

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, MAY 7, 2012 TIME: 7:00PM

AGENDA

- 6:00PM – ANTICIPATED “NON-MEETING” WITH COUNSEL RE: NEGOTIATIONS RSA: 91-A:2, I (b-c)

- I. CALL TO ORDER [7:00PM or thereafter]
- II. ROLL CALL
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE

PROCLAMATIONS

1. Bike/Walk to Work Day in Portsmouth
2. Police Week in Portsmouth & Peace Officers' Memorial Day

PRESENTATION

1. *Mayor's Blue Ribbon Committee on Sustainable Practices – Bert Cohen, Chair

V. ACCEPTANCE OF MINUTES – APRIL 2, 2012 AND APRIL 16, 2012

VI. PUBLIC COMMENT SESSION

VII. PUBLIC HEARINGS

- A. ORDINANCE AMENDING CHAPTER 7, ARTICLE II, SECTION 7.229 OF THE TAXI ORDINANCE – GENERAL PROVISIONS BY A NEW SUB-SECTION E - ENTITLED COMPLIANCE WITH STATE AND FEDERAL LAW
- B. ORDINANCE AMENDING CHAPTER 10, ARTICLE 4, SECTION 10.440 OF THE ZONING ORDINANCE – TABLE OF USES – RESIDENTIAL, MIXED RESIDENTIAL, BUSINESS AND INDUSTRIAL DISTRICTS BY CREATING PERFORMANCE STANDARDS APPLICABLE TO DRIVE-THROUGH FACILITIES AND; CHAPTER 10, ARTICLE 8, SECTION 10.836.20 OF THE ZONING ORDINANCE REGARDING ACCESSORY DRIVE-THROUGH USES BY CHANGING TYPE OF APPROVAL REQUIRED FROM A SPECIAL EXCEPTION TO A CONDITIONAL USE PERMIT
- C. ORDINANCE AMENDING CHAPTER 10, ARTICLE 15, SECTION 10.1530 – TERMS OF GENERAL APPLICABILITY RELATIVE TO THE DEFINITION OF MUSEUM REGARDING ACCESSORY USES THAT ARE INCIDENTAL AND SUBORDINATE TO THE PRIMARY NON-PROFIT MUSEUM USE

VIII. APPROVAL OF GRANTS/DONATIONS

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

IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second reading of Proposed Amendment to Taxi Ordinance – Chapter 7, Article II, Section 7.229 – General Provisions by a new Sub-section E - entitled Compliance with State and Federal Law ***(Sample Motion – move to pass second reading and hold third and final reading of the proposed Ordinance, as presented, at the May 21, 2012 City Council meeting)***
- B. Second reading of Proposed Amendment to Chapter 10, Article 4, Section 10.440 of the Zoning Ordinance – Table of Uses – Residential, Mixed Residential, Business and Industrial Districts by creating Performance Standards applicable to Drive-through Facilities, and Chapter 10, Article 8, Section 10.836.20 of the Zoning Ordinance regarding Accessory Drive-through Uses by changing type of approval required from a Special Exception to a Conditional Use Permit ***(Sample Motion – move to pass second reading and hold third and final reading of the proposed Ordinance, as presented, at the May 21, 2012 City Council meeting)***
- C. Second reading of Proposed Amendment to Zoning Ordinance, Chapter 10, Article 15, Section 10.1530 – Terms of General Applicability relative to the Definition of Museum regarding Accessory Uses that are Incidental and Subordinate to the Primary Non-Profit Museum Use ***(Sample Motion – move to pass second reading and hold third and final reading of the proposed Ordinance, as presented, at the May 21, 2012 City Council meeting)***

X. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Letter from Mylene Hollick, March of Dimes, requesting permission to hold the 2012 Seacoast March for Babies on Sunday, May 20, 2012 from 9:00 am. – 1:00 p.m. ***(Anticipated action – move to refer to the City Manager with power)***
- B. Acceptance of Donation to the Fire Department from Patricia MacNeil - \$75.00 ***(Anticipated action – move to accept and approve the donation, as presented)***
- C. 2012 Omnibus Sidewalk Obstruction Renewals – Part III – See Attached Listing ***(Anticipated action – move to refer to the City Manager with power)***
- D. Request for Approval of Pole License to install/replace 1 pole located on Willard Avenue ***(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)***

