

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, MAY 21, 2007

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

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, 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 Smith led in the Pledge of Allegiance to the Flag.

V. ACCEPTANCE OF MINUTES – MAY 7, 2007

Councilor Smith moved to approve and accept the minutes of the May 7, 2007 City Council meeting. Seconded by Councilor Pantelakos and voted.

VI. PUBLIC COMMENT SESSION

Harold Ecker spoke regarding the possible relocation of the middle school to the Jones Avenue site. He said that tours should be held at the middle school for people to look at the rooms and review the building. Mr. Ecker advised the City Council if the existing middle school is renovated the Inspection Department should conduct a thorough review of the building and its renovations.

Dave Gross spoke concern regarding the redevelopment of the Paul A. Doble Reserve Center. If housing is decided to be the form of re-use for the property, he urged the City Council to make it owner occupied.

Mark Mattson spoke in favor of Municipal re-use for the Paul A. Doble Reserve Center. He said that the re-use is a quality of life issue for the neighborhood. Mr. Mattson asked the City Council to range the uses in order of low to high noise and low to high activity when making a decision.

Ken Burns informed the City Council that his property abuts the Paul A. Doble Reserve Center. His first choice for re-use of the property would be Municipal. Mr. Burns advised the City Council that he is not in favor of a housing element for the re-use of the property.

Alec McEachern said he favors a Municipal re-use of the Paul A. Doble Reserve Center. However, if the property is to be re-used for housing, it should be owner occupied.

Adam Hegi said that the Cottage Street neighborhood abuts a high traffic area and spoke in favor of a Municipal re-use of the Paul A. Doble Reserve Center site. He also suggested the City Council consider the creation of a park at the location. He provided City Clerk Barnaby with a petition containing 53 signatures in favor of a Municipal re-use for the property and not a housing element.

Mark Ayotte informed the City Council that his property abuts the Paul A. Doble Reserve Center and that he favors a Municipal re-use of the site. He advised the City Council to consider the significant changes the neighborhood will be facing in the future, such as the renovation of the Meadowbrook motel and the traffic circle reconfiguration.

David Randall informed the City Council that his property abuts the Paul A. Doble Reserve Center and he would favor a Municipal re-use of the site. He said it would be a shame for the City Council to allow any other use.

VII. PUBLIC HEARINGS

- A. ORDINANCE AMENDING CHAPTER 1, ARTICLE IX, SECTION 1.901 – CONFLICT OF INTEREST BY THE AMENDMENT TO MANDATORY FINANCIAL DISCLOSURE IN ARTICLE IX, AND THE ADDITION OF A NEW SECTION 1.902 – ELECTION CANDIDATE FINANCIAL DISCLOSURE

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

City Attorney Sullivan reported at the request of the City Council he took the existing conflict of interest ordinance and created a new section dealing with this matter. He explained how the ordinance would work and the reporting requirements of candidates to the City Clerk. City Attorney Sullivan advised the City Council that the reports would be open to the public for review.

Harold Ecker, Portsmouth resident, said he has been a candidate for City Council in the past and asked if he was to use his own funds would he need to file a report with the City Clerk. City Attorney Sullivan advised Mr. Ecker that he would not have to file a report with the City Clerk if he was using his own funds.

After three calls and no further speakers, Mayor Marchand declared the public hearing closed.

B. ORDINANCE AMENDING CHAPTER 10, ARTICLE I, SECTION 10-102 DEFINITIONS BY THE ADDITION OF LIGHT INDUSTRY AND ARTICLE XV, SECTION 10-1508 – ESTABLISHING A PROCESS BY WHICH TO CONSIDER A NON-RESIDENTIAL PLANNED UNIT DEVELOPMENT TYPE USE WITHIN AN OFFICE RESEARCH ZONING DISTRICT

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

City Manager Bohenko requested that Planning Director Holden provide the history on this proposed ordinance.

Planning Director Holden provided an overview of the ordinance and advised the City Council that on October 21, 2004 the Planning Board provided a report back to the City Council and recommended that various proposed zoning amendments, including one for the US Route 1 Office Research district, should only be considered within the framework of preparing a new Master Plan. He reported in March 2005, the Planning Board adopted a new City of Portsmouth Master Plan, which identifies issues with the Office Research zone. On March 15, 2007 a public hearing was convened by the Planning Board to consider the proposed zoning amendment and the Board acted favorably by recommending the Council's adoption of the proposed amendments. In making this recommendation, the Board acknowledged the following points.

1. Proposed amendments are in accord with the City's Master Plan;
2. Amendments provide for increased buffering between nonresidential and residential uses;
3. Increases protection for residential districts by encouraging campus style and low impact development practices on larger Office Research (OR) zoned land parcels; including:
 - Placing structures closer to property boundary lines than is allowed today;
 - Requiring the placement of parking lots and loading berths to the rear of the lot;
4. Encourages the mixing of compatible uses and prohibits certain uses, such as, outdoor entertainment; and,
5. Planning Board is provided with considerable flexibility

Planning Director Holden advised the City Council of the following:

- The proposed amendment is narrower in scope as it applies only to parcels in OR districts abutting Industrial districts (i.e., it does not apply to land in Industrial districts abutting OR districts, as in the original proposal).
- A new use category and definition is established for "light industry" which includes performance standards and specifically excludes all high hazard uses as defined in the Building Code. This allows for a differentiation between light and general industrial uses that does not exist in the current Ordinance.
- Under the revised proposal, the only industrial uses that would be permitted in the OR district are "light industry," food processing and beverage manufacturing.

