

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, MARCH 19, 2012

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

At 6:30 p.m. an anticipated "Non-Meeting" with Counsel was held - RSA 91-A:2, I (b-c).

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

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

II. ROLL CALL

Present: Mayor Spear, Assistant Mayor Lister, Councilors Coviello, Kennedy, Novelline Clayburgh, Lown, Dwyer, Smith and Thorsen

III. INVOCATION

Mayor Spear asked everyone to join in a moment of Silent Prayer.

IV. PLEDGE OF ALLEGIANCE

Councilor Coviello led the Pledge of Allegiance.

PROCLAMATION & PRESENTATION

1. USS Virginia – Assistant Mayor Robert Lister

Assistant Mayor Lister read a Proclamation extending best wishes to the officers and crew of The USS Virginia (SSN 774) as they prepare to leave the Seacoast area for new deployments in defense of our nation. Mayor Spear presented Commander Timothy Salter with the Proclamation. Assistant Mayor Lister presented Commander Salter and Machinist's Mate Master Chief Chad Shultz with a gift bag on behalf of the City Council.

Commander Salter spoke briefly extending his sincere thanks to the City of Portsmouth, Mayor Spear, Assistant Mayor Lister, City Council members, City Manager Bohenko and Pat Remick for all of their support during their stay here.

V. ACCEPTANCE OF MINUTES – MARCH 5, 2012

Councilor Smith moved to approve and accept the minutes of the March 5, 2012 City Council meeting. Seconded by Councilor Dwyer and voted.

VI. PUBLIC COMMENT SESSION

Martin Cameron spoke in support of the request for a "Welcome Home, Iraqi Veterans" Parade to be held on July 8, 2012. He also requested that the City of Portsmouth allow for a waiver of fees associated with police details and insurance for the event.

Nancy Johnson spoke regarding potential errors in the Chapter 10 Zoning Ordinance. She indicated that Article 4, Section 10.410, Office Research was listed under Business Districts instead of the adjacent Industrial Districts. Likewise in the charts contained on pages 18-36 (Section 10.440 Table of Uses) OR is shown in the Business category instead of the adjacent Industrial. Additionally the wording in Article 5, Section 10.532, describes Islington Street as a boundary of the North Mill Pond OR District when in reality the railroad is the actual boundary. Furthermore, on the Proposed Zoning Amendment of January 27, 2012 sheet the wording includes Cate Street in the OR District, but Cate Street is not included in the wording in Section 10.532.10 of the Zoning Ordinance. She requested that these inconsistencies be corrected.

Norm Olsen thanked Councilors Thorsen and Kennedy for putting forward a request that City Department Heads create a zero percent budget. He thanked the Department Heads for all of their work in preparing their budgets however he does not feel that the salaries and benefits are sustainable. He spoke opposed to the additional funding provided to the Fire Department for the operation of Fire Station 3. Mr. Olsen said as a result of that vote, the City overspent. He urged the City Council to vote for a flat budget.

VII. PUBLIC HEARINGS

- A. ORDINANCE AMENDING CHAPTER 10 – ZONING ORDINANCE, ARTICLE 4 – ZONING DISTRICTS AND USE REGULATIONS, SECTION 10.440 – TABLE OF USES – RESIDENTIAL, MIXED RESIDENTIAL, BUSINESS AND INDUSTRIAL DISTRICTS THAT WOULD ALLOW ASSISTED LIVING CENTERS AS A PERMITTED USE IN OFFICE RESEARCH DISTRICTS AND ALLOW CLUB, FRATERNAL OR SERVICE ORGANIZATIONS BY SPECIAL EXCEPTIONS IN THOSE DISTRICTS

ADDITIONALLY AMEND ARTICLE 5 – DIMENSIONAL AND INTENSITY STANDARDS, SECTION 10.531 – TABLE OF DIMENSIONAL STANDARDS – BUSINESS AND INDUSTRIAL DISTRICTS TO REDUCE MINIMUM LOT DIMENSIONS IN OFFICE RESEARCH DISTRICTS SO THAT LOT AREA WOULD BECOME 2 ACRES, CONTINUOUS STREET FRONTAGE 200 FEET, DEPTH 200 FEET, AND MINIMUM SIDE YARD 50 FEET

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

City Manager Bohenko requested that Planning Board Chair Ricci and Planning Director Taintor speak to the Ordinance.

