

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: MONDAY, JULY 19, 2010

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

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

### **I. CALL TO ORDER [7:00PM or thereafter]**

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

### **II. ROLL CALL**

Present: Mayor Ferrini, Assistant Mayor Novelline Clayburgh, Councilors Hejtmanek, Spear, Dwyer, Coviello, and Smith

Absent: Councilors Lister and Kennedy

### **III. INVOCATION**

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

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

Assistant Mayor Novelline Clayburgh led in the Pledge of Allegiance to the Flag.

Mayor Ferrini explained that Councilor Dwyer is participating via tele-conference and therefore all votes will be roll calls in compliance with the Right-to-Know RSA.

### **V. ACCEPTANCE OF MINUTES – JUNE 21, 2010**

**Councilor Smith moved to approve and accept the minutes of the June 21, 2010 City Council meeting. Seconded by Assistant Mayor Novelline Clayburgh and voted on a 7-0 roll call.**

### **VI. PUBLIC COMMENT SESSION**

Karina Quintans spoke in favor of the Downtown Portsmouth Zero Waste Project. She thanked everyone who has worked on and supported this project. She submitted a letter of support from Kendra Ford and John Benford for the record.

Martin Cameron, spoke regarding the moving of the WW I grave markers stating that the site at Route 33 is not acceptable and feels that they should be moved back to the Plains ball field. He stated that the city hasn't done a lot for veterans stating that many of the memorials that do exist were done by other groups and organizations and haven't been kept up over the years.

Al LaPanne spoke in favor of opening the back gate on Sherburne Road for a trial period during construction of the bridge over Interstate 95 for which a petition was submitted with 154 signatures. He continued that the neighborhood is completely blocked and that it is a hazard when large trucks come into the area and realize they can't go through to the tradeport and then have to turn around and can only do that by backing up a long distance. He stated if they don't open the gate, then the city should at least consider renaming the portion of Sherburne Road on the Tradeport as it is confusing people with GPS units.

Al Silva, owner of Infinite Imaging, spoke in favor of the projecting sign request for Jeff Casler, Second Time Around at 19 Congress Street.

Mary Lou McElwain, spoke on behalf of herself and husband Bob, stating that they would like to see the current temporary agreement with the Red Ginger, 261 South Street to be extended as the first trial period has not concluded and the table and chairs weren't actually out there long enough to see the real affect on the neighborhood. She stated that Mindy, the owner of the Red Ginger, has done a great job so far, but feels there needs to be a longer evaluation period before it is approved permanently.

Bill St. Laurent spoke regarding the petition requesting opening the back gate on Sherburne Road stating that he is impressed with the number of signatures, but feels that not everyone is in favor of this request. He explained that this is a quiet neighborhood with a lot of kids who are used to the area as a low traffic area and if the gate is opened then the traffic will increase and cause problems. He asked that if this item is referred to the Traffic and Safety Committee, that Councilor Smith please keep these comments in mind during the discussion. On another subject he concluded by asking the Council to move the WW I monument to the Plains ball fields.

## **VII. PUBLIC HEARING**

### **A. PURSUANT TO RSA 482-A:15 II ON THE DESIGNATION OF PRIME WETLANDS IN ACCORDANCE WITH THE REPORT PREPARED FOR THE CONSERVATION COMMISSION BY WEST ENVIRONMENTAL IN FEBRUARY 2007**

Peter Britz, Environmental Planner, began by stating that Mark West of West Environmental, Inc. and Steve Miller, Chair of the Conservation Commission are both in attendance this evening. He then reviewed the background of the Proposed Prime Wetlands Designation process which was recommended in the citywide Master Plan adopted in March 2005. He stated the NH RSA 482-A:15 defines prime wetlands as jurisdictional wetlands that "because of their size, unspoiled character, fragile condition or other relevant factors make them of substantial significance." He continued that West Environmental prepared the documentation needed to support the designation of prime wetlands in a February 2007 Prime Wetland Analysis Report which describes the scientific methodology used in developing the list of potential prime wetland candidates. From there, both the Conservation Commission and the Planning Board in 2007 voted in favor of designating prime wetlands as listed in West's Report. The City Council held a work session regarding prime wetlands on April 7, 2008 and a public hearing was held April 21, 2008 with 2 speakers in support of designating prime

wetlands in the City. They also appropriated \$5,000 from the Conservation Fund in order to complete the prime wetlands mapping effort which depicts 14 areas that meet the state criteria for prime wetland designation, which includes wetland 007 on the Pease Tradeport.