- Production limits are proposed for beverage manufacturing as acknowledgement that production facilities of a defined capacity are appropriate in this setting.
- The application for a conditional use permit must include a traffic impact mitigation plan in order to ensure that impacts on surrounding areas, particularly residential neighborhoods, are minimized.

Planning Director Holden reviewed various sections of the ordinance and spoke specifically to Item J entitled Planning Board Action and outlined the following:

1. The Planning Board may be flexible when considering a project under this Section, and shall evaluate the project with the requirements of this Section
2. The Planning Board may, at its discretion, approve or deny the request for a PUD-NR. Nothing contained herein shall compel the Planning Board to approve a PUD.
3. Preliminary Approval by the Planning Board shall be subject to Site Plan Review under the City's Site Review Regulations, and to review as to content and form by the City's Legal Department of any restrictive covenants, cooperative agreements or similar instruments requiring the participation of the City. As appropriate to verify compliance with this Section, the Legal Department may review appropriate condominium or cooperative agreements that are enacted as part of a project.
4. The Planning Board may require surety to ensure performance of any requirement of this section or the conditional use permit.

Peter Egelston owner of Smuttynose Brewing Company, spoke in favor of the proposed Planned Unit Development ordinance. He advised the City Council that he was not here this evening to discuss his own project, unless members of the City Council have specific questions about it, or unless he needs to clarify matters of fact that may arise during the course of this hearing. He addressed some of the goals of the Master Plan which include:

- Improving the look and function of the City's primary transportation corridors. This is listed as a "priority" for action in the Master Plan.
- Promoting high-quality, mixed used developments along those corridors.
- Encouraging sustainable development.
- Finding ways to make the rest of Portsmouth as special as its downtown.
- Encouraging the economic vitality of the city's neighborhoods.
- Developing better transportation modes, including pedestrian and bicycle access.

Mr. Egelston said that the Planning Board has a tremendous amount of authority in shaping any Planned Unit Development proposed. He said that this ordinance has been wrongly described as a rezoning of the Office Research district. The OR district would remain intact, serving its buffering function as intended, a PUD would exist as an overlay in the OR district by virtue of a special use permit, which the Planning Board has the right to issue or deny, based on the merits of any given proposal. Mr. Egelston informed the City Council and residents that if there are concerns surrounding his specific proposal, he is eager to work to resolve any issues. He said concerns regarding traffic, safety, noise and odors can all be addressed.

Mark Allison, Portsmouth resident, submitted a petition to City Clerk Barnaby containing 213 signatures opposed to the adoption of this ordinance. He expressed his opposition with proposed "light industry" for the area and that Office Research does not work in the area of the Lafayette Road. Mr. Allison said that the neighborhood realizes that something will go into this lot however, it must be appropriate to the neighborhood and the residents. He also addressed the issues relating to traffic and its impact on the neighborhood.

Bob Reynolds, Portsmouth resident, spoke to the area and the removal of trees from the parcel several years ago. He said that the neighborhood was advised that the City would protect the area and he does not feel that this proposed zoning is appropriate for the area. He also addressed the impact of traffic on the neighborhood.

Byron Robyn, Portsmouth resident, spoke in support of the ordinance.

Kathleen Hersey, Portsmouth resident, spoke opposed to the proposed zoning ordinance amendment. She advised the City Council that "light industry" does not belong next to a residential neighborhood. She said the proposed zoning amendment would create more traffic; the neighborhood would need to contend with smells, and property values will decrease.

Tim Ellis, Portsmouth resident, spoke against the ordinance. He reviewed what could be put at the site at this time. He asked what the City Council would do if issues developed from the proposed development. Mr. Ellis spoke to the existing industrial park, the availability of space, and suggested that the brewery relocate there were it would not impact neighborhoods. He requested that the City Council consider the impact on the quality of life of the neighborhood if this zoning amendment was adopted.

Elizabeth Staulcup, Portsmouth resident, said if the proposed ordinance was adopted and the development was to take place it would decrease her property value. She spoke to a letter from John Rice of Tate & Foss regarding the proposed development and its potential impact on her property. She said that the City Council should consider rezoning the properties on the other side of Lafayette Road. Ms. Staulcup said that the residents feel as though their thoughts and concerns don't matter. She said that she does not believe that a brewery would be a transitional use and that the proposed development would not be low impact on the neighborhood. Ms. Staulcup asked how a project is deemed suitable. She advised the City Council that the property should be used for recreational fields. She also asked if a traffic study has been completed to see how it would impact the area.

Tom Grasso, Portsmouth resident, spoke against the ordinance. He advised the City Council that during the public hearing on this matter at the Planning Board the majority of the people that spoke, were against the ordinance but the Planning Board voted to approve the ordinance and refer the matter to the City Council for consideration.

Elizabeth Doucette, Portsmouth resident, read a letter from Nancy Beach and Brian Vawter in favor of the ordinance. The letter indicated that the proposed ordinance is in the spirit of the Master Plan and was unanimously approved and recommended by the Planning Board. Elizabeth acknowledged the people on Lafayette Road and their concerns. She feels that the proposed project would be beautiful and urged the City Council to approve the ordinance.

