

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, OCTOBER 17, 2016

PORTSMOUTH, NH
TIME: 7:00 PM

I. CALL TO ORDER (7:00PM)

Mayor Blalock opened the meeting at 7:05 p.m.

II. ROLL CALL

Members Present: Mayor Blalock, Assistant Mayor Splaine, Councilors Perkins, Dwyer, Lown, Pearson, Spear, Cyr and Denton

III. INVOCATION

IV. PLEDGE OF ALLEGIANCE

Councilor Denton led the Pledge of Allegiance.

PRESENTATION

1. Update Re: Various Parking Programs – Parking Manager Joey Giordano

Parking Manager Joey Giordano gave a brief presentation updating the status of various parking programs recently put into place. He also announced the implementation of Passport Parking which is a smart-phone application going into effect on October 18th for the Bridge Street and Worth Parking Lots. He explained how the new parking application will eliminate issues that people have with the current system including having to go back to their car after purchasing a ticket.

Discussion ensued regarding parking fees and turnover and trying to find the right balance.

V. ACCEPTANCE OF MINUTES – *(There were no minutes on for acceptance)*

VI. PUBLIC COMMENT SESSION

Jonathan Wyckoff – spoke in favor of the proposed Demolition ordinance stating it doesn't stop demolition but allows a public hearing aspect which is very important. He would like to see a stipulation added that the committee be notified immediately when a demolition is proposed on a 50+ year structure.

Mark Brighton – stated that the idea brought forward by Councilor Pearson to take 100 spaces from the new parking garage for green space is laudable but shouldn't be done there. He then discussed the item regarding transparency on the agenda under Councilor Spear stating he doesn't understand wanting to have less transparency. Finally, regarding the appointment of Mr. Kiesel to the Planning Board, he feels his application was less than forthright and that there is a conflict of interest.

Joe Caldarola – apologized for a recent comment regarding Jeff Kiesel but feels that putting him on the Planning Board would not be a good idea as he has spoken on many applications and does not offer any changes, only blanket approval.

Councilor Spear stated for clarification that the rules of Public Comment is that they are supposed to speak on one subject.

VII. PUBLIC HEARINGS

- A. ORDINANCE AMENDING CHAPTER 3, ARTICLE II, SECTION 3.2 SOLID WASTE, YARD WASTE AND RECYCLING AND AN AMENDMENT TO CHAPTER 1, ARTICLE XIII, SECTION 1.13 – MUNICIPAL ENFORCEMENT PROCEDURES

Mayor Blalock read the legal notice, declared the public hearing open and called for speakers. Seeing no one wishing to speak, Mayor Blalock closed the public hearing.

- B. RESOLUTION AUTHORIZING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF THREE HUNDRED AND FORTY-FIVE THOUSAND (\$345,000.00) DOLLARS FROM THE SEWER FUND UNRESTRICTED NET POSITION FOR LAND ACQUISITION THROUGH EMINENT DOMAIN RE: 150 GREENLEAF AVENUE

Mayor Blalock read the legal notice, declared the public hearing open and called for speakers.

James Boyle, owner of Toyota of Portsmouth – discussed the ongoing issue with the City of Portsmouth stating that this has demonized his business. He continued that the City Manager and staff have made mistakes dealing with this through the years and would like the City Council to think for themselves.

Atty. Kuzinevich – representing James Boyle – discussed the cost to his client and the city over the many years of negotiations and feels that this will only continue to cost the City more going forward with this process.

Paul Mannle – stated he doesn't believe that eminent domain is in the best interest of the city and feels that negotiations should continue.

Esther Kennedy – stated she would like to take personalities out of this issue and consider if we really need all of this property for that sewer line. She urged continued negotiations.

Mayor Blalock clarified that the public hearing is regarding the appropriation of funds and not a vote on the Eminent Domain issue which was voted at the September 6, 2016 City Council meeting.

Ruth Griffin – stated she is a life-long resident and remembers when urban renewal took away a lot of taxable properties and if the city takes this property, it will also take away taxable property.

