

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: MONDAY, APRIL 4, 2016

PORTSMOUTH, NH  
TIME: 6:00PM

**At 6:00PM, a Work Session was held Re: Deer Street Garage Property Acquisition, Purchase and Sale Agreement and Post Closing Obligations Agreement.**

### **I. CALL TO ORDER**

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

### **II. ROLL CALL**

Present: Mayor Blalock, Assistant Mayor Splaine, Councilors Perkins, Dwyer, Lown, Pearson, Spear, Cyr and Denton

### **III. INVOCATION**

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

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

Councilor Dwyer led in the Pledge of Allegiance to the Flag.

Mayor Blalock announced that the Presentation for the Recognition of Portsmouth High School Boys 2016 New Hampshire Basketball Division 2 New Hampshire State Champions will not be held this evening due to the snow.

### **V. ACCEPTANCE OF MINUTES – MARCH 14, 2016**

**Councilor Spear moved to approve and accept the minutes of the March 14, 2016 City Council meeting. Seconded by Councilor Lown and voted.**

### **VI. PUBLIC COMMENT SESSION**

Jim Warner said he owns the property abutting Deer Street Associates and supports the project. He said the property values to the north end will increase and that will be better for everyone. He also said that the north end would be a completely new neighborhood.

Tracey Kozak spoke in favor of the Deer Street Parking Garage and said it will provide benefits to the public. She said that this is within the north end vision plan and would be less intrusive construction. She said this could be the beginning of creating a Transportation HUB.

Tom Hersey spoke in support of a Project Labor Agreement (PLA) for the Wastewater Treatment Facility project. He stated the increase in funds that it would cost could be made up through the project. He said a PLA would level the playing field and urged the City to move in that direction as it would be best for the City.

Steven Burk spoke to the training and skills of PLA workers. He said the workers spend a great deal of time in classrooms for the training that is required. He stated they are licensed through the State.

Joe Casey spoke in favor of PLA workers for the Wastewater Treatment Facility. He spoke to workers other than PLA sometimes walk off jobs and are not as reliable.

Bob Shouse said the work session was informative and the City Manager and City Attorney offered good solutions for Deer Street Associates. He stated he does not support building a new parking garage at the Deer Street location but would support the building at the Bridge Street lot.

Judy Stadtman – urged the City Council to adopt a PLA for the Wastewater Treatment Facility. She said she has worked with residents and spoke on communities this would help. She said a PLA would ensure that all workers receive benefits and fair wages.

John Lyons, Attorney representing 20 property owners requested the Council pass first reading of the ordinance on irrigation meters. He said that the City would have control and be able to conserve water. He said it would be consistent with the Master Plan to increase property values. Attorney Lyons said that this is the right thing to do for the City Council.

Roy Helse spoke to the high wages of City employees. He said there are too many employees making over \$100,000.00 and residents can't continue to pay these kinds of wages.

Mark Holden spoke in favor of PLA for the Wastewater Treatment Facility. He said PLA allows contractors to use their own employees and to hire other personnel that may be necessary. He said there is not justification for not using PLA for the project.

Ron Cogliano said he could provide additional information on PLA's and how they would work. He said PLA's require you hire union only employees and would be beneficial for the City to use on this project.

**Councilor Lown moved to suspend the rules in order to take up Item IX. A.1. – Deer Street Garage property Acquisition, Purchase and Sale Agreement and Post Closing Obligations Agreement Options as result of Work Session. Seconded by Councilor Spear and voted.**

XI. A.1.       Deer Street Garage Property Acquisition, Purchase and Sale Agreement and Post Closing Obligations Agreement Options as result of Work Session

City Manager Bohenko said given the conversation at the work session it would be appropriate to postpone until April 18, 2016 meeting to take into account the changes brought forward by the Deer Street Associates and for the City Manager to reduce the items into writing.

