

CITY COUNCIL WORK SESSION

Legislative Delegation

December 11, 2006 - 6:30 p.m.

Council Chambers

City Council Present: Mayor Marchand, Assistant Mayor Ferrini, Councilors Grasso, Dwyer, Reynolds, Pantelakos, Whitehouse and Hynes

City Council Absent: Councilor Smith

Officials Present: City Manager; John P. Bohenko, State Representatives, Jacqueline Calipitts, James Splaine, James Powers, Christopher Serlin, and Laura Pantelakos, State Representative Elect, Paul McEachern, Superintendent of Schools, Robert Lister, School Board, Kent LaPage, Fire Chief, Christopher LeClaire, Coalition Communities, Patricia Remick, and Deputy City Clerk, Dianne M. Kirby

I. Call to Order

Mayor Marchand called the meeting to order at 6:35 p.m.

II. Introduction

City Manager Bohenko requested that the State Representatives introduce themselves for the watching public. He then stated that he would like to begin tonight's meeting with a discussion on Educational Funding.

III. Education Funding

City Manager Bohenko stated that when the statewide property tax was instituted in 1999 to help pay for education, Portsmouth led the opposition that resulted in the formation of the Coalition Communities. He stated that there are now 34 communities from across the State. He stated that in total, donor towns were forced to raise \$161 million in excess of property taxes to be distributed to other communities. He said that \$11.7 million came from Portsmouth. He stated that that coalition has worked hard to encourage the legislature to adopt targeted aid – helping only towns that need it. He stated that the coalition has also pushed for including an income factor in determining how needy a town is and also to include extra money for English as a second language and special education costs. City Manager Bohenko stated that the tax is now very low. He stated that the rate will drop from the current \$2.51 to \$2.24 per thousand in FY 07 and we can spend any excess property taxes on education in Portsmouth. He said that until the statewide property tax in Portsmouth is eliminated all together, there is always the risk that Portsmouth can become a donor town again. City Manager Bohenko stated that the Supreme Court ruled in September that the current formula is unconstitutional because it did not define adequate education and has ordered the Legislature to come up with a definition by July 1, 2007. City Manager Bohenko stated that the Court said it would not even look at the challenge to the funding part of the formula until there is a definition, but they indicated that they believe the State must pay for whatever it determines a constitutional adequacy to be. City Manager Bohenko stated that at least 15 educational funding related bills have been introduced thus far.

Patricia Remick, Coalition Communities stated that she did a search of Legislative Service Requests. She said that this list gives an example of the wide birth of ideas people have this year. She stated that even though the Legislature has only been tasked by the Supreme Court to define adequate education, there are proposals out there that will go to the next step. She said the Governor said he would like to see another version of his targeted aid plan and possibility a limited constitutional amendment which will allow targeting. She stated that there is a plan coming in that is a bipartisan plan seeking House Education Committee members from last session. She said that it defines an adequate education and puts the cost at \$1.2 billion, but it doesn't always say how they are going to raise the money. She said that there are several proposals such as a tax increase on second homes owned by non-residents; luxury entertainment cost, such as tickets costing more that \$50.00 and luxury tax on items costing more that \$10,000. She stated that Fred Bramante, who has been active in educational funding, but is not a legislator has a couple people introducing a bill for him that would have a statewide property tax of \$1.00 per \$1,000.00 on residents, \$2.00 per \$1,000.00 on businesses and \$3.00 per \$1,000.00 on second homes owned by non-residents – everyone would be a donor community under this plan because it would go directly to the State. Ms. Remick stated that the Andy Peterson plan was filed as a NH Homestead plan. She stated that under this plan, Mr. Peterson would set a \$7.50 statewide property tax per \$1,000.00 going directly to the State. Ms. Remick stated that this Bill would put us back to a system that is even worse than we had before. She stated that we would be a donor town in a big way. She stated that the Homestead exemption only goes up to homes valued at \$200,000. She stated that this would hurt the donor towns with high property values as they would pay more under this plan than they do currently. She stated that Fred King has been very active in education funding and his plan is to change the language because the current educational funding formula talks about equitable instead of adequate education. She stated that what he wants to do is to include a reference to the Educational 300 Rules. She said that State Representative King maintains that the Supreme Court has it wrong and that New Hampshire does in fact define an adequate education through the rules and that the Legislature has made an oversight because these rules had to go before the House and Senate Rules Committee.

