

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, JULY 11, 2005

PORTSMOUTH, NH
TIME: 7:00 PM

At 6:00 p.m., an Anticipated "Non-Meeting" with counsel was held regarding Negotiations – RSA 91-A:2, I (b-c).

I. CALL TO ORDER

Mayor Sirrell called the meeting to order at 7:00 p.m.

II. ROLL CALL

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

III. INVOCATION

Mayor Sirrell asked everyone to join in a moment of silent prayer in memory of William Marconi who passed away over the weekend and for the loss of life in London, England due to the recent terrorist attacks.

IV. PLEDGE OF ALLEGIANCE

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

MAYOR'S AWARDS

Mayor Sirrell announced that the Mayor's Awards for the Portsmouth Girls Softball League Champions will be held at the August 1, 2005 City Council meeting.

PRESENTATION

1. Former Superintendent of Schools Lyonel Tracy

Mayor Sirrell, City Manager Bohenko and the City Council presented former Superintendent of Schools Lyonel Tracy with a City of Portsmouth Chair in recognition of his recent retirement. Lyonel thanked Mayor Sirrell, City Manager Bohenko and the City Council for this thoughtful gift.

V. ACCEPTANCE OF MINUTES – JUNE 8, 2005 & JUNE 20, 2005

Councilor Hynes moved to approve and accept the minutes of the June 8, 2005 and June 20, 2005 City Council meetings. Seconded by Councilor St. Laurent and voted.

VI. PUBLIC COMMENT SESSION

Raymond Will asked the City Council to consider the Avanti land purchase as an opportunity to create naturally affordable housing. He discussed the need for the developer to agree to adhere to building criteria related to height, and square footage maximums, as well as façade and yard specifications, which would create a natural way to keep the homes affordable.

Rick Becksted spoke to a letter he delivered to Mayor Sirrell last week regarding him not being reappointed to the Historic District Commission. He indicated that in the past he has submitted a letter requesting reappointment to the Commission, that is why he did not complete an application.

Harold Ecker suggested that the City Council conduct the performance audit instead of hiring a company. He said that the City Council is capable of performing the audit and that it should be unannounced. He said an in-house audit would save the taxpayers money.

Ken Weston said that the neighborhood has worked with Avanti regarding their proposed development project for Atlantic Heights. He urged the City Council to link the documents with the easements to ensure that all stipulations are adhered to. He also requested that language be added to specific level of quality of materials. He advised the City Council that there are several units vacant in Atlantic Heights that he would like to see used for work force housing.

Robin McIntosh said that Avanti has altered their original design and incorporated public parking as requested by the neighborhood. She urged the City Council to incorporate the recommendations/stipulations as recommended by the Planning Board as part of the approval process. She said it is important that we preserve the integrity of the design and look of the neighborhood.

Stephanie Krenn spoke in support of the positions expressed by Mr. Weston and Ms. McIntosh this evening regarding the Avanti Development project. She said it is important that the neighborhood remain consistent with the architect of Atlantic Heights.

Councilor Ferrini moved to suspend the rules in order to take up Item XI. A.1. – Report Back Re: Avanti Development. Seconded by Councilor St. Laurent and voted.

City Manager Bohenko reviewed in detail his memorandum to the City Council regarding this request. He outlined the recommendations/stipulations of the Planning Board to approve the conveyance of the land to Avanti Development.

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. Laurent.

Planning Board Stipulations/Recommendations

- *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 shall be consolidated by deed with the adjacent property of Avanti Development into one lot as required by RSA 674:39a;*
- *That the City shall retain an easement over the conveyed parcel for municipal utility purposes, either current or as needed in the future;*
- *That the applicant must provide off-street parking for any development;*
- *That the zoning district classification should be addressed;*
- *That all representations made in Attorney Pelech's letter dated April 21, 2005 are attached to this recommendation, including, the conceptual designs of the building as well as the providing of public parking spaces; and,*
- *Require the applicant to complete a Site Review process so as to ensure conformance with Attorney Pelech's representations and conduct a voluntary design review process with the Planning Board*

Councilor Whitehouse asked if the stipulations cover the concerns expressed by Mr. Weston, Ms. McIntosh and Ms. Krenn. City Attorney Sullivan said that the land needs to be consolidated with the existing lot and would be subject to these restrictions.

Councilor Whitehouse suggested adding another stipulation that would indicate that if the land is resold the purchaser would need to comply with all previous stipulations.

Councilor Ferrini moved to suspend the rules in order to allow Attorney Pelech to address the City Council. Seconded by Councilor Whitehouse and voted.

Attorney Pelech said that the buildings will be built to look like what the neighborhood and Avanti has agreed to.

Councilor Ferrini asked if the neighborhood is in agreement with this before he votes on the matter. Councilor Ferrini moved to suspend the rules to allow Mr. Weston the opportunity to speak. Seconded by Assistant Mayor Grasso and voted.

Mr. Weston said he is concerned because the letter does not stipulate the materials that will be used in the building process.

City Manager Bohenko said he feels that the last stipulation addresses Mr. Weston's concerns. City Attorney Sullivan said as long as the Planning Board understood that the last stipulation meant that the City Council wanted brick, then the construction would be brick.

Councilor Pantelakos asked if materials that look like brick could be used. City Attorney Sullivan said if the materials meet the requirements of the Planning Board.

Councilor Reynolds moved to suspend the rules to allow Ray Will the opportunity to speak. Seconded by Councilor Ferrini and voted.

Ray said that Atlantic Heights was built to make the units small to allow for affordable housing. He expressed concern regarding the square footage for the development. He said it needs to fit the character of the City and neighborhood. He also expressed concern with the height of the building.

Councilor Ferrini said that the Planning Board would hold a public hearing on the design process.

Councilor Reynolds expressed concern that the last stipulation indicates that the developer would conduct a voluntary design review process with the Planning Board. City Attorney Sullivan said the applicant will voluntarily agree to the design review process and has agreed to this. Councilor Ferrini said that Attorney Pelech has indicated that Avanti Development has agreed to the voluntary design review process.

On a unanimous roll call 9-0, motion passed.

VII. PUBLIC HEARINGS

- A. AMENDMENT TO CHAPTER 7 – VEHICLES, TRAFFIC PARKING (OMNIBUS PARKING ORDINANCE APRIL 16, 2004 TO JUNE 14, 2005)
- CHAPTER 7, ARTICLE III, SECTION 7.327 – LIMITED PARKING – TWO HOURS – BY THE DELETION OF HANCOCK STREET: BOTH SIDES FROM MARCY STREET TO PLEASANT STREET

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

Public Works Director Parkinson explained that this request was sent to the Traffic & Safety Committee and this ordinance created a difficult situation that impacted the people in the area after a year it was determined that this ordinance should be deleted.

Toby Sole spoke in favor of the proposal to delete this ordinance. He said that the ordinance allowed for efficient use of parking on Hancock Street.

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

- B. ORDINANCE AMENDING CHAPTER 7, ARTICLE III, SECTION 7.336 – ONE WAY STREET BY THE ADDITION OF PEARL STREET: NORTHERLY FROM ISLINGTON STREET TO HANOVER STREET

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

Public Works Director Parkinson said that this was requested by a neighborhood petition because of the businesses located on the street it created a dangerous situation. He said that the Traffic & Safety Committee reviewed the petition and request from the neighborhood and had the ordinance created.

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

C. ORDINANCE AMENDING CHAPTER 7, ARTICLE III, SECTION 7.330 – NO PARKING – BY DELETION OF PEARL STREET: WESTERLY SIDE FROM ISLINGTON TO HANOVER STREET

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

City Manager Bohenko advised the City Council that this ordinance is in conjunction with the previous ordinance.

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

D. ORDINANCE AMENDING CHAPTER 7, ARTICLE X, SECTION 7.1004 – TOWING OR IMMOBILIZATION OF MOTOR VEHICLES FOR NON-PAYMENT OF PARKING FINES

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

City Manager Bohenko explained that this would increase the amount of unpaid parking tickets from \$75.00 to \$125.00 before a certified letter is sent to the owner. He said that the Parking Division was finding an increase in certified mail because it didn't take much to accumulate \$75.00 in unpaid fines. He said that this ordinance would reduce the number of individuals on the boot and tow list.

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

Assistant Mayor Grasso said she appreciated having the maps attached to the ordinances. She said that the maps are very helpful to the City Council.

