

REGULAR MEETING OF THE AGAWAM CITY COUNCIL

October 18, 2010

President Rheault – Good evening ladies and gentlemen. Welcome to the City Council meeting of October 18th.

Item 1. Citizen's Speak Time

President Rheault – We have a few citizens wishing to address the Council, the first being Alan Griffin. You're being called up.

Alan Griffin – Hello folks. How you doing? My name is Alan Griffin. I'm at 104 North Street in Agawam and so forth. Well I'm here to talk about our farm lands. What are we going to be doing about our farm lands? Let them all go away? Waste our properties? Get a big city in here? Build high scrapers and all that stuff? Why don't we eliminate some of this stuff? We don't need no high scrapers. We don't need no big buildings in here. We need more farm land. We need more food for our towns. We don't need to starve our people. We don't need to hurt our people in any ways. You know hey if a person wants to keep their animal well they should be able to keep their animal. You know listen to what Mr. Magovern said you know animals are good animals and they should be able to keep animals. Understand what I'm saying? Am I right Mr. Magovern? Hmmm? Think about it. People want animals. They work hard for their animals. Somebody shouldn't have to come over and tell you you shouldn't have animals. That is wrong. As far as my goats goes, they did not smell, they did not stink, if there was a problem don't you think the cops would have done something? Or the Board of Health would have done something? No. They didn't. They come over and try to take my animals away because of Mr. Gary Croteau didn't like my animals which is very, very wrong. So you know I am plus I am part farmland, I'm part residential. Well, you know as far as crossing land that is residential over the farmland, the Lord walked upon this earth with animals. Did he have to get a special permit to cross over to His property? Hell, no! He didn't. So this is definitely all wrong. So you think about it, you know? You really think about it. They didn't hurt nobody. They did not smell. If there was a smell, don't you think the cops would have been over there saying there was a smell? The cops showed up on my property to take my animals away but I took them out the night before. If there was a smell, they would have bitched about the smell. There was no smell. So what's the big complaint about having goats or anything like that, you know my wife needed it for her colitis. She has an illness and I told you people a thousand, thousand, thousand times, I have all kinds of doctors' notes that my wife needs it. You're dementing her from her illness, this is definitely wrong and she does fall under the MCAD Massachusetts state laws and if you look under the MCAD Massachusetts state laws, there's certain rules and all that stuff about us keeping the animals and so forth. So that's all I'm gonna say. So I'll let you go cuz I know you want to cut me short so I'll let you all go so hey, it's up to you to think about it but you think about it Mr. Magovern, hey, you cared about animals, so do something on mines, you know, you're running for State Representative so let's do something. All right. Thank you. Bye.

President Rheault – Thank you. David DeMatteo?

David DeMatteo – Good evening. I'm David DeMatteo, 51 Merrell Drive in Agawam. I'm the current President of Agawam Little League and the Agawam Youth Football Association. We are here in support of the Resolution to use CPA Funds for the irrigation system down at the Memorial Field behind Phelp's School. Currently we have irrigation on the two baseball diamonds, the football field, the other two baseball diamonds nearest the school and by the playscape do not have irrigation. That's also where the youth football team practices. You have a beautiful football field, actually Kirk Park Field named after Kirk Parker who is here tonight and we have a beautiful playscape – in between that is an area where like I said two baseball fields and the football team practice which has limited grass now because there is no irrigation there. Little League and Youth Football pick up the price for watering the baseball fields and the football fields and we would continue to do the same if this Resolution passes. We will split the cost between the two organizations. Gym classes at Phelp's School use our football field because there is no grass close to the school now because of lack of irrigation. So we are hoping, our two organizations, that the Resolution passes. Thank you.

President Rheault – Thank you. Kirk Parker?

Kirk Parker – Hi. I'm Kirk Parker, 21 Belmont Avenue out in Feeding Hills. I'm also here to speak in favor of the Resolution concerning the irrigation system at Phelp's School Memorial Field. I tried to make it a guide post in my life to always do the things that are best for the children. I have a feeling that this small thing is something that would really improve the quality of life in the Town of Agawam for the children, the school children, the children that participate in athletic programs and especially children that suffer from asthma which seems to be gradually increasing over the years. Thank you.

President Rheault – Thank you. Lyn Bussiere?

Lyn Bussiere – Hi. My name is Lyn Bussiere. I live at 30 Elbert Road. I'm here tonight in support of the irrigation system on Memorial Field. I've lived in Agawam my whole life. I support the irrigation system to keep the field, like my predecessors were saying, in good shape cuz it is kind of a dark patch in between nice grass. It would be nice if we could do that not only for the elementary school for gym classes and so on but for Little League and football which I've been involved in for many years and still continue to at this point. The playscape is beautiful. I love it, I take my grandchildren over there actually, I have two grandchildren and we go to the playscape. We love going over there. The baseball and football facilities are outstanding. They do a very good job over there and we would like to keep the rest of the field also looking up to par with those. The cost of this system is, to me, very minor in comparison to what the overall good will be for the town and for the kids especially which I, like Coach Parker, do a lot of things for the kids and I think that's what we need to do. Thank you very much.

President Rheault – Thank you. Rick Sheehan?

Rick Sheehan – Hi. My name is Rick Sheehan from 65 Corey Street here in Agawam. I coach down at the Youth Football Organization and I've been part of the Agawam Little League for eight to ten years in both organizations. We have beautiful fields as everyone before me has spoken except when we get to our practice facilities it's tough to be able to line it, the town does the best it can but the dirt just rubs away and to be able to practice and see what's going on this would just be great. Not only for the kids that play sports down there but also for the PTO over at Phelp's who has a nice Field Day there every year and if we don't have any grass there they've got to move it out over to the football field and it moves it further and further away from the school so there's not as easy access for them. So I'm just here to support the irrigation at Phelp's and Memorial Field.

President Rheault – Thank you. The final speaker is Doug Reed.

Doug Reed – Good evening. Doug Reed, 10 Shelley Lane in Feeding Hills. I too am here to urge you to support this resolution and continue to maintain the fields and improve the fields. As the gentlemen here and lady have spoken about we have a field that really in traveling through the six years that my son has been involved in traveling to other towns, we have a field that every town that we go to is absolutely envious of so to complete the rest of that project down there and have the hold field as a 100% complete irrigated field would just be fantastic. I would urge any of you to come this Saturday morning and view a couple of the football games and get a feel for what goes on down there. I think you'd be really impressed. It's something to be very proud of. That's about it although if you're available come to Springfield College Sunday at 2:45 – we've got a team that going 6-0 right now and(off microphone).

President Rheault – Thank you.

Item 2. Roll Call

President Rheault – Barbara, please call the roll?

ROLL CALL – 11 PRESENT, 0 ABSENT

President Rheault – Eleven present, we have a full quorum.

Item 3. Moment of Silence and the Pledge of Allegiance

President Rheault – Please rise for a moment of silence and Pledge of Allegiance.

Item 4. Minutes

Regular Council Meeting – October 4, 2010

President Rheault – Moved by Councilor Simpson, seconded by Councilor Perry. Any corrections, additions? If not, voice vote is sufficient. All those in favor? Opposed? Councilor Mineo abstained.

Item 5. Declaration from Council President

President Rheault – Councilor Perry has requested to set up an Ad Hoc Committee for possible review of reorganization by the Council and I will be appointing that after I hear from who has an interest to serve on the Council. So you may want to think about that during the meeting and let me know at the end of the meeting. The letter that he has requested of the counsel, the legal counsel, the attorney called me this evening and said that it would be ready for this evening and if not, he would put it in the box of the City Council and Barbara checked late, as late as around 5:00 and it was not there at that time so I do not have that Dennis but I did bring that up to him in the meeting this morning.

Item 6. Presentation of Petitions, Memorials & Remonstrances

(a) Resolutions

- 1. TR-2010-40 - A Resolution Confirming the Reappointment of Paul Schafer, 134 Corey Colonial, Agawam, MA to the Historical Commission to a Term Expiring January 1, 2013 (Mayor)**

President Rheault – Moved by Councilor Simpson, seconded by Councilors Bitzas and Perry. Any discussion on the Resolution of the confirmation? If not, Barbara, please call the roll.

ROLL CALL – 11 YES, 0 NO

President Rheault – Eleven yes, we have confirmed the appointment of Paul Schafer and Barbara if you can kindly let him know.

- 2. TR-2010-41 - A Resolution Authorizing the Community Preservation Committee to Spend \$7,000.00 for the Purchase of an Irrigation System to Preserve Memorial Field as provided for under the Preservation of Open Space Section of the Community Preservation Act (Referred to the Ad Hoc CPA Committee) (Councilor Bitzas)**

President Rheault – Moved by Councilor Simpson and Councilor Walsh. Councilor Bitzas?

Councilor Bitzas – Mr. President can you read the Resolution for the record so that people can know what it is about. Thank you.

President Rheault – TR-2010-41 A Resolution Authorizing the Community Preservation Committee to Spend \$7,000.00 for the Purchase of an Irrigation System to Preserve Memorial Fields as Provided for under the Preservation of Open Space Section of the Community Preservation Act (Sponsored by Councilor George Bitzas)

WHEREAS, the voters of Agawam chose to form a Community Preservation Committee; and

WHEREAS, of the Committee's Functions, as provided by the Community Preservation Act, is related to the acquisition, preservation of open spaces; and

WHEREAS, the Committee has recommended that \$7,000.00 should be expended for the preservation of open space at Memorial Fields; and

WHEREAS, the expenditure will preserve, and protect these valuable Town assets; and

WHEREAS, the Agawam Department of Public Works will install will cover the cost of installation.

NOW THEREFORE, the AGAWAM CITY COUNCIL hereby resolves, appropriates and authorizes the expenditure of Community Preservation Funds in the amount of Seven Thousand and 00/100 dollars (\$7,000.00) from the Fiscal 2011 undesignated fund balance for the purchase of an irrigation system for preservation of Memorial Fields in accordance with Massachusetts General Law 44B, Section 2.

COUNCIL CLERK OF TOWN
AGAWAM, MASS.
2010 OCT 19 11:34

Councilor Bitzas – Thank you Mr. President.

President Rheault – Councilor Simpson?

Councilor Simpson – Do you want the report of the committee? Thank you. I had called a committee meeting of the Ad Hoc CPA for Tuesday, October 12, 2010 at 5:30pm at the Agawam Public Library. The meeting was called to order. In attendance was myself as Chair and that was it. Councilor Rossi did come but he is not a member of the committee but came for some questions, answers and dialogue. So since there was no one else from the committee and no one else there for the TR in front of us, we were not able to hold a meeting or to make a recommendation to the Council. However tonight I do see that Henry is here and I do apologize to the Council that I did not have time to make calls because I had a couple of questions where I highlighted a few items where I feel personally, I'm for this, I am very familiar with the fields – two boys who played baseball down there and used the facilities – but I felt that there were two areas that I felt were in in the description of each other that one was saying it was okay and one wasn't. Sometimes it's all interpretation of how you're reading it. So I would ask the Council's pleasure since we weren't able to really have a meeting that night on the night of the 12th, if we could go into a brief Committee as a Whole and ask Henry Kozloski to come up and see if we can get a couple questions answered. If Henry's not able to answer them if they're more legality questions I would hope to proposed to table this, for me to go back to the law department to get those questions answered because I think this is a viable thing but I just want to make sure we're going down the right path. So with the Council's pleasure I would like to go into Committee as a Whole and invite up Henry. Thank you.

President Rheault – Moved by Councilor Simpson to go into Committee as a Whole, seconded by Councilor –

Councilor Bitzas – Before, Mr. President – before we do that can we discuss it?

President Rheault – No.

Councilor Perry – There is a motion on the floor.

President Rheault – Well there is a motion on the floor but she's requesting that she's got questions so –

Councilor Bitzas – But the first time on the floor, the Council did not have an opportunity to discuss it and then call Henry to come up. I have no problem with it.

Councilor Perry – Second the motion.

Councilor Letellier – Second the motion. The motion does not prevent further discussion. It just allows for an initial Committee as a Whole so we can have an educated discussion.

President Rheault – That's right. We don't have a motion to discuss the \$7,000.00. Second by Councilor Perry. All those in favor of going into Committee as a Whole? Any opposed? We're now as a Committee. Okay, Councilor Simpson?

Councilor Simpson – Thank you. Henry? Thank you Henry for coming up. My discrepancy comes and please correct me at any point here in reading a couple of memos that were sent to us one from Vince and then one from Stuart Sabnor (?) from Preservation Information. I think what I'm feeling right here is what I'm interpreting as a discrepancy is the fact that this field initially was not CPA funded and then I look and see that there are caviats where you can do something if it wasn't CPA funded if the field was built prior to CPA and that irrigation did fall into that but only could pay for the irrigation system not for labor cost or maintenance thereafter of the irrigation system. So I'm reading and there's a site here quoted about a case in Newton where they tried to use CPA money and it looks like it was denied because they considered an irrigation system a maintenance but then if I read another memo it seems like you can do it as long as you don't have the labor and maintenance thereafter. So I was wondering if you could, if you had any information or you could clarify for me that part of it. I'm sure other councilors have questions too. Thank you.

Henry Kozloski – The problem with the field down on Memorial Field is it's becoming non-usable and it's not – we're trying to preserve the field – that's the key word is preservation because if we were just doing a field to irrigate it and grass was growing – no but not the field is becoming basically non-usable because there is no grass basically growing and that's what it's under – it's under preservation of the field so you don't – it's under the thing where it just means protect from injury, harm or destruction, not maintenance. The irrigation system would not be maintenance. We're trying to preserve the field so it will be still usable both by the school and by whoever wants to use it. So it's under the word preservation.

Councilor Simpson – Okay, so the fact though that this was not a field that was acquired by CPA funds like say School Street that used part of that?

Henry Kozloski – Well, I think there's a confusion, we did not buy School Street with CPA funds.

Councilor Simpson – We used CPA to help –

Henry Kozloski – To develop it, right.

Councilor Simpson – Correct. I'm sorry but the Memorial Field, the field that we're talking about now has been in existence for ages so I'm just, cuz at one point it says on our memo from Vince let me see here, not including maintenance, preservation but would rather be designed to improve substantially the park's overall quality, attractiveness and usage which is not permitted under the CPA unless the park had been originally acquired or created with CPA funds. If Memorial Park was acquired, created with CPA funds the funds may be used for the purchase and installation of the irrigation system as maintenance is prohibited under the statute.

Henry Kozloski – There are two different – they were just doing a field that grass was growing from....the problem with Memorial Field, it's becoming non-usable and you're trying to do is preserve the field because it will not be usable. I mean if you have people who can't practice because of whatever thing I mean that's – you can say health or anything – but the field becomes non-usable. So the question we're doing it's under Section Preservation it means protect from injury, harm or destruction – the field is being destroyed in reality. That's the way I think the Solicitor interpreted and that's the way coalition interprets it and that's the way this piece of paper interprets it. I mean that's up to you.

Councilor Simpson – Right, so if that field in other words was lush and beautiful and fine, then you're saying that would be maintenance to keep it up that way as opposed to now that it has been run down and no grass, then we're trying to preserve.

Henry Kozloski – You wouldn't need an irrigation system if the grass was growing.

Councilor Simpson – Well, even still if you wanted to put an irrigation system in anyhow for future use, then it would not be able to be used if it was –

Henry Kozloski – I would think not. The problem right now is the field is becoming, I mean it's detrimental to – you can cut the ice – the answer is if you have a number of people who cannot practice on a field even because of their health or anything then I think you should protect the field and that's what we're going on, it's on preservation.

Councilor Simpson – Thank you.

President Rheault – Councilor Bitzas next?

Councilor Bitzas – Mr. Kozloski, if you're up here voting for this thing that came from your committee to us, are you going to support this as written by the Solicitor and can see everybody here have and I sponsored the Resolution sir and I sponsored the Resolution after I spoke with the Solicitor and the Solicitor said it's legal. He's the lawyer. He's responsible. You can dance around and put a monkey wrench into it here everybody to create trouble but we cover our backs. The Solicitor, I put my sign here my name and I ask questions and we have here the Resolution, signed by –

Councilor Simpson – Do you have a question Councilor Bitzas for Mr. Kozloski?

Councilor Bitzas – Signed by the Solicitor –

Councilor Simpson – Point of Order?

President Rheault – Point of Order.

Councilor Simpson – There should be a question to Mr. Kozloski.

Councilor Bitzas – if you have here, Councilor Simpson, vote no if you don't want to –

Henry Kozloski – Let me answer your question.

Councilor Bitzas – The question is we have here the Resolution signed by legality by the law, the lawyer, I spoke to the lawyer today this morning before I came to vote down here and he say it's legal. Are you telling me this is illegal, not to vote for it? Are you a lawyer? Please answer the question.

Henry Kozloski – You're putting me in a position where it's your responsibility – you have a Resolution before you, okay? We've put this forward thinking it meets the Act, that's what we've done. We did talk with the Solicitor several times on this cuz it's one of these areas which is a gray area I will agree to that. It's your responsibility to make the vote.

Councilor Bitzas – Thank you sir. Thank you very much and the other thing is I have a letter here for the records and I want you to comment on this, this is my last question because it is common sense for all of us here to vote this because it's legal, it's plain and clear and the letter says Mr. Kozloski and I want you to comment about it cuz that letter's true and it comes from Stuart Savignor which is Executive Director of Community Preservation Coalition from Boston, I hope the Council has read this letter to and it's to you okay and it says Hi Henry, thank you for your call for more information for CPA recreation projects. Although communities cannot rehabilitate recreation unless it was acquired or created by CPA funds, they can preserve the recreation at any time. The attached letter from DOR helps explain this issue. You notice that this letter pre-dates the SJC recreation from the Newton DOR has said that the findings on the case did not

change anything about the letter. It's still 100% valid. There are very few examples of what we can do to preserve a field other than rehabilitation however, the three common examples that are being used in other CPA projects are those –

Councilor Letellier – Point of Order?

President Rheault – Councilor –

Councilor Letellier – Point of Order. He's reading an email. What is the question?

President Rheault – What is the question to Mr. Kozloski?

Councilor Bitzas – Because the question say the cost to operate an irrigation system...water or labor cost could be maintained, we don't do that.

President Rheault – That's not a question.

Councilor Bitzas – The question is to Mr. Kozloski is that, do you agree with this letter or not agree with the letter?

Henry Kozloski – Well, obviously I called him up to get an opinion.

Councilor Bitzas – Do you agree with it?

Henry Kozloski – Well, I mean, you, I'm trying to be fair to everybody.

President Rheault – If I may –

Henry Kozloski – You asked me a question, I will answer it. I mean you do have to read the last sentence.

Councilor Bitzas – I read it.

Henry Kozloski – In fairness to the other members, you have to read the last sentence.

Councilor Bitzas – They don't let me finish it. So it's okay, no more questions. I hope the Council votes tonight. Thank you.

President Rheault – Councilor Rossi?

Councilor Rossi – Thank you. Henry you're aware of the case of Newton?

Henry Kozloski – Yes.

Councilor Rossi – And you quoted in your presentation here tonight “preservation” and you cited reasons of being unhealthy, that the field is deteriorating. That was addressed very specifically in that case as you know. You’re familiar with that, correct?

Henry Kozloski – Not the Newton case, that was not the Newton case, I’m sorry.

Councilor Rossi – Well it did.

Henry Kozloski – Now I can tell you what the Newton case was.

Councilor Rossi – Well, preservation was very specifically addressed.

Henry Kozloski – Not in the Newton case.

Councilor Rossi – Yes, it was Henry.

Henry Kozloski – The Newton case was -

Councilor Rossi – Well, you’re more than welcome to read it.

Henry Kozloski – All right, go ahead.

Councilor Rossi – And what it said was preservation under your definition does not apply and what they said was that an irrigation system which was specifically addressed in Newton said that it would substantially improve the park’s overall quality, attractiveness and usage which is exactly what we’re talking about here. Now I’m not against the project in fact I’m for the project. I just think that we need to find other funding for it and I don’t think it’s appropriate under this statute. I think that if this City Council goes and votes for it, then we’re voting for it in violation of case law. Now case law has already determined what the law is. Now we can sit here and dispute facts or issues all day long but the fact of the matter is the case has already been decided by law.

Henry Kozloski – Well, my understanding of Newton’s law is different than your understanding. So I mean let’s face it, it’s up to you to do what you want to do. I’m not here, it’s something you have to decide on your own, that’s what you’re elected for to make those decisions.

Councilor Bitzas – I move to go out of question –

President Rheault – I’m not gonna accept that yet until we have an opportunity from other councilors to ask questions. Councilor Letellier?

Councilor Letellier – Yes, thank you. Henry, it’s your understanding as the Chairperson of the Community Preservation Act Committee and as someone who has attended a number of these seminars that we are allowed to make these improvements under the

preservation portion of the CPA not the maintenance portion. We cannot maintain but we can rather preserve the field, that's your understanding?

Henry Kozloski – That's our understanding.

Councilor Letellier – And that's backed up by the Department of Revenue –

Henry Kozloski – To some degree.

Councilor Letellier – letter that was sent as well as the Community Preservation Coalition email that Mr. Bitzas tried to read into the record, correct?

Henry Kozloski – Yes.

Councilor Letellier – Thank you.

President Rheault – Councilor Magovern?

Councilor Magovern – The only question and comment that I have is that when I was in college and I think Councilor Letellier who is a lawyer can answer this better, but when I was in college I took some law courses. The one thing I learned in my law courses is that for every general rule, there's an exception to the general rule and I think that this case and I'm asking Henry do you think this falls under the exception to the general rule because it's very clear that you can't do it in one rule but then under what you've said, we can do it. So I'm asking you that after looking at the law, is this in your mind one of those exceptions to the general rule?

Henry Kozloski – I would think so.

Councilor Bitzas – My last question, Mr. President?

President Rheault – I'm sorry, Councilor Messick?

Councilor Messick – Thank you. Henry, are there any other projects in town that might be somewhat similar to this. I'm reading this email from Mr. Sagninor and it says these types of preservation projects such as drainings structures and erosion control. Have we used CPA for anything else like that?

Henry Kozloski – Not at this time.

Councilor Messick – No, so we don't have a test case on our own. No? Okay. Thanks.

President Rheault – Councilor Bitzas?

Councilor Bitzas – Mr. Kozloski, in your committee you discussed this one here, did you vote in support for the project or not?

Henry Kozloski – Yes, we did.

Councilor Bitzas – Thank you very much sir.

President Rheault – Any other questions while we've got Mr. Kozloski up here?

Councilor Rossi – I just have one.

President Rheault – Oh, I'm sorry, Councilor Rossi?

Councilor Rossi – Henry, were you not the point of this spear that got this thing off the ground? Were you not the one that initiated this irrigation system?

Henry Kozloski – In a round about, yes because the point of, part of the, part of the thing of CPA is to find what the town needs and that's some of our job. There are a couple projects we have been involved in through CPA, one was the funding for the records in the Town Hall which came out of the meeting we had with Stuart Saginor at the library and finally it took maybe six or eight months later they applied for funds to repair the records so it was through one of the meetings we had and we try to be as proactive as we can but on some projects it's almost impossible because they're – you would have to have a plan before you. What I did is I said it's possible for irrigation systems to do this in fields which are no longer usable, then the person, Mike Pickins took it upon his own to come up with a plan, submitted it, it did not meet all of the qualifications because we require three bids which he finally obtained for us and at that time we passed it. We talked to the Solicitor and we talked to the Coalition so we try and be proactive on projects we can be but if the project is very large, we'd have to have some sort of idea of what it falls under, cost, you'd have to have some sort of a plan.

Councilor Rossi – Well, did you contact the Park & Recreation Department on this?

Henry Kozloski – No.

Councilor Rossi – Why not?

Henry Kozloski – From what I was told the fields are taken care of by DPW.

Councilor Rossi – The Parks & Recreation Department washed their hands of this whole project?

Henry Kozloski – I don't know if they washed their hands –

Councilor Rossi – They wouldn't get involved, is that what you're saying?

Henry Kozloski – I can't answer that because it's made available to everybody.

Councilor Rossi – Well, they didn't get involved, correct?

Henry Kozloski – Well, my answer is who takes care of the fields? He doesn't take care of the fields, DPW does.

President Rheault – I'll entertain a Motion to come out of Committee? Moved by Councilor Magovern, seconded by Councilor Cichetti. All those in favor? Opposed? Motion is now on the floor. Councilor Bitzas?

Councilor Bitzas – Thank you very much. Thank you Mr. Kozloski I think you cleared up the atmosphere and I hope that the Council they vote tonight. We have front to us a Resolution, it is signed by the Solicitor. It is very clear per order and approved as to form and legality – Vincent Gioscia – and this is his signature. I spoke to him and it's nothing illegal. We can do that. Councilor Magovern said sometimes we do – with what is is – it depends on what is is so let's not go into the details. This is much needed project. It's not much money. We have about two million dollars almost in the fund. That's one percent comes from our homes – taxpayers – it's not better project than this project here for \$7,000.00 for the youth of Agawam. It's for the school children. It's for the football players. It's for the baseball, my kids played there cuz then I wish we had the money to do it that time but better late than never. It must be done. We must act tonight and I hope we don't table because it delays. There's nothing to table. It's all plain and clear. We are covered. So and we have from Cascio Company which is Tom Cascio and he did so much for this town. His bid is about 1/3 less for anybody else for the equipments and willing to help us too. \$7,000.00 – it's nothing compared to other bids and he do that because of his heart and he said he wants to give something to the town. He did a lot more projects here this person. It is nothing to do with the maintenance, nothing to do with the – it is just only for the parts and labor and equipments. The DPW will maintain and pay for that. We all covered – 100% legal. It'd be unfortunately if some of you delay it or you can vote no it's fine, it's democracy, I'm not saying how to vote but at least have the courage to vote yes or vote no and I hope you vote yes. The children need this and the town and we can do it. It's legality. It's 100% legal. It's right here. Thank you.

President Rheault – Councilor Letellier?

Councilor Letellier – Thank you. Well, I'm not as confident as George is that it's 100% legal because there is no precise case on point, if you've ever been to the field it's clear that this project is really, truly about preserving this field. My son plays there. We go on the playscape, we go on the field. In years past before I had my son I brought my nieces and nephews out there, this ground is so dry it doesn't even absorb rain water. It's hard-caked so in addition to worrying about kids getting injured from sliding on those two smaller baseball fields, it's so dry that when there's wind, the dust really comes up and kids that have asthma or respiratory problems, it's really dangerous for them out there. So I agree with Henry and with the DOR letter and with the email that we can use this money as a preservation project. The town is going to maintain it once the irrigation system is put in. The town cannot under CPA maintain it once it's put in and if anyone or

any citizen challenged this expenditure of the \$7,000.00, I think that when you look at the condition of the field now, it's clear that it really is preservation. It's weedy, it's dry, the grass doesn't grow, it's hard, it's hard, it's dangerous for kids if they're falling or they're trying to slide into the bases on those fields so I'm not as confident as George that it's 100% okay but I am very confident that it is truly a preservation of the field and I'm gonna vote yes for it and I hope everyone else does too.

President Rheault – I don't know who was first, I'll go down the line. Councilor Rossi?

Councilor Rossi – Yes, thank you. I agree that there is a need for sprinkler systems on that field and I'm not opposed to the project as I said earlier. I'm just opposed to this appropriation because I think this appropriation is not legal. Under the definition of the CPA, preservation is for the land itself and not for persons, it's to, for erosion and for flooding, it's for the destruction of the property itself under preservation that is what the definition is. The court has ruled under Spedman that preservation in this instance over here is maintenance – the irrigation system is maintenance because it's to enhance the field, it's to produce vegetation, it's to create a usage for the field. Under preservation definition that does not qualify and in the state statute that does not qualify, the original ruling by our City Solicitor has even said that that it does not qualify. If we had purchased or acquired it under CPA, it would qualify as maintenance but clearly the courts have said, they have spoken on this matter and it's right in the case, if you've read the case law, you would see that it addresses it very specifically on what preservation is and what the determination of law is in that case. Now we can sit here and banter issues around all day long but the fact of the matter is that the legality of this thing has already been decided in the courts. Now our Solicitor said on June 29th that that was the case, that this was not an appropriate expenditure, somehow or another along the line, he was, someone convinced him to change his ruling or something, I don't know what happened but it's before us on the Agenda. Now, I understand that this is not an elaborate appropriation, \$7,000.00, and I'm sure that if we dig deeply somewhere else we can come up with \$7,000.00 for this appropriation and I'm not opposed to doing that. I'd be more than happy to spear head a committee to go into that budget and find a little fluff to get it. I mean that's how much I agree with this system but what I'm saying is we as a City Council can take any action that we want but if it's determined to be illegal, then I think we have a problem on our hands because if it is illegal, it's not gonna go away because other issues are gonna come before us. Now if you want to talk about irrigation, I mean, preservation, the track at the High School would qualify under CPA as preservation because there is erosion over there, there is flooding over there, that would qualify under the definition of preservation under CPA, but no one seems to want to address that which is a very needy project so I can't in all good conscience vote for it under CPA. I will gladly give my vote for any other appropriations for this. I don't think it's something that we need to do right now – winter's setting in – we've got plenty of time but before I give a vote for the CPA, I want our City Solicitor to stand right down here at that podium and give his legal interpretation on the Spedman case, that's what I want. We have two conflicting things and I want him to stand here and give us a legal interpretation, an opinion, I don't want to take anything for granted here. Thank you.

President Rheault – Councilor Magovern?

Councilor Magovern – Before I say anything, I want to thank the volunteers that are here and thank you for the City Council and for the Town for all the hours that you put in as volunteers to the athletic programs here in Agawam because it's the volunteers that and I've said it for years, it's the volunteers that make this town the great town that it is. But to this issue, I think that time is a situation where we've got a problem where I think that Mr. Cascio has put a bid in which is substantially less than all the other contractors and part of the reason might be because it's a slow time of the year for him and I think that he could get started with this right away if we pass this. I feel exactly the same as Councilor Rossi does that I'd like to feel a little bit more comfortable that this is legal but back to what I said before, the one thing I did learn in law school or in my law courses is for every general rule, there's an exception to the general rule. Our attorney which is paid by the town – the City Solicitor – is the one who signed off. He signs off as a lawyer, it's his legal opinion that he has found the exception where this will float. I think it is his ruling that we have to go by. If he's wrong, then the City Solicitor is the one that has to stand for that. The \$7,000.00 is not that much money. I feel that we could have found it somewhere else but at this point the time is the problem so again, I'm gonna vote for it only because I think that there's a time crunch, the City Solicitor has signed off on it, I'm not totally comfortable with it because there is General Rule that says that it's not but accordingly to Mr. Kozloski and that field is in terrible shape and I'd like to see Phelp's being the school that I graduated from, an elementary school, I'd like to see those fields preserved, so again thank you for your volunteering and I'll be voting for it.

President Rheault – Councilor Simpson?

Councilor Simpson – Thank you. I'd like to thank Henry for pointing out the difference between the use of maintenance and use of preserving and I think that there is a statement in here from the Community Preservation Coalition that says preserve that is to protect the field from injury, harm or destruction but not including maintenance. At this point it sounds like that the field would be totally harmed or destructed or there would be injury to the field if it was not properly maintained at this point and we could get to the point where we would have to shut the field down, we've been through that before in the town where we've had to shut fields down due to the fact that they just became unplayable. I too am not totally convinced that it's 100% legal. I think a lot of, as we all know, is through interpretation, I'm sure Councilor Letellier can say that as being a lawyer, one lawyer can interpret something one way and another can interpret it another way but I think this really does fall under the fact that we are really trying to preserve a field from being totally unusable. I would think that if it was a field that for some reason didn't get much water but for some reason could keep growing and be fine – it seems like sometimes some areas are like that – that then I would say that it wouldn't fall under this definition and also the fact that not only injury to the land but injury to the people who are using that. We have to take that into consideration with children and adults that are on that field during practice time, game time or play time so I'm a little bit more convinced now. I've always been in favor of it but a little shaky on just the terminology of it but I feel confident and I will have a yes vote for this. Thank you.

President Rheault – Councilor Messick?

Councilor Messick – I’m going on a couple things here. First that our attorney didn’t actually give us an opinion of what his thought was whether this was allowable or not. I noticed in the memo about the office records preservation he says “it is my opinion that the use of funds is proper”. In the Memorial Field irrigation memo, he doesn’t say that. He essentially just tells us what the law says, that’s an interpretation, that’s not an opinion. The other thing is in the email from Stuart Saginor, it says capital improvements such as draining structures, installation of an irrigation system for erosion control are not normal maintenance items. These are capital improvements and as the other councilors have said to preserve a field which is being destroyed. I think he very clearly tells us the difference between maintenance and preservation. Maintenance would be the cost to operate the irrigation system which is not the issue here. So I’m pretty confident that this is allowable and I’m going to be voting in favor of it. Thank you.

President Rheault – Any further discussion? If not, Barbara, will you please call the roll?

ROLL CALL – 10 YES, 1 NO (Councilor Rossi)

President Rheault – Ten yes, one no, you have approved the transfer or the authorization I should say.

Item 7. Report of Council Committees

None.

Item 8. Elections

None.

Item 9. Public Hearings

None.

Item 10. Old Business

1. ***PH-2010-7 - [ZC-2010-1(TO-2010-34)] Public Hearing Date of November 3, 2010 on the Matter of a Petition by Thomas Russo, 204 Suffield Street, Agawam, MA for a proposed Zone Change on property located on Garden Street (Referred to Zoning Review Committee)***

President Rheault – This is a continuation for publication purposes. Next meeting will be the public hearing on the zone change and that’s been referred over to Zoning and at that time we’ll ask for a report back, Jill? Okay?

2. **TO-2010-26 - An Order Granting or Renewing a LICENSE for a Class II Dealer – Agawam Auto Mall, Inc., 825 Springfield Street, Feeding Hills, MA. (Referred to License Committee) (Clerk)**

President Rheault – I'll accept a motion to put the discussion on the floor. Moved by Councilor Rossi, seconded by Councilor Perry. A report from Councilor Rossi on the License Committee.

Councilor Rossi – Yes, the Committee is in full agreement to send a positive recommendation for all of the Class II Dealer Licenses that are on the Agenda this evening and that would be 2010-26 through 2010-33 and I would entertain a motion to consolidate the nine or the seven items to take one vote if the Council so pleases.

President Rheault – Moved by Councilor Rossi, seconded by Councilor Magovern. I would change the motion to read TO-2010-26 Agawam Auto Mall; -27 Falcor Auto Sales; -28 Langonet, Inc.; -29 Parrotta Auto Service; -30 V&F Auto; -31 Zielinski Brothers; -32 Chris Auto South; -33 Joseph Polys d/b/a Joe's Truck Repair, all inclusive in one vote for the granting of the license. Any discussion further? Seconded by Councilor Letellier. Barbara, please call the roll.

ROLL CALL – 11 YES, 0 NO

President Rheault – Eleven yes, you've approved the granting of the licenses just mentioned.

3. **TO-2010-27 - An Order Granting or Renewing a LICENSE for a Class II Dealer – Falcor Auto Sales, Inc., 373 Springfield Street, Agawam, MA. (Referred to License Committee) (Clerk)**

President Rheault - See item 2 above.

4. **TO-2010-28 - An Order Granting or Renewing a LICENSE for a Class II Dealer – Langonet, Inc., 61 Ramah Circle South., Agawam, MA. (Referred to License Committee) (Clerk)**

President Rheault – See item 2 above.

5. **TO-2010-29 - An Order Granting or Renewing a LICENSE for a Class II Dealer – Parrotta Auto Service, Inc., d/b/a Parrotta Auto Sales, 357 Main Street, Agawam, MA. (Referred to License Committee) (Clerk)**

President Rheault – See item 2 above.

6. **TO-2010-30 - An Order Granting or Renewing a LICENSE for a Class II Dealer – V&F Auto, Inc., 7 Harding Street, Agawam, MA. (Referred to License Committee) (Clerk)**

President Rheault – See item 2 above.

7. **TO-2010-31 - An Order Granting or Renewing a LICENSE for a Class II Dealer – Zielinski Brothers, II, 218 Shoemaker Lane, Agawam, MA. (Referred to License Committee) (Clerk)**

President Rheault – See item 2 above.

8. **TO-2010-32 - An Order Granting or Renewing a LICENSE for a Class II Dealer – Chris Auto South, Inc., 207 Main Street, Agawam, MA (Referred to License Committee) (Clerk)**

President Rheault – See item 2 above.

9. **TO-2010-33 - An Order Granting or Renewing a LICENSE for a Class II Dealer – Joseph J. Polys d/b/a Joe’s Truck Repair, 97 Ramah Circle South, Agawam, MA. (Referred to License Committee) (Clerk)**

President Rheault – See item 2 above.

Item 11. New Business

1. **PH-2010-8 - [ZC-2010-2 (TO-2010-35)] Suggest a Public Hearing Date of November 15, 2010 on the Matter of a Petition by Tirone Development Corp., as prepared by Anderson Associates, 375 Walnut Street Ext., Agawam, MA for a proposed Zone Change on the vacant lot located at the corner of Spencer Street and Maple Street in Agawam, MA.**

President Rheault – Any question on that? If not, Barbara would you take care of the publication please?

2. **TR-2010-43 - A Resolution Confirming the Appointment of Tim A. Bryant, 80 Bradford Drive, Feeding Hills, MA to the Historical Commission to a Term Expiring January 1, 2014 (Mayor)**

President Rheault – Next Agenda

3. **TR-2010-44 - A Resolution regarding the Extension of KENO Monitoring (Council)**

President Rheault – Next Agenda, refer that over to the License Committee.

4. **TO-2010-36 - An Order Granting or Renewing a LICENSE for a Class I Dealer – G&T Beaver, Inc. d/b/a Beaver Camper Service, 721 Springfield Street, Feeding Hills, MA. (Clerk)**

President Rheault – Next Agenda, refer that over to the License Committee.

5. **TO-2010-37 - An Order Granting or Renewing a LICENSE for a Class II Dealer – A-C-E Auto Body – Sales, 1363 Main Street Agawam, MA (Clerk)**

President Rheault – Next Agenda, refer that over to the License Committee.

6. **TO-2010-38 - An Order Granting or Renewing a LICENSE for a Class II Dealer – Auto Kraft, 119 Walnut Street, Agawam, MA. (Clerk)**

President Rheault – Next Agenda, refer that over to the License Committee.

7. **TO-2010-39 - An Order Granting or Renewing a LICENSE for an Automatic Amusement Device(s) – Buc, Inc. d/b/a Buccaneer Lounge, 84-86 Maple Street, Agawam, MA. (Clerk)**

President Rheault – Next Agenda, refer that over to the License Committee.

8. **TO-2010-40 - An Order Granting or Renewing a LICENSE for an Automatic Amusement Device(s) – The QUEST, Inc., 1251 River Road, Agawam, MA. (Clerk)**

President Rheault – Next Agenda, refer that over to the License Committee.

9. **TO-2010-41 - An Order Granting or Renewing a LICENSE for an Automatic Amusement Device(s) – F.S.F., Inc. d/b/a Riverboat Bar & Grill, 11 South End Bridge Circle, Agawam, MA. (Clerk)**

President Rheault – Next Agenda, refer that over to the License Committee.

10. **TO-2010-42 - An Order Granting or Renewing a LICENSE for an Automatic Amusement Device(s) – T.J. Sporthouse, 1664 Main Street, Agawam, MA. (Clerk)**

President Rheault – Next Agenda, refer that over to the License Committee.

11. **TR-2010-45 - A Resolution Authorizing the Application and Acceptance and Expenditure of a Massachusetts Community Development Block Grant (Mayor)**

President Rheault – Next Agenda, send that over to the Finance Committee.

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

President Rheault – We’ll start at my furthest right, Councilor Bitzas?

Councilor Bitzas – Just I want to thank the Council for the support of the \$7,000.00. It’s the best \$7,000.00 spent for the betterment for the fields. It’s the right time we did it. We didn’t postpone it. I hope we can do it very soon so they are going to have good fields to play and that’s it.

President Rheault – Councilor Simpson?

Councilor Simpson – Nothing tonight, thank you.

President Rheault – Thank you. Councilor Magovern?

Councilor Magovern – I just want to remind everybody that Election Day is November 2nd and I hope that you all will go out and exercise your rights and vote in the upcoming election. Thank you very much.

President Rheault – Councilor Mineo?

Councilor Mineo – Nothing this evening.

President Rheault – Councilor Rossi?

Councilor Rossi – Nothing this evening.

President Rheault – Councilor Walsh?

Councilor Walsh – Nothing this evening.

President Rheault – Councilor Cichetti?

Councilor Cichetti – Nothing, thank you.

President Rheault – Councilor Messick?

Councilor Messick – Would you like the Tirone Zone Change referred to the Zoning Committee?

President Rheault – Oh, I'm sorry, did I miss that one? Again. Thank you.

Councilor Messick – Thank you.

President Rheault – Thank you. Councilor Letellier?

Councilor Letellier – I'm gonna buck the tradition. I have a whole list of stuff.

President Rheault – You do?

Councilor Letellier – Sorry but it's still early.

President Rheault – Is it all legal to the Council?

Councilor Letellier – It's all pertinent to the Council. Now that Councilor Walsh is back, I wondered and it's up to the Chair to do this but maybe we could refer the issue of

Free Cash for the Finance Committee to look at? There's a lot of money out there. I don't know if we're over budgeting in certain areas, or what we're doing because if we can eliminate some of this Free Cash we can eliminate how much taxes we have to raise. So obviously you're the Chair but I would respectfully ask that you refer the issue to be reviewed by the Finance Committee.

President Rheault – So done.

Councilor Letellier – Thank you. I would love to serve on the Reorganization Committee.

President Rheault – All right. Thank you.

Councilor Letellier – Let's see. The Democratic Town Committee is having its Annual Democrat of the Year breakfast this coming Sunday at Chez Josef. Tickets are still available as are ad spaces. We are honoring Registry of Probate Tom Moriarty as our Democrat of the Year and Theresa Kozloski well known former School Committee member as our Lifetime Achievement Award winner. If you're interested in tickets, you can see Councilor Messick or myself and I do want to remind everyone to vote and I want to remind everyone to look at the questions really, really clearly. As City Councilors, I think the question that probably of most interest to us is Question #3. I'm not gonna tell you how to vote, that's not my job. I'm gonna ask you to read the question very clearly because they're not looking to roll back the taxes back to 5 or 5 ¼ percent, they're looking to roll it to 3%. So keep that in mind as you think about how we deal with local aid and the resources we have to balance our town budget and that's it. Thank you very much.

President Rheault – Thank you. Councilor Perry?

Councilor Perry – Yes, thank you Mr. President. Just one thing – I want to be part of the Reorganization Committee.

President Rheault – I would expect that.

Councilor Perry – Okay, thank you.

President Rheault – Thank you. I have nothing. I will take into consideration the two names and I know that one councilor mentioned it earlier and I'll see if he's still interested and I'll entertain a Motion to Adjourn. So moved. All those in favor? Opposed? We are now adjourned. Good evening and good night.

Adjournment.