

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, APRIL 3, 2006

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

At 6:00 p.m. – an Anticipated Non-Meeting with Counsel was held regarding Litigation.

At 6:15 p.m., the City Council held a Work Session regarding the Water and Sewer Rate Study.

I. CALL TO ORDER

Mayor Marchand called the meeting to order at 7:35 p.m.

II. ROLL CALL

Present: Mayor Marchand, Assistant Mayor Ferrini, Councilors Grasso, Dwyer, Raynolds, Pantelakos, Whitehouse, Smith and Hynes

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

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

INTRODUCTION OF STUDENTS PARTICIPATING IN STUDENT GOVERNMENT DAY, APRIL 18, 2006

KATIE HAMMER	MAYOR MARCHAND
ALEX LEITH	ASSISTANT MAYOR FERRINI
KATY HANSON	COUNCILOR GRASSO
MARISSA REILLY	COUNCILOR DWYER
KEVIN ANDERSON	COUNCILOR RAYNOLDS
JUDEE UTOH	COUNCILOR PANTELAKOS
ANDREW POULIN	COUNCILOR WHITEHOUSE
TAYLOR BARNES	COUNCILOR SMITH
JOHN HASLAM	COUNCILOR HYNES
SAVITA ANNE OKHUYSEN	CITY MANAGER
ALI DONNERMEYER	CITY ATTORNEY
DANIELLE LEGER	CITY CLERK

The City Council, City Manager Bohenko, City Attorney Sullivan and City Clerk Barnaby introduced their counterparts that will be participating in Student Government Day on April 18, 2006

V. ACCEPTANCE OF MINUTES – MARCH 20, 2006

Councilor Hynes moved to approve and accept the minutes of the March 20, 2006 City Council meeting. Seconded by Councilor Pantelakos and voted.

VI. PUBLIC COMMENT SESSION

Peter Bresciano spoke opposed to the City Council adopting the Ordinance regarding Funding of Public Art. He said that this Ordinance is too expensive and the burden should not be placed on the taxpayers.

David O'Connor said that street performers add to the economics for a City. He said Ordinances relative to this matter have been challenged throughout the country and the rights of the performer have prevailed.

Kathy Pearce spoke opposed to pushing back the funding for the Portsmouth Middle School. She said the primary concern should be for the health and safety of the students and teachers. She urged the City Council to listen to the findings of the Feasibility Committee before making a decision.

Mayor Marchand announced that the previously scheduled City Council Work Session with the School Board on April 12th would need to be rescheduled. He said a possible date for the Work Session would be April 17th but the City Council would discuss this matter further later in the agenda.

Jane James read a letter from Robert Thoresen who was unable to attend this evening. The letter indicated Mr. Thoresen's support for the Funding of Public Art Ordinance and its vitality and economic value of any community. The letter urged the City Council to approve the Ordinance.

Steve McHenry spoke in favor of the Funding of Public Art Ordinance and its approval of the City Council.

Debra Phillips spoke to her request on the agenda for permission to place one dumpster on Church Street. She advised the City Council that the dumpster would be used by her business and tenants.

George Bell thanked the Traffic & Safety Committee for addressing the issues regarding Church Street. He advised the City Council that enforcement is taking place by the Police Department of the area. He asked the City Council to approve the request of Ms. Phillips.

Evelyn Sirrell spoke opposed to the City Council approving the Packard Development settlement agreement. She expressed concern relative to the additional traffic created by the development. She suggested the City Council consider changing the zoning of the area if the development is allowed. She urged the City Council to table this issue for a public hearing.

Bill St. Laurent spoke opposed to the City Council adopting the Funding of Public Art Ordinance. He said that this is an additional tax on taxpayers. He said if the City Council adopts the Ordinance it should be a voluntary item on the tax bill and not a requirement.

Martin Cameron spoke opposed to the City Council approving the settlement agreement with Packard Development. He said that he is opposed to the City allowing the development to tie into the sewer system.

Barbara Massar, Pro Portsmouth, announced that the 16th Annual Children's Day would be held on Sunday, May 7, 2006. She announced the sponsors for Children's Day: Title Sponsor, Newman Communications, Supporting Sponsors: Bank of America, Flatbread Pizza, G. Willikers, Infinite Imaging, Seacoast Coca Cola and Seacoast Community Church. She also announced that Market Square Day would be held on Saturday, June 10, 2006. She also spoke in support of her request for "Summer in the Street" plan for this summer.

Lisa Sweet urged the City Council to retain the funding for the improvement plan for the Portsmouth Middle School. She said that the study completed by Team Design seemed logical to her. She said that the City Council needs to consider the safety of the building.

