

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, AUGUST 3, 2009

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

At 6:15 p.m. an Anticipated "Non-Meeting" with Counsel was held regarding Negotiations – RSA 91-A:2, I (b-c).

I. CALL TO ORDER

Mayor Ferrini called the meeting to order at 7:15 p.m.

II. ROLL CALL

Present: Mayor Ferrini, Assistant Mayor Blalock, Councilors Novelline Clayburgh, Dwyer, Smith, Kennedy, Pantelakos and Hejtmanek

Absent: Councilor Spear

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

Assistant Mayor Blalock led in the Pledge of Allegiance to the Flag.

MAYOR'S AWARD

1. Sharon Jones

Mayor Ferrini presented a Mayor's Award to Sharon Jones for her outstanding singing performance during the Fourth of July fireworks. Ms. Jones accepted the award with thanks and appreciation.

PRESENTATIONS

1. Cable Television and Communications Commission Re: Proposed Public Access Charitable Trust – John Gregg, Chair

John Gregg, Chair of Commission, reviewed the creation of a Proposed Public Access Charitable Trust. He informed the City Council that we could have 2 additional government access channels.

Assistant City Attorney Suzanne Woodland presented the rules for the Charitable Trust and advised the City Council that the City needs a vehicle for funds to be placed for the access channels. She also spoke to the need of establishing an Advisory Board for the Charitable Trust.

Councilor Smith asked what happens to the funds if the Trust does not move forward. Mr. Gregg said if the funds are not utilized at the end of 10 years, the funds would revert back to the City.

City Attorney Sullivan said the Trust will remain in place in perpetuity until the City Council dissolves it or after 10 years.

City Manager Bohenko said that the concept is to have no future impact to the taxpayer and tax rate. He said that this will not be part of the City budget or effect the tax rate as residents requested.

2. Proposed Consent Decree with United States Environmental Protection Agency and New Hampshire Department of Environmental Services

Dave Allen, Deputy Public Works Director provided an update on the Wastewater Master Plan and Assistant City Attorney Woodland discussed the Proposed Consent Decree. Deputy Public Works Director Allen reviewed the scope of work that has been completed, which remains on-going as well as future work that needs to be done. Assistant City Attorney Woodland spoke to the development of this complex Consent Decree and the relationship between the Decree and our Master Plan.

She informed the City Council that additional consent decree terms are as follows:

- Stipulated Penalties - \$500.00 per day to \$1,000.00 per day for failure to comply
- Force Majeure Clause – Allows relief from timely performance if an event occurs beyond control of the City
- Dispute Resolution Process

Assistant City Attorney Woodland advised the City Council that the estimated costs for a new treatment plant is around \$55,000,000.00. The costs will come with the completion of the Wastewater Master Plan. In addition, there is uncertainty with certain regulatory requirements that may impact costs.

Councilor Kennedy asked what percentage of the waste comes from outside of the City. Deputy Public Works Director Allen said it is very small, approximately 30,000 gallons which is less than one percent.

City Manager Bohenko said the costs have been included in the Capital Improvement Plan. He said we may need a contract employee for a period of time.

Attorney Tupper Kinder explained the issue of penalties and that they would be split between the State and EPA equally.

Councilor Smith asked when we would vote on bonding. City Manager Bohenko advised the City Council that he does not want to set a date for bonding at this time. Further, he informed the City Council that we do not fully bond until the plant is built. Deputy Public Works Director Allen advised the City Council that specific design costs have been outlined in the Capital Improvement Plan.

Councilor Smith asked if there is a difference of opinion between the State and EPA. Attorney Kinder said the process is not a level playing field. There is a dispute resolution process on these kinds of matters.

V. ACCEPTANCE OF MINUTES – JULY 20, 2009

Councilor Novelline Clayburgh moved to approve and accept the minutes of the July 20, 2009 City Council meeting. Seconded by Councilor Smith and voted.

