

**MINUTES**  
**NOVEMBER 18, 2021**  
**CITY COUNCIL SPECIAL MEETING**  
**MCINTYRE**

Mayor Becksted opened the meeting at 5:33 p.m.

**Roll Call:**

Present: Mayor Becksted, Assistant Mayor Splaine, Councilor McEachern, Councilor Whelan, Councilor Lazenby, Councilor Kennedy, Councilor Huda, Councilor Tabor and Councilor Trace.

Mayor Becksted thanked everyone for being able to attend this meeting which was requested by Michael Kane who indicated he would be bringing an architect and engineer as well. He then invited Michael Kane of Redgate/Kane to address the Council as he had requested the meeting. He stated there perhaps has been some miscommunication but has done everything he could to make this meeting happen.

Mr. Kane agreed there has been some miscommunication explained that he did request a meeting before the election, which didn't happen, then he thought there would be a joint meeting with the current and new incoming city council that may be productive, but that is not the case.

Mayor Becksted clarified that Mr. Kane has nothing to present this evening to which Mr. Kane stated he did not. Mayor Becksted stated he had no knowledge of a joint meeting with the new Council.

Councilor Huda asked who gave Mr. Kane the information that the new Council would be present as well. Mr. Kane responded it was a communication between City Attorney Sullivan and Mr. Falby.

Mayor Becksted stated he had hoped to have a discussion of moving forward from here since the National Park Service has given the thumbs up on the "People's Plan" to be able to build over the post office and bring forward some more detailed drawings to move forward with our partner for a real submittal to them.

Mr. Kane stated that due to the Council not responding to previous resolution to litigation that was presented there is nothing to speak about at this time.

Mayor Becksted stated he must be referring to the term sheet which Mr. Kane confirmed.

Councilor Whelan stated he was disappointed with what Mr. Kane has said in the newspaper today stating that it was all over with, but applauds him being here tonight.

**Councilor Whelan moved:**

**To immediately cancel the development agreement between the City of Portsmouth and Redgate/Kane d/b/a Sobow Square LDT and send the \$400,000.00 deposit held in escrow back with interest. Part of this would be to establish a new Request for Proposal with the community plan which was established by community effort led by Portsmouth Listens and Principle Group and to be put out to bid as soon as possible. Seconded by Councilor Huda.**

Councilor Whelan stated that tonight the City of Portsmouth is at a crossroads as Redgate/Kane restarted a lawsuit 2 weeks before the Election against the City of Portsmouth and its residents which was totally political and meant to influence an election. He stated the subcommittee has been negotiating and moving the project forward despite threats and character attacks against the subcommittee. He continued that he has been silent trying to protect the citizens' interests but is silent no more and it is time to take action. He stated the subcommittee, made up of 4 Councilors, has poured 2 years into negotiating this project in good faith and professional manner and have been characterized as unprofessional, uncivil, bullies, etc. and the community project portrayed as cartoonish, unbuildable, a sham, etc. He stated it is time for the City of Portsmouth to move on from Redgate/Kane and get a real partner. He stated this is a 75 year marriage and we need a good relationship with a trusted partner and this is not just another development project. The land and the McIntyre building will be owned by the residents, not Redgate/Kane. He stated the last few weeks have been a bad lesson of how to get what you want in Portsmouth and listed various actions taken. He concluded stating it is time to move on.

**Councilor McEachern moved to adjourn to a Non-Public Session to receive legal advice from Mr. Connolly and City Attorney Sullivan, seconded by Assistant Mayor Splaine. Motion FAILED on a 4-5 Roll call vote. Assistant Mayor Splaine, Councilor McEachern, Councilor Lazenby and Councilor Tabor voted in favor. Councilor Whelan, Councilor Kennedy, Councilor Huda, Councilor Trace and Mayor Becksted voted opposed.**

Assistant Mayor Splaine stated either we learn from history or repeat it. He stated that he remembers 4 years ago that the Council voted 8-1 to take steps for the next City Council to select a partner to start the process on the McIntyre. He stated he was the vote opposed as he thought the vision should be worked out first before selecting a partner. He stated the City then became entangled in legal concerns which we are still committed to. This City Council set up a process of 4 City Councilors, which is no reflection on them, was doomed to fail if there was no involvement and conversations with that partner. He feels it was best to discontinue the partnership or to continue and work out as much of a partnership as we can, but we are only here for another 43 days. He feels the new Council should begin without the encumbrances of the previous City Council. He stated that taking this action, will set them up for failure, such as with making board appointments will do as well.

Councilor Lazenby stated there was a similar vote on January 28, 2020 blocking the Council from hearing legal advice from our attorneys that had significant legal, financial and other consequences for the City of Portsmouth. He stated that didn't work out well then and it won't work out well now.

**Councilor Lazenby moved to table this action until a public hearing can be held, seconded by Councilor McEachern.**

Councilor Lazenby stated that this will be the 10<sup>th</sup> City Council who has been trying to acquire the McIntyre. Countless hours and money have been put into this already and for us to act on this without input from the public, he can't imagine anyone wanting that to be the way this goes.

Councilor McEachern stated we recently held a work session on PFAS for over 2 hours and made sure to receive public input. He stated after having served on the subcommittee for 2 years he wants to see the community plan come to life, but this is as far away from making that happen as he can imagine. He stated it is personally disappointing to have this motion made, and although it may feel good to some to do this, it is not moving us closer, it moving us further away.