VIII. APPROVAL OF GRANTS AND DONATIONS

- A. Acceptance of Donations to the New Library Building Fund
- Thelma Ballew - \$10.00
 - Charles Vaughn - \$100.00
 - Carol Hollis - \$100.00
 - Robert & Nackey Scagliotti - \$1,000.00
 - John P. Bohenko & Nancy K. London - \$1,000.00

Assistant Mayor Grasso moved to approve and accept the donations to the New Library Building Fund as listed. Seconded by Councilor Pantelakos and voted.

- B. Acceptance of Donations to the Cemetery Committee
- Robert & Betty Goldstein - \$25.00
 - Anonymous - \$47.00
 - Dr. Robert Chaikin - \$100.00

Councilor Whitehouse moved to approve and accept the donations to the Cemetery Committee as listed. Seconded by Councilor St. Laurent and voted.

- C. Acceptance of Grant to the Portsmouth Police Department from the Office of Juvenile Justice for the tri-state ICAC task force in the amount of \$450,000.00

Councilor Pantelakos moved to approve and accept the grant to the Portsmouth Police Department as listed. Seconded by Assistant Mayor Grasso and voted.

- D. Acceptance of Donation to the Portsmouth Police Honor Guard from Rick Fecteau in the amount of \$100.00

Councilor Whitehouse moved to approve and accept the donation to the Portsmouth Police Department as listed. Seconded by Councilor St. Laurent and voted.

- E. Acceptance of Donation to the Portsmouth Police Department from the Fuller Foundation for Drug Recognition Expert (DRE) training in the amount of \$1,000.00

Assistant Mayor Grasso moved to approve and accept the donation to the Portsmouth Police Department as listed. Seconded by Councilor Ferrini and voted.

- F. Acceptance of Recycling Grant from NH The Beautiful, Inc. in the amount of \$2,790.00

Councilor Raynolds moved to approve and accept the Recycling Grant from New Hampshire The Beautiful, Inc. as listed. Seconded by Councilor Marchand and voted.

- G. Acceptance of NHSCA Community Arts Development Grant in the amount of \$5,000.00

Councilor Hynes moved to accept and expend the grant funds from New Hampshire State Council on the Arts and authorize the City Manager to oversee administration of the grant as listed. Seconded by Assistant Mayor Grasso and voted.

Councilor Whitehouse requested that Mayor Sirrell send a letter of thanks to the New Hampshire State Council on the Arts for issuing this grant to the City.

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

A. Second reading of Amendment to Chapter 7 – Vehicles, Traffic Parking (Omnibus Parking Ordinance April 16, 2004 to June 14, 2005)

- Chapter 7, Article III, Section 7.327 – Limited Parking – Two Hours – by the deletion of Hancock Street: both sides from Marcy Street to Pleasant Street

Councilor Hynes moved to pass second reading of the action to be incorporated into the Parking Ordinance, as presented, and hold a third and final reading at the August 1st City Council meeting. Seconded by Assistant Mayor Grasso and voted.

B. Second reading of Ordinance amending Chapter 7, Article III, Section 7.336 – One Way Street by the addition of Pearl Street: Northerly from Islington Street to Hanover Street

Councilor Marchand moved to pass second reading of amended ordinance, as submitted, and hold a third and final reading at the August 1st City Council meeting. Seconded by Councilor St. Laurent.

Councilor Whitehouse said that the large business on the corner was not notified of this proposed ordinance. He said that this ordinance would negatively impact the business and their customers.

Councilor St. Laurent asked why this ordinance did not go through the Parking Committee. Councilor Hynes said that the request was handled through the Traffic & Safety Committee and a site walk of the area was held. He advised Councilor St. Laurent that all of the Traffic & Safety Committee business is conducted in the open and any one is invited to attend the meetings.

City Manager Bohenko said that the Parking Committee handles parking issues and the Traffic & Safety Committee handles traffic flow issues.

City Manager Bohenko said that we could do something through the next omnibus ordinance regarding parking on Pearl Street.

Motion passed.

C. Second reading of Ordinance amending Chapter 7, Article III, Section 7.330 – No Parking – by deletion of Pearl Street: westerly side from Islington To Hanover Street

Councilor Pantelakos moved to pass second reading of amended ordinance, as submitted, and hold a third and final reading at the August 1st City Council meeting. Seconded by Councilor Hynes and voted.

