

REGULAR MEETING OF THE AGAWAM CITY COUNCIL

Minutes dated August 1, 2011

President Rheault – Good evening ladies and gentlemen. Welcome to the August 1st Council meeting.

Item 1. Citizen's Speak Time

President Rheault – We have a few citizens wishing to address the Council. First is Richard Cohen.

Richard Cohen – Good evening. Richard Cohen, 47 Alexander Drive, Agawam. Ladies and gentlemen of the Council, as Mayor and Chairperson of the Agawam School Committee, I am here tonight in support of the passage of the Supplemental School Budget presented before you this evening to be voted on. As you are aware, as Mayor I submitted a balanced budget to the Council that I believed met the needs of our community. The Council with my concurrence amended that budget to cut \$250,000.00 from the town side and place that funding into the school side budget with an 11-0 vote, unanimously. As for town side reduction, I want to assure you that I have met and will continue to meet regularly with town department heads and monitor the appropriations given the cut made by the Council. In closing, I continue to be in agreement with the Council in putting the Agawam School system as our town's number one priority. With the passage of the Supplemental Budget this evening, our class sizes will remain low; we will return many para-professionals, clerical positions and the Police Resource Officer at the High School. Regarding the issue of fees, on August 16th the School Committee will meet to discuss the various fees proposed by the previous Superintendent and her budget. I am hopeful that the Policy Sub-Committee, the School Committee, Principal and Interim Superintendent will report to the School Committee that for example fees for the National Honor Society and band will NOT be necessary. The next speaker in regards to this issue is Mr. William Sapelli, Interim School Superintendent of Schools who will outline for you what he and the School Committee have planned for the use of the Supplemental Budget before you this evening. Thank you.

President Rheault – Thank you. William Sapelli?

William Sapelli – Good evening. William Sapelli, 427 Meadow Street, Agawam. I would like to take this opportunity to thank the Council for the unanimous vote on approving the additional of \$250,000.00 to the FY12 budget on June 20th. By voting in this manner, you have demonstrated your continued philosophy of supporting education for the Town of Agawam and we greatly appreciate that. In presenting the FY12 Supplemental Budget proposal, I believe that said proposal is reflective of the concerns that were voiced by you during that meeting on June 20th. As we understand it, those concerns were reducing student/teacher ratios – class size was a big concern that evening I heard from you. Also there was a big concern about restoring positions that were cut – paraprofessionals, secretaries and the like and the third major concern was reinstating the

Resource Officer at the High School. Well, as you can see from the budget proposal that was submitted to you, we have accomplished the following. First and foremost, reinstating one first grade teacher at Granger School which will reduce class sizes from 26 students in the class to 18, also reinstate one kindergarten teacher as well as one paraprofessional at Robinson Park School reducing class size from 25 to 19. We also are reinstating one K teacher and one K paraprofessional at Phelps School which will reduce class size from 24 to 18. Now I know that you're aware that the class sizes have gone up due to reductions over the past several years and in the past four to five years we haven't replaced several teachers especially at the elementary level who've retired. At one point, we had four teachers at each grade level – four kindergarten teachers, four first grade teachers, four second, four third and fourth grade teachers at every elementary school. We're down in most schools to three teachers and with these cuts we're actually going to two first grade teachers at Granger. So granted the enrollment has gone down over the last several years but we did not replace teachers that retired over the last four or five years and now with this cut as well, we were gonna have class sizes that were getting 25 and greater. We tried to keep at least at K and One the numbers to twenty per class and that's gone up to 25 if we didn't have this money reinstated and these positions reinstated so that was a big help. We also reinstated one paraprofessional in an integrated classroom at the Early Childhood Center. We reinstated two itinerant pool para's for IEP main coverage district-wide. We reinstated the SRO at the High School and the secretaries you'll see in your proposal – we had given notice to three secretaries of lay-off and since June when this happened, we've had a resignation at Granger, a resignation at Phelps and we posted those in-house so we're gonna replace those positions with two of those three people and as you also saw in your proposal the creation of the clerical person at the Central Office for fees and other responsibilities and I believe it was Councilor Letellier that brought up the fact that there was monies in that before and after school account and we explained how restricted we are in spending that, it has to go directly back to that particular account. So this position will be funded by that particular account and it will also cover all of the benefits as well so that will not be coming out of the \$250,000 nor will those two secretaries obviously at Granger and Phelps. We put that in there just to show you because your concern was replacing the secretaries that were laid off – that's not affecting the \$250,000 – that happened because of the two resignations and because of the creation of this position which is coming out of funds not school budget funds but budgeted funds from that before and after school program that are generated that way. So that's why that is in there as an aside on the bottom of that sheet. So once again I want to thank you for your careful analysis and your thoughtful deliberations resulting in this positive outcome for all of Agawam students and it is my hope and recommendation that the Supplemental Budget proposal will be approved as presented and once again I thank you for that unanimous vote on June 20th for that \$250,000.00. It's greatly appreciated. Thank you.

President Rheault – Thank you Bill. Sandra Stasiowski?

Sandra Stasiowski – Yes, thank you. Sandra Stasiowski, 30 Plantation Drive. I'm a member of the Board of Manager at the Plantation Condominiums and I'm here on behalf of the Plantation Condominiums especially the people that signed the petitions that I'll

submit tonight. I would like to ask for your help with a very dangerous situation that occurs most Fourth of July's, most recently on July 30th. There are people on the street next to us, on Hearthstone Drive, Hearthstone Terrace, who have holiday parties and while they're allowed and while we called the police about them that's not why I'm here. I'm here about a dangerous situation. They set off fireworks over our property, over two of our buildings. This year, the sparks, the pieces of the fireworks were landing on the roof, roofs of both of our buildings. We repeatedly called the police. No one ever came. One of the residents called 911. No one ever came and we would like to know what can be done to have this not happen again. Out of the last five years, they've had parties for the past three years – three of the five years – and yes, it is loud and disruptive but what we are most concerned about is the danger of fire when these materials land on our property. I know they were also landing on Corey Colonial over their clubhouse and over their pool but I'm here representing Plantation and I will say that I did call the police multiple times as well as other people. I emailed both the Fire Chief and the Mayor the day after and received no response from either one so I don't know what else to do about this so I'm hoping that maybe you can help us out with this. Thank you very much.

President Rheault – Thank you.

Item 2. Roll Call

President Rheault – Barbara please call the roll?

ROLL CALL – 9 PRESENT, 2 ABSENT (Councilors Cichetti and Mineo)

President Rheault – Nine present, two absent, we have a quorum. Councilor Cichetti is out ill and Councilor Mineo said that he's going to try his best to get here - he's detained a little bit.

Item 3. Moment of Silence and the Pledge of Allegiance

President Rheault – Regular Council minutes –

Councilor Perry – Moment of silence and Pledge of Allegiance?

President Rheault – I'm sorry. I've got it circled here. Please rise for a moment of silence and Pledge of Allegiance.

Item 4. Minutes

(a) Regular Council Meeting – June 20, 2011 (Tabled 7/5/11)

President Rheault – Thank you Dennis. Now, the June 20th Council minutes – they are on the table. Moved to take them off the table by Councilor Perry, seconded by Councilor Messick, all those in favor? Opposed? Any corrections or additions on the 20th? All those in favor of the 20th acceptance? Opposed? Unanimous.

(b) **Regular Council Meeting – July 5, 2011**

President Rheault – Moved by Councilor Walsh, seconded by Councilor Rossi. Any corrections or additions? If not, all those in favor? Opposed? Councilor Simpson abstains.

Item 5. Declaration from Council President

None.

Item 6. Presentation of Petitions, Memorials & Remonstrances

(a) **Resolutions**

1. **TR-2011-39 - A Resolution Authorizing a Loan Order for the Purchase and Installation of a new town wide Telephone System (1/2) (Mayor)**

President Rheault – I have to relinquish the Chair for a potential conflict with one of the vendors and Councilor Rossi will take over.

