

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, JANUARY 7, 2013

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

At 6:30 p.m., an Anticipated "Non-Meeting" with Counsel was held – RSA 91-A:2 I (b-c).

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 Coviello, Kennedy, Novelline Clayburgh, Lown, Dwyer, Smith and Thorsen

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

Councilor Novelline Clayburgh led the Pledge of Allegiance to the Flag.

PRESENTATION

1. Portsmouth US Route 1 Bypass Bridge Replacement Projects Update – Alex Vogt, Project Manager, NH DOT Highway Design

Alex Vogt provided an update to the City Council on the following projects:

- Replacement of Middle Road bridge over Bypass & Replacement of Islington Street bridge over Bypass – Advertising date: February 19, 2013 with a construction cost of \$6,200,000.00;
- Replacement of Woodbury Avenue bridge over Bypass & Replacement of Stark Street bridge over Bypass – Advertising date: May 20, 2014 with a construction cost of \$6,930,000.00;
- Replacement of Maplewood Avenue bridge over Bypass – Advertising date: July 2, 2013 with a construction cost of \$5,000,000.00;
- Removal of bridge over Bypass Extend Lafayette Road to new signal on Bypass – Construction Cost is \$4,950,000.00 with an expected date of completion of August 2014

Mr. Vogt said it has been a pleasure to work with the City and staff on these projects.

Councilor Smith said later under the Parking and Traffic Safety Committee minutes we will review with City Council the discussion held by the committee regarding the intersection coming off the Bypass to Maplewood Avenue. He asked Mr. Vogt if there will be changes in traffic patterns with that project. Councilor Smith spoke regarding the illegal left turn going west bound on Maplewood Avenue.

Mr. Vogt said there are no plans to change the traffic patterns or install a signal. Councilor Smith also spoke regarding the intersection of Maplewood Avenue and Cutts Street and whether there are plans to install a traffic signal. Mr. Vogt said the left onto the ramp will remain and there are no plans for a traffic signal at this time. Councilor Smith inquired as to the illegal left turns taking place. Mr. Vogt said it would be dependent on sight distances.

Councilor Coviello spoke regarding the changes to the rotary and the project. Mr. Vogt said due to the economy the project changed.

Mayor Spear asked about Coakley Road intersection with pedestrian crosswalks and if there will be bike paths added. Mr. Vogt said there would be bike paths added.

V. ACCEPTANCE OF MINUTES – DECEMBER 3, 2012 AND DECEMBER 17, 2012

Councilor Coviello moved to approve and accept the minutes of the December 3, 2012 and December 17, 2012 City Council meetings. Seconded by Assistant Mayor Lister and voted.

VI. PUBLIC COMMENT SESSION

Tom Carroll brought a tire from his vehicle which picked up scrap metal from Market Street Extension and caused him to have it replaced. He said this is the third time he has had to replace his tire and it costs \$200.00 each time. Mr. Carroll requested that the City have someone collect the material along Market Street Extension so that they can fully understand the extent of this problem.

Dixie Tarbell said she has submitted 2 letters to the editor regarding the Portwalk developer taking advantage of a loop hole in the zoning ordinance relative to height requirements. She said that there have been impacts from this project and would like to know how much groundwater has been created from the construction of building.

VII. PUBLIC HEARING

- A. AMENDMENTS TO CHAPTER 10 – ZONING ORDINANCE, ARTICLE 5 – DIMENSIONAL AND INTENSITY STANDARDS, SECTION 10.535 – DIMENSIONAL STANDARDS IN THE CENTRAL BUSINESS DISTRICTS, RELATING TO THE HEIGHT REQUIREMENTS IN THE CBA AND CBB DISTRICTS

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

Nick Cracknell, Planner, spoke on behalf of Planning Director Taintor who was unable to attend this evening due to a death in his family. He addressed the ordinance relating to height requirements in the CBA and the CBB districts. He said the amendment is as follows:

Section 10.535.12 Central Business A and B – Maximum Elevation Above Street

Within 25 feet of any street line, the elevation of the highest point of a building above the grade at the street line shall not exceed 50 feet in the Central Business A district and 60 feet in the Central Business B district. This provision shall apply to a parapet wall, fence, railing or similar structure, or roof appurtenance that extends more than 2 feet above the roof surface; but shall not apply to any such structure or device that does not extend more than 2 feet above the roof surface.

Mr. Cracknell reported that the “street line” is the edge of the municipal right of way, which in the downtown area is approximately at the back of the sidewalk. He said to accommodate two identified development projects that have initiated a formal process with the City’s land use boards (and thereby demonstrated significant investment in project design); the proposed ordinance also exempts applications which have been the subject of legal notice for a hearing before the Zoning Board of Adjustment.

