

SPECIAL CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: WEDNESDAY, JULY 26, 2006

PORTSMOUTH, NH
TIME: 7:00PM [or thereafter]

This meeting was recessed from July 17, 2006

I. CALL TO ORDER

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

II. ROLL CALL

Present: Mayor Marchand, Assistant Mayor Ferrini, Councilors Grasso, Dwyer, Raynolds, Pantelakos, Whitehouse, Smith and Hynes

III. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

City Attorney Sullivan said the first portion of the meeting held on July 17, 2006 ran into a late hour do to a lengthy public hearing. The City Council was to vote on the ordinance before them and because they felt the process would be time consuming the Council made the determination to recess the meeting. City Attorney Sullivan advised the City Council that the last item before them was the motion made by Councilor Hynes to pass second reading of Ordinance amending Chapter 10, Article II, Section 10.202 – Location of the Zoning Ordinance and Zoning Map be amended by rezoning the properties located off Hanover Street and Maplewood Avenue at Assessor's Map 124, Lot 12, Map 118, Lot 28, Map 125, Lot 21 from Central Business A (CBA) to Central Business B (CBB) and hold third and final reading at the August 7, 2006 City Council meeting.

Assistant Mayor Ferrini said that the City Council would vote on second reading this evening and hold third and final reading at the August 7, 2006 City Council meeting. He said that there would not be a public hearing but a public comment session would take place as with all City Council regular meetings.

- A. Second reading of Ordinance amending Chapter 10, Article II, Section 10.202 – Location of the Zoning Ordinance and Zoning Map be amended by rezoning the properties located off Hanover Street and Maplewood Avenue at Assessors Map 124, Lot 12, Map 118, Lot 28, Map 125, Lot 21 from Central Business A (CBA) to Central Business B (CBB)

Motion by Councilor Hynes seconded by Councilor Pantelakos before the City Council is as follows:

Move to pass second reading of Ordinance amending Chapter 10, Article II, Section 10.202 – Location of the Zoning Ordinance and Zoning Map be amended by rezoning the properties located off Hanover Street and Maplewood Avenue at Assessor's Map 124, Lot 12, Map 118, Lot 28, Map 125, Lot 21 from Central Business A (CBA) to Central Business B (CBB) and hold third and final reading at the August 7, 2006 City Council meeting.

Councilor Hynes said that the City Council is ready to address the first of the four amendments before them this evening. He said that he works for the residents of the community and more than 70% of the residents are in favor of the conference center.

Councilor Whitehouse said he feels strongly that enough is enough and the City Council needs to take a look at where the City is going. He advised the City Council that residents want the City Council to be careful in their decision relative to this matter. He expressed concern regarding the additional 10 feet in height and informed the City Council that he would not support the motion.

Councilor Dwyer said that the most compelling reason for supporting this motion is the comments made by Councilor Smith during the July 17, 2006 meeting. Councilor Smith indicated to the City Council what the intent of the Planning Board was during the master plan process. Councilor Dwyer said that Councilor Smith had stated that it was a mistake of the Planning Board not to put this parcel in that zone and there were over 2,000 amendments made back in 1995.

Councilor Smith stated back in 1995 the Planning Board through the master plan process felt it was important to preserve the waterfront views. He advised the City Council that there were mistakes made and the Planning Board's intention was anything that was on the water would be 50 feet and anything behind would be 60 feet. He said that this amendment allows for the correction and the original intent of the Planning Board.

Assistant Mayor Ferrini said that he is persuaded by Councilor Smith's comments. He advised the City Council that he feels this amendment is keeping with the character of the property surrounding it.

Councilor Pantelakos said she has listened to many people and this has been in the making for 8 years. She advised the City Council that she feels it is a benefit to the City and the businesses.

Councilor Grasso said that she would support the change because it is the proper zoning for this area. She spoke to the rezoning of the property on Lang Road that was Office Research and changed to Garden Apartments to fit the zoning of the area. She advised the City Council that she feels this rezoning would continue a natural flow of the area.

