

## **SPECIAL CITY COUNCIL MEETING**

MUNICIPAL COMPLEX  
DATE: TUESDAY, NOVEMBER 1, 2022

PORTSMOUTH, NH  
TIME: 6:00PM

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

Mayor McEachern called the meeting to order at 6:00 p.m.

### **II. ROLL CALL**

**PRESENT:** Mayor McEachern, Assistant Mayor Kelley, Councilors Tabor, Denton (6:03 p.m.), Moreau, Bagley, Lombardi, Blalock, and Cook

### **III. PUBLIC HEARING AND ADOPTION OF RESOLUTION:**

A. RESOLUTION AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM UNASSIGNED FUND BALANCE FOR THE SETTLEMENT AGREEMENT BETWEEN THE CITY OF PORTSMOUTH AND DEER STREET ASSOCIATES AND AFFILIATES - \$500,000.00

- **PRESENTATION**
- **CITY COUNCIL QUESTIONS**
- **PUBLIC HEARING**
- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

City Attorney Morrell spoke to the agreement with DSA regarding providing 68 spaces in the Foundry Garage and Lot 2 to be conveyed to the city. She reviewed the construction easements and history of this case. She stated that building permits were issued to DSA. She reported to settle the law suit we would pay DSA \$500,000.00 and the agreement releases liability. City Attorney Morrell advised the Council that they're considering the appropriation of the funds and the adoption of the Resolution, which requires a two-thirds vote.

Councilor Tabor asked as part of the agreement DSA will pay \$145,000.00 for improvement over lot 2.

Mayor McEachern asked if there were changes in the terms for the \$145,000.00 we agreed to be completed before the garage. City Attorney Morrell said it was contemplated that the improvements would be made and completed before this time. She said \$145,000.00 can be spent up to three years.

Mayor McEachern opened the public hearing and called for speakers.

Rick Becksted thanked the City Attorney for providing the background information on this matter. He stated in March of 2020 that the City Council voted on the agreement and authorized the City Manager to implement the agreement. He stated a new agreement came before the Council because DSA refused the agreement.

Petra Huda thanked Mayor McEachern for not playing the blame game. She said the City Council of 2016/2017 was in breach of the agreement. She read the agreement and what needed to happen with the transfer of parking spaces. She said that a Certificate of Occupancy was issued and up to this point not a shovel has been put in the ground.

Rick Becksted said the agreement was signed in 2020 of September and the City Council was supposed to receive Lot 2 or \$800,000.00. He stated the City Council was contacted in 2020 that a force majeure was declared for two years. He is interested in finding out where the agreement was held up. He said during his term on the Council the Council was aware in negotiations that parking spaces could be used as collateral with no objections. He urged the City Council to say no, and not pay DSA any funds.

Paige Trace said the force majeure is something beyond the control of any of us during the pandemic. She asked what made Mr. Rogers capable of making the force majeure, the past City Attorney called it an agreement not a contract. Ms. Trace said that it was a bad agreement as stated by former City Attorney Sullivan. She urged the Council to think long and hard on spending \$500,000.00. She stated the Council gave Mr. Rogers the spaces and tried to make a good deal with him and he thumbed his nose at the Council.

Petra Huda said as a resident and taxpayer, the question remains, why was the lawsuit not dropped when the City Council gave away the parking spaces. She asked why we are now paying \$500,000.00 for something the city should have traded for.

Peter Weeks said the city spent \$5,000,000.00 to buy this property and the mistake made was the city turning into post-closing agreement. He said it is not fair that the city pay \$500,000.00, but you have been advised that in court it would cost more than \$500,000.00 to settle this matter. He said you should make public that the City Attorney recommended to make an agreement for \$500,000.00. Mr. Weeks urged the City Council that it is wrong to approve this appropriation.

With no further speakers, Mayor McEachern closed the public hearing.

Councilor Bagley said we signed a settlement agreement and the City Council can speak freely on this matter.

City Attorney Morrell said outside counsel was engaged and it was clear we would have attorney fees at approximately \$500,000.00

Councilor Bagley spoke to the history of this matter which he gained prior to being elected to the Council. He spoke to the history of this matter from when he was not serving on the Council. He spoke to what transpired at the November 16, 2020 Council meeting where a robust discussion occurred. He said the agreement could be a little better but there is no way out of this, we had to pay. Councilor Denton asked if we can appropriate funds for the \$145,000.00. City Manager Conard said the language in the Resolution is from bond counsel and would not recommend making changes. She said the funds are held in an account for that purpose.

Councilor Tabor said none of us want to spend this money. He stated a law suit is really expensive and if the city had gone to trial we would spend \$500,000.00 in fees and there would be no obligation to the \$145,000.00. He said we urged the former City Council not to vote down the parking agreement.

**Councilor Denton moved to adopt the Resolution as presented. Seconded by Assistant Mayor Kelley.**

Councilor Blalock said this is the best choice for the city and least expensive.

Councilor Denton said part of him wanted to let this go to court and let the former City Council be deposed, but that would have been reckless because it is the most unreasonable path.

Mayor McEachern asked if this ends any legal hold on documents. City Attorney Morrell said it would release discovery documents. Mayor McEachern stated if the city has a contract with a developer and the city breaches that contract, we are liable. He said we must honor the contract or figure a way out of the contract limiting our exposure. He said the community space we are gaining is valuable to the city and the City Council.

**On a unanimous roll call 9-0, voted to adopt the Resolution as presented.**

#### **IV. ADJOURNMENT**

**At 6:50 p.m., Councilor Blalock moved to adjourn. Seconded by Councilor Denton and voted.**



KELLI L. BARNABY, MMC/CNHMC  
CITY CLERK