

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, APRIL 4, 2005

PORTSMOUTH, NH
TIME: 7:00PM

I. CALL TO ORDER

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

II. ROLL CALL

Present: Mayor Sirrell, Assistant Mayor Grasso, Councilors Ferrini, Marchand, Pantelakos, Hynes, Whitehouse and St. Laurent

Absent: Councilor Raynolds

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

Councilor Pantelakos led in the Pledge of Allegiance to the Flag.

PROCLAMATION

1. Poet Laureate

Assistant Mayor Grasso read the Proclamation declaring Mimi White as the Poet Laureate of Portsmouth. Mayor Sirrell presented Mimi with the Proclamation who accepted it with thanks and appreciation. Mimi read a few poems and said it is an honor to be named the new Poet Laureate.

V. ACCEPTANCE OF MINUTES – MARCH 21, 2005

Councilor Whitehouse moved to accept and approve the minutes of the March 21, 2005 City Council meeting. Seconded by Assistant Mayor Grasso and voted.

VI. PUBLIC COMMENT SESSION

Donald Coker said that the issue of a Bill of Rights Resolution should not be before the City Council it should be handled by the federal government. He spoke against the Resolution and urged the City Council to not support the Resolution as presented.

Peter Bresciano spoke against the Bill of Rights Resolution and passing it would send a message of no confidence to Police Chief Magnant. He said the PATRIOT Act is an appropriate tool for police enforcement.

Harold Ecker spoke to the new lights on Richards Avenue and Court Street. He said that Banfield Road is a much longer street and it lacks lighting. He requested the City Council consider installing additional lighting to Banfield Road.

Richard Smith announced that there would be a Poetry and Jazz Festival on April 14, 2005 – April 17, 2005. He encouraged all to attend and support the festival.

Larry Simonds said that this City is full OF arts and culture. He thanked the City Council for recognizing and supporting the Poet Laureate program. He also spoke in support of the Poetry and Jazz Festival and encouraged the community to attend and experience a weekend of great music and poetry.

John Grady spoke in support of the Poet Laureate program. He said that the Poetry and Jazz Festival is an exciting event for the City and its residents.

Peter Somssich spoke in support of the Bill of Rights Resolution. He said we can't take our freedom for granted and we need to protect our rights. He said that the Resolution is a symbolic act and has nothing to do with the PATRIOT Act. He urged the City Council to adopt the Resolution as presented.

James Horrigan spoke to the proposed Animal Control Ordinance. He said there is a need for a leash law in the City and supported the ordinance as presented by the Dog Committee. He spoke of an incident in which he was bit by a dog. He urged the City Council to support the ordinance and the recommendation of the Dog Committee.

Councilor Ferrini moved to suspend the rules in order to take up Item XI. C.1. – Bill of Rights Resolution. Seconded by Assistant Mayor Grasso and voted.

Councilor Pantelakos moved to pass Draft #2 of the Resolution Affirming the Bill of Rights and Civil Liberties. Seconded by Councilor Whitehouse for discussion purposes.

Councilor Pantelakos read Draft #2 of the Resolution and said that she would not support any Resolution that would appear as having no confidence in Police Chief Magnant.

Councilor Whitehouse asked what the differences were between the original Resolution and Draft #2 Resolution. Councilor Ferrini explained the differences to Councilor Whitehouse.

Councilor Marchand said that there have been several hours of discussion on this matter. He said if the City Council adopts this Resolution it would be setting precedence. He said the most effective way to handle this matter is to encourage the individuals that signed the petition in support of the Resolution send letters to the federal government who could address this issue. The issue does not belong with municipal government.

Assistant Mayor Grasso said that she likes Draft #2 much better but does not feel this belongs with the City Council, it is a federal government issue. Assistant Mayor Grasso moved to amend the motion to delete Draft #2 Resolution in its entirety with Item #3 remaining which states *"The City of Portsmouth hereby reaffirm our commitment to the Bill of Rights as set forth in the United States Constitution and the constitution of the State of New Hampshire because the Bill of Rights guarantees the civil rights and civil liberties of our free society."* Seconded by Councilor St. Laurent.

