final building and path designs, and selection of future contractors.
- ***What is the role of the Council in this redevelopment project?*** The Council will hear all final recommendations by the Committee and will authorize all signing of agreements and contracts. The Council will also have the final say on building use and design that comes from the Committee or the public process.

Public Participation Outline

The Carr Lot project and property presents a unique opportunity for a public/private partnership on a critical downtown site with exciting possibilities. To successfully capture these opportunities, a meaningful public participation process is highly desirable. The process is to be as inclusive as possible and productively structured. Participation by all, reinforced and facilitated by the design team, will ensure truly civic effort that is visionary and engaging. The following outline suggests a public participation process consisting of three major milestone steps. These steps start by taking a wide angle look at the community and Carr Lot and then in measured and predictable steps narrow down in focus to more detailed internal issues and opportunities.

Community Participation Event #1 – Community (week of April 21-25)

The goal of this event is to facilitate community input on macro-scale community issues and opportunities for the project. This event will allow community members to identify, then prioritize, important issues and opportunities for the property at a community context scale. This will be an input event, the design team will not present any ideas or designs. Issues to be discussed include (but not limited to) the following:

- * City gateway
- * Important view sheds
- * The property in context with surrounding properties
- * Linkages to the Capital Complex
- * Linkages to the downtown, especially pedestrian
- * Relationship to the Winooski River
- * Relationship to the bike path
- * Vehicular/mass transit routes
- * Resilient design strategies on a macro scale

Event format -

Attending community members will assemble at City Hall then be briefed by the design team facilitators on the participation goals and desired “take away” topics. Community members will then be broken down into groups of 8 - 10 people with one design team facilitator. Each group will take a walking tour of the City starting on Main St. going across the river to the corner of Main and Memorial. Then follow Memorial to the corner of Bailey Ave. Then loop around the VSECU to the bike path then follow the path to the Carr Lot. Then proceed to the corner of Taylor and State St. follow State to Christ Church then down through the “farmers market” parking lot back to the Carr Lot. During the entire length of the tour, the facilitator will prompt input from participants on the issues listed above and keep notes on all comments and summarize conversations. If weather permits, a de-briefing will take place outside at the Carr Lot to go over all notes, have a joint discussion and start to assemble the input into thematic categories along with a discussion on prioritizing these. If weather doesn’t permit, the debriefing will take place at City hall.

The event will end, the participants will be asked to provide contact information. Within a week the design team will then issue a written spreadsheet summary to all participants.

Community Participation Event #2 – Place (week of May 12 – 16)

The goal of this event is to facilitate community input on a site specific and immediate neighbor scale. This event will build on the resulting input from the first session and then allow community members to identify, then prioritize important issues and opportunities for the property at a narrower site and community place making scale. This will be both an input and feed back event, the design team will present a summary of the first event as well as community context level design options. Each design option will be reviewed by the participating community members to identify strengths and weaknesses of each. The design team will facilitate this discussion and make a noted list of each. New input issues to be discussed include (but not limited to) the following:

- * City gateway opportunities on a site specific manner
- * Response to important view sheds
- * Place making in context with surrounding properties
- * Internal place making
- * Linkages to the downtown, especially pedestrian
- * Relationship to the Winooski River
- * Relationship to the bike path
- * Vehicular/mass transit routes
- * Public – private use relationships
- * Resilient design strategies on a site specific scale

Event format -

Attending community members will assemble at City Hall then briefed by the design team facilitators on the participation goals and desired “take away” topics. As a whole, the community context design options will be presented and then discussed on an issues and opportunities basis. These will be posted and documented by the design team. These will be discussed as a group so all can hear a holistic view point from the entire participating cohort. Most likely this discussion will lead to a “culling” and or saving of ideas.

Community members will then be broken down into groups of 8 - 10 people with one design team member. If weather permits, each group will proceed to the Carr Lot to review the above issues on a site specific basis. The facilitator will take notes and brief each group with a summary at the end of the session. If weather does not cooperate, this part of the session will remain at City hall and the discussion will take place in the small groups over site plan drawings.

Within a week of the session the design team will provide and distribute a written outline summarizing the group session input data.

Community Participation Event #3 – Space (week of June 2- 6)

The goal of this event is to facilitate community input on a site and building specifics and scale. This event will build on the resulting input from the previous two sessions and then allow community members to identify, then prioritize important issues and opportunities for the property at a site community place making and architectural scale. This will be primarily a feed back event. The design team will present a number of design options building on the input from the two previous sessions. Each design option will be reviewed by the participating community members to identify strengths and weaknesses of each. The design team will facilitate this discussion and make a noted list of each. New input issues to be discussed to be (but not limited to) the following:

- * Internal place making
- * Mass transit circulation
- * Internal auto circulation and parking
- * Internal pedestrian circulation
- * Internal low impact design strategies
- * Building environmental goals
- * Relationship to the Winooski River
- * Relationship to the bike path
- * Vehicular/mass transit routes
- * Public – private use relationships
- * Resilient design strategies on a site detail and building scale

Event format -

Attending community members will assemble at City Hall then briefed by the design team facilitators on the participation goals and desired “take away” topics. As a whole, the community context/place design options will be presented and then discussed on an issues and opportunities basis. These will be posted and documented by the design team. These will be discussed as a group so all can hear a holistic view point from the entire participating cohort. As with the previous session, this will most likely lead to a “culling” and or saving of ideas.