VI. PUBLIC COMMENT SESSION

Attorney Charles Griffin said he is outraged by the decision of City Attorney Sullivan to allow the Toyota dealership to move forward with their changes to the property based on Site Review approvals. He said by the City Attorney reaching this decision the City has effectively thrown the towel in on residents of the neighborhood. He spoke to the adverse effect the neighborhood has experienced due to Toyota.

Dianne Lavoie spoke in support of comments made by Attorney Griffin. She said that the City is required to provide justice for all and what is being done is an injustice to the neighborhood.

Martin Cameron expressed his concerns relative to the treatment plant and the cost to construct a new facility.

Bill St. Laurent, Association of Portsmouth Taxpayers expressed his concern that any funds for an access channel would affect the tax rate. He said the Association of Portsmouth Taxpayers does not want to see the franchise fee going to the access channel that is over and above the \$360,000.00.

Michael Donah expressed concern with the City allowing the Toyota dealership to move forward with the site review plan. He said that the residents need the support of the City Council and that the signage is a real concern.

Bill Mortimer said he is affected by the portal at the Toyota dealership. He requested that the City Council consider the residents and not sign the agreement until the finding is made by the court. He said if the City signs the agreement, it would be a let down to the residents.

Phil Geraci said that the residents feel as though the nightmare continues. He said the Toyota dealership is not agreeable to making any concessions. He said the residents want to maintain their property and urged the City Council to give the process a chance.

Jill Tapscott said she is concerned with the City providing assistance to the dealership when the dealer is unwilling to make any concessions for the neighborhoods. She said the City officials are supposed to protect all residents.

Don Pexton expressed concern with the decision of the City relative to the dealership.

City Attorney Sullivan said the responsibility of the decision was his and what needs to be understood is that there are 6 cases so far with 2 more threatening. He advised the residents that the written estimate of claims for damage are between two and four million dollars. City Attorney Sullivan informed the residents that his sympathies are with them and his responsibilities are to the City. If the City was not to agree to this decision, we would lose and it could be used against them. He reported that the portal issues are left before the court and he feels the right decision was made.

Assistant Mayor Blalock moved to suspend the rules in order to take action on the Cable Television and Communications Commission Re: Proposed Public Access Charitable Trust. Seconded by Councilor Pantelakos and voted.

Assistant Mayor Blalock moved to establish the Cable Television Public Access Charitable Trust; and further voted to authorize the City Manager to exercise the City's rights under the Cable Franchise Renewal Agreement that such fees from the Comcast Franchise Renewal Agreement above the baseline of \$360,000.00 are directed to the Cable Television Public Access Charitable Trust. Seconded by Councilor Pantelakos.

Councilor Dwyer said there is a difference between the user fee and the taxpayer fee. She said that this is not taxpayer dollars.

Motion passed.

Assistant Mayor Blalock moved to suspend the rules in order to take action on the Proposed Consent Decree with United States Environmental Protection Agency and New Hampshire Department of Environmental Services. Seconded by Councilor Dwyer and voted.

Assistant Mayor Blalock moved to authorize the City Manager to finalize and execute the proposed Consent Decree with USEPA and NHDES. Seconded by Councilor Dwyer and voted.

VII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Donation to the Coalition Legal Fund
- Town of Lincoln - \$2,000.00

Councilor Pantelakos moved to approve and accept the donation, as listed, to be placed in the Coalition Legal Fund. Seconded by Councilor Novelline Clayburgh and voted.

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Third and reading of Ordinance amending Chapter 7, Article IV, Section 7.402 – Areas Established, Designated and Described of the Ordinances of the City – Hanover-Fleet Street Off-Street Parking Area (High Hanover Parking Garage)

Councilor Smith moved to pass third and final reading of the proposed Ordinance, as submitted. Seconded by Councilor Novelline Clayburgh and voted.

