

## **CITY COUNCIL MEETING**

MUNICIPAL COMPLEX  
DATE: MONDAY, DECEMBER 16, 2019

PORTSMOUTH, NH  
TIME: 6:15PM

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### **Public Dialogue Session – Table A**

PRESENT: Assistant Mayor Lazenby, Councilors Roberts, Pearson and Dwyer

Blair McCracken asked what will be the City's responses to the National Park Service Comments on the City's application for the McIntyre Federal Building.

Councilor Dwyer said a series of questions were asked by the National Park Service and were answered. She stated the questions are contained in the packet.

Councilor Roberts said there is zero chance that anything will happen on the McIntyre Building this evening.

Mayor Blalock said there will be no action on the McIntyre Project this evening. He said we are required to cooperate with the National Park Services as is Redgate/Kane.

Councilor Dwyer pointed out that all the questions and answers are available and posted on-line.

William Castle said he was not pleased with the reappointments by the Council put through the last meeting and will be voted on this evening. He said the reappointments should have been held over for the new City Council. He also spoke regarding the answers to the questions for the McIntyre to the National Park Service. He stated the answers should have waited until January.

Councilor Dwyer said we need to work in partnership and secure the building. She said this has been going on for 17 years.

Assistant Mayor Lazenby said those answers were appropriate to hear and what action is taken is a fair question. He said in terms of the appointments, it was important to keep the work going and move ahead and this does not need to be controversial.

Justin Richardson said he looked at the Development Agreement Section 2.16 – if the application is reviewed the City would work with the developer on a new application. He asked where things stand in terms of that provision. He said people want to see a smaller project. He stated the National Park Service was concern with the mass of the building.

Councilor Dwyer said the questions from the National Park Service are questions coming from them and the questions were about position and use.

Mr. Richardson asked could we use this, to go back and use that to our advantage.

Councilor Roberts said the next City Council could deal with Redgate/Kane first, and then the National Park Service. He said there is nothing that will be done this evening.

Assistant Mayor Lazenby said most of this is for January and beyond. He said could the application be revised but that is the question for the new City Council. He said we could say we would look at reducing the scale of the building.

Councilor Dwyer said you want to do that with design and planning. She said the agreement would need to be relooked at and the finances as well.

Larry Cataldo asked how the City Manager plans to administer. Acting City Manager Conard said she is encouraged to work with the City Council and said the staff here is phenomenal. She said it is her first day and said she could provide further substance after she has been here a few weeks.

Esther Kennedy encouraged the City Council to bring the last item on the agenda forward earlier in the meeting.

Mayor Blalock said he will be bringing the item forward and said this is for the next City Council to act upon. He said it is for public information only this evening.

Ms. Kennedy stated the ground lease is in the document this evening.

Erik Anderson said you are scheduled to sign an agreement with Town of Rye on sewer line and asked does this jeopardize the capacity of our system.

Mayor Blalock said City Engineer Desmarais will come forward and speak. Mr. Anderson said there should be a public hearing on this matter. City Engineer Desmarais said the discharge will go to the Wastewater Treatment Facility. He spoke to the treatment facility and average capacity. Mr. Anderson said there should be a public hearing that there will be no problem in the future and there is no change to the City Council. The residents need to be confident that this will not harm our capacity because of supplying to another town.

Deputy City Attorney Woodland said there is no public hearing requirements and this is a two phase process. She said there will be an opportunity to hear from the Town of Rye staff and home owners in Rye and will speak to those matters on capacity. She stated that the Public Utilities Commission has weighed in on this and we will be receiving approval from them. She stated there will also be a second regulatory look.

Mr. Anderson asked if the developer will look at the land. City Engineer Desmarais said an engineering study on the flow of property is taking place now.

Assistant Mayor Lazenby said valid concerns have been brought forward. We need to make sure it is good for the City and if there are costs to the City.

Deputy City Attorney Woodland said we already serve the trailer park in Rye and those users are factored in.