Councilor Pantelakos spoke against the amendment and she does not feel this is a federal government issue.

Councilor Hynes said that the federal government is in charge of this matter.

Councilor St. Laurent spoke in favor of the amendment and opposed to the original motion. He said this matter does not belong before the City Council, it is a partisan issue and the City Council is a non-partisan group.

Councilor Whitehouse said he spoke with Senator Sununu's office regarding the PATRIOT Act and the proposed SAFE Act. He requested that the City Council further amend the motion to include language he received from Senator Sununu's office.

On a roll call vote 6-2, amendment to the motion passed. Assistant Mayor Grasso, Councilors Ferrini, Marchand, Hynes, St. Laurent and Mayor Sirrell voted in favor. Councilors Pantelakos and Whitehouse voted opposed.

Councilor Whitehouse moved to amend the Resolution to add the following text: *"It be recognized that New Hampshire's junior US Senator, John Sununu, is a champion of privacy rights and civil liberties, and has cosponsored legislation, the SAFE Act, which would require more stringent Congressional and Judicial review of PATRIOT Act provisions and their applications to ensure the privacy rights and civil liberties of law abiding citizens are not violated."* Seconded by Councilor St. Laurent.

Mayor Sirrell passed the gavel to Assistant Mayor Grasso.

Mayor Sirrell said that she has received a number of calls and visits from residents saying that the City Council should not be involved in this matter. She urged the group to submit their petitions to the federal government.

Assistant Mayor Grasso passed the gavel back to Mayor Sirrell.

On a roll call vote 7-1, amendment to the motion *failed* to pass. Councilor Whitehouse voted in favor. Assistant Mayor Grasso, Councilors Ferrini, Marchand, Pantelakos, Hynes, St. Laurent and Mayor Sirrell voted opposed.

Assistant Mayor Grasso moved to pass the main motion as amended. Seconded by Councilor St. Laurent. On a unanimous roll call 8-0, voted to pass the main motion as amended.

Mayor Sirrell announced that she would be establishing a Blue Ribbon Committee to review and discuss the various options for the Academy Building and Benedict House where our library is currently housed. She urged anyone wishing to serve on the Committee to send her a letter for her consideration.

VII. PUBLIC HEARINGS

- A. RESOLUTION AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM UNDESIGNATED FUND BALANCE TO IMPLEMENT THE GUARANTEED MAXIMUM PRICE (GMP) FOR THE CONSTRUCTION OF THE PUBLIC LIBRARY IN THE AMOUNT OF ONE MILLION (\$1,000,000) DOLLARS

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

John O'Leary, Chair of the New Library Building Committee explained the need for additional funding. He advised the City Council that the price of steel has increased 56% along with other increases in construction costs. He said that the two-year delay has created the need for additional funding. He advised the City Council that the New Library Building Committee voted unanimously to support the \$1,000,000 supplemental appropriation.

Deputy Public Works Director Allen outlined the process used to get the guaranteed maximum price. He advised the City Council that all of the elements and issues were reviewed to get the best price and best project for the City. He reported that there were 16 areas that formed the construction contract to derive at the price for the project.

Library Director List discussed the items that were not lost in the process. She advised the City Council that the building would be 38,000 square feet. She reported that due to the LEEDS program the building would be an environmentally efficient building.

City Manager Bohenko spoke to a letter Finance Director Belanger received from our outside auditors regarding the use of fund balance for the appropriation. The auditors have indicated that this Resolution is appropriate and funds can be used from the undesignated fund balance. He said that this is a non-reoccurring expense, which meets the guidelines for use of fund balance.

Raimond Bowles spoke in support of the Resolution and recommended approval by the City Council. He said it is time to move forward and build the library that the community has requested.

Neil Novello, Acting President of the Association of Portsmouth Taxpayers, said that the Association is against appropriating funds from the undesignated fund balance account. He asked the City Council to consider the costs that will be associated with the encroachment of the Peirce Trust. He requested that the City look at properties that are municipally owned and are not being used to put them back on the tax rolls for additional revenue.