IX. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

There are no items under this section of the Agenda

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Peter Donovan requesting permission for the installation of a memorial bench for Carl Collins

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

- B. Letter from Paul Cincotta, Packard Development, regarding Banfield Road Conservation Land (***Sample motion – move to refer to the Planning Board for report back***)

Councilor Pantelakos moved to refer to the Planning Board for report back. Seconded by Councilor Novelline Clayburgh and voted.

- C. Letter from Wendy McCoolle, CelebratePink, requesting permission to hold a 5k Road Race & Walk on Saturday, September 19, 2009 at 9:00 a.m.

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

- D. Letter from Lisa Mure, Community Health Institute, requesting permission to set up a table and two chairs for the purpose of collecting surveys from community members in the Vaughan Mall on Wednesday, August 12, 2009 from 3:00 p.m. – 7:00 p.m.

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

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Non-Union Employee Contract Standards

City Manager Bohenko said that the City Council instructed him to come back with Non-Union Employee Contract Standards. The concept is to look at the Police Chief, Deputy Police Chief, Fire Chief, Deputy Fire Chief, Assistant Fire Chief, Superintendent of Schools and Assistant Superintendent of Schools to create a salary schedule like other Non-Union Employees.

He reported that the Human Resources Department will conduct a detailed wage and benefit survey from nineteen (19) comparable communities located in Connecticut, Maine, Massachusetts, New Hampshire and Rhode Island. These include Groton, CT; Andover, MA; Barnstable, MA; Brookline, MA; Concord, MA; Gloucester, MA; Lexington, MA; Newton, MA; Peabody, MA; Salem, MA; Waltham, MA; Portland, ME; Concord, NH; Dover, NH; Keene, NH; Manchester, NH; Nashua, NH; Rochester, NH and Newport, RI.

These communities were selected based on shared comparability amongst six principal factors, namely: population, proximity to coastal area, similarity in municipal services, valuation per capita, tourism and geographic proximity to Portsmouth.

The objectives of this study are:

- A. Establish external competitiveness in wages. In order to attract and retain the highest caliber of employees, the City recognizes the need to revise its formal pay structure, for the non-union contract employees, in order to assure the City remains competitive in the job market without placing undue burdens on the taxpayer.

- B. Establish internal consistency. The City recognizes it needs to evaluate the various positions in order to maintain internal consistency within the current pay structure. Therefore, the City will need to review job content and apply it to the City's established formula in order to establish job worth in comparison with all positions in the City's organizational structure.

Once the information is collected from these municipalities, he will provide the results to the City Council with a recommendation for a salary range for each of the five (5) public safety positions that are up for renewal/negotiations. These include the Fire Chief, Assistant Fire Chief, Deputy Fire Chief, Police Chief and Deputy Police Chief. In addition to the salary range, he will also recommend a standard benefits package to provide to all employees.

City Manager Bohenko reported that he also directed Thomas Flygare, Labor Negotiator, to simplify the contracts, as well as to establish a unified contract that all non-union employees will follow with the same terms and conditions of employment.

City Manager Bohenko advised the Council that he would provide the results of the survey with recommendations along with a sample copy of the contract to the City Council for their review within 30 days.

Councilor Pantelakos moved to accept the non-union employee contract standards review. Seconded by Councilor Kennedy.

Councilor Smith said he would support the motion as long as the Superintendent and Assistant Superintendent are looked at within the 30 day requirement. In addition, he inquired as to whether we could shorten the timeline. City Manager Bohenko said we need to work with the communities and try to get the information before 30 days.

Councilor Kennedy said it should be all Non-Union Employees including the City Manager.

Assistant Mayor Blalock said we are asking for the review to be done in less than 30 days but we are expanding the survey. He said that there is a time essence for the Police and Fire Departments that needs to be considered.

Motion passed.