- D. Second reading of Ordinance amending Chapter 7, Article X, Section 7.1004 – Towing or Immobilization of Motor Vehicles for Non-Payment of Parking Fines

Councilor St. Laurent moved to pass second reading of amended ordinance, as submitted, and hold a third and final reading at the August 1st City Council meeting. Seconded by Councilor Whitehouse and voted.

X. PRESENTATION AND CONSIDERATION OF WRITTEN COMMUNICATIONS AND PETITIONS

- A. Request for Sidewalk Obstruction License from Mimi Loureino, 02 Yoga Studio to place 1 A-frame sign in front of establishment

Councilor Pantelakos moved to refer to the City Manager with power. Seconded by Councilor Marchand.

Councilor Raynolds expressed concern with the number of A-frame signs throughout the City. He requested that City Manager Bohenko conducted a survey of the number and width of signs located throughout the City.

Councilor Ferrini said he feels that the City Council should not be taking the time to review these requests and suggested that they would be better suited being handled administratively or possibly through the Planning Board.

Motion passed.

- B. Letter from Attorney Bernard Pelech regarding Rezoning of Land at Banfield Road and Constitution Avenue

Councilor Whitehouse moved to refer to the Planning Board for a report back. Seconded by Assistant Mayor Grasso and voted.

- C. Letter from Martha Petruzzi, The American Diabetes Association, requesting permission to hold the annual America's Walk for Diabetes on Saturday, October 15, 2005

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

- D. Letter from Attorney Robert Ciandella requesting Motion for Rehearing in regards to ordinance amending Chapter 10, Article II, Section 10.202 – Location – to rezone properties located off Mirona Road at Tax Map 252, Lot 3 and Map 253, Lot 4 from Industrial to General Business

City Manager Bohenko asked City Attorney Sullivan to discuss this matter and request. City Attorney Sullivan explained that the City Council voted to adopt the rezoning request for land off of Mirona Road on June 6, 2005. He said the appeal process that Attorney Ciandella is asking for is the same process that applies to the Zoning Board of Adjustment. He said that Attorney Ciandella's client Market Basket is opposed to the rezoning that was granted by the City Council in June. He advised the City Council that they must act on this request within 30 days of receipt. He outlined the three options available to the City Council, which are as follows:

1. Deny the Motion for Rehearing filed by Market Basket
2. Suspend the application of the rezoning ordinance pursuant to the Motion for Rehearing filed by Market Basket under the following terms and conditions: (the City Council would need to state those terms and conditions)
3. Grant the rehearing requested by Market Basket and reopen the public hearing and second reading of the ordinance at the next regular meeting of the City Council

Councilor Ferrini moved to deny the Motion for Rehearing filed by Market Basket. Seconded by Councilor Marchand.

Councilor Ferrini said that the arguments have been made in great detail, preserved for the record with both parties presenting pro and con for the rezoning request.

Assistant Mayor Grasso said that she would support Councilor Ferrini's motion to deny because she sees nothing new being presented this evening that was not presented the evening the City Council took their original vote.

On a roll call vote 7-2, motion passed. Assistant Mayor Grasso, Councilors Ferrini, Marchand, Pantelakos, Hynes, Raynolds and Mayor Sirrell voted in favor. Councilors Whitehouse and St. Laurent voted opposed.

- E. Request for Sidewalk Obstruction License from Donna Downes, Edible Arrangements, requesting permission to place 1 A-frame sign in front of establishment

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

- F. Letter from Sister Mary Agnes, St. Charles Children's Home, requesting permission to hold a 5k Road Race at Pease International Tradeport on Labor Day, September 5, 2005 at 9:00 a.m.

Assistant Mayor Grasso moved to refer to the City Manager with power. Seconded by Councilor Pantelakos and voted.

- G. Letter from Gary Dodds & Pat Lyons, Portsmouth Rotary Club, requesting permission to hold the 13th annual Thunder Chicken 5k Road Race on Thursday, August 4, 2005

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

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

- 2. Clarification of July 14, 2005 Work Session

City Manager Bohenko advised the City Council that the School Department has informed him that the request for a joint work session with the City Council was actually an invitation by the Joint Building Committee to tour the High School and provide an update on the project. He said that the tour would begin at 6:00 p.m. followed by a project update at 6:30 p.m. in the High School Library.