Ralph DiBernardo spoke opposed to not allowing for public discussion regarding the Packard Development settlement agreement. He said that the City Council should allow for more public input on this matter before making a decision.

Rick Horowitz expressed concern relative to the increase in the school budget. He said more people do not come before the City Council because they are overwhelmed.

Amelia Jones urged the City Council to take a tour of the Portsmouth Middle School during the day. She said that the building needs renovations or there needs to be a new school built. She spoke opposed to the City Council removing the funding in the Capital Improvement Plan for the Portsmouth Middle School.

Michael Simchik spoke in favor of the Funding for Public Art Ordinance. He said that it would be helpful to the community to adopt this Ordinance. He also advised the City Council that many artists are relocating out of the City due to the high rents.

Ellen Fineberg spoke in support of the Funding for Public Art Ordinance. She spoke to the committee that would be formed to provide input on public art. She advised the City Council that the City is valued for its beauty and urged the City Council to support the Ordinance.

Dana Levenson, Economic Development Commission Chair, said that the Commission is concerned with the continued vitality of the downtown. He spoke in favor of the proposed group licenses for the parking garage. He said that the licenses would support our retail and small businesses. He also spoke in favor of the proposed Tax Increment Financing (TIF) Districts. He said that the TIF concept could be useful with projects.

Eric Spear asked the City Council to reconsider its plan to close the Portsmouth Middle School. He asked that the City Council say we can rather than we cannot. He spoke in favor of the renovation of the Portsmouth Middle School.

Tony Coviello said that the School Board fails to realize that the standards by the State for schools do not address older buildings. He spoke to the renovation of the Portsmouth Middle School and urged the City Council to review all of their options before making a decision.

Roger Goldenberg spoke in support of the Funding for the Public Art Ordinance. He said that the establishment of this type of Ordinance was addressed in the Cultural and Master Plans for the City. He urged the City Council to support the adoption of this Ordinance.

Jim Melfi spoke opposed to the Packard Development settlement agreement. He said that the City Council needs to look at the total sewer issues before acting on this agreement. He said that the Peirce Island facility is at the end of its life. He urged the City Council to allow additional input from the public on this matter before taking action.

Jeffrey Cooper spoke in favor of the Funding for Public Art Ordinance. He said art makes the City beautiful and adds to the quality of life. He said that art expresses the legacy of a community.

Carl Diemer spoke in support of the Capital Improvement Plan funding for the Portsmouth Middle School. He said that the community needs to act as soon as possible on this matter. He advised the City Council that the Committee is reviewing renovation options and will work with the City Council, School Board and public on any suggestions made relative to this issue.

Brad Lown spoke in support of the proposed funding in the Capital Improvement Plan for the Portsmouth Middle School. He urged the City Council to be patient and creative when making a decision on this matter.

Janet Tucker spoke in support of the funding in the Capital Improvement Plan for the Portsmouth Middle School.

Russ Grazier, Portsmouth Music & Arts Center, spoke to his letter requesting that the City allow their organization to undertake a feasibility study of the Lafayette School building. He said that their current location has outgrown its use and urged the City Council to consider their request.

Kent LaPage, School Board Chair, urged the City Council to keep the funding in the Capital Improvement Plan for the Portsmouth Middle School. He recommended the City Council not take action on the Capital Improvement Plan until the joint work session is held with the School Board.

VII. PUBLIC HEARING

- A. RESOLUTION INCREASING THE MAXIMUM INCOME LIMIT FOR INDIVIDUALS QUALIFYING FOR THE ELDERLY REAL ESTATE TAX EXEMPTION TO \$27,000.00 FOR SINGLE AND \$37,000.00 FOR MARRIED

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

City Manager Bohenko advised the City Council that 148 residents receive the exemption, which equates to \$.14 on the tax rate.

After three call and no speakers, Mayor Marchand closed the public hearing.

Mayor Marchand declared a brief recess at 8:40 p.m. The meeting was called back to order at 9:00 p.m.

Assistant Mayor Ferrini moved to suspend the rules in order to take up Item X. C. - Letter from Russ Grazier, Jr., Portsmouth Music & Arts Center, requesting the City Council allow the Portsmouth Music & Arts Center to undertake a feasibility study of the Lafayette School building. Seconded by Councilor Whitehouse and voted.

- C. Letter from Russ Grazier, Jr., Portsmouth Music & Arts Center, requesting the City Council allow the Portsmouth Music & Arts Center to undertake a feasibility study of the Lafayette School building.

Assistant Mayor Ferrini moved to refer to the City Manager for report back. Seconded by Councilor Grasso.

Councilor Grasso said for years she thought that the Lafayette School would be a great location for the arts.