Councilor Dwyer asked if you could give an approximate flow the properties would add. City Engineer Desmarais said that number will be given by the Town of Rye engineers.

Mr. McCracken asked what the maximum flow is. City Engineer Desmarais said 22 million gallons per day. He stated the plant will still treat that amount. He explained the treatment plant and basins that get the water. He said this is very similar to other New England communities. He said we already have 7 projects and \$60,000,000.00 has been spent and we have seen a 90% reduction. City Engineer Desmarais said we will update the plan and what will further improve the system.

Esther Kennedy asked who is responsible for the costs and if something happens in the Rye area. Deputy City Attorney Woodland said Rye puts in all the pipes and once we own it we would treat it like any other infrastructure we own.

Dick Bagley asked about the over flow and the number of discharges. He said we have no development in the North End why did the overflow happen. He understands the rain and asked what will the new City Council use for the level of concern. He said the answer does not need to be given this evening but he wants to know what the new City Council will do.

Assistant Mayor Lazenby said all the City Council is asked what we have available working with staff.

### **Public Dialogue Session – Table B**

PRESENT: Councilors, Denton, Perkins, Raynolds and Becksted.

Paige Trace – discussed the sewer line extension to the Town of Rye stating she wonders why no public hearing was held on this issue. She continued that nothing is free and feels that there is no chance that this isn't going to cost the city something eventually. Secondly, she asked why we are doing this without know the full capacity of the new Wastewater Treatment facility.

Councilor Perkins stated that Deputy Public Works Director Goetz did mention capacity when it was discussed at the December 2<sup>nd</sup> meeting and that there is some contingency for more capacity.

Ms. Trace stated she also found it disturbing that at the end of the proposal it is suggested that this line may continue to the other end of Rye and into North Hampton, which would mean a lot more people added.

Councilor Raynolds stated that it is assumed that the new facility is being built for more capacity and continued that the reason this extension is being contemplated at all is because of proximity to Berry Brook.

Ms. Trace clarified that this is a sewer line and not a water line so not related to that issue.

Councilor Becksted stated when this comes up for discussion and vote tonight he will be raising the issue of if we are adding more units, why would they be for the Town of Rye and not for the City of Portsmouth. He stated that if we max out the capacity with another town being added, they aren't responsible for the upgrades when the time comes.

City Engineer Desmarais explained that the capacity was previously 4.8 million gallons per day and is now 6.13 million gallons per day. He continued to explain the issues with combined collection systems and spikes in flow rates. He stated that this is a moving target and is also impacted with people using more efficient fixtures.

Ms. Trace stated that she still has an issue with extending the line into North Hampton and wants to make sure that the City of Portsmouth will have capacity to add workforce housing, etc. in the future.

Mr. Desmarais stated that the City Council will still have to approve the defined area and clarified that the area being proposed isn't actually a large expansion.

Mark Brighton asked what capacity is being added.

Mr. Desmarais stated that the engineer will be at the meeting this evening when the issue is discussed on the agenda and be able to confirm the numbers. He stated we still have to get information on all pumps and systems.

Mr. Brighton asked why not wait to vote until we have those numbers.

Assistant City Attorney Woodland explained that the only thing being approved tonight is the plan with the defined lots that will be serviced and anything else would still have to come back to the Council for approval. She continued that the Public Utilities Commission (PUC) also have to approve and it is required. She stated that the attorney for the property owners will also be present this evening as well as the attorney representing the Town of Rye.

Ms. Trace stated she is still surprised that there isn't a public hearing being held.

Ms. Woodland stated it is a 2 step process, but public hearing is not required.

Kathleen Cavellero presented the City Councilors with cards and invited everyone to join in the refreshments in the Portsmouth Room.

Ms. Trace thanked the 4 Councilors at table B for all they have done and their service.

Trevor Bartlett asked each of the 4 Councilors to share what they are most proud of accomplishing during their terms.