- E. Letter from Alyssa Aldrich, Big Brothers Big Sisters of the Greater Seacoast, requesting permission to hold the 3rd Annual Stiletto Race on Saturday, July 28, 2012 from 4:00 p.m. – 6:00 p.m. (rain date of Saturday, August 4, 2012) ***(Anticipated action – move to refer to the City Manager with power)***

XI. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Karina Quintans, Islington Creek Neighborhood Association, regarding Nighttime closure of Rock Street Park
- B. Letter from Padi Anderson, 2012 Fishtival Steering Committee, requesting support from the City of Portsmouth in the amount of \$1,000.00
- C. Letter from Eric G. Mart and Kathryn A. McCallion requesting a rezoning of 1283 Woodbury Avenue ***(Sample motion – move to refer to the Planning Board for report back)***

XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

Items Which Require Action Under Other Sections of the Agenda

- 1. Public Hearing/Second Reading of Proposed Ordinance Amendments:
 - 1.1 Public Hearing/Second reading of Proposed Amendment to Taxi Ordinance – Chapter 7, Article II, Section 7.229 – General Provisions by a new Sub-section E - entitled Compliance with State and Federal Law ***(Action on this matter should take place under Section IX of the Agenda)***
 - 1.2 Public Hearing/Second reading of Proposed Amendment to Chapter 10, Article 4, Section 10.440 of the Zoning Ordinance – Table of Uses – Residential, Mixed Residential, Business and Industrial Districts by creating Performance Standards applicable to Drive-through Facilities, and Chapter 10, Article 8, Section 10.836.20 of the Zoning Ordinance regarding Accessory Drive-through Uses by changing type of approval required from a Special Exception to a Conditional Use Permit ***(Action on this matter should take place under Section IX of the Agenda)***
 - 1.3 Public Hearing/Second reading of Proposed Amendment to Zoning Ordinance, Chapter 10, Article 15, Section 10.1530 – Terms of General Applicability relative to the Definition of Museum regarding Accessory Uses that are Incidental and Subordinate to the Primary Non-Profit Museum Use ***(Action on this matter should take place under Section IX of the Agenda)***

City Manager's Items Which Require Action

1. Request for Approval of Police Department Early Retirement Incentive
2. Request to Establish Public Hearing Re: Use of Bond Premium
3. Report Back Re: Proposed Closure of Rock Street Park between the hours of 11:00 p.m. and 5:00 a.m.
4. Request from Paul R. Frohn, Jr., and Susan C. Frohn for Restoration of Involuntary Merged Lots Under RSA 674-39-aa
5. Request from Irene R. Lebel and Frances D. Lebel for Restoration of Involuntary Merged Lots Under RSA 674-39-aa
6. Applications for Sidewalk Cafes Providing Alcohol Service
 - a) Popovers on the Square
 - b) The District
 - c) RiRa
 - d) State Street Saloon
 - e) Surf Restaurant
7. Report Back Re: Public Service of New Hampshire Easement at Prescott Park
8. Report Back Re: Request of New Hampshire Department of Transportation for an Easement under the Scott Avenue Bridge in support of the Memorial Bridge Project
9. Report Back Re: Letter from Attorney Malcolm McNeill, representing Commerce Way, LLC, regarding Commerce Way Conditional Road Layout and Betterment Assessment
10. Report Back Re: Letter from David Mikolaities, Lieutenant Colonel, NH Army National Guard, regarding the Acquisition of a Portion of the Right of Way along Market Street and Site Improvements for Access to the National Guard Readiness Center on 803 McGee Drive
11. Report Back Re: Request of Barbara Devanna and Robert Cohen for an Access Easement over 55 Pine Street for property at 55 Meredith Way (previously identified as 55 Pine Street)