Vice President Rossi – Thank you Council President Rheault. So moved by Councilor Letellier and seconded by Councilor Messick. Discussion? Any discussion? Seeing none, Barbara, please call the roll? I'm sorry?

Councilor Letellier – I'm sorry. Eight votes are needed because it's a loan?

Vice President Rossi – Yes, eight votes.

Councilor Letellier – Do we have eight councilors? Yup, okay.

Vice President Rossi – All set.

ROLL CALL – 8 YES, 0 NO, 2 ABSENT (Councilors Cichetti and Mineo), 1 ABSTENTION (Councilor Rheault)

Vice President Rossi – The motion is passed. I will now turn the Chair back over to Council President Rheault.

2. **TR-2011-42 - A Resolution Adopting a Fiscal Year 2012 Supplemental Budget of \$250,000 for the Town of Agawam (Referred to Finance Committee) (Mayor)**

President Rheault – Moved by Councilor Simpson, seconded by Councilor Magovern. Report from the Finance Committee?

Councilor Walsh – Yes, we met tonight at 6:30 so we called the meeting to order. Present were Councilors Rossi, Perry and myself and also Cheryl St. John and Laurel

Placzek and William Sapelli were in attendance also. We had a discussion and Councilor Rossi had indicated that he did have some problems with some of the items such as User Fees and hiring a secretary to basically collect those fees. Also there was a lengthy discussion on decreasing enrollment in the school versus class sizes and Mr. Sapelli basically discussed over the last five years the fact that yes we have had some declining enrollment but we also have had a reduction in the teaching force to go along with it during that period of time. I also brought up the point that by adding the \$250,000 to the budget – when we looked at the budget that we had been presented with on June 20th, it was in balance and basically in agreement with the schools – they weren't happy with it but they did agree that the budget was workable and my position here is by adding the \$250,000 to the budget for this year, this will now be part of the base and future years so effectively this could be adding 2.5 million dollars over the next ten years because of this one supplemental budget so we took a vote at the meeting and the recommendation was 2 – 1 to recommend to the Council NOT to vote favorably on the Supplemental Budget.

President Rheault – Thank you. Any further discussion? The light is hidden by the water pitcher. Councilor Letellier?

Councilor Letellier – Yes, thank you. I apologize for not getting here on time for the Finance Committee meeting. I think that Interim Superintendent Sapelli did a nice job in his five minutes to explain the decrease in enrollment that has resulted in the larger class sizes and first of all, the less number of First Grade and Kindergarten classes but the increased enrollment. I think this is an excellent opportunity for us to get these enrollments under 20. Also if you've been following the state budget being passed, because of the additional municipal funds that were put back into the state budget, the town is going to be getting at least this \$250,000 if not more back, it appears from the state. So that will allow us to put money back into Reserve or whatever the Mayor feels is appropriate so I think that the funds that we votes *unanimously* – it shocks me that a month ago we unanimously agreed this was important and now we don't think it's important but nonetheless I'm not concerned for two reasons. One, if you look at the amount of Free Cash of unspent departments that's being funneled over to next year and when you add that to the additional funds that are coming from the state now that the state has passed the budget, I'm not concerned about the impact of this ten years from now – I'm concerned about the impact from this in September and that's what we're here to vote on – what's gonna happen in September in these classrooms. So I would strongly urge you to pass the Supplemental Budget.

President Rheault – Thank you. Councilor Magovern?

Councilor Magovern – I wish that the Teachers' Union was as concerned about the students of Agawam as the City Council was last month at our meeting. We voted unanimously to pass this budget because I think that the students were totally shortchanged with this last budget. To have class sizes of 29, 25, 24 in today's day and age, I think is rather inappropriate in our present school system. When I went through the Agawam schools we had larger class sizes than this but we didn't have all the special needs children being mainstreamed into the regular classrooms and I think that Agawam

has earned a reputation in the Valley for having excellent education for autistic children, special needs children and they are being mainstreamed and I think that we do need the teachers' aides, the teachers' assistants in these classes. The \$250,000.00 that we passed or we hope to pass this evening as Councilor Letellier said I think will come back to us in state aid but I don't think we have any choice but we have to go for it. I don't think this is gonna be a standard policy. I don't think this is gonna be added in for next year. This is a one time only situation that we've had to do because of the situation as I said earlier where the Teachers' Union just refused to reduce a one percent raise and through some of their younger teachers under the bus. I know it sounds harsh but I feel very strongly about this that they did not cooperate with the School Board. I don't want to see taxes go up in this town and I really feel that even though that may be the problem, that education is more important to our students than not passing this budget. Thank you.

President Rheault – Councilor Bitzas?

Councilor Bitzas – Yes, Mr. President. I just don't understand now at the last hour to come and take away the \$250,000.00 that all of us strongly suggested to the Mayor to shift from the town to the schools. We should put a leap of faith to the School Committee, to the Superintendent, the administration and I know we don't all agree what those \$250,000.00 should go but at least we have a School Committee, we trust them and the Superintendent of Schools and the principals and the whole administration, they did a good job to allocate those monies to have about five teachers, three paraprofessionals. I'm happy that we are going to have no fees, some fees, I'm against any fee. I think that parents they pay enough money, the taxpayers, and the kids should be going to school and be awarded for the excellence but not be punished by paying fees to join the Honor Society etc. etc. So I will suggest to the Committee, I respect their voice, their opinion but we cannot please everybody, everybody have a different a opinion where the money goes to but unanimously we vote in favor to give the school's the \$250,000.00 all of us, eleven votes, it would look awkward now to say okay we take it back. I hope you change your mind and think about it, have some more debate and I respect your opinion. I'm not gonna tell you what to do but I'm going to stick with the original opinion and decision to give the \$250,000.00 as we voted 11 – 0 two weeks ago. Thank you.

President Rheault – Councilor Walsh?

Councilor Walsh – Yes, I think I would disagree that we voted to increase \$250,000.00 to the school last month. Our vote was on the town budget of which we are only allowed to cut not add and we voted to cut \$250,000.00 from the Reserves. That was the extent of our vote last month so it's not necessarily related to the Supplementary Budget we now have. It was the amendment to cut the Reserve and to then finally approve the budget we had for the town but I still feel that in contrast to Councilor Magovern that this will be part of the base budget next year and every year thereafter. There is no way that they're going to say thank you for the bonus of \$250,000.00, we will now deal with an increase over our base budget excluding that. Now the \$250,000.00 will be part of the base budget and as far as I can tell unless the budget gets cut in future years, over the next ten

years it's gonna cost you \$2.5million and I see no way around it so that's my opinion. Thank you.

President Rheault – Thank you. Councilor Messick?

Councilor Messick – As far as the mechanics of the funding and how that occurred, I think you're quibbling, with respect to Councilor Walsh, in describing the mechanics of how we did that. Yes, we cut the town side but we very clearly stated and we were very clearly heard, Superintendent Sapelli just very clearly enumerated what we sat up here and said – reduce the class size and for \$250,000.00 which is a drop in the bucket on the school side and the whole town budget, that's a tiny amount of money to have that much positive affect especially in the kindergartens, especially in the elementary schools, especially reinstating teachers and personnel who are absolutely necessary to run these schools in the way that have been run which is so satisfactory to everybody – we keep saying what stellar schools we have – we want to keep these schools stellar. We're gonna on occasion have to look at their budget and have to say you know what you need a little more money here. We can always say in the future, you know what? We're gonna have to cut something because we're really in dire straights but this is a tiny amount of money and for us to have unanimously sat there and made that transfer, made that cut in the Reserves and then sit here now and say we don't recommend it, we're not gonna do it? That's bullshit!

President Rheault – Well! Councilor Rossi?