Rodney Rodriguez – stated as an abutter, he is directly impacted by this issue and is completely opposed to this action. He urged continued negotiations.

Rick Becksted – stated that the City has used eminent domain 2 other times and wonders where the money came from at that time. He stated he has never heard of using sewer funds for this purpose especially when that money is needed for other sewer related items. He urged continued negotiations.

Joe Caldarola – stated the City has found a way to get the mules’ attention as they have been negotiating all along to this point.

Seeing no one else wishing to speak, Mayor Blalock closed the Public Hearing.

Discussion ensued regarding reopening the public hearing for a second round. Mayor Blalock reopened the public hearing with clarification again that this was specific to the supplemental funding resolution.

Seeing no one wishing to speak, Mayor Blalock closed the second round of the Public Hearing.

Councilor Lown moved to suspend the rules to move up Item XI.A.3. of the agenda for consideration. Seconded by Assistant Mayor Splaine and voted.

3. Report Back Re: 400th Anniversary Celebration

Assistant Mayor Splaine moved to authorize the development of a trust for the 400th Anniversary Celebration, and further, authorize the City Manager to enter into a partnership agreement with the Portsmouth Historical Society/Discover Portsmouth Center to provide an annual contribution from the City of Portsmouth to the PHS/DPC which will provide a base level of support to create a varied, organized and informed set of activities in which the community can engage to develop a sense of pride for Portsmouth’s past and future, seconded by Councilor Lown.

Councilor Dwyer stated she understands that the trust must be established first, but will there then be a recommended appropriation amount.

City Manager Bohenko stated that he would welcome the City Council to come up with a scope of work and will have a line item in the FY18 budget.

Councilor Spear suggested looking for sponsorships as well.

Assistant Mayor Splaine stated there are other cities that will also be celebrating their 400th anniversaries in the same time period such as Provincetown and urged outreach and participation with those communities.

Motion passed.

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second reading of Ordinance amending Chapter 3, Article II, Section 3.2 Solid Waste, Yard Waste and Recycling and an amendment to Chapter 1, Article XIII, Section 1.13 – Municipal Enforcement Procedures

Councilor Lown moved to pass second reading and schedule a third and final reading of the proposed ordinance at the November 21, 2016 City Council meeting as presented, seconded by Assistant Mayor Splaine.

Assistant Mayor Splaine stated he is glad that the terminology regarding “trailer park” was changed but is still confused with the terminology of “manufactured housing”, but is glad the conversation has been started.

Motion passed.

Councilor Denton moved to suspend the rules to hold the third and final reading of ordinance, seconded by Councilor Cyr.

Councilor Dwyer asked if passing this early will have any effect on notification to businesses etc. City Manager Bohenko stated it will not start immediately and there will be outreach first.

Motion passed.

Councilor Denton moved to pass third and final reading. Seconded by Councilor Spear and voted.

- B. Adoption of Resolution Authorizing a Supplemental Appropriation in the amount of Three Hundred and Forty-Five Thousand (\$345,000.00) Dollars from the Sewer Fund Unrestricted Net Position for Land Acquisition Through Eminent Domain Re: 150 Greenleaf Avenue

Councilor Spear moved to adopt the resolution to raise and appropriate \$345,000.00 from the Sewer fund net position for land acquisition through eminent domain regarding 150 Greenleaf Avenue, seconded by Councilor Denton.

Councilor Spear stated to clarify that this will be protecting the sewer line we are currently using. He continued that State Law provides we acquire it at fair market value and that negotiations are required by State law as part of the eminent domain process.

Councilor Denton stated we are here at this point because previous negotiations have failed. He stated the use of eminent domain for a sewer line is appropriate.

Councilor Dwyer stated that it was pointed out that with this action we have gotten their attention and there is a change in tone and if there is a realistic opportunity for agreement, then the Council would be open, but there already have been many attempts made. She asked for clarification regarding a discrepancy in Planning Director Taintors’ opinions.

Deputy City Attorney Suzanne Woodland – clarified the issues regarding the Planning Director opinions that were referred to previously stating that there were 2 different assumptions arrived because there were 2 different reports submitted for 2 different purposes.

Discussion ensued regarding the costs so far and potential costs.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock stated that again, this is a vote on the supplemental appropriation, but hopes that we can still reach an agreement as continued negotiations are a required part of the process anyway. He stated that the people in the neighborhood should be reassured that this will protect the sewer in their area.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Councilor Dwyer stated this is a complicated issue but we are required to maintain the sewer and if we didn't and something happened to the neighborhood then we would be derelict in duty.

Councilor Cyr stated he will support this resolution with the intent of continued negotiations.

Motion passed on a 7-2 roll call vote. Assistant Mayor Splaine and Councilor Lown voted opposed.

- C. Third and final reading of Ordinance amending Chapter 14, Article II – Demolition – The Preservation of Buildings and Places of Historic, Architectural and Community Value

Assistant Mayor Splaine moved to pass third and final reading of proposed ordinance as presented, seconded by Councilor Spear.

Assistant Mayor Splaine asked if the change suggested at public comment could be incorporated. City Manager Bohenko stated this could be done administratively.

Motion passed.

IX. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

(There are no items under this section of the agenda)

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

(There are no items under this section of the agenda)

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Purchase & Sale Re: Elliott Property

City Manager Bohenko stated the City has been in discussions with George Elliott and his attorney, Richard Foley, with regard to settling a dispute related to drainage impacts to the property at 850 Banfield Road. He continued that the property owner has indicated that he prefers that the City purchase the entire parcel. Finally, he stated that in an effort to avoid potential litigation the City has negotiated an agreement with Mr. Elliott to purchase the entire parcel, approximately 7.1 acres, for \$550,000.

Public Works Director Peter Rice stated the property is located at a low point in a series of drainages originating along Route 1 through the Portsmouth Industrial Parks on Constitution Avenue and Heritage Avenue which outlet through a railroad culvert into the Great Bog. Due to changing development patterns and lack of maintenance by the railroad, the property at 850 Banfield Road has experienced a history of storm-water inundation impacting Mr Elliott's property. In addition to the storm-water inundation, Mr. Elliott believes his drinking water well was impacted by the change in ground water hydrology. He continued that the lengthy negotiations have included a number of potential solutions including securing a drainage easement, purchasing a portion of the property and purchasing all of the property.

Environmental Planner Peter Britz explained that 3.3 acres in wetlands will be used to help stormwater management. The remaining 3.8 acres are in uplands and can be subdivided to be sold as possibly two building lots whereby the City could recover a majority of the cost of purchasing this land. It is recommended that \$150,000 come from the Conservation Fund and the remaining \$400,000 come from Fund Balance. This property abuts conservation land the City already owns. The purchase of this property would provide better stormwater management options over the long term and supports conservation efforts.

Councilor Spear moved to:

- 1) Authorize the expenditure of \$150,000 Conservation fund contingent upon Conservation Commission approval;**
- 2) Establish a public hearing for November 21, 2016 appropriating \$400,000 from Unassigned Fund Balance for the purchase of land;**
- 3) Refer this matter to the Planning Board for a report back to the City Council; and**
- 4) Further, authorize the City Manager to enter into a Purchase and Sales Agreement subject to funding.**

Seconded by Councilor Pearson.

Councilor Lown stated he is concerned with item 4 regarding the purchase and Sales Agreement and what the legal basis would be for this action.

City Attorney Sullivan cautioned that further discussion should be held in a non-public session.

Councilor Lown stated he understands the environmental and financial issues but feels there is a key missing piece.

City Manager Bohenko stated that Lafayette Road has been developed over the years and many changes have occurred which have changed the water drainage and has become an issue and it is our responsibility to manage the stormwater.

Public Works Director Rice explained that stormwater management has changed and evolved over the years so the way it was handled previously has changed to current practices.

Councilor Dwyer asked if we now have practices in place during the Site Review process to mitigate this from happening in the future.

Public Works Director Rice stated we have learned a lot about the function of wetlands over the years.

Discussion ensued regarding the assessed value of the property being lower than the sale price. Councilor Spear asked if item 4 can be voted on November 21st after the public hearing.

City Manager Bohenko stated that Mr. Elliott has been patient to this point and related that this is a similar issue which occurred in the Brewster Street area.

Councilor Dwyer feels that it would make sense to have a report back from the Planning Board for the November 21st meeting as well.

Councilor Lown asked that the question be divided for voting, Items 1-3 and then 4.

Motion to approve items 1-3 passed on a 9-0 vote.

Councilor Spear moved to amend Item #4 as follows:

- 4) Further, authorize the City Manager to enter into a Purchase and Sales Agreement subject to funding and the report back from the Planning Board for the November 21, 2016 City Council meeting.**

Seconded by Councilor Cyr.

Motion passed on an 8-1 roll call vote.

Recess/Reconvened 9:10 – 9:20 p.m.

2. City Hall Building North Facade Replacement Design

Public Works Director Peter Rice explained that in 2014, the City addressed structural concerns on the North Wall of City Hall, in addition to having Lavallee Brensinger Architects conduct a Municipal Complex Programmatic Needs study to commence long-term planning for improvements to the entire City Hall facility. The North Wall of City Hall facing the South Mill Pond was inspected by structural engineers after showing stress cracks in the brick veneer. The result of that structural evaluation showed the brick façade was at risk of complete failure and immediate repairs were made to secure the façade. These repairs were a temporary fix intended to allow the City time to design a permanent facade replacement. He continued that following this work, Lavallee Brensinger Architects developed conceptual designs for a new North Wall Façade. Three conceptual plans were developed and presented to the City Council on August 15, 2016, and the Historic District Commission on September 7, 2016. In addition, the alternatives were a topic of discussion at the October 1, 2016 City Council retreat. The consensus of these discussions was the selection of Alternative B, Curtain Wall and Masonry façade. He concluded that although the façade has had temporary repairs, it is critical that the façade replacement move forward to avoid the potential consequence of a complete failure.

Councilor Lown moved to approve the section of Alternative B, curtain Wall and Masonry façade for the replacement of the Municipal Complex's 1962 Building façade. Seconded by Councilor Spear and voted.

Councilor Pearson asked when the public will be able to give input.

Public Work Director Rice stated that this work needs to be done as soon as possible so it would be challenging to extend the public input.

City Manager Bohenko stated that the public has had multiple opportunities to give input.

3. Report Back Re: 400th Anniversary Celebration – *previously addressed*
4. Request to Dispose of Surplus Vehicles and Equipment

Councilor Spear moved to authorize the City Manager to dispose of surplus vehicles and equipment by the sealed bid process. Seconded by Councilor Lown and voted.

5. Commerce Way

City Manager Bohenko stated that this is a housekeeping measure to close this project.

City Attorney Sullivan explained that the City Council voted on September 17, 2012 to proceed with a Conditional Road Layout and Betterment Assessment of Commerce Way. A bond resolution for \$1,600,000 was passed to pay for the reconstruction of the roadway. The bond resolution provided that no amount could be borrowed or expended unless all right, title and interest in Commerce Way was conveyed by its current owners to the City. He stated the City was conveyed the land for the roadway in three separate deeds and two Drainage Easements Deeds were also transferred to the City because they were necessary to meet City construction standards. The newly design roadway modifies a curve in the road and that modification leaves a small parcel conveyed to the City that is not part of the new roadway. The original proposal approved by the Council in 2012 indicated that this parcel was to be conveyed to the owner of 135 Commerce Way after construction was complete and the road was accepted by the City. He concluded the second condition imposed by the Council was that the City Attorney draft a letter to the City Manager confirming the layout process complied with State statute. This letter was completed and sent on May 26, 2016. The roadway has been built and has been inspected by the Department of Public Works and is built to City standards and specifications. Because the conditions of the layout approved by the Council in 2012 have been met, Commerce Way is now a public right of way. The City is ready to issue the betterment assessment to those abutters who are served by the road.