Susan Walker, Portsmouth resident, said that she would not have chosen to live in Elwyn Park if she knew that an industrial use would be put into the proposed location. She expressed her concern for the children living in the area and the traffic issues that currently exist, that would intensify from the proposed ordinance. Ms. Walker advised the City Council that she is opposed to the ordinance.

Robert Padian, Portsmouth resident, said that flexibility is a good thing to have in the Master Plan. He spoke to the traffic in the area and said that traffic exists in all sections of the City. Mr. Padian asked the City Council to consider the economic growth of the City when voting on this ordinance. He said it is important to remember that something will be located at the proposed site, and spoke in favor of the proposed ordinance.

Kelly Allison, Portsmouth resident, said that she is proud of the City and to live in Elwyn Park but, she is opposed to the proposed ordinance and the impact it would have on the neighborhood. She advised the City Council that this is a quality of life issue for the residents of the area, and urged the City Council to consider that when making a decision.

Attorney Bernie Pelech, representing Smuttynose Brewing Company, said that this ordinance is not a vote for the Smuttynose proposal; it is a zoning amendment that has been recommended by the Planning Department, Economic Development Commission and Planning Board. He reminded individuals that a special conditional use permit would be needed for the project to move forward. He further advised individuals that the Site Review Technical Advisory Committee and Traffic & Safety Committee would need to review and approve the project. Attorney Pelech also indicated that this proposed ordinance is not spot zoning.

Harold Ecker, Portsmouth resident, said that the City Council should consider other areas of the City not just Lafayette Road. He said he feels that the proposed ordinance would benefit the area. Mr. Ecker said it is important that green space be addressed in the area.

Richard Pentis, Portsmouth resident, spoke opposed to the ordinance. He advised the City Council that the traffic in the area is dangerous and the noise has increased. Mr. Pentis said that there are other industrial sites available and could be used for this project.

Tim Stone, Portsmouth resident, said he is aware of the noise in the area but, he accepts that because of where he lives. He spoke in favor of the zoning amendment and said it is important to remember that it is the ordinance that is before the City Council this evening and not the Smuttynose project. Mr. Stone said that this ordinance has been reviewed and recommended by the Planning Board with the decision being made in a thoughtful manner. He urged the City Council to approve the ordinance as presented.

Nason Reid, Portsmouth resident, said that there are 4 parcels in the City that this ordinance would apply to. He said that Lafayette Road is the only parcel that abuts Office Research, Industrial and Residential. Mr. Reid informed the City Council that he feels this ordinance is spot zoning and urged the City Council to consider the desires of the neighborhood and its residents.

Jay McSharry, Portsmouth resident, spoke in support of the ordinance amendment. He said it is thoughtful progress that the Planning Board worked through the process and made this recommendation to the City Council.

Patricia Allison, Portsmouth resident, spoke against the ordinance and advised the City Council that her main concern is the traffic impact on the neighborhood. She said that adding another business on Lafayette Road would increase the safety issues the neighborhood faces. Ms. Allison urged the City Council to remember that this is a residential area when making a decision.

Ruth Girffin, Portsmouth resident, said that she is concerned with the ordinance and the quality of life for the residents. She advised the City Council that she opposes the ordinance and feels it is spot zoning. Ms. Griffin asked the City Council to consider the residents of the neighborhood that have spoken this evening when making their decision. She said the strength of a community is in its neighborhoods, and urged the City Council to oppose the ordinance.

Peter Egelston, owner of Smuttynose Brewing Company, said he needs to clarify a few things that have been brought up this evening. He said that he has had a traffic study completed for the project and he is fully committed to following the recommendations outlined in the study. Mr. Egelston spoke to his last 15 years of operating a successful business in the City of Portsmouth and said that he has a track record of enhancing property values and not diminishing values.

Mayor Marchand said that this public hearing is not about the proposed project but the zoning amendment, and urged individuals to keep their comments to the amendment only.

Mr. Egelston said that the proposed site has a long troubled history and has nothing to do with the zoning amendment. He said that the focus needs to stay on the amendment and that the recommendation came forward from the Planning Board.

Mark Allison, Portsmouth resident, said that he hears a great deal lately relative to Portsmouth Listens. He said that he would have thought that Portsmouth Listens would have come to the neighborhood and asked the residents what they would like to see for development at the site. He advised the City Council that a buffer needs to be put in place and that the Council needs to consider the neighborhood and its residents. Mr. Allison said that this area should not be an experiment for the rest of the City.

Attorney Bernie Pelech, representing Smuttynose Brewing Company, said that the other 3 areas that would be part of this zoning amendment about a residential area. He also advised that a buffer would be in place for the area.

Elizabeth Staulcup, Portsmouth resident, discussed the buffer zone for the area as outlined in the ordinance under Development Planning Criteria. Planning Director Holden said that both buffer zones would apply, the 75 feet and the 300 feet. He advised Ms. Staulcup that the 300 feet buffer applies to any use classified as H3 or H4 in the City's Building Code. Planning Director Holden said that H3 or H4 are defined as high hazardous use. Ms. Staulcup advised the City Council that she feels that the zoning amendment is not needed when we have an industrial park which is under utilized.