**Councilor Lown moved to postpone action until the April 18, 2016 City Council meeting to take into account the changes brought forward by Deer Street Associates and for the City Manager to have the City Attorney reduce the items into writing. Seconded by Councilor Spear.**

Assistant Mayor Splaine said he does not want to give more money to an owner than is needed. He would like an updated appraisal done on the property. He said he would like to know what kinds of benefits we're giving to the sellers on parcels 3, 4, 5, and 6. Assistant Mayor Splaine said a benefit would be what the sellers could build on those parcels.

Councilor Lown said that time is of the essence and we need a parking garage. He said he is encouraged by the process and would move forward if we do not complete the purchase and sales on April 18<sup>th</sup> and make a motion to build a garage at the Bridge Street lot.

**Motion passed.**

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

- A. Portsmouth Police Department Donations in support of the Explorer Cadets as follows:
- Donation of a \$30.00 Blitz Park gift card by the Police Commission to the Portsmouth Police Trading Card initiative as a program incentive prize
  - Donation of \$300.00 from Mr. Jason C. Page to provide 2 scholarships for the 2016 Explorer Cadet Academy
  - Donation of \$400.00 from Mr. & Mrs. David Brow to provide 2 scholarships for the 2016 Explorer Cadet Academy

**Councilor Dwyer moved to accept the donations to the Portsmouth Police Department, as presented. Seconded by Councilor Spear and voted.**

- B. Portsmouth Police Department Grant in the amount of \$9,926.40 from the NH Office of Highway Safety for Sustained Traffic Enforcement Patrols (STEP)

**Councilor Lown moved to approve and accept the Grant to the Portsmouth Police Department, as presented. Seconded by Councilor Pearson and voted.**

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

- A. First reading of Proposed Ordinance amending Chapter 11, Article II, Section 11.216 – Sewer Use Charges/Records/Hook-up

**Councilor Lown moved to pass first reading and schedule a public hearing and second reading of the proposed Ordinance as presented, at the April 18, 2016 City Council meeting. Seconded by Councilor Pearson.**

City Manager Bohenko had Deputy Public Works Director Goetz provide a presentation on the irrigation meter ordinance.

Deputy Public Works Director Goetz reported under the current ordinance a single family residential customer may install a separate water service and irrigation meter and commercial properties cannot install similar meters. He addressed the irrigation meter options explored in 2015:

- Proposed Ordinance – Eliminate all irrigation meters (including existing)
- Grandfather existing irrigation meters and disallow any future irrigation meters
- Expand irrigation meters to all City customers

He stated that City Council took no action and the existing ordinance remains in place. He said expanding irrigation meters to all customers will increase water demand and over time, metered water revenue will increase and metered sewer revenue will decrease. He spoke to if irrigation meters are expanded:

- Increase the irrigation rate to pay for additional system capacity necessary to meet peak demands
- Customer with irrigation meter does not pay capital fee for use of capacity
- Capacity use charge per CCF reflects use of capacity not purchased when connecting to the City water system (current capacity charge for water is \$1,300.00 per equivalent dwelling unit, or 250 gallons per day)

He said if irrigation meters are expanded the following recommendations need to be considered:

- Encourage water efficiency through specific policies that govern how irrigation water can be used within the community. These policies would include such items as:
  - City approvals only landscape irrigation systems designed and installed an EPA Water Sense Certified professional
  - Require in-ground irrigation systems include moisture sensors
  - Restrict irrigation usage to specific days or periods of time
    - April 1 to September 30, landscape irrigation utilizing water, in whole or in part, obtained from the City water system, is prohibited except during the times between 6:00 p.m. and 10:00 a.m.
  - Enable the City to restrict the use of irrigation meters during periods of drought

Deputy Director Goetz reported that this would reduce sewer revenues over time. He said potential sewer rate impact if irrigation meters are expanded is an increase in sewer rates. He stated the current recommended FY17 rate increase is 4%; this would correspond to a 13.7% increase if all irrigation usage were through irrigation meters. He also stated that irrigation customers will pay more for their water use.

Councilor Denton stated he wanted to bring forth first reading of the previous ordinance from 2015 and pass first reading.

Mayor Blalock said we would have to have 2 public hearings.

