

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: TUESDAY, NOVEMBER 13, 2012

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

At 6:15 p.m., a Work Session was held regarding the FY14 Budget.

### **I. CALL TO ORDER [7:00PM or thereafter]**

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

### **II. ROLL CALL**

Present: Mayor Spear, Assistant Mayor Lister, Councilors Kennedy, Novelline Clayburgh, Lown, Dwyer, Smith and Thorsen

Absent: Councilor Coviello

### **III. INVOCATION**

Mayor Spear asked everyone to join in a moment of Silent Prayer.

### **IV. PLEDGE OF ALLEGIANCE**

Councilor Smith led the Pledge of Allegiance to the Flag.

### **PROCLAMATIONS**

#### 1. Portsmouth Music and Arts Center

Assistant Mayor Lister read the proclamation which was accepted by Russ Grazier, co-founder of the Portsmouth Music and Arts Center, with thanks and appreciation. Mr. Grazier thanked Assistant Mayor Lister for his support when the Center was started 10 years earlier.

#### 2. Small Business Saturday in Portsmouth

Councilor Dwyer read the proclamation proclaiming the Saturday after Thanksgiving as "Small Business Saturday" and encouraged people to shop independently owned businesses in the City of Portsmouth.

### **PRESENTATION**

#### 1. Memorial Bridge Illumination Committee

Ben Porter, on behalf of Peter Somssich and other committee members, reviewed the progress of the committee in moving forward with the Memorial Bridge Illumination project. He stated that this will bring the lighting of the bridge to 21<sup>st</sup> century standards and will allow it to be illuminated at night such as the Zakim Bridge in Boston. He stated they are also working with the Dark Sky initiative to keep within their guidelines as well. He stated that it is possible to illuminate the bridge and to save taxpayer money as the lighting will be LED based. He continued that they want to illuminate the Memorial Bridge plaque as well, which had never been done before and there will also be the ability to change colors of the towers. He stated there are 3 phases to the

project which includes getting pledges, collecting the pledges and the installation and operation. He stated they are asking the Town of Kittery and the City of Portsmouth to show their support of the project.

City Manager Bohenko stated that the State DOT indicated that they would not participate financially in the illumination of the bridge, so he then discussed it with the City Attorney and have decided that if the group is successful in raising funds for illumination and 5 years of operating costs, then he would recommend setting up a trust with the Trustees of the Trust Funds for the funds to be deposited and payments come out of that Trust. He stated any remaining money would fund operating costs and would continue to be privately funded. He stated he is looking to the Council as to how to proceed.

**Councilor Lown moved to suspend the rules to take action on this item. Seconded by Councilor Thorsen and voted.**

**Councilor Lown moved to authorize the City Manager to bring back to the Council at the December 3, 2012 meeting a proposal to establish a Trust Fund for the Memorial Bridge Illumination Project. Seconded by Councilor Novelline Clayburgh and voted.**

**V. ACCEPTANCE OF MINUTES** *(There will be no minutes on for acceptance)*

**VI. PUBLIC COMMENT SESSION**

Mayor Spear opened the public comment session asking if anyone wished to speak:

Tom Carroll, local business owner at 500 Market Street – stated that he is expressing his own opinion regarding the removal of the scrap metal pile in answer to Councilor Thorsens' recent question as to what power does the city have over this decision. He stated we have the greatest power to be able to speak our opinions under the First Amendment. He stated we should be going after the State for all of the money they owe us. He discussed a scrap metal site that was shut down in Portland because it was the number one goal to do so and it shows it can be done. He stated the State has been abusing municipalities for years and its time for the Council to speak up.

Alyssa Gold Jacobs, owner of Le Club Boutique at the Vaughan Mall – read her letter to the editor recently published in the Portsmouth Herald expressing her opposition to a parking garage at the Worth Lot.

Joel Carp, asked for clarification as to what the City Manager's authority on the Pease Development Authority Board stating the City has no authority on the port, but is located within the City of Portsmouth. He stated he wonders how the City Manager votes when something that is proposed will harm the interests of the City of Portsmouth who does he take his direction from and how are these contradictions supposed to be handled, is there a procedure in place. He stated that he feels the PDA should be removed from running the port and allow the City to take back the control as had been done in the past. He stated he is not meaning to criticize the City Manager, but wonders if there is a conflict of interest.

Mayor Spear stated that as a result of the recent Council Retreat, the question can now be answered when asked.

City Manager Bohenko stated his ultimate responsibility is to the City of Portsmouth and stated he has voted against the scrap metal contract since early on. He stated as part of "Best Management Practices" he has been working with the PDA to find appropriate commerce for the Port which is a self-sustaining entity operating since 1962 and is now under the PDA's authority. He stated that in answer to the direct question, if there is a conflict, he consults with the City Attorney. He stated that there is an informational session being held by the PDA on 11/26/2012 at 6:30 p.m. at City Hall which will be recorded for rebroadcast.

