

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, JANUARY 22, 2007

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

At 6:00 p.m., an Anticipated “Non-Meeting” with Counsel was held – RSA 91-A:2 I (c)

I. CALL TO ORDER

Mayor Marchand called the meeting to order at 7:15 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.

PRESENTATION

1. Interim Report from Mayor’s Blue Ribbon Committee on Building Re-use Re: Disposition of the Old Library – Heather Hurtt

Ms. Hurtt reviewed the goals and deliverables of the Committee and outlined those items which have been completed and those that remain in progress. She spoke to the financial overview of annual operating expenses for the old library as well as the restrictions for re-use of the Academy Building. If the building is not used as a library or memorial hall, market-rate terms will likely be required for lease or sale with all proceeds being invested in a Trust for the new public library.

Listening Session Key Take-Aways as follows:

1. The majority of participants came from the non-profit sector;
2. Participants were very open to partnership concepts in order to cover the financial costs of the property (private/public or various non-profits partnering together);
3. The majority of participants felt strongly about keeping the property under city ownership but did not expect the city to take on the entire financial burden (maintenance & capital improvements);
4. Participants expressed strong desire in keeping at least part of the property for some public use

Top Re-Use Concepts:

1. Cross-cultural gateway with multiple uses that complemented each other
 - a) City welcome center w/central ticketing booth for all Portsmouth attractions
 - b) Café
 - c) Historical exhibits on the history of Portsmouth including archival material
 - d) Display of the Old State House with a balcony on the exterior façade
 - e) Performing art space
 - f) Public Rest Rooms and Trolley stop
2. Art Museum
3. Visitor Center
4. Art, Music or Historical Society Archive Library
5. Green Space

Disposition Methods:

1. Lease building and land
2. Ground Lease building
3. Subdivide – lease, sell or combination of both
4. Sell building and land

She advised the City Council that the Building Re-use Committee is recommending that an RFP be issued within the next month to elicit public and private re-uses. Emphasis should be on viable re-uses with solid financial plans and partnerships (non-profits and public/private). In closing, Ms. Hurtt reported that the Building Re-Use Committee will be conducting the following Listening Sessions: February 6, 2007 Re: Lafayette School; March 6, 2007 Re: Rock Street Garage, Plains School; and March 20, 2007 Re: South Meeting House. All these sessions will be held at the new library in the Levenson Room at 7:00 p.m.

Councilor Dwyer moved to suspend the rules in order to take up Item X. C.1. - Action on Old Library Building Re-use. Seconded by Assistant Mayor Ferrini and voted.

C. COUNCILOR DWYER

1. Action on Old Library Building Re-Use

Councilor Dwyer moved to authorize the City Manager to issue an RFP that would look for public and private re-uses of the old library and to accept the Interim Report dated January 22, 2007 from the Mayor's Blue Ribbon Committee on Building Re-use. Seconded by Councilor Grasso.

Councilor Whitehouse complimented Ms. Hurtt on serving as Chair of the Committee and the work that has been done to this point. He suggested stipulating in the RFP that a certain amount of money be spent on capital improvements to the building. City Manager Bohenko reported that a plan would need to be outlined in the proposal and include capital improvements and the financial means for the project.

Councilor Reynolds said he would like to see architectural ideas to replace the 1970's building as part of the RFP. City Manager Bohenko said that we want to keep the RFP broad to allow individuals to use their imagination and ingenuity.

Councilor Dwyer spoke to the deed restrictions to the Academy Building and Benedict House and that it does not apply to the 1970's piece.

Motion passed.

V. ACCEPTANCE OF MINUTES – JANUARY 8, 2007

Councilor Pantelakos moved to approve and accept the minutes of the January 8, 2007 City Council meeting. Seconded by Councilor Smith.

Councilor Whitehouse requested that his comments expressing concern relative to the large amount of paper work contained in the packet, specifically the report back regarding bicycle friendly communities be added to the minutes under Miscellaneous/Unfinished Business. Motion passed with Councilor Whitehouse's comments being noted as part of the January 8, 2007 minutes.