Councilor Dwyer said that several organizations have conducted studies on the Lafayette School and suggested that Mr. Grazier obtain copies of those studies on file with the City as a starting point.

Motion passed.

Assistant Mayor Ferrini moved to suspend the rules in order to take up Item X. A. - Letter from Attorney Sean O'Connell, Shaheen & Gordon, on behalf of the Children's Museum, requesting a one year extension of the lease. Seconded by Councilor Pantelakos and voted.

- A. Letter from Attorney Sean O'Connell, Shaheen & Gordon, on behalf of the Children's Museum, requesting a one year extension of the lease

City Manager Bohenko said that this would allow for a one year extension to the lease. He said that a copy of the existing lease has been provided for the City Council to review.

Councilor Grasso moved to authorize a one year extension of the Children's Museum lease until September 2008. Seconded by Councilor Pantelakos and voted.

Councilor Pantelakos moved to suspend the rules in order to take up Item IX. D. - Letter from George Hosker, Jr. requesting permission to hold a parade on Thursday, May 25, 2006 at 5:45 p.m. to celebrate the early history of Portsmouth in conjunction with the Underbelly Tour. Seconded by Councilor Grasso and voted.

- D. Letter from George Hosker, Jr. requesting permission to hold a parade on Thursday, May 25, 2006 at 5:45 p.m. to celebrate the early history of Portsmouth in conjunction with the Underbelly Tour

Assistant Mayor Ferrini moved to refer to the City Manager with power. Seconded by Councilor Grasso and voted.

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Ordinance amending Chapter 7, Article XVI, Section 7.1602 - Locations - Resident Only Parking by the addition of Pearl Street - Easterly side of Pearl Street, from a point ninety feet (90') north of Islington Street to the corner of Pearl Street and Hanover Street

Councilor Whitehouse moved to pass first reading of amended ordinance, as submitted, and hold a public hearing and second reading at the April 17, 2006 City Council meeting. Seconded by Councilor Hynes and voted.

- B. First reading of Ordinance amending Chapter 7, Article III, Section 7.330 - No Parking sub-section A by the addition of Pearl Street - Westerly side of Pearl Street after 8:00 a.m. and before 5:00 p.m.

Councilor Smith moved to pass first reading of amended ordinance, as submitted, and hold a public hearing and second reading at the April 17, 2006 City Council meeting. Seconded by Councilor Hynes and voted.

- C. First reading of Ordinance amending Chapter 7, Article VI, Section 7.601 - Truck Loading/Unloading by the addition of Pearl Street - Easterly side from a point thirty feet (30') north of Islington Street to a point seventy feet (70') north of Islington Street

Councilor Smith moved to pass first reading of amended ordinance, as submitted, and hold a public hearing and second reading at the April 17, 2006 City Council meeting. Seconded by Councilor Pantelakos and voted.

- D. First reading of Ordinance amending Chapter 7, Article III, Section 7.330 - No Parking sub-section A by the addition of Cottage Street: both sides from Route 1 By-pass
- the southerly side from Route 1 By-Pass easterly three hundred feet (300')
 - the northerly side from Route 1 By-Pass easterly four hundred feet (400')

Councilor Hynes moved to pass first reading of amended ordinance, as submitted, and hold a public hearing and second reading at the May 1, 2006 City Council meeting. Seconded by Councilor Smith and voted.

- E. First reading of Ordinance amending Chapter 7, Article IVA, Section 7.A402 - Bus Stops, Taxicab Stands & Horse Drawn Carriages by the addition of Middle Street - a strip 10 feet adjacent to the sidewalk on the westerly side of said street from the point of intersection of Madison Street and running northerly along Middle Street a distance of 40 feet

Assistant Mayor Ferrini moved to pass first reading of amended ordinance, as submitted, and hold a public hearing and second reading at the May 1, 2006 City Council meeting. Seconded by Councilor Whitehouse and voted.

- F. First reading of Ordinance amending Chapter 3, Article IV, Section 3.404 - Noises Prohibited - Unnecessary Noise Standard by the addition of Item R - Engine Compression Brakes

Councilor Smith moved to pass first reading of amended Ordinance, as submitted, and hold a public hearing and second reading at the May 1, 2006 City Council meeting. Seconded by Councilor Pantelakos.

Councilor Smith advised the City Council that engine compression brakes are commonly known as jake brakes.

Councilor Whitehouse said he hopes that the public is aware of this Ordinance and public hearing.

Councilor Raynolds requested that the Police Department attend the public hearing to discuss enforcement of this proposed Ordinance and whether the State Police would provide enforcement.

Motion passed.

