

## **CITY COUNCIL MEETING**

MUNICIPAL COMPLEX  
DATE: MONDAY, AUGUST 18, 2008

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

At 5:45 p.m., an Anticipated “Non-Meeting” with Counsel was held regarding Negotiations – RSA 91-A:2, I (b-c).

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

Mayor Ferrini called the meeting to order at 7:00 p.m.

### **II. ROLL CALL**

Present: Mayor Ferrini, Assistant Mayor Blalock, Councilors Novelline Clayburgh, Dwyer, Smith, Kennedy, Spear, Hejtmanek and Pantelakos

### **III. INVOCATION**

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

### **IV. PLEDGE OF ALLEGIANCE**

Assistant Mayor Blalock led in the Pledge of Allegiance to the Flag.

### **PRESENTATION**

1. Update Re: Middle School – Dr. Mitchell Shuldman, School Board Chair

Dr. Shuldman reported that the School Board is working on the size and needs of the Middle School. He said the objective of the School Board is to ensure that the building meets the educational program and is conducive to learning for the education of our children. Dr. Shuldman advised the City Council that JCJ has proposed a design of 134,000 square feet. He said JCJ’s proposed design is larger than the recommended baseline of the State, but the School Board feels the additional size is needed to meet the educational needs for the Middle School.

Councilor Spear asked if we would get the determination from the State if they would fully fund us before the Council approves the bonding. Dr. Shuldman said he would look into that and provide an answer back to the City Council.

Councilor Hejtmanek asked if the current plan provides enough parking for teachers. Dr. Shuldman advised the City Council that we are 30 spaces short.

Councilor Kennedy asked when the School Board would be making a decision of size and cost for the middle school. Dr. Shuldman said that the School Board plans to vote on September 9<sup>th</sup>. Councilor Kennedy asked if anyone has looked at renovating the school based on the State's baseline for square footage. Dr. Shuldman said currently the school classrooms are at 600 square feet and the State recommends 900 square feet. Councilor Spear said he would like to see what type of school we would get with the State's baseline square footage.

Councilor Smith asked if the School Board has considered parking at the Parrott Avenue lot. Dr. Shuldman said they looked into that possibility but it is not only their decision. He suggested that the City consider permitting the spaces along Parrott Avenue during school hours. Councilor Smith asked what Plan B would be for the School Board if the Peirce property does not move forward. Dr. Shuldman said the School Board would look to building to the right. He reported that JCJ has provided 2 different designs but the School Board prefers to the left.

Councilor Dwyer said that 7% of the total space for the Middle School is for special education. Dr. Shuldman said there is a need for the space and that there are different types of disabilities that affect the space required.

Mayor Ferrini passed the gavel to Assistant Mayor Blalock.

Mayor Ferrini advised Dr. Shuldman that the City Council needs to know how much the renovation will cost and the list of things it would include. He said it is difficult to vote on a bond without knowing those things.

Assistant Mayor Blalock returned the gavel to Mayor Ferrini.

## **V. ACCEPTANCE OF MINUTES – AUGUST 4, 2008**

Councilor Smith moved to approve and accept the minutes of the August 4, 2008 City Council meeting. Seconded by Councilor Pantelakos and voted.

## **VI. PUBLIC COMMENT SESSION**

Anita Kennedy informed the City Council that she resides at 20 Islington Street and parks her car at the Kline Furniture store and was just notified that they would no longer be allowed to park in the lot after September 1, 2008. She asked the City Council if they could contact Fairpoint Communications to allow the residents of 20 Islington Street to park in their lot. She also suggested the City issue parking permits to the parking garage at a lower rate for the residents of 20 Islington Street.

Ruth Arroyo advised the City Council that she agreed with the comments and suggestions made by Ms. Kennedy.

Councilor Smith said that these items could be brought forward at the next Parking Committee meeting.

Kathy Pearce asked the City Council to support the request for eminent domain for the Peirce property. She said that the Middle School should remain centrally located and remain at the present site.