Councilor Tabor agrees with Assistant Mayor Splaine that this may be a motion that would pass as the community wants to get rid of the lawsuit and go forward with the project. However, there was no notice to the public that this would be occurring tonight.

Councilor Kennedy stated that the public was involved throughout the whole process, and Mr. Kane by his actions and words have said that this is done. She stated that they are giving the next Council a gift that they can get another developer to really do what the public has asked. She stated that taking this vote tonight, the public can come forward and be a part of the whole process including the RFP.

Councilor Huda stated she read the paper today and was quite surprised and has done a timeline of what has occurred to this Council over the last 2 years in the press. She stated it can be summed up in one sentence, that we have irreconcilable differences with our developer. She stated that our developer has continuously stated that the Council redevelopment plan is unbuildable so to her as a Councilor, it seems that we need to take a different direction.

Councilor Trace stated she has spent 2 years on the subcommittee and when Redgate/Kane was available they were there. She stated it seemed at first that we were working together in good faith to get a project that suited both parties which led to the involvement of Portsmouth Listens and a lot of community input, a new plan was brought forward, which Mr. Kane stated he wanted no involvement. She continued that all of the comments that Mr. Kane has made has had an effect on the subcommittee and the public and feels that this will give a fresh start to the next Council.

Assistant Mayor Splaine asked for parliamentary clarification that considering the legal liability, financial liability and the legal contracts we are in, is it advisable to vote on this motion without consultation from our legal advisors.

City Attorney Sullivan stated it is advisable to go into a Non-Public Session.

Assistant Mayor Splaine stated he received great advice from Paul McEachern to listen to your attorneys as they will keep you out of trouble.

Councilor Lazenby stated the Council was notified by an e-mail from the City Clerk which specified that the sole purpose of the meeting would be to meet with Michael Kane and there was also no notice on the Agenda and no Public Comment item on the agenda which is not the normal procedure of this Council. He stated even adding a public comment at this time is not the same as prior public notice.

**Motion to table FAILED on a 4-5 Roll call vote. Assistant Mayor Splaine, Councilor McEachern, Councilor Lazenby and Councilor Tabor voted in favor. Councilor Whelan, Councilor Kennedy, Councilor Huda, Councilor Trace and Mayor Becksted voted opposed.**

Mayor Becksted stated he answered many questions from the public today as well as Councilors that he would allow for public comment.

Mayor Becksted opened a Public Comment Session (not on the Agenda):

Bill Downey – spoke in favor of terminating the agreement with Redgate/Kane stating it was about time that this was done.

Rich Blalock, City Councilor-Elect – spoke opposed to taking the vote to terminate the agreement with Redgate/Kane this evening.

Kate Cook, City Councilor-Elect – spoke opposed to taking the vote to terminate the agreement with Redgate/Kane this evening.

Roy Helse – spoke in favor of terminating the agreement with Redgate/Kane.

Cliff Lazenby, speaking as a resident and current City Councilor – spoke against the allowance of the public comment when it was not an agenda item this evening.

Elizabeth Barrett (via zoom) – spoke opposed to taking the vote to terminating the agreement with Redgate/Kane this evening as this is not the way to get out of a contract.

Patricia Bagley (via zoom) – spoke in favor of terminating the agreement with Redgate/Kane.

Nancy McDonald - spoke in favor of terminating the agreement with Redgate/Kane.

Byron Matto (via zoom) - spoke opposed to taking the vote to terminating the agreement with Redgate/Kane this evening.

Jim Lee - spoke in favor of terminating the agreement with Redgate/Kane.

Arthur Clough - spoke in favor of terminating the agreement with Redgate/Kane.

Doug Roberts (via zoom) - spoke opposed to taking the vote to terminating the agreement with Redgate/Kane this evening.

Seeing no one else wishing to speak, the Mayor closed the public comment.

Councilor Lazenby asked for clarification that if this action will have immediate legal implications and will then have to expend funds will the motion require 6 votes to pass.

City Attorney Sullivan clarified that it will cost money due to continued litigation but if the cost can be covered in existing budget it would require 5 votes, but if have to amend the budget, it would require 6 votes.

Councilor Lazenby asked if we have the funds to cover these costs in the current budget. City Manager Conard responded no.

City Attorney Sullivan clarified that this motion would require 5 votes because it does not involve the payment of the bill.

Councilor McEachern asked if City Attorney Sullivan if he would suggest that the Council support this motion to terminate the relationship with the developer.

City Attorney Sullivan stated he does not support this action without consulting with the Attorney representing the City of Portsmouth.

City Manager Conard stated that as fiscal custodian of the City, there will need to be a supplemental appropriation done before the end of this Council term.

Councilor Whelan restated the motion:

**To immediately cancel the development agreement between the City of Portsmouth and Redgate/Kane d/b/a Sobow Square LDT and send the \$400,000.00 deposit held in escrow back with interest. Part of this would be to establish a new Request for Proposal with the community plan which was established by community effort led by Portsmouth Listens and Principle Group and to be put out to bid as soon as possible.**

**Motion passed a 5-4 roll call vote. Councilors Whelan, Kennedy, Huda, Trace and Mayor Becksted voted in favor. Assistant Mayor Splaine, Councilors McEachern, Lazenby and Tabor voted opposed.**

Adjournment – **At 6:40 p.m. voted to adjourn.**

Respectfully submitted:

Valerie A. French  
Deputy City Clerk