Planning Board Chair Ricci thanked the City Council for allowing him to speak and for the City Council's support on the recommended zoning changes to the Office Research (OR) District. He stated that OR is typically not a district subject to too much development so zoning changes are intended to provide flexibility and dimensional yard set backs. He said it is the Planning Boards' hope that it will provide increased value to the City. He also stated that the assisted living allowance is not to be confused with the CCRC.

Planning Director Taintor said that this began back in July of 2011. He stated that the matter was referred to the Planning Board and public hearings were held on the topic. He stated that the changes are focused on site development changes and will provide more flexibility. Planning Director Taintor said that there are 5 OR Districts in the City and 3 of the 5 do not comply. He spoke to the assisted living component and explained that it would be like the Mark Wentworth Home. He further indicated that OR is restrictive in uses and does not change the character of an area.

Attorney Paul McEachern stated that he represents Aphrodite Georgopolous, owner of a vacant parcel at 1900 Lafayette Road, who is requesting the zoning change. He said that Ms. Georgopolous acquired this development parcel in 2000 and has attempted to offer the parcel for sale since then but the zoning designation has proved insurmountable for prospective users. Attorney McEachern said as it stands currently you need approval of the Board of Adjustment for anything to go into that property. In addition, he spoke to the change allowing for an assisted living facility not a CCRC. He also indicated that the City Council needs to consider that the Planning Director and Planning Board Chair support and recommend this zoning change.

Patricia Cummings from the Edgewood Centre spoke opposed to the zoning change. She spoke to the types of facilities that vary with assisted living and urged the City Council to carefully review this request. She further stated that this type of change would require more strain onto City services. In addition, Ms. Cummings also explained Medicare funding and how it relates to these facilities and its impact on the Edgewood Centre.

Mary Johnson Benson from the Clipper Home said that she shares many of the concerns expressed by Ms. Cummings of the Edgewood Centre. She said that this could impact the operations of the Clipper Home as well and damage the balance of care in the City.

Ralph DiBernardo spoke opposed to the ordinance and stated that the inability to sell the property at 1900 Lafayette Road is not a reason to change the zoning across the City. He said on page 4 there are changes to the table and allows assisted living, clubs, fraternal or service organization as minor changes. He does not feel that the proposed changes have been well thought out and urged the City Council to deny passage of the ordinance.

Nancy Johnson spoke against the Ordinance and expressed concern with the North Mill Pond and Bartlett Street areas. She said there should be no changes in density.

Rebecca Emerson requested that the City Council table this Ordinance. She said that these are big changes to the Ordinance and stated that the Council is here for the residents not just

a developer. She said if a project is a good fit, the neighborhood would support a development.

Laura Mannle requested that the City Council voted opposed to the ordinance and its amendments.

Robin Normandeau asked the City Council to reconsider how this amendment is being brought forward. She does not feel that due process has been done with this change. The residents should have more time to review these proposed changes. She recommended that this type of change should come as part of the Master Plan and not just an individual ordinance change.

Paul Mannle requested the City Council vote opposed to any zoning ordinance changes. He said it is not the responsibility of the City Council or City staff to change zoning to allow for a sale of property. He does not feel that the City should be changing zoning to fit the vision of the Planning Director. Mr. Mannle said this property owner should have been directed to request a variance through the Board of Adjustment as other property owners are. He said allowing this would allow two-thirds of the uses of a CCRC. He urged the City Council to vote against the ordinance and provided the Council with a petition containing 60 signatures opposed to the zoning change.

Lenore Weiss Bronson requested that the City Council oppose the zoning change. She said there are many residents that can't come here this evening to speak opposed to this ordinance and wanted to make sure that the Council was aware. She further stated that the City cannot do without the Edgewood Centre or the Clipper Home and urged the Council to oppose the ordinance.

Attorney Paul McEachern said that an assisted living facility is not a skilled nursing home. He said there are no current offers on the parcel at 1900 Lafayette Road. He stated that an assisted living facility under this ordinance would not be in competition with the Clipper Home or the Edgewood Centre. Attorney McEachern said with the Board of Adjustment you would need to prove hardship and the Board of Adjustment generally does not approve such variances. He also spoke to this being vacant land and that you could not even build a home without going to the Board of Adjustment. The Planning Board voted through a deliberative process.

Shaun Rafferty said that Attorney McEachern is trying to bypass the Board of Adjustment and go through the City Council for this zoning change. He said this change does affect the entire City and the residents of the neighborhood should be concerned.