VI. PUBLIC COMMENT SESSION

Peter Bresciano spoke regarding the proposed rezoning for Smutty Nose Brewery on Lafayette Road. He spoke to the issues that the residents of the Lafayette Road area have had to deal with over the years and urged the City Council to consider the concerns of the residents. Mr. Bresciano advised the City Council that the zoning was put in place to keep the residents buffered from commercial uses and if they can't locate their business at the location with the present zoning they should have to go through the Zoning Board of Adjustment for a variance.

Elisa Loeser & Kristin Scott, Portsmouth High School, requested that the City Council approve their request for Student Government Day to be held on April 11, 2007. They discussed their experiences in participating in previous Student Government Day and the knowledge they took away with them.

Assistant Mayor Ferrini moved to suspend the rules in order to take up Item VIII. H. under the Consent Agenda – Letter from Elisa Loeser, Student Council President and Mary Carey Foley, Student Council Adviser, requesting permission to hold Student Government Day 2007 on Wednesday, April 11, 2007. Seconded by Councilor Pantelakos and voted.

- VIII. H. Letter from Elisa Loeser, Student Council President and Mary Carey Foley, Student Council Adviser, requesting permission to hold Student Government Day 2007 on Wednesday, April 11, 2007

Councilor Grasso moved to refer to the City Manager with power and accept the letter as submitted. Seconded by Councilor Pantelakos and voted.

VII. APPROVAL OF GRANTS AND DONATIONS

- A. Acceptance of Grant for the Cities Readiness Initiatives in the amount of \$4,093.00

Councilor Pantelakos moved to authorize the City Manager to accept and expend these funds from the New Hampshire Department of Health and Human Services for the purpose of operationalizing our POD Clinic. Seconded by Councilor Whitehouse and voted.

VIII. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Acceptance of Donations to the Coalition Legal Fund
- Town of New Castle - \$500.00
 - Town of Hampton Falls - \$1,000.00
 - Town of Lincoln - \$1,000.00
 - Town of Moultonborough - \$1,000.00
 - Town of Newington - \$1,000.00

(Anticipated action – move to approve and accept the donations as listed, to be placed in the Coalition Legal Fund)

- B. Acceptance of Donations to the New Library Building Fund
- Jill H. Breneman - \$50.00
 - PM Campbell - \$100.00
 - O. L. & Sharon S. Thagard - \$100.00
 - Roberta O. & Barry P. Finkelstein - \$100.00
 - Anne Rouse & Matthew P. Sudduth - \$250.00

(Anticipated action – move to approve and accept the donations to the New Library Building Fund as listed)

- C. Letter from Donald Allison, Eastern States 20 Mile, requesting permission to hold the Eastern States 20 Mile Road Race on Sunday, March 25, 2007 ***(Anticipated action – move to refer to the City Manager with power)***
- D. Letter from Christopher Courage, American Lung Association, requesting permission to hold the 22nd annual Clean Air Challenge Seacoast Bike Tour on May 19, 2007 and May 20, 2007 ***(Anticipated action – move to refer to the City Manager with power)***
- E. Letter from Emily Yadati, American Diabetes Association, requesting permission to hold the America's Walk for Diabetes on Saturday, September 29, 2007 ***(Anticipated action – move to refer to the City Manager with power)***

- F. Letter from Kaarin Olofsson, Greater Portsmouth Chamber of Commerce, requesting permission to hold the 12th annual Harbour Trail Road Race on Saturday, July 14, 2007 (***Anticipated action – move to refer to the City Manager with power***)
- G. Letter from Allyson Welsh, Cystic Fibrosis Foundation, requesting permission to hold the 2007 Seacoast Safari for CF on Saturday, July 21, 2007 (***Anticipated action – move to refer to the City Manager with power***)
- H. Letter from Elisa Loeser, Student Council President and Mary Carey Foley, Student Council Adviser, requesting permission to hold Student Government Day 2007 on Wednesday, April 11, 2007 (***Anticipated action – move to refer to the City Manager with power***)

Councilor Pantelakos moved to adopt the Consent Agenda as presented. Seconded by Councilor Grasso and voted.