Mayor Ferrini opened the public hearing.

Philip Stokel, spoke regarding his property at 83 Peverly Hill Road which is one of the 14 areas on the Prime Wetlands Designation Map. He stated his family has owned the property since 1913 and have paid full taxes on the property. He distributed a map to the Council of his property and explained the various uses stating that the only wetlands is a man-made pond and ditch which has attracted beavers. He stated that he is not going to allow his land to be declared a wetlands because of rodents.

## **VIII. APPROVAL OF GRANTS/DONATIONS**

### **APPROVAL OF GRANTS/DONATIONS**

#### **A. Acceptance of Conservation License Plate Grant**

**Councilor Smith moved to authorize the City Manager to accept and expend a \$10,000.00 grant from the State of New Hampshire Division of Historical Resources Conservation License Plate Grant Program for the Morton-Benedict House Roof Project. Seconded by Councilor Coviello and voted on a 7-0 roll call.**

#### **B. Acceptance of Donations to the Coalition Legal Fund**

- Town of Carroll - \$1,000.00
- Town of Moultonborough - \$5,000.00
- Town of Tuftonboro - \$5,000.00

**Councilor Smith moved to approve and accept the donations, as listed, to be placed in the Coalition Legal Fund. Seconded by Assistant Mayor Novelline Clayburgh and voted on a 7-0 roll call.**

**Councilor Smith moved to suspend the rules in order to take up Items XII.A.1. – Prime Wetlands Designation. Seconded by Assistant Mayor Novelline Clayburgh and voted on a 7-0 roll call vote.**

#### **XII. A.1. Prime Wetlands Designation**

**Councilor Spear moved to adopt prime wetlands as designated on the Proposed Prime Wetland Map with the exception of wetland 007 located on the Pease Tradeport and to authorize the City Manager to forward all necessary supporting documentation to the NH Department of Environmental Services for their review. Seconded by Councilor Smith.**

City Manager Bohenko asked Peter Britz to address Mr. Stokels' comments.

Peter Britz stated that there are not any new wetlands designated on this map as they used the 2007 delineation and have been there since at least 2003. He clarified that any wetlands will still have to go through the city process and this just adds an additional State level to ensure that there will not be any adverse impact.

Councilor Coviello asked if the owner of any property with a designation of wetlands can still go through an appeal process. Peter Britz stated that yes they can update the Prime Wetlands Map but he is not sure how long it would take to return to non-wetlands.

Assistant Mayor Novelline Clayburgh asked which property on the Map is Mr. Stokels'. Peter Britz stated it is number 6 on the map and explained that there are 2 separate wetland areas; one to the great bog and one to Sagamore Creek. Assistant Mayor Novelline Clayburgh asked what is the percentage of wetlands. Peter Britz stated it is 20-30% overall and explained that on this map it is a smaller percentage outlined as a Prime Wetland.

Councilor Coviello asked about the cemetery area and will this impact the activities that take place there. Peter Britz explained that they are in a tidal buffer zone and when it is Prime Wetland they will have to prove that there will be no impact on the wetland and yes it will probably impact the activities. Councilor Coviello asked how these are delineated. Peter Britz stated it is GIS layered on the map.

Councilor Smith asked if Peter Britz has spoken to Mr. Stokel regarding his concerns. Peter Britz stated only in passing.

Assistant Mayor Novelline Clayburgh stated when the Council first reviewed this, they were getting the information from the experts but now we have a citizen who has had the land for 100 years and asked how can we accommodate him.

City Manager Bohenko explained that no matter what happens with this Prime Wetlands designation, the property will still be a wetlands and this will add another layer of protection only to that portion designated. He stated all of the wetlands will still have to go through city review, will still need a state wetlands permit, etc.

Mark West, of West Environmental, Inc. explained that this wetlands designation doesn't stop any potential mitigation and only adds another layer of protection and a more thorough investigation.

Assistant Mayor Novelline Clayburgh is still concerned and asked if that parcel can be removed from the vote.

**Councilor Smith moved to table this item for a report back from Planning Department. Seconded by Assistant Mayor Novelline Clayburgh.**

City Manager Bohenko clarified that the Wetlands will always be there and this is not creating more wetlands, just highlighting some areas that would receive a closer look by the State.

Councilor Hejtmanek stated this was started 5 years ago at the Planning Board level and simply adds a small layer to important wetlands.