- G. Adoption of Resolution Increasing the Maximum Income Limit for Individuals Qualifying for the Elderly Real Estate Tax Exemption to \$27,000.00 for Single and \$37,000.00 for Married

Councilor Grasso moved to adopt the Resolution amending Elderly Exemption Income Limits as presented. Seconded by Assistant Mayor Ferrini.

City Manager Bohenko advised the City Council that the Disabled Exemption Income Limits should be amended to be consistent with the Elderly Exemption Income Limits.

Councilor Whitehouse moved to amend the Resolution to increase the total asset limit from \$100,000.00 to \$125,000.00. Seconded by Councilor Smith.

City Attorney Sullivan advised the City Council that the asset limits could be amended but a new public hearing would need to be held or the City Council could have a new Resolution drafted and brought back for consideration.

Councilor Whitehouse withdrew his motion and Councilor Smith his second.

City Manager Bohenko said that this item could be reviewed next year. Councilor Whitehouse said he would like this matter brought forward next year for consideration.

Mayor Marchand passed the gavel to Assistant Mayor Ferrini.

Mayor Marchand moved to amend the Resolution to increase the Single Maximum Income Limit to \$30,000.00. Seconded by Councilor Whitehouse.

Mayor Marchand said he has received a number of calls requesting that the single maximum income limit be increased to \$30,000.00. He said that we do not know how much of a difference this amendment could make but he feels it is necessary. He said he understands that this exemption shifts the burden onto other residents.

On a unanimous roll call 9-0, motion passed.

Assistant Mayor Ferrini returned the gavel back to Mayor Marchand.

Main motion passed as amended.

The City Council requested that City Manager Bohenko bring back for first reading at the April 17, 2006 meeting an amendment to the Disabled Exemption Resolution to increase the income limits to \$30,000.00 for single and \$37,000.00 for married.

Councilor Smith suggested that the City Council consider increasing the married income limit next year as well.

- H. Second reading of Ordinance amending Chapter 1, by the creation of Article XVII - Funding of Public Art

Councilor Dwyer moved to continue second reading of the ordinance until the August 7, 2006 City Council meeting. Seconded by Assistant Mayor Ferrini and voted.

- I. Third and final reading of Ordinance amending Chapter 10, Article II, Section 10.202 - Location - Rezoning properties located off Banfield Road and Constitution Avenue from Office Research (OR) to Industrial (I)

Assistant Mayor Ferrini moved to pass third and final reading, as submitted. Seconded by Councilor Grasso and voted.

IX. CONSENT AGENDA

Councilor Whitehouse requested that Item F. - Letter from Barbara Newton, Players' Ring, requesting permission to install a new roof and apply to the New Hampshire State Council on the Arts for a Cultural Conservation Grant and Item L - Letter from Barbara Massar, Pro Portsmouth, requesting the City consider a plan for the closure of Pleasant Street from Porter Street to Market Square to be called "Summer in the Street - presented by Pro Portsmouth" during the summer months be removed from the Consent Agenda.

Councilor Grasso moved to adopt the remainder of the Consent Agenda as presented. Seconded by Councilor Pantelakos and voted. Assistant Mayor Ferrini abstained from voting on Item E.

- A. Acceptance of Donation to the Cemetery Committee
- Richard Hadlock & Stuart Wisong - \$100.00

(Anticipated action – move to approve and accept the donation to the Cemetery Committee as listed)

- B. Renewal Request for Sidewalk Obstruction License from the following business with no changes from last year
- Helen Marks – 1 A-frame sign

(Anticipated action – move to refer to the City Manager with power)

- C. Letter from Matt Lyman, March of Dimes, requesting permission to hold the WalkAmerica event on Saturday, May 6, 2006 ***(Anticipated action – move to refer to the City Manager with power)***

- E. Letter from Dawn Curtis, PNF Realty, Inc. requesting permission to place three dumpsters (two for the State Street Saloon and one for Peter Floros) on Church Street ***(Anticipated action – move to refer to the City Manager with power)***

- G. Request from Ashley & Victoria, LLC to place one A-frame sign in front of their establishment located at 33 Deer Street, Suite 1-A ***(Anticipated action – move to refer to the City Manager with power)***

- H. Request from Ashley & Victoria, LLC to place one A-frame sign in front of their establishment located at 59 Deer Street, Suite 2-B ***(Anticipated action – move to refer to the City Manager with power)***

- I. Request from Maine-ly New Hampshire to place one A-frame sign in front of their establishment located at 33 Deer Street, Suite 5-A ***(Anticipated action – move to refer to the City Manager with power)***