Tim Stone, Portsmouth resident, said that if this ordinance is not passed there is a potential for a more heavy development to be put at the proposed site. He said that the city can use low impact development techniques. He urged the City Council to support the recommendation of the Planning Board and pass the ordinance as presented.

Tom Grasso, Portsmouth resident, said if the City Council moves forward with the ordinance, a stipulation be added that any OR that borders a residential area that this non-residential PUD cannot apply.

Tim Ellis, Portsmouth resident, spoke opposed to the amendment and said that the residents of the area need to be protected. He advised the City Council that he does not want his way of life changed because of this ordinance.

Richard Pentis, Portsmouth resident, said that a highway is not part of a buffer zone. He expressed his concern with allowing the Planning Board flexibility with proposals.

Jay McSharry, Portsmouth resident, said that he works with other communities and the City of Portsmouth has a thoughtful process in terms of the Planning Board. He urged the City Council to approve the ordinance as presented.

Elizabeth Doucette, Portsmouth resident, said that she trusts that the City Council will approve the recommendation of the Planning Board and move forward with the Master Plan recommendations.

Bob Reynolds, Portsmouth resident, thanked the City Council for listening to the public input provided this evening.

Ryan Russman, Portsmouth resident, said that he is opposed to the ordinance. He said that a change to "light industry" use can mean many other changes for the community. Mr. Russman asked the City Council to consider all matters and content of this zoning amendment. He advised that City Council that this proposed amendment affects a residential neighborhood. He urged the City Council to vote opposed to the ordinance.

Dianna Gilbert, Portsmouth resident, spoke concern with the development of the City. She said that this development would be well thought out and supports the ordinance amendment as presented.

Bill Downy, Portsmouth resident, said he is in favor of the ordinance. He urged the City Council to support and accept the recommendation of the Planning Board.

Nason Reid, Portsmouth resident, said that we are not voting on the Smuttynose project. He advised the City Council if the zoning amendment is approved, it could change the face of the area.

After three calls and no further speakers, Mayor Marchand declared the public hearing closed.

Councilor Grasso moved to suspend the rules in order to take up Item IX. E. Second reading of Ordinance amending Chapter 10, Article I, Section 10-102 Definitions by the addition of Light Industry and Article XV, Section 10-1508 - establishing a Process by which to Consider a Non-residential Planned Unit Development Type Use within an Office Research Zoning District. Seconded by Councilor Pantelakos and voted.

- IX. E. Second reading of Ordinance amending Chapter 10, Article I, Section 10-102 Definitions by the addition of Light Industry and Article XV, Section 10-1508 - establishing a Process by which to Consider a Non-residential Planned Unit Development Type Use within an Office Research Zoning District

Councilor Grasso moved to deny the ordinance. Seconded by Councilor Pantelakos.

Councilor Grasso said that she has served on all 3 land use boards and the ownership of property is the largest investment people have and it is important to protect that. She advised the City Council that this property abuts hundreds of residential homes and that "light industry" is not the proper zoning for this area. It is important to remember that this zoning change would remain with the land no matter what business locates at the site. Councilor Grasso said that it is possible for Mr. Egelston to get what he is requesting by going through the Zoning Board of Adjustment for approval. She informed the City Council that traffic continues to be a large concern for the residents of the area and this zoning amendment would not minimize the traffic. She suggested that the land should go back to the Planning Board for consideration.

Councilor Hynes said he has listened to both sides this evening and it is evident why we want to impart an amendment in the ordinance. Currently the zoning would not permit "light industry". He discussed the other issues that could exist with this change.

Councilor Dwyer said as the Planning Board representative from the City Council she said that several people have spoke this evening regarding the unanimous vote of the Planning Board for this recommended amendment. She advised the City Council that the Planning Board addressed the various concerns discussed this evening. Councilor Dwyer said that a PUD is opening up the flexibility for development and she feels it is better than moving this matter to the Zoning Board of Adjustment. She read the second paragraph of the letter presented by Ms. Staulcup from John Rice of Tate & Foss which states the following:

There is an opportunity for the state and/or city to create a unique "sense of place." I could see Lafayette Road being widened to allow a median strip planted with lovely maple trees, maybe perennial flowers and some lawn. To have the stretch from the old "Yoken's light" to St. James' Church redeveloped in this way would create a pleasant, urban boulevard similar to what you might see in West Hartford, Ct., today. The buffer would clearly divide commercial from residential sides, there-by enhancing residential values.

Councilor Whitehouse asked if the motion before the City Council is proper. City Attorney Sullivan said that the motion is proper, and if passed by the City Council than the second reading of the ordinance has failed. Councilor Whitehouse said that this zoning change would affect 3 parcels. He informed the City Council that Mr. Egelston has operated a profitable business for the last 15 years and that the City does not cater enough to the local businesses and developers, but with that said, he would support the motion because it is not for the City Council to make a final decision on this matter, it should go back to the land use boards.

Councilor Pantelakos said that she would not support the amendment to the ordinance. She said that it is time that the Planning Board listens to the residents and their concerns.

Councilor Raynolds advised the City Council if a proposal comes before a land use board and meets the definitions, the request must be approved. He said that the PUD would give the Planning Board the power to approve or deny a request. Councilor Raynolds also stated, it is important to remember that something will go into that parcel.