Councilor Coviello stated he doesn't understand what questions aren't answered so let's get them answered now.

Councilor Smith stated it is important to answer the questions of any resident and it is important for the Council to get these answers as well.

**Motion to table FAILED on a 2-5 roll call vote. Assistant Mayor Novelline Clayburgh and Councilor Smith voted in favor. Councilors Hejtmanek, Spear, Dwyer, Coviello and Mayor Ferrini voted opposed.**

**Main motion passed on a 6-1 roll call with Councilor Smith voting opposed.**

**Councilor Coviello moved to authorize the City Manager to send a letter to the Pease Development Authority to ask them to seek State designation of Wetland 007 as a Prime Wetland. Seconded by Assistant Mayor Novelline Clayburgh and voted on a 7-0 roll call.**

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

*There were no items under this Section of the Agenda.*

#### **X. CONSENT AGENDA**

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

- A. Letter from James Heinz and Rochelle Jones requesting permission to hold a softball game fundraiser for firefighter Sarah Fox on Sunday, August 22, 2010 at 2:00 p.m. at Alumni (***Anticipated action – move to refer to the City Manager with power***)

**Councilor Smith moved to adopt the Consent Agenda. Seconded by Councilor Coviello and voted on a 7-0 roll call.**

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

- A. Letter from Cindi Blanchette, Portsmouth City Soccer Club, requesting permission to hang banners at Leary Field during soccer season from mid August through November (Same conditions as last year)

**Councilor Coviello moved to refer to the City Manager with power. Seconded by Assistant Mayor Novelline Clayburgh and voted on a 7- 0 roll call.**

- B. Letter from Richard Adams requesting that the City Council reconsider its action regarding the WW I monuments.

City Manager Bohenko stated that at the last meeting the City Council voted to move this to Langdon Park but there was not an overwhelming consensus from the Veterans Council, although it was reviewed by a sub committee of Councilors and an outside group. He stated that he is asking that the Council be sure what action they want to take with these monuments so that they are not moved again. He stated they are safe where they are right now, but is waiting for the Council's final word.

**Councilor Smith moved to place on file. Seconded by Councilor Coviello.**

Mayor Ferrini asked Councilor Smith to advise as to whether the Council needs to reconvene people to get a final consensus.

Councilor Smith stated that where they are currently, they are not accessible. He continued that moving them back to the Plains Ball fields, there is not any room because of the widening of the highway and it will cause traffic and parking problems. He stated we could review this again, but feels the recommendation would be the same to move them to Langdon Park.

Councilor Dwyer asked about relocating to the memorial park on Islington Street which has another World War I Memorial. Councilor Smith stated this was discussed but it was decided that there was more room at Langdon Park.

Assistant Mayor Novelline Clayburgh stated she feels that if the memorials were put back to the Plains ball fields, it would cause a lot of problems with parking etc.

**Motion passed on a 6-1 roll call with Councilor Spear voting opposed.**

- C. Petition requesting to open the back gate on Sherburne Road for a trial period during construction of the bridge over Interstate 95.

**Assistant Mayor Novelline Clayburgh moved to refer to the Traffic and Safety Committee for a report back. Seconded by Councilor Smith and voted on a 7-0 roll call.**

- D. Letter from Thans Lapanne requesting to change the name of the portion of Sherburne Road on the Tradeport.

**Assistant Mayor Novelline Clayburgh moved to refer to the Planning Board for a report back. Seconded by Councilor Coviello and voted on a 7- 0 roll call.**

- E. Letter from Jon and Gloria Wennberg requesting permission to install a bench in Market Square in memory of their daughter Heather.

**Councilor Smith moved to refer to the City Manager with power. Seconded by Assistant Mayor Novelline Clayburgh and voted on a 7- 0 roll call.**

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

### **A. CITY MANAGER**

2. Request for License Agreement Re: 51 Islington Street, LLC

**Councilor Smith moved to authorize the City Manager to enter into a license agreement with 51 Islington Street LLC to facilitate construction activities. Seconded by Assistant Mayor Novelline Clayburgh and voted on a 6-0 roll call. Councilor Coviello abstained from voting on this matter.**

3. Request for a License from Jeff Casler, owner of the Second Time Around, for property located at 19 Congress Street to install a projecting sign.

**Councilor Smith moved to accept the recommendation of the Planning Board with the aforementioned stipulations and approve the request of Jeff Casler, owner of Second Time Around, to install a projecting sign on a new bracket at 19 Congress Street and further authorize the City Manager to execute a License Agreement for this request. Seconded by Councilor Coviello and voted on a 7- 0 roll call.**

#### *Stipulations:*

- *The license shall be approved by the Legal Department as to content and form;*
  - *Any removal or relocation of the projecting sign, for any reason, will be done at no cost to the City; and*
  - *Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.*
4. Approval of Downtown Portsmouth Zero Waste Project.

**Councilor Smith moved to authorize the City Manager to proceed with the placement of recycling containers in downtown Portsmouth, as presented at the work session and the attached map location. Seconded by Councilor Hejtmanek and voted on a 7 – 0 roll call.**

5. Report Back Re: Red Ginger, LLC, 261 South Street

City Manager Bohenko said that the comments made during the public comment session are correct, but there have been no issues with the tables and chairs being out and therefore he

feels this should be extended to the end of the year. He stated that the weather will have the tables and chairs brought in before that anyway.

**Councilor Coviello moved to approve the extension of the Sidewalk Obstruction License with stipulations for The Red Ginger, 261 South Street in accordance with the stipulations for the remainder of the year at which time it is renewable annually. Seconded by Assistant Mayor Novelline Clayburgh and voted on a 7-0 roll call.**

6. Request to Establish a Work Session with Recreation Board Re: Recreation Needs Study

City Manager Bohenko stated that the Recreation Board has both August 2<sup>nd</sup> and September 7<sup>th</sup> open, and reminded the Council they are scheduled to hold a work session on the CCRC on August 2<sup>nd</sup> so it is up to the Council when to schedule the work session with the Recreation Board.

Assistant Mayor Novelline Clayburgh stated we had asked the Staff to have some information ready for the 2<sup>nd</sup> on the CCRC, would they prefer September 7<sup>th</sup>. City Manager Bohenko stated they will be ready for August 2<sup>nd</sup>.

**Councilor Coviello moved to establish a work session on Tuesday, September 7, 2010 at 6:00 p.m. with the Recreation Board regarding the Recreation Needs Study. Seconded by Councilor Smith and voted on a 7- 0 roll call.**

7. Representatives to the Rockingham Metropolitan Planning Organization (MPO) Technical Advisory (TAC)

**Councilor Smith moved to designate Steve Parkinson, Public Works Director, Dave Allen, Deputy Public Works Director (alternate) and Rick Taintor, Planning Director (alternate) to act as the City's representatives to the Rockingham Metropolitan Planning Organization (MPO) Technical Advisory Committee (TAC) for the July 1, 2010 to June 30, 2013 term. Seconded by Councilor Coviello and voted on a 7- 0 roll call.**

### **Informational Items**

1. Events Listing
2. Notice of Public Meeting Re: Middle School Building Project Update

City Manager Bohenko stated the Middle School Building Project Update meeting will be held on July 21, 2010 at 6:30 p.m. at the Eileen Dondero Foley Council Chambers.

### **B. MAYOR FERRINI**

1. Appointments to be Voted:
  - Elissa Hill Stone – Appointment as an Alternate to the Conservation Commission with term to expire April 1, 2013



**Assistant Mayor Novelline Clayburgh moved approve the appointment of Elissa Hill Stone as an alternate to the Conservation Commission. Seconded by Councilor Smith and voted on a 7- 0 roll call.**

2. Resignation – Susanne Delaney – Economic Development Commission

**Councilor Smith moved to accept the resignation of Susanne Delaney from the Economic Development Commission with regret and a letter of thanks and appreciation. Seconded by Assistant Mayor Novelline Clayburgh and voted on a 7- 0 roll call.**

3. Report Back from School Board Re: Final Budget Adjustments

**Councilor Smith moved to accept and place on file the report back from the School Board regarding final budget adjustments. Seconded by Councilor Coviello.**

Assistant Mayor Novelline Clayburgh asked about #8, Redirect Stimulus Funds (ARRA) on the list of adjustments and whether or not this follows the federal guidelines. City Manager Bohenko stated he is sure that is the case.

**Motion passed on 7- 0 roll call vote.**

4. Letter from First Lady Michelle Obama Re: Preserve America Community Designation

**Councilor Smith moved to place letter on file. Seconded by Assistant Mayor Novelline Clayburgh.**

Councilor Coviello read the letter from First Lady Michelle Obama into the record.

**Motion passed on a 7- 0 roll call.**

5. Reports

Mayor Ferrini introduced a letter from Vernis Jackson, Chair, African Burying Ground Committee requesting the Committee be allowed to make a presentation to the City Council on its overall fundraising plan and strategy towards establishing a Trust at the September 20<sup>th</sup> Council Meeting.

Mayor Ferrini asked Councilor Dwyer if this presentation could be made at a meeting in August. Councilor Dwyer stated that they are trying to coordinate the presentation with the visit of artist Jerome Meadows.

The Council consensus was to schedule the presentation for September 20<sup>th</sup> depending on the availability of Mr. Meadows. City Manager Bohenko stated that the legal department will also draft a Proforma Trust Fund Agreement.

**C. ASSISTANT MAYOR NOVELLINE CLAYBURGH**

1. \*Parking Rates

Assistant Mayor Novelline Clayburgh stated she would like to look into raising the parking rate from 75 cents per hour to \$1.00 per hour as a way to raise revenue for next year's budget. She stated she understands this would need to go before the Parking Committee first, but would like to start the discussion.

Councilor Smith stated this has come up in the past and believes that there are State laws regarding this that prohibit the money going to the general fund.

City Manager Bohenko stated there is a difference between an Enterprise Fund and a Special Revenue Fund. He explained that we are looking to establish an Enterprise Fund for the Parking and once we do that, the money will all go into this fund. He stated the General Fund can charge the Enterprise Fund for overhead expenses to a certain percentage, but it cannot be used to offset taxes.

City Attorney Bob Sullivan further explained the difference between a "fee" and a "tax" stating that a "fee" can be charged for the performance of a service and a "tax" is assessed by the city for funds for other purposes and these are regulated by the State. He stated that Parking fees have to be fees and rationally related to the cost to provide that service and a study needs to be conducted to show that the money will be spent on parking.

City Manager Bohenko stated that once there is an Enterprise Fund, the fee can be raised and set aside for specific parking related purposes.

Councilor Spear stated that procedurally we are going to have a report back regarding the "in lieu of fee" and other parking related issues so would like to have a work session after that report back by the Planning Board and other committees have reviewed it.

Councilor Coviello asked if it is possible to ask for specifics i.e. create a better traffic pattern at an 85% utilization rate. City Manager Bohenko stated if the Council wants to have specific items addressed, it is better to submit those in writing as to what they want included in the report rather than verbal.

**D. COUNCILOR SMITH**

1. Parking Committee Action Sheet and Minutes of the July 8, 2010 meeting

**Councilor Smith moved to approve and accept the action sheet and minutes of the July 8, 2010 meeting. Seconded by Councilor Spear and voted on a 7-0 roll call.**

2. \*Middle School Parking

Councilor Smith stated the Parking Committee held a special meeting with the Middle School JBC to discuss parking issues with the new middle school and whether to allow permit parking on Parrott Avenue for employees, but because it is a public street, we cannot put it as a private use by permitting it. He clarified that the Council can vote to do so. He stated the next action sheet will include a recommendation to allow 45 spaces for employee parking at the Parrott Avenue Lot be designated during school hours.

City Attorney Sullivan stated that because of the source of authority that the Council has to act is much greater to property the city owns such as the Parrott Avenue Lot compared to that of what the city does not own but still polices such as Parrott Avenue.

City Manager Bohenko stated that this will be on the August 16, 2010 City Council Agenda.

Councilor Dwyer thanked the Parking Committee for meeting with the JBC on such short notice as this came up at a JBC meeting as a concern for parking parents and other visitors to the school as well as library patrons during the school day and now they can stay on schedule.

Councilor Coviello then asked Councilor Dwyer for an update on the Middle School project specifically, are they concerned with going over budget since they decided to add back the air conditioning. Councilor Dwyer stated she gives an update every other Council meeting, but addressed his concern stating that the process is all about options, choices and tradeoffs to stay on budget.

After some discussion, Mayor Ferrini stated that this is beyond the scope of the discussion at this time and stated there are opportunities for the public (including the Council) to give input at the JBC meetings. Councilor Dwyer stated the next JBC meeting with public comment session will be held July 28, 2010 at 6:30 p.m.

**XIII. MISCELLANEOUS/UNFINISHED BUSINESS**

*There were no items under this section of the Agenda.*

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

**At 8:40 p.m., Councilor Coviello moved to adjourn. Seconded by Councilor Spear and voted on a 7-0 roll call.**