- J. Letter from Corradina Arangio, Attrezzi Fine Kitchen Accessories, requesting permission to close the small 16-car parking lot on the corner of Market and Hanover Streets on Sunday, May 14th between Noon and 6 PM to hold the Downtown Spring Tag Sale Event (with a rain date of May 21st) (**Anticipated action – move to refer to the City Manager with power**)
- K. Letter from Kaarin Olofsson, Greater Portsmouth Chamber of Commerce, requesting permission to prohibit parking on Parrot and Junkins Avenues after business hours close on Friday, July 7, 2006 through Saturday, July 8, 2006 for the 11th annual Harbour Trail 5K Road Race scheduled on Saturday, July 8, 2006 (*Approval for race given by City Council on December 19, 2005*) (**Anticipated action – move to refer to the City Manager with power**)
- F. Letter from Barbara Newton, Players' Ring, requesting permission to install a new roof and apply to the New Hampshire State Council on the Arts for a Cultural Conservation Grant

Councilor Whitehouse said that the roof on the Players' Ring is made of wooden shingles and would like to see that replaced in kind.

Councilor Whitehouse moved to refer to the City Manager with power. Seconded by Councilor Dwyer.

Councilor Grasso advised Councilor Whitehouse that the reason people change to another type of roof is due to the expense.

Assistant Mayor Ferrini asked that City Manager Bohenko use his discretion if we replace the roof on the Players' Ring.

Motion passed.

- L. Letter from Barbara Massar, Pro Portsmouth, requesting the City consider a plan for the closure of Pleasant Street from Porter Street to Market Square to be called "Summer in the Street – presented by Pro Portsmouth" during the summer months

Councilor Whitehouse expressed his concerns regarding amplified music.

Mayor Marchand said the issue of amplified music was addressed by the City Council during their work session on a public performance ordinance.

City Manager Bohenko said that amplified music was allowed last year and he would address any issues that may arise this year.

Assistant Mayor Ferrini moved to refer to the City Manager with power. Seconded by Councilor Pantelakos and voted.

X. PRESENTATION AND CONSIDERATION OF WRITTEN COMMUNICATIONS AND PETITIONS

- B. Letter from Deborah Phillips, The Clip Joint Barber Shop, requesting permission for the placement of one dumpster on Church Street

Councilor Pantelakos moved to refer to the City Manager with power. Seconded by Councilor Smith.

City Manager Bohenko advised the City Council that he would allow the placement of a 2 yard dumpster to be consistent with the other dumpsters in the area.

Motion passed.

- D. Letter from Perry Silverstein, requesting permission for a license for an outswing door onto Commercial Alley

Councilor Pantelakos moved to refer to the Planning Board for report back. Seconded by Assistant Mayor Ferrini and voted.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

- 1. Request to Adopt the Capital Improvement Plan (CIP) 2007-2012

City Manager Bohenko spoke to the public hearing held by the City Council regarding the Capital Improvement Plan. He advised the City Council that this is a plan and during the budget process the City Council can increase or reduce the funding. He also advised the City Council that they could move out projects beyond the years specified in the plan.

Assistant Mayor Ferrini moved the adoption of the FY2007-2012 Capital Improvement Plan as presented at the public hearing on March 20, 2006. Seconded by Councilor Smith.

Councilor Grasso moved to amend Page 63 of the Capital Improvement Plan to move the funding for the Middle School to FY2010 and FY2011. Seconded by Councilor Hynes.

Councilor Grasso said that we need time for the establishment of a Joint Building Committee to decide whether or not we renovate or build a new Middle School.

Councilor Dwyer said that she supports the amendment and would like to link it to the \$30,000,000.00 over a 3-year period. She said we need to do a study on the population for K-8 grades. She also expressed the need to clarify what the feasibility study is.

Councilor Whitehouse said he would like to move the funding further out.

Councilor Pantelakos said that the City Council should wait until the Work Session with the School Board. She expressed her opposition to the motion and said that the Committee should be afforded the ability to present their findings to the City Council.

Assistant Mayor Ferrini said he agrees with Councilor Pantelakos. He said that this is being done in a cavalier fashion. He said that there has been a significant need indicated by the public for a renovation or the new construction of a Middle School. He said that we need to move the matter forward.

Councilor Dwyer spoke to the need to review all of the elementary schools at the same time as the Middle School. She said that we do not have enough information to say we need to start constructing a new school next year.

Councilor Reynolds spoke to the Resolution under his name, which completely removes all funding from the Capital Improvement Plan for the Middle School. He said because of the Capital Improvement Plan it was more prudent to bring the issue up at this point in the agenda. He said he informed the Committee last week that he would bring the Resolution for a vote of the City Council. He said he feels his Resolution has been misinterpreted. He advised the City Council that some feel that the current Middle School is adequate, and that is not the case. He said we need to act to do something sooner than later. He said he would not support the motion by Councilor Grasso to move the funding out to FY2010 and FY2011.