Councilor Raynolds said that he is also persuaded by Councilor Smith's comments. He said that this parcel is not on the water. He said that this issue has been widely discussed and this proposed amendment is of concern to the community. Councilor Raynolds indicated that the 10 feet in additional height is not that significant in light of the big picture.

Mayor Marchand returned the gavel to Assistant Mayor Ferrini.

Mayor Marchand said Councilor Smith's first hand knowledge is compelling. The height is a legitimate concern to not wall off one part of the City from the other. He said that this

amendment would clear up an error that was made previously and he would support the motion.

Assistant Mayor Ferrini passed the gavel back to Mayor Marchand.

On a roll call 8-1, voted to pass second reading of Ordinance amending Chapter 10, Article II, Section 10.202 – Location of the Zoning Ordinance and Zoning Map be amended by rezoning the properties located off Hanover Street and Maplewood Avenue at Assessors Map 124, Lot 12, Map 118, Lot 28, Map 125, Lot 21 from Central Business A (CBA) to Central Business B (CBB) and hold third and final reading at the August 7, 2006 City Council meeting. Assistant Mayor Ferrini, Councilors Grasso, Dwyer, Raynolds, Pantelakos, Smith, Hynes and Mayor Marchand voted in favor. Councilor Whitehouse voted opposed.

- B. Second reading of Ordinance amending Chapter 10, Article XII, Section 10-1201 – Off-Street Parking – to allow Off-Street Parking Facilities to be Located on Lots other than the Same Lot as the Principle Use where the applicant and the City agree on the terms and conditions under which a municipally owned covered parking facility shall be constructed as part of the overall development project

Councilor Grasso moved to pass second reading of Ordinance amending Chapter 10, Article XII, Section 10-1201 – Off-Street Parking – to allow Off-Street Parking Facilities to be Located on Lots other than the Same Lot as the Principle Use where the applicant and the City agree on the terms and conditions under which a municipally owned covered parking facility shall be constructed as part of the overall development project and hold third and final reading at the August 7, 2006 City Council meeting. Seconded by Councilor Pantelakos.

Councilor Whitehouse asked for an explanation of the ordinance. City Manager Bohenko requested that Planning Director Holden come forward to explain the ordinance as requested by Councilor Whitehouse. Planning Director Holden advised the City Council that this deals with a public private partnership. He said the original intent of the ordinance was that the City would be protected by keeping properties in the same ownership devoted to parking facilities. He said in this case that same benefit should be allowed and extended to the applicant in a case where there is a public private partnership.

Councilor Smith asked what would happen if the parking garage is built and they do not build the hotel. City Attorney Sullivan said that the City and HarborCorp are currently engaged in a Joint Development Agreement. If the garage and conference center are built then the Joint Development Agreement obligates the City and further agreements with HarborCorp under which HarborCorp would be provided with the right to park cars in the garage at certain costs. In the event that the garage is built and the conference center is not built then all City obligations towards HarborCorp are extinguished however, we will still have a right to buy that garage at a maximum cost of \$15 million dollars regardless of how much the garage actually costs to build. He also advised the City Council that part of purchasing the garage at \$15 million dollars the City would get the land for free which is valued at \$1.8 million dollars.

Councilor Hynes said that there is a need for a conference center. He said that the City would provide the bond provided we have an agreement to rent enough units to pay for the costs of

the bond over 20 years. He said at the end of 20 years the bond is paid off by hotel rentals and the City owns the garage and land that it sits on.

Assistant Mayor Ferrini asked what happens if this all gets built and prior to the payoff HarborCorp sells its interest, presumably there is an assign ability and the same agreement continues. City Attorney Sullivan responded affirmatively.

On a unanimous roll call 9-0, voted to pass second reading of Ordinance amending Chapter 10, Article XII, Section 10-1201 – Off-Street Parking – to allow Off-Street Parking Facilities to be Located on Lots other than the Same Lot as the Principle Use where the applicant and the City agree on the terms and conditions under which a municipally owned covered parking facility shall be constructed as part of the overall development project and hold third and final reading at the August 7, 2006 City Council meeting.

- C. Second reading of Ordinance amending Chapter 10, Article XII, Section 10-1202 – Off-Street Parking Innovation: Inter Modal Transportation Credit for Central Business A and Central Business B District – to allow the Inter Modal Parking Credit to be applicable when the applicant and the City agree on the terms and conditions under which a new, municipally owned covered parking facility shall be constructed as part of the overall development project

Councilor Whitehouse moved to pass second reading of Ordinance amending Chapter 10, Article XII, Section 10-1202 – Off-Street Parking Innovation: Inter Modal Transportation Credit for Central Business A and Central Business B District – to allow the Inter Modal Parking Credit to be applicable when the applicant and the City agree on the terms and conditions under which a new, municipally owned covered parking facility shall be constructed as part of the overall development project and hold third and final reading at the August 7, 2006 City Council meeting. Seconded by Assistant Mayor Ferrini.

Assistant Mayor Ferrini requested that Planning Director Holden outline this Ordinance. Planning Director Holden said that this amendment builds on the previous amendment and awards the same opportunity with the inter modal parking credit with a public private partnership.

Councilor Reynolds asked Planning Director Holden to explain what the inter modal parking credit is. Planning Director Holden said that an applicant is responsible to provide sufficient parking to meet the terms of the Ordinance. He advised the City Council that there are a number of ways that this can be done, one of them involves the inter modal credit whereby building a parking facility receives certain credits and that is the situation here. He said in this instance the credit mechanism is being applied in situations where you have a public private partnership.

Councilor Whitehouse asked what would be the dollar figure required by the developer if this amendment is not passed. Planning Director Holden advised Councilor Whitehouse for each space you are obligated to pay a credit of approximately \$1,200.00.

On a unanimous roll call 9-0, voted to pass second reading of Ordinance amending Chapter 10, Article XII, Section 10-1202 – Off-Street Parking Innovation: Inter Modal Transportation Credit for Central Business A and Central Business B District – to allow the Inter Modal Parking Credit to be applicable when the applicant and the City agree on the terms and conditions under which a new, municipally owned covered parking facility shall be constructed as part of the overall development project and hold third and final reading at the August 7, 2006 City Council meeting.

- D. Second reading of Ordinance amending Chapter 10, Article II, Section 10.208 – Table 4, Paragraph 16, Uses in Business District, Central Business B Zone, to allow said uses as Permitted Uses rather than as a Special Exception

Councilor Pantelakos moved to pass second reading of Ordinance amending Chapter 10, Article II, Section 10.208 – Table 4, Paragraph 16, Uses in Business District, Central Business B Zone, to allow said uses as Permitted Uses rather than as a Special Exception. Seconded by Councilor Smith.

Councilor Whitehouse said that the Planning Board had a long discussion relative to this amendment and asked Planning Director Holden what the final vote was. Planning Director Holden said the Planning Board did not recommend this amendment. He said the discussion of the Planning Board was whether or not this duplicated what was in site review regulations. He said the issue comes down to what is a purpose of a special exception and what is the purpose of site review regulation. He advised the City Council you should view this as an attempt or a request for a motel/hotel to be viewed as a matter of right rather than a special exception. Councilor Whitehouse asked if this would need to go to the Site Review Technical Advisory Committee. Planning Director Holden said that is correct.

Councilor Dwyer said the Planning Board did not favor this amendment and she as a member voted opposed. She said that this is a different issue than to correct a mistake. She said in this case by changing it to a matter of right in the district we could have motels and hotels with attachments that exceed 500 persons. She said the concerns she has heard regard scales, maps, traffic, pressure in the downtown and changing the character of the downtown. She said by allowing a number of spaces to have more than 500 persons without going through the Zoning Board of Adjustment we may well be changing the character of the downtown.

Councilor Hynes said this issue of whether that particular need would be referred to the Zoning Board of Adjustment or handled by the City Council is reasonably easy to understand if you know the City Council makes the Ordinances. He said when an Ordinance does not serve a small part of the City businesses they could go to the Zoning Board of Adjustment to request a change. There is no need for the City Council to ask for a change in the Ordinance that they already created or had created.