Councilor Reynolds stated he is glad they were able to do a trial run of the "Share the Square" event and hopes that it can be expanded in the future.

Councilor Perkins stated she tried to bring forward the need for affordable housing in the city and also is glad to see more young people becoming involved in government and bringing alternative perspectives.

Councilor Becksted stated he has tried to bring more public awareness and participation to the process and plans to continue that during the next term. He stated he will hold more work sessions which will include dialogue with the citizens during the process.

Mr. Bartlett asked if he thinks the electronic communication has been less effective or not effective and will they continue with the public dialogue sessions.

Councilor Becksted stated he feels the e-mails are another way for people to communicate but he would also like to have the public dialogue sessions be separate from regular council meetings on different days.

Councilor Denton stated over the past 4 years the Council has added the all veterans' tax credit and increased the amount of the exemption for the disabled veterans and hopes that this will be kept in the future.

Valerie Rochon read a letter of appreciation to the City Council for their work on many important issues and appreciates the conversations to grow with balance and sustainability.

Martha Fuller Clark hopes that the outgoing Councilors will continue to serve the community in public service of some kind so we can all benefit from their experience.

Jane Zill also wished the outgoing Councilors well.

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**CITY COUNCIL MEETING**

MUNICIPAL COMPLEX  
DATE: MONDAY, DECEMBER 16, 2019

PORTSMOUTH, NH  
TIME: 7:00 PM

**II. CALL TO ORDER**

Mayor Blalock called the meeting to order at 7:05 p.m.

**III. ROLL CALL**

PRESENT: Mayor Blalock, Assistant Mayor Lazenby, Councilors Roberts, Pearson, Dwyer, Denton, Perkins, Raynolds and Becksted

**IV. INVOCATION**

Mayor Blalock asked everyone to join in a moment of silent prayer.

**V. PLEDGE OF ALLEGIANCE**

Mayor Blalock led the Pledge of Allegiance.

Mayor Blalock welcomed Acting City Manager Conard. Mayor Blalock said that this is the last City Council meeting of 2019 for this final term of the City Council. He gave a big thanks to City Staff, Deputy City Manager Nancy Colbert Puff, and Joanna Diemer, fellow Councilor's and said this has been a job well done by the City Council. He gave further thanks to Mayor-Elect Becksted and Assistant Mayor Lazenby for being elected to the new City Council. He thanked the residents and said it has been his honor to serve and the City Council should be proud of the way we conducted meetings in decorum.

Assistant Mayor Lazenby thanked Mayor Blalock for his leadership and work on the City Council and the many challenges we faced.

**PRESENTATIONS:**

1. Holiday Music Performed by the Portsmouth High School Band

The Portsmouth High School Band performed four selections: Deck the Halls, God Rest Ye Merry Gentlemen, White Christmas and Jingle Bells.

2. Zolani Prince Shapiro Tyalimpi's Poem on African Burying Ground

Zolani Prince Shapiro Tyalimpi's read and presented the poem "Augmentation" to the Mayor and City Council. Mayor Blalock accepted the poem with thanks and gratitude.

**VI. ACCEPTANCE OF MINUTES – NOVEMBER 7, 2019, NOVEMBER 12, 2019, AND DECEMBER 2, 2019**

**Assistant Mayor Lazenby moved to approve and accept the minutes of the November 7, 2019, November 12, 2019 and December 2, 2019 City Council meetings. Seconded by Councilor Dwyer.**

Councilor Roberts requested to amend page 10 under his name discussion relative to the 3 Pleasant Street Community Space Easements regarding the Historic District Commission meeting on the addition of two feet was done by the developer and not the HDC.

Councilor Pearson requested to amend page 8 under her name, discussion regarding the Market Street Gateway Park stating that Portsmouth is the Gold Standard and not the Gold Start.