IX. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Deborah Childs, John Paul Jones House Museum, requesting permission for the Portsmouth Historical Society to borrow the A View of Portsmouth, NH from Freeman's Point painting from the Council Chambers for an exhibit being held June 1, 2007 through October 31, 2007

City Manager Bohenko recommended that the City Council refer this matter to him for report back. He said that it is a very valuable painting and the request needs to be reviewed.

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

Councilor Whitehouse expressed concerns relative to insuring the painting completely.

Councilor Dwyer said that the letter indicates a need for restoring the painting and advised City Manager Bohenko that the Moose Plate Grant may be available by the State for this purpose.

Councilor Grasso expressed concerns regarding the transportation of the painting.

Motion passed.

- B. Request from Farah's Special Occasion to place one A-frame sign in front of building located at 110 Fleet Street

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

Councilor Grasso said that she was interested in the comments at the last Planning Board meeting that the sidewalks are shrinking and A-frames are of a concern.

City Manager Bohenko advised the City Council that the Zoning Officer reviews all requests and that some requests have been asked to be withdrawn because of issues. He reported to the City Council that he feels the current system is working and if there are any particular signs that are of a concern to the Council they can be reviewed.

Councilor Reynolds expressed concern with the number of A-frame signs and the sidewalks becoming crowded. He spoke to the Historic District Commission regulations relative to signs and that he would like to raise the issue.

Councilor Dwyer spoke regarding the Planning Board's meeting and their discussions regarding A-frames on the sidewalks and whether the sidewalks should be widen. She said that the policy of A-frames on the sidewalks needs to be reviewed.

Councilor Whitehouse said that he is in favor of continuing the practice of A-frames in the future.

Councilor Smith said that he has an A-frame sign for his business and spoke to the amazing job that the Zoning Officer does in the review of signs and their placement on the sidewalks.

Motion passed.

X. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

City Manager's Items Which Require Action

1. Planning Board Report Back on the Request of The Housing Partnership for an Access Easement on Bedford Way

City Manager Bohenko reported that Attorney Sharon Somers on behalf of The Housing Partnership has advised him that The Housing Partnership has not yet reached agreement with the Portsmouth Housing Authority. Therefore, The Housing Partnership is unable to satisfy stipulation number one. For this reason, The Housing Partnership is not in a position to negotiate the Bedford Way easement at the present time.

Councilor Pantelakos moved to postpone action on the Bedford Way easement until such time as The Housing Partnership has requested that the City Manager place the easement back before the City Council. Seconded by Councilor Grasso and voted.

2. Staff Recommendation and Report Back on Letter from Temple Israel

Deputy City Manager Hayden provided a report back on the request of Temple Israel to waiver a portion of their building permit fee. She advised the City Council that various staff members reviewed the request and developed criteria for the adoption of the City Council for dealing with these types of requests.

Staff Recommendation as follows:

- *In that Portsmouth's historic buildings and streetscapes are key to the City's economic vitality and unique character, a public benefit accrues when improvements are made to the facades of buildings that a) enhance and preserve the City's historic character and are located within the City's Historic District; and b) have demonstrated that they provide a public benefit to the extent that the religious, charitable or educational organizations that own those buildings are exempt from local property taxes on those buildings because of the public benefit they provide; and*
- *The portion of building permit fees to be waived should be rationally related to the dollar value of the proposed (exterior) façade improvements; and*
- *Building permit applicants that meet the above criteria and wish to have a portion of their building permit fees waived, should make a request in writing to the City Council, which specifies a) the amount of public benefit provided, which would be the dollar value of proposed façade improvements; b) the location of their project within the Historic District; and c) documentation of their local property tax exemption status as determined by the City Assessor*
- *Each request to waive a portion of the building permit fee should be reviewed and considered for approval by the City Council on a case by case basis, after referral to City staff for a recommendation and report back*

Deputy City Manager Hayden advised the City Council in the case of Temple Israel, once they submit building plans to the Inspection Department; staff will be able to use the above criteria, to calculate the amount of their building permit fee that would be waived under this policy.

