

TO: JOHN P. BOHENKO, CITY MANAGER

FROM: KELLI L. BARNABY, CITY CLERK

RE: ACTIONS TAKEN BY THE PORTSMOUTH CITY COUNCIL MEETING HELD ON MONDAY, APRIL 7, 2014, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, MUNICIPAL COMPLEX, ONE JUNKINS AVENUE, PORTSMOUTH, NEW HAMPSHIRE

PRESENT: MAYOR LISTER, ASSISTANT MAYOR SPLAINE, COUNCILORS SHAHEEN, KENNEDY, LOWN, DWYER, MORGAN, SPEAR AND THORSEN

1. At 6:00 p.m., an Anticipated “Non-Meeting” with Counsel was held regarding Personnel Matters – RSA: 91-A:2, I (b-c).
2. At 6:30 p.m., a Presentation by Portsmouth Listens Study Circles was held regarding Transportation Dialogue.
3. Public Comment Session – There were 43 speakers: Rich DiPentima, Catherine DiPentima, Bob Gibbons (Sea-3); Gerry Zelin, Bob Shouse, George Carlise, Jeff Mountjoy, Sarah Lachance, Lawrence Cataldo, Jeffrey Cooper, Doug Bates, Jay McSharry, David Hill, Shari Donnermeyer, Peter Somssich, Peter Weeks, Shari Young, Chris Thompson, Ralph DiBernardo, Michael Frandzel, Nancy Vawter, Barbara Ward, John Lyons, Joe Almeida, Jennifer Almeida, Nancy Brown, David Adams, Drew Schulthess, Jeff Kisiel, Colby Gamester, Andrew Bagley, Chuck Raye, Ned Raynolds, Lee Roberts (Conditional Use Permit); Margaret O’Rourke (Thank You, Council); Doug Roberts (Transportation, Form-Based Zoning); David LaFevers (Main Traffic coming into Portsmouth); Harold Whitehouse (Now is the Time); Pat Ford (Pan Amtracks); Duncan MacCallum (Repeal Conditional Use Permit); George Dempsey (Repeal Continuances); and Paul Mannle, Rick Becksted (Form-Based Zoning).
4. Acceptance of Asset Management Planning Grant from the New Hampshire Department of Environmental Services - **Voted** to accept and expend an Asset Management Planning Grant from the New Hampshire Department of Environmental Services in an amount up to \$15,000.00.
5. Acceptance of Community Development Block Grant Funds - **Voted** to accept and expend a Community Development Block Grant (CDBG) in the amount of \$507,379.00 from the U.S. Department of Housing and Urban Development.
6. First Reading of Proposed Borrowing Resolution Re: New Franklin School Energy Project – **Voted** to pass first reading and authorize the City Manager to bring back for public hearing and adoption the borrowing Resolution in an amount of up to Four Hundred Thousand Dollars (\$400,000.00) for the New Franklin School Boiler Replacement and Other Identified Energy Conservation Measures, at the April 21, 2014 City Council meeting, as presented.

7. Third and Final Reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance, Section 10.535 – Exceptions to Dimensional Standards in the Central Business District, which would eliminate a Conditional Use Permit under Section 10.535.13 – Motion to pass third and final reading of the proposed ordinance, as presented.

On a roll call vote 5-4, motion to suspend the rules in order to allow for an amendment to the ordinance **failed** to pass. Councilor Shaheen, Lown, Dwyer, Spear and Thorsen voted in favor. Assistant Mayor Splaine, Councilors Kennedy, Morgan and Mayor Lister voted opposed. *(Six votes required for a suspension of the rules).*

Councilor Dwyer moved to postpone third reading of the ordinance until we have the results of Form-Based Zoning in the expanded study areas which include the Northern Tier, Maplewood Avenue MRO and the Islington Street corridor area. Seconded by Councilor Spear. *Councilor Dwyer withdrew her motion and Councilor Spear withdrew his second to the motion.*

Councilor Shaheen moved to suspend the rules that the Conditional Use Permit would remain in effect for the CBB District with the more stringent criteria that has been recommended to the City Council by the Planning Board and to sunset as soon as Form-Based Zoning is implemented for the Northern Tier. Seconded by Councilor Spear. *Councilor Shaheen withdrew her motion and Councilor Spear withdrew his second to the motion.*

On a unanimous roll call 9-0, **voted** to reconsider the suspension of the rules to deal with considering a motion to add HarborCorp to the exemptions under the repeal.

On a unanimous roll call 9-0, **voted** to “carve out” the HarborCorp lot from any repeal of the Conditional Use Permit.