Assistant Mayor Ferrini said that the City Council are veterans at looking at new zoning opportunities. He said that he has received 3 calls relative to this amendment and did not expect a petition with 213 signatures opposed to the ordinance. He feels that the Planning Board did a great job and Mr. Egelston is a fine business man. Assistant Mayor Ferrini said perhaps we should continue to evolve on this issue.

Councilor Dwyer said that the Planning Board did listen to the neighborhood and advised the City Council that the underlining use is already in the OR district.

Assistant Mayor Ferrini said that we need to look at how we enumerate the uses and the process. He suggested that the Planning Board review this ordinance further, and the manner in which it is applied.

Councilor Smith spoke to set backs and buffer zones as well as the 10 acre minimum requirement. He said he served on the Planning Board for 14 years and promised to protect that neighborhood and its residents, therefore he would vote in favor of the motion to deny. He said many times things were brought forward to the City Council from the Planning Board and sent back for further review and refining and something better came from it. He advised the City Council that this is not a perfect ordinance and hopes that the Planning Board continues to work on this and keeps the promise to the residents to protect them.

Councilor Hynes said that the City Council needs to do what is in the best interest of the people they represent.

Councilor Dwyer said that she has the best interest of the people in mind and does not know if the City is protecting the neighborhood with the current zoning for the area. She said that we need to protect the gateway to the City.

Mayor Marchand passed the gavel to Assistant Mayor Ferrini.

Mayor Marchand said he agrees with the comments of Councilor Dwyer. He said the intent of the Planning Board provides flexibility of what we have and what we can create. If you review the definitions of "light industry" it addressed the concerns expressed this evening during public input. He advised the City Council that he would vote against the motion because by doing it another way we can achieve the goals of the Planning Board.

Assistant Mayor Ferrini returned the gavel to Mayor Marchand.

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

On a roll call 6-3, voted to deny the ordinance. Assistant Mayor Ferrini, Councilors Grasso, Pantelakos, Whitehouse, Smith and Hynes voted in favor. Councilors Dwyer, Reynolds and Mayor Marchand voted opposed.

At 10:20 p.m., Mayor Marchand declared a brief recess. Mayor Marchand called the meeting back to order at 10:30 p.m.

VIII. APPROVAL OF GRANTS AND DONATIONS

- A. Acceptance of Grant from the New Hampshire Charitable Trust Foundation Otto Fund to Art Speak - \$20,000.00

Councilor Dwyer moved to accept the NHCF grant award and authorize the City Manager to oversee its administration. Seconded by Councilor Whitehouse and voted.

- B. Acceptance of the Renewal of the Public Health Network Grant - \$75,000.00

Councilor Smith moved to authorize the City Manager to accept and expend a grant from the New Hampshire Department of Health and Human Services for the purpose of funding the regional public health network. Seconded by Councilor Grasso and voted.

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

A. Adoption of Budget Resolutions of Fiscal Year July 1, 2007 – June 30, 2008 (FY2008)

1. Resolution #1 – General Fund Expenditures

Municipal	\$15,265,956.00
Police	\$ 8,352,488.00
Fire	\$ 6,500,665.00
School	\$34,326,773.00
<u>Non-Operating</u>	<u>\$15,412,920.00</u>
Total	\$79,858,802.00

City Manager Bohenko said as a result of the May 15, 2007 Work Session the budget was reduced by \$570,000.00. This budget represents a 4.71% increase over last year.

Councilor Pantelakos moved to adopt Resolution #1 – General Fund Expenditures. Seconded by Councilor Whitehouse.

Councilor Whitehouse said he was looking to further reduce the tax rate, but it could not be accomplished and he would support this resolution as submitted.

Motion passed.

2. Resolution #2 – Municipal Fees

City Manager Bohenko said that this resolution adopts the fees recommended by the Fee Schedule Study Committee. He advised the City Council that the fees represent 1% of the general fund revenues.

Councilor Grasso moved to adopt Resolution #2 – Municipal Fees. Seconded by Councilor Pantelakos.

Councilor Whitehouse said that he would request that the boat launching fee for Peirce Island be reviewed early in the process next year for a possible increase. City Manager Bohenko advised Councilor Whitehouse that a note was made during the budget work session to have that fee reviewed next year.

Motion passed.

3. Resolution #3 – Sewer Fund Expenditures

Total Budget Sum \$11,748,493.00

Sewer User Charge effective for invoices generated after July 1, 2007

\$4.89 per unit (1 unit equals 100 cubic feet or 748 gallons) for the first 10 units of sewer usage per month, and \$5.33 per unit for all units used thereafter to yield the case requirement for the operation of the City of Portsmouth's sewer system.

City Manager Bohenko advised the City Council that this resolution sets the user fee rate.

Councilor Hynes moved to adopt Resolution #3 – Sewer Fund Expenditures. Seconded by Councilor Pantelakos and voted.

4. Resolution #4 – Water Fund Expenditures

Total Budget Sum \$6,468,136.00

Water User Charge effective for invoices generated after July 1, 2007

\$1.90 per unit (1 unit equals 100 cubic feet or 748 gallons) for the first 10 units of water consumed per month, and \$2.20 per unit for all units consumed thereafter to yield the cash requirement for the operation of the City of Portsmouth's water system.

City Manager Bohenko advised the City Council that this resolution sets the user fee rate.