Councilor Whitehouse moved to adopt the recommendation by City staff. Seconded by Councilor Smith.

Councilor Pantelakos spoke regarding the dollar value of the proposed (exterior) façade improvements. Deputy City Manager said it would be proportionate to the value of exterior improvements.

Motion passed.

3. Report Back Re: Proposed Zoning Amendment Regulating Formula Businesses with the Historic District

City Manager Bohenko said that the proposed ordinance was referred to the Planning Board for report back at the December 4, 2006 City Council meeting. He spoke to the memorandum from Planning Director Holden with the recommendations of the Planning Board.

Planning Board Recommendations:

- 1) That the Council should not enact the proposed Ordinance in its present form;
- 2) That the Board sees merit in further consideration of this matter and, perhaps, with more refinement, portions should be considered for inclusion within the Historic District Ordinance; and,
- 3) That this matter will be reconsidered as the Planning Board continues the re-writing of the Zoning Ordinance

City Manager Bohenko said the City Council has three options available to them this evening:

- 1) Accept the report of the Planning Board
- 2) Schedule first reading of the Formula Business Ordinance; or
- 3) Vote to table indefinitely

Councilor Dwyer moved to table indefinitely and accept the report from the Planning Board. Seconded by Councilor Hynes.

Councilor Smith said he would vote against this matter but he would like work to continue with the Planning Board on this process. He said tabling the matter indefinitely would kill it and go against the master plan. He spoke to the master plan reference to supporting independent small businesses, helping small businesses to grow and becoming incubators.

Councilor Dwyer said that she is in favor of the items as outlined by Councilor Smith. She said the ordinance does not provide incentives for small businesses. She said that the aesthetic aspects can be handled through the Historic District Commission.

Assistant Mayor Ferrini said he co-sponsored the ordinance with Councilor Smith and that it was useful to get input from the Planning Board on this matter. He said that the ordinance zeros in on signage and the illumination of signs. He said he would like further refinement of the ordinance with respect to addressing specific issues of emblems, signage and lighting as they fit within the character of the downtown.

Assistant Mayor Ferrini moved to amend the motion not to table indefinitely but to refer back to the Planning Board for refinement with respect for how they would address specific issues of emblems, signage and lighting as they fit within the character of the downtown. Seconded by Councilor Smith.

Councilor Whitehouse expressed concerns regarding Item 3, Section 10-1302 (b) The formula business will be compatible with existing surrounding uses and will be operated in a non-obtrusive manner to preserve the Historic District's character and Ordinance and (d) the formula business will contribute to a diverse and appropriate blend of businesses in the Historic District; will complement those businesses already in the Historic District; and will help to promote and foster the local economic base as a whole. Assistant Mayor Ferrini said that those items are goals for consideration and if this was to go back to the Planning Board for report back those items would not be included.

Mayor Marchand said he would recommend sending this back to the Planning Board to look at the signage component.

Amendment to the motion passed.

Councilor Smith said that the signage would be one portion of the ordinance and other parts could come out of it.

Main motion passed as amended.

Councilor Dwyer said she would like to speak to the master plan items Councilor Smith referenced such as supporting independent small businesses, helping small businesses to grow and becoming incubators. She advised the City Council that she believes that these are all worthy goals and for another committee to deal with. She said it is hard to get through Planning and feels that they belong with the Economic Development Commission. Councilor Smith said he agrees with Councilor Dwyer and feels it is a two prong approach with the Planning Board and Economic Development Commission.

4. Maxam Property Easement

City Manager Bohenko said the City acquired the Maxam Property in December of 2005 which made up of three parcels of land off of Coach Road in the southernmost part of the City. The City expended \$25,000.00 from its conservation fund, the NH Coastal Program provided \$45,000.00 for the purchase of this property through its Coastal Grants program and the Seacoast Land Trust provided the final \$5,000.00 for the total purchase price of \$75,000.00.