Andy Kaplan requested that the City Council consider supporting a ballot initiative that would order the indictment and arrest of President Bush and Vice President Cheney for war crimes. He advised the City Council that this question was passed at the annual Town Meeting in Brattleboro, Vermont.

Pat Gormley spoke regarding the residents continuing concerns about the proposed renovation of the Middle School. She said the school administration and the School Board do not appear to be meeting state requirements and expectations in the planning of this building.

Allen Nelson said there is a great deal of discussion regarding eminent domain. He asked why some other options have not been explored, such as the front, which would avoid tampering with the Peirce deed. He said the Peirce land should be excluded. Mr. Nelson suggested a ballot referendum for the residents to decide what they feel is best relative to the Middle School.

Dave Forman said that the School Board needs to consider the cost and impact to the tax rate now and in the future when bringing forth a figure for the renovations to the Middle School.

Jerry Stow said much of what he prepared has been covered this evening. He expressed concern with the changing demographics and the School Board should have started out with an idea of how many students we need to build for in the future.

Harold Whitehouse expressed concern with the eminent domain process. He said this would be different if we were taking private property for safety issues. He said the City would be breaking a trust and that is a serious issue.

Assistant Mayor Blalock moved to suspend the rules in order to take up Item XII. A.2. - Request to Commence Eminent Domain Proceedings Re: Peirce Estate Property (Alumni Field/Middle School). Seconded by Councilor Pantelakos and voted.

XII. A.2. Request to Commence Eminent Domain Proceedings Re: Peirce Estate Property (Alumni Field/Middle School)

City Manager Bohenko said there is a memorandum from the City Attorney's Office regarding the process and likely timeline to acquire rights necessary to expand the Middle School into the adjacent land known as Alumni Field (Peirce Estate property). As indicated by the City Attorney, this acquisition process will likely take approximately six to nine months from the date on which the City Council votes to commence the process. The condemnation process commences with the scheduling of a public hearing to determine the public use and necessity for the acquisition of the property interest. Notice must be provided at least 30 days in advance of the hearing to the Division of Charitable Trusts and any other persons and parties impacted by the eminent domain process. At the hearing, City/School representatives would have to present the case for the public use and necessity for expanding the Middle School. The public would have an opportunity to be heard. Thereafter, at the same meeting, the Council would vote to adopt, or not, a resolution finding that a public necessity and use for the property exists. Although a simple majority is sufficient to commence eminent domain, the Council should be mindful that a 2/3 majority vote will be needed to bond Middle School renovations.

City Manager Bohenko said it would be our recommendation to schedule a public hearing to determine the public use and necessity, at the October 6, 2008 City Council meeting, to allow for the appropriate legal work to be completed as well as to achieve the legal notice requirements (30 days are required).

City Attorney Sullivan said if the City Council votes to go forward it starts the process and does not set in motion anything that can not be changed at a later date.

Councilor Spear moved to authorize the City Manager to commence the eminent domain process for the property that is subject to the Peirce Estate restriction; and, schedule a public hearing to determine the public use and necessity, at the October 6, 2008 City Council meeting. Seconded by Councilor Dwyer.

Councilor Spear said he supports the motion because it is a preliminary vote on the process. He said a public hearing would take place on the topic and we will have another vote when we vote for the bonding.

Councilor Dwyer said she agrees with the comments of Councilor Spear. She thanked City Attorney Sullivan for providing clear legal direction and said the legal heirs of the Peirce property do not want to stand in the way of education.

Assistant Mayor Blalock said he initially opposed the eminent domain process but in the spirit of open mindedness and much thoughtful consideration we need to remember if we do not proceed with eminent domain we would need to purchase land. He indicated that he has spoken with two heirs of the Peirce property and they would not stand in the way of education. Assistant Mayor Blalock said the City Council should vote to proceed in building the best school possible.