Community members will then be broken down into groups of 8 - 10 people with one design team member. Each group will stay at City Hall to review the above issues. The facilitator will take notes and brief each group with a summary at the end of the session. We will then re-assemble to review each group’s notes and then have a facilitated discussion to identify which issues have conclusions and which need further study.

Within a week of the session the design team will provide and distribute a written outline summarizing the group session input data.

Post Public Participation Presentation (week of June 23 – 27)

Community Event #3 will be the last working participation. After the three sessions it is anticipated that all important issues will be covered. The public will have had meaningful input in the project and all voices that wanted to be heard will have been heard. The design will be realized in an exciting manner that builds on the confidence and enthusiasm of the public. As the public/private partnership design effort wraps up design, one more feedback presentation will be held. This intended to be both a celebratory event as well as one more chance for public feedback.

On Going Participation

Montpelier has a number of dedicated community volunteer groups who have a great deal of knowledge in specific experience areas. Groups such as the Conservation Commission, Tree Board, Bike Committee, Pedestrian Committee and the Parking Committee will be encouraged to participate in all the public participation sessions. We also anticipate reaching out to all of these groups (as well as DPW and others identified by the City) on an individual basis throughout the design process. Representatives from CCTA/GMTA/Greyhound that will use with the facility will be encouraged to be involved in all public participation forums.

A General Note on Public Participation

Our experience with major public – private community based developments has shown that a well designed public participation process can result in a true community building experience. The key is to be clear on the roles and intentions of each event and not let them result in “winners and losers”. The outlined process above is the result of our successful past experiences. Each of the sessions should last about 2 to 2.5 hours. This timeframe allows enough time to have through discussions, but yet not drag on. We want to keep the energy and enthusiasm levels high.

This is a suggested process and we anticipate working closely with the Carr Lot Committee to refine as a working team.



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Thierry Guerlain
Justin Turcotte
Anne Watson

William Fraser
City Manager

Jessie Baker
Assistant City Manager

MEMORANDUM

To: Mayor Hollar & City Council Members
From: William Fraser, City Manager
Jessie Baker, Assistant City Manager
Re: Quarterly Performance Report – FY14 Q3
Date: April 11, 2014

With the FY15 budget process, we amended how we presented departmental information to include performance measures. This effort was undertaken in order to improve how performance management is conducted in the City of Montpelier. With the FY15 budget, we committed to reporting on measures quarterly. We will also use these measures to make programmatic and resource allocation decisions internally. With this document we submit the first quarterly report of performance measures. Please keep in mind that these efforts are developing and evolving. As we, as a team, get more comfortable with using performance data to make decisions we will refine these measures.

Below we have outlined our performance management framework and our model for using performance measures. In the following pages you will also find departmental reports on the measures included with the FY15 budget. You will continue to receive this report quarterly.

Background

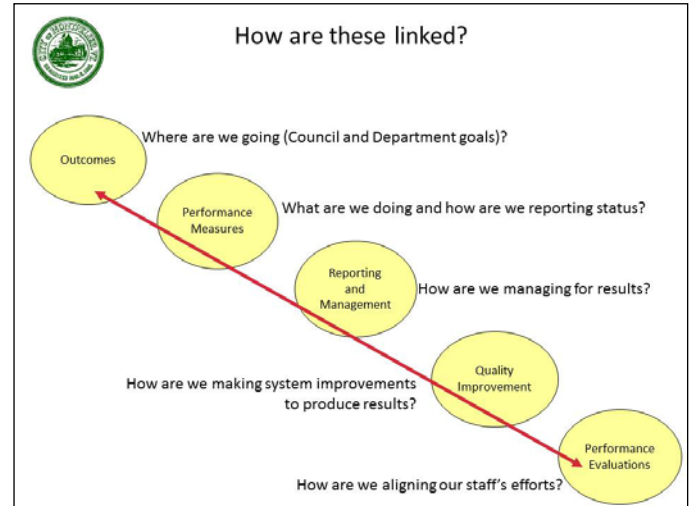
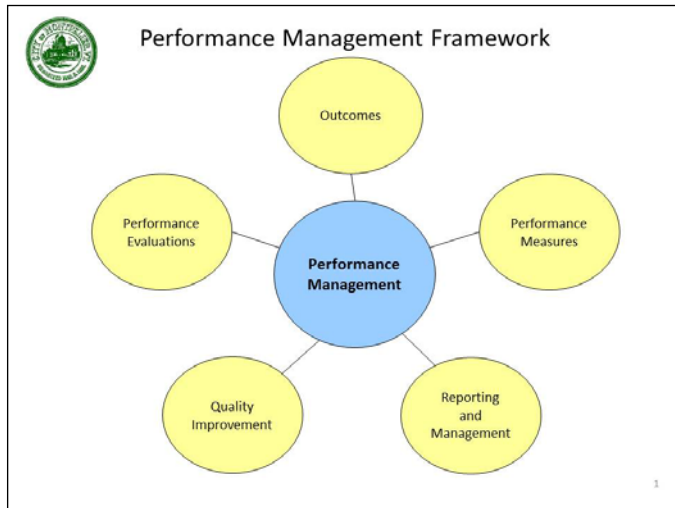
What is performance management and why do we do it?