On a roll call vote 3-6, motion to postpone third reading for the rest of the area until we have the results of Form-Based Zoning **failed** to pass. Councilors Lown, Dwyer and Spear voted in favor. Assistant Mayor Splaine, Councilors Shaheen, Kennedy, Morgan, Thorsen and Mayor Lister voted opposed.

On a roll call 6-3, **voted** to pass third and final reading of the proposed ordinance, as amended which “carved out” the Harborcorp lot from any repeal of the Conditional Use Permit. Assistant Mayor Splaine, Councilors Shaheen, Kennedy, Morgan, Thorsen and Mayor Lister voted in favor. Councilors Lown, Dwyer and Spear voted opposed.

8. At 10:00 p.m., Mayor Lister declared a brief recess. At 10:10 p.m., Mayor Lister called the meeting back to order.
9. Third and Final Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Inserting a New Article 5A – Character Districts (aka Form-Based Zoning) and further to Adopt the Zoning Map for the Character Districts for the Maps reference in Section 10.5A14.10 of Article 5A – Moved to suspend the rules to allow for amendments outlined in the City Manager’s memorandum. Councilor Spear withdrew his motion and Councilor Shaheen withdrew her second to the motion.

Moved to suspend the rules in order to allow for amendments to the ordinance. *Councilor Spear withdrew his motion and Councilor Kennedy withdrew her second to the motion.*

Voted to postpone third reading of the ordinance until the April 21, 2014 City Council meeting.

10. Third and Final Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Miscellaneous Conforming Amendments to Implement Character-Based Zoning – **Voted** to postpone third reading of the ordinance until the April 21, 2014 City Council meeting.

11. Consent Agenda – **Voted** to adopt the Consent Agenda.

- A. Request for Approval of Pole License to install 2 poles off of Rock Street to provide street lighting to the new Rock Street parking lot. ***(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. Letter from Ken La Valley, Chair, Portsmouth Chapter of the AFSP Out of the Darkness Walk, requesting permission to conduct the annual Out of the Darkness Community Walk on Saturday, September 27, 2014 10.00 a.m. – 12:00 noon ***(Anticipated action – move to refer to the City Manager with power)***
- C. Letter from Ben Anderson, Executive Director Prescott Park Arts Festival, requesting permission to close the Prescott Park North parking lot (corner of State Street and Marcy Street) during the 30th Annual WOKQ Chowder Festival being held Saturday, June 7, 2014. ***(Anticipated action – move to refer to the City Manager with power)***
- D. Letter from Chris Vlangas, Development Director Northern New England Chapter of the Cystic Fibrosis Foundation, requesting permission to travel through the City of Portsmouth in conjunction with the 2014 Cycle for Life Event being held Saturday, July 19, 2014 and Sunday July 20, 2014. ***(Anticipated action – move to refer to the City Manager with power)***
- E. Letter from Ryan Fleming, Events Manager, Redhook Brewery, requesting permission to conduct 17th annual Redhook/Runner's Alley 5k on Pease Tradeport to support the Krempel's Center for Brain Injury on Sunday, May 25, 2014. ***(Anticipated action – move to refer to the City Manager with power)***
- F. Request for License from Susan, Calina and Paul Hood, owners of Studio on 90 Fleet for property located at 90 Fleet 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 Susan, Calina and Paul Hood, owners of Studio on 90 Fleet for a projecting sign at property located at 90 Fleet Street and, further, authorize the City Manager to execute License Agreements for this request)***

Planning Director's Stipulations:

- ***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, shall 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***

- G. Request for License from Andre Van Oss, owner of Buff & File Nail Bar for property located at 92 Pleasant 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 Andre Van Oss, owner of Buff & File Nail Bar for a projecting sign at property located at 92 Pleasant Street 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***

- H. Request for License from Richard Cyr, owner of Federal Cigar for property located at 36 Market 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 Richard Cyr, owner of Federal Cigar for a projecting sign at property located at 36 Market Street 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***

12. Letter from Christopher P. Mulligan, Attorney, Bosen & Associates, regarding Request for Restoration of Involuntarily Merged Lots Pursuant to RSA 674:39-aa (194 Wibird Street/Tax Map 148, Lot 1) – **Voted** to refer to City staff for review and report back at the April 21, 2014 City Council meeting.

13. Letter from Sandra Yarne, Tax Day Coordinator, Seacoast Peace Response, requesting permission to utilize a plywood structure in conjunction with annual Penny Poll in Market Square on Tuesday, April 15, 2014 – **Voted** to refer to the City Manager with power.