Councilor Pantelakos said she would vote opposed to the motion. She said that the City is going back on their word and it sets a precedent for the future. She suggested building the Middle School on the High School fields and moving the fields to Jones Avenue.

Councilor Smith said he would oppose the motion. He asked what we are going to do to replace the land we are taking. He expressed concern with breaking the trust and asked what incentive people would have to create a trust that the City could break in the future. Councilor Smith said the City Council still does not know the size and cost for the renovations of the Middle School. In addition, he feels that the Council is rushing the decision and he does not feel comfortable breaking the trust.

Councilor Kennedy said as an educator this is a hard decision. She expressed concern with the School Board not recommending a size and cost for the renovations to the Middle School to the City Council as of this date. She said that the City Council cannot move forward without that information made available to them. Councilor Kennedy recommended waiting until September 9, 2008 before making a decision.

Councilor Hejtmanek said the current Middle School is not adequate to teach our children. He said if we build to the left we are not taking family homes but we need to replace the fields prior to construction starting. The question of size is a great concern to him and the size will affect the cost. He said the School Board needs to do more work on size and costs, however he would support the motion to proceed forward.

Councilor Novelline Clayburgh said that the City Council needs to allow the School Board the next step to move forward. She spoke in favor of the motion and said she has spoken with the heirs of the Peirce property and they are not opposed to the building of a Middle School for the property. Councilor Novelline Clayburgh said we need to put faith and trust in the School Board and the process.

Councilor Dwyer said that the School Board is doing what the City Council requested following the work session. She said that we are not asking for bonding this evening. Councilor Dwyer said we could invest funds for space for recreational use. City Attorney Sullivan said whatever amount would be paid by the City to remove the restriction could be paid into a recreational trust and then the City Council would make the decision on how the funds would be spent from the trust.

Councilor Spear asked the City Attorney if a quarter of the trust property was used would the cost be less. City Attorney Sullivan said the cost varies with quantity of land.

Mayor Ferrini passed the gavel to Assistant Mayor Blalock.

Mayor Ferrini said we are preserving our right to move forward. He said the cost and size of the school needs to be addressed. He said it is a complex process and he would support the motion.

Assistant Mayor Blalock returned the gavel to Mayor Ferrini.

On a roll call 6-3, voted to authorize the City Manager to commence the eminent domain process for the property that is subject to the Peirce Estate restriction; and, schedule a public hearing to determine the public use and necessity, at the October 6, 2008 City Council meeting. Assistant Mayor Blalock, Councilors Novelline Clayburgh, Dwyer, Spear, Hejtmanek and Mayor Ferrini voted in favor. Councilors Smith, Kennedy and Pantelakos voted opposed.

At 8:45 p.m., Mayor Ferrini declared a brief recess. Mayor Ferrini called the meeting back to order at 8:55 p.m.

## **VII. PUBLIC HEARING**

- A. ORDINANCE AMENDING CHAPTER 7, ARTICLE XI, SECTION 7.1100 – SPEED LIMITS SUB-SECTION B – 20 MPH – LEAVITT AVENUE, MCCLINTOCK STREET, MOFFAT STREET, SWETT AVENUE AND WOODWORTH AVENUE

Mayor Ferrini read the legal notice, declared the public hearing open and called for speakers. After three calls and no speakers, Mayor Ferrini declared the public hearing closed.

## **IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES**

- A. First reading of Ordinance amending Chapter 7, Article III, Section 7.330 – No Parking sub-section A – Parrott Avenue:
- on the northerly side from 255' easterly of Richards Avenue to a point 338' easterly of Richards Avenue
  - on the southerly side from 310' easterly of Richards Avenue to a point 355' easterly of Richards Avenue

Councilor Smith moved to pass first reading and hold a public hearing and second reading of the proposed ordinance, as submitted at the September 15, 2008 City Council meeting. Seconded by Councilor Pantelakos.