Amy Brnger spoke in support of the Resolution and urged the City Council to adopt it as presented. She urged the City Council to act now in order to avoid additional costs due to further delays.

Janet Polasky commended the New Library Building Committee and City Council for their hard work on this project. She urged the City Council to adopt the Resolution and move forward with the building of a new library.

Peter Bresciano said years ago when he was President of the Association of Portsmouth Taxpayers they fought to prevent the \$9,000,000 proposed library. He said we never would have guessed several years ago that costs would increase so much. He said adding another \$1,000,000 to the cost of the library is not outrageous, it is the price of doing business after so many years of not getting the library built. He said that the City Council brought the price of the building down to what the residents wanted and it is time to build the new library.

Harold Ecker said he voted for the library, but not the location. He urged the City Council to not be cheap when it comes to building the new library. He said it is important to spend the money to build the right building.

Claudia Morner said that we can almost envision the dedication of the new library. She said many people have worked hard for this project and spoke in support of the Resolution as presented.

Rick Horwitz said if the City does not sell the existing library then the City should sell City properties that are not being utilized to use for recouping the \$1,000,000 appropriation. He said he is uncomfortable with the increased cost of the library.

After three calls and no further speakers, Mayor Sirrell declared the public hearing closed.

- B. ORDINANCE AMENDING CHAPTER 7, ARTICLE III, SECTION 7.330 – NO PARKING SUB-SECTION A – ISLINGTON STREET: SOUTHERLY SIDE FROM ESSEX AVENUE TO A POINT 180 FEET WESTERLY

Mayor Sirrell read the legal notice, declared the public hearing open and called for speakers. After three calls and no speakers, Mayor Sirrell declared the public hearing closed.

VIII. APPROVAL OF GRANTS AND DONATIONS

- A. Acceptance of Donations to the New Library Building Fund from two anonymous donors in the amount of \$150.00

Councilor Whitehouse moved to approve and accept the donations to the New Library Building Fund as listed. Seconded by Councilor St. Laurent and voted.

- B. Acceptance of NHSCA Mini-Grant

Assistant Mayor Grasso moved to approve and accept the NHSCA Mini-Grant award and authorize the City Manager to oversee administration of the grant. Seconded by Councilor Hynes and voted.

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Adoption of Resolution Authorizing a Supplemental Appropriation from Undesignated Fund Balance to Implement the Guaranteed Maximum Price (GMP) for the Construction of the Public Library in the amount of One Million (\$1,000,000) Dollars

Councilor Hynes moved to adopt the Resolution and authorize the City Manager to appropriate the supplemental \$1 million from undesignated fund balance to implement the GMP for construction of the new library. Seconded by Councilor Ferrini.

Councilor Whitehouse said that the 38,000 square feet is not accurate because we will not have a foundation with a cellar, therefore all mechanical items i.e. air conditioning, heating and electrical panels will be on one floor, which will take appropriately 5,000 – 6,000 square feet. Deputy Public Work Director Allen said that is not correct. He advised the City Council that there are two working floors and all mechanical items will be installed on the third floor, which allows for 38,000 square feet of usable space. Councilor Whitehouse asked if installing these items on the third floor meets code. Deputy Public Works Director Allen said the design team is working with the Building Inspector and all applicable building codes will be met. He said that it is very conventional to do this and it is not extraordinary.

Councilor Whitehouse said that test drills were done some time ago in that area and we went down 30 to 35 feet, therefore we will need to drill piles to that depth. He requested that North Branch separate out the cost of drilling. Deputy Public Works Director Allen said that the cost for a foundation and footings would be bid separately.

John O'Leary said that the New Library Building Committee has worked hard on this project and the most important issue was to maintain and provide a quality library. He said the increase in cost is not the fault of the New Library Building Committee, the increase in cost is due to the delays, which were beyond the control of the Committee and the City.

Assistant Mayor Grasso said that the Committee would ensure that the cost of the new library does not go above the guaranteed maximum price.

Councilor Marchand spoke to the positive effects the LEEDS program will have on the construction of the new library. He said it is an investment that provides for an economical and efficient building.

Councilor Pantelakos said she would support the Resolution and thanked the volunteers that have worked on this project for twenty-two years.

Councilor Whitehouse said that there will be another cost issue with the encroachment of the Peirce Trust and he would like to know where the funding would come from for that issue.

Assistant Mayor Grasso said that the Peirce Trust issue would need to be addressed whether or not a library was built in that location.

Mayor Sirrell passed the gavel to Assistant Mayor Grasso.

Mayor Sirrell announced that she and former Mayor Foley sent out over 350 letters requesting donations for the construction of a new library. She said she would appreciate some assistance from the Council with this venture.

Assistant Mayor Grasso passed the gavel back to Mayor Sirrell.

On a roll call vote 6-2, motion passed. Assistant Mayor Grasso, Councilors Ferrini, Marchand, Pantelakos, Hynes and Mayor Sirrell voted in favor. Councilors Whitehouse and St. Laurent voted opposed.

- B. Second reading of Ordinance amending Chapter 7, Article III, Section 7.330 – No Parking sub-section A – Islington Street: southerly side from Essex Avenue to a point 180 feet westerly

Assistant Mayor Grasso moved to pass second reading of the amended ordinance, as submitted, and hold a third and final reading at the April 18, 2005 City Council meeting. Seconded by Councilor St. Laurent and voted.

- C. Third and final reading of Ordinance amending Chapter 10, Article VII – Flood Plain Development – Proposed Amendment to the City's 1995 Zoning Ordinance Regarding the Adoption of Flood Insurance Study and Rate Maps

Councilor Whitehouse moved to pass third and final reading of the amended ordinance, as submitted. Seconded by Councilor St. Laurent and voted.

- D. Third and final reading of Ordinance amending Chapter 7, Article III, Section 7.330 – No Parking – sub-section A – *Crescent Way*: south side from Kearsarge Way to 40' west of Saratoga Way, south side from Porpoise Way to end of street, north side from Kearsarge Way to 80' west of Porpoise Way; and *Preble Way*: south side from Ranger Way to Kearsarge Way, north side 20 feet east of Ranger Way to Kearsarge Way

Councilor St. Laurent moved to pass third and final reading of the amended ordinance, as submitted. Seconded by Councilor Ferrini and voted.

X. PRESENTATION AND CONSIDERATION OF WRITTEN COMMUNICATIONS AND PETITIONS

Letter from Mary Carey Foley, Student Council Adviser, thanking the City Council and staff for participating in Student Government Day 2005 on Wednesday, March 30, 2005 (Not on agenda)

Assistant Mayor Grasso moved to accept and place the letter on file. Seconded by Councilor St. Laurent and voted.

- A. Renewal Requests for Sidewalk Obstruction Licenses from the following businesses with no changes from last year
- Ambrosia Gardens, Inc. – 1 A-frame sign
 - The One Hundred Restaurant – 1 A-frame sign

Councilor St. Laurent moved to refer to the City Manager with power. Seconded by Councilor Ferrini and voted.

- B. Letter from John Kelley, Chairman of Police Commission, inviting the City Council to participate in a thorough review of the Police Department, its various programs and activities

Councilor Whitehouse moved to notify the Police Commission to set up a date and report back to the City Council. Seconded by Councilor St. Laurent.

City Manager Bohenko said if more than five members of the City Council attend it would be considered a meeting, and we need to produce a notice of such. He suggested holding the tour of the department prior to a work session.

Councilor Whitehouse withdrew his motion and Councilor St. Laurent his second to the motion.

Councilor Whitehouse moved to refer to the City Manager with power. Seconded by Councilor St. Laurent and voted.

- C. Letter from Jennifer Slade, Attrezzi Fine Kitchen Accessories, requesting permission to close the small 16-car parking lot on the corner of Market and Hanover Streets on May 15th between Noon and 6 PM to hold the Downtown Spring Tag Sale Event (with a rain date of June 5th)

Councilor Ferrini moved to refer to the City Manager with power. Seconded by Assistant Mayor Grasso.