**Motion passed.**

**Councilor Denton move to have the 2015 proposed Ordinance regarding the Elimination of Irrigation Meters pass first reading and schedule a public hearing and second reading of the proposed Ordinance, as presented, at the April 18, 2016 City Council meeting. Seconded by Assistant Mayor Splaine.**

Councilor Denton said many people are in favor of keeping their meters but irrigation meters allow for more water to be used.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock said he would not vote in favor of the motion because he feels it makes the process cumbersome.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

**Motion passed with Mayor Blalock voting opposed.**

City Manager Bohenko said that we would advertise both public hearings.

Mayor Blalock said he would like to have a public hearing on the 2015 ordinance first then follow with the new ordinance.

## **IX. CONSENT AGENDA**

- A. Requests for License to Install Projecting Sign:
- Danielle Short, owner of Siren Salon, for property located at 49 Market Street  
***(Anticipated action – move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreements for this request)***
- B. 2016 Omnibus Sidewalk Obstruction Renewals – See Attached Listings  
***(Anticipated action – move to refer to the City Manager with power)***
- C. Letter from Holly Tennent and Melissa Mikulski, Bottomline Technologies, requesting permission to hold annual 5K event to benefit Families First on September 17, 2016. ***(Anticipated action – move to refer to the City Manager with power)***
- D. Letter from Donna Hepp, Seacoast Century Co-coordinator, Granite State Wheelmen, Inc., requesting permission to hold 2016 Seacoast Century Ride on September 24-25, 2016. ***(Anticipated action – move to refer to the City Manager with power)***

**Councilor Spear moved to adopt the Consent Agenda. Seconded by Councilor Pearson and voted.**

**X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS**

- A. Letter from Ronald N. Cogliano, President, Merit Construction Alliance (mca) regarding proposed Union-only Project Labor Agreement on City of Portsmouth's Sewer Treatment Plant

**Councilor Spear moved to accept and place the letter on file. Seconded by Councilor Lown and voted.**

- B. Letter from Edward Miller regarding opposition to Maplewood Ridge, LLC request to rezone property located at 678 Maplewood Avenue from Single Residence B to Business

**Councilor Pearson moved to refer to the Planning Board for report back. Seconded by Councilor Spear and voted.**

**XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS**

**A. CITY MANAGER**

2. Applications for Sidewalk Cafes providing Alcohol Service

City Manager Bohenko explained the policy for sidewalk cafes providing alcohol service.

- a. State Street Saloon

**Councilor Lown moved to authorize the City Manager to enter into an Area Service Agreement with State Street Saloon for outdoor Alcohol service on City land for the 2016 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service. Seconded by Councilor Cyr and voted.**

- b. Popovers on the Square

**Councilor Lown moved to authorize the City Manager to enter into an Area Service Agreement with Popovers on the square for outdoor Alcohol service on City land for the 2016 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service. Seconded by Councilor Cyr and voted.**

- c. Ri Ra

**Councilor Spear moved to authorize the City Manager to enter into an Area Service Agreement with Ri Ra for outdoor Alcohol service on City land for the 2016 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service. Seconded by Councilor Pearson and voted.**

d. The District

**Councilor Spear moved to authorize the City Manager to enter into an Area Service Agreement with The District for outdoor Alcohol service on City land for the 2016 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service. Seconded by Councilor Pearson and voted.**

3. Applications for Sidewalk Cafes providing Alcohol Service – private sidewalk

a. British Beer Company

**Councilor Spear moved to enter into an Area Service Agreement with British Beer Company for outdoor Alcohol service for the 2016 season subject to City operating conditions contained in Council Policy No. 2012-02. Seconded by Councilor Pearson and voted.**

b. The BRGR Bar

**Councilor Spear moved to enter into an Area Service Agreement with The BRGR Bar for outdoor Alcohol service for the 2016 season subject to City operating conditions contained in Council Policy No. 2012-02. Seconded by Councilor Pearson and voted.**

Councilor Lown said that this is a great thing for the City and keeps the City interesting.