Lisa DeStefano said she appreciates the awards of the Planning Department and meetings held with stakeholders regarding this ordinance amendment. She said the loop hole has been in the zoning ordinance for years. She stated it is similar to other zoning ordinances that became a challenge and developers adjust. Ms. DeStefano said a challenge in the permitting process exists. She said moving through the process we find it not to be anchored until the public hearing and that it is a challenge to property owners and an economic development issue for the City. She advised the Council that she currently has two property owners holding back because of amendments to the zoning ordinance. She recommended that the Council approve the ordinance amendments including language for the two projects that are in the Board of Adjustment process, and the Planning Department come back with amendments to the building permit process. She spoke of a flow chart that existed in the past which outlined the permitting process and recommended bringing that chart back.

With no further speakers, Mayor Spear declared the public hearing closed.

VIII. APPROVAL OF GRANTS/DONATIONS

- A. Grant Application for New Hampshire Department of Transportation Safe Routes to School Program

Assistant Mayor Lister moved to authorize the City Manager to apply for, accept, and expend a \$250,000.00 grant from the NH DOT Safe Routes to School Program for the purpose of implementing infrastructure projects and non-infrastructure programming to encourage and enable elementary and middle school children to safely walk and ride bicycles to school. Seconded by Councilor Coviello and voted.

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Article 5 – Dimensional and Intensity Standards, Section 10.535 – Dimensional Standards in the Central Business Districts, Relating to the Height Requirements in the CBA and CBB Districts

Councilor Novelline Clayburgh moved to pass second reading and schedule a third and final reading of the proposed Ordinance, as presented, at the January 22, 2013 City Council meeting. Seconded by Councilor Coviello.

Councilor Kennedy expressed concern allowing the grandfathering of two projects that are already in the process.

Councilor Kennedy moved to amend the ordinance by deleting the paragraph which reads “This shall not apply to any application which has been the subject of notice by the Zoning Board of Adjustment after June 1, 2012, and prior to the first legal notice of the second reading and public hearing on this amendment at the City Council”. Seconded by Councilor Dwyer.

Councilor Kennedy said she wants to know that staff is looking at the zoning ordinance for amendments that are needed. She said she would like a figure for the height requirement. Councilor Coviello stated that it is not easy to just provide a figure, and no lot is perfectly flat. He also indicated that we are talking about 50 feet to 60 feet, and there is a need to know where to measure the building front and the grade. Councilor Coviello spoke in favor of moving forward. Mr. Cracknell said that this amendment requires 50 feet to 60 feet only for the wall that abuts the street in the first 25 feet of the street.

Councilor Coviello said most people developing a project go to the Historic District Commission for a period of time and then proceed to Planning Board. He asked the Council if they thought there needed to be a more defined process for people to understand the rules. Mr. Cracknell stated that you want to begin the process with the Historic District Commission because they have the ability to lower the building height from the 60 feet before going to the Planning Board and Site Review for approvals. City Manager stated that this could be discussed internally and with other agencies in the City to see what can be done without unintended consequences. Councilor Coviello said there is no method currently for following a project, and we need to work towards that as our next goal.

Councilor Novelline Clayburgh stated she would not support the amendment by Councilor Kennedy because the current projects have gone through a great deal with City Boards at this point.

Councilor Thorsen said that this is a process issue. He said there needs to be a clear process and exceptions should not be made into ordinances.

Councilor Dwyer said that design review is a plan for the future.

On a roll call vote 4-5, motion to amend the ordinance by deleting the paragraph which reads “This shall not apply to any application which has been the subject of notice by the Zoning Board of Adjustment after June 1, 2012, and prior to the first legal notice of the second reading and public hearing on this amendment at the City Council” *failed* to pass. Assistant Mayor Lister, Councilors Kennedy, Dwyer and Thorsen voted in favor. Councilors Coviello, Novelline Clayburgh, Lown, Smith and Mayor Spear voted opposed.

City Attorney Sullivan informed the Council that effectively the language within the ordinance contained in the paragraph after the amendment, will be listed as a notation at the end of the ordinance.

Main motion passed.

- B. Third and Final Reading of Proposed Amendments to Chapter 10 - Zoning Ordinance, Article 6 – Overlay Districts, Section 10.633.20 – Exemptions from Certificate of Approval in the Historic District; and to Article 15 - Definitions, Section 10.1530 – Terms of General Applicability, Defining the term “Contributing Structure”

Councilor Novelline Clayburgh moved to pass third and final reading of the proposed Ordinance. Seconded by Councilor Coviello and voted.