Councilor Novelline Clayburgh stated she has previously served on the PDA as the Council representative in a non-voting capacity, and knows that the PDA Board has a great deal of respect for City Manager Bohenko. She continued that it is critical to have him representing the City on the Board as he is looking out for the City's best interest.

Assistant Mayor Lister stated he is the current City Council representative and agrees with Councilor Novelline Clayburghs comments.

Mr. Carroll stated that regarding City Manager Bohenko's comments, he does not feel that the Port Authority is self-sustaining.

Seeing no one else wishing to speak, the Mayor closed the public comment session.

## **VII. PUBLIC HEARING**

- A. PROPOSED ORDINANCE AMENDING CHAPTER 7, ARTICLE IX, SECTION 7.901 (E) – PENALTIES OF THE CITY ORDINANCES TO AMEND SECTION 7.105 (A) PARKING VIOLATION – EXPIRED METER FINE AMOUNT FROM \$10.00 TO \$15.00

Mayor Spear read the legal notice, declared the public hearing open and called for speakers. With no speakers, Mayor Spear declared the public hearing closed.

## **VIII. APPROVAL OF GRANTS/DONATIONS**

- A. Acceptance of Police Department Grants/Donations:
- NH Department of Highway Safety Grant for "Operation Safe Commute" patrols - \$4,950.00
  - US Department of Justice Grant for the FY12 Internet Crimes Against Children Task Force continuation - \$237,531.00
  - Scholarship Grant to Emergency Communications Manager Gil Emery from APCO International for digital training - \$500.00
  - Donation from The Friends of the South End Neighborhood Association in support of the Police Explorer Cadets - \$400.00

**Assistant Mayor Lister moved to approve and accept the grants and donation to the Portsmouth Police Department, as listed. Seconded by Councilor Thorsen and voted.**

- B. Acceptance of Donation Re: Bench

**Councilor Novelline Clayburgh moved to approve and accept the donation for a bench, as presented. Seconded by Councilor Kennedy and voted.**

- C. Acceptance of Donation from Liberty Mutual Insurance

**Councilor Kennedy moved to authorize the City Manager to accept and expend a donation from Liberty Mutual Insurance for improvements to Peirce Island. Seconded by Assistant Mayor Lister and voted.**

## **IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES**

- A. Second Reading of Proposed Ordinance amending Chapter 7, Article IX, Section 7.901 (E) – Penalties of the City Ordinances to amend Section 7.105 (A) Parking Violation – Expired Meter Fine Amount from \$10.00 to \$15.00

**Assistant Mayor Lister moved to pass second reading and schedule a third and final reading of the proposed Ordinance, as presented, at the December 3, 2012 City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.**

- B. Third and Final Reading of Proposed Ordinance which would amend the Zoning Ordinance, Chapter 10, to Rezone 143 Daniel Street (former Connie Bean Property) from Municipal to Central Business B (CBB) and also, to place that property in the Downtown Overlay District (DOD)

**Councilor Lown moved to pass third and final reading of the proposed Ordinance Amendments, as presented, seconded by Councilor Novelline Clayburgh.**

Councilor Kennedy clarified that the only thing moved into the Central Business District with this ordinance change will be the lot itself and not the building. The City Manager stated it will be the building and small parking lot in the back.

**Motion voted.**

## **X. CONSENT AGENDA**

**Assistant Mayor Lister moved to adopt the Consent Agenda as presented. Seconded by Councilor Kennedy and voted.**

- A. Request for Approval of Pole License to install 2 poles located on Maplewood and Woodbury Avenues (***Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes***)

- B. Request for Approval of Pole License to install 5 poles, 4 located on Woodbury Avenue and 1 located on Maplewood Avenue (***Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes***)
- C. Request for License from Robin Brownson owner of Orange Leaf Frozen Yogurt, for property located at 218 State Street for a projecting sign on a new bracket (***Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Robin Brownson owner of Orange Leaf Frozen Yogurt, for a projecting sign at property located at 218 State Street on a new bracket and, further, authorize the City Manager to execute License Agreements for this request***)

**Planning Director's Stipulations:**

- ***The licenses shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of the projecting signs, 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 signs, 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***

- D. Request for License from Dana Deniro owner of Lunachics, for property located at 65 Bow Street for a projecting sign on an existing bracket (***Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Dana Deniro, owner of Lunachics, for a projecting sign at property located at 65 Bow Street on an existing bracket and, further, authorize the City Manager to execute License Agreements for this request***)

**Planning Director's Stipulations:**

- ***The licenses shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of the projecting signs, 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 signs, 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***

## **XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS**

- A. Letter from Zachary Taylor and Alex Marshall, Santa Ski New England 2012, requesting permission to hold a fundraising event on Saturday, December 1, 2012 at the Isles of Shoals Steam Ship Company located at 315 Market Street to raise food and money donations for three local food pantries; Footprints, Table of Plenty, and Operation Blessing

City Manager Bohenko explained that this does not require Council action to approve, but because it was addressed to the Mayor and City Council, he brought it forward as a written communication.

