

A special meeting of the Board of Aldermen was held Tuesday, November 24, 2020, at 6:05 p.m. via teleconference.

President Lori Wilshire presided; City Clerk Susan K. Lovering recorded.

Prayer was offered by City Clerk Susan K. Lovering; Alderman David C. Tencza led in the Pledge to the Flag.

### President Wilshire

As President of the Board of Aldermen, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are:

Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means:

*To access Zoom, please refer to the agenda or the City's website for the meeting link.*

*To join by phone dial: 1-929-205-6099      Meeting ID: 874 0766 0212      Passcode: 672586*

*The public may also view the meeting via Channel 16.*

We previously gave notice to the public of the necessary information for accessing the meeting, through public postings. Instructions have also been provided on the City of Nashua's website at [www.nashuanh.gov](http://www.nashuanh.gov) and publicly noticed at City Hall and the Nashua Public Library.

If anybody has a problem accessing the meeting via phone or Channel 16, please call 603-821-2049 and they will help you connect.

In the event the public is unable to access the meeting via the methods mentioned above, the meeting will be adjourned and rescheduled. Please note that all votes that are taken during this meeting shall be done by roll call vote.

Let's start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting, which is required under the Right-To-Know Law.

City Clerk Lovering called the roll and asked them to state the reason he or she could not attend, confirmed that they could hear the proceedings, and stated who was present with him or her.

The roll call was taken with 15 members of the Board of Aldermen present: Alderman Michael B. O'Brien, Sr., Alderman Patricia Klee, Alderman Richard A. Dowd, Alderman June M. Caron, Alderman Benjamin Clemons, Alderman, Alderman David C. Tencza, Alderwoman Elizabeth Lu, Alderman Ernest Jette, Alderman Jan Schmidt, Alderman Brandon Michael Laws, Alderman Skip Cleaver, Alderman Linda Harriott-Gathright, Alderman Wilshire. Alderwoman Shoshanna Kelly and Alderman Lopez arrived after roll call.

Mayor James W. Donchess, Corporation Counsel Steven A. Bolton, Celia Leonard, Deputy Corporation Counsel and Tim Cummings, Economic Development Director were also in attendance.

ROLL CALL

Alderman O'Brien

I am present, I can hear the proceedings and I am alone.

Alderman Klee

I am here, I can the proceedings, I am alone.

Alderman Dowd

Yes, I am present, I can hear everyone and I am alone.

Alderman Caron

Yes, I am here, I am alone and I can hear everyone.

Alderman Clemons

I am present, I can hear everyone and I am by myself.

Alderman Tencza

I am present, I am alone and I can hear everyone.

Alderwoman Lu

I am here, I am alone and I can hear you.

Alderman Jette

I am here, I am alone and I can hear the proceedings.

Alderman Schmidt

I am present and I am alone in the room.

Alderman Laws

I am here, I can hear you and nobody is here but my fiancé.

Alderman Cleaver

I am here, I am alone and I can hear the proceedings.

Alderman Harriott-Gathright

I am present, I can hear everyone and I am in the room alone.

President Wilshire

I am here, I can hear everyone and I am alone.

Susan Lovering, City Clerk

You have 13 in attendance.

President Wilshire

Thank you. Also in attendance is Mayor Donchess and Corporation Counsel Steve Bolton.

COMMUNICATIONS - None

**R-20-094**

Endorsers: Mayor Jim Donchess  
Alderman-at-Large Lori Wilshire  
Alderman Richard A. Dowd  
Alderman Linda Harriott-Gathright  
Alderman Skip Cleaver  
Alderman-at-Large Michael B. O'Brien, Sr.  
Alderman Thomas Lopez  
Alderman Patricia Klee  
Alderman-at-Large Ben Clemons  
Alderwoman-at-Large Shoshanna Kelly

**OMNIBUS RESOLUTION REGARDING NEW MARKETS TAX CREDIT TRANSACTION FOR THE PERFORMING ARTS CENTER**

**MOTION BY ALDERMAN O'BRIEN TO RECOMMEND FINAL PASSAGE BY ROLL CALL**

ON THE QUESTION

President Wilshire

Alderman Lu?

Alderman Lu

Yes, I'd like to suggest that we have some presentation on this?

President Wilshire

Sure, we have Director Cummings here, Director Cummings, would you care to address this?

Tim Cummings, Director of Economic Development

Yes, thank you, Madam Chair. So, for the record, Tim Cummings, Director of Economic Development. I am going to share my screen now if that's alright with the body. What you see before you is a Memo I put together this afternoon which basically is more of an orientation than anything else. The substance of the material has already been provided to you, so this really is just to help organize my thoughts. With that being said, Madam President, thank you for making time this evening for a Special Board of Aldermen meeting. I know you guys have been having a lot of these meetings; time is of the issue and you'll hear about that in a few moments.

Technology-wise this evening, just to set the stage, I am going to be sharing my screen for the most part this evening. At one point I am going to stop sharing my screen; Niel Cannon is going to share his screen when he speaks and then he'll be handing it back over to me. I say that to everyone so logistically you can just become acclimated to that. When we are done speaking, I'll bring down my shared screen as quickly as possible so we can have the full context of everyone for participation purposes. So, with that being said, Madam President, I am sharing my screen here and I am just going to quickly read this to you. Again, an overview: **A New Market Tax Credit is a Federal Financial Program that aims to stimulate business and real estate investment in low income communities through a Federal Tax Credit.** The program is administered by the US Treasury Departments, Community Development Financial Institutions Fund known as CFI and allocated by and through Community Development Entities known as CEE's.

Early on we anticipated using the New Market Tax Credit as a tool for the benefit of the Performing Arts Center Project. **In 2018 and 2020 a Comprehensive Tax New Market Credit 101 type briefings were provided by our Development and Finance Consultant, Niel Cannon who is on this call with us this evening. During the briefings, Niel explained in detail how the program works.** R-20-094 which is the subject of tonight's conversation is an omnibus piece of Legislation that provides multiple authorizations necessary for the City to proceed with the New Market Tax Credit. The structure before you is pretty simple, pretty standard deal structure; ultimately, however, every New Market Tax Credit transaction is unique and may require certain nuances tweaks. A New Market Transaction is like a multiple dial lock, that you need to align the dials to unleash its potential.

The following describes how we are aligning the dials to make the program work for us as we are a Municipal Corporation. And why are we doing this? As you all know, there is a \$4 million-dollar requirement for non-Nashua tax dollars to be contributed to the project in order for it to proceed. **The New Market Tax Credits afford us this opportunity to proceed now, because the New Market Tax Credit Transaction will net to us \$2.446 million coupled with local philanthropic donations of \$1.553 million.** We achieved the \$4 million-dollar requirement that needs to be satisfied. Needless to say, we had a unique condition placed upon us and it calls for a unique solution. The chart beside you outlines the sources and the amounts that achieves that \$4 million dollars that I referenced.

**Unique constraints, speaking of unique solutions, we also have some unique constraints when dealing with the New Market Tax Credit.** One of these constraints is time. From the very beginning we outlined that time is going to be of the essence which does not lend itself toward our unique Government structure. We would need to adapt this to this condition and this omnibus does just that. If you recall, we outlined that once a CDE decides to make a Quality Equity Investment, known as a QEI, we would need to move expeditiously. A second issue is the evolving nature of the deal structure, which means that as we look to align the dials, new issues and details arise which must be addressed. The varied documents are typically evolving all the way up until closing and this body is accustomed to seeing set deals with a handful of documents. The omnibus addresses a dynamic and multi-part deal structure of the New Market Tax Credit transaction by employing a typical tool that other municipalities use which is to seek approval to allow for the overall effectuation of the deal and empowers the professional staff in administration to execute based upon details and overall concepts.

**So, my request this evening is two-fold. Tonight, I ask for favorable consideration and our recommendation in order to proceed with the New Market Tax Credit Transaction with a favorable approval of the omnibus addition to that, I am requesting a verbal report at your regularly scheduled Board of Aldermen Meeting just following this meeting for final passage of R-20-094.** With that being said, Madam President and through you to the body, this evening, we have put together a small presentation that I would like to go through; and the team that has been working on this so Celia Leonard and me, we've been working hand in hand on this, **Attorney John Kaminski who is with us this evening, is our outside New Market Tax Credit Counsel. And then Neil Cannon, our Development and Finance Professional along with Andy Prolman our local Real Estate Attorney is here with us this evening.** Each one of those individual members will speak this evening on the various parts of the deal that they are involved with.

We have been working on this avenue of the financing plan for well over 3 years and as of recently we have been working on this twice a week on closing coordination calls, in order to meet our deadline of December 15<sup>th</sup> which is why I am asking for this special consideration. So, tonight's Agenda, we are going to start with Niel Cannon, he's going to go through the flow of funds which have already been provided to you, but I am going to stop sharing my screen; I am going to ask Niel to share his. After Niel speaks, then John Kaminski and Celia Leonard are going to present exactly how we are going to execute the deal and I believe John Kaminski will be leading off that conversation and handing it off to Celia. I will begin sharing my screen again at that point and then rounding things out with have Andy Prolman who will talk about the Real Estate matters relative to this transaction. So, if I may, Madam President, I am going to stop sharing my screen and ask Niel Cannon to pull up his so we can actually get into the details of how the transaction will commence.

President Wilshire

Thank you, Director Cummings.

Director Cummings

Thank you.

President Wilshire

Mr. Cannon?

Niel Cannon

Thank you. I think it's up now, can everybody see it?

President Wilshire

Yes.

Mr. Cannon

What I do is I take my Zoom screen and move it down to the lower right-hand corner so we can see this whole thing. So, thank you for the opportunity to present tonight and I'll be short and as quick as possible. Before I start, I just want to say that it's been a real pleasure working with your municipal staff. I have been working with Tim for close to 3 years on this. Over the last year or so, a lot with Celia and, of course, with your finance staff. I want to say if it wasn't for their confidence and their patience in dealing with these rules as well as in dealing with me, it wouldn't be going so smoothly. So, with that said, I'd like to start by asking you to focus on this top box which I just lost – I don't know what happened with it. I am going to try to bring it up again.

Alderwoman Kelly

Alderman Wilshire, while we are waiting I just wanted to say that I'm here.

President Wilshire

Thank you, Alderman Kelly.

Alderwoman Lu

Excuse me, Alderman Wilshire?

President Wilshire

Yes?

Alderwoman Lu

I just wanted to ask is this the sheet of paper that we all received today? Perhaps we are all looking at it?

President Wilshire

I'm not sure everyone has one.

Alderwoman Lu

Ok.

Mr. Cannon

Ok we are back, I'm sorry. Can we all see it?

President Wilshire

Mr. Cannon

Mr. Cannon

I apologize for that. So, I'd like you to look at the top box here, which basically shows the sources of funds as well as the uses. And very simply, there's 3 sources; there's your \$21 million-dollar bond; there's the \$2.446 million-dollar New Market Tax Credit Equity, which is what this is all about. And there's a donation of \$1.5 million dollars and change from the Nashua Community Arts. That totals \$25 million. The uses are without getting into the detail, is a total development budget for the building itself including acquisition of the land of \$22,550,000.00 and for furnishing and fixtures, this is special equipment audio/visual, stage lighting, etc., of \$2.45 which brings you to your total. So, given that I want to talk a little bit about how this works in terms of this project. As you all know, because we've talked about it before, as many of you know, the New Market Tax Credit Program is an incentive for communities or individuals to invest in distressed communities. And a distressed community is a census tract which meets certain criteria. The Census Tract in Downtown Nashua that this project is located in is the most distressed census tract in the State. So, it is eligible.

The amount of the Tax Credit available to investor is 39% of the qualified equity investment. Now the Qualified Equity Investment which you see here is \$9.75 million. We tried, Tim and I, for more than a year to make like that \$15 million, so that the number, you know, we were talking about \$5 or \$6 million dollars and add up see equity. But unfortunately, we couldn't get an allocation any greater than this. It's for several reasons, number one) Mascoma which is the only CDE that serves New Hampshire exclusively did not have an allocation from US Treasury. Number two) the market for these things is very competitive and when you go outside of New Hampshire asking for a CDE to make an allocation to do a project inside New Hampshire, the first they do is they look at New Hampshire's statistics and say, "you are too well off, you have a median family income way about the national average, so we are not going to spend money there". Well, that's too bad. They are very macro oriented rather than micro oriented.

So anyway, if you take that number of \$9,750,000.00, the Tax Credit 39% of that or \$3.8 million dollars which is this number right here. So, for an investor to get that credit, he has to buy it from us because we don't want it. We want to raise cash. So, we effectively are selling him that credit, the \$3,802,500.00 for \$.76 cents on the dollar, which is another number that's gone way, way down because of the Tax Act of 2017, COVID and other issues. But we did well.

The nationwide average right now is \$.70 cents, we've got \$.76. So, we are going to take it and run. So, if you multiply the \$.76 cents times 3.8 you get the \$2,889,900.00. That's cash in at the top of the deal from the equity investor before we start taking fees out. So, if we look at this number down here, again the \$9,750,00.00, I want to focus at what's in the shade are first, because that's the New Market Deal. If we look at the \$9,750,000, which is what we have been allocated, we have to raise to get \$9,750,000.00 down here, which is here, we have to raise \$9,998,750.00 because we got fees to pay for \$248,000. So, the difference between this, this less this equals this over here, the \$7 million. **So, between a loan from 201 Main Street Financing Corp. which is most cases is a bank but this case because it is municipal finance, it's an entity that has been created under 152-G and you guys created it. That loan which is the portion of your bond goes into the investment fund box. In addition, the \$2,889,000.00 goes into that box and \$248,000.00 which is about 2.5% in fees, are taken out. Then they make the Qualified Equity Investment which is the whole key to this New Market jargon and qualifies us for the deal.**

Their investment into a subsidiary of Mascoma Community Development established solely for the purposes of this deal. Mascoma Community Development is the managing partner of 14, or 15, or 16 or 17 of these sub CDE's, we call sub-CDE's. Again, there's another fee paid to them so the \$975 is reduced to this and they make a loan to, **in this case, Impact Corp. which is, go all the way down here. Impact Corp is an entity that is an affiliate entity of 201 Main Street, which is another 162-G with a separate governance than the 162-G created up here.** So, we now have \$9.555 million dollars in Impact Corp. in the form of loans. Well that's not going to cover the whole deal is it? That's not enough, but it's how we got \$2,446,150.00 into it, that's the important thing. How do we finance the balance of the deal, the stuff that's outside the gray area? That's not a good term, "gray area" I should use a different color.

But the way we finance the balance and I think this is the stuff that Celia and John are going to get into because it involves transactions that you have to authorize. Well, number one) we are going to take \$13 million dollars, the balance of the bond, the \$21 million dollars less the \$7, I'm sorry this number here is wrong, this is the right number, I don't know how that happened. \$13,891,000.00 which is this plus this equals \$21 million. **We are going to take that and we are going to make a grant to 201 Main Street Corporation, which is the non-profit 162-G entity that you created.** At the same time, Nashua Community Arts is going to donate \$1.5 million dollars into 201 Main Street Real Estate Corp. So now, 201 Main Street is going to have \$15,445,000.00 in the bank for a couple of seconds at least. What are they going to do with it? **Number one) they are going to make a capital contribution of \$12,995,000.00 the QALICB Borrower, which is Impact Corp. which owns the building.**

**So now between this contribution of \$12,995 and the \$9,555 we have the total, we go up here, total \$22,550 that's needed to build the building and acquire the land. After 201 Main Street makes that capital contribution it's going to have \$2,450,000.00 left over. Going back up again, that's the cost of the equipment, you see it here, \$2,450,000.00. So, Impact, I should say more than just equipment, FF&E, specialty stuff mostly including seating, by the way, including this portable seating, that 201 Main Street will purchase and lease to the City of Nashua which is the Master Tenant. And in conjunction with that, which is sort of outside the deal, the City signs an Operator Agreement with Spectacle Management and has a Trustee established to oversee the programming and the deals of this agreement.**

I think that covers it. Tim, do you want me to take questions now or do I just let you go?

Director Cummings

Thank you, Neil, Madam President if I may, I would suggest that we hold questions until the end. What I'd like to do is ask Niel to turn off the sharing of his screen so I can share my screen, if I could, Madam President.

President Wilshire

Sure.

Director Cummings

Thank you. So now I'd like to pivot and ask John Kaminski who is our New Market Tax Credit Counsel to start the legal overview. And I am now sharing my screen, hopefully everyone can see it. I am going to pull up a similar type diagram that was just shown but it's going to have a little nuance to it to make sure we are very clear on the legal aspects of this transaction. John?

John Kaminski, Attorney

Madam President, Members of the Board of Aldermen, it is my pleasure to be here with you this evening. You may remember I was with you some time ago when we first were discussing this transaction, you approved the creation of the two corporations. I do a fair amount of New Market Tax Credit transactional work and am happy to be working with the City and the City team in putting together this transaction. And I imagine by now you are asking yourself, "Why the devil is this so complicated". And I think the answer is that we are taking a program that the Federal Government created for the purpose of providing subsidies and providing incentives to businesses to be located in distressed communities and we are adapting it and using it to help serve municipal purposes so we need to create a business entity and create a business in order to take advantage of this program.

I have to say that this transaction is not totally unique, I've worked on other transactions, representing other municipal entities to utilize the credit. And the transaction you see is a typical New Market Tax Credit structure that has evolved as people have used the law since the New Market Tax Credits were enacted by the Federal Government back in 2001. So, this is a fairly standard transaction. I think one way to think about this transaction is that it takes place in three phases. The first Phase is the Acquisition and Financing Phase that Niel talked about and we are going to talk about more this evening. The second Phase is the Operational Period of 7 years after we close in December on the New Markets Tax Credit transaction there will be a 7-year period through December of 2027 in which we will need to be in compliance with all the Federal requirements for the New Market Tax Credit Transactions. And then the third Phase is what happens after the 7-year period.

I want to spend some time which you this evening talking about each of these three Phases because I think it's important as you consider the Omnibus Resolution before you and potentially approving this program. The Acquisition and Financing phase as Niel has gone over for you this evening, involves the various loans and other transactions between the City's entities, 201 Main Street Financing, Impact, and 201 Main Street Real Estate. All of these three entities are affiliates of the City. We had to create Impact Corp. which is a New Hampshire Business Corporation to serve as the location for the business that's going to be financed with the New Market Tax Credit money. Impact Corp.'s business is leasing property. It is in the business of developing the site at 201 Main Street and leasing it to the City. So, the facility will be constructed and equipped under the plans that the City has evolved over the last several years.

The City will then have a 25-year lease of the facility and will have a 5-year renewal option on the facility. The purpose for this lease is to demonstrate that the Impact Corp. has an ongoing business. We can't simply have a business that lasts for 7 years and qualify for the New Market Tax Credits, we have to have a business that is a long-term operational potential in front of it. So, we demonstrate that Impact Corp. has a business going on and that enables us to qualify for the New Market Tax Credits. The investors, Mascoma in this case, in New Markets Tax Credit transactions, have some requirements that they be assured that they are going to get the credits and that everything is going to operate appropriately over the 7-year period of time and that they will not incur any unanticipated environmental problems. All of these things are baked into the program for Impact Corp. but the investors require that the City as the sponsor of this transaction, guarantee the obligations of Impact Corp. to operate appropriately over the 7-year period of time and guarantee construction completion and that there will be no unanticipated environmental liabilities. And you will see that in one of our Omnibus Resolutions



The acquisition in financing is done through a complex set of documents that are designed to meet New Market Tax Credit requirements, investor requirements and to achieve the ability of tax counsel, myself included and Mascoma's National Counsel included to give a tax opinion to Mascoma that the transaction qualifies for the New Market Tax Credit. So that's Phase One, that's the acquisition and financing Phase.

Second is the Operational Phase during 7 years after the closing of the financing. During this period of time, the project needs to continue to be operated, continue to be an active business. **Spectacle Management is going to be managing the project during that period of time. You don't see the funds flow during that period of time on this chart, but what's going to happen is that the City is going to pay rent to Impact Corp. under its lease and (audio cuts out) lease are going to find their way back to the City in the form of repayment of debt because the City has made this \$7 million dollar loan and also find their way back to the City because any rental funds that are paid to Impact Corp. in excess of what Impact Corp has for debt service and costs, will be distributed back up to the City through 201 Main Street Real Estate.**

During the Operational Phase there will also be some reporting obligations, **the Impact is going to need to file reports with Mascoma so that Mascoma can demonstrate to the Federal Government that everything is being done appropriately.** There are some community benefits obligations as well, that the project be providing benefits to the community through the existence of the Performing Arts Center and attendance at events and things of that nature. That's the second phase.

The third Phase is what happens at the end of the 7-year New Markets Tax Credit compliance period. **After 7 years, there is no longer a requirement to continue to comply with the requirements of the New Markets Program.** Unfortunately, the IRS does not allow us to simply today enter into a binding contract, it says after 7 years we erase the slate completely clean and undo all of this, were that life were so simple. Instead what has evolved is a system where Mascoma has a document that is called a Put Option. Mascoma can Put its interest in the Impact Investment fund the yellow box at the top, Mascoma being the equity investor shown to the right there. **Mascoma has the ability to put its interest in the investment fund to 201 Main Street Financing Corp. the City's affiliate for \$1,000.00. At that point, if Mascoma chooses to Put 201 Main Street pays Mascoma \$1,000.00 and Mascoma is out of the deal completely. Notice I use the word, if Mascoma chooses to put, because they are the ones that have the option at that point in time.**

What has happened over time in the industry, is that equity investors almost always want to get out of transactions at that point, they have received all their bargained for benefits, there's nothing left for them in the transaction, other than have to continue to report this on their tax return and their financial statements and it becomes an administrative burden to them. So basically investors, the expectation is, although there can't be an assurance of it, that they will Put after the end of the 7 years. And you might say, well what happens if they don't? Suppose that Mascoma doesn't Put. **Well if they don't Put, then 201 Finance Corporation has what's called a Call Option. 201 Real Estate Finance Corporation can elect to purchase Mascoma's interest in the investment fund at the fair market value of that interest at that point in time.** Fair market value at that point in time is going to be very small because they've already gotten all the economic benefits out of the transaction. So, one way or the other, there is the ability to at least wipe the Mascoma part of this screen clear and have **every entity that remains be the City or a City affiliate.** And after the interest and investment fund is acquired, the City can, at that point in time, opt to retain some or all of the aspects of this structure or simplify it. That will be dictated at that point in time, 7 years out by tax, business, and other considerations that the City can evaluate after the end of 7 years but at that point in time, everything will be back in the control of the City.

So that's sort of an overview of the transaction, an overview of the three Phases and an overview of the documentation that will be signed in this transaction which is very typical of New Markets deals as they are done nationally. And at this point, I think I am going to turn it over to Celia Leonard, who will go over the Omnibus Resolution and link the approvals that you are being asked to give tonight to the provisions of the transaction. And certainly, I too, am available to answer any questions when the question and comment time arrives.

Celia Leonard, Deputy Corporation Counsel

Ok thank you John and thank you President. Good evening everyone. So I am going to talk about action items which are reflected in the Omnibus for consideration in front of you today. There's a \$21 million dollar bond which has been authorization and we've gone through the flow of funds, how that's going to work. And so the City has action items to get there. I am going to do them in order, both looking at the Omnibus Resolution and I keep looking to the left because my screen is up on the left and also Tim's awesome graph where he put the approvals with the lines, even with my reading glasses it is a little hard for me to see so we will wing it here. But overall approval of the deal as John was saying, the New Market Tax Credit deal has a lot of variables as the overall projects sponsor, the City has responsibilities for various guarantees and documents. And approval of one is a general Omnibus Approval within an Omnibus. Even if we don't know the name of the document now, if it comes up in the next two weeks, if it helps to effectuate and is necessary, which actually is pretty much more where we are at now. We are doing the necessary – it will be approved and we can move forward with confidence that the Board understands and approves the actions the City needs to take.

We don't anticipate much unanticipated, but of course that's in here, so that's why that's one is there, that's why it is up at the top. Approval One – this is the structure and you agree that the City can forward under these known details. Approval Two – is authorizing the transfer of title from the City who purchased it from Alec's Shoe Store to the QALIGB, the Impact Corp. there. That is the sale, it will net or bring \$2 million back to the City. The next approval is the City and these aren't necessarily sequential, honestly it's how I thought of them in my mind, so that's how it came out on the approval list. So the City will – on the other side you can see Approval Three is the City entering into the Master Tenancy that has been discussed. And also entering into equipment leases to fit up the Performing Arts Center with the specialty equipment and AV and everything that goes into that, two separate documents, but Approval Three covers both of them.

Approval Four has 3 parts; one is the loan which was discussed in detail by Niel of the \$7 million, the number says "up to \$8 million" because at the time of drafting, there were still questions as to how much exactly would have to go in. This number is driven exactly by how much New Market Tax Credit equity is available. So that number, depending on how much equity is going to be – would have changed but we are very confident it is pretty much going to be this \$7,108,850.00 or whatever Niel said. But it will not be more than \$8 million. The next 4B is the payment or the transfer of the not to exceed \$14 million; it is around \$13,8 million I think from Niel's presentation apparently. That transfer of money to 201 Main Street Real Estate Corp. and then Niel explained how that comes back up in to Impact Corp. the QALICB borrower. And I think, I'm not positive if John mentioned it, but I'll just say again that Impact Corp. is a taxable entity and that does impact the lease in that the City will issue real estate tax to Impact Corp. for holding, obviously the real estate at what we call 201 Main Street. That is factored into the lease payments and will be a circular transaction back to the City.

The Third Approval 4C is that in addition to the loan and the transfer of those bond funds, there's various documents that need signing, closing statements, department certificates, settlement statements, etc., and this authorizes the City to not only do those discreet transactions but all of the dozens, I'm trying to think, we go through a closing agenda now twice a week of what over 100 documents that we are looking at, different discreet. Approval 5 is authorizing the City as Master Tenant to enter into an agreement with Spectacle. Now the Board has already approved an MOU as I recall, put it in the whereas is. And this is further authorization that the final agreement can be entered into. The Reference Community Benefits Agreement which I know is very important to the Board and to the City is also important to our investor and to the overall New Market Tax Credit structure and portions of that – important portions about tracking the community benefits are going to be incorporated via contract into that Spectacle Management Contract. We have been in negotiations and discussions with Spectacle and they have been really open and excited to participate with the City.

The next approval is Approval 6 which authorizes the City to then sign all the contracts that you've and the Finance Committee have already approved such as the construction contract and the architect contract. Those are the two main ones that I'm thinking of, but if we find any other what I would call "smaller" but I don't mean to say that they are less important, PO's or items that didn't rise to the level of the City's purchasing threshold to come to Finance or the Board all those Performing Arts Center contracts that are still viable and need action will be assigned to the QALICB, the Impact Corp. **Next is Authorizing – there's 7 and 8 are guarantees but they are different guarantees.** Approval 7 relates back to the community, the CDFA, the Community Development Finance Authority Tax Credits that came into the City and this Board recently authorized their transfer to the fundraising arm, Nashua Community, not arm excuse me, fundraising entity Nashua Community Arts. And the City's guarantee there is that there's going to be a performance guarantee meaning that Performing Arts Center will, in fact, be run as a Performing Art Center. So that is not a debt guarantee, that is an actual performance guarantee.

Approval 8 is a debt guarantee. What it allows the City to do is utilize future funds for current gain, the Mascoma money goes away at the end of the year. If we were not able to close this deal, we would not be able to avail ourselves the non-City money of almost \$2.5 million dollars. So as part of that, there's a bridge fund because there are pledges that are going to come in over a little bit of time, they are not going to come in directly on or before December 15<sup>th</sup>, come in as cash. That amount is under \$100,000.00, I think at last tally that might be, I know Rich Lannan is on but it's down lower. So the City will step into the shoes of Nashua Community Arts there if for some reason Nashua Community Arts isn't able to gather the pledges, the City can take over and get those pledges and make sure that those private funds come into the deal.

**And lastly is Approval 9 which with the transfer of real estate to a for profit corporation, Impact, comes the City's fee structure.** As other developers in the City face on a daily and weekly basis, but this is asking you to waive for this project the permit and inspection fees which, although we don't have any final numbers, very ballpark figure, we are looking at around, that would be a cost to the project about 50, five-zero, thousand dollars so that's Approval 9. So those are the Action Items. A little more background information about what this Resolution, if approved, would effectuate for the City and for the New Market Tax Credit Deal.

#### Director Cummings

So if I may, Madam President, just lastly, I would ask Andy Prolman to talk about his involvement relative to the real estate.

#### Andy Prolman, Attorney

Madam President and members of the Board, Good Evening, I am Andy Prolman with Prunier & Prolman. My role in this transaction is relatively simple and straight-forward. I am the Title guy. My task is to make sure that the Title of the real estate into Impact is good and it is, we've run our Title updates so we are in good shape there. **I am to help coordinate the transfer from the City of Nashua to Impact, do the actual hands-on recording at the Registry of Deeds.** I record the mortgage that Impact will be granting back to the Mascoma subsidiary entity. We will be reviewing the lease and recording a Notice of Lease at the Registry as John said for the 25 year lease with the 5-year option. And I can tell you that from my perspective, everything looks good with respect to the title aspect. First American Title Insurance Company has issued a title of commitment to ensure Title to both Impact and the Mascoma entity. And we look like we are teed up to get this closed by the December 15<sup>th</sup> deadline. We've been working with Celia and Tim and the whole team and we will be ready to go, ready to record to close this on the 15<sup>th</sup>. That's all I had. Thank you.

#### Director Cummings

And thank you Andy. So first I want to apologize, I didn't realize, I wanted to double check to make sure that the other piece of Legislation that is important to this deal structure was on the Agenda this evening and it is. And it's relative to creating a Board of Trustees as a standing Committee of the City of Nashua.

That's this blue, highlighted entity right here which is essentially the same language that was used to create the Hunt Board for the Hunt Library. So that's a separate piece of Legislation, though it goes part and parcel with this. I just wanted to reference it because, of course, we are looking to try to get a favorable recommendation on that piece of Legislation after this particular topic closes this evening. It is not as imperative that that piece of Legislation get voted on at your following evening. But, of course, if you are of interest and of mind to do it, we would certainly welcome it. But there is not as much time sensitivity for that separate piece of Legislation so that could go through the normal course of business.

Anyway, so I wanted to just quickly clarify that and Madam President, I am going to stop sharing my screen here as that is essentially our formal remarks that we had prepared to quickly highlight how this deal was going to be effectuated and I would close my comments by reminding everyone that we have been working on this for a really long time and it's been a huge effort within the community. We have got some great support from various volunteers, I can't say enough about all of them who have been involved; I am not going to name them out of fear that I might leave someone out. But they all know who they are and it's been a pleasure working on this project. I am excited to bring it to fruition. So thank you and I ask for your favorable consideration.

President Wilshire

Thank you everyone, thank you Director Cummings and everyone who was here to present, Mr. Cannon, Celia, everyone who was involved, thank you all very much. I am going to start with questions from the Board, if anyone has questions? No questions? Alderwoman Lu?

Alderwoman Lu

Thank you Madam Chairman, Madam President. I have several questions, so I am sorry if I am the rare person who needs some help here. So if I could just get some clarification on – I understand the dynamics of the Call and the Put, but what I am confused about is whether the Put is to sell their part, Mascoma's Put, they may be willing to sell for \$1,000.00 or is it \$10,000.00 or something, their interest in the financing corp. or their interest in the real estate or is it their interest in the Impact?

Attorney Kaminski

Madam Chair, may I answer that?

President Wilshire

Mr. Kaminski, please?

Attorney Kaminski

It is their interest in the investment fund. Tim, if you could put that diagram up please?

Alderwoman Lu

Maybe he's not here.

Mr. Kaminski

No I see him staring at the screen intently, trying to make it happen but as he's doing that, let me explain further. All that Mascoma is going to own here is an interest in the investment fund. The investment fund doesn't own the real estate, all the investment fund is, is the pooling vehicle that pools the Mascoma money and the City's \$7.something million dollar loan together and sends that money down through the structure. So they don't own the real estate, all they own is an interest in the investment fund and all the investment fund owns are the rights to collect the loans that are being paid by Impact through the structure.

As those loans are being paid up through the structure, remember that money to repay those loans goes over to repay the City's \$7. something million dollar loan. So once they have finished taking the Tax Credits over the 7 year period of time, they don't own very much at all. They own just a few rights in the investment fund, nothing to do really with the real estate, just with respect to that debt that is largely being repaid back to the City. Does that answer your questions?

Alderwoman Lu

Yes, I am not sure I understand it completely. But does their interest, is it their interest in the fund reduced over time?

Mr. Kaminski

Their benefit is reduced over time because they claim the New Market Tax Credits. They claim their credit over a 7 year period of time; a slice in Year 1, a slice in Year 2 and so forth. By year 7, they claim them all and that's their primary economic benefit.

Alderwoman Lu

Ok, thank you that makes sense. So they don't have anything to gain after the 7 years? OK. So could I just ask three other questions?

President Wilshire

Yes.

Alderwoman Lu

Ok, how is it, I think Attorney Leonard mentioned that when we close on the sale of the building that the purchase price will go back to the City. Now is that going to stay back at the City?

Mr. Kaminski

Yes the City is selling the real estate for \$2 million dollars to Impact Corp. and that \$2 million dollars that is received from Impact Corp. is the sale proceeds to the City.

Alderwoman Lu

OK, I didn't remember whether our bond amount included the purchase price for the building. I am guessing it did. And how many municipalities, I understand this sounds like a process that is typically geared toward businesses and we are kind of going some convoluted actions here to make it fit within a municipality. Do many municipalities go through this rigmarole? Thank you?

Director Cummings

I can speak to it as well after Niel.

President Wilshire

Mr. Cannon.

Mr. Cannon

Thank you, Madam Chairman. You are exactly right, Alderman Lu in it is a bit more complicated because of the actions we have to go through to create, first of all, the City as a Master Tenant because the municipality cannot be a borrower and then to get the City Bond Funds and to create the senior leverage lender which is the 201 Main Street Corp. It's not done often, I have been involved in two projects where it has been done, both are in Keene where municipal bonds were used to build the Cheshire County Courthouse and lease it to the county and to do an addition to the Library, a small project. But as I understand it, it is little more frequently used in the mid-west and other areas, but New Hampshire and probably Vermont and Maine, there's only 3 or 4 incidents and this will be one of them.

Director Cummings

And then if I may Madam President to follow on to that. I am very familiar with the project in the City of Boston where the City of Boston decided to move all of our their administrative offices and the School Department to a lower income area called Dudley Square and they built a new Administrative Office for their Department of Education and they used New Market Tax Credits to do that as well so it wouldn't be a much money on the property tax (inaudible).

Mr. Kaminski

And if I may add to that? I am familiar with a couple of transactions that were done in Maine, the Mid Coast Regional Redevelopment Authority that's redeveloping what used to be the Brunswick Naval Air Station. It has participated in two New Markets Tax Credit transactions; it is a Governmental Entity chartered by the State of Maine. So it does happen, not with a lot of frequency in this part of the country, but there is precedent for it and you folks will not be pioneers in doing this.

President Wilshire

Are you all set Alderman Lu?

Alderwoman Lu

I have one other question that I wanted to ask about which is – the approval number 8 concerns me. I would feel better if we had some – the pledges is it correct that the on or received we have all but \$100,000.00 in hand of that \$1.553 million because I thought that was what I heard. I thought I heard that under \$100,000.00 needs to be guaranteed under Approval #8. So I am concerned about that, how much is it exactly that is a pledge? I had hoped that it is a pledge and not cash in hand.

Director Cummings

So if I may Madam President?

President Wilshire

Director Cummings?

Director Cummings

Yes thank you and I am sorry my data might be a little slow so I might be a little delayed. But nonetheless relative to the question at hand, I can speak to where the Nashua Community Arts is relative to fund raising if you'd like. Before I do that, I want to preface my comments and remind you all that early on we had always said that pledges and cash would be counted. Can everyone hear me?

President Wilshire

Yes.

Director Cummings

Ok so we always had said from the very beginning that cash and pledges and would be always understood to be part of the fund raising and not just solely cash. The cash is necessarily to effectuate the New Market Tax Credit deal which is why we are pivoting in this direction. I can, if everyone can see my screen, I am going to share my screen for a quick second here. I have a letter from Deb Novartny which outlines that they have \$780,000.00 in cash on hand, that's of today. Pledges received, they had \$760 so they'll have more than the \$1556 available and the guarantee, if you will, would be for, if I'm reading this correctly, for approximately \$760,000.00. So I just want to make sure you had that information as well.

Alderwoman Lu

Are you all set Alderwoman Lu?

Alderwoman Lu

Yes, I am. If Director Cummings has a chance to shoot that over, that's something that would be, I'd love to see that, have a chance to look at what years those are coming in. I am a little concerned about guaranteeing, but thank you, I'm all set.

President Wilshire

Anyone else, questions? I'm not seeing anyone. OK, well the Motion before us is to recommend final passage of Resolution 20-094. If there's no one with questions, I am going to ask the Clerk to please call the roll?

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Klee, Alderwoman Kelly, Alderman Dowd,  
Alderman Clemons, Alderman Lopez, Alderman Tencza,  
Alderman Jette, Alderman Schmidt, Alderman Laws,  
Alderman Cleaver, Alderman Harriott-Gathright, Alderman Wilshire

13

Nay: Alderman Caron, Alderwoman Lu

2

**MOTION CARRIED**

NEW BUSINESS – ORDINANCES**O-20-036**

Endorsers: Mayor Jim Donchess  
Alderwoman-at-Large Shoshanna Kelly  
Alderman Richard A. Dowd  
Alderman Skip Cleaver  
Alderman Linda Harriott-Gathright  
Alderman Patricia Klee  
Alderwoman Elizabeth Lu  
Alderman-at-Large Michael B. O'Brien, Sr.  
Alderman-at-Large Ben Clemons  
Alderman-at-Large Lori Wilshire

**ESTABLISHING PERFORMING ARTS CENTER BOARD OF TRUSTEES****MOTION BY ALDERMAN O'BRIEN TO RECOMMEND FINAL PASSAGE BY ROLL CALL**ON THE QUESTIONPresident Wilshire

Director Cummings, did you want to talk a little bit about this one as well?

Director Cummings

You know, Madam President, I'll just keep my comments very brief. I would like favorable passage of it this evening if I could. This, again, would be the standing Committee that would be, if you will, the governance, that would oversee the Performing Arts Center and would be very or substantially similar to the Hunt Building in how we have that structured. Thank you.

President Wilshire

Thank you. Alderman Clemons?

Alderman Clemons

Thank you. I was reading that and I just have a question about that and my question is, in the Ordinance as it is proposed and thinking about how the Hunt Building Trustee is as well, is there an Aldermanic Liaison on this in the Legislation because I didn't read that. And I'm wondering if that is something that we should add to the Legislation?

President Wilshire

I could ask either Director Cummings or Attorney Bolton?

Director Cummings

I will pull up the Legislation right now to look at it more closely but what I can tell you is the template that we used, is we created, using the Hunt and I can tell you the Hunt does have a Legislative Liaison to it. So, I am going to double check that right now.

President Wilshire

Thank you. Alderman Clemons?



Alderman Clemons

Yeah, is that a voting member on the Hunt Trustee or is just a Liaison do we know?

President Wilshire

I believe it is a non-voting member?

Director Cummings

No full voting.

President Wilshire

Oh full voting member.

Alderman Clemons

If I could if this Legislation doesn't have that, I would recommend that we add that a voting member appointed by the President of the Board. So I am going to make that motion tentative to amend.

**MOTION BY ALDERMAN CLEMONS TO AMEND O-20-036 TO ADD A VOTING LIASIOIN FROM THE BOARD OF ALDERMEN TO THE COMMITTEE BY ROLL CALL**

ON THE QUESTION

President Wilshire

Alderman Clemons that's your motion? OK discussion on that motion? Alderwoman Klee?

Alderman Klee

Thank you, Madam President. I agree with Alderman Clemons' comments about it, as having been a person that was on the Hunt Memorial, two years. I think it is important to have a voice from the Board of Aldermen on it. You know, as important as this project is, just like the Hunt, I think we do need to have a voice on the Board of Trustees.

President Wilshire

Further discussion on the motion to amend? Alderman O'Brien?

Alderman O'Brien

As making the original motion, I strongly support Alderman Clemons' motion to amend. Thank you.

Alderman Dowd

Yes, I also support it. If for no other reason, it's a conduit for information coming back to the Full Board.

President Wilshire

The Motion before us is to amend, further discussion on that? Director Cummings?

Director Cummings

Madam President, I see Celia Leonard wants to speak and then I also just want to clarify, I think you want to have two Aldermanic Members, I think it's a 9 person Board, I would recommend it be 11. But with that being said, I think Deputy Corporation Counsel has something to say.

President Wilshire

Attorney Leonard?

Attorney Leonard

Yes, thank you, if I may. I am scrolling through our Ordinances, it appears, I apologize, the Liaison portions are in Section 5.9 of the Ordinances, not in the – so we would be amending a different section. We can effectuate the Board's wishes to have a Liaison it just wouldn't – I suppose we could do it in either, but just to let you know we did model this Legislation after the Hunt and the reason that it wasn't in there is because the Hunt Liaison is in Section 5.9 not in the establishing Legislation for the Hunt Committee. So we can put it either place, but that's a clarifying of why it didn't show up.

President Wilshire

OK, thank you.

Director Cummings

And if I may just correct the record, I was just informed that it's technically a non-voting member. The Aldermanic Liaison is a non-voting member. So I think it's the spirit in which that this be a voting member so it would be two voting members of the Board of Aldermen.

Alderman Clemons

Can I ask why the need to have 11 is there a reason to avoid deadlocks or I don't particularly seeing this being a controversial?

Director Cummings

If I may, no it doesn't need to be 11 per se, it could be less than that and we could reduce the 9 down to 7 and then add in two for 9 or we could reduce it down to 8 and add in the Aldermanic Liaison for a full complement of 9. As you point out, it's not going to be relatively controversial so happy to do whatever the pleasure of the Board is.

Alderman Clemons

I guess my question is why the odd number as opposed to an even number?

President Wilshire

Well typically we do that so there's not a deadlock.

Director Cummings

I would recommend it as good governance just so you can have an odd number in case votes are called.

President Wilshire

Attorney Bolton?

Steve Bolton, Corporation Counsel

It's sort of traditional to establish Boards and Committees with an odd number and ostensibly that's to make ties less likely. Frankly, you often have even numbers present and if you get a majority the motion passes, if it's tie, that's not a majority. So it is not required anywhere that it be an odd number, but it is sort of tradition.

President Wilshire

So speaking of tradition, it's typically the liaison and the alternate. So I don't think you add two people as voting members, I think you add an alternate, I mean a liaison and if the liaison can't make it to a meeting the alternate goes and they have a vote. I think it should only be one vote from the Board, do you agree with that Alderman Clemons?

Alderman Clemons

I do and I also don't think that having 10 members is, in my opinion, problematic. So I would leave my motion but amend it to add an alternate as well.

**MOTION BY ALDERMAN CLEMONS TO AMEND O-20-036 TO ADD A VOTING LIASIOIN AND AN ALTERNATE FROM THE BOARD OF ALDERMEN TO THE COMMITTEE BY ROLL CALL**

ON THE QUESTION

President Wilshire

OK, Alderman Lu?

Alderwoman Lu

Thank you. I would like to know why you feel that it's best not to have two to only have one? And it seems to me because I don't or am not very familiar with appointing boards. This is a Board of Trustees rather than a Board of Directors. So if you could just clarify the difference for me?

Attorney Bolton

There's no difference.

President Wilshire

I'm not sure there is a difference, right. Alderman Gathright?

Alderman Harriott-Gathright

Sorry, you mentioned, that there's 11 or 9. Which one is it?

Director Cummings

So I am going to just say it's 9 members as of right now, but I believe that there is a motion pending by Alderman Clemons to make it one additional voting Aldermanic Liaison for a total of 10, if I summarize that correctly.

Alderman Harriott-Gathright

OK well then the Board Members that are there now, I am assuming, where are they from? Are they from the business community, are they from the community, where are they from? Or that has not happened?

President Wilshire

I don't believe that's happened yet.

Alderman Harriott-Gathright

Alright, I'd like to – for example when I think of that location, I think of so many things and so many entertainment venues and I expect that there will be someone from maybe the African American Community or Religious Community or from Indian American Community. I just want to make sure that when we do this, that's it is incorporating Nashua the Community. So I am not sure who is selecting, how it's being selected or anything like that. But I do believe that there needs to be a voice in that.

President Wilshire

OK, anyone else? Alderman Dowd.

Alderman Dowd

Director Cummings, if you could in 25 words or less, if you can, explain exactly what the duties of that Board will be?

Director Cummings

25 words or less?

Alderman Dowd

That was just to put a scope on your answer.

Alderman Dowd

You have 21 words left.

Director Cummings

So essentially what it would do is it would act as the standing Committee on behalf of the City. So there would be a direct liaison to the private operational manager to make sure that the building is being steward in a proper function, similar in scope and manner as to what those who do at the Hunt Memorial Library, where they meet regularly, they have fund raising activities, they ensure that the building is being stewarded properly and they work directly with the Hunt Memorial Liaison to make sure that the goals are being met. That is essence what this would do and this entity would do it on behalf of the City of Nashua.

Alderman Dowd

As I understand it they'll have no direct oversight or what's going to be presented, that's up to the company that's running it for us?

Director Cummings

Well that's correct in terms of the day-to-day operations would fall to the management company.

President Wilshire

Are you all set Alderman Dowd?

Alderman Dowd

All set.

President Wilshire

The Motion is to amend; further discussion on that motion? If not, would the Clerk please call the roll?

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Klee, Alderwoman Kelly, Alderman Dowd, Alderman Caron, Alderman Clemons, Alderman Lopez, Alderman Tencza, Alderwoman Lu, Alderman Jette, Alderman Schmidt, Alderman Laws, Alderman Cleaver, Alderman Harriott-Gathright, Alderman Wilshire	15
Nay:	0

**MOTION CARRIED**

President Wilshire

So the motion before us is for final passage of Ordinance 20-036 as amended. Further discussion on that Motion? Seeing none, would the Clerk please call the roll?

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Klee, Alderwoman Kelly, Alderman Dowd, Alderman Caron, Alderman Clemons, Alderman Lopez, Alderman Tencza, Alderwoman Lu, Alderman Jette, Alderman Schmidt, Alderman Laws, Alderman Cleaver, Alderman Harriott-Gathright, Alderman Wilshire	15
Nay:	0

**MOTION CARRIED**

ADJOURNMENT

**MOTION BY ALDERMAN O'BRIEN THAT THE NOVEMBER 24, 2020, SPECIAL MEETING OF THE BOARD OF ALDERMEN BE ADJOURNED BY ROLL CALL**

A viva voce roll call was taken to adjourn the Board of Aldermen meeting which resulted as follows:

Yea: Alderman O'Brien, Alderman Klee, Alderwoman Kelly, Alderman Dowd,  
Alderman Caron, Alderman Clemons, Alderman Lopez, Alderman Tencza,  
Alderwoman Lu, Alderman Jette, Alderman Schmidt, Alderman Laws,  
Alderman Cleaver, Alderman Harriott-Gathright, Alderman Wilshire

15

Nay:

0

**MOTION CARRIED**

The meeting was declared adjourned at 7:28 p.m.

Attest: Susan K. Lovering, City Clerk