Councilor Pantelakos moved to adopt Resolution #4 – Water Fund Expenditures. Seconded by Councilor Hynes and voted.

5. Resolution #5 – Special Revenues for Necessary Expenditures

City Manager Bohenko advised the City Council that this resolution allows for the expenditures of Special Revenues and Designated Fund Balances.

Councilor Whitehouse moved to adopt Resolution #5 – Special Revenues for Necessary Expenditures. Seconded by Councilor Smith and voted.

6. Resolution #6 – Investment Policy

City Manager Bohenko advised the City Council that this resolution deals with the adoption of an annual investment policy. State law requires the annual adoption of such a policy by every city and town.

Councilor Pantelakos moved to adopt Resolution #6 – Investment Policy. Seconded by Councilor Hynes and voted.

City Manager Bohenko thanked the staff and City Council for their support with this budget. He said that the number of work sessions and amount of information provided made this budget process possible.

- B. First reading of Resolution Authorizing Borrowing in Anticipation of Revenues and Taxes in the amount of \$16,000,000.00

Councilor Hynes moved to pass first reading and hold a public hearing and adoption of the Resolution at the June 4, 2007 City Council meeting. Seconded by Councilor Pantelakos.

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

- C. First reading of Ordinance amending Chapter 7, Article III, Section 7.330 – No Parking – Fleet Street: Westerly side from Congress Street to a point 135 feet in the northerly direction

Councilor Whitehouse moved to pass first reading and hold a public hearing and second reading at the June 4, 2007 City Council meeting. Seconded by Councilor Grasso and voted.

- D. Second reading of Ordinance amending Chapter 1, Article IX, Section 1.901 – Conflict of Interest by the amendment to Mandatory Financial Disclosure in Article IX, and the addition of a new Section 1.902 – Election Candidate Financial Disclosure

Councilor Raynolds moved to pass second reading of the amended ordinance, as submitted, and hold third and final reading at the June 4, 2007 City Council meeting. Seconded by Assistant Mayor Ferrini.

Councilor Whitehouse spoke opposed to the ordinance. He asked the City Attorney if having the Association of Portsmouth Taxpayers list a candidates name on their signs endorsing certain individuals is considered a donation. City Attorney Sullivan said it is a donation if the Association was to give a candidate more than \$100.00 in any calendar year. Councilor Whitehouse reported that the number of candidates has diminished since 1997 and this ordinance could cause a further decline. He said he does not feel this type of burden should be placed on individuals wishing to seek election. He advised the City Council that a similar type of ordinance was created in the City of Dover and they have gone to court over it. City Attorney Sullivan said that this ordinance was not drafted with any other ordinance in mind or in consideration.

Councilor Smith requested that a letter be sent to the School Board, Police and Fire Commissions advising them that the ordinance is under consideration by the City Council for adoption.

Motion passed with Councilor Whitehouse voting opposed.

- F. Third and final reading of Ordinance amending Chapter 10, Article II, Section 10-208 – Uses in Business Districts – Table 4 and Chapter 10, Article II, Section 10-209 – Uses in Industrial Districts – Table 5 regarding the Regulation of Amusement Parks/Outdoor Recreation in the Industrial & General Business Districts Respectively

Assistant Mayor Ferrini moved to pass third reading of the amended ordinance, as submitted. Seconded by Councilor Smith and voted.

X. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Request from Meredith Stolpher, Isis on Penhallow, requesting permission for a Sidewalk Obstruction License to place 1 A-frame sign in front of establishment ***(Anticipated action – move to refer to the City Manager with power)***
- B. Request from Gregory Bolduc, Springers Jewelers, requesting permission for a Sidewalk Obstruction License to place 1 A-frame sign in front of establishment ***(Anticipated action – move to refer to the City Manager with power)***
- C. Request from Meredith Stolper, The Stockpot, requesting permission for a Sidewalk Obstruction License to place 1 A-frame sign in front of establishment ***(Anticipated action – move to refer to the City Manager with power)***
- D. Letter from Wendy Segit, Seacoast Mental Health Center, Inc., requesting permission to hold the 10th annual Bridges 4 Friendship 10k Road Race on Saturday, October 13, 2007 at 10:00 a.m. ***(Anticipated action – move to refer to the City Manager with power)***
- E. Letter from Alain Jousse, Portsmouth Model Yacht Club, requesting permission to use the South Mill Pond on August 12, 2007 to hold the 11th annual “You gotta to regatta” radio control sailing event ***(Anticipated action – move to refer to the City Manager with power)***

Assistant Mayor Ferrini moved to adopt the Consent Agenda as presented. Seconded by Councilor Grasso and voted.

XI. PRESENTATION AND CONSIDERATION OF WRITTEN COMMUNICATIONS AND PETITIONS

- A. Letter from Marty Lahue requesting permission to use the covered picnic area on Four Tree Island on Saturday, July 14, 2007 from 10:00 a.m. – 3:00p.m. for a family celebration

Councilor Whitehouse moved to refer this request to the Trustees of the Trust Fund for Prescott Park and the City Manager. Seconded by Councilor Pantelakos and voted.

- B. Letter from Jason Gionet, Portsmouth Professional Fire Fighters, requesting permission to hold two boot drives in Market Square on Saturday, June 23, 2007 and Saturday, August 18, 2007

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

- C. Letter from David Beadling, Jr. and Cynthia Smith, regarding the replacement of entry steps at the front door of their home located at 466 Dennett Street extending two feet beyond their property line onto city land

Councilor Whitehouse moved to refer to the City Manager and Public Works Director for report back. Seconded by Councilor Grasso.