Informational Items

1. Events Listing
2. Installation of New Historic Markers
3. Budget Work Session Agenda

B. MAYOR SPEAR

1. Appointments to be Voted:
 - Reappointment of Kathleen Bergeron to Citywide Neighborhood Steering Committee
 - Reappointment of Ed DeValle to Recreation Board

C. COUNCILOR SMITH

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the April 12, 2012 meeting

D. COUNCILOR DWYER

1. *Middle School Update

E. COUNCILOR COVIELLO AND COUNCILOR DWYER

1. City Council Rule 23 – Committee Nomination

XIII. MISCELLANEOUS/UNFINISHED BUSINESS

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

**KELLI L. BARNABY, CMC/CNHMC
CITY CLERK**

**Indicates Verbal Report*

INFORMATIONAL ITEMS

1. Notification that the Conservation Commission Minutes of March 14, 2012 meeting are available on the City's website for your review
2. Notification that the Planning Board Minutes of January 19, 2012 and March 15, 2012 meetings are available on the City's website for your review
3. Notification that the Site Review Technical Advisory Committee Minutes of April 3, 2012 meeting are available on the City's website for your review
4. Notification that the Zoning Board of Adjustment Minutes of January 17, 2012 and February 21, 2012 meetings are available on the City's website for your review.
5. Notification that the Zoning Board of Adjustment Amended Minutes of the October 18, 2011 meeting are available on the City's website for your review

NOTICE TO THE PUBLIC WHO ARE HEARING IMPAIRED: Please contact Dianna Fogarty at 603-610-7270 one-week prior to the meeting for assistance.

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: May 3, 2012
To: Honorable Mayor Eric Spear and City Council Members
From: John P. Bohenko, City Manager
Re: City Manager's Comments on May 7, 2012 City Council Agenda

6:00 p.m. – Non-meeting with counsel.

For details on this matter, please refer to the confidential envelope inserted in the inside pocket of your binder.

Presentations:

1. **Mayor's Blue Ribbon Committee on Sustainable Practices.** Bert Cohen, Chairman of the Mayor's Blue Ribbon Committee on Sustainable Practices will make a presentation to update the City Council on the Committee's activities at Monday's meeting.

Items Which Require Action Under Other Sections of the Agenda:

1. **Public Hearing/Second Reading of Proposed Resolution and Ordinance Amendments:**
 - 1.1 **Public Hearing/Second Reading of Proposed Amendment to Taxi Ordinance – Chapter 7, Article II, Section 7.229 – General Provisions by a new Sub-section E - Entitled Compliance with State and Federal Law.** As a result of the April 16th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading [the attached proposed Ordinance amendment to the Taxi Ordinance – Chapter 7, Article II, Section](#)

7.229 – General Provisions by a new Sub-section E - Entitled Compliance with State and Federal Law.

I would recommend the City Council move to pass second reading and schedule a third and final reading of the proposed Ordinance, as presented, at the May 21st City Council meeting. Action on this matter should take place under Section IX of the Agenda.

- 1.2 **Public Hearing/Second Reading of Proposed Amendment to Chapter 10, Article 4, Section 10.440 of the Zoning Ordinance – Table of Uses – Residential, Mixed Residential, Business and Industrial Districts by Creating Performance Standards Applicable to Drive-Through Facilities and; Chapter 10, Article 8, Section 10.836.20 of the Zoning Ordinance Regarding Accessory Drive-Through Uses by Changing Type of Approval Required from a Special Exception to a Conditional Use Permit.** As a result of the April 16th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the [attached aforementioned proposed Ordinance amendment](#).

As you will recall, at the February 6, 2012 City Council meeting, the Council referred this request to the Planning Board for report back to the City Council. Mr. Choate’s request is that the City considers amending the Zoning Ordinance with respect to the number of drive-through lanes allowed. The Planning Board considered this request at its meeting on March 15, 2012 and voted to recommend the changes to the Zoning Ordinance as outlined in the [attached memorandum from Rick Taintor, Planning Director](#).