14. Request for First Reading for Proposed Amendment to Chapter 7, Article I of the Ordinances Re: Parking and Traffic Safety Committee – **Voted** to schedule a first reading of the proposed Ordinance amendment, as presented, at the April 21, 2014 City Council meeting.

15. Applications for Sidewalk Cafés Providing Alcohol Service – city-owned sidewalks:

- Popovers on the Square
- Ri Ra Portsmouth
- State Street Saloon
- Surf
- The District

Voted to authorize the City Manager to enter into an Area Service Agreements with Popovers on the Square, Ri Ra Portsmouth, State Street Saloon, Surf and The District for outdoor Alcohol service on City land for the 2014 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service. Councilor Kennedy voted opposed.

16. Applications for Sidewalk Cafes providing Alcohol Service – private sidewalks:

- British Beer Company
- The BRGR Bar

Voted to authorize the City Manager to enter into an Area Service Agreements with British Beer Company and The BRGR Company for outdoor Alcohol service for the 2014 season subject to City Council Policy No. 2012-02.

17. Utility and Sidewalk Easements at 129 Aldrich Road, 185 Cottage Street and 65-67 Mark Street – **Voted** to authorize the City Manager to accept the easements, as presented.

18. Establish a Work Session Re: Peirce Island Wastewater Treatment Facility – **Voted** to establish a Work Session on Monday, April 14, 2014 at 7:00 p.m. regarding the Peirce Island Wastewater Treatment Facility.

Councilor Morgan requested that the City Council receive the Presentation two days prior to the Work Session for review.

19. **Voted** to suspend the rules in order to take up Item XI. C.1. – Sea-3 Propane Proposal Update.
20. Sea-3 Propane Proposal Update – **Voted** that the City Council opposes the Sea-3 expansion project currently before the Newington Planning Board; that we reiterate to the Newington Planning Board our support for the Mayor’s request that appropriate comprehensive safety and environmental studies be conducted prior to approval of the Sea-3 proposal; and that we encourage the Pease Development Authority to examine the building of a track route for the trains through Pease.
21. Appointments to be Considered – The City Council considered the appointments listed below which will be voted on at the April 21, 2014 City Council meeting.
- Barbara McMillan reappointment to the Conservation Commission
 - Kimberly Meuse appointment to the Conservation Commission (alternate)
 - Samuel “Wes” Tator appointment to the Sustainable Practices Blue Ribbon Committee
 - Lawrence Cataldo appointment to the Taxi Commission
 - Stephen Dunfey appointment to the Taxi Commission
22. Appointments to be Voted:
- Voted** to appoint Judith Bunnell to the Citizens Advisory Committee; reappointments of Steve Miller, Elissa Hill Stone, and Allison Tanner to the Conservation Commission until April 1, 2017; reappointments of Stephen Philp and John Simon to the Peirce Island Committee until December 31, 2015; reappointment of Jackie Cali-Pitts to the Recreation Board until April 1, 2017; and appointment of Kathryn Lynch to the Recreation Board until April 1, 2015. Ms. Lynch is filling the unexpired term of Ed DelValle.
- Voted** the reappointment of Amy Schwartz to the Portsmouth Housing Authority until April 1, 2019. Councilor Shaheen abstained from voting on this matter.
23. Resignation - John Palreiro from Taxi Commission – **Voted** to accept with regret the resignation of John Palreiro from the Taxi Commission with a letter of thanks for his service to the City.
24. At 12:15 a.m., **voted** to suspend the rules in order to continue the meeting beyond 10:00 p.m.
- Mayor Lister stated that this motion should have been made at 10:00 p.m. and the Council should not be conducting business at midnight.
25. The following items were postponed until the April 21, 2014 City Council meeting:
- Assistant Mayor Splaine:
- Creating A Fee Penalty Guideline for Violations of Land Use Board Approvals
 - Status of Abandoned or Derelict Buildings
- Councilor Kennedy:
- Transportation Center
 - Establish Transportation Committee (Discussion Purposes Only)
- Councilor Lown:
- Parking & Traffic Safety Committee Minutes of the March 13, 2014 meeting

Councilor Morgan:

- Master Plan – Update of our Master Plan’s Implementation Plan section, in anticipation of the 2015 Master Plan Review
- Portwalk – Request for Work Session to review:
 - a) Enforcement
 - b) Penalties
 - c) Process and path forward: how we got here and what is the plan/process to prevent this from happening again
- Civility of City Officials

Councilor Thorsen

- Legal Analysis regarding Financial Disclosures received from NHMA and suggested amendment language to Administrative Code

26. Adjournment – At 12:25 a.m., voted to adjourn.

Respectfully submitted by:

Kelli L. Barnaby, CMC/CNHMC
City Clerk