Councilor Rossi – Thank you. Well, I have to agree with Councilor Walsh because we did agree to cut the money out of the Reserves with the recommendation to the Mayor and the School Committee that they look at ways to, if there were in fact problems with class sizes, to look for ways to get those class sizes down and we talked about the paraprofessionals, I know I did, I would like to see the paraprofessionals reinstated and I'd like to have seen the Resource Office reinstated and the User Fees reinstated I mean eliminated. As I look at what the School Committee and the Mayor came up with, I look at one First Grade teacher which is gonna reduce the class size according to their figures by about eight students and a Robinson Park and Phelp's Kindergarten teacher which is gonna reduce one by six and the other one it looks like by eight. So for \$250,000.00 I don't think that it wasn't exactly what I thought that they were gonna do with the money. I was looking, I was under the impression that there was a big class size problem in the district and as it turns out here apparently I guess there was only one teacher in the First Grade at the Granger School and one teacher at the Kindergarten in the Phelp's School so I thought there could have been a little bit more thought process going on with the School Committee and the Mayor. The Resource Officer I don't think should have been eliminated first of all. I think that there was too much information to support or demonstrate the need for that position. I think it was a mistake by the School Committee to eliminate that to begin with and I don't think that position should be incorporated in the \$250,000.00 that we recommended for the class sizes that this Council recommended a while back. I don't think that should have been included. I think that should have been absorbed into the district but I have to agree with Councilor Walsh that looking at what

we have here I think it's, I don't think it's cost effective in my view and I think he's absolutely right – we're not ever gonna get this back. The \$250,000.00 is to be added to the baseline of this budget and over a period of time, it's gonna only increase and I don't think we're getting our money's worth of the \$250,000.00 – not in my view – not when I have to see students who want to play sports have to pay a fee and not when I look at class sizes of one elementary First Grade when you're only reducing that to like eight students as all that's gonna be affected here with this \$250,000.00 and I have to say that I'm against it and I'm also against the creation of another secretarial position to collect those fees and I didn't, in my mind, I didn't vote for any secretarial positions to be included back into this budget with this money. I thought the money was gonna go directly into the Student Services but that's not the case here. There's only three, actually one teacher and there's two Kindergarten teachers and a couple paraprofessionals and there was something like I don't know how many eleven or seventeen paraprofessionals that were eliminated and they only put back five so I can't in all good conscience vote for this budget the way it is. I was hoping it would come back with a little bit more of a thought process.

President Rheault – Councilor Perry?

Councilor Perry – Yes, thank you Mr. President, through the Chair to Councilor Rossi, we're adding one teacher but we're reducing three, well no I'm just saying, at each school we're adding three teachers and we're reducing three classrooms at each school by eight students. In other words, no you're adding one teacher and you're taking eight students or nine students from the other three classes and putting them into their class so you're reducing four classrooms per school by adding one teacher at each one of those schools. In other words, if we did not give this money, we would have had three teachers at these elementary schools with a class size of 26. By adding one teacher to each school, each one of those classrooms are now reduced from 26 to 17 – so it's not just one class room. It's the whole elementary school. There's four kindergarten classes, there's four first grade classes now that have 17 students in it. If we didn't add this, we'd have three with 26 in each school so it's a lot more of an impact than what you're thinking cuz there would have, do you understand where I'm coming from Bobby? You had three classrooms before we gave this money back. By giving this money back, we've created four classrooms reducing all four of them down to 19 whereas if we didn't all three would have been at 26. So you're actually affecting in these three schools twelve different classrooms not one and that's what we were talking about that night at the budget that I was looking at. As far as the paraprofessionals we all know and we discussed it at our sub-committee meeting, the classrooms are different now because of the mainstream of the special needs students, it's not the same. The paraprofessionals are there to meet the needs cuz some of these students can be a constant need, all day long, where someone has to watch them to where the teacher can do her job for the other students in that classroom. I would love to turn around and say from the Council in looking at the budget, well there's a way for us to take \$1 million and put it back into the school system and not have fees, not have lay-offs, teachers throughout the school system but to me, when I look at \$250,000.00 out of a \$70 million budget, we've done quite a bit right here and I agree with the Resource Officer – that should never have been eliminated

because that is definitely needed at the High School and I'm glad it's back there. In regards to the secretaries for the after school program and fees collection – that's not included in this \$250,000.00. That's being paid out of the after school funding both of those positions down below are not included in this \$250,000.00 so for me, when I look at this and I reflect back on our budget meeting in June, this is exactly what we were looking at getting back. I wish there was more to give but I think what we have is going to have a huge impact on this year's school system. In regards to Councilor Walsh's stating that the \$250,000.00 will be there next year – yes it will – those positions will be there Jack – there's no question about it but that's a whole new budget. There's whole new circumstances that may come up and we may have to make those cuts next year. I don't know. We're not there yet but I'm dealing with this year's budget and that's why I will be supporting this this evening. Thank you.

President Rheault – All right? Barbara, please call the roll?

ROLL CALL – 7 YES (Councilors Bitzas, Letellier, Magovern, Messick, Perry, Rheault and Simpson), 2 NO (Councilors Rossi and Walsh), 2 ABSENT (Councilors Cichetti and Mineo)

President Rheault – Seven yes, two no, two absent, you've approved the resolution.

Item 7. Report of Council Committees

President Rheault – I'm going to move the Auditor to the first spot.

Report from City Auditor

Cheryl St. John - Good evening Councilors. During the past four months, the Auditing Department has been busy working on accounts payable, payroll, financials and other miscellaneous things. In the Accounts Payable area, the Accounting Principal Clerk processed 5,423 payments from April through July. Our fiscal year end was June 30, 2011 and she processed Fiscal Year 2011 payments through July 15th. At the end of Fiscal Year 2011, all departments provided our department with their holdover requests for Fiscal Year 2011 bills to be paid in 2012. There is approximately \$1.5 million in holdover requests for the town and school. When the final year end report is issued these holdover amounts will be reflected in the encumbrance column on your reports. In the Payroll area, the Payroll Administrative Assistant input all the step increases in July for the new fiscal year. In the Financials area, we currently have two fiscal years open in the computer. I am working on the 2011 fiscal year end adjustments and preparing the year end financial reports for the town, Department of Revenue and our Independent Auditors. These reports include the Department of Revenue Year End Checklist which includes a balance sheet, cash reconciliations, outstanding receivables, debt statement and detailed analysis of the general fund balance, the Schedule A which summarizes all town activities to the DOR, the Schedule 1 and 19 which summarizes school activities to the department of education, and the Form CP 1, 2 and 3 which summarizes Community Preservation activity. I anticipate that the Fiscal Year End Report will be completed and forwarded to you in September or October. When everything is completed, our

Independent Auditors, Powers and Sullivan, will perform our annual audit and the DOR will certify our Free Cash. Other miscellaneous things that our department has been busy working on during this quarter are journal and budget entries, monthly reports, recording fixed assets, balancing Accounts Receivables, attending staff & Council meetings, handling basic life insurance claims and answering the switchboard. I would like to thank my staff for their hard work and I look forward to completing the Fiscal 2011 Year End. Have a good evening.

President Rheault – Thank you. My light was off. I thought it was on. When the lights go out, sound goes out - Councilor Letellier on Rules?

Council Sub-Committees

Rules & Regulations – Councilor Letellier

Councilor Letellier – Yes, thank you. A draft was circulated to the Council with proposed changes and I haven't heard back from anyone yet so I will wait to hear back from my fellow councilors.

Utilities & Street Acceptance – Councilor Mineo

President Rheault – Councilor Mineo is not here.

Licenses – Councilor Rossi

Councilor Rossi – Thank you Council President. The quarterly report for the Licensing Committee is that we met three times for license renewal at Six Flags for the Amusements Licenses which were unanimously recommended in a positive passage to the Full Council. In June we met for a Junk Dealer License which was recommended and positively passed by the Full Council and again in June we met for three items of assorted licenses up for renewal and full passage by this City Council and there was no other business associated with the Licensing Committee.

Public Safety – Councilor Cichetti

President Rheault – Thank you. Councilor Cichetti's not here.