Councilor Spear moved to:

- 1) Accept transfer of land and drainage easements to the City necessary for the layout of construction of Commerce Way. This vote is subject to Planning Board issuing a report or waiver of referral. Said land and easements are recorded at the Rockingham County Registry of Deeds at Book 5631, Page 1041; Book 5631, Page 1051; and Book 5722, Page 0322; and are shown on the Plan D-38901 and drainage easements are recorded at Book 5631, Page 1057 and Book 5631, Page 1054;**
- 2) Convey .228 acres of land to 135 Commerce Way, LLC as contemplated in the original roadway design to reflect as built roadway conditions of Commerce Way. This vote is subject to Planning Board issuing a report or waiver of referral. Said conveyance is shown on Plan D-38901; and**
- 3) Refer this matter to the Planning Board for report or waiver.**

Seconded by Councilor Lown and voted.

6. Request to Extend Existing License at 64 Market Street

Councilor Spear moved to authorize the City Manager to extend the license with Cereno Construction to finalize reconstruction activities of the Gaslight Restaurant. Seconded by Councilor Cyr and voted.

Informational items

1. Events Listing
2. Report Back Re: Food Truck Vendors
3. Status Report Regarding Conversion of West Road (Service Road) into a City Street
4. Reminder Re: Household Hazardous Waste Day
<http://cityofportsmouth.com/publicworks/solidwaste-recycle-hhw.htm>.

B. MAYOR BLALOCK

1. Appointment to be Voted:
 - Appointment of Jody Record to the Planning Board as a Regular Member

Councilor Spear moved to approve the appointment of Jody Record to the Planning Board as a regular member until 12/31/2017 (filling unexpired term of William Gladhill). Seconded by Councilor Pearson and voted.

- Appointment of Jeffrey Kisiel to the Planning Board as an Alternate Member

Councilor Perkins moved to approve the appointment of Jeffrey Kisiel as an alternate member of the Planning Board to December 31, 2018, seconded by Councilor Pearson.

Mayor Blalock stated he has received emails concerning this appointment and he did not make this appointment lightly. He stated he interviewed Mr. Kisiel and discussed the issues of concern. He stated he feels it is important to have a cross section of people on land use boards and also encourage younger people to become involved.

Councilor Dwyer stated that there were comments made about a conflict of interest and feels that term is being misused as it is not a conflict to have a different opinion or any opinion at all, but is if you are pre-judging a project. She stated that Mr. Gladhill had previously stated that he would not vote in favor of any contemporary project in the Historic District.

Councilor Pearson stated that being an alternate is an incredible learning opportunity and a good way to become involved.

Councilor Denton stated he only received 2 emails regarding this appointment and feels that Mr. Kisiel is a good addition to the Planning Board.

Assistant Mayor Splaine stated he does not want to appear that the Council is critical of Mr. Gladhill or of any appointments to Boards. He stated he will vote against this appointment because he feels the Council should be more involved in the process and be able to review all applications before being brought forward.

Councilor Lown stated he received approximately 15 e-mails from well-informed people so he called Mr. Kisiel and asked the questions regarding being an advocate for Harborcorp and was told that he is in the construction business, is in favor of the Harborcorp project but is not associated in any way with the developer. He stated he found him to be an open-minded level-headed individual.

Motion passed on an 8-1 roll call vote. Assistant Mayor Splaine voted opposed.

- Reappointment of Bruce Boley to the Board of Library Trustees

Assistant Mayor Splaine moved to approve the reappointment of Bruce Boley to the Board of Library Trustees until October 1, 2019. Seconded by Councilor Spear and voted.

- Reappointment of Jack Jamison to the Board of Library Trustees

Assistant Mayor Splaine moved to approve the reappointment of Jack Jamison to the Board of Library Trustees until October 1, 2019. Seconded by Councilor Perkins and voted.