X. CONSENT AGENDA

- A. Letter from Kim Blanchard, National Multiple Sclerosis Society, requesting permission to hold the 2013 Walk MS Portsmouth on Saturday, April 13, 2013 from 10:00 a.m. – 2:00 p.m. (***Anticipated action – move to refer to the City Manager with power***)
- B. Letter from Zhana Morris, Production Manager, The Music Hall, requesting Meter Bags for 2012-2013 Season (***Anticipated action – move to refer to the City Manager with power***)
- C. Letter from Dave Abbett, Founder, Sub 5 Race Management, requesting permission to hold the 2013 Friends on the Fourth 5K road race on Thursday, July 4, 2013 (***Anticipated action – move to refer to the City Manager with power***)
- D. Letter from Garfield Jones, Fattman Productions, requesting permission to hold a portion of 24 hour relay race on Saturday, June 22, 2013 – Sunday, June 23, 2013 (***Anticipated action – move to refer to the City Manager with power***)
- E. Letter from Caitlyn Mosher Ellis, Alzheimer’s Association, requesting permission to hold the 2013 Walk to End Alzheimer’s on Sunday, September 29, 2013 (***Anticipated action – move to refer to the City Manager with power***)

- F. Request for Approval of Pole License of one pole, one electrical manhole and 710 feet of underground conduit located on Hanover and Bridge Streets
(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)

Councilor Novelline Clayburgh moved to adopt the Consent Agenda. Seconded by Assistant Mayor Lister and voted.

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

(There are no items under this section of the Agenda)

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Proposed Revisions to Fund Balance Ordinance

City Manager Bohenko informed the Council that he would like to bring back for first reading at the January 22, 2013 Council meeting amendments to the Fund Balance Ordinance. He indicated that the amendments would help put the City in a better position to receive an AAA bond rating. He stated that the unassigned balance could not go below 10%.

Councilor Coviello moved to allow the City Manager to bring back Proposed Revisions to the Fund Balance Ordinance at the Tuesday, January 22, 2013 City Council meeting. Seconded by Councilor Novelline Clayburgh.

Councilor Thorsen said he would like to see the marginal benefit between an AA+ and AAA rating. Councilor Kennedy asked what other types of criteria do the rate agencies use to assign a bond rating.

Motion passed.

2. Report Back Re: Cemetery Setbacks

City Attorney Sullivan reported that in the absence of local zoning regulations regarding setbacks from cemeteries; State law (RSA 289:3) establishes a minimum 25 foot setback. He stated our zoning ordinance does not address setbacks from cemeteries; therefore, the State's minimum setback requirement applies. City Attorney Sullivan said State law was enacted in order to guard against accidental disturbance of human remains, which are often buried outside the boundaries of historic cemeteries. For example, slaves, Native Americans, people who did not attend church, and poor people were customarily buried outside cemeteries and their burial places may be unmarked. In other cases, walls and fences were later erected around old cemeteries with no real knowledge as to the outer limits of burials.

Councilor Kennedy moved to accept the Planning Board's recommendation to not vote to enact a zoning ordinance regarding setbacks from cemeteries as requested. Seconded by Councilor Coviello.

Councilor Lown said he does not agree with the recommendation from the Planning Board and feels that Attorney Noucas' clients should be given an exception to construct a garage along the rear boundary line of property located at 32 Livermore Street. He said the owners want to build in a specific area and on the surface of the ground.

Councilor Thorsen said he agrees with Councilor Lown, and the Council should create an ordinance and grant the owners a variance. He stated with an ordinance each request could be reviewed individually. He feels we should have an ordinance which allows local control.

Councilor Coviello said some good points came forward and he would not feel comfortable building above a grave. He said he would like to hear the points of the State Archaeologist in order to receive further information.

Councilor Lown said Attorney Noucas has indicated with the law the memorial for Chestnut Street will be prohibited by the City. Councilor Dwyer said Attorney Noucas was incorrect. The role of the African Burial Ground is memorializing the site rather than building on the site.

Councilor Kennedy said this is our history and we need to celebrate it. She said people come to Portsmouth for its arts, culture and richness in history.

Councilor Lown said these are valuable historic areas and should be controlled by the City, not the State. He said the City could increase the buffer zone.

Councilor Smith said he would like an ordinance brought forward to protect our cemeteries and historic meaning. He said he would not want to see anyone building over a burial site.

On roll call 7-2, voted to accept the Planning Board's recommendation to not vote to enact a zoning ordinance regarding setbacks from cemeteries as requested. Assistant Mayor Lister, Councilors Coviello, Kennedy, Novelline Clayburgh, Dwyer, Smith and Mayor Spear voted in favor. Councilors Lown and Thorsen voted opposed.

3. Report Back Re: Zoning for Assisted Living Facilities

City Manager Bohenko stated he would postpone this item until the January 22, 2013 City Council meeting, as Planning Director Taintor could not be present this evening due to a death in his family.