Ms. Remick stated that some of the people involved in this issue are pointing out that New Hampshire students rank very high above the average and also rank very high in testing. She stated that local property taxes are currently funding at least 60% of the cost of education in New Hampshire. She said that the most recent available national average puts it at only 29% in most states.

Councilor Pantelakos stated that Ms. Remick keeps talking donor towns. She asked if there are still donor towns. Ms. Remick stated that at this time the excess statewide property taxes that are raised in a town may remain in the town if it is spent on education. Councilor Pantelakos asked if we have completely done away with donor towns. Ms. Remick stated that at this point yes.

State Representative Jim Powers stated that all the State Representatives have pledged to eliminate statewide property tax and eliminate donor towns. He stated that at this time the primary task they face is to come up with a definition of adequate education and that is what they will be working on. State Representative Jackie Cali-Pitts stated that the representatives ran stating that they would not reinstate donor towns and that they are going to have the

income tax battle again. She stated that the House and Senate did pass the income tax once and that the reason some of these other states have the low local percentage of payout for education is because they have an income tax. She stated that now the battle is going to be wages again and the camps are already drawing up. She stated that what she does not want to see happen is that we take a figure and we back door into it by saying that the cost for adequate education is \$3,000.00 and then we try to fit something into that figure. She stated that we do not want adequate education for our children, we want much more than that. State Representative Jim Splaine stated that he agrees with State Representative Cali-Pitts and that the discussion around tax reform will be front and center despite different types of approaches and it has to be. We can not talk about adequacy we have to talk about excellence. He suggested that it takes somebody like Mayor Marchand and the Coalition Committees to really run with this. He stated that we need to get this out of just the political and legislative process in Concord at the Statehouse and have a summit that brings together the expertise such as the Superintendents, School Boards, all the players in the Statewide Taxpayers Association, business communities, youth, and Mayors from different communities so they can come up with an idea that is really going to solve the problem.

Mayor Marchand stated that he had met with Manchester's Mayor earlier in the day and has two questions for the delegation that are equally important. He went on to say that they discussed equality of access and opportunity vs. a discussion on what the appropriate number of dollars is required to achieve the level that as a State we agree is the proper level. He said that these are two separate discussions that if they are commingled you end up getting nowhere fast. He said they are both extremely difficult and complex and each is a Legislative session in and of itself. He said that the Court has stated that the Legislature has to come up with the system we are going to use, not necessarily the number of dollars, though that would seem to be a natural progression. He asked the Delegation how they see the attempt to come up with a system that produces equal opportunity and is this going to be separate from a discussion on the appropriate number of dollars. State Representative Cali-Pitts requested to know what the Mayor means by equal opportunity. Mayor Marchand stated that this could be the first problem. He said that his personal definition is the cost of education at the same level, whether it is adequacy or excellence in terms of opportunity. He stated that it could be wildly different in terms of practical costs from cities and towns and so the exact number of dollars is not a fair tool. He stated that this may be the first challenge. State Representative Cali-Pitts said that if you define that, wouldn't you then come up with the formulas to make sure that the money is distributed equally. She asked if due to the cost not necessarily targeted, wouldn't this be on the funding side not on the opportunity side. Mayor Marchand said this is true and in his opinion a formula would be needed because there are cost drivers that are different in all parts of the State. State Representative Elect McEachern stated the Court has said that it is the States obligation to pay for adequate education and they say that that comes from the Constitution. He further stated that we all took an oath to support and uphold the Constitution. He said the easy job is going to be to define an adequate education, but we have to know that the property tax is not going to be the funding vehicle for that. He stated that it is unconstitutional that the State is the taxing district and the taxing district has never assessed the property in the State. He stated that everybody knows that the only fair way to fund education is with an income tax. He urged the coalition communities to start thinking in a broader picture than just protecting themselves. He stated that now is the time for everybody in the State to realize that an income tax is the fair way to support education. Councilor Pantelakos stated that the prime concentration this session is coming up with a definition of