Councilor Whitehouse advised the City Council that he has reviewed this area and there are other properties that are almost encroaching upon city property.

City Manager Bohenko said that the request would be evaluated and a report back would be made to the City Council.

Motion passed.

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Re-use Plan Development for the Paul A. Doble Army Reserve Center

City Manager Bohenko spoke to the 2 options available to the City Council, housing or Municipal Re-use. He advised the City Council in order to meet BRAC requirements the City Council needs to accept one of the 2 options and a public hearing would need to be held. City Manager Bohenko recommended that a public hearing on one of the options be scheduled for June 4, 2007.

Councilor Grasso moved to adopt Option #2 for Municipal Re-use of the site for either police or recreation. Seconded by Councilor Whitehouse.

Councilor Dwyer said both uses are viable, but she is not in favor of a Municipal Re-use. She advised the City Council that we have heard over the last 2 years the need for work force housing with median income of 120%. Councilor Dwyer said that the Council needs to address space, traffic, density and keep the quality of the neighborhood. She said that she understands that the Police Department is looking for a new location, but she does not feel that this is the appropriate site.

Councilor Smith said that work force housing is needed, but the parcel is only 3.9 acres. He advised the City Council that only a limited number of units could be put on that site due to the size. Councilor Smith spoke in favor of a recreation or police use for the site. He said that the neighborhood has indicated their support for Option 2 – Municipal Re-use.

Councilor Reynolds said he appreciates and agrees with much of what Councilor Dwyer has said regarding the need for work force housing, but Councilor Smith makes a good point relative to the size of the lot. He spoke in favor of Option 2 – Municipal Re-use for the site. Councilor Reynolds said he feels there is a need to create a unified recreational center.

Councilor Grasso spoke in favor of Option 2 – Municipal Re-use for the site and said that we do not know what the needs of the City will be in the next few years. She also expressed concern with the proposed reconfiguration of the traffic circle and the impact that could have on the neighborhood.

Mayor Marchand said with the recreational option, the Connie Bean Center could be vacated, and asked about its resale ability. City Manager Bohenko said the deed for the Connie Bean Center lists the Army Navy Group which no longer exists. He advised the City Council that the proceeds from the sale of the building would be placed in a recreational trust.

Mayor Marchand said that the site would not allow for a large number of units for the creation of work force housing. City Manager Bohenko said the number of units would depend upon the layout of the buildings. He said that this is conceptual and there is no plan to close the Connie Bean Center.

Councilor Dwyer expressed concern with the lack of specificities with Municipal Re-use. She said that it would make a difference to her whether it was for recreational or police. City Manager Bohenko said that we have left that broad.

On a roll call 8-1, voted to adopt Option #2 for Municipal Re-use of the site for either police or recreation. Assistant Mayor Ferrini, Councilors Grasso, Raynolds, Pantelakos, Whitehouse, Smith, Hynes and Mayor Marchand voted in favor. Councilor Dwyer voted opposed.

Councilor Grasso moved to establish a public hearing on the Municipal Re-use Option for the June 4, 2007 City Council meeting. Seconded by Councilor Smith and voted.

2. Report Back Re: Popovers on the Square, Requesting the Reconfiguration of Sidewalk Tables and Chairs

City Manager Bohenko advised the City Council that the best way to proceed with this request is to conduct a pilot program where we move the tables and chairs as requested by Mr. Tinios and determine if pedestrian traffic will not be obstructed. The pilot program would go to the end of June. Jason Page, Zoning Enforcement Officer, would observe placement of the tables and chairs, on a regular basis, to assure that pedestrian traffic would be able to pass through unobstructed. With regards to the bike rack, at this time, we will leave it in the present location.

Councilor Grasso moved to accept the City Manager's report back to conduct a pilot program until the end of June to move the tables and chairs as requested by Mr. Tinios. Seconded by Councilor Smith and voted.

3. Report Back Re: Motorized Wheelchair Visibility and Betty's Dream

City Manager Bohenko said that this is a report back regarding the request of Councilor Whitehouse. He said that there are 21 residents that use motorized wheelchairs at Betty's Dream and the cost for these flags has been prohibitive for this population, but that assistance with this matter would be welcomed. City Manager Bohenko recommended the approval of the expenditure of up to \$400.00 from the Contingency Fund for the purchase of flags for motorized wheelchairs at Betty's Dream.

Councilor Pantelakos moved to authorize the City Manager to expend up to \$400.00 from the Contingency Fund for the aforementioned matter. Seconded by Councilor Smith and voted.

4. Request to Cancel City Council Meeting of May 22, 2007

City Manager Bohenko indicated with the City Council approving the FY08 budget this evening there is no longer a need for the City Council meeting tomorrow evening.

Assistant Mayor Ferrini moved to cancel the City Council meeting scheduled for May 22, 2007. Seconded by Councilor Grasso and voted.

Informational Items

- Financial Reporting Award

City Manager Bohenko reported to the City Council that the City has received notification that our comprehensive annual financial report (CAFR) for the fiscal year ended June 30, 2006, qualifies for a Certificate of Achievement for Excellence in Financial Reporting. The Certificate of Achievement is the highest form of recognition in governmental accounting, and its attainment represents a significant accomplishment by a government and its management. This is the 12th year that the City has received this recognition.