**Assistant Mayor Lazenby and Councilor Dwyer accepted the requested amendments as part of the main motion and passed the main motion with the changes.**

**VII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS**

1. Steering Committee Report for Portsmouth Community Coordinated Response to Substance Misuse – Cliff Lazenby, Chair and Dr. Larry McCullough, Facilitator

Assistant Mayor Lazenby reported on the Portsmouth Community Coordinated Response to Substance Misuse. He reported that 4 meetings were held on this matter and said the report does have an action plan for next year. He said the Steering Committee is being requested to revamp for next year and all the members that served in 2019 will continue to serve next year with others being invited to join.

Dr. McCullough outlined the 5 recommendations of the Steering Committee:

- Need for education and training for prevention of Substance Misuse
- Area of housing for sober or translational individuals
- Issue of Employment for individuals
- Affordable transportation for individuals
- Coordination between agencies dealing with Substance Misuse

Assistant Mayor Lazenby said the proposal will be brought back to the new City Council and thanked everyone for putting in a great deal of time on this matter.

### **VIII. PUBLIC DIALOGUE SUMMARY**

Councilor Roberts gave a brief summary of the topics discussed during the Public Dialogue Session at Table A – Responses to the National Park Service regarding McIntyre; Appointments made by Mayor Blalock at the December 2, 2019 City Council meeting, What the management approach of new City Manager will be; and the Rye Sewer Connection. Councilor Perkins gave a brief summary of the topics discussed at Table B- Extension of the Sewer Line into Rye and the City Council's accomplishments over the last two years.

**Assistant Mayor Lazenby moved to suspend the rules in order to bring Item XVI. 4. – Response to National Park Service Comments on City of Portsmouth Application for the McIntyre Federal Building. Seconded by Councilor Roberts and voted.**

Deputy City Manager Colbert Puff said it reached her mail box at the very end of the deadline and felt it best to place this matter on the agenda. She stated most of the questions were on the draft lease and we wanted to show the National Park Service that we would provide the language on the draft lease. She said the process would be an ongoing issue until the National Park Service is satisfied and reported that National Park Service wanted answers kept in an informal way.

Mayor Blalock said no action would take place this evening. He said when responses came forward from the National Park Service and releasing information to the public it would not be delayed and that is why this was brought forward.

Assistant Mayor Lazenby said the answers would be a revised application and would it come before the City Council. Deputy City Manager Colbert Puff said yes, it would. Assistant Mayor Lazenby said this does not have a long term action until next year.

Councilor Denton said the request of Section 7.5 regarding waste disposal that the tenant provide a space for their tenants that want a compost area. Deputy City Manager Colbert Puff said that would take place.

## IX. ORDINANCE AND/OR RESOLUTION

### A. Third and Final Reading of Ordinance – Zoning Ordinance – Flood Plain Overlay District:

Third and Final Reading of Ordinance amending Chapter 10 – Zoning Ordinance, Article 6 – Overlay Districts and Article 15 – Definitions – Flood Plain District

**Councilor Denton moved to pass third and final reading on the proposed amendments to the Flood Plain District sections of the Zoning Ordinance. Seconded by Assistant Mayor Lazenby.**

Councilor Becksted said he is concerned with changing the ordinance and not notifying property owners that would be effected by this ordinance.

Mayor Blalock said when something is going to change to their property the City should make an effort to notify the property owners.

Councilor Denton requested this item to be brought forward in April and wanted to have the public hearing left open for large developments would need to abide by the ordinance. He said this ordinance requires properties to be built towards the future.

Councilor Dwyer said we are building ways to look at how climate change effects properties. She said they will meet the flood insurance requirements. She said she feels that we should notify people what the ordinance is and what it means.

Mayor Blalock said we would notify people in the flood plain district.

Councilor Dwyer said she can't think of an ordinance and process that we held open like this. She said if we need an amendment to notify property owners, a motion can be made.