Ordinances – Councilor Magovern

Councilor Magovern – Thank you Council President. We had a meeting scheduled for May 2nd for a Resolution adopting Mass General Law Chapter 32B, Section 18. The meeting was cancelled due to the withdrawal of the Resolution by the Mayor. June 16th we had a meeting held at the library. All committee members were present along with Louis Russo and Henry Kozloski. There items were discussed during the meeting were an Ordinance adopting the Outdoor Dining Amendment – this discussion was held and a positive recommendation was sent to the Full Council; an Ordinance amendment to the Code of the Town of Agawam Article 14, Chapter 180, Section 94 entitled “Personal Wireless Services Facilities” – the petition was withdrawn; and our third item was a

resolution to revoke Mass General Law Chapter 44B, Section 3 through and including 7 of the CPA. After much discussion by Mr. Russo, Mr. Kozloski and all of our members, we recommended that a negative recommendation come before the Full Council for this, it was voted on at our meeting. Thank you very much and that concludes our Ordinance meeting.

President Rheault – Thank you.

Zoning Review – Councilor Messick

Councilor Messick – Zoning Review Sub-Committee met one time during this period of time on June 16th. Present were myself, Councilor Rossi and Councilor Bitzas. Our first item on the Agenda was an Ordinance adopting the Outdoor Dining Amendment to the Code of Agawam. There was discussion as to how this ordinance came about. There are a number of restaurants in town who would like to provide outdoor dining. A vote was taken 3 – 0 in favor of sending a positive recommendation to the Full Council. Our second item on the Agenda was an Ordinance to Amend the Code of the Town of Agawam Chapter 180-94 entitled “Personal Wireless Services Facilities and Towers”. The Planning Board had not at that point had their public meeting on this issue and we discussed whether we should wait for their recommendation and their concerns about it prior to making a decision on the sub-committee so the vote was 3-0 in favor of tabling that until the Planning Board had met and that was all we did this time period. Thank you.

President Rheault – Thank you.

Finance – Councilor Walsh

Councilor Walsh – Yes, we met on April 13th to discuss TR-2011-24 Resolution to Borrow and Appropriate Funds for Construction of a Storage Building at the Building Maintenance Facility at 1347 Main Street, Agawam. The meeting was at the library and the entire Finance Committee was in attendance along with Tony Albro, Council President Rheault and Councilor Bitzas. After a discussion, the vote was 4 – 1 with Councilor Perry being the only negative vote in favor of sending a positive recommendation to the Full Council to approve the borrowing of the funds. On April 25th TR-2011-27- a Resolution Accepting a Grant from the Federal Emergency Management Agency and the U.S. Department of Homeland Security pursuant to MGL Chapter 44, Section 53A to be utilized by the Agawam Fire Department for the purchase of Emergency Rescue Equipment. The meeting was held at the library with the entire committee in attendance. After a discussion, the vote was taken and it was 5-0 in favor of sending a positive recommendation to the Full Council to accept the grant and that’s my report.

President Rheault – Thank you.

Industrial Relations – Councilor Perry

Councilor Perry – Nothing was referred to our committee during this quarter. Thank you.

Ad Hoc Sewers – Councilor Rossi

Councilor Rossi – Thank you. I checked with the Director of DPW today to find out just exactly where we were just as far as the phases of the sewer were and I found out that the first phase is completed however it's on hold right now as is the Phases II and III which part of the design phase, most of the design phase and engineering phase have been completed. I was really kind of hoping it would be gone out to bid and at least started before the winter season this year but that also apparently is on hold and I guess the sticky point here is the sewer rate – the water and sewer rates – that needed to be increased and it's my belief that the Mayor apparently wants to attach those sewer increases, water fees and sewer fees to the sewer project rather than come back with some kind of a projection of what we actually need. If you all would remember we passed this budget with an unknown factor with the sewer fee and I can't get what that fee is gonna be so I'm assuming that we're not gonna get anything done until we actually come back with what the sewer increases are gonna be and so everything is on hold until that happens and I can't get anybody to give me any kind of information on where we stand with that. All I know is that we sent it out to Tighe & Bond. Tighe & Bond apparently is attaching it to the sewer project and I'm guessing that we're not gonna hear anything for at least for after the election. That would be my guess so everything is at a standstill for those people out there. That's where we stand.

President Rheault – Thank you.

Ad Hoc Recreation – Councilor Bitzas

Councilor Bitzas – Thank you Mr. President. The Ad Hoc Recreation Sub-Committee meeting held July 18, 2011. Also in attendance were Mayor Cohen, Christopher Sparks, Director of Parks and Recreation and Henry Kozloski, CPA Chairman. Called to Order 3:00pm in the Auditor's Conference Room at the Town Hall. Item 1 - Discussion of Phase II plans of the School Street Park Project. Chris Sparks provided detailed plans for the Phase II project. He reported that the town has already submitted an application for a PARC (Parkland Acquisitions and Renovations for Communities) Grant in the amount of \$500,000. There is a very good chance that we will receive this grant but will not be notified for a couple of months. Upon notification, the next step is to go to the CPA for the remainder of the funding. The total cost of the Phase II project is estimated at \$2,267,256.97. Some questions and concerns were raised and discussed. The new park will include a new baseball diamond, soccer field, playground, water spray park, picnic area, volleyball, walking trails, over two hundred new parking spaces and much more. A more detailed copy of the plans as well as the PARC application is in the Council office for your review. A Motion was made by Councilor Jill Messick and seconded by myself and the committee voted 2-0 to send a positive recommendation to the Full Council to approve this item when it appears on the Council's Agenda. Thank you Mr. President.

Ad Hoc Condominiums – Councilor Mineo

Ad Hoc Personnel – Councilor Magovern

Councilor Magovern – Everybody has behaved very admirably here in the last quarter and there was nothing brought before the Personnel Committee. Thank you.

President Rheault – Thank you.

Ad Hoc CPA – Councilor Simpson

Councilor Simpson – Thank you. Three items were referred to the Ad Hoc CPA Subcommittee. A meeting was held on June 20, 2011 to discuss the three items. They were TR-2011-36 - A Resolution Authorizing the Reservation and Appropriation of Funds from the CPA Fund; **TR-2011-37** - A Resolution Authorizing the CPA Committee to Spend \$555.00 for the Purchase of Six Cemetery Signs for the Six Historical Cemeteries of the Town of Agawam as provided for under the Restoration of Historic Resource Section of the CPA; and **TR-2011-38** - A Resolution Authorizing the CPA to Spend \$7,612.00 for the Purchase and Installation of a Laser Fiche Software Upgrade to further update the Town Clerk’s Historical Records under the Historic Preservation Section of the CPA. All of these items were discussed at the meeting and all committee members were present except for one. All items were voted upon with a 4 positive one absent to send a positive recommendation to the Full Council for passage and all items did pass. Thank you.

President Rheault – Thank you.

Ad Hoc Master Plan – Councilor Messick

Councilor Messick – The committee has not met in this period of time. Thank you.

Ad Hoc Reorganization – Councilor Perry

Councilor Perry – Yes, thank you, Mr. President. We did not meet in this last quarter. I opted not to call meetings due to the numerous budget committee meetings that were going on for this year’s budget and with vacation times and everything of that nature. I do plan on contacting by email my committee members to see when they will be available again, hopefully this month, I do have a lot of information I’ve collected to share with them and we’ll be moving forward. Thank you.

President Rheault – Thank you.

Item 8. Elections

None.

Item 9. Public Hearings

1. **PH-2011-5 - (TOR-2011-3) An Ordinance Adopting the Outdoor Dining Amendment to the Code of the Town of Agawam (1/2) (Referred to Zoning Review and Ordinance Committees) (Tabled 7/5/11) (Councilor Bitzas)**

President Rheault – The item is off the table. Item is *on* the table. Motion to take it off? Moved by Councilor Bitzas, seconded by Councilors Walsh and Rossi and public hearing is now open. We've got a report back from Zoning and Ordinance.