Assistant Mayor Grasso moved to cancel the City Council Joint Work Session scheduled for July 14th at 6:30 p.m. and accept the invitation of the Joint Building Committee to attend the meeting to receive an update on the High School Project. Seconded by Councilor Hynes and voted.

B. MAYOR SIRRELL

- 1. Donations to the Coalition Legal Fund

Mayor Sirrell passed the gavel to Assistant Mayor Grasso.

Councilor Pantelakos moved to accept the \$1,000.00 contribution from the Town of Lincoln and \$500.00 from the Town of Hebron, to be placed in the Coalition Legal Fund. Seconded by Councilor Hynes and voted.

Assistant Mayor Grasso passed the gavel back to Mayor Sirrell.

- 2. Art-Speak Trust Appointment

Assistant Mayor Grasso moved to appoint Elaine Krasker to be the Mayor and City Council's designee to the Trust Advisory Group. Seconded by Councilor Pantelakos and voted.

3. Port Reuse Advisory Board Appointments

Councilor Hynes moved to appoint Joel Carp, City Councilor and State Representative Laura Pantelakos, and State Representative Jim Powers to the Pease Development Authority's Ad Hoc Advisory Committee known as the Division of Ports and Harbors Use Committee. Seconded by Assistant Mayor Grasso and voted.

4. Appointments

The City Council considered the appointment of Kathleen Pearce and the reappointment of Gene Fisk to the Cable Television and Communications Commission; and the reappointment of Andy Bangs to the PEDLP Review Committee. These appointments will be voted on by the City Council at the August 1, 2005 City Council meeting.

Councilor Pantelakos moved to appoint Richard Katz as a regular member of the Historic District Commission until June 1, 2008 filling the expired term of Rick Becksted. Seconded by Assistant Mayor Grasso.

Councilor Whitehouse said he attends many Historic District Commission meetings and finds many times that an applicant will approach Mr. Becksted thanking him for bringing forward a suggestion for a change to their project. He said Mr. Becksted has a great deal of knowledge and it is important to have that when serving on this board, therefore he will vote against the appoint of Mr. Katz because he feels Mr. Becksted should have been reappointed to the Commission.

Councilor Pantelakos said she would like to clarify a statement made by Mr. Becksted during the Public Comment Session. She said every applicant must complete an application for reappointment or appointment to a board, they cannot just submit a letter as indicated by Mr. Becksted.

Councilor St. Laurent said because Mr. Becksted came before the City Council this evening he would like to hold back this appointment. He said he would vote against the motion because he would like to receive answers to the comments and questions raised by Mr. Becksted during the Public Comment Session.

Motion passed with Councilors Whitehouse and St. Laurent voting opposed.

Councilor Pantelakos asked City Attorney Sullivan if it is proper to discuss a past member being reappointed or not appointed to a board and commission. City Attorney Sullivan said that it is not advisable to have a lengthy discussion right now in this format, it would be better to discuss in a non-meeting with counsel.

Councilor Ferrini moved to appoint Jonathan Wyckoff as an alternate to the Historic District Commission filling the unexpired term of Richard Katz until June 1, 2007. Seconded by Assistant Mayor Grasso and voted.

C. COUNCILOR MARCHAND

1. Resolution Re: Support for Continued Presence of Taxpayer Assistance Center in Portsmouth

Councilor Marchand said that the City Council received notification that the Taxpayer Assistance Center would be closed. He said he would like the City Council to go on record in opposition to the closing of the center and the value of this necessary service to the residents of the City of Portsmouth.

Councilor Marchand moved to adopt the Resolution regarding Support for Continued Presence of Taxpayer Assistance Center in Portsmouth. Seconded by Councilor St. Laurent.

Councilor St. Laurent spoke in favor of the Resolution and suggested amending the Resolution to make the language stronger, rather than saying, "reconsider its planned closure" to "keep open."

Councilor Whitehouse requested that a copy of the Resolution be sent to the Congressional Delegation.

Councilor St. Laurent moved to amend the last paragraph of the Resolution by deleting the words "*reconsider its planned closure of*" and insert the following language "*keep open*". Seconded by Councilor Marchand and voted.

Main motion passed as amended.

XIII. ADJOURNMENT

At 8:45 p.m., Councilor St. Laurent moved to adjourn. Seconded and voted.



Kelli L. Barnaby, City Clerk