adequate education – the funding part will follow in future sessions. Mayor Marchand stated that one message to take home is that the coalition would be wise to try to find ways in which to reach out to people that are beyond the donor town community. He stated that he feels that there are not enough of us to move what we want to move. State Representative Cali-Pitts stated that donor towns are gone and will never come back. She said that the coalition needs to establish that grassroots type of ethics within the local community on the funding. She said that what the coalition did when they went to eliminate the donor towns was to make the message very well put and she thinks that the local communities have to do that again. She stated that you have to build from the ground up and say how you want to fund this. She said the Coalition needs to start again and look at what the funding methods are and which one we prefer. She stated that unless pressure is applied from local people, she doesn't think there will be any movement on this issue. She stated that the Coalition has the ability, they have proven it in the past and she stated that that is where it has to start again. Ms. Remick pointed out that the legislature has the sentiment of no donor towns but when the Court looks again at the challenge, the Court level might look at donor towns again. State Representative Splaine stated that politicians tend to follow more than lead. He said what we need to do is see more of the grassroots – the Council, Board of Alders, School Boards, Superintendents, and Mayors need to lead the Legislature. State Representative Powers stated that grassroots does work.

IV. New Hampshire Retirement System (Municipal Employees)

City Manager Bohenko discussed the local impact on this year's budget. He stated that Portsmouth alone is going to see about a \$700,000 or about 29% increase in pension payments next year, bringing the City to approximately three million dollars that we will be paying out for retirement benefits. He stated that he knows there is a working group that has been working with the local Government Center and will be meeting with the Speaker of the House to discuss some of these issues. He stated that this situation will not be resolved on one side or the other and it is going to have to be resolved as a team effort to try to recognize the problem and address the major issues. He stated that this is an area that has major ramifications for the City as we move forward as a community. He stated that between the increase in health care costs and retirement costs there are major ramification to the budget. City Manager Bohenko stated that he was asked by the working group to get with the Speaker of the House in order to facilitate getting information from the actuaries at the New Hampshire Retirement System on if there will be a savings prior to implementing a change. He stated that this is a complex issue and we need to work together to come up with some ideas. Mayor Marchand stated that at the Mayor's Group this issue is always right on the top of the group's concerns. He asked where it is in the minds of representatives in Concord. City Manager Bohenko stated that he has a list of bills and quite frankly there are a number of items that are going forward.

V. Route 1 Traffic Circle

City Manager Bohenko stated that he has sent a letter under the Mayor's signature to Commissioner Carol Murray concerning the Department of Transportation's (DOT) preferred option for replacing the Portsmouth Traffic Circle. He stated that at the October 3, 2006 meeting, DOT officials said the primary option for State Project 13455, the U.S. Route 1 Bypass Project, involved construction of an 8 to 10 lane at-grade, signalized intersection. He stated that this option would cause massive traffic problems as well as environmental