4. Request to Establish Work Session Re: Water/Sewer Rate Study

City Manager Bohenko recommended holding a Work Session on the Water/Sewer Rate Study on February 11, 2013.

Councilor Dwyer moved to establish a Work Session on Monday, February 11, 2013 at 6:30 p.m., regarding the Water/Sewer Rate Study. Seconded by Councilor Smith and voted.

B. MAYOR SPEAR

1. Appointments to be Considered:
 - Alison Hamilton, Citizens Advisory Committee
 - Anthony Blenkinsop, reappointment to the Planning Board

The City Council considered the above listed appointments that will be voted on at the January 22, 2013 City Council meeting.

2. Appointments to be Voted:
 - Elizabeth Moreau appointment as an alternate to the Planning Board
 - Karina Quintans appointment as a regular member to the Planning Board (*current alternate*)
 - Thomas Watson reappointment to the Trustees of the Trust Fund

Councilor Smith moved to appoint Elizabeth Moreau as an alternate to the Planning Board until December 31, 2015; appointment of Karina Quintans as a regular member to the Planning Board (*current alternate*) until December 31, 2015 and reappointment of Thomas Watson to the Trustees of the Trust Fund until January 1, 2016. Seconded by Assistant Mayor Lister and voted.

Councilor Smith asked for an update on the Brewster Street Boarding House matter. City Manager Bohenko said he has given the matter to City Attorney Sullivan who has been meeting with residents. He reported the staff has indicated that the license is due in March. He also indicated that Deputy City Manager Allen will set up a Committee to review concerns of the residents, and provide a report back to him that he will bring to the Council. City Manager Bohenko stated that we are being deliberate on this matter because it has ramifications.

C. COUNCILOR SMITH

1. Parking and Traffic Safety Committee Action Sheet and Minutes of December 13, 2012

Councilor Smith moved to approve and accept the action sheet and minutes of the December 13, 2012 Parking and Traffic Safety Committee meeting. Seconded by Assistant Mayor Lister.

Councilor Smith reported that there are no requirements for ordinance amendments in the action sheet and minutes from this meeting.

Motion passed. Councilor Kennedy voted opposed.

Councilor Kennedy asked where the City is with regards to the meters on Maplewood Avenue which had the meter heads removed. She stated if this is a long term issue it requires an ordinance change, which has not come before the Council. City Manager Bohenko reported that there are 41 meters in that area, with 10 being meters and 31 not. Back in October, the issue was discussed to allow for a pilot program where 5 of the meter heads were removed to see if it would make a difference with turnover at the meters. City Manager Bohenko stated this matter will come back to the Parking and Traffic Safety Committee in February and we need to make a decision on whether to meter all of the 41 spaces. Councilor Smith said he agrees with the comments of City Manager Bohenko and that this matter is under review, and there will be a study of the area. Councilor Coviello stated he suggested the pilot study because of the high usage of spaces not metered versus those metered.

Councilor Novelline Clayburgh asked for an update from the Parking and Traffic Safety Committee on Resident Only Parking. Councilor Smith reported the Parking and Traffic Safety Committee will be looking at adding Sutton Avenue, and will be conducting an over all review of Resident Only Parking. He said some neighborhoods do not want to create resident parking.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Coviello asked if there was interest by the Council to review the Holiday Free Parking Program. Councilor Smith spoke to the success of the program and the economic benefit to downtown merchants and restaurants. Councilor Lown said that the program costs the City \$30,000.00 in revenue, and perhaps people are abusing the program. Mayor Spear stated more discussion on this matter could take place during the budget work session. City Manager Bohenko reminded the Council that the City does enforce the 2 hour parking limit by chalking tires during the free holiday parking. Mayor Spear said the matter should be discussed during the work session on the budget under the Parking and Transportation Department.

Councilor Coviello informed the City Council he will bring forward on the January 22, 2013 Council Agenda, under his name, a request to fund a downtown shuttle.

Mayor Spear asked that the Recreation Board consider changing the date of trick or treat to October 31st when Halloween is celebrated, rather than October 30th and report back their recommendation to the Council.

Councilor Dwyer reported Attorney Tom Watson was interested in having re-given to the State Legislature the Petition of the Slaves of 1779. Senator Clark introduced this to the Legislature for it to be voted on. In addition, because there were Portsmouth citizens, it's a Portsmouth Petition. The Legislature will vote to Resolve the Petition which was given 234 years ago.

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

At 8:35 p.m., Councilor Novelline Clayburgh moved to adjourn. Seconded by Councilor Coviello and voted.

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

Kelli L. Barnaby, CMC/CNHMC
City Clerk