Performance management is the process of using data to make decisions. To improve municipal functioning, it is important to identify measures that are meaningful, track the progress to achieving these measures, and use this data to make management decisions. Identifying and using measures also enables municipalities to share with the public key matrices demonstrating how tax payer dollars are used. In that sense, performance management is an accountability and communication tool and is used to manage our work.

Performance Management Framework

The City of Montpelier's performance management framework outlines how we align our efforts across the City to positively affect priority outcomes. The framework supports two levels of accountability:

- **Population accountability** – for which we as Departments, in conjunction with our city government and community partners, share responsibility for making change.
- **Program accountability** – for which our Departments are responsible for the performance that we believe, over time, will affect the population outcomes.



Why performance measures?

The development of performance measures and tracking of our success to deliver on performance measures will enable us to:

- Monitor and hold all accountable to achieving Departmental results and efforts to achieve our city-wide outcomes
- Support performance improvement at the program level
- Assist with the identification of areas for technical assistance and additional support
-

What do we mean by performance measures?

Definition: A measure of how well a program is working.

When thinking about the performance of a program think about:

- How much did they do?
- How well did they do it?
- Is anyone better off?

Or put another way:

Program Performance Measures		
	Quantity	Quality
Effort	How much did we do?	How well did we do it?
Effect	Is anyone better off?	
	#	%

The strongest performance measures are from the lower right hand box as they speak to a programs effect and quality or outcomes for Montpelier residents.



Performance Management Report: FY 14 – Q3: Assessor

FY 2015 Priorities:

- Cross training staff
- Continue interior inspections of properties not done in 2010 reappraisal
- Assist with implementation of new Water & Sewer rate structure
- Complete and file a Grand List for the upcoming year prior to the statutory deadline. This requires tracking of all ownership changes, new condominiums, new subdivisions, etc. It also involves review of zoning and building permits, making inspections, valuation of new properties and adjustment to the valuation of properties where improvements and other changes have occurred. In addition, annual personal property reports are requested to be filed by all business property owners. These reports are reviewed and assessed values are determined for each year's Grand List.
- Hear and decide grievances and prepare for and defend the City's property valuations in appeals to the BCA, State Property Tax Hearing Officers and Superior Court.
- Maintain and annually update the City's parcel maps to reflect new information from surveys, deeds, property owners, research and the like.
- Maintain the Assessor's page on the City's website to provide the most recent available information including individual parcel records, parcel maps, recent sales data and Grand Lists, assuming necessary funds are available.
- Provide prompt, courteous assistance to Property owners, potential buyers, real estate brokers, appraisers, surveyors and others. In most cases, requests for information will be answered within 5 business days.
- Coordinate the production of the City's Annual Report.

Departmental Goals and Performance Measures:

Goal or Outcome	Performance Measure	FY14-Q3	FY15 Target
Assessor's Office will provide excellent customer service			
	% of requests for information are answered within 5 business days	100	95
	% of residents indicate that the service they receive from the Assessor's Office is courteous	Pending data source	95



Performance Management Report: FY 14 – Q3: Cemetery

FY 2015 Priorities:

- Continue with Chapel renovation
- Finish old vault exterior renovation
- Complete survey of monuments needing repair
- Continue to repair monuments
- Renovation of both traffic circle plantings

Departmental Goals and Performance Measures:

Goal or Outcome	Performance Measure	FY14-Q3	FY15 Target
Maintain the City's cemeteries			
	% of work requests performed within 2 weeks of initial request	80%	In development
	% of accounts receivable/payable are completed within 14 days of completion of work	100 %	In development
	% of lawn areas mowed at least once within every two week period (including City green spaces)	N/A	In development
	% of capital projects finished and within budget	N/A	In development



Performance Management Report: FY 14 – Q3: City Manager

FY 2015 Priorities:

- Implement the goals of the City Council.
- Complete the full startup of District Heat Montpelier including the connection to the State's Biomass Heat Plant.
- In partnership with a development partner, start construction of the multi-modal transit center at 1 Taylor Street and complete the bike path extension at this site.
- Start construction on the bike path extension from Granite Street to Gallison Hill Road.
- Fully integrate performance management and employee evaluations to ensure that we are using data to make decisions.

Departmental Goals and Performance Measures:

Goal or Outcome	Performance Measure	FY14-Q3	FY15 Target
Advance the City Council's adopted goals and priorities.			
	% of city council goals for which progress was made	100%	100%
Information is provided in a timely manner to the City Council and the public.			
	% of agendas and packets released on the Friday before a meeting.	100%	100%
	% of City Manager's Reports released weekly	100%	100%
	# of hits to the City Manager's weekly reports on the website and Facebook	In development	In development
Provide excellent customer service to those who call or walk in.			
	% of calls returned from the City Manager's Office within 1 day of receipt	In development	In development
	% of residents who rate the service from the City Manager's Office as courteous and helpful (pending data source)	Pending data source	Pending data source
City services are delivered effectively and efficiently.			
	% of Departmental quarterly performance management reports reviewed within 30 days of the end of the quarter	In development	In development



Performance Management Report: FY 14 – Q3: FINANCE

FY 2015 Priorities:

- Successful Performance Measures evaluation
- Implement new Water and Sewer rates
- Develop District Heat customer billing and reporting systems that comply with the business plan

Departmental Goals and Performance Measures:

Goal or Outcome	Performance Measure	FY14-Q3	FY15 Target
Produce accurate quarterly and monthly financial reports that monitor revenues and expenditures, report on financial trends and issues and status of major projects			
	% of finance reports distributed on schedule * (some Capital Projects not done)	70%	100%
Compliance with Governmental Accounting Standards Board standards.			
	[Y/N] Favorable opinion by the annual auditors	Y	Y
Prepare the City's annual operating and capital budgets accurately and on time.			
	% of budget deadlines achieved	100%	100%
Staff members work toward continuance of performance improvement and professional services.			
	% of annual evaluations completed	83%	100%

*Quarterly reports have not been completed for Bike Path and 1 Taylor St because we do not have current budget information.