Councilor Kennedy expressed concern with making this amendment with the upcoming Middle School renovations.

Councilor Smith reported that this is for the creation of a crosswalk.

Councilor Kennedy asked how many parking spaces would be lost from the creation of the crosswalk.

Motion passed with Councilor Kennedy voting opposed.

- B. Second reading of Ordinance amending Chapter 7, Article XI, Section 7.1100 – Speed Limits sub-section B – 20 MPH – Leavitt Avenue, McClintock Street, Moffat Street, Swett Avenue and Woodworth Avenue

Councilor Smith moved to pass second reading and hold third and final reading of the proposed ordinance, as submitted, at the September 15, 2008 meeting. Seconded by Councilor Dwyer.

Councilor Smith said if a speed limit is not posted by a community it would revert to the State standard of 35 mph.

Motion passed.

- C. Third and final reading of Ordinance amending Chapter 7, Article VII, Section 7.702 – Truck Traffic Prohibited – Maplewood Avenue: from Central Avenue to Woodbury Avenue

Councilor Smith moved to pass third and final reading of the proposed ordinance, as submitted. Seconded by Assistant Mayor Blalock.

Councilor Smith said that this ordinance would remove trucks from the local residential area.

Motion passed.

## **X. CONSENT AGENDA**

### ***A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA***

- A. Letter from The Portsmouth Halloween Parade Committee, requesting permission to hold the annual Halloween Parade on Wednesday, October 31, 2008 at 7:00 p.m. (***Anticipated action – move to refer to the City Manager with power***)
- B. Letter from Deb Weeks, The Green Monkey Restaurant, requesting renewal of Dumpster License located on Church Street for a period of one year (***Anticipated action – move to approve the annual renewal of the dumpster license agreement for the Green Monkey Restaurant, as submitted***)

- C. Letter from Tom Hall, The Portsmouth Maritime Folk Festival, requesting permission to hold outdoor performances adjacent to 21 Pleasant Street on Sunday, September 28, 2008 (***Anticipated action – move to refer to the City Manager with power***)
- D. Letter from Nicole Gregg, New Hampshire Film Festival, requesting permission to use the Connie Bean Center for their Headquarters and Hospitality Suite for the NH Film Festival on October 16, 2008 – October 19, 2008 (***Anticipated action – move to refer to the City Manager with power***)

Councilor Smith moved to adopt the Consent Agenda. Seconded by Councilor Kennedy and voted.

## **XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS**

- A. Letter from Deborah Bouchard-Smith, Scarecrows of the Port Committee, requesting permission to place scarecrows in designated locations throughout the Portsmouth Downtown Area October 17, 2008 – November 2, 2008

Councilor Pantelakos moved to refer to the City Manager with power. Seconded by Councilor Novelline Clayburgh and voted. Councilor Smith abstained from voting.

- B. Letter from Pawn Nitichan, City Year, requesting permission to hold an Opening Day Ceremony in Market Square on September 26, 2008 at Noon

Councilor Smith moved to refer to the City Manager with power. Seconded by Councilor Novelline Clayburgh and voted.

## **XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS**

### **A. CITY MANAGER**

- 1. Report Back Re: Councilor Kennedy's Request Regarding Fishing Fleet Committee

City Manager Bohenko said in discussing this matter with Councilor Kennedy, he would recommend that this be a seven (7) member committee consisting of two (2) City Councilors, two (2) members from the fishing community, one (1) from the Economic Development Commission, one (1) from the general public and the Director of Ports and Harbors or his designee.



The charge of the committee will be for a report back by the second meeting in October with the following:

1. History of the fishing fleet in Portsmouth;
2. Present day fishing fleet activities; and
3. Proposed program for recognition and support of the existing fishing fleet.

It would be the intent of the subcommittee to sunset after the report back in October with the opportunity to continue as needed and if authorized by the Mayor and the City Council.

Councilor Kennedy said she would like the report back to the City Council to be made in November.

Councilor Kennedy moved that the Mayor appoint a seven (7) member committee consisting of two (2) City Councilors, two (2) members of this Fishing Fleet community, one (1) from the Economic Development Commission, one (1) from the general public and the Director of Ports and Harbors or his designee to a Fishing Fleet Committee, which shall report back to the City Council at its October 20<sup>th</sup> meeting at which time it will sunset unless reauthorized by the Mayor and City Council. Seconded by Councilor Spear.

Councilor Dwyer said she would like to see this move towards economic investment. She said there is a great deal to be gained by looking at economic clusters from an investment standpoint. She informed the City Council that Rick Taintor has done a great deal of work with economic clusters and has a great amount of knowledge.

Councilor Smith said he would support the motion and the comments of Councilor Dwyer. He said we need to support the fishing industry. He recommended not providing the report back until the end of the year.

Councilor Smith moved to amend the motion for a report back to the City Council at its first meeting in January at which time it will sunset unless reauthorized by the Mayor and City Council. Seconded by Councilor Spear and voted. Main motion passed as amended.

### 3. Request for Work Session Re: Update on Riverwalk

City Manager Bohenko advised the City Council that the Mayor has requested that the City conduct a work session prior to the regular meeting on September 15<sup>th</sup> to receive an update on the Riverwalk project. In addition, he reminded the City Council that there is also a work session on the retirement system, which was requested by Councilor Spear. He said he would recommend that we start the work session at 6:00 p.m. regarding the retirement system and 6:30 p.m. for an update on the Riverwalk project.

Councilor Smith moved to establish a work session on Monday, September 15, 2008 at 6:00 p.m. for the retirement system and 6:30 p.m. for an update on the Riverwalk project. Seconded by Councilor Kennedy and voted.

Informational Items

- Report Back Re: Sustainability Committee

City Manager Bohenko said he would recommend the City Council invite the Sustainability Committee to come in at the September 15<sup>th</sup> meeting and make a presentation on their activities over the past year. In addition, he recommended that the Sustainability Committee come in on a quarterly basis to give the City Council updates on their activities.

He said if he does not hear any objections on behalf of the City Council, he would invite them to the next meeting for a presentation and a report.

**B. MAYOR FERRINI**

1. Appointment to be Considered:
  - Anthony Blenkinsop – Appointment to Planning Board

The City Council considered the appointment of Anthony Blenkinsop to the Planning Board which will be voted on by the City Council at the September 15, 2008 meeting. Anthony Blenkinsop will fill the unexpired term of Jerry Hejtmanek until December 31, 2009.

2. Appointment to be Voted:
  - Stephen McCarthy – Appointment to Building Code Board of Appeals

Councilor Pantelakos moved to appoint Stephen McCarthy to the Building Code Board of Appeals until July 1, 2013. Seconded by Councilor Novelline Clayburgh and voted.

3. Resignation:
  - Brian Gregg – Rockingham Planning Commission

Councilor Smith moved to accept with regret the resignation of Brian Gregg from the Rockingham Planning Commission and requested that Mayor Ferrini send a letter thanking Mr. Gregg for his service to the City. Seconded by Councilor Pantelakos and voted.

**C. COUNCILOR SMITH**

1. \*USS NH In-kind Support from City of Portsmouth

Councilor Smith reported that the Commissioning of the USS NH is coming and the expenses will be great. He advised the City Council when something similar was done in Delaware the local community donated several hundred thousand dollars. He would like to do in-kind donations for Police, Fire and Public Works Departments expenses.

City Manager Bohenko said he would like to collect information on what we expect for costs and he would provide a report back at a future meeting.

**XIII. MISCELLANEOUS/UNFINISHED BUSINESS**

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

At 9:15 p.m., Councilor Smith moved to adjourn. Seconded by Councilor Pantelakos and voted.

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

Kelli L. Barnaby, CMC/CNHMC  
City Clerk