Paul Mannle said he feels that Attorney McEachern has a problem with the process and going through the Board of Adjustment. He said zoning should not be changed without a change made to the Master Plan.

Nancy Johnson said the Office Research District is simply for office and research.

Lenore Weiss Bronson said that the City Attorney has made the statement in the past to her that the Board of Adjustment here is known in the State to be the most lenient.

With no further speakers, Mayor Spear declared the public hearing closed.

- B. ORDINANCE AMENDMENT TO CHAPTER 1, ARTICLE XIV, SECTION 1.14 – MUNICIPAL FUND BALANCE BY THE DELETION OF THE TERMINOLOGY *UNDESIGNATED* THROUGHOUT THE ORDINANCE WITH THE REPLACEMENT OF THE TERMINOLOGY **UNASSIGNED**

Mayor Spear read the legal notice, declared the public hearing open and called for speakers. With no speakers, Mayor Spear declared the public hearing closed.

- C. RESOLUTION AUTHORIZING THE ISSUANCE OF REFUNDING BONDS TO REFINANCE CERTAIN OUTSTANDING BONDS OF THE CITY SO AS TO REDUCE INTEREST COSTS AND TO PAY ALL COSTS INCIDENTAL AND RELATED THERETO. THE CITY IS AUTHORIZED TO ISSUE REFUNDING BONDS IN THE AMOUNT OF UP TO TWENTY MILLION DOLLARS (\$20,000,000.00)

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

City Manager Bohenko said that this Resolution does not represent new debt. He said we are simply calling the bond from the High School and will refinance at a lower rate. City Manager Bohenko stated it is important to get this through now as interest rates are starting to go up.

With no speakers, Mayor Spear declared the public hearing closed.

- D. RESOLUTION AUTHORIZING A BOND ISSUE AND/OR NOTES OF THE CITY UNDER THE MUNICIPAL FINANCE ACT AND/OR PARTICIPATION IN THE STATE REVOLVING FUND (SRF) LOAN FOR COSTS RELATED TO THE LONG TERM CONTROL PLAN (LTCP) IMPLEMENTATION NOT TO EXCEED TWELVE MILLION FIVE HUNDRED THOUSAND (\$12,500,000.00) DOLLARS

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

City Manager Bohenko requested that Deputy Public Works Director Allen address this item.

Deputy Public Works Director Allen said this bond is part of the sewer separation projects. He advised the City Council that the EPA requires that the Combined Sewer Overflow – Long Term Control Plan to be completed by 2014. He further outlined the areas on the project which include Richards Avenue, Rockland Street, Highland Street, Miller Avenue, Merrimac Street, streets off of Lincoln Avenue, Union Street, Wibird Street, Park Street and the Cass Street area.

With no speakers, Mayor Spear declared the public hearing closed.

VIII. APPROVAL OF GRANTS/DONATIONS

(There are no items under this section of the agenda)

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Proposed Ordinance Amendment to Chapter 6, Article XVI, Section 6.16 – Magazine Subscription Solicitors by amending Section 6.1604 – License Fee – The fee for such license shall be determined on an annual basis by the City during its budget process

Councilor Smith moved to pass first reading and schedule a public hearing and second reading on the proposed Ordinance amendment, at the April 2, 2012 City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.

- B. First reading of Proposed Ordinance Amendment to Chapter 5, Article VIII, Section 5.8 – Alarm Systems Monitored by the City - Section 5.802 by removing service charge to service fee and adding such amounts as may be determined on an annual basis by the City during its budget process. The service fee may be graduated to increase based upon an increasing number of unfounded emergency calls. In addition, amending Section 5.803 – Permissible Unfounded Emergency Calls by replacing service charge with service fee and sub-section A - replacing Police Offices with Police Department and sub-section B – replacing Fire Officials with Fire Department

Councilor Smith moved to pass first reading and schedule a public hearing and second reading on the proposed Ordinance amendment, at the April 2, 2012 City Council meeting. Seconded by Councilor Novelline Clayburgh.

Councilor Kennedy asked if there would be a presentation on this Ordinance. She indicated that she would like to know how many calls are received on an annual basis, where the majority of calls are made from, are the calls from facilities such as hotels and such places where the alarm is being pulled more often, and are we presently charging the appropriate fee for the amount of time and services provided when going to these calls.

City Manager Bohenko advised that there would be a presentation during the public hearing on this matter.

Motion passed.