Councilor Messick – Yes, the Zoning Sub-Committee did meet about this and we did make a recommendation to pass it but in our packets recently there's a letter dated July 22nd from the Planning Board who then met after we had met essentially saying that the Planning Board is in favor of outdoor dining in Agawam but feels that the process should be done through special permitting process which would essentially allow them more flexibility as far as tailoring what's necessary to each individual area and restaurant. I mean we are talking about now indoor and outdoor areas and as you know each restaurant in town is quite unique and so the special permitting would allow them to work a little more flexibly with the restaurant owners and I am making an assumption that if we want to continue with this concept, we can work with the Planning Board or the Planning Board will be working on this so I'm going to actually turn this over to Councilor Bitzas who probably knows a little bit more about it than I do at this point.

President Rheault – Before you speak on it Councilor Bitzas, we will open it up since it is a public hearing, the opportunity for the public to speak. Is there anyone who wishes to address the issue?

Councilor Letellier – If I may a point, I'm not sure a Point of Order or what have you but we can't pass this if the Planning Board denied it, correct? Don't we need –

President Rheault – Of course we can.

Councilor Letellier – We can?

President Rheault – Yea, they're a recommending body, that's all.

Councilor Letellier – They are a recommending body, okay, because my thought in having read that letter is that we should table our public hearing and try to work on an ordinance that allows for the special permit process because I think it is a good idea to let the neighbors have some say and I don't want to steal any thunder from Councilor Bitzas but I think it would make more sense to have a public hearing after we have a revised ordinance. That would be my recommendation.

Councilor Bitzas – Point of Information?

President Rheault – Councilor Bitzas?

Councilor Bitzas – I know...or I can speak after, oh public hearing now, okay, I don't believe the Planning Board read the Ordinance because I don't think they read the Ordinance because if they read it, they will know the restrictions we put into the Ordinance. The Planning Board said in the paper, the Planning Board rejects outdoor dining and the reason they reject it not to try to work more flexible with the restaurants,

they try to put more teeth in the Ordinance and try to want to have control to themselves, not the other boards. If they read the Ordinance, the Ordinance is very strict, very fair, but if you have to play this political to have the Planning Board give the special permit they're going to make the Ordinance a lot worse, a lot more difficult for the restaurants. Now I want to, I sent a letter to the Planning Board and I told them before they had the meeting and the letter said I'm unable to attend Thursday's Planning Board public hearing of the Outdoor Dining Ordinance due to a work conflict. I would like to reiterate that this Ordinance is for the best interest for the Town of Agawam, it benefits business and it benefits businesses and future businesses interested in coming to our town. Attached please find copies of the minutes from recent Zoning & Ordinance meetings regarding this item. As you can see, both sub-committees recommended sending a positive recommendation to the Full Council for passage of this Ordinance. I'd like to thank all the members of the Planning Board for holding this special meeting, it is greatly appreciated. I truly believe this ordinance will benefit the residents of our town. If you need additional information from me prior to your meeting, please do not hesitate to contact me. Thank you again. Nobody called me for a month. Nobody came to ask questions. Now they come to tell us they want to dictate that, we are here City Councilors, we answer to the people, we have responsibility and we have the knowledge and we have the brains to make the Ordinance and to see it and vote yes or no. We don't need the Planning Board to dictate to us because they want to control that and for the record for the Planning Board and for the people to know what's going on outdoor dining areas shall be allowed as a use to a restaurants subject, very important, to the issuance of a permit from the Building Inspector and subject to the following conditions. I know, I've been trying to do that for a year. The Planning Board they don't want the Building Inspector to have the control, to give the permits, they want themselves to give the permits, there's a conflict there, so we have to decide what do we like to do. So the Planning Board they throw it to us a monkey wrench to ruin a very good Ordinance and it looks like anti-business for the community. I'm very disappointed and very surprised to see the headlines in the paper and for the Planning Board if they're watching us and I'm sure they do, nobody is here today to defend that. I think they make a big mistake because they didn't read the Ordinance. Now, the conditions are –

President Rheault – Councilor, just to remind you we're in a public hearing – an opportunity for the public to speak.

Councilor Bitzas – Okay, just for the public to know the compliance with the Town of Agawam including Zoning Ordinance, the Building Code of the Commonwealth of Massachusetts and the Fire Code of Commonwealth of Massachusetts, all applicable and federal statues are mandatory. Compliance with the Massachusetts Department of Health Sanitary Code Food Establishments and alcohol may be served and be consumed by patrons in outdoor dining areas, provided, that's very important, that all necessary licenses are acquired. These licenses are to be gathered through the Liquor Commission, the Building Inspector and the Board of Health. We have three boards that give permits. Why do you need that? Anyway, we'll discuss it later on and I will explain it a little more but it is a waste of time for the Council to have it –

Councilor Perry – Point of Order, Mr. President? If we could just go through the public hearing then the Council can have discussion?

President Rheault – Before any comments. Is there anyone who wishes to address the Council regarding being in favor of the Ordinance? Anyone against? Anyone to be recorded by name only? If not, I'm going to close the public hearing and I'd like to move to go into Committee as a Whole because I have some comments as well. Move to go into Committee as a Whole by Councilor Bitzas, seconded by Councilor Rossi, all those in favor? Opposed? We're in Committee. Before we go further, I'd like to clarify a point – as I read the correspondence from the Planning Board, the Planning Board chooses, are basically in favor of the Ordinance, of granting the open dining. What they're looking for is to shift the responsibility to the Board of Appeals, not to themselves, to get a special permit for this. I was speaking to a couple of the members and the current status is we've got a business in function right now with an outdoor dining that's been approved by the Building Inspector because he required them to meet the standards and if they needed a liquor license then they'd have to address it to the Liquor Commission so they're probably isn't in my opinion anyway, any reason to strengthen the Ordinance because if the Building Inspector is the issuing, I don't see why we have to tie up any New Business to go through the process of a special permit. I think that's delaying the process and negative to business trying to establish another area of revenue. Because the Building Inspector would have to demand that they meet certain criteria – zoning and so forth – before he'd issue the permit and if they chose to add liquor to it, it would have to go in front of the Liquor Commission.

Councilor Bitzas – Point of Information, Mr. President?

President Rheault – What's your point?

Councilor Bitzas – In the paper that Mr. Gregory Scibelli wrote the article, the Planning Board the Chairman says and I quote “Ward said he wanted outdoor dining only to be allowed by special permit through the Planning Board who oversees how outdoor dining would be set up on particular piece of property so they want to do it themselves – not the Board of Appeals.

President Rheault – I think that's incorrect.

Councilor Bitzas – It's right here.

President Rheault – Well, it may be there but I believe it's incorrect.

Councilor Perry – They can't, they don't have the power.

President Rheault – They don't have the jurisdiction. All right, Councilor Magovern is next.

Councilor Magovern – I think we're going a little bit out of order here because you haven't called for the committee reports yet, you called for one but this is an ordinance and I believe –

President Rheault – Oh, I didn't, that's right. Go ahead.

Councilor Magovern – that the Ordinance Committee basically held a meeting on the Ordinance and I'd like to give a report as Chairman of the Ordinance Committee.

President Rheault – Please do!

Councilor Magovern – Okay. The Ordinance Committee met and discussed this and we gave a positive recommendation that this ordinance should be passed and I think that a lot of the points have been touched on. Number one this is an Ordinance. It comes under the City Council before any restaurant can have any outside dining as Council President Rheault alluded to it has to go before the Planning Board anyway in order to pass, to get a restaurant it's gotta go before the Building Inspector and also it has to pass the Health Board so there are already plenty of boards that it has to go through and to have another layer of bureaucracy entered into this, I am totally one hundred opposed to it. I think we've got too much bureaucracy right now. There's too many boards trying to stick their fingers into what the public should do. We want to be a business-friendly community. I think that if a restaurant wants to sink their life's savings or an individual wants to sink their life's savings into a restaurant, they're going to pass all the necessary requirements by going through Planning, Health, Building Inspector before a board issued and I don't believe they need to have another layer of bureaucracy here. I for one feel very strongly that the ordinance should be passed. It was passed by all the sub-committees here on the Council. The Council should be the authorizing body for this and not the Planning Board so thank you very much.