Performance Management Report: FY 14 – Q3: Finance – Information Technology

FY 2015 Priorities:

- Upgrade the City's wireless capabilities for the water meter reading hardware.
- Find a secure and affordable "Cloud Source" for Municipal and Public Safety Data.
- Maintain the proper levels for equipment replacement.

Departmental Goals and Performance Measures:

Goal or Outcome	Performance Measure	FY14-Q3	FY15 Target
Ensure the City's technology resources are functional			
	% of written reports of non-emergency user problems that are responded to within 1 business day	87%	75%
	% of lost connectivity and lost data problems that are responded to within 30 minutes	98%	95%
	% of collection, storage, security, integrity, access and recovery of electronic data.	None needed	95%
	% of the Internet Service Provider's advertised connectivity speed maintained on the City's enterprise networks	97.6%	90%
	% of uptime of the City's website	100%	90%



Performance Management Report: FY 14 – Q3: Fire

FY 2015 Priorities:

- Continue to evaluate Ambulance revenue with new billing procedures.
- Work with Assistant City Manager to develop performance based employee evaluation system.
- Complete new state required EMT requirements.
- Continue awareness training to reduce job related injuries, workers comp. claims.
- Maintain staffing levels, training requirements, and equipment maintenance within budget expectations.

Departmental Goals and Performance Measures:

Goal or Outcome	Performance Measure	FY14-Q3	FY15 Target
Provide for the public's safety			
	% of emergent request for service within the City that a fire apparatus or ambulance arrive at the callers aid within 3 minutes and 21 seconds of the dispatch time.	3:30	3:21
	% of days standard flood monitoring is performed	100%	100%
	# of fire safety and community prevention programs offered	Ongoing	Ongoing
	# of call force members	4	In development
Ensure a trained workforce			
	% of the fulltime firefighters that are certified at the level of Firefighter 1, and Emergency Medical Technician.	100%	100%



Performance Management Report: FY 14 – Q3: Montpelier Senior Activity Center

FY 2015 Priorities:

- Maintain existing in-demand programming and develop new programming to address special needs such as those related to retirement-transition and living with dementia
- Maintain (through operating budget) and enhance (through capital projects funded by MSAC endowment) our facility for optimal functionality, enjoyment of members, and the use by the public.
- Maintain existing partnerships and facilitate new partnerships with community organizations in order to fulfill the mission of MSAC, including the possibility of adding new community sites for MSAC programming.
- Improve outreach to supporting towns and seniors that have not yet been reached by MSAC services and opportunities.
- Develop fundraising initiatives, to include long-term goals and exploration of options.

Departmental Goals and Performance Measures:

Goal or Outcome	Performance Measure	FY14-Q3	FY15 Target
Montpelier and surrounding community residents age 50 years and above will have the opportunity to participate classes in Movement, Arts & Crafts, Humanities, and Games.			
	# of MSAC members from Montpelier	607 of 847 total	650
	# of MSAC members from surrounding communities 166 "Supporting" + 74 "Other"	240 of 847 total	280
	# of classes offered each week	43	45-50
Service provision through MSAC will be largely supported by volunteers.			
	# of volunteers (FYTD)	120	160
	# of volunteer hours served	Appr. 4500	5000

Goal or Outcome	Performance Measure	FY14-Q3	FY15 Target
Supporting town funding contributions will increase.			
	\$ collected in supporting town funding contributions	Budgeted \$3000 for FY14, actual is \$7800	Budgeted \$15,500 for FY15, actual is \$16,000
	% increase in supporting town funding contributions	280% over FY13 (\$2050)	105% over FY14
Montpelier residents age 50 years and above will benefit from being members of the MSAC.			
	# of Montpelier members	607	650
	# of Montpelier registrations <i>third quarter (Winter 2014)</i>	492 Q3	Min. 2000 for total FY15
	% of MSAC members from Montpelier	72% (607/847 as of 4/7/14)	70%
	% of class registrations by members from Montpelier	71% (492/691 for Q3)	70%
MSAC members will have access to trip activities that are self-supporting.			
	% of trips offered that are self-supporting	100%	100%



Performance Management Report: FY 14 – Q3: Parks

FY 2015 Priorities:

- Make a new handicap accessible composting toilet for the old shelter
- Create a rustic playground for Hubbard park and one for Blanchard Park
- Continue work reducing the number of invasive species in the parks and replacing with natives
- Replace leaning equipment shed with a more stable and functional version
- Railing for National Life trail steps in one section
- Improve looks of Blanchard Park entrance
- Railing for National Life trail steps in one section
- Develop a management plan for Stonewall Meadows Park
- Improvement to trail and signage on Nature trail

Departmental Goals and Performance Measures:

Goal or Outcome	Performance Measure	FY14-Q3	FY15 Target
Parks are well maintained			
	# of miles of trail groomed daily in the winter	7	5
	# of miles of additional trails groomed every second or third day	2	3
	# of hours of “volunteer” hours served	950	2000
	# of volunteers involved in maintaining or improving parks in Montpelier	450	200
	# of acres of lawns mowed weekly during growing season	N/A	3
	# of additional acres of lawns mowed bi-weekly during growing season	N/A	2
	Y/N Build railing for one section of National Life trail stairs	N/A	Y
	# of High use areas of parks clean or cleaned every day (shelters, tower...)	3	



Performance Management Report: FY 14 – Q3: Planning and Community Development

FY 2015 Priorities:

- Work with the Planning Commission to complete a rewrite of the zoning ordinance.
- Finalize the Bike Mater Plan and its execution.
- Provide support for the Carr Lot project as it is under construction.
- Continue to work on exploring housing projects such as the development of the upper floors of the Dickey Block.
- Consider convening an Economic Development group to develop and economic development strategic plan.
- Improve the team's repetitive loss certifications to improve flood insurance rates.

Departmental Goals and Performance Measures:

Goal or Outcome	Performance Measure	FY14-Q3	FY15 Target
Planning and zoning processes are implemented in a timely manner.			
	# of days to process administrative permits	3.75	<5
	# of days to process DRC/DRB permits	1 DRC/ 58+ DRB	1 DRC/ <30 DRB
	# of days to process building permits	13.32	<14
The Planning Department provides excellent customer service			
	% of residents who rate the service they receive from Planning and Community Development as courteous and helpful (pending data source)	Pending data source	100%
City efforts are maximized through the application for and receipt of other supporting funding sources.			
	\$ of new grant funds secured	\$22,500	
	# of loans processed	1	



Performance Management Report: FY 14 – Q3: Police

FY 2015 Priorities:

- Control crime, maintain safe streets, deliver broad base public safety services that promote a healthy and safe environment for the City of Montpelier.
- Continue to identify aggressive training goals that develop MPD officers in order to meet the policing needs of the city in an effective and efficient manner.
- Continue to work with the public to address both crime and quality of life issues.

Departmental Goals and Performance Measures:

Goal or Outcome	Performance Measure	FY14-Q3	FY15 Target
Crime is controlled in the City of Montpelier			
	Total # of reported offenses	133	In development
	Total # of individuals arrested	37	In development
	Total # of motor vehicle stops	438	In development
	Total # of incidents (both calls for service and proactive incidents)	2,079	In development
The MPD police force is trained and prepared			
	% of officers achieving training goals	100	In development
The community is supported through problem solving			
	Attending community and organizational meetings to address areas of concern, and to look at collaborative approaches for	<10	In development
	# of posts to social media	3-5 per week	In development



Performance Management Report: FY 14 – Q3: Public Works – Buildings

FY 2015 Priorities:

- Continue to work towards improving upon the energy efficiency of the buildings as started with our Capital Needs Assessment. The “low hanging fruit” are the window replacement at the DPW garage and insulation of the DPW garage.
- Continue to paint rooms/ areas of City Hall/ Public Works Garage to freshen up the offices.
- Continue to evaluate our facilities (mostly City Hall) for ADA accessibility improvements.
- Continue to maintain the City buildings to provide a clean and functional building and ensure for the long term preservation of the buildings.

Departmental Goals and Performance Measures:

Goal or Outcome	Performance Measure	FY14-Q3	FY15 Target
City Buildings are well maintained			
	% of energy efficiency projects completed.	100%	100%
	# of rooms painted	0	4
	# of ADA accessibility projects	1	0



Performance Management Report: FY 14 – Q3: Public Works – Fleet Operations

FY 2015 Priorities:

- To continue the excellence of maintenance for all City Departments vehicles and equipment by performing preventative maintenance and repairs of the City fleet.
- To continue to work with other divisions within the Public Works Department and within other Departments of the City of Montpelier to provide maintenance and guidance in building, equipment and vehicle repairs, replacement, etc.

Departmental Goals and Performance Measures:

Goal or Outcome	Performance Measure	FY14-Q3	FY15 Target
The City's fleet is well maintained and fully functional			
	% of preventive maintenance activities that occur within a week of the scheduled requirement	99%	100%
	# of days fleet vehicles are off-line due to maintenance issues	81	81
The Wastewater plant receives excellent service from fleet operations			
	% of time that Manager Plus is in use at the Plant.	100%	100%
	# of repairs processed at the Wastewater plant	2	8



Performance Management Report: FY 14 – Q3: Public Works – Streets

FY 2015 Priorities:

- In development

Departmental Goals and Performance Measures:

Goal or Outcome	Performance Measure	FY14-Q3	FY15 Target
City roads and sidewalks are well maintained			
	# [average] of hours after the end of a normal storm that roads are substantially open	4 hours	4 hours
	# [average] of hours after the end of a normal storm that sidewalks are substantially open	6 hours	5 hours
	% of potholes filled within 3 working days of being reported in winter months	95%	100%
	% of potholes filled within 2 working days of being reported in non-winter months	N/A	100%
	% of Construction & Access Permits executed within 3 days	90%	100%



Performance Management Report: FY 14 – Q3: Public Works – Sewer

FY 2015 Priorities:

- To continue to optimize the performance of the plant and plan for possible future changes to the Total Maximum Daily Load (TMDL) for the wastewater facility discharge.
- Optimize the performance of the collection system and increase the amount of sanitary sewer and storm drains cleaned as required by the discharge permit.
- Perform the CSO assessment and evaluation and install monitoring devices to meet the requirements of notification and quantifying overflow events.