Mayor Blalock urged people to apply to be on Boards and Commissions. He further explained that it is the responsibility and duty of the Mayor to bring forward applications to the Council for appointment to the Boards and Commissions.

C. COUNCILOR DWYER

1. Prescott Park Master Plan Update

Councilor Dwyer gave an update on the conceptual design discussions held by the Prescott Park Master Plan Blue Ribbon committee (handout submitted). She stated that there were 2 more public input events held on October 13th and 15th. She concluded by summarizing the items that have received strong support including; continuing public docks, relocating the stage with Shaw acting as a place for back-of-house; creating one or more through-paths along/over the water; focus more on Liberty Pole area enhancement; better linkage to Four Tree Island; preserve larger open law space areas; rethink trial gardens; add integrated play structures; replace/rebuild formal garden area.

Councilor Pearson stated she has been pleased to see the public has been open to the different ideas which has allowed for creative discussions.

Mayor Blalock stated that this committee has been everything he had hoped it would be with a lot of public participation. He stated that the mission is to enhance the Park and not everything will happen at the same time.

D. COUNCILOR LOWN

1. Parking and Traffic Safety Committee Meeting Action Sheet and Minutes of October 6, 2016

Councilor Spear moved to approve and accept the Action Sheet and Minutes of the October 6, 2016 Parking & Traffic Safety Committee meeting. Seconded by Councilor Pearson and voted.

Councilor Cyr stated he would like to have the 15 minute parking spaces reviewed to ensure we are maximizing their efficiency.

Assistant Mayor Splaine complimented Councilor Lown on how well he runs the Parking and Traffic Safety Committee meetings.

E. COUNCILOR PEARSON

1. Feasibility of Creating a Public Park at the current Bridge Street Parking Lot Location

Councilor Pearson stated that there have been 400 comments submitted regarding the Prescott Park master plan and feels that the Prescott sisters should be thanked for preserving that area for the residents of Portsmouth. She stated that the downtown area however, has many little vacant lots and would like the staff to come back with the feasibility of adding green space and how it can fit into the CIP.

Councilor Perkins stated she supports this idea whole-heartedly as the West-end continues to be developed.

Assistant Mayor Splaine stated that during the Charette process of the West-end it became apparent that this will become the center of the city and feels that putting aside some green space would be the right thing to do.

Discussion ensued regarding the various areas that should be looked at with City Manager Bohenko stating that he will be reporting back on ways to maximize the areas of Bridge Street, Bridge Street Lot, Worth Lot, Vaughan Mall and Maplewood area.

Councilor Pearson stated the goal is to preserve open space.

F. COUNCILOR SPEAR

1. Discontinue Free Holiday Parking

Councilor Spear stated that meters exist in the downtown for the benefit of businesses so that there is turnover throughout the day. He stated that the loss of revenue that we incur due to the free holiday parking, when businesses still need the turnover, could be used in a different way; i.e. manning the kiosk, patrol officer, snow removal, etc. He stated he would like to see the policy reviewed.

Councilor Lown stated that this small amount of goodwill is hard to quantify and wondered if there was an alternative.

Assistant Mayor Splaine stated this is a serious issue and that dialogue should be held with the Chamber of Commerce.

Following discussion, it was requested that the City Council representative to the Chamber of Commerce, Councilor Pearson, bring the issue to the Chamber of Commerce and report back.

2. Article Entitled Against Transparency (*No Action Required*)

Councilor Spear asked the Councilors to read the information he provided.

G. COUNCILOR DENTON

1. Hodgson Brook Advisory Committee

Councilor Denton stated the last meeting of this committee will be on October 18th and if anyone has any questions or concerns, to let him know.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Cyr stated he appreciated the report back on Food Truck vendors under the City Manager informational items but would like a work session held as well.

City Manager Bohenko stated he will work with Mayor Blalock on a date for the work session.

XIII. ADJOURNMENT

Councilor Spear moved to adjourn at 10:30 p.m. Seconded by Councilor Pearson and passed unanimously.

Respectfully submitted,



Valerie A. French
Deputy City Clerk