President Rheault – Next is Councilor Rossi.

Councilor Rossi – Thank you. I'm gonna have to disagree with what I've heard so far except the point that it should go to the Board of Appeals which I think is probably the soundest idea I've heard here tonight. I think it makes an absolute, it makes sense. This here ordinance the way it's set up right now although the Building Inspector is the one that says the okay, this is a by right ordinance. A by right ordinance means that if we adopt this ordinance as it is that anybody who has a restaurant in this community can set up outside dining and set any criteria that they wish because the Planning Board has no power. Only the Board of Appeals can set conditions. The Planning Board can only make recommendations now no one is opposed to outside dining. I think every opportunity should be given to every business owner who wants to have outside dining but I think as it was mentioned here before; there are certain conditions that are attached to every single business. Every business is unique unto themselves. There are locations that have to be concerned, abutters have to be concerned, I mean there's a lot of things that have to be concerned. One of the things I see in here that it could be up to, the hours of operation could be up to including the hour of ending in closing, so if somebody

wanted to set a band up outside they could go to 2:00 in the morning and this gives them the authority to do that. If it had to go to the Board of Appeals, Board of Appeals could look at this situation on an individual basis and make a determination on what the hours should be. Maybe somebody could have a reasonable hours that maybe it's 10:00 or 11:00, maybe no outside entertainment after 11:00 or 12:00. I mean there's a lot of conditions that have to be looked at when you're asking for outdoor dining because we don't live in this community all by ourselves, the restaurants don't operate independently from our neighborhoods. We have to be concerned with the neighborhoods – that's what zoning is all about. That's exactly why we have zoning ordinances so –

Councilor Bitzas – Point of informations?

Councilor Rossi – So I think that there isn't anything with the way, to have this ordinance to have outside dining, I just think there needs to be control present and I think that control should be through the Board of Appeals.

President Rheault – Thank you.

Councilor Bitzas – Point of Information, Mr. President? Those concerns that Mr. Rossi said, they all are in the conditions here – hours of operations 11:00, the music, and everything, they have eleven conditions in the ordinance and when my time comes I will read those conditions because they all met all the criteria by all the boards –

President Rheault – When your time comes. All right. Councilor Messick?

Councilor Messick – Two things in the letter from the Chair of the Planning Board. He says twice that the Planning Board is fully in favor of having outdoor dining in Agawam. One of the concerns that the Planning Board has is that allowing the use by right will not fully protect abutters. The process going to the Planning Board and going through all the steps that we have now without any added layers of bureaucracy results in a restaurant that I think we all know at the end of South Street by Six Flags. That's the result. When they're saying a legally defensible position in the letter from the Chairman of the Planning Board – if there are violations right now, unless we have a document such as a special permit, we really don't have a legal leg to stand on if there are any violations of *any* of the permits that were granted. The Board of Health permit is the easiest one to persecute if there are violations. Other than that it's just, we need more ability to control this sort of thing and when you're talking about outside, maybe next door to a house, maybe next door to condos, you do really need to have some sort of legal back-up in case these things go to court and in case the town gets involved and I think that is one of the major things. The other thing that the Planning Board is currently doing and I know we've gotten memos on this, we haven't gotten a lot of information about it is they're doing a complete revision of the zoning ordinance and if we would like to incorporate something like this in the zoning ordinance which I am completely in favor of it would be a great time right now to write something that's gonna work with any changes to the zoning ordinances that are occurring right now. So I think I would like to maybe make a motion to table this eventually when it's time to make such a motion and take a look into

what is the Planning Board looking at. We can certainly make some phone calls to the members, have a meeting, find out what's the best way to handle this but I think special permit might actually be a good idea just from a legal standpoint and from knowing what you end up with right now if you go through that whole process.

Councilor Bitzas – Mr. President?

President Rheault – Councilor Perry was next. Councilor Perry?

Councilor Perry – Yes, thank you, Mr. President. In looking at this, I think we're all in favor of it, George, there's no question. I think the Planning Board is, I think every councilor up here is. When we're looking at the recommendation from the Planning Board to go to special permit processes, typically the Board of Appeals makes exceptions to the rules that we have written and we really can't give it to them if we don't have anything that's really written, if you're following my logic. If we don't pass anything, the Board of Appeals can't issue any permit because they've got nothing to issue it against. So I agree, I think this is a little gray. I think it could use a little bit more refining, put it on the books and then if a certain business does not fit that criteria, then they can go to the special permitting process so I would definitely agree with you, Jill, to table when the time comes and take another look at what we can do to maybe add a little bit more to this, a little more definition and then it will go along with the standard ordinances that we already have on the books to where if one particular restaurant did not meet this, they could go for their special permit. Thank you.

President Rheault – All right. For the first time, Councilor Letellier?

Councilor Letellier – Thank you. I'm quite frankly disappointed that no one's here from the Planning Board because I think had we gone into Committee as a Whole with the Planning Board, we could have resolved this tonight so at least we would have a version that we could pass the first reading. I was a member of the Ordinance Committee and I did vote, I think George did an excellent job, however, now that I see the Planning Board's recommending a special permit, I think it's a good idea because I think that we have to be careful about how our neighbors are treated and in terms of how many seats you could have, liquor and things like that, I think also we have to remember that there are certain people that will shall we say push the boundaries if the boundaries are not made more enforceable and so I would be recommending that we table this and I think we need to decide should the Planning Board be the special permit granting authority or should the Board of Appeals be the special permit granting authority. Now with the Board of Appeals, we appoint, we can go forward on prosecutions if we feel it's necessary; Planning Board, Mayor appoints. Right now the Planning Board is the special permit granting authority for the town. Do we want to continue with that or do we want to give this authority over to the Planning Board? [Board of Appeals] But I think it's a discussion that needs to be had and quite frankly I think, I'm really disappointed that they're not here tonight so we could actually have worked on this a whole lot more.

President Rheault – Councilor Bitzas?

Councilor Bitzas – Yes, just to answer some councilors concerns and some questions, definitely the Planning Board wants the control. In both papers, it states, two papers states that the Planning Board wants to have the control of this ordinance, not the Board of Appeals. They don't like the Board of Appeals to have control because the Board of Appeals they believe it is more political because they need three votes to approve an issue, three votes, if two agree to give the special permits and one person say no, then it's problems, so you have a 3-0. Now you make this now too political and we are the ones, we're not smart enough to act and we have somebody else to do it and the Planning Board fight they don't want it to go to the Building Inspector, the Building Inspector of course have a lot of authority and all this areas that Councilor Messick said in Six Flags, they're all illegal, if we have this ordinance pass, this we make then close them down and let me read for you councilors and Councilor Rossi about hours of operation I would tell Councilor Rossi in (d) in the ordinance it says "the hours of operation of outdoor dining area may be equal to or less than the hours of operation of the main restaurant. Dining areas which abut residential areas and residential zones must end outdoor dining and seating activities by 11:00 so that's there. Now another thing too, the outdoor dining area shall not encroach upon the front, side the rear yard setback areas or public way. Another protection, outdoor dining areas shall meet all Architectural Access Board, state and federal ADA requirements – another conditions, compliance with the Code of the Town of Agawam including the Zoning Ordinance, the Building Code of the Commonwealth Massachusetts, the Fire Code of Commonwealth Massachusetts and no applicable state and federal statutes is mandatory – it's another one. The other one is most important – compliance with Massachusetts Department of Public Health State Sanitary Code and Food Establishment shall be mandatory. Any heater used outside must be positioned and approved by Agawam Fire Department designee. Public address system and other system intended to convey verbal messages through the use of amplified sound shall be prohibited. We still don't allow to have it there. Music must be allowed at reasonable volume and conform to Agawam Code Chapter 121 Section 121 and Massachusetts General Law Chapter 40 Section 21 and three, four, five others. Don't you gentlemen read those compliance and you want to have a somebody else, another board, tell us how to do our job? I'm sorry but if you going to do that, go ahead and do it, I don't agree with that. I think I'm smart enough to know what I'm doing and this ordinance was written to let you know in the presence of the Fire Chief, Police Department, the Planning Board director, the Building Inspector, the Town Planner, the Law Department and the Mayor and myself in the meetings there so we all did a lot of work, many hours to create that. If you want to table, do whatever you like, I'm against that and I want this ordinance perfect, I don't want it to be political. The restaurants have hard times, they close left and rights, you impose more regulations like Councilor Magovern said, regulation after regulation after regulations, this is not – I thought this is too many regulations. I thought, I was almost against this ordinance to put my name again because they put too many regulations. Now that we try to put a lot more regulations, close the door to the restaurants? Go ahead and do it. This is anti-business. Thank you.

President Rheault – Councilor Messick?

Councilor Messick – Councilor Simpson was first.

President Rheault – Oh, I'm sorry. I didn't see the light.

Councilor Simpson – No problem. I'll be brief. First, thank you Councilor, I guess we can't read ourselves. Thank you for reading that. I'm very much in favor of the outside dining. I love sitting outside and dining in the nice weather. We're cooped up for what about nine months of the year and when it comes time, I always love to go someplace that has outside dining. I'm not a big fan of tabling things especially where we've had the information for quite a while but I see just a couple of gray areas there that I would like to check into just into the portion of the music part and I don't have a problem with an establishment having music but there's always, I know it's addressed in there, but there's always that fine line even when it comes down to people having parties of you know a neighbor calls at 8:00 and thinks it's a nuisance to have music at 8 and someone else calls and says at 10:00 and there's always discrepancy so we'd almost be better just to pick our own time in there for music so I think there's a couple of gray areas and I think at this point, we're August now, establishments who are going to do outside dining probably won't start it until next spring at this point because most of them will probably have to install maybe a patio, a fenced area, tables, whatnot and considering once October hits, we're pretty well done with dining so I don't think we'll probably put any businesses in jeopardy right now by not having the dining and it would be nice that it would be all set by the end of the fall and then they could get ready in spring and be ready for next summer. So I would like to see this tabled just to get a couple areas qualified and then we can go on with it so thank you.

President Rheault – Thank you. Councilor Magovern?

Councilor Magovern – I'm against the tabling of it for a reason that Councilor Simpson said and that is that we've had months to read this. I mean I always get frustrated when we've had all the time in the world as City Councilors to look at an ordinance, to read an ordinance and if there's questions, to ask the questions and I'd like to know if anybody here has called the Planning Board, I know that Council President Rheault has, and asked what their objection was in passing this ordinance? I'm upset that we have an ordinance that has been on our Agenda for quite some time yet the Planning Board who isn't in favor of it, chose not to even bother to appear this evening at a public hearing and give us their rationale for their thinking. We have outside dining already in this town and we have of all places, we have 911 – they've had outside dining for how many years up there? We have the Main Street Deli that has outside dining. We have Giovanni's that has outside dining. We have Six Flags which would be severely impacted if we took away outside dining because they've got a whole park full of outside dining. We have the Health Department regulations. We have the Planning Board regulations, I mean we have Building Inspector and George has read a litany of restrictive clauses that are in this ordinance to protect the public, to protect the restaurants and to protect the public image to make sure that nobody goes overboard. If there's anybody that is in violation of these restrictions, they can be shut down very easily but as City Councilors, I think that it's an embarrassment for me to sit here and table a measure that we've had in front of us for

two months. We're City Councilors. We're paid by this town to act on the town's business in a due fashion. Now if this gets tabled tonight, it's gonna be September, October before anything gets moved on and it'll be next year before anything is done. Those that want outside dining already have outside dining. So you know, we're being hypocritical about this because we're passing an outside dining ordinance when we already have outside dining which is permitted. We have the Still that has outside dining and I believe that they went through many restrictions to get their outside dining. So there's many, many places that have outside dining and I can't think of any restaurants in town that would want to go outside dining that are not already doing it so if anything this ordinance puts in more regulations to control the procedures to make sure that everything is done to the health codes and the public safety. Thank you.

President Rheault – Councilor Messick?

Councilor Messick – Through the Chair to Councilor Magovern, yes we have had this ordinance in our packages for quite a long time. I've read it a number of times and I think it's very well written. I think a lot of thought was put into it. I talked to Councilor Bitzas about it. I talked to Debbie Dachos about it. I know that it was very thoughtfully done. However, we do have a Planning Board. We did not get the information from the Planning Board until July 22nd. This is why I'm talking about this now rather than before. The other thing about the special permit process is that the special permit process involves a mechanism by which abutters are contacted. So if we have abutters who are involved in the process from the beginning when the permits are being issued and can voice their concerns at a public hearing as unlikely as that sometimes seems because people just don't come to public hearings, possibly problems that we have had and are ongoing with these types of things around Agawam could be nipped in the bud. If neighbors could come and say for instance I have a problem with noise. Our noise ordinance says 'reasonable volume'. Our noise ordinance is lousy. It has no teeth whatsoever so to refer something in this ordinance to our noise ordinance is just as bad as not having a reference in here at all. So I think you did a great job writing this and I have no quarrel with what's included, I just think that the Planning Board has a point with the special permit especially since abutters are then notified and having the special permit process gives us, as the Chairman of the Planning Board says, a more legally defensible position. The other think about this ordinance that makes it different again, through the Chair to Councilor Magovern, all the restaurants that you listed have outdoor *seating areas* but they do not have outdoor service of food and that's what we're talking about here. It's a slightly different thing, that we're talking about having areas where you take your food and go and sit outside is a little bit different than having waitresses going in and out, having your menus sit there and that type of thing. So that's the different definition of outdoor dining. Thank you.

Councilor Magovern – Through the Chair –

President Rheault – Councilor Rossi?

Councilor Rossi – Thank you. Well Councilor Messick pretty much sums up what I had to say and she's absolutely right when it comes to outdoor seating versus outdoor dining. Those places that you mentioned as Councilor Messick said, those people get their food, like the Deli, they go outside and they eat it as they do with Six Flags and as they do with other places, 911 you mentioned, they get their food at a service window and go to picnic tables and eat it. That's not outside dining. That's outside seating. The other end of it too is and I think that we're losing sight of one very important thing and that is enforcement. That's been touched on before and I don't think I really need to go crazy with this thing. This thing is enforceable only through the Building Inspector. There is no teeth in this thing. The Building Inspector if there's a violation, he goes over there, he gives them a civil citation, they have fourteen days to respond and if they don't respond and then it turns into a criminal matter and there's all kinds of things. The reason that we'd go to the Board of Appeals on something like this is because they have enforcement policies. They can actually go out there and set criteria and enforce that criteria. We don't have that here. If we pass this ordinance as it is, it's by right. That means that anybody that comes in here and applies, as long as they follow the conditions on the application, we have to give them outdoor dining. The Board of Appeals can make certain conditions that apply to the different, unique situations to each individual applicant and that's where I think that we're missing the boat over here. I think that's where we need to concentrate on. There isn't anything wrong with anybody wanting to have outside dining, to go to the Board of Appeals with a sane, sound plan and have it approved by them and that's it. I don't see what the big problem is. We have a Board of Appeals, that's what it's for. Our Planning Board is a recommending body. They recommend to this City Council that that's what their recommendation would be, and I've heard councilor over here who are vehement, screaming at the top of their lungs for the passages of things and I've heard them say a hundred times, we have boards in this town, how come we don't listen to them. I think we should listen to them and I think it's a smart and wise thing for this City Council to send this back, re-work this thing and have the issuing authority be with the Board of Appeals. I think that's the smart thing to do and I'm not denying like anyone else is, no one's against this program but I think it's smart to do it that way.

Councilor Simpson – Motion to table.

Councilor Perry – Second.

President Rheault – No, we're still in Committee as a Whole. Motion to come out of Committee as a Whole, moved by Councilor Rossi, seconded by Councilor Walsh, all those in favor? Opposed? We're now out of committee and I'll entertain a motion.