Departmental Goals and Performance Measures:

Goal or Outcome	Performance Measure	FY14-Q3	FY15 Target
Maintain the functionality of the City's sewer system			
	% of lines on the City's sanitary sewer system that are cleaned and annually.	0%	25%
	% of catch basins on the City's drainage system that is cleaned and inspected annually.	0%	20%



Performance Management Report: FY 14 – Q3: Public Works – Water

FY 2015 Priorities:

- To continue to supply high quality potable water to the system customers.
- To continue to meet the water quality requirements of the permit to operate and work towards eliminating the situation with untreated users on the permit.
- Perform a hydraulic analysis of the water system as a requirement of the permit to operate.
- Prioritize and provide a schedule to the Water supply division of future water system improvements as required by the permit to operate.

Departmental Goals and Performance Measures:

Goal or Outcome	Performance Measure	FY14-Q3	FY15 Target
High quality water is provided to the City of Montpelier			
	% of regular inspections of the water source completed according to the schedule	95%	100%
	% of unidirection flushing performed to remove sediment according to the schedule	N/A	100%



Performance Management Report: FY 14 – Q3: Tree Management

FY 2015 Priorities:

- Continue and update tree inventory
- Work with Tree Board to develop contingency plans for ash borer effects on Montpelier's ash trees
- Seek grants to help leverage tree plantings all significant streetscapes
- Continue systematic tree pruning program
- Offer training to DPW, fire and emergency crews on handling fallen trees that are "under compression" to prepare city crews to be prepared and better coordinated in relation to potential storm events.

Departmental Goals and Performance Measures:

Goal or Outcome	Performance Measure	FY14-Q3	FY15 Target
Montpelier's trees are well maintained			
	# of tree related public injuries	0	0
	# of tree related damage to public property	0	0
	# of tree crew injuries	0	0
	# of hazard trees removed	6	15
	# of trees pruned	14	100
	# of trees inventoried	0	1000
	# of trees planted	0	30

April 11, 2014

Montpelier City Council,

The Montpelier Bicycle Advisory Committee has been in discussions with the Montpelier Public Works Department and, more recently, with the State of Vermont Bicycle & Pedestrian Program regarding the need for bicycle lanes along State Street. Based on these discussions and the input received, the Bicycle Advisory Committee recommends to Montpelier City Council that a bicycle lane be installed along State Street. The Advisory Committee prefers that this recommendation be implemented during the 2014 restriping of State Street and re-implemented during the 2015 roadway repaving/reconstruction project.

Specifically, the recommendation is for a striped bicycle lane along one side of State Street between Taylor Street/Governor Davis Ave & Bailey Ave Ext/Bailey Ave. The bicycle lane will be for one-way bicycle traffic going in the same direction as vehicle traffic. This addition of a bicycle lane will be accomplished by slightly narrowing both vehicle travel lanes along this same section of State Street. Along with allowing sufficient space for a bicycle lane, this narrowing of the roadway should also lead to traffic calming as motorists are more apt to drive slower on a narrower roadway.

Due to road width constraints, the Advisory Committee recommends that sharrows be utilized for the opposite side of State Street, along this same stretch of roadway. Sharrows are street markings to indicate to motorists that cyclists may be present and to share the road with them. Normally sharrows include an arrow indicating the direction of travel and a bicycle icon. The Advisory Committee prefers that these sharrows be painted close to or in the center of the westbound travel-way. This placement will place them directly in the line of sight of motorists, encourage cyclists to ride outside of the “door zone” of parked vehicles and allow the paint markings to last longer as they will be out of the vehicle tire tracks.

The Montpelier Bicycle Advisory Committee recognizes that separated bicycle lanes on both sides of State Street would be the ideal recommendation. However, this would only be possible with a significant reconstruction and widening of the roadway along the entire length of State Street. A similar reconstruction of the roadway is planned by the State of Vermont in front of the State House to accommodate diagonal parking. Unfortunately, widening of the roadway is not currently being considered for the remainder of State Street to accommodate safe, separated bicycle lanes. The Bicycle Advisory Committee appreciates any and all considerations given to a reconstruction and widening of the entire roadway for the purpose of installing a separated bicycle lane.

The bicycle advisory committee is very grateful for the valuable input received from the Montpelier Public Works Department, the State of Vermont Bicycle & Pedestrian Program and the Office of the City Manager during this review process. Thank you in advance for your consideration of this proposal.

Montpelier Bicycle Advisory Committee

**City Of Montpelier
Department of Public Works
Memorandum**

To: William J. Fraser, City Manager
From: Todd C. Law, PE, Director 
Date: April 10, 2014
Subject: New Truck #6

On April 10, 2014, we received a quote for a new Cab and Chassis from Clark's Truck Center of Jericho, VT. Staff recommends that the truck chassis be purchased under the State's Contract Bid system for a purchase price of **\$49,373.40**. The dump body, hydraulics and all related equipment will be put out to bid at a later date. The amount included in the FY2015 budget for this purchase is \$105,000.