Mayor Blalock passed the gavel to Mayor Splaine.

Mayor Blalock said he is downtown a great deal and observes the cafes which create a vibrant atmosphere.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

4. Annual Renewal of Boarding House Permits

City Manager Bohenko said the Boarding Houses have been inspected and requested approval of the renewal permits.

a. 278 Cabot Street

**Councilor Lown moved to approve the Boarding House permit for 278 Cabot Street for a one year permit to expire April 5, 2017. Seconded by Councilor Spear and voted.**

b. 350-352 Hanover Street

**Assistant Mayor Splaine moved to approve the Boarding House permit for 350-352 Hanover Street for a one year permit to expire April 5, 2017. Seconded by Councilor Pearson and voted.**

5. Request from Wright Avenue, LLC for Second Amendment to License for 57, 73 and 77 State Street

City Manager Bohenko reported that this is a second amendment to the license due to a delay in construction caused by severe winter weather in 2015 and 2 major abutting projects being constructed at the same time.

Public Works Director Rice spoke regarding the electrical service to the property and the need to bury the utilities.

**Councilor Dwyer moved to authorize the City Manager to negotiate and enter into a Second Amendment to the License Agreement for Wright Avenue, LLC. Seconded by Councilor Spear and voted.**

6. Downtown Parking Shuttle Recommendation for 2016

City Manager Bohenko said we are recommending entering into a partnership with COAST.

**Councilor Spear moved to authorize the City Manager to negotiate and enter into an agreement between COAST and the City of Portsmouth to operate the downtown parking shuttle for the 2016 season. Seconded by Councilor Cyr and voted.**

7. Greenleaf Recreation Center Lease Extension

City Manager Bohenko said this is an agreement at Greenleaf Recreation Center with Operation Blessing. He spoke to the activities held by Operation Blessing.

City Manager Bohenko spoke to the Sons of Italy also using the Greenleaf Recreation Center for their monthly meetings instead of the Plains School. He said the Greenleaf Recreation Center would be beneficial due to the parking and it is handicap accessible. He further discussed the need for the Pontine Theatre to have a location for use other than performances and the Plains School is currently under utilize and would be entering into negotiations with Pontine to use the Plains School for various items such as rehearsal space, work shops and storage space.

Councilor Spear said he is pleased with the information provided by the City Manager for the use of Greenleaf Recreation Center and the Plains School to be further utilized.

**Councilor Spear moved to authorize the City Manager to negotiate and enter into a Second Amendment to the License Agreement for Wright Avenue, LLC. Seconded by Councilor Lown and voted.**

8. Request to Establish a Public Hearing Re: Proposed Bonding of up to Five Million Dollars (\$5,000,000.00) for Little Harbour School Improvements

City Manager Bohenko said that this is to request a public hearing on a Resolution for Phase II Improvements to Little Harbour School. He said the public hearing and adoption would take place at the April 18, 2016 meeting.



Superintendent Zadavec said this will complete Phase II for improvements to Little Harbour School. He said that this is a comprehensive plan for the improvement for first floor classrooms, improvements to the gym and cafeteria.

Councilor Dwyer said that the School Board was going to provide a tour of Little Harbour School and would like to know when that could take place. City Manager Bohenko said that he would work with Superintendent Zadavec and Mayor Blalock on scheduling something in the near future.

Assistant Mayor Splaine asked if this would complete the asbestos removal. Superintendent Zadavec said that was done in Phase I of the improvements.

Mayor Blalock said the tour would take place after school hours.

**Councilor Spear moved to establish a public hearing on Monday, April 18, 2016 for bonding of up to Five Million (\$5,000,000.00) Dollars for Phase II of the Little Harbour School Improvements. Seconded by Councilor Pearson and voted.**

City Manager's Informational Items

2. *Firm Selection for Prescott Park Master Plan*

City Manager Bohenko reported that the firm of Weston & Sampson Engineers, Inc. was chosen. He said the cost of the contract services will be \$80,000.00 with \$40,000.00 from UDAG and the other \$40,000.00 will be funded with contingency funds. He stated the firm's work on this project will begin very shortly. City Manager Bohenko said updates on the project timeline; major milestones, public input opportunities and other information about the project will be forthcoming.