Mayor Marchand passed the gavel to Assistant Mayor Ferrini.

Mayor Marchand advised the City Council it is important to not send a negative message. He said that the Middle School needs significant capital investment relatively soon. There is no practical effect between FY2009 and FY2010. He said he agrees with Councilor Dwyer and the need to review all of the elementary schools at the same time as the Middle School.

Mayor Marchand suggested amending the motion to move the funding to FY2009 and FY2010. Councilor Grasso said that she would accept this as a friendly amendment to her motion. The motion shall now read as follows: Amend Page 63 of the Capital Improvement Plan to move the funding for the Middle School to FY2009 and FY2010.

Councilor Whitehouse spoke to the meeting by the Committee to the School Board, which lasted three hours. He said that the School Board received very detailed information and it is not unusual to move the funding out two years.

Assistant Mayor Ferrini returned the gavel to Mayor Marchand.

Councilor Grasso said she has no problem extending the funding out to FY2009. She said that she cares about kids and has her entire life. She advised the City Council her reason for moving the funding is because of the increase in the water and sewer rate. She spoke to her service on the Joint Building Committee over the last six years. She said it is important that information received by the City Council and School Board is complete and accurate.

Councilor Pantelakos said she would support moving the funding out to FY2009 but the City Council needs to hear the findings of the Committee as soon as possible.

Councilor Smith spoke in support of moving the funding out to FY2009. He said he looks forward to receiving the report from the Committee and said that we need to conduct a study on all of the schools not just the Middle School. He also said it is important to look at the entire picture not just a small section.

Mayor Marchand said that the community cares about the education and needs of our children.

Assistant Mayor Ferrini said that the entire City Council has the best interest of the children in mind.

Amendment to the motion passed.

Councilor Whitehouse moved to suspend the rules in order to continue the meeting beyond 10:00 p.m. Seconded by Councilor Grasso and voted.

Councilor Whitehouse moved to amend the main motion to remove \$50,000.00 from the library furnishings and relocate it to the Peirce Island Master Plan. No second to the motion received.

Main motion passed as amended.

2. Proposed Settlement Re: Olde Port Development Group LLC

City Attorney Sullivan provided a presentation on the Olde Port Development Group LLC Proposed Settlement. In January of 2005 Olde Port Development Group LLC filed a complex lawsuit against the City in Rockingham County Superior Court. The lawsuit concerns the development plans of Olde Port with respect to a 4.2-acre parcel of real estate located at the end of Mill Pond Way on the North Mill Pond. Briefly stated, the suit claims that the City's assertion of certain property rights in unbuilt paper streets and the City's adoption of a 100 foot tidal buffer zone after the plaintiff purchased the property are both unlawful actions by the City. It is claimed that these allegedly unlawful acts by the City had the effect of denying the developer the ability to proceed with a condominium project. The relief which the plaintiff seeks in this lawsuit is monetary in nature. Attorney Paul McEachern on behalf of Steve Kelm, the principal of Olde Port Development Group LLC, advises that the damage claim to be presented in court will seek an amount in the multi-million dollar range from the City. The City disputes the plaintiff's claims.

The factual basis of both the paper street issue and regulatory taking question are subject to differing interpretations. Moreover, the law which would dictate the result generated by those facts is not clearly developed in New Hampshire. Therefore, proceeding with this case through to trial offers significant risk for both parties.

In this situation prudence dictates that settlement of the litigation be explored by both sides. Following that course of action a settlement concept has been reached which the City's Legal and Planning Departments are recommending to the City Council.

The settlement concept is as follows:

1. The City will agree to allow an order to be entered by the Superior Court under which the paper street and buffer zone issues would be resolved by permitting Olde Port the right to construct two residential condominium structures, each containing four dwelling units, and appurtenant structures as shown on a plan, a draft of which is attached hereto.
2. Olde Port will agree on behalf of itself, its successors and assigns that no further buildings will be built on any of the land which is the subject of the litigation.
3. Olde Port will deed to the City for use as a public park a parcel of waterfront land identified as Tax Map 143, Lot 8, also shown on the attached plan.
4. Olde Port will agree to:
 - A. Maintain natural wetland buffer as shown on the settlement plan.
 - B. Not to use fertilizer in the buffer area.
 - C. To implement a landscaping plan as approved by the City's Technical Advisory Committee.
 - D. To implement a lighting plan to avoid light pollution.
5. The parties shall exchange mutual releases suitably drafted to protect each party from any further claims from the other party arising out of the issues in contention in the lawsuit.

Although numerous lesser details will need to be resolved in order to settle the case, the foregoing constitutes the major settlement elements.

If the City Council approves the settlement, then it is requested that the authority be given to the City Manager by motion.

Councilor Pantelakos moved to authorize the City Manager to negotiate, draft and execute settlement documents to implement the proposal presented in the City Manager's report dated March 31, 2006. Seconded by Councilor Smith and voted.

3. Proposed Tax Increment Financing (TIF) Districts

City Manager Bohenko said in accordance with the Economic Development Commission's (EDC) 2006 Action Plan and as a follow-up to discussions on exploring economic development tools available to communities, the EDC has researched the Tax Increment Financing option.

Basically Tax Increment Financing (TIF) is a method of targeting tax revenue to a specified area of the municipality (development district) to finance improvements. The district is usually an area the municipality wishes to develop for economic development reasons such as a downtown in need of revitalization, streetscape improvements, property acquisition, a parking garage or a commercial or industrial park.

The first step required before identifying potential TIF districts and projects in the City is adoption of the TIF legislation. Next a TIF district is established and financing plan is developed. Depending on the plan, tax revenue for assessed value gained above the base year of the district is allocated to the district. The improvements in the district may be made over time as the tax revenues come in or can be financed with bonds with the tax revenue paying the bond debt service (principal and interest). Development districts are dissolved per the initial plan, usually upon completion of an improvement, a set time period or, in the case of bond financed improvements, final payment of the debt.

The state regulation that allows a community to adopt TIF districts is RSA 162-K. The EDC is interested in pursuing potential TIF financing for streetscape and infrastructure improvements associated with the Schultz Brewery, the Islington Street corridor and the possibly the McIntyre Block. **Accordingly, the EDC voted at its March 17th meeting to recommend that the City Council adopt RSA 162-K that, as stated above, is the first step required before identifying potential TIF districts and projects in the City.** The adoption process requires a 7-day notice period prior to a public hearing on the adoption of the RSA chapter. Per RSA 162-K: 4, the vote on adoption of RSA 162-K follows no sooner than 15 days after the public hearing.

Councilor Whitehouse moved to authorize the City Manager to bring back for public hearing a proposed resolution to adopt New Hampshire RSA 162-K authorizing the establishment of one or more Tax Increment Financing Development Districts at the April 17, 2006 City Council meeting. Seconded by Assistant Mayor Ferrini and voted.

4. Proposed Group Licenses for Parking Garage

City Manager Bohenko reported on January 31, 2006, James F. L. Kenny of Wenberry Associates, LLC submitted the attached proposal for discounted parking passes in the High Hanover Parking Garage associated with a lease for property located at 155 Fleet St. (third floor of the former Bottomline Technology office).

In response to the request, City Attorney Sullivan reviewed the City's regulations and advised that, "The City Ordinances at Section 7.402 provide that the City Council may authorize a separate (HHPG parking) rate as it determines for group licenses. A group shall be considered twenty-five (25) spaces or more."

Rather than respond unilaterally to the Wenberry Associates' request, City Manager Bohenko said he asked staff to develop a draft policy that pertains to Section 7.402 of the City Ordinances so that in the future, requests for group licenses are reviewed in accordance with established criteria. At its March 17th meeting, the EDC reviewed the attached draft policy for group licenses in the parking garage and voted to recommend its adoption by the City Council.

The EDC also reviewed the attached request from Wenberry Associates LLC for a 25% discount on parking passes in the High Hanover Parking Garage and recommended that the City Council approve the request based on the following reasons:

- It will facilitate recruitment of the local business Desktop Standard to a downtown property that has been vacant for three years that can accommodate the company's growth.
- There is potential for the relocation of forty, and up to an additional 100 professional technology jobs at Desktop Publishing to the downtown over the next several years with the added benefit of additional patronage of the downtown businesses.

Councilor Raynolds moved to implement the policy as presented and further, in accordance with the policy, approve the Wenberry Associates' request as presented in the City Manager's comments dated March 31, 2006. Seconded by Councilor Pantelakos.

Councilor Dwyer asked that the City Council consider setting a level limit for this garage or any other garage a percentage of open spaces for the general public we want to keep. City Manager Bohenko said that this is a good point made by Councilor Dwyer. He said that we would develop the percentage by working with the Parking Committee.

Councilor Smith said that most of the cars generated from the Hilton Garden Hotel would be utilizing the High Hanover Parking Garage. He said we need to come up with a balance at the Parking Committee. He spoke to the City holding spaces open during events for pass holders that do not utilize those spaces.

Motion passed.