We request that this item be placed on the Consent Agenda for the upcoming Council meeting, suggested wording for the Agenda follows:

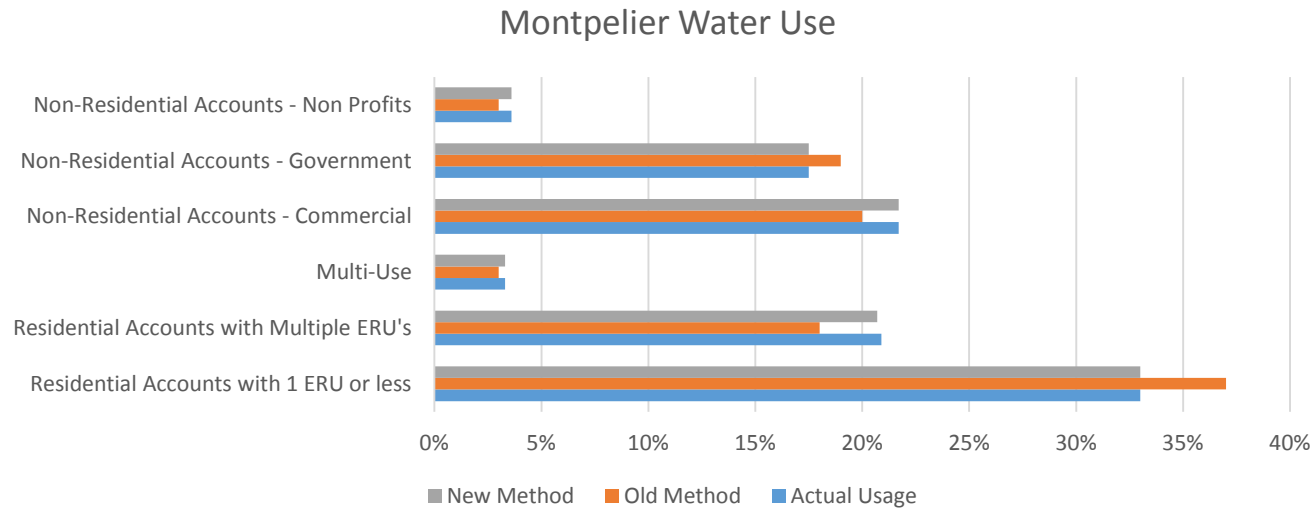
To accept the bid proposal from Clark's Truck Center under the State's Contract for the 2015 Model 7400 SFA dump truck chassis, for the price of \$49,373.40, and to authorize the City Manager to execute all documents related to this purchase.

If you would like further information, or if you would like to review the file on this purchase, please feel free to contact my office.

C: Eric Ladd, Equipment Supervisor

Montpelier Water Use Cost Allocation - Old Rates vs. New Rates

	Actual Usage	Old Method	New Method
Residential Accounts with 1 ERU or less	33%	37%	33%
Residential Accounts with Multiple ERU's	21%	18%	21%
Multi-Use	3%	3%	3%
Non-Residential Accounts - Commercial	22%	20%	22%
Non-Residential Accounts - Government	18%	19%	18%
Non-Residential Accounts - Non Profits	4%	3%	4%





City of Montpelier Water/Sewer Rate Structure For Fiscal Year 2015

The purpose of restructuring the City's water and sewer rates is to establish an adequate and equitable billing system for customers using a logical methodology in the calculation of the proposed rates' components.

Previous (Current) Rate Structure:

The previous rate structure is comprised of two components – a fixed "Readiness to Serve" charge and a usage (metered) charge. Conservation is encouraged with the lowest rates for customers using under 50,000 gallons per quarter and the highest rate for customers that use more than 250,000 gallons per quarter. This rate structure is producing challenges in user equity and financial management. Customers are not being charged based on the cost of providing services to them. The fixed charges are not high enough to cover the fixed costs (debt, taxes), especially in the Water Fund. Also, when users conserve water, revenues decrease without any notable reduction in expenditures causing a financial short-fall.

Proposed ERU Rate Structure: The new rate structure has three components - Capacity Rate, Fixed(Administration Rate), Commodity/Demand Rate.

The new rate structure is more equitable to all categories of customers using the Equivalent Residential Unit methodology for covering non-variable costs. The ERU is the average gallons of use per residential unit which is calculated over 48 months of billing data for both single family and multiple residential properties. This ERU is the basis for billing capacity and administrative costs (two of three components of the new rate structure).

The third component of the rate structure is metered usage. This component is the basis for billing commodity/demand costs that vary based on usage (water) and flow (sewer) amounts.

To establish these components, the water and sewer budgets are divided into three sections; Capacity costs, Fixed (Administration) costs and Commodity-Demand costs. Capacity costs are debt and taxes. Fixed/Administration costs are for managing operations, metering and billing. Commodity/Demand costs are related to the production/treatment, and distribution/collection.

Capacity and Fixed (Administration) charges are calculated based on the total number of ERU's. Commodity/Demand (metered) charges are calculated based on the total number of gallons used.

Customer Billing:

Customers will be billed for non-variable costs using their ERU. Meter readings will establish data for actual usage amounts that will be the basis of billing for variable costs.

Residential customers are assigned ERUs based on their property's number of housing units. A single family house or condominium unit has an ERU of 1. A multi-unit residential property is assigned an ERU by multiplying the number of units by .7. (See chart below) Non-residential commercial properties will have ERUs which are calculated by dividing their historical usage by the average usage of a single family residential unit.