Councilor Dwyer said the Committee looked at 4 firms and everyone was impressed with Weston & Sampson Engineers, Inc. She said the Committee meetings are scheduled at 7:30 a.m. in the morning and are televised. She said that she will identify a short list of truisms and the first is the City owns the park.

Assistant Mayor Splaine asked about involvement of the public on this matter.

Councilor Dwyer said public input will happen in June and July and different kinds of involvement from family work shop days for conceptualizing in the park, town hall forums, etc.

3. *Report Back Re: Assistant Mayor Splaine's Request – Project Labor Agreement for the Peirce Island Wastewater Treatment Facility Upgrade*

City Manager Bohenko reported that the City staff does not recommend the incorporation of a Project Labor Agreement (PLA) into the existing bid process for the Peirce Island WWTF Upgrade. He said in short, a PLA requires the use of union labor for most tasks. He said a PLA is not in accord with the intent of the City's competitive bidding ordinances and is inconsistent with past bidding practices. He stated a PLA makes the process less competitive by excluding otherwise qualified bidders and, based on reports from other communities and agencies, increases prices. He said there is also no objective documented evidence that staff is aware of that supports the assertion that the quality of the work performed by a unionized workforce in the northeast region is better than non-union work forces. City Manager Bohenko said NH has a far greater proportion of non-union workers within the trades that are going to be employed on Peirce Island than union workers. He also said it is late in the Peirce Island WWTF current bidding process to add a PLA. In addition, of the five prequalified bidders, one firm has already signaled that it would withdraw from the bidding process if the PLA is required because its workforces are non-union and a second firm might also withdraw.

Public Works Director Rice said the City Manager is correct and he said to do this now would affect the schedule and construction to start on July 1<sup>st</sup>.

Assistant Mayor Splaine said it would be difficult but not impossible. Public Works Director Rice said he does not believe so.

City Manager Bohenko said we need to have a process in place and have an ordinance in place. He said it is not part of our procurement process.

Councilor Dwyer said she would be concerned with competition. She said it is not just a schedule issue but this is a complicated issue and we should not take things lightly.

Councilor Spear said that the City Council should make the decision on a PLA in a less ad-hoc environment and does not feel this is the appropriate time or project. He said we could discuss this matter in summer in a Work Session.

Councilor Denton said he supports PLA's and would like to see this included in an ordinance for our procurement process.

Assistant Mayor Splaine said that this is the biggest project we have. He requested to have this matter on the agenda under his name for the April 18, 2016 City Council meeting. He stated he would like to have public input on the project.

**Assistant Mayor Splaine moved to hold public comment on the value of a PLA for the Wastewater Treatment Facility at the April 18, 2016 meeting. Seconded by Councilor Denton.**

Councilor Pearson said she would only agree if there was a guarantee that this would not affect the schedule.

Councilor Dwyer said she would not support the motion.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock said we need to move the process along and would not vote in favor of the motion.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Assistant Mayor Splaine said that this is a good time to do this and the right thing to do.

**On a roll call vote 3-6, motion failed to pass. Assistant Mayor Splaine, Councilors Cyr and Denton voted in favor. Councilors Perkins, Dwyer, Lown, Pearson, Spear and Mayor Blalock voted opposed.**

### **B. MAYOR BLALOCK**

1. Appointments to be Considered:
  - Reappointment of Amy Burns to Cable Television and Communications Commission
  - Reappointment of Robert Capone to Cable Television and Communications Commission
  - Reappointment of Cliff Lazenby to Citywide Neighborhood Steering Committee
  - Reappointment of Samantha Wright as alternate to the Conservation Commission
  - Reappointment of Kory Sirmaian to the Recreation Board

The City Council considered the reappointments listed above which will be voted on at the April 18, 2016 City Council meeting.