2. Pease Tradeport Economic Revitalization Zone

City Manager Bohenko reported the City Council authorized him to submit an application to the New Hampshire Department of Resources and Economic Development for designation of High Liner Avenue as an Economic Revitalization Zone (ERZ) per RSA 162-N:8. The ERZone designation is an economic development tool that qualifies businesses expanding or relocating into these zones for tax credits to be used against Business Profit Tax and Business Enterprise Tax up to a maximum of \$40,000 annually for a five year period. Qualifying ERZone projects must create new jobs and expand the economic base for the State and can range from the creation of new facilities to the rehabilitation of existing structures.

Recent inquiries from businesses contemplating expansion or relocation to Pease Tradeport prompted discussion between PDA Executive Director Dave Mullen and State and City Economic Development staff about submitting an application for ERZ designation for Pease. It was determined that an ER Zone at Pease would be a valuable asset for business attraction and retention.

To implement the program so that local businesses are able to qualify for the tax credits, the City must identify a revitalization area and apply to the State for approval of the designated area. After State approval from the Division of Business Resources, businesses can apply for tax credits. There is no cost to the local community for designating ER Zones.

City Manager Bohenko informed the City Council that Dave Mullen, PDA Executive Director is here this evening to answer any questions the Council may have relative to this matter.

Councilor Dwyer asked Mr. Mullen how long it would take for the PDA to get this in place. Mr. Mullen said he is not sure.

Mayor Ferrini passed the gavel to Assistant Mayor Blalock.

Mayor Ferrini asked Mr. Mullen if zoning was changed at the PDA to have housing qualify under the ER Zone because he would not want to preclude zoning changes in time. He discussed the campus style of development at the Tradeport. Mr. Mullen said that the PDA would need to research this matter before answering that question.

Assistant Mayor Blalock returned the gavel to Mayor Ferrini.

Councilor Novelline Clayburgh moved to authorize the City Manager to submit an application to the New Hampshire Department of Resources and Economic Development for approval of Pease Tradeport as an Economic Revitalization Zone (ERZ). Seconded by Councilor Pantelakos and voted.

Councilor Dwyer said it would be helpful to have updates from the PDA in the future on a more regular basis. Mr. Mullen said he would be happy to provide the updates to the Council. City Manager Bohenko said updates could be provided on a quarterly basis. He advised the City Council that the PDA would need to discuss this matter with the Board and that he could provide a report back to the Council on setting up the meetings.

3. Report Back Re: Request by Mario Giberti to purchase City-owned Land

City Manager Bohenko referred to a memorandum from Planning Director Taintor outlining the recommendation and stipulations of the Planning Board.

Councilor Smith said when this request came before the City Council in the past the City was suppose to search and see if there are any relatives that may have interest in the land, and asked if that had been done. City Attorney Sullivan said when we are going to convey land we look for family members.

Councilor Novelline Clayburgh moved to accept the recommendation of the Planning Board with the aforementioned stipulations regarding the request of Mario Giberti to purchase City-owned land known as Assessor Map 233, Lot 133 on Barberry Lane. Seconded by Councilor Pantelakos and voted.

Planning Board Stipulations:

- *The City should retain long-term ownership of the subject lot for potential future recreational use, either as a neighborhood park or in connection with recreational use of the rail corridors*
- *If the Council determines that private use is appropriate, disposition should be through a ground lease and only for passive uses, including landscaping. No structures should be permitted on the lot. Lease payments should be based on the equivalent tax revenue based on assessed valuation*

4. Request for a License from Robert Sevigny owner of The Paper Patch for property located at 36 Market Street to Install a projecting sign

City Manager Bohenko said that this is a straight forward request to install a projecting sign.

Councilor Kennedy moved to accept the recommendation of the Planning Board with the aforementioned stipulations and approve the request of Robert Sevigny owner of The Paper Patch to install a projecting sign at 36 Market Street and further authorize the City Manager to execute a License Agreement for this request. Seconded by Councilor Smith and voted.