He referred to the attached copy of the Conservation Easement, which if authorized by the City Council will be granted to the Southeast Land Trust of New Hampshire (The name of the newly combined Seacoast Land Trust and the Rockingham Land Trust) to ensure the property is held in conservation in perpetuity. Also, attached is a copy of an aerial map showing the location of the property.

Councilor Grasso moved to refer this matter to the Planning Board to provide a report back to the City Council approving the acquisition of this parcel and execution of the Conservation Easement Deed. Seconded by Councilor Pantelakos and voted.

5. Request to Renew Lease of Seacoast Area Lodge No. 2303 Order Sons of Italy in America

City Manager Bohenko advised the City Council that this is a one-year extension request to the lease. He reported that the Building Re-Use Committee is reviewing this property but it is not at the top of their priority list.

Councilor Pantelakos moved to authorize the City Manager to extend the Lease with the Seacoast Area Lodge No. 2303 Order Sons of Italy in America for the property known as the Plains School House at One Plains Avenue, for a period of April 1, 2007 through March 31, 2008. Seconded by Councilor Whitehouse.

Councilor Dwyer said that she understood that the lessor would be responsible for repairs and maintenance to the building. City Attorney Sullivan said that is correct. Councilor Dwyer expressed concerns regarding the language contained in the lease which indicates that the lessor maintains its own equipment in good, sanitary and neat order, condition and repair. It also states that the lessor shall not be obligated to make any repairs, replacements or renewals to the interior of the leased premises which confuses her. City Attorney Sullivan said he believes it is a distinction between the building and the personal property inside of the building. Councilor Dwyer asked where in the lease does it say for the \$1.00 per year you are to keep up the building. Councilor Dwyer said that she believes that it is an understanding for this building but wants to ensure that and she knows that the building is in excellent condition.

City Manager Bohenko said that we are partners with the Lessor and work with them. City Manager Bohenko said any improvements that are needed to the building the lessor comes to the City and we work with them on their needs and permits required. City Attorney Sullivan said perhaps we should improve the form of the document and improvements will be made.

Motion passed.

Councilor Grasso commended City Manager Bohenko and City staff on the demolition of the water tower on Islington Street. She said that process was amazing and said that it was well done by the City and staff.

6. Update on Elderly and Disabled Persons Exemptions

City Manager Bohenko said that this is an updated on elderly and disabled persons exemptions. As you recall, the City Council requested that staff come back on an annual basis and review these resolutions. He advised the City Council that the suggestion would be to adjust these exemptions by 2% including asset limitations, which is the annual inflation rate from November 2005 through November 2006.

Councilor Whitehouse moved to authorize the City Manager to bring back for first reading at the February 12, 2007 City Council meeting the resolutions as presented. Seconded by Assistant Mayor Ferrini.

Councilor Whitehouse indicated that first reading would take place on February 12, 2007 with a public hearing and adoption at the March 5, 2007 City Council meeting.

Motion passed.

7. Request to Dispose of Surplus Vehicles and Other Equipment

City Manager Bohenko advised the City Council that we currently have five (5) surplus vehicles for disposal. Also recommended is the disposal of a 1983 boat and boat trailer. In the past, we have sold the surplus vehicles and other equipment through a sealed bid process to the highest bidder. According to City Ordinance, Section 1.505, property valued at \$500.00 or more must receive approval from the City Council prior to bidding.

Councilor Smith moved to authorize the City Manager to dispose of surplus vehicles and other equipment by the sealed bid process. Seconded by Councilor Pantelakos.

Councilor Raynolds suggested widening the range of bidders and listing the items on EBay. City Manager Bohenko advised Councilor Raynolds that our ordinance requires a sealed bid process and EBay would not allow for that and the ordinance would need to be amended. He also indicated that the staff time and costs related to this needs to be considered. City Manager Bohenko also spoke to the importance of ensuring that everything is done fairly and equitably.

Motion passed.

8. Request to Bring Back for First Reading Proposed Ordinance Amendments to Chapter 7

City Manager Bohenko advised the City Council that these amendments are housekeeping issues to the ordinances and that there were several items that were not done through the omnibus amendments and they are being brought forward at this time. He recommended bringing them back for first reading at the February 12, 2007 City Council meeting.