### **C. ASSISTANT MAYOR SPLAINE**

1. Policy on Travel To North Carolina Re: That State's LGBTQ Discrimination Law

**Assistant Mayor Splaine moved that the Portsmouth City Council expresses to the City Manager its position that no public employees attend any conference or event to be held in the State of North Carolina until the law passed by the state's legislature and signed by Gov. Pat McCorory on March 23, 2016 allowing for discrimination against LGBTQ resident be repealed. Exempt from this request are meetings of an essential or emergency nature, those dealing with homeland security, or law-enforcement. Seconded by Councilor Denton.**

Assistant Mayor Splaine said the time is right to discuss issues of discrimination. He said many States have voiced objection with what is happening in North Carolina.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock said he agrees that discrimination is wrong and it angers him.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Councilor Dwyer said she would like to turn this into something. She said we try to make these types of motions meaningful for our residents and Seacoast Outright is not included in our budget as receiving annual funds from us under Social Services. She recommended our support go to our younger community and place money in the budget this year and ongoing years for Seacoast Outright.

Councilor Denton said if we vote on Assistant Mayor Splaine's motion he would vote against because many good people live in North Carolina and are fighting the law and feels that people would be negatively impacted. He said he does not feel this is the right message and the right message would be to send our staff to North Carolina.

Councilor Cyr said that the motion would not have likely any effect and would like to see Councilor Dwyer's suggestion placed within the motion which would have an effect.

Councilor Spear said he would oppose the motion because he feels it has no meaning to the City of Portsmouth but he would support Councilor Dwyer's because that would be impactful.

City Manager Bohenko said we would need to look at Councilor Dwyer's motion when we get to the budget and the Council could make an amendment.

Councilor Lown said there is no end to the really good causes we could weigh in on in the Country.

Assistant Mayor Splaine said this does affect the people of the City of Portsmouth and he likes Councilor Dwyer's point and would accept it as part of the motion.

Assistant Mayor Splaine said he would support adding "those boycotting in North Carolina" to the beginning of the main motion. Councilor Denton as the second to the motion agreed and the motion now will read as follows:

**Moved in support of those boycotting in North Carolina that the Portsmouth City Council expresses to the City Manager its position that no public employees attend any conference or event to be held in the State of North Carolina until the law passed by the state's legislature and signed by Gov. Pat McCrory on March 23, 2016 allowing for discrimination against LGBTQ resident be repealed. Exempt from this request are meetings of an essential or emergency nature, those dealing with homeland security, or law-enforcement.**

**Assistant Mayor Splaine moved to amend the motion to have the City Manager report back during the budget process his recommendation or thoughts of providing funding for Seacoast Outright. Seconded by Councilor Dwyer and voted. Councilors Lown, Spear and Denton voted opposed.**

**Main motion passed, as amended. Councilors Lown and Denton voted opposed.**

**D. COUNCILOR DENTON**

1. Commercial Property Assessed Clean Energy (C-PACE)

**Councilor Denton moved to have the City Manager or designee meet with the Jordan Institute to discuss administering a Commercial Property Assessed Clean Energy (C-PACE) energy efficiency and clean energy district in Portsmouth and then make a presentation back to the City Council on how administering such districts in Portsmouth could work. Seconded by Councilor Lown.**

Councilor Denton spoke to the letter from the Sustainable Practices Committee in support of this. He said a presentation would be held on how to administer such districts. He further stated he would like to see what our role would be as a City Council by meeting with the Jordan Institute.

City Manager Bohenko said this would allow us to put liens on properties and he would need to review this matter further.

Councilor Lown said it is a good idea and if someone wants to put a solar area on their roof and then sell the property before the end of the loan there would be a lien on the tax bill for the new property owner to pay the remaining balance of the loan.

**Motion passed.**

**XIII. MISCELLANEOUS/UNFINISHED BUSINESS**

**XIV. ADJOURNMENT**

**At 9:25 P.M., Councilor Lown moved to adjourn. Seconded by Councilor Spear and voted.**



Kelli L. Barnaby, MMC, CMC, CNHMC  
City Clerk