- C. First reading of Proposed Ordinance Amendment to Chapter 6, Article VII – Dogs and Other Pets, Section 6.708 License by the addition of the following language – The fee for this license shall be set at the maximum amount permitted by state law

Councilor Novelline Clayburgh moved to pass first reading and schedule a public hearing and second reading on the proposed Ordinance amendment, at the April 2, 2012 City Council meeting. Seconded by Councilor Kennedy and voted.

- D. Second reading of Proposed Ordinance Amendment Chapter 10 – Zoning Ordinance, Article 4 – Zoning Districts and Use Regulations, Section 10.440 – Table of Uses – Residential, Mixed Residential, Business and Industrial Districts that would allow Assisted Living Centers as a Permitted Use in Office Research Districts and allow Club, Fraternal or Service Organizations by Special Exceptions in those Districts

Additionally Amend Article 5 – Dimensional and Intensity Standards, Section 10.531 – Table of Dimensional Standards – Business and Industrial Districts to reduce Minimum Lot Dimensions in Office Research Districts so that Lot Area would become 2 acres, Continuous Street Frontage 200 feet, Depth 200 feet, and Minimum Side Yard 50 feet

Councilor Lown said he has a professional conflict of interest and would need to abstain from voting on this Ordinance.

Councilor Dwyer said she would like to do parts of the ordinance.

Councilor Dwyer moved to amend the Ordinance for Permitted Uses to allow Club, Fraternal or Service Organizations by Special Exceptions in those Districts and the Dimensional and Intensity Standards. Seconded by Councilor Kennedy to allow for discussion.

Councilor Dwyer said the amendment she is making is because the only concerns seem to be around assisted living. She stated that Office Research (OR) really should have been changed in the Master Plan. She indicated that the Planning Board had suggested that change coming out of the last Master Plan. Councilor Dwyer said a variety of reasons in the interim seems that some of the issues here and some of the changes in dimensions would be worthwhile. She said personally, as a side note, and someone that abuts the Clipper Home, she feels that she lives in one of the most desirable residential areas in the City. The assisted living facility – Clipper Home has been nothing but an excellent neighbor to have so it is hard for her to understand the concerns. She indicated that it is difficult to understand the heaviness of the concerns, but they are there, and so people need more time to understand what such a facility would be like.

The second reason for this amendment is that the City Council has spent a lot of time over the last several months looking to support the senior citizens in our community. She does not know why we would not want them to be able to live here and perhaps provided support if we want to transport them to various activities and appointments. She further stated that maybe she is living in a bubble next door to the Clipper Home and doesn't see all the problems that it is creating. In closing, she said she believes we should try to move forward on adjustments to the OR Districts as proposed in the Master Plan.

Councilor Kennedy said she would oppose the Ordinance and feels that both uses could be the non-profit and feels they should be for profit. She also stated that she feels that this is spot zoning. There is a process to go through with the Board of Adjustment to seek variances and that is what should be done in this case. In addition, she spoke opposed to any changes in lot sizes.

Councilor Thorsen said he is concerned with the frontage and asked what other land in the City could be changed to Office Research. Planning Director Taintor said the Planning Board looked at existing lots in the Office Research and that Office Research is the only district that has a 300 feet and 3 acre requirement. This change would make it more similar to the Industrial zone. Councilor Thorsen asked if some lots on Islington Street could be changed with this amendment. Planning Director Taintor said the only case someone would want to move to Office Research is if they have a residential lot. Councilor Thorsen said that Office Research is restrictive and he is opposed to the ordinance. He also said it looks like spot zoning and this change should be made in the Master Plan. In closing, Councilor Thorsen said he feels that this change is being crafted for a person.

Assistant Mayor Lister said he would vote opposed to the amendment and ordinance change. He respects the work of the Planning Board and Planning Department but suggested voting on each parcel for its own merits. He stated we need to get a big picture for senior services and that is when a proposal should come forward for the assisted living and senior care. Assistant Mayor Lister also indicated that residents want the neighborhoods protected.

Councilor Coviello asked if assisted living is allowed anywhere in the ordinances. Planning Director Taintor said yes but he is unable to remember what district.

Councilor Coviello asked if the current lot meets the Zoning Ordinance. Planning Director Taintor indicated that it does.

Councilor Novelline Clayburgh thanked the Planning Department and Planning Board for their hard work on this matter. She said that she would not support the Ordinance because a process is allowed through the Board of Adjustment and that is the process that should be used.

Councilor Dwyer said that this would allow for small developments and that we need more housing options rather than less. She indicated that we have an aging population that needs to be considered.

Discussion followed as to whether the motion was proper as part of parliamentary procedures. It was determined that a motion to get second reading in front of the Council was required before an amendment is brought forward.

Councilor Dwyer withdrew her motion to amend and Councilor Kennedy her second to the motion.

Councilor Smith moved to deny passage of second reading of Ordinance. Seconded by Councilor Kennedy.

On a roll call vote 5-3, motion passed. Assistant Mayor Lister, Councilors Kennedy, Novelline Clayburgh, Smith and Thorsen voted in favor. Councilors Coviello, Dwyer and Mayor Spear voted opposed. Councilor Lown abstained from voting. *By action of the City Council this Ordinance has been defeated.*

- E. Second reading of Proposed Ordinance Amendment to Chapter 1, Article XIV, Section 1.14 – Municipal Fund Balance by the deletion of the terminology *Undesignated* throughout the Ordinance with the replacement of the terminology **Unassigned**

Councilor Coviello moved to pass second reading and schedule third and final reading on the proposed Fund Balance Ordinance, at the April 2, 2012 City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.

- F. Adoption of Resolution Authorizing the Issuance of Refunding Bonds to Refinance Certain Outstanding Bonds of the City so as to Reduce Interest Costs and to Pay all Costs Incidental and Related Thereto. The City is authorized to issue refunding bonds in the amount of up to Twenty Million Dollars (\$20,000,000.00)

Councilor Novelline Clayburgh moved to adopt the Refunding Resolution of up to Twenty Million Dollars (\$20,000,000.00) as presented. Seconded by Councilor Smith.

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

- G. Adoption of Resolution Authorizing a Bond Issue and/or Notes of the City under the Municipal Finance Act and/or Participation in the State Revolving Fund (SRF) Loan for Costs Related to the Long Term Control Plan (LTCP) Implementation not to exceed Twelve Million Five Hundred Thousand (\$12,500,000.00) Dollars

Councilor Novelline Clayburgh moved to adopt a Bond Resolution for the aforementioned long-term control plan, as presented. Seconded by Councilor Dwyer.

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

X. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

Councilor Smith requested the removal of Item X.A. – 2012 Omnibus Sidewalk Obstruction Renewals. Councilor Smith stated he will abstain from voting on this item as he is the owner of the establishment.

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

- B. Letter from Jay Diener, Seacoast Half Marathon, requesting permission to hold the 7th Annual Seacoast Half Marathon on Sunday, November 11, 2012 ***(Anticipated action – move to refer to the City Manager with power)***
- C. Letter from Doug Bates and Joan Chawziuk, Greater Portsmouth Chamber of Commerce, requesting permission to hang Portsmouth Harbour Trail Flags at 24 key sites for the 2012 season ***(Anticipated action – move to refer to the City Manager with power)***
- D. Letter from Kelly Lemos, New Hampshire SPCA, requesting permission to place 2 Paws Walk Posters and Brochures at the Mill Pond Dog Park ***(Anticipated action – move to refer to the City Manager with power)***
- E. Request for Renewal of Boarding House Permit for Brian Hogan, Bach Realty, LLC, 21 Brewster Street ***(Anticipated action – move to authorize the City Manager to issue the Boarding House Permit for Brian Hogan, Bach Realty, LLC, 21 Brewster Street)***
- F. Request for a License from Tom Holbrook, owner of River Run Bookstore on Fleet Street for property located at 142 Fleet Street to install a projecting sign on an existing bracket ***(Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Tom Holbrook, owner of River Run Bookstore on Fleet Street to install a projecting sign at 142 Fleet Street and, further, authorize the City Manager to execute a License Agreement for this request)***

Planning Director's 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***
- G. Request for Approval of Pole License to install/replace 1 pole located on Fernald Court ***(Anticipated action – move to approve the aforementioned Pole License Agreement as recommended by the Public Works Department with the approval conditioned upon amendment of the license to allow for the collection of any lawfully assessed real estate taxes)***
- A. 2012 Omnibus Sidewalk Obstruction Renewals – See Attached Listing ***(Anticipated action – move to refer to the City Manager with power)***

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

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Dyanna Smith, Red Eft Project, requesting permission to install 3 sculptural pieces of art on Friday, May 11, 2012 through Sunday, May 13, 2012 at the following locations:
 - Corner of Market Street (where the ant and moose were located)
 - Grassy area where City Hall exits onto Junkins Avenue
 - Park across the street from City Hall, near corner of Junkins Avenue and South Street

Councilor Smith moved to refer to Art-Speak for report back. Seconded by Assistant Mayor Lister and voted.

- B. Letter from Peter Somssich and Josh Denton, “Welcome Home, Iraqi Veterans” Parade Committee, requesting permission to hold a “Welcome Home, Iraqi Veterans” Parade on Sunday, July 8, 2012 and further, request that the City of Portsmouth assume the costs involved with the police details and insurance

Assistant Mayor Lister moved to refer to the Veteran Committee that Assistant Mayor Lister and Councilor Smith serve, for report back. Seconded by Councilor Novelline Clayburgh.

City Manager Bohenko said that he would contact Assistant Mayor Lister and Councilor Smith to meet with City staff on this matter. He also indicated in order to waive the insurance requirements, the event would need to be co-sponsored by the City.

Councilor Kennedy moved to suspend the rules in order to allow Peter Somssich to speak to the request. Seconded by Councilor Novelline Clayburgh and voted.

Mr. Somssich stated that this was brought forward at the request of Harold Whitehouse. He also informed the City Council that some veterans feel this should include soldiers that served in Afghanistan as well. He advised the City Council that this would be the first City in New England to hold such a parade.

Councilor Dwyer asked if there was a sense of how many people that have served in the seacoast area. Mr. Somssich said there is not.

Councilor Thorsen said he would like to know how the funding for the event could be mitigated. City Manager Bohenko said typically we have not waived monetary costs unless it is a City co-sponsored event.

Motion passed.

- C. Letter from Attorney Malcolm McNeill, Representing Commerce Way, LLC, regarding Commerce Way Conditional Road Layout and Betterment Assessment

Assistant Mayor Lister moved to refer to the Planning Board for report back. Seconded by Councilor Novelline Clayburgh and voted.

- D. Letter from Kit Clews requesting permission to install an interactive sculpture in Market Square

Councilor Coviello moved to refer to Art-Speak for report back. Seconded by Assistant Mayor Lister and voted.

Mayor Spear called for a brief recess at 9:00 p.m. Mayor Spear called the meeting back to order at 9:10 p.m.

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

- 1. Adoption of Capital Improvement Plan (CIP) FY2013-2018

City Manager Bohenko reviewed the process followed in preparing and presenting the Capital Improvement Plan for FY2013-2018. He stated that the CIP is available on the website, at the Library and City Clerk's Office for review or reference. City Manager Bohenko requested that the City Council adopt the CIP this evening. He also advised the City Council that the CIP is a plan and does not appropriate funds.

Councilor Novelline Clayburgh moved to adopt the Capital Improvement Plan for FY2013–2018 with any appropriate amendments. Seconded by Councilor Smith.

Councilor Coviello requested that the installation of a sound barrier at Pannaway Manor be identified as part of the FY2014-2019 Capital Improvement Plan.

Councilor Smith said that Rock Street and Myrtle Avenue should also be covered with the sound barrier.

City Manager Bohenko said that there is a definite process through the Department of Transportation for that project. He indicated that we would contact the DOT and identify what we are looking for and start the process.

Councilor Coviello stated that there maybe other alternatives other than a sound barrier.

Councilor Kennedy said she would like to compliment the adjustments made by the Planning Board in bringing the CIP forward to the Council. She stated however, there is more work to be done on the plan. She also stated in regards to the parking garage, there will be another vote on the concept for the garage and just because it is in the CIP does not mean it is a done deal.

City Manager Bohenko said a bonding resolution requires two readings with a public hearing and a two-thirds vote of the Council for adoption.

Councilor Lown stated that the City Council can remove items from the CIP at the adoption of the budget. He said that the Council cannot be lenient on funding the CIP because you get behind with projects and it will cost more in the long run.

Councilor Thorsen stated that the proposed \$1,500,000.00 from the General Fund is too high and would like it lowered by \$500,000.00. He further stated the plan needs to be looked at as a whole.

Assistant Mayor Lister thanked the staff for their hard work in preparing the CIP. He said the Coakley Road project went through a process with the Boards/Commission and that is a good example of public participation.

Motion passed with Councilor Thorsen voting opposed.

2. Policy Regarding Use of City Property for Sidewalk Cafes' Providing Alcohol Service

City Manager Bohenko said a copy of the policy has been provided to the City Council for review and that changes may be made as we evaluate the process. He stated that in paragraph 1 there is a maximum to allow for 6 licenses. He also indicated that the State Liquor Commission has reviewed the policy and find no issues. City Manager Bohenko also spoke to the success of the pilot program.