Assistant Mayor Ferrini asked Planning Director Holden to review by which criteria a special exception would be determined by the Zoning Board of Adjustment. Planning Director Holden responded that a special exception is a permitted use under the Zoning Ordinance. A special exception is granted upon the Zoning Board of Adjustment making certain findings that would allow that use in that district. He informed the City Council that the proposed new use is limited to motels and hotels and this is a very narrowly defined use. Planning Director Holden also informed the City Council that in the downtown it would be difficult to assemble another large parcel this type of use. He said parking would be an issue and the private entity would be responsible to supply the parking.

Assistant Mayor Ferrini asked if someone assembled a parcel and this was allowed as a matter of right and it is a 500 person non hotel or conference center and there is also going to be employee parking what would that translate to from an unmet parking need perspective. Planning Director Holden said that they would need to provide for sufficient parking as the Ordinance requires and/or pay the impact fee.

Mayor Marchand asked what would be an example of a non hotel or motel and what process would they deal with. Planning Director Holden said an example would be a nightclub that exceeds 500 persons and they would be required to obtain a special exception and go through the process.

Councilor Pantelakos said it would not be economically feasible to build another conference center in the downtown.

Councilor Dwyer asked if we have precedents for zoning changes by reasons of economics. Planning Director Holden said the master plan combines many elements including land use and includes economic development, transportation and other elements. The City Council makes the balance and determines if it should be a special exception or not.

Councilor Smith said that this development still has a process to go through with site review. He advised the City Council that the City has looked at a conference center for years. He said if you support a conference center, you should support the Ordinance.

City Attorney Sullivan said every decision that is made concerning this project is capable of being appealed. He spoke to the difference between a decision of the City Council versus the Zoning Board of Adjustment or Planning Board.

Councilor Whitehouse said he would support the Planning Board's decision on this Ordinance and he respects their knowledge but now that he has heard from Councilor Smith he is persuaded to vote differently and support the Ordinance as presented.

Councilor Raynolds thanked Councilor Smith for bringing the information forward as to the original intent of the Planning Board back in 1995. He said that he would support the motion to pass second reading of the Ordinance.

Mayor Marchand passed the gavel to Assistant Mayor Ferrini.

Mayor Marchand advised the City Council that at the beginning of the meeting he planned to support the recommendation of the Planning Board relative to this proposed amendment but the information brought forward by Councilor Smith persuaded him to support the motion to pass second reading of the Ordinance as presented. He said that land use policies are extremely important and we have a master plan that people are excited about.

Assistant Mayor Ferrini returned the gavel to Mayor Marchand.

Councilor Grasso said when this came before the City Council this Ordinance was a concern. She said she would support it to be consistent with the other zoning changes. She said anything that happens in the City she wants the decision to be made by the City and not someone else.

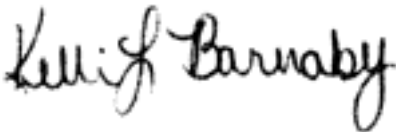
Assistant Mayor Ferrini said that there is a lot of logic on both sides. He advised the City Council that he would vote opposed to the motion.

On a roll call 7-2, voted to pass second reading of Ordinance amending Chapter 10, Article II, Section 10.208 - Table 4, Paragraph 16, Uses in Business District, Central Business B Zone, to allow said uses as Permitted Uses rather than as a Special Exception. Councilor Grasso, Reynolds, Pantelakos, Whitehouse, Smith, Hynes and Mayor Marchand voted in favor. Assistant Mayor Ferrini and Councilor Dwyer voted opposed.

Councilor Smith announced that August 1, 2006 is National Night Out from 5:30 p.m. to 8:30 p.m.

IV. ADJOURNMENT

At 8:45 p.m., Councilor Pantelakos moved to adjourn. Seconded by Councilor Hynes and voted.



Kelli L. Barnaby, CMC
City Clerk