Councilor Simpson – Motion to table.

President Rheault – I'm sorry was it Councilor Simpson? Moved by Councilor Simpson and Councilor Perry seconded. Barbara, please call the roll.

ROLL CALL -7 YES, 2 NO (Councilors Bitzas and Magovern), 2 ABSENT (Councilors Cichetti and Mineo)

President Rheault – Seven yes, two no, two absent, you have approved the tabling. Send this back to the Ordinance, do you want to be included in that, Councilor Messick – Zoning and Ordinance Committee and I would suggest that both Chairpersons suggest that the Planning Board be in attendance of your meetings. All right? Thank you.

Councilor Magovern – Council President? Could we ask for a combined meeting?

President Rheault – Yea, well –

Councilor Letellier – Wouldn't you have to have it as a workshop because you'd have a quorum?

President Rheault – Workshop.

Councilor Magovern – Good point. Thank you.

Councilor Letellier – No problem.

President Rheault – Well, it's still posted so or will be.

2. *PH-2011-4 - (TOR-2011-4) (ZC-2011-1) (Needs to be withdrawn per letter of 7/20/11) An Ordinance to Amend the Code of the Town of Agawam Article XIV, Chapter 180 §94 Entitled "Personal Wireless Services, Facilities and Towers" (Public Hearing Postponed until September 6, 2011) (Referred to Zoning Review and Ordinance Committees) (Tabled 6/20/11) (City Council)*

President Rheault – We've received a letter of request without prejudice to remove this from the Agenda so voice vote is sufficient, well no, Barbara, please call the roll.

Councilor Letellier – Can you just clarify that a yes vote means to remove it from the Agenda?

President Rheault – A yes vote is to remove it from the Agenda in compliance with their request.

ROLL CALL – 9 YES, 0 NO, 2 ABSENT (Councilors Cichetti and Mineo)

President Rheault – Nine yes, two absent, we have removed it from the Agenda without prejudice.

Item 10. Old Business

None.

Item 11. New Business

1. **TR-2011-43 - A Resolution Accepting a Gift of Land by Fether, Inc. pursuant to Massachusetts General Law Chapter 40, Section 14 for the Town of Agawam, MA (Councilor Messick)**

President Rheault – Next Agenda and that should go to Councilor Messick’s committee.

2. **TR-2011-44 - A Resolution Adopting Massachusetts General Law Chapter 59, Section 5, Clause 54 (Mayor)**

President Rheault – Next Agenda and that goes over to your’s Bob, Ordinance.

3. **TO-2011-19 - Voucher for Massachusetts Municipal Association Dues (\$4,827.00) (Council)**

President Rheault – Next Agenda that’s Councilor Perry’s favorite item.

Item 12. Any other matter that may legally come before the City Council.

President Rheault – I’m gonna start with Councilor Rossi.

Councilor Rossi – Okay, thank you. I don’t, the only thing I really have is I was a little I don’t know what you want to term it, I listened to this woman from Plantation describe incidents that she’s had out here when she’s called the Police Department, the Fire Department, asked the Mayor for help with a situation and no one responded to her and I wasn’t very pleased to hear that the Police Department didn’t respond on the fireworks complaint, the Fire Department didn’t respond? She emailed the Fire Chief and the Mayor and they didn’t respond, now I don’t know exactly what this Council can do but somebody, somewhere along the line in this government has to help these people who call up here and get no response from our government. I think they’re entitled to a response, they’re entitled to better than that and I don’t know what this City Council can do about that but I think that it should be taken under advisement somewhere along the line and just exactly find out what happened. I have no reason to believe that this person would come before this body and make up or fabricate a story like that so I don’t know and I would defer to the Council, in their judgment, as to what should be done with something like this but I don’t really think it should go unnoticed.

President Rheault – I think the first step would be to send a letter to the Mayor and she did mention, she included him, and want he intends to do to rectify the situation. That would be a start. Councilor Magovern?

Councilor Magovern – I’d just like to add that although we may disagree up here at times with some of our votes, I think we’ve got a very fine City Council and I want to thank you all and it’s a pleasure to serve with you and that’s all I have to say tonight. Thank you.

President Rheault – Are you going somewhere?

Councilor Magovern – I would hope not but I would like to add though that the House passed the Debt bill and if they can compromise to pass their debt bill, I would like to see some compromise here too at times.

President Rheault – Well, we don't play with those kind of numbers. Councilor Simpson?

Councilor Simpson – Nothing tonight, thank you.

President Rheault – All right. Councilor Bitzas?

Councilor Bitzas – Yes, I want to echo Councilor Rossi and Councilor Letellier my disappointment that nobody from the Planning Board were here tonight and nobody Planning Board have the courtesy to give me a call or give us a call and this is not a good service for a Planning Board and the people out there, they have an impression, all the papers and the lawsuits and I hope we don't continue that. I hope we don't give the appearances of anti-business and I hope the Planning Board should take notes for that and I hope the Planning Board make it clear if they want to have control themselves or the Board of Appeals because that's the conflict between them and I hope we don't ruin this ordinance because I agree with you, we all like the ordinance, you agree with that except for this particular small thing that can be worked out but I'm afraid that would ruin the whole ordinance and I want again, I'd like to thank the Zoning and Ordinance Committees that vote in favor of the ordinance and I'm disappointed the Planning Board they throw a monkey wrench into it. Thank you.

President Rheault – I think a letter to the Chairperson of the Planning Board on behalf of the Council's feelings is in order that if they expect us to take action on one of their recommendations, they should have the courtesy to come in front of us. Councilor Walsh?

Councilor Walsh – Yes, regarding the lady from the Plantation and having contacted the Police, Fire and the Mayor, my suggestion might be that in your next meeting with the Mayor that maybe you have some dialogue with him to try to find out from his perspective anyway what happened or is there another problem that we're not seeing?

President Rheault – Good point. Councilor Messick?

Councilor Messick – Yes, in reference to the woman from the Plantation, I'd actually kind of like to apologize because you've got fireworks falling on your roof and you're not sure whether it's gonna catch on fire and you should be able to call the Fire Department or the Police or 9-1-1 and have somebody show up. That's ridiculous. So I'm gonna suggest that whatever letters we send to the Mayor, we fire off one to the Fire Department Chief and the Police Chief as well. Thank you.

President Rheault – Councilor Letellier?

Councilor Letellier – Yes, thank you. I've struggled with something that whether it's my obligation to share with the public or not, but something has come back to me that makes me feel that my private life can no longer be private. As some of you know, I am fighting breast cancer and I am currently undergoing chemotherapy and I have been told that I will be cured, that I have a very long road. However, someone who works in the Town Hall told a friend of mine that this individual heard that I was dying of stomach cancer and that really pissed me off. So whoever it is that is telling people that I'm dying of stomach cancer, go to hell. I have breast cancer. I'm gonna beat it. I'm gonna run for re-election and I'm continue to be on this Council. Thank you.

President Rheault – Thank you. That's a great attitude. Councilor Perry?

Councilor Perry – I only have one thought and that was in regards to the woman from Plantation. We do have a Public Safety Committee. This Council *can* look into it through that committee and through investigations or Rule 33, I always throw that out there so we as a Council do have the power to look into these things. So from a Council's standpoint I would recommend the letters be written that we want to send but also to put it to the Public Safety Chairman to look into it and if need be we could go farther down into our Council Rules to get any more information we may need. Thank you.

President Rheault – So it's now in your committee's hands. No, oh that's right. As soon as he gets better [Councilor Cichetti], we'll address that issue to him. I have only one thing and probably on a more pleasant note, I want to wish our fellow councilor all the way down to the end that he's a new grandfather to a beautiful granddaughter, Councilor Bitzas.

Councilor Bitzas – Thank you. Thank you guys.

President Rheault – And may you have twenty more! I have nothing else and I'll entertain a motion to adjourn. Moved by the Council, seconded by the Council, all those in favor? Opposed? Thank you and good evening.

Adjournment.