Councilor Smith moved to adopt the policy regarding Use of City Property for Sidewalk Cafes' Providing Alcohol Service. Seconded by Councilor Novelline Clayburgh.

Councilor Kennedy said that she feels the fee of \$2,000.00 is too low for blocking off a piece of sidewalk. City Manager Bohenko stated that the City Council could amend the fee.

Councilor Coviello said he likes the general sense of the policy. He further stated that he is supportive of paragraph 13 regarding a substantial meal needing to be ordered for alcohol to be served.

Councilor Thorsen said he is having a hard time imaging 6 different areas downtown. He spoke concern as to how wide an area could be.

Assistant Mayor Lister said City Manager Bohenko had expressed concern with the amount of time staff would be taken from this. City Manager said the policy helps with this. He further stated we may have people question how we follow the criteria.

Councilor Dwyer stated that we are not doing this for the money but to add to the vitality of the downtown.

Assistant Mayor Lister said he feels strongly that this is something we should try. He said we are providing this to fill a demand that exists. He further stated that the price may be low and we can make adjustments as we go forward.

Councilor Novelline Clayburgh said that she would support the policy and that it is a benefit to the residents and tourists. She also stated that she feels the fee should be increased and would recommend \$15.00 per square foot.

On a roll call vote 8-1, motion passed. Assistant Mayor Lister, Councilors Coviello, Novelline Clayburgh, Lown, Dwyer, Smith, Thorsen and Mayor Spear voted in favor. Councilor Kennedy voted opposed.

3. Approval of Guiding Parking Principles Re: Central Business District

City Manager Bohenko advised the City Council that changes can be made as we move forward. He stated we would start the process in terms of the flow chart that has been provided to the Council.

Councilor Novelline Clayburgh moved to approve the Guiding Parking Principles for the Central Business District, as presented. Seconded by Councilor Smith.

Councilor Kennedy asked when the City Council would receive the final Nelson/Nygaard Parking Report. City Manager Bohenko stated that the City will work closely with Nelson/Nygaard on the proposal and also work with the Economic Development Commission, Parking & Traffic Safety Committee and Land Use agencies. He stated that the report is complete and is the City's to use.

Councilor Novelline Clayburgh spoke in support of the motion. She stated that the guide outlines how we should move forward and she supports the flow chart as well.

Councilor Dwyer said that this is a first step for parking principles and not transportation. She also stated that she wants to make sure that we are on track with a Transportation Committee.

Councilor Smith said that there was a Transportation Policy Committee and it has been put on hold until the parking principles are completed. Councilor Smith said he will bring that back to push out the date of the Transportation Policy Committee.

Assistant Mayor Lister stated that the City Council is not voting on a parking garage with these principles. City Manager Bohenko said that is correct.

Councilor Thorsen said he does not feel that Item 19 – Parking strategies, should be revenue neutral.

Councilor Thorsen moved to amend the motion and remove Item 19 from the Principles. Motion received no second.

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

4. Request for Approval of Pro Portsmouth Settlement Agreement

City Attorney Sullivan provided background information on this matter. He outlined the issues involving Pro Portsmouth and funds owed for police services related to past Market Square Day events. City Attorney Sullivan advised the City Council that Pro Portsmouth currently owes the City the sum of \$27,173.60 (as of March 13, 2012) and the parties agree that the entire past due debt described shall be compromised and settled by the payment of a single lump sum in the amount of \$12,000.00 due at completed execution of this agreement. He requested that the City Council support the agreement, as presented.

Councilor Coviello moved to approve the Settlement Agreement with Pro Portsmouth, and further, authorize the City Manager to execute this agreement. Seconded by Councilor Smith.

Councilor Coviello asked what system has been put in place to make sure this does not happen again. City Manager Bohenko said Pro Portsmouth is an integral part of providing events for the City. He said over time because of the success of Pro Portsmouth, the costs increased with the police details which caused Pro Portsmouth to get behind. He further stated that now when an event is held the Police Department looks at costs required for the details.

Councilor Thorsen said he supports the Settlement Agreement because it is more beneficial to settle now and receive the funds today versus over time.

Councilor Smith spoke in support of the Settlement Agreement. He did express some concern with this setting precedence.

Councilor Dwyer said in many cities the City would pay for the functions provided by Pro Portsmouth. She said that Pro Portsmouth is a non-profit organization providing these wonderful events for over 35 years.

Councilor Novelline Clayburgh said she will vote in favor because of the amount of vitality Pro Portsmouth has provided to the City. She suggested that the City discuss in the future partnering with Pro Portsmouth.

Motion passed.

5. Request for Acceptance of Land Exchange with the State of New Hampshire Relating to General Sullivan Bridge Reconstruction

City Manager Bohenko said that the Department of Transportation (DOT) has asked to exchange land to allow the improvements to the General Sullivan Bridge. He spoke to the map that outlined the parcels that will be exchanged and allow NHDOT to maintain its construction schedule. City Manager Bohenko advised the Council that the Planning Board has reviewed this and unanimously indicated there are no issues with the exchange of land. He also stated that the City Council could vote on this matter this evening or bring it back for action at the April 2, 2012 City Council meeting.

Councilor Smith moved to accept the letter and approve the exchange of the properties in a manner which would allow NHDOT to maintain its construction schedule. Seconded by Councilor Coviello and voted.

City Manager's Informational Items

- *Peirce Island Wastewater Treatment Facility Open House*

City Manager Bohenko announced that the Peirce Island Wastewater Treatment Facility will be conducting an Open House on Saturday, March 31, 2012 from 9:00 a.m. – Noon.

Councilor Coviello voted to suspend the rules in order to extend the meeting time to 10:30 p.m. Seconded by Councilor Dwyer.

Councilor Smith suggested that staff is released if the Council can't get things completed before 10:00 p.m. City Manager Bohenko thanked Councilor Smith for the suggestion however, he would need to be the one to release the staff because he may require them to answer certain questions or address various items that are before the Council.

Motion passed.

B. MAYOR SPEAR

1. Appointments to be Considered:
 - Appointment of David Rheume as a regular member to the Zoning Board of Adjustment
 - Appointment of David Rheume as a regular member to the Building Code of Appeals filling the unexpired term of Chester Keefe
 - Reappointment of MaryAnn Blanchard to the Conservation Commission

The City Council considered the above referenced appointments which will be voted on at the April 2, 2012 City Council meeting.

2. Appointment to be Voted:
 - Appointment of Christopher Mulligan as a regular member to the Zoning Board of Adjustment

Councilor Coveillo moved to appoint Christopher Mulligan as a regular member to the Zoning Board of Adjustment until December 1, 2016. Seconded by Councilor Smith and voted.

3. Reappointment of Peter Loughlin to the Pease Development Authority as (Co-Representative with the Town of Newington) until March, 2015

Assistant Mayor Lister moved to reappoint Peter Loughlin to the Pease Development Authority as Co-Representative with the Town of Newington until March 1, 2015. Seconded by Councilor Coviello and voted.

City Manager Bohenko said that Peter Loughlin has served on the Pease Development Authority for a number of years and his appointment has also been a holdover. He further stated that Peter has done an outstanding job in serving as the Co-Representative for the Town of Newington and the City of Portsmouth.

C. COUNCILOR SMITH

1. Parking and Traffic Safety Committee Action Sheet and Minutes from March 8, 2012 meeting

Councilor Smith moved to approve and accept the Action Sheet and Minutes of the March 8, 2012 Parking and Traffic Safety Committee meeting. Seconded by Councilor Coveillo.

Councilor Smith informed the City Council that there are no ordinance changes required through the actions of the Parking and Traffic Safety Committee meeting.

Motion passed with Councilor Kennedy voting opposed.

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

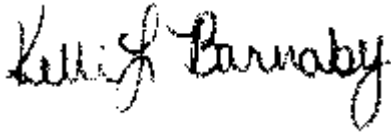
Councilor Novelline Clayburgh spoke to the recent article in the newspaper regarding restoring the rail line to the City of Portsmouth and asked if there was anything the Council could do.

Councilor Smith stated that the City has looked at this matter for over 20 years. He advised the City Council that there is a problem with crossing over the bridge into Massachusetts over the Merrimack River. He further stated that the bridge is in need of repairs and Massachusetts is unwilling to pay for those upgrades to make the bridge functional for rail line use. City Manager Bohenko said that it would require federal funding as well as State funding.

Councilor Dwyer informed the City Council that the contributions for the African Burying Ground Trust provided this evening do not reflect additional contributions of \$130,000.00 received.

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

At 10:15 p.m., Councilor Coviello moved to adjourn. Seconded by Councilor Novelline Clayburgh 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