**Councilor Dwyer moved to inform residents in the Flood Plain District of the adopted ordinance and its changes. Seconded by Councilor Denton and voted. Councilor Becksted voted opposed.**

**Main motion passed as amended. Councilor Becksted voted opposed.**

## X. MAYOR BLALOCK

### 1. Appointment to be Voted:

- Beth Moreau appointment to the Rocking Planning Commission as the Planning Board Representative

Mayor Blalock said this is not adding a new member, it is the Planning Board Representative to the Rockingham Planning Commission.



**Councilor Perkins moved to appoint Beth Moreau to the Rockingham Planning Commission as the Planning Board Representative. Seconded by Assistant Mayor Lazenby and voted.**

2. Friendship City Agreement between Portsmouth, NH and Santarcangelo, Italy on December 18<sup>th</sup> in Conference Room A beginning at 10:00 a.m. with a Skype call at 10:30 a.m.

Mayor Blalock announced the City will be endorsing the Friendship City Agreement between Portsmouth, NH and Santarcangelo, Italy on Wednesday, December 18<sup>th</sup> in Conference Room A beginning at 10:00 a.m. with a Skype call at 10:30 a.m.

## **XI. CITY COUNCIL MEMBERS**

### **A. COUNCILOR ROBERTS**

1. Vaughan Mall Blue Ribbon Committee

Councilor Roberts provided an update on the Vaughan Mall Blue Ribbon Committee. He said that Mayor-Elect will reappoint the Committee to complete the work of the Vaughan Mall next summer. He said a description of the project is outlined in the packet. We are doing extensive work in 2023. He indicated four firms were interviewed and the Klopfer Martin Design Group was selected. He reported that a site walk would take place in January or February and a liaison would be appointed by Mayor-Elect Becksted to the Committee.

Councilor Becksted said he would partake in the meetings and a great job was done by the Committee. He will reappoint the Committee and wants Councilors Roberts, Pearson and Raynolds to continue to serve. He said he would fill in as liaison to the Committee because he deals with construction.

### **B. COUNCILOR DENTON**

1. Renewable Energy Policy Accomplishments

Councilor Denton summarized the Renewable Energy Policy Accomplishments as outlined in the packets.

Mayor Blalock thanked Councilor Denton for his work and leading the charge on this matter.

**Councilor Roberts moved to suspend the rules in order to bring forward an update on the African Burying Ground. Seconded by Assistant Mayor Lazenby and voted.**

Councilor Dwyer provided a brief update on the African Burying Ground and how it has become a destination in the City of Portsmouth for visitors and residents. She spoke to the DNA testing that is being done on the first remains uncovered. She said we shall learn many things from the testing.

Mayor Blalock said the Burying Ground has attracted followers and wide attention.

Councilor Pearson thanked Councilor Dwyer and recognized her longevity on the City Council. She stated she does not feel there will ever be another City Councilor like Councilor Dwyer.

Mayor Blalock thanked Councilor Dwyer for her service.

## **XII. APPROVAL OF GRANTS/DONATIONS**

### **A. Portsmouth Police Department Grant and Donation:**

- New Hampshire Department of Justice Grant Narcotics-related drug use and trafficking - \$30,000.00
- Donation to Portsmouth Police Honor Guard from Attorney Robert P. Sullivan in commemoration of the life and career of Detective Commander William D. Mortimer - \$500.00

**Assistant Mayor Lazenby moved to approve and accept the grant and donation to the Portsmouth Police Department, as presented. Seconded by Councilor Perkins.**

Councilor Roberts said there was no more dedicated than Commander William Mortimer.

City Attorney Sullivan said he made the donation because he was a true Police Commander who believed that trust was the most important thing. He said the people you go through hard and trying times become true friends, and that was Bill Mortimer.

**Motion passed.**

## **XIII. ACTING CITY MANAGER'S ITEMS WHICH REQUIRE ACTION**

### **A. ACTING CITY MANAGER CONARD**

#### **1. Lafayette Road Sewer Extension Into Rye**

Acting City Manager Conard reported the City Council voted at the last meeting to bring forward for a vote a proposed Intermunicipal Agreement with the Town of Rye to extend the public sewer, at no cost to the City, along Lafayette Road into a portion of Rye. She said the proposed extension would be at no cost to the City or the Town of Rye, funded entirely by the benefiting property owners. She stated the extension would be built to City specifications and owned by the City once completed and operational. She indicated the Agreement has been sent to the NH Attorney General's office for review and we anticipate no or only minor changes to the draft Agreement as this document is substantially similar in forms to one previously approved by that office.

**Councilor Denton moved to authorize the Acting City Manager to negotiate and enter into an Intermunicipal Agreement between the City of Portsmouth and Town of Rye to extend sewer service at no cost to the City along a portion of Lafayette Road / Route 1 in Rye. Seconded by Councilor Perkins.**

Councilor Becksted expressed concern regarding the pipe to be installed.

Attorney Phoenix said the Town of Rye approved the Intermunicipal Agreement and the area is primarily commercial with some homes.

Councilor Becksted asked about this being a Phase I going into Phase II. He said there is a number that we would need to add and a regional perspective is great. He stated if we had the number of capacity how does that get solved or fixed.

Attorney Phoenix said the project would not go further and would not consider this regional. He stated this is in Berry's Brook Water Shed and people have projects to do and something needs to be done now.

Deputy City Attorney Woodland said the scope of the Agreement and said it would be very easy to make minor adjustments that any expansion would need to come back to the City Council. She recommended last line of paragraph 6 to add "Approval to the City of Portsmouth."

Assistant Mayor Lazenby said in looking at the Agreement how do you assess impact on our system. City Engineer Desmarais said they are still working with land owners in Rye and without sharper numbers we plan on 2% of the treatment plant as a whole. Assistant Mayor Lazenby asked if the project was to change it would need to come back to the City Council. Deputy City Attorney Woodland said the Town of Rye is trying to clearly define what the size of the pipe will be. She said an analysis would take place and required improvements that are needed because they are paying into the capacity they are taking.

Councilor Dwyer said commercial was mentioned, is any of this industrial. Attorney Phoenix said not that he is aware of.

Councilor Denton asked if hooking up will cost us any money. City Engineer Desmarais said cost are borne by the developer and people connected would be rate payers.

Councilor Reynolds said he supports the motion and is sympathetic to another Town taking up some capacity of the project. He asked if it appropriate for the rate payers to pay an additional surcharge because they have taken 2% of our capacity. Deputy City Attorney Woodland said because property owners are installing the pipes and making the investment in infrastructure typically we save the surcharge but then our ordinance kicks in. City Engineer Desmarais said we pass the surcharge off of water. He said you are looking at \$2,500.00 and the fee could go higher based on the use.

Councilor Becksted asked will the City of Portsmouth have a say of any project in line. City Engineer Desmarais said we would have a say for compliance with the City ordinance. He asked if we have to pay for upgrades to get their waste into our system. City Engineer Desmarais said we want to make sure there is capacity and the attempt is to avoid that and we want to make that decision at this point.

Councilor Pearson asked if a business owner does not meet our requirements could they be denied. City Engineer Desmarais said yes.

**Councilor Becksted moved to postpone this matter until the Town of Rye receives its study relative to this matter. Seconded by Councilor Pearson.**

Councilor Dwyer said the Agreement is to pay no matter what the study shows.

Councilor Pearson said she sees value on getting more information on the commercial zoning before moving forward.

Deputy City Attorney Woodland said there are no costs to the City of Portsmouth for capital costs and this has a 5 year sunset on the Agreement. She stated third party extensions will need to take place and ownership of this matter.

Councilor Becksted asked City Attorney Sullivan if this will not be sunset and have the next City Council take it up. City Attorney Sullivan said once the Agreement is entered the sunset would take place. He said the other way is to make another Agreement.

Attorney Phoenix said we could lose some major contributors by not entering into the Agreement. He said there is no real need to postpone and all residents and the City of Portsmouth are important. He further stated that residential and retail are allowed but no industrial uses.

City Attorney Sullivan said the way the motion is posed the matter is to come back and would require one meeting notice. The alternative would be to postpone to a date certain.

Assistant Mayor Lazenby said we are not talking about a month from now.

**Councilor Pearson moved to amend the motion until January 21, 2020. Seconded by Assistant Mayor Lazenby. On a roll call 8-1, voted to pass the motion. Assistant Mayor Lazenby, Councilors Roberts, Pearson, Denton, Perkins, Raynold, Becksted and Mayor Blalock. Councilor Dwyer voted opposed.**

**On a roll call 6-3, voted to pass the main motion to postpone, as amended. Assistant Mayor Lazenby, Councilors Roberts, Pearson, Perkins, Raynolds and Becksted voted in favor. Councilors Dwyer, Denton and Mayor Blalock voted opposed.**

At 9:05 p.m., Mayor Blalock declared a brief recess. At 9:15 p.m., Mayor Blalock called the meeting back to order.

2. Holiday Parking

Acting City Manager Conard reported that the Parking Division proposes that the Council considers offering on-street downtown parking free of charge from Tuesday, December 17<sup>th</sup> through Thursday, December 26, 2019 in an effort to attract the shopping public. She indicated in November 2019, Portsmouth on-street parking averaged \$9,977.00 daily, which would equate to \$99,773.00 for the 10-day period.

**Councilor Becksted moved to authorize the Acting City Manager to implement a free holiday parking period from December 17, 2019 through December 26, 2019. Seconded by Assistant Mayor Lazenby.**

Councilor Dwyer indicated that regular enforcement will take place.

**Motion passed.**

3. Request to Unmerge Lots on Thaxter Road

Acting City Manager Conard outlined the request and the appeal of the decision of the City Council to the Board of Adjustment for abutters, Kenneth and Deborah Jennings. She said the BOA heard the appeal at which time Attorney Ralph Woodman, on behalf of the appealing abutters, indicated to the BOA that there was information which had not been available to the City Council at the time of its initial vote which should have been considered prior to granting the unmerger of the lots. Further, stated was subsequent to the hearing and deliberation, the BOA voted to remand the matter to the City Council for the Council to take whatever action it deemed to be appropriate under the circumstances.

Mayor Blalock asked if one of the options would be that we request to have the Planning Board recommendation on this to send it back to the Planning Board. City Attorney Sullivan said this is an unusual request and that a land use board remands this back to the City Council which refer the matter originally considered. He said the City Council should act on this matter this evening.

**Councilor Dwyer moved to uphold the previous decision to unmerge the lots. Seconded by Councilor Perkins.**

Attorney Pelech said this originally came to the City Council and referred to the Planning Board which unanimously recommended unmerger. He said the history of the lots is quite clear and the lots were merged by action of the City which merged the three lots into 1 lot. The merger occurred in 1981. He said the applicants wanted one lot and not through any act by the applicants, the tax card changed.

Councilor Dwyer asked if Attorney Pelech was extending the same reason Mr. Guptil was told he had to separate the two lots and filed an application and used what the tax map showed.

Attorney Woodman said the decision on these lots was made before there was a Planning Board in 1910. The City is being asked to unmerge the lots in 2004 and Mr. Guptil was told that he needed a variance to separate the lots. In 2004 he asked for two lots to be created out of one. He spoke to a building permit being sought in 2011 the owner needed a variance when asking for the permit.

Assistant Mayor Lazenby said that information was not given to the Planning Board and City Council and you contend that this was vital new information. Attorney Woodman said he understands that things were not on the website at previous BOA meetings.

Attorney Pelech said he does not feel it was new information. He said the burden is on the City.

Councilor Becksted said he never heard that description when attending the meeting. He said he never heard the story of two lots. He said we either send it back to the Planning Board or decide right now.

Councilor Perkins said she is inclined to do that if we need to make a decision tonight. She asked if the current owner was able to obtain title insurance.