Planning Board Recommendations:

- *The license shall be approved by the Legal Department as to content and form;*
- *Any removal or relocation of the projecting sign, for any reason, will be done at no cost to the City; and*
- *Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works*

5. Request for a License from Deb Orlando, owner of Phly LLC for property located at 222 State Street to Install a projecting sign

Councilor Pantelakos moved to accept the recommendation of the Planning Board with the aforementioned stipulations and approve the request of Deb Orlando owner of Phly LCC to install a projecting sign at 222 State Street and further authorize the City Manager to execute a License Agreement for this request. Seconded by Councilor Kennedy and voted.

Planning Board Recommendations:

- *The license shall be approved by the Legal Department as to content and form;*
- *Any removal or relocation of the projecting sign, for any reason, will be done at no cost to the City; and*
- *Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works*

City Manager Bohenko announced that there will be a Special City Council meeting on August 10, 2009 on the Middle School Bonding Resolution. He reported that no action would take place at the August 10, 2009 meeting but would take place at the August 17, 2009 Council meeting. City Manager Bohenko informed the City Council that a bond resolution requires two readings with a two-third majority vote for adoption.

Mayor Ferrini noted that the Council would not engage in questions during the public hearing but questions could be asked during the August 17, 2009 City Council meeting.

Councilor Smith said that he would not be able to attend the August 10, 2009 meeting but would make himself familiar with all comments made during the public hearing.

Councilor Novelline Clayburgh asked if JCJ Architects will address the issue of parking and fields during the public hearing.

City Manager Bohenko said he would make a note of the concern to have those issues addressed.

Councilor Novelline Clayburgh reported that the School Board is considering lowering the amount required for bonding and asked when the Council could make amendments to the resolution. City Attorney Sullivan reported that amendments can take place during second reading prior to adoption of the resolution.

B. MAYOR FERRINI

1. Proposed Letter of Support Re: Bridge Grant

Mayor Ferrini spoke to his draft letter in support of the New Hampshire Department of Transportation in support of the proposed (Transportation Investment Generating Economy Recovery Discretionary Grant Piscataqua River Bi-state Multimodal Transportation improvements) between Portsmouth, NH and Kittery, Maine. He said he would like to be able to send the letter if the City Council agrees.

Councilor Pantelakos said she would not accept the letter with the reference to Port facilities.

Mayor Ferrini passed the gavel to Assistant Mayor Blalock.

Mayor Ferrini said he would remove the reference to the Port facilities as contained in the final paragraph of the letter.

Mayor Ferrini moved to send the proposed letter to the Maine Department of Transportation and the New Hampshire Department of Transportation in support of the proposed Transportation Investment Generating Economy Recovery Discretionary Grant Piscataqua River Bi-state Multimodal Transportation improvements between Portsmouth, NH and Kittery, Maine. Further to remove the following language from the last paragraph of the letter as follows: *“as well as the Port facilities.”* Seconded by Councilor Novelline Clayburgh and voted.

Assistant Mayor Blalock returned the gavel to Mayor Ferrini.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Kennedy asked when the decision on the lighting issue at the Toyota dealership would be forthcoming. City Attorney Sullivan reported that the case has been argued and the decision could be made at any time but there is no rule on when a decision would come from the court. Councilor Kennedy asked if there was anything else the City could do based on comments made by residents during the Public Comment Session. City Attorney Sullivan said not at this point. He advised the City Council that during original discussions with the residents we informed them that the City would stand with them as long as we possibly could, and the point occurred where we had to step away. City Attorney Sullivan also noted that all work has been approved by the Planning Board.

XIII. ADJOURNMENT [AT 10:00PM OR EARLIER]

At 9:15 p.m., Councilor Pantelakos moved to adjourn. Seconded by Councilor Smith and voted.

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive style and is positioned above the typed name and title.

Kelli L. Barnaby, CMC/CNHMC
City Clerk