Councilor Smith moved to authorize the City Manager to bring back for first reading at the February 12, 2007 City Council meeting the ordinance amendments as submitted. Seconded by Councilor Pantelakos and voted.

B. MAYOR MARCHAND

1. Request for Memorial Tree

Mayor Marchand passed the gavel to Assistant Mayor Ferrini.

Mayor Marchand said that this is a request from Lenore Weiss Bronson for the planting of a tree in a municipal park as a celebration in honor of Thomas Fogarty's life and as an enduring gesture of respect to his family.

Mayor Marchand moved to authorize the Trees and Greenery Committee to select the appropriate tree species and location for the planting of a tree. Seconded by Councilor Pantelakos and voted.

Assistant Mayor Ferrini returned the gavel to Mayor Marchand.

2. Appointments to be Considered:
 - Appointment of Elizabeth A. Shepard-Rabadam – Citywide Neighborhood Association
 - Appointment of Sandra Dika – Historic District Commission from Alternate to Regular Member

The City Council considered the appointment of Elizabeth A. Shepard-Rabadam to the Citywide Neighborhood Association and the appointment of Sandra Dika to the Historic District Commission from an alternate to a regular member. The City Council will vote on these appointments at the February 12, 2007 City Council meeting.

3. Appointments to be Voted:
 - Appointment of John R. Howe – Traffic & Safety Committee

Councilor Smith moved to appoint John R. Howe to the Traffic & Safety Committee filling the unexpired term of Herbert Bunnell until January 1, 2008. Seconded by Councilor Pantelakos and voted.

- Appointment of Richard G. Adams – Alternate to Conservation Commission

Councilor Grasso moved to appoint Richard G. Adams as an alternate to the Conservation Commission filling the unexpired term of James Horrigan until April 1, 2009. Seconded by Councilor Pantelakos and voted.

- Appointment of Richard Smith – Peirce Island Committee

Councilor Whitehouse moved to appoint Richard Smith to the Peirce Island Committee. Seconded by Councilor Pantelakos and voted.

D. COUNCILOR SMITH

1. Traffic & Safety Committee Action Sheet and Minutes of the January 11, 2007 meeting

Councilor Smith moved to approve and accept the action sheet and minutes of the January 11, 2007 Traffic & Safety Committee meeting. Seconded by Assistant Mayor Ferrini and voted.

2. Parking Committee Action Sheet and Minutes of the January 11, 2007 meeting

Councilor Smith moved to approve and accept the action sheet and minutes of the January 11, 2007 Parking Committee meeting. Seconded by Councilor Hynes and voted.

XI. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Pantelakos thanked City Manager Bohenko as a member of the Board of Directors of the PDA for bringing forth an ordinance regarding the noise issues at the Tradeport.

Councilor Dwyer announced that the January 24, 2007 Joint School Advisory Committee meeting will be televised with a presentation from Team Design at 7:00 p.m. She said that it would be important for the City Council to encourage the School Board to hold a public hearing on sites and site selections for the Middle School.

Councilor Grasso said once the School Board makes a recommendation to the state the Committee would have a public hearing on the sites and there will be ample time for people to come forward and express their concerns. She said that the Joint School Advisory Committee was created to gather facts.

Councilor Whitehouse asked if the January 24, 2007 meeting of the Joint School Advisory Committee is a public hearing or is it public informational. Councilor Grasso advised Councilor Whitehouse that it is public informational and there will be no public comment. She also said that public comment would be allowed at the February 7, 2007 meeting.

Mayor Marchand said he would write a letter encouraging the School Board to hold a public hearing on the sites and site selections for the Middle School. Councilor Grasso said that a letter is not necessary because the School Board will hold a public hearing. Mayor Marchand said at what ever date the Joint School Advisory Committee makes a recommendation it is not made to the City Council directly it is a recommendation to the School Board which is covered by law.

XII. ADJOURNMENT

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



Kelli L. Barnaby, CMC
City Clerk