

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, OCTOBER 16, 2006

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

At 6:00 p.m., a reception for Raimond Bowles was held in the Portsmouth Room.

I. CALL TO ORDER

Mayor Marchand called the meeting to order at 7:05 p.m.

II. ROLL CALL

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

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

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

PROCLAMATION

1. Raimond Bowles

Councilor Whitehouse read a Proclamation declaring October 16, 2006 as Raimond Bowles Night in the City of Portsmouth to express our gratitude for his many years of public service to the citizens of Portsmouth, the citizens of New Hampshire and the citizens of the United States of America.

Kent LaPage, Chair of the School Board spoke to Mr. Bowles years of service to the School Board and his accomplishments.

Peter Loughlin spoke to Mr. Bowles exceptional character and his many years of service to the City of Portsmouth. He said that Mr. Bowles has truly left his mark on the City and said that the City is better off because of his efforts.

Mayor Marchand presented Mr. Bowles with the Proclamation who accepted it with thanks and appreciation.

MAYOR'S AWARD

1. Peirce Island Wastewater Treatment Plant Employees - Plant of the Year

City Manager Bohenko announced that Peirce Island Wastewater Treatment Plant has been named the NH Plant of the Year. He said that the award is a testament to all employees that work at the plant and spoke to the professionalism of the staff at the plant.

Deputy Public Works Director Allen said he is pleased to be here this evening and spoke to the quality and dedication of the staff. He said that operating a treatment plant is a difficult job with difficult regulatory requirements. He spoke to the benefits the City receives from the professional staff and said he is very proud to work with this group of employees.

Mayor Marchand presented a Mayor's Award to the employees of the Peirce Island Wastewater Treatment Plant for their achievement of being named NH Plant of the Year. Paula Anania accepted the award on behalf of the employees with thanks and appreciation.

PRESENTATIONS

1. Blue Ribbon Committee on Board and Commission Appointment Process Committee Report - Eric Spear

Eric provided the City Council with a brief report on the Committee's accomplishments and their plans for the future. Eric advised the City Council that the Committee was created by Mayor Marchand to increase balance and healthy turn over on the boards and commissions.

2. City Attorney Sullivan Report Re: Eminent Domain/Peirce Island Trust (Middle School Project)

City Attorney Sullivan provided a brief presentation regarding Eminent Domain relative to the Peirce Land Trust (Middle School Project). He spoke to the state statute for the construction of a new school. The School Board selects the site and only the School Board however; the City Council provides the funding. He said that there needs to be a cooperative agreement with the School Board and City Council. City Attorney Sullivan advised the City Council that he attended a recent Joint School Advisory Committee meeting to answer the question if the existing Middle School can expand into the Alumni Field. He said the City owns the field but the City does not own every possible ownership of the field and is subject to restrictions. He said that land was given to the City with the restrictions that it remains as a park. He reported that there is no Peirce Trust, the restrictions are held by the Attorney General as a Charitable Trust. The City owns the field but does not own one piece that would allow it to build on the land. He reported that the City could expand the site by eminent domain and that restrictions would need to be removed from the land. He said that the City would need to pay for that piece of land and the price would be negotiated with the Attorney General's Office. He reported that an outside appraiser would appraise the land and he has been advised by an appraiser that the worse case would be in the range of \$2 million dollars.

Mayor Marchand asked where the money would go if the City was to pay for the land. City Attorney Sullivan reported that the Attorney General would determine that. He said it is possible that the funds could go to the recreational trust that was previously created.

V. PUBLIC COMMENT SESSION

Harold Ecker said that the City should not take the Middle School Alumni Field by eminent domain to expand the existing Middle School.

Attorney Bernie Pelech spoke regarding the zoning ordinance amendment to Uses in Business Districts. He asked the City Council to move slowly on this matter. He said he would like to see the City Council table this ordinance, which is scheduled for third and final reading this evening. He said he feels that this amendment is not necessary at this time.

Peter Rice, Newcastle resident, spoke opposed to the taking of the Peirce Land Trust. He read a letter from his mother Mrs. S.M. Decker, Jr., who's father, Joshua Winslow Peirce, in 1913 conveyed to the City a parcel of land that was part of the Peirce home, located at 16 Court Street. This was a gift of land that he hoped would be preserved as open space. Land to be held in trust with deed restrictions that it is left "forever as a park and for no other purpose." The letter indicated that her father trusted that the City would honor the terms and restrictions of a deed. She indicated that she and other surviving members of the Peirce Family trust that the City will, in turn, perform their duties as public servants in a trustworthy and honorable manner.

Doug Bogen spoke regarding local efforts in global warming and climate changes. He said that there is much at risk from climate disruption. He asked that the Sustainability Committee take action on this and pass a resolution before the end of the year on this issue.

Jim Powers, State Representative, spoke to the climate changes and their effects on the area. He said that we can take steps to make sure a bad situation does not get worse. He spoke in support of Mr. Bogen's request for a resolution.

Jack Kelley spoke regarding the Peirce Trust. He said he spoke with Terry Knowles at the State about the taking of the trust land. He said he was advised that an appraisal would need to take place and then the City would decide if they wanted to purchase the land. He spoke opposed to the taking of the trust. He presented a petition to City Clerk Barnaby for the record with approximately 500 signatures opposed to taking the trust.

Jennifer Hawkins said that she is legally blind and is dependent on public transportation. She spoke to the lack of crosswalks in front of Wal-Mart on Lafayette Road. She said that the trolley does not have a safe place to stop and let passengers off at Wal-Mart. She spoke to a conditional acceptance of a coastal transportation. She advised the City Council that the trolley service needs to be expanded.

Joan Hamblet spoke to the effects of global warming. She said the City needs to do its part and urged them to adopt a resolution regarding this matter as requested by Mr. Bogen.

Neil Depauli spoke concern with global warming and its effect. He said he is pleased with some of the things the City has done in terms of sustainability. He asked that the City create a climate change agreement. He urged the City Council to not delay in taking action regarding global warming.

VI. APPROVAL OF GRANTS AND DONATIONS

- A. Acceptance of Donation of a high capacity water pump to the Portsmouth Fire Department from Insurcomm Construction, Inc. and Servpro of the Seacoast, Inc.

Councilor Grasso moved to approve and accept the donation of a high capacity water pump to the Fire Department. Seconded by Councilor Smith and voted.

VII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Ordinance by the creation of a Chapter 16, Utilities, Article I, Water Ordinance; the Deletion in the entirety of Chapter 11, Article IX, Section 11.9 - Cross Connection Control and Back Flow Prevention, amending Chapter 13, Article VII, Section 13.7 - Water Supply, and amending Chapter 14, Article I, Section 14.103 - Services, Equipment, Facilities for Plumbing

Councilor Smith moved to pass first reading of the amended ordinances, as submitted, and hold a public hearing and second reading at the November 13, 2006 City Council meeting. Seconded by Councilor Whitehouse and voted.

- B. Third and final reading of Ordinance amending Chapter 10, Article II, Section 10-208 (35) - Uses in Business Districts

Councilor Grasso moved to pass third and final reading on a proposed ordinance amendment to Chapter 10, Article II, Section 10-208 (35) - Uses in Business Districts. Seconded by Councilor Pantelakos and voted.

- C. Third and final reading of Ordinance amending Chapter 7, Article III, Section 7.327 - Limited Parking - Two Hours - Islington Street:
- Northerly side from Tanner Street to Parker Street
 - Northerly side from Pearl Street to a point westerly 335'
 - Northerly side from Cabot Street to a point easterly 515'

Councilor Pantelakos moved to pass third and final reading of the amended ordinance, as submitted. Seconded by Councilor Grasso and voted.

- D. Third and final reading of Ordinance amending Chapter 7, Article III, Section 7.325 - Limited Parking - Thirty Minutes - Islington Street
- Northerly side from the corner of Brewster Street easterly 110'
 - Northerly side easterly 70' from Dover Street to a point 82' westerly from Salem Street
 - Northerly side from Pearl Street to Parker Street

Councilor Grasso moved to pass third and final reading of the amended ordinance, as submitted. Seconded by Councilor Dwyer and voted.

- E. Third and final reading of Ordinance amending Chapter 7, Article III, Section 7.330 - No Parking - Adding to the Ordinance (with appropriate deletions):
- Hanover Street (Hanover Street Extension) southerly side from Brewster Street easterly 40'
 - Islington Street: northerly side from the corner of Congress Street/Maplewood Avenue/Middle Street running westerly to the easterly corner of Tanner Street
 - Islington Street: northerly side - easterly from a point 145' from Salem Street to a point 73' westerly of Cabot Street
 - Rock Street: deletion of easterly side from Islington Street to Hanover Street

Councilor Whitehouse moved to pass third and final reading of the amended ordinance, as submitted. Seconded by Councilor Smith and voted.

- F. Third and final reading of Ordinance amending Chapter 7, Article III, Section 7.324 - Limited Parking - One Hour subsection A - deletion of Islington Street: northerly side from the west side of Bridge Street westerly for a distance of 131 feet to the east side of Tanner Street

Councilor Smith moved to pass third and final reading of the amended ordinance, as submitted. Seconded by Councilor Whitehouse and voted.

VIII. CONSENT AGENDA

There are no items under Consent Agenda this evening.

IX. PRESENTATION AND CONSIDERATION OF WRITTEN COMMUNICATIONS AND PETITIONS

- A. Letter from Barbara M. Massar, Executive Director, Pro Portsmouth, Inc. requesting the City's permission to hold the Christmas Tree Lighting Ceremony on Friday, December 1, 2006 at 6:00 p.m. and financial support towards the event

Councilor Whitehouse requested to split the two requests.

Councilor Whitehouse moved to approve the Christmas Tree Lighting Ceremony on Friday, December 1, 2006 at 6:00 p.m. Seconded by Councilor Grasso and voted.

Councilor Whitehouse moved to authorize the expenditure of \$1,000.00 from the contingency fund to Pro Portsmouth, Inc. to assist with costs related to the Christmas Tree Lighting Ceremony. Seconded by Councilor Pantelakos.

Councilor Reynolds moved to suspend the rules in order to allow Executive Director Massar to speak. Seconded by Councilor Whitehouse and voted.

Executive Director Massar said the funds would go towards the production costs for the evening. She advised the City Council that the schools would be part of the entertainment.

Motion passed.

- B. Letter from Asa Magro requesting the consideration of the installation of a flashing yellow light on Middle Street for both directions between Lincoln Avenue and Cabot Street

Councilor Pantelakos moved to refer to the Traffic & Safety Committee. Seconded by Councilor Smith.

Councilor Raynolds spoke in support of referring this matter to the Traffic & Safety Committee. He said he would like to be informed of when the site walk would be conducted. Councilor Smith said that this matter would appear on the next Traffic & Safety Committee agenda and the site walk would be conducted the Tuesday prior to the meeting at 8:00 a.m.

Motion passed.

- C. Letter from Doug Bogen, New Hampshire Program Director, Clean Water Action regarding climate-disruption

Councilor Raynolds moved to refer this letter to the Blue Ribbon Committee on Sustainable Practices for a recommendation. Seconded by Councilor Smith and voted.

X. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

There are no items which require action under the City Manager this evening.

Informational Items

1. 2007 Schedule of City Council Meetings and Work Sessions

City Manager Bohenko advised the City Council that he would like them to adopt the 2007 schedule of City Council meetings and work sessions at the November 13, 2006 City Council meeting.

Councilor Whitehouse reported that the Canvass of the Vote from the Municipal Election needs to be added to the schedule. City Clerk Barnaby said that she would add the Canvass of the Vote to the schedule for adoption.

2. Work Session Agenda Re: Planning Board Land Use Issues

City Manager Bohenko said that the City Council has been provided with a copy of the agenda for the October 23, 2006 Work Session regarding Planning Board Land Use Issues.

B. MAYOR MARCHAND

1. Veterans Day Services - November 11, 2006

Mayor Marchand announced that Veterans Day Services would be held on November 11, 2006 at 10:30 a.m.

2. Appointment to be Considered
 - Paul Harvey - Economic Development Commission

The City Council considered the reappoint of Paul Harvey to the Economic Development Commission. The City Council will vote on this appointment at the November 13, 2006 City Council meeting.

3. Appointments to be Voted
 - Sharon Morrison - Citywide Steering Neighborhood Committee

Councilor Whitehouse moved to appoint Sharon Morrison to the Citywide Steering Neighborhood Committee. Seconded by Councilor Smith and voted.

- William St. Laurent - Citywide Steering Neighborhood Committee

Councilor Smith moved to appoint William St. Laurent to the Citywide Steering Neighborhood Committee. Seconded by Councilor Whitehouse and voted.

4. Resignations
 - Charles Cormier, Conservation Commission

Assistant Mayor Ferrini moved to accept with regret the resignation of Charles Cormier from the Conservation Commission. Seconded by Councilor Grasso and voted.

- Reverend Angelo Pappas, Portsmouth Housing Authority

Councilor Pantelakos moved to accept with regret the resignation of Reverend Angelo Pappas from the Portsmouth Housing Authority. Seconded by Councilor Smith and voted.

C. COUNCILOR PANTELAKOS

1. Funding for Middle School & Eminent Domain (***Tabled from the October 5, 2006 City Council Meeting***)

Councilor Smith moved to remove the item from the table. Seconded by Councilor Grasso and voted.

Motion by Councilor Pantelakos seconded by Councilor Whitehouse before the City Council is as follows: Move that the City Council go on record that they have no intention of taking the Peirce Land for the Middle School.

Councilor Hynes said he would vote against the motion. He said the City Council does not want to commit the City to using eminent domain to take land.

Councilor Whitehouse said that the City Council should take seriously the information provided this evening during the public comment session from Peter Rice and the letter he read from his mother. He requested that the City Council think seriously on this issue before voting on this matter.

Councilor Pantelakos said that the City's reputation is at stake and urged the City Council to take action on this matter this evening to go on record of having no intention of taking the Peirce Land for the Middle School.

Councilor Grasso said that she would not support the motion. She said that she is the Chair of the Joint School Advisory Committee and from the beginning, the Committee has tried to keep an open mind on all issues. She said that we need to assess the Peirce Land and other land. She said that she is in conflict and feels that the Peirce Land should remain as is but the Committee cannot do its job if the motion passes this evening.

Assistant Mayor Ferrini said he echoes Councilor Grasso's remarks. He said that we need to review all issues. He said that he is also in conflict and will review all facts and would vote against the motion.

Councilor Dwyer said that Councilor Grasso stated it extremely well. She said that we are not endorsing using eminent domain to take property but we are saying there is not enough information to make a decision on our options for the Middle School.

Councilor Pantelakos said that the City Council knows that there is not enough land to build a new Middle School on Alumni Field. She said the City Council should lay this matter to rest this evening.

Councilor Whitehouse said that people are concerned with the City taking this land by eminent domain.

Councilor Reynolds said he would like to echo the words of Councilors Grasso, Dwyer and Assistant Mayor Ferrini. He said he feels the motion is premature and an in depth look needs to be taken on the pro's and con's.

Assistant Mayor Ferrini said that Councilor Pantelakos is correct that the current parcel is not large enough to meet the criteria of the State but the State can grant waivers for the expansion of the current facility.

Mayor Marchand said that this is a step in the process. He said all possibilities must be considered. He advised the City Council that the Joint School Advisory Committee will take into account the comments made here by the City Council this evening. He said that the Joint School Advisory Committee needs to review all options and report back to the City Council with their findings.

Councilor Pantelakos said this has been a mute question about the Alumni Field. She said even if a waiver is granted a grade would need to be removed from the Middle School. She said that the City Council needs to remember that we are talking about a piece of land that was trusted to the City.

On a roll call vote 4-5, motion failed to pass. Councilors Pantelakos, Whitehouse, Smith and Hynes voted in favor. Assistant Mayor Ferrini, Councilors Grasso, Dwyer, Reynolds and Mayor Marchand voted opposed.

XI. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Smith announced that the Parking Committee has renewed the snow ban parking program allowing residents to park in the High-Hanover Parking Facility during snow emergencies for \$3.00 with a City-issued coupon.

City Clerk Barnaby announced that absentee ballots are currently available in the City Clerk's Office. City Clerk Barnaby also reviewed the requirements for obtaining absentee ballots.

X. ADJOURNMENT

At 9:05 p.m., Councilor Whitehouse moved to adjourn. Seconded and voted.



Kelli L. Barnaby, CMC
City Clerk