**Councilor Novelline Clayburgh moved to accept and place on file. Seconded by Assistant Mayor Lister and voted.**

## **XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS**

### **A. CITY MANAGER**

1. Prescott Park Docks

City Manager Bohenko explained that there is a change to the policy to move the lottery date up to February 15<sup>th</sup> so that those not chosen have time to make alternate arrangements.

**Councilor Novelline Clayburgh moved to approve the Policy for Prescott Park Docks for the 2013 boating season as presented, seconded by Assistant Mayor Lister.**

Councilor Kennedy stated that in her business, the insurance coverage usually goes from May 15<sup>th</sup> through October 15<sup>th</sup> and wonders if this is an issue. City Attorney Sullivan stated that the Docks are not insured separately and are a part of the city's general policy. Councilor Kennedy asked who will set the rates. City Attorney Sullivan stated the fee committee will set the rates.

**Motion voted.**

2. New Castle Avenue Dock Revocable License Agreement for Priscilla Semprini

City Attorney Sullivan reviewed the history of the 5 docks that had been built on New Castle Avenue without permits stating that when New Castle Avenue was rebuilt 5 years ago, the docks had to be removed because they were not permitted. He stated that after a lengthy process and meeting terms and conditions set by the City Council, one property owner has been allowed to put another dock in and now a second person has come forward, also having met the conditions.

**Councilor Smith moved to approve the New Castle Avenue Dock Revocable License Agreement for Priscilla Semprini as presented, and further, authorize the City Manager to execute the agreement. Seconded by Councilor Kennedy and voted.**

3. Report Back Re: Proposed Amendments to Zoning Ordinance Relative to Exemptions from Certificate of Approval in the Historic District

**Councilor Novelline Clayburgh moved to authorize the City Manager to bring back for first reading the proposed Ordinance amendment, as presented, at the December 3, 2013 City Council meeting, seconded by Assistant Mayor Lister.**

Councilor Kennedy explained that the proposed amendments are meant to streamline the current permit process, clarify current exemptions and refine and develop new performance standards for many of the listed exemptions. She stated that the Historic District Commission believes that the proposed amendments will significantly reduce its caseload and reduce the cost and burden to homeowners making minimal improvements and allow the HDC to spend time reviewing larger projects within the Historic District.

Councilor Dwyer stated that it is a great thing to alleviate the number of cases going before the Historic District Commission, but feels that it needs to be more clearly defined what will and will not be required. City Manager Bohenko stated that they will look at that more closely and will ask the Chair of the Historic District Commission and City Planner Nick Cracknell to be present at the public hearing.

**Motion voted.**

4. Proposed Zoning Ordinance Amendment – Building Height

City Manager Bohenko asked Planning Director Taintor to review the proposal.

Planning Director Taintor explained that there is a loophole in the existing ordinance that was not a part of the changes made to Chapter 10 in 2009 and would modify the existing building height provisions for the Central Business Districts in 3 ways including; defining “street wall”, establish a “stepback” provision, and require that no portion of a building be higher above the street grade than the nominal maximum building height. He stated it would also amend the definition of “grade plane” for buildings in the Central Business Districts.

**Councilor Smith moved to refer the aforementioned matter to the Planning Board for a report back to Council, seconded by Councilor Lown.**

Discussion ensued regarding the proposed ordinance and its implications on various properties in the city. Mayor Spear asked if anything being done will have an impact on the Portwalk and City Manager Bohenko stated no.

**Motion voted.**

5. Acceptance of Easements and Quitclaim of Abandoned Lines

**Assistant Mayor Lister moved to authorize the City Manager to negotiate and convey the property interests identified in Exhibit A. Seconded by Councilor Novelline Clayburgh and voted.**

**Informational Items**

1. Events Listing
2. Informational Meeting Re: Scrap Pile
3. Sale of Connie Bean
4. Update on Wayfinding Project

**B. MAYOR SPEAR**

1. Appointment to be Considered:
  - Marc Stettner to the Peirce Island Committee
  - John Bosen to the Economic Development Commission
  - Ernestine Greenslade to the Library Board of Trustees

The aforementioned appointments were considered and will be voted at the December 3, 2012 City Council meeting.