problems for the City. City Manager Bohenko stated that the letter was to encourage the DOT to work with the City and pursue a grade-separated (flyover) configuration. He requested the Delegation encourage the Commissioner to work with the City and to use the flyover as the primary option. Mayor Marchand stated that if the cheaper way doesn't work, don't do anything. He stated that the flyover is more costly, but if the other way doesn't work or is ineffective, it doesn't matter if it is cheaper. State Representative Jim Powers stated that he did send a letter to Commissioner Murray in support of our letter, but has not heard back yet. Assistant Mayor Ferrini stated that if the State goes off wrong headed, he would want to see what the City could do to stop them. He stated that the City needs to get it across to DOT that this is extremely important to us and we will not suffer their foolishness if they make the wrong choice. Councilor Pantelakos asked when the project is scheduled to start. City Manager Bohenko stated that it is not scheduled until 2012. Councilor Pantelakos stated that the State is on a 10 year plan and this project was to start in 2006. She stated that she doesn't think it will ever happen. City Manager Bohenko stated that what the Council has to remember is that eventually it will get build and what is designed will get built. He said that this is why getting this designed corrected right now is important. Councilor Whitehouse stated that this is a tightly knit neighborhood with 7 hotels and businesses and we need to let the Commission know that the noise pollution alone would not be accepted. He stated that the Council should emphasize that the overpass is the way to go. School Board Chair, Kent LaPage stated that the Route 1 Traffic Circle is a school community and it will extremely impact one of three of our elementary schools. He requested that the City keep the School Board informed and that they will send a letter to Commissioner Murray emphasizing the School Board's concerns. State Representative Elect McEachern stated that there are more opportunities to stop this. He stated that the City should clearly tell DOT that if they are looking for a fight they have it on this one. City Manager Bohenko stated that the Council is hoping that DOT will go with the City's preferred option of the flyover.

VI. Wetland Issues, Including Buffer Vernal Pools

City Manager Bohenko stated that under State regulations Vernal Pools are a type of Wetland and almost always the excepted definition of a Wetland. He stated that currently Vernal Pools are not recognized any differently than other Wetlands in the State. He stated that he had asked the City Environmental Planner to give the Council a little background on Vernal Pools. City Manager Bohenko distributed a handout on Vernal Pools. He stated that Vernal Pools are important and that there are some issues. He stated that he does not know if there is any legislation to regulate Vernal Pools at this time. State Representative Powers stated that he thought there was. City Manager Bohenko requested that copies of any bills that come through be sent to him so that he may keep track of them.

VII. Caucus of 13 Cities?

Ms. Remick passed out a list of the number of Representatives and Senators from the 13 Cities. Mayor Marchand stated that to some extent this relates back to educational funding. He stated that in order to come up with a critical mass of folks, preferably from both sides of the issue, it is going to require a coalition of folks that right now are not coming together on key issues. Assistant Mayor Ferrini stated that there are two or three towns that are bigger than some of the smaller cities. He requested if there is a reason why these larger towns are not part of the caucus. Mayor Marchand stated that most of the larger towns are relatively new to

the party in terms of fast growing southern and south eastern cities, such as Derry, Salem and others. He asked if there was anything in the legislature dealing with these mega districts. State Representative Cali-Pitts stated that there is a move for redistricting and the way State Representatives are elected. Councilor Pantelakos stated that the towns not being incorporated have different guidelines then cities do. City Manager Bohenko stated that Councilor Pantelakos is correct that there are different statutes that govern the City. Councilor Grasso stated that towns have different time frames for their budget and they go through the town meeting process. State Representative Cali-Pitts said that what might be good is that prior to the communities really getting up to full speed if one of the committees or Senators or someone call together a meeting of the Representatives from the Cities to talk about legislature that would impact only the cities. Mayor Marchand stated that a conference of Mayors may achieve many of the same objectives. State Representative Cali-Pitts suggested a presentation at the beginning of the session on issues that would impact cities would bring their main points of interest to light and inform the Legislature what they need to keep their eyes open for. Councilor Pantelakos stated that all these cities and towns, if they belong to the Municipal Association should be doing the work. She stated that they are paid to keep track of this legislation. City Manager Bohenko stated that the local Government Center is geared towards the smaller towns and they are a resource for the smaller towns.

VIII. Questions and Discussion

Councilor Whitehouse asked where the Road Rage Bill was. He stated that many states have bills where a commuter can file a report on an aggressive driver and get something done. He again requested where these bills are for New Hampshire. State Representative Jackie Cali-Pitts stated that there are laws on the books for this, we just don't have enforcement of these laws.

IX. Adjournment

Mayor Marchand stated that the Delegation and the Council will be getting back together again sometime in January pending schedules. At 8:00 p.m., Mayor Marchand closed the meeting.

Respectfully submitted by:

Dianne M. Kirby, Deputy City Clerk