City Manager Bohenko requested City Attorney Sullivan comment on the issues before the Planning Board relative to conflict of interests.

City Attorney Sullivan advised the City Council that HarborCorp is in the process of trying to build a Westin Hotel, 1,000 rooms Conference Center and a 700 car Parking Garage on Deer Street. The Joint Development Agreement obligates HarborCorp to do that work in compliance with all City land use regulations and processes in connection with the project. He reported that Ocean Properties has filed 2 suits challenging the City Council rezoning activities and the authorizing for bonding of the parking garage and the second suit relates to the site plan. He advised the City Council that the Planning Board is considering 2 requests from HarborCorp for the approval of certain land exchanges or subdivisions. The Planning Board opened the public hearing on the land transaction and Planning Board member Donald Coker raised the question as to whether the City Council representative and City employees had a conflict of interest because the City had an interest in acquiring the parking garage. He said that the Attorney from Ocean Properties did not have a concern, and the Planning Board recessed the matter for a month to allow him to research the matter. City Attorney Sullivan informed the City

Council that there is no case precisely decided on this point by the NH Supreme Court and he does not feel any one is acting in a conflict of interest. Attorney McNeill, representing HarborCorp has indicated there interests is in getting this hotel and related facilities constructed, not in clarifying Planning Board law in the State of New Hampshire. HarborCorp has 2 lawsuits to deal with and they fear that if the Planning Board members challenged by Mr. Coker should stay on the case and make a decision on either the subdivision issue or the site plan issue that would then create an issue for Ocean Properties to file a third law suit challenging the project. If another suit was filed it would need to go through Superior Court and then to the Supreme Court and could lead to perhaps another 18-month delay. City Attorney Sullivan advised the City Council that Attorney McNeill has indicated on behalf of HarborCorp it is their request regardless of whether Mr. Coker was correct that the 3 members he is challenging be asked to step aside as a practical matter not because any one felt they had any conflict but simply because HarborCorp is trying to avoid the third lawsuit. If the 3 members step aside and allow the alternates to vote there would be no issue. City Attorney Sullivan informed the City Council based on the request of Attorney McNeill he has made the recommendation to the Planning Board to have the 3 members consider stepping aside; however, it is an individual decision based upon their own analysis. He also advised the City Council he made the recommendation that all HarborCorp issues currently before the Planning Board be continued to a special meeting on June 7, 2007. At that special meeting all public hearings would begin from anew so that whatever Planning Board members that turn out to be sitting to make the decisions hear the entire public hearing and so that anyone that speaks at the pubic hearing would get to speak to the Planning Board members that are actually going to make the decision.

Councilor Whitehouse asked City Attorney Sullivan who the 3 members were that Mr. Coker had concerns with. City Attorney Sullivan advised Councilor Whitehouse that they are the Building Inspector, Deputy City Manager Hayden and Councilor Dwyer.

B. MAYOR MARCHAND

1. Appointment to be Considered:
 - Kathleen Pearce – Cable Television and Communications Commission
 - Jonathan Wyckoff – Historic District Commission
 - Sandra Dika – Historic District Commission
 - Tracy Kozak – Historic District Commission

The City Council considered the reappointment of Kathleen Pearce to the Cable Television and Communications Commission; the appointment of Jonathan Wyckoff and Tracy Kozak and reappointment of Sandra Dika to the Historic District Commission. These appointments will be voted on by the City Council at the June 4, 2007 meeting.

2. Appointments to be Voted:
 - MaryLiz Geffert – Alternate to Planning Board
 - James Melfi – Citywide Neighborhood Steering Committee

Councilor Whitehouse moved to appoint MaryLiz Geffert as an Alternate to the Planning Board until December 31, 2009. Ms. Geffert filled the expired term of Paige Roberts who was

appointed as a regular member to the Planning Board. Seconded by Councilor Dwyer and voted.

Councilor Hynes moved to reappoint James Melfi to the Citywide Neighborhood Steering Committee until April 1, 2008. Seconded by Councilor Pantelakos and voted.

3. *Upcoming Appointment Vacancies for the month of June
 - Historic District Commission – 1 Alternate

Mayor Marchand announced that the Historic District Commission is seeking an Alternate to serve on the Commission. Mayor Marchand urged anyone wishing to apply to submit an application with the City Clerk's office or the Mayor's office. Also, individuals can download applications from the City's website.

C. COUNCILOR SMITH

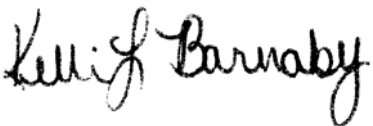
1. Traffic & Safety Committee Action Sheet and Minutes of the April 26, 2007 meeting

Councilor Hynes moved to approve and accept the action sheet and minutes of the April 26, 2007 Traffic & Safety Committee meeting. Seconded by Councilor Grasso and voted.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

XIV. ADJOURNMENT [AT 10:00PM OR EARLIER]

At 11:45 p.m., Assistant Mayor Ferrini moved to adjourn. Seconded by Councilor Pantelakos and voted.



Kelli L. Barnaby, CMC
City Clerk