2. Appointments to be Voted:
  - Karina Quintans to the Planning Board (alternate)

**Councilor Lown moved to approve the appointment of Karina Quintans as an alternate member of the Planning Board, term to expired December 31, 2014. Seconded by Assistant Mayor Lister and voted.**

- Robert Marchewka reappointment to the Economic Development Commission

**Assistant Mayor Lister moved to approve the reappointment of Robert Marchewka to the Economic Development Commission, term to expire October 1, 2016. Seconded by Councilor Lown and voted.**

- Jeffrey Mountjoy reappointment to the Housing Endowment Fund

**Councilor Novelline Clayburgh moved to approve the reappointment of Jeffrey Mountjoy to the Housing Endowment Fund, term to expire June 1, 2015. Seconded by Assistant Mayor Lister and voted.**

3. Resignations:
  - Tim Allison from the Economic Development Commission
  - Lisa DeStefano from the Economic Development Commission
  - Brian Groth as an Alternate to the Planning Board

**Councilor Smith moved to accept the aforementioned resignations with a letter of thanks and appreciation of service. Seconded by Assistant Mayor Lister and voted.**

**C. ASSISTANT MAYOR LISTER & COUNCILOR SMITH**

1. Resolution Supporting USS Thresher Memorial and Request to Donate \$1,000.00 for the USS Thresher Memorial Project from the Contingency Fund

Assistant Mayor Lister read the memorandum and Councilor Smith read the resolution regarding the report back from the Veteran's Organization requesting support for the USS Thresher Memorial in Kittery Maine.

**Councilor Smith moved to adopt the Resolution in Support of the USS Thresher Memorial and further, donate \$1,000.00 for the Thresher Memorial Project from the Contingency Fund, seconded by Assistant Mayor Lister.**

Councilor Thorsen asked what is the total cost of the project.

Councilor Smith stated that the cost is \$72,000.00 and City Manager Bohenko stated that Mr. Kerr has reported \$60,000.00 in pledges.

Councilor Thorsen asked what happens if they raise over the amount of the project, will the City want to follow through with the \$1,000.00 pledge. City Manager Bohenko stated that once the pledge is made it is made and feels that they will still need money for maintenance of the memorial. He stated that this tragedy affected both communities then and now and feels that this donation is symbolic and will help encourage others to donate.

Councilor Smith stated that donations are still being accepted and asked that the link to the website be placed on the City's website.

Councilor Novelline Clayburgh asked if the Town of Kittery is making a donation as well. Councilor Smith stated they will be approached.

Councilor Dwyer stated she was on the committee and stated that only 2 of the people who died on the USS Thresher were born in Portsmouth, but feels that those who lived in Portsmouth should be identified as well. She stated this tragedy affected many in the community and it took a long time for people to be comfortable bringing this forward.

**Motion voted.**

**D. COUNCILOR DWYER**

1. \*Middle School Update

Councilor Dwyer stated that since the last update they have begun learning about Phase II of the project which is updating the 1930's portion of the building. She stated that Phase I, the new construction, was the easy part and we now know what the consequences of rehabbing a 1930's building are going to entail. She continued that 1930's construction methods are going to require more support of existing walls with steel and these changes will result in delays of Phase II because the steel has to be ordered. Next, she stated the second set of issues is regarding the soils and we don't need to remove as much as we originally thought, but this will also require

redesign and will take some more time. She stated the impact on the schedule is that instead of moving in over February 2013 vacation they will be shooting for April 2013 vacation or early May. They want to begin the final phase as soon as possible which is connecting Phase I and Phase II but it will probably not be until after the new school year begins in September. She stated the School Board is also learning about this today, but there is no impact to school programs expected.

**E. COUNCILOR SMITH**

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the October 11, 2012 meeting (Also attached - Downtown Speed Study)

**Councilor Smith moved to accept the action sheet and minutes of the October 11, 2012 Parking and Traffic Safety Committee meeting, seconded by Councilor Novelline Clayburgh.**

Councilor Smith stated that there are some ordinance changes that will be required including the Bow Street loading zone hours being changed from 6:00 a.m. to noon on Sundays and also, the recommendations in the Speed Study, which was included with the minutes. He also informed everyone that the Parking garage snow emergency coupons are now available and the annual Free Holiday Parking will be December 14, 2012 through January 2, 2013.

**Motion voted 7-1, Councilor Kennedy voted opposed.**

**XIII. MISCELLANEOUS/UNFINISHED BUSINESS**

Assistant Mayor Lister thanked the Public Works Department for replacing the city street signs with the larger printed signs which is ongoing throughout the city.

Councilor Novelline Clayburgh stated that it is an exciting weekend for Portsmouth High School with the football championship game and the annual musical production beginning which this year will be "Tommy" based on music by the Who.

Assistant Mayor Lister stated that the Thanksgiving Day football game this year will be in Portsmouth against Dover beginning at noontime.

**XIV. ADJOURNMENT [AT 10:00PM OR EARLIER]**

**Assistant Mayor Lister moved to adjourn at 8:45 p.m., seconded and voted unanimously.**

Respectfully submitted:



Valerie A. French  
Deputy City Clerk