Councilor St. Laurent expressed concern with the portion of the letter that indicated cars would be towed from the lot if necessary prior to setting up for the sale. City Manager Bohenko said he would discuss this matter with Ms. Slade.

Motion passed.

- D. Letter from Charles DoLeac, The Japan-America Society of New Hampshire, requesting permission to borrow two portraits from City Hall Chambers

Assistant Mayor Grasso moved to grant permission to The Japan-America Society of New Hampshire to borrow two portraits from City Hall Chambers with the necessary insurance protection. Seconded by Councilor Ferrini and voted.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Request to Adopt the Capital Plan (CIP) FY 2006-2011

City Manager Bohenko said he is requesting that the City Council adopt the Capital Improvement Plan as presented. He said that a public hearing was held on the plan at the March 21, 2005 City Council meeting. He reported that this is a plan and appropriations take place during the adoption of the budget. He advised the City Council any items requiring bonding would need a separate resolution with a public hearing for approval.

Councilor Whitehouse moved to adopt the FY2006-2011 Capital Improvement Plan as presented at the public hearing on March 21, 2005. Seconded by Councilor Marchand.

Assistant Mayor Grasso requested that City Manager Bohenko ask the Planning Board to consider pushing back the funding for a new Middle School a few more years when preparing next year's Capital Improvement Plan.

Councilor St. Laurent suggested reducing the plan from \$1.2 million to \$1 million. City Manager Bohenko said that could be done during the budget process.

Councilor Whitehouse said there is \$100,000 for the Peirce Island Master Plan in FY07. He suggested moving \$50,000 into FY06 for the Peirce Island boat launch ramp. He said the City applied for a grant to assist with the construction of a boat launch ramp, however it is a matching grant. City Manager Bohenko said when we know the actual cost he would come back to the City Council if there were a short fall asking for specific use of contingency. City Manager Bohenko advised Councilor Whitehouse if you add the money you need to find a funding source.

Assistant Mayor Grasso cautioned using the contingency account until we know the funding needed to take care of the over expenditures in the snow removal budget.

Motion passed.

- #### **2. Proposed Acceptance of Various Deeds and Easements**
- Mark Odiorne – Easement
 - David Bohne – Easement
 - Ferrari Remodeling & Design, Inc. – Easement
 - Quitclaim Deed from John Ahlgren

City Attorney Sullivan recommended approval of the above listed deed and easements by the City Council.

Councilor St. Laurent moved to authorize the City Manager to accept an easement from Mark Odiorne for drainage, easement from David Bohne for a sidewalk, easement from Ferrari Remodeling & Design, Inc. for improvements to the intersection of Ocean Road and Banfield Road, and the Quitclaim Deed from John Ahlgren. Seconded by Assistant Mayor Grasso and voted.

3. Report Back Re: Avanti Development Request for Purchase of City Owned Land

City Manager Bohenko said he has provided the City Council with a map outlining the number of parking spaces that could be built on the land for use of the neighborhood during snow emergency parking bans at a cost of \$25,000. He advised the City Council that they could accept the Planning Board's recommendation as listed or create the off-street parking spaces.

Councilor Whitehouse moved to accept the recommendations of the Planning Board to approve the conveyance of the aforementioned land to Avanti Development with the following stipulations and authorize the City Manager to enter into any and all agreements. Seconded by Councilor St. Laurant.

Planning Board Stipulations

- *That the City Assessor shall determine the present value of this parcel, so current land values are made available for the Council's use.*
- *That the property be consolidated by deed with the adjacent property of Avanti Development into one lot as required by RSA 674:39a.*
- *That the City retain an easement over the parcel conveyed for municipal utility purposes, either current or needed in the future.*
- *That the applicant must provide off-street parking for any development*

Councilor Whitehouse asked if we could create an agreement with Avanti Development to allow for off-street parking. City Manager Bohenko said it would be private property because the land would be sold to Avanti Development if the Council accepts the recommendation of the Planning Board.

Mayor Sirrell passed the gavel to Assistant Mayor Grasso.

Mayor Sirrell said the Council would be ruining the neighborhood by allowing this development. She said she is opposed to the motion.

Assistant Mayor Grasso passed the gavel back to Mayor Sirrell.

Councilor Pantelakos said she would like to have the property used for off-street parking for the neighborhood.

On a roll call vote 7-1, motion failed to pass. Councilor Whitehouse voted in favor. Assistant Mayor Grasso, Councilors Ferrini, Marchand, Pantelakos, Hynes, St. Laurent and Mayor Sirrell voted opposed.

Assistant Mayor Grasso moved to refer this matter to the Planning Board to be included in the FY2007 Capital Improvement Plan. Seconded by Councilor Pantelakos and voted.

4. Newcastle Avenue Roadway and Seawall Reconstruction Project Burying Overhead Utilities-Cost Sharing Proposal

City Manager Bohenko asked Parking and Transportation Director Burke to come forward to address this matter. He thanked Parking and Transportation Director Burke on behalf of the City Council, staff and himself for his work while being employed by the City. He said he has done a tremendous job for the City and has been a key asset. He announced that Director Burke has accepted a position with the City of Evanston, Illinois and his last day with us will be April 8, 2005.

Parking and Transportation Director Burke advised the City Council that the NHDOT disallow the use of federal transportation funding for burying overhead utilities. He said a meeting was held to inform the public of the NHDOT decision on October 14, 2004. At the meeting, several abutters proposed sharing the cost of burying the utilities with the City on a 50/50 basis. He reported that seven property owners have verbally indicated a desire to participate in the 50/50 proposal on project costs with an estimated cost of \$350,000. The proposal would require an estimated contribution of \$175,000 from the City and \$25,000 from each abutter.

City Manager Bohenko said he and City Attorney Sullivan would work with the property owners on an agreement and bring it back for formal approval at the May 2, 2005 City Council meeting.

Councilor St. Laurent moved to authorize the City Manager to work with the residents and the City Attorney in order to bring this back for formal approval at the May 2, 2005 City Council meeting. Seconded by Councilor Whitehouse and voted.

B. MAYOR SIRRELL

1. Appointment

The City Council considered the reappointment of Steven Berg to the PEDLP Review Committee. This appointment will be voted on by the City Council at the April 18, 2005 City Council meeting.

2. Reappointment of Ken Smith as the Planning Board Representative to the Historic District Commission

Councilor Whitehouse moved to reappoint Ken Smith as the Planning Board Representative to the Historic District Commission until December 31, 2005. Seconded by Councilor St. Laurent and voted.

C. COUNCILOR PANTELAKOS

2. Proposed Animal Control Ordinance

Councilor Pantelakos advised the City Council that the Dog Committee has met on several occasions and voted to recommend that the City Council consider the proposed ordinance amendment for first reading at the April 18, 2005 City Council meeting.

Councilor Pantelakos moved to authorize the City Manager to bring this ordinance back for first reading at the April 18, 2005 City Council meeting. Seconded by Assistant Mayor Grasso.

Councilor Whitehouse requested City Manager Bohenko provide the City Council with a synopsis of the changes to the ordinance.

Mayor Sirrell passed the gavel to Assistant Mayor Grasso.

Mayor Sirrell said that dogs need to be on a leash and she is in favor of the leash law.

Assistant Mayor Grasso passed the gavel back to Mayor Sirrell.

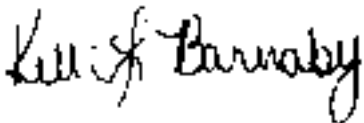
Assistant Mayor Grasso also spoke in favor of the leash law. She said that it is a safety factor for the dogs as well as people.

Councilor Marchand spoke in support of the leash law and suggested the City Council receive a report back after the ordinance is adopted to find out if the enforcement is working.

Motion passed.

XIII. ADJOURNMENT

At 10:00 p.m., Councilor Whitehouse moved to adjourn. Seconded and voted.



Kelli L. Barnaby, City Clerk