City Attorney Sullivan said the statute is vague and it is a general appeal statute.

Assistant Mayor Lazenby said he is not sure he is comfortable to make a decision on this matter, it should go back to the Planning Board.

Councilor Dwyer said she can say separating these in clusters, she would vote to unmerge.

City Attorney Sullivan pointed out that the Planning Board has no rule for decision, it is made by the governing body.

Councilor Reynolds said he supports the prior action even if we as a City Council accept the grounds that it is new information.

**On a roll call vote 4-5, motion failed to pass to uphold the previous decision to unmerge the lots. Councilors Roberts, Dwyer, Perkins and Reynolds voted in favor. Assistant Mayor Lazenby, Councilors Pearson, Denton, Becksted and Mayor Blalock voted opposed.**

**Assistant Mayor Lazenby moved to refer back to the Planning Board. Seconded by Councilor Reynolds and voted. Councilors Dwyer and Denton voted opposed.**

#### 4. Sale of Surplus Equipment

Acting City Manager Conard said Public Works, Police and Fire Departments have surplus property comprising of vehicles and equipment ready for disposal. She reported in the past, we have disposed of the surplus equipment through a sealed bid process or through GovDeals an online auction site in which the equipment is sold to the highest bidder.

**Assistant Mayor Lazenby moved to approve the sale of surplus equipment through GovDeals. Seconded by Councilor Perkins and voted.**

5. Polling Hours – February 11, 2020 Presidential Primary Election

Acting City Manager Conard reported that City Clerk Barnaby is requesting polling hours from 8:00 a.m. to 7:00 p.m. for the Presidential Primary Election on February 11, 2020.

**Councilor Perkins moved to set the polling hours from 8:00 a.m. to 7:00 p.m. for the Presidential Primary Election on Tuesday, February 11, 2020. Seconded by Councilor Pearson and voted.**

#### **XIV. CONSENT AGENDA**

- A. Letter from Donald Allison, Eastern States 20 Mile, requesting permission to hold the Eastern State 20 Mile Road Race on Sunday, March 29, 2020 ***(Anticipated action – move to refer to the Acting City Manager with power)***
- B. Letter from Richard Clyborne, Gundalow Company, requesting permission to hold the 2<sup>nd</sup> Annual Piscataqua River Festival on Friday, June 5, 2020 and Saturday, June 6, 2020 ***(Anticipated action – move to refer to the Acting City Manager with power)***
- C. Letter from Jennie Halstead, My Breast Cancer Support, requesting permission to hold the 12<sup>th</sup> Annual race on Sunday, September 13, 2020 ***(Anticipated action – move to refer to the Acting City Manager with power)***

**Councilor Becksted voted to adopt the Consent Agenda. Seconded by Councilor Perkins and voted.**

#### **XV. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS**

- A. Email Correspondence

**Councilor Perkins moved to accept and place on file. Seconded by Assistant Mayor Lazenby and voted.**

#### **XVI. ACTING CITY MANAGER'S INFORMATIONAL ITEMS**

1. Annual Report on Chamber/City Partnership
2. Clarification of Executive Order 13888 on Refugee Resettlement
3. Town of New Castle – Water Update
4. Response to National Park Service Comments on City of Portsmouth Application for the McIntyre Federal Building

Acting City Manager Conard reported at the December 6, 2019 Economic Development Commission meeting, the Chamber Collaborative of Greater Portsmouth staff reported on the new business development and member initiatives and destination marketing/tourism metrics for the period January through November 2019. She stated that the report is part of the City of Portsmouth and Chamber Collaborative partnership for which the Council has requested copies of the annual reports presented to the Economic Development Commission.

**XVII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING**

City Attorney Sullivan announced he will be retiring on July 26, 2022.

**XVIII. ADJOURNMENT**

**At 10:00 p.m., Councilor Denton moved to adjourn. Seconded by Councilor Perkins and voted.**



KELLI L. BARNABY, MMC/CNHMC  
CITY CLERK