Utility bills will continue to be on a quarterly (three month) schedule.

Proposed Equivalent User Units

Classification	Equivalent User Unit
Single-Family residence (including Condos)	1
Mobile Home	1
Apartment	0.7
Accessory Apartment to Single-Family Res.	0.5
Residential – Utility Use only	0.25

Residential Properties - Dwelling/Accessory Apt = 1.5 ERU's

Dwelling/5 Apts = $(1 + (5 * .7)) = 4.5$ ERU'S

Apartment Building/6 Apts = $6 * .7 = 4.2$ ERU's

Montpelier Elderly Housing (Gary Home) = 50 ERU's

Central Vermont Medical Center info is not in the calculations

WATER RATE STUDY FOR FY15 RATES
 JANUARY 29 2014 CVMC OUT-CALCULATED AS REV ONLY
 7 FOR APARTMENTS
 WATER FUND FY15 BUDGET with 1 Cent Benefit Charge
 NUMBER OF ACCOUNTS BY CATEGORY & CODE

	TOTAL	%
Residential Accounts w/1 ERU OR LESS	1,983	69%
Residential Accounts w/Multiple ERU's	394	14%
Residential-Utility	6	0%
Multi-Use Accounts (Res & NonRes)	53	2%
Non-Residential Accounts- Commercial	345	12%
Non-Residential Accounts-Government	61	2%
Non-Residential Accounts-Non Profits	47	2%
TOTAL ACCOUNTS	2,889	

ERU Calculation for non-residential:	
Total 2 year usage of Single Residential	137,564,000 gallons
Total 2 year usage of Multi-Residential	87,630,000 gallons
	225,194,000
divided by Total number of Residential Units	3157.45
Two year ERU gallons	71,321 gallons

RECALCULATED NUMBER OF ERU'S BY CATEGORY & CODE

	TOTAL	USAGE/YR Gallons	Usage %	NEW RATES Billing %	OLD RATES Billing %
Residential Accounts w/1 ERU OR LESS	1,949	33.3%	32.9%	33%	37%
Residential Accounts w/Multiple ERU's	1,208	20.6%	20.9%	21%	18%
Residential-Utility	2	0.0%	0.0%	0%	0%
Multi-Use (Res & NonRes)	193	3.3%	3.3%	3%	3%
Non-Residential Accounts- Commercial	1,274	21.7%	21.7%	22%	20%
Non-Residential Accounts-Government	1,028	17.5%	17.5%	18%	19%
Non-Residential Accounts-Non Profits	206	3.5%	3.6%	4%	3%
TOTAL ERUs	5,860	per year	209,171,450		
		per qtr	52,292,863		

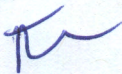
Res

	FIXED COSTS W/DEFICIT REDUCTION	CAPACITY	COMMODITY-DEMAND	TOTAL
ANNUAL COSTS	311,817	879,467	1,040,048	2,231,332
QUARTERLY COSTS	77,954	219,867	260,012	557,833
DIVISORS-W/ERU	5,860	5,860	52,293 per 1000 gal	

NEW RATES PER QUARTER

	FIXED RATE =Fixed Costs/Total ERUs	CAPACITY RATE= Capacity Costs/Total ERUs	COMMODITY- DEMAND RATE = Commodity- Demand Costs/ERUs)
	\$ 13.30 fixed per Qtr	\$ 37.52 fixed per Qtr	\$ 4.97 per 1000 gal

**City Of Montpelier
Department of Public Works
Memorandum**

To: William J. Fraser, City Manager
From: Todd C. Law, PE, Director 
Date: April 10, 2014
Subject: Digester Flare at Wastewater Treatment Plant

The 20-year-old digester flare at the Wastewater Treatment Plant has become unrepairable and obsolete. We solicited quotes from the only three companies in the US to produce this specialty equipment, and after careful review staff recommends that the quotation from Evoqua (a division of Siemens) in the amount of **\$20,583** be accepted.

We request that this item be placed on the Consent Agenda for the upcoming Council meeting, suggested wording for the Agenda follows:

*To accept the quotation from Evoqua Water Technologies of Waukesha, WI, for a latest model waste gas burner for the price of **\$20,583**, and to authorize the City Manager to execute all documents related to this purchase.*

If you would like further information, or if you would like to review the file on this purchase, please feel free to contact my office.

C: Bob Fischer, Chief Operator

**City Of Montpelier
Department of Public Works
Memorandum**

To: William J. Fraser, City Manager
From: Todd C. Law, PE, Director 
Date: April 10, 2014
Subject: Influent Pumps at Wastewater Treatment Plant

Due to the failure of one of two plunger pumps at the WWTP, leaving us with no backup for primary sludge pumping, we solicited quotes from three companies to replace the faulty pump. Staff recommends that the quotation from Penn Valley Pump Co. in the amount of **\$22,440** be accepted. The WWTP is already equipped with eight pumps from Penn Valley and staff has been very satisfied with their operation.

We request that this item be placed on the Consent Agenda for the upcoming Council meeting, suggested wording for the Agenda follows:

*To accept the quotation from Penn Valley Pump Co., Inc. of Warrington, PA, for a latest model double disc plunger pump, for the price of **\$22,440**, and to authorize the City Manager to execute all documents related to this purchase.*

If you would like further information, or if you would like to review the file on this purchase, please feel free to contact my office.

C: Bob Fischer, Chief Operator