5. Request for Approval of Pole Licenses #63-427 and #63-429

City Manager Bohenko advised the City Council that the Public Works Department have reviewed the requests for pole licenses. He reported that the Public Works Department has determined that the requests do not pose an impact to existing City infrastructure and recommend approval.

Councilor Pantelakos moved to approve the requests from PSNH for pole license agreements, #63-427 and #63-429, as recommended by the Public Works Department. Seconded by Councilor Smith and voted.

6. Proposed Work Session Re: Middle School

City Manager Bohenko requested changing the Work Session with the School Board from April 12, 2006 to April 17, 2006 prior to the City Council meeting. He advised the City Council that originally Matrix Consulting was to provide their report regarding the overtime audit however, the report will not be ready at that time. He suggested rescheduling the Work Session with Matrix Consulting to April 24, 2006.

Councilor Whitehouse expressed concern regarding not having enough time for the Work Session with the School Board prior to the City Council meeting of April 17, 2006. Councilor Grasso echoed the concerns of Councilor Whitehouse.

The City Council agreed to have Mayor Marchand and City Manager Bohenko establish a date for a Work Session with the School Board regarding the Middle School.

Councilor Grasso moved to schedule a Work Session on Monday, April 24, 2006 at 6:30 p.m. in the Council Chambers regarding the Matrix Consulting Overtime Report. Seconded by Councilor Pantelakos and voted.

- City Manager's Informational Item 2006 Construction Projects

Councilor Pantelakos requested that City Manager Bohenko provide the City Council with the cost of providing traffic control for the 24 construction projects.

Councilor Whitehouse asked City Manager Bohenko if the bids for the Newcastle Avenue project have come in. City Manager Bohenko advised the City Council that because we are rebuilding the seawall and plan to reuse the existing stone the cost of the project increased. He reported that the City would take pictures of the seawall as it currently exists for historical purposes and provide a written report to the City Council on this matter.

Councilor Smith requested that the list of 2006 construction projects be placed in the Community Newsletter.

B. MAYOR MARCHAND

1. Appointments

The City Council considered the reappointment of Jeffrey Landry to the Cable Commission. The reappointment of Carl Diemer, Patrick McCartney, and Paul Houlares to the Recreation Board. The appointment of Barbara McMillan as a regular member to the Conservation Commission filling the unexpired term of Donald Green. The appointment of Skye Maher as a regular member to the Conservation Commission filling the expired term of J. Lyn Walters. The reappointment of Eva Powers to the Conservation Commission. The City Council will vote on these appointments at the April 17, 2006 City Council meeting.

Councilor Whitehouse moved to appoint James Horrigan as an alternate to the Conservation Commission until April 1, 2009. Seconded by Councilor Grasso and voted. Mr. Horrigan is filling the expired term of Barbara McMillan.

C. COUNCILOR DWYER

1. Little Harbour Tour

Councilor Dwyer provided a report on the recent tour by the City Council of the Little Harbour Elementary School. She said that the staff has accommodated in many ways to the design challenges posed by a building built around a then-current instructional fad, i.e. open space. She said no one present (principal, maintenance supervisor, PTA parents, school board members) seemed to understand the existence of the Capital Improvement Plan process as the mechanism for accomplishing capital requests. She said that the City Council needs to consider a system-wide facilities manager overseeing all public buildings and being under the direction of the City Manager.

D. COUNCILOR RAYNOLDS

1. Resolution Re: Portsmouth Middle School

Councilor Raynolds advised the City Council that he is not inclined to offer this Resolution this evening.

E. COUNCILOR PANTELAKOS

1. Packard Development

Mayor Marchand suggested tabling this matter until the April 17, 2006 City Council meeting. He said that holding a public hearing on this issue would set a precedent on settlement agreements. He advised the City Council that waiting to take action on this matter until the April 17, 2006 meeting would allow for additional public comment.

Councilor Pantelakos said she has no problem waiting to take action on this matter until the April 17, 2006 meeting. She advised the City Council that she is opposed to conducting a public hearing on this issue.

Mayor Marchand suggested suspending the rules to take action on the Packard Development issue early in the agenda of the April 17, 2006 City Council meeting.

Councilor Pantelakos moved to remove this item from the agenda this evening and place the item on the April 17, 2006 City Council agenda. Seconded by Assistant Mayor Ferrini.

Assistant Mayor Ferrini requested that City Attorney Sullivan provide a comprehensive report on this matter at the April 17, 2006 City Council meeting.

Motion passed.

XIII. ADJOURNMENT

At 11:20 p.m., Councilor Pantelakos moved to adjourn. Seconded and voted.



Kelli L. Barnaby, CMC
City Clerk