I would recommend the City Council move to pass second reading and schedule a third and final reading of the proposed Ordinance, as presented, at the May 21st City Council meeting. Action on this matter should take place under Section IX of the Agenda.

- 1.3 **Public Hearing/Second Reading of Proposed Amendment to Zoning Ordinance, Chapter 10, Article 15, Section 10.1530 - Terms of General Applicability relative to the Definition of Museum regarding Accessory Uses that are Incidental and Subordinate to the Primary Non-profit Museum Use.** As a result of the April 16th City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the [attached proposed Ordinance Amendment to Zoning Ordinance, Chapter 10, Article 15, Section 10.1530 – Terms of General Applicability relative to the Definition of Museum](#).

[Attached is a memorandum from Rick Taintor, Planning Director](#), regarding a request from Strawberry Banke Museum for an amendment to the definition of “museum” in the Zoning Ordinance. Specifically, it is requested that the provision

excluding “commercial galleries for the sale of art” be removed from the definition.

At its meeting on March 15, 2012, the Planning Board voted unanimously to recommend that the City Council amend the definition of “museum “ as follows:

A non-profit permanent institution, open to the public, which acquires, conserves, researches, exhibits, and interprets objects having scientific, historical or artistic value. Museums may include exhibit and display areas, libraries and research areas, administrative offices, areas for constructing exhibits, and storage areas for museum materials, artifacts and objects. Accessory uses may include retail sales (~~but not including the regular sale of objects collected or Displayed~~), food services for museum visitors or others, manufacturing for museum purposes, and events such as craft demonstrations, receptions, and periodic celebrations, **provided that all such accessory uses are incidental and subordinate to the primary non-profit museum use.** ~~Museums include galleries for the display of works of art, but do not include Commercial galleries for the sale of art work.~~

I would recommend the City Council move to pass second reading and schedule a third and final reading of the proposed Ordinance, as presented, at the May 21st City Council meeting. Action on this matter should take place under Section IX of the Agenda.

Consent Agenda:

1. **Acceptance of Fire Department Donation.** The Portsmouth Fire Department has received a donation from Patricia MacNeil in the amount of \$75.00 for the gift and donation account ([see attached letter](#)).

I would recommend the City Council move to accept and approve the donation, as presented. Action on this matter should take place under Section X of the Agenda.

City Manager’s Items Which Require Action:

1. **Request for Approval of Police Department Early Retirement Incentive.** The Police Commission has requested that the City Council consider approving a retirement incentive for police officers. [Attached is a Memorandum of Agreement](#) between the Portsmouth Board of Police Commissioners and the New England Police Benevolent Association Local 11, outlining the following details:

- Eligible members who have twenty five (25) years or more of service in law enforcement by the end of the 2012 fiscal year, which ends June 30, 2012, and

who file an irrevocable commitment to retire from law enforcement between the date of this agreement and on or before June 30, 2012 and who actually retire under the New Hampshire Retirement System at the end of FY 12 will receive a one-time payment of \$12,000.

This is similar to the teacher's early retirement that was passed earlier this year. The Police Commission feels that this will be a savings in the budget if those eligible participate.

I am recommending that the City Council approve the request from the Portsmouth Police Commission to offer a retirement incentive to police officers, as presented.

2. **Request to Establish Public Hearing Re: Use of Bond Premium.** The City of Portsmouth currently holds the second highest bond rating available from both Standard and Poor's and Moody's rating agencies (AA+ and Aa1 respectively).

The City was able to take advantage of its excellent bond rating when on December 14, 2011; the City of Portsmouth issued a \$32,400,000 bond. The proceeds of the bond will finance \$6.4 Million of General Fund capital projects, \$500,000 for a Fire Apparatus, \$22.5 Million for the Middle School and \$3 Million for the Peirce Island Wastewater Treatment Plant and Long-Term Control Plan. In addition to the \$32.4 million principal, the City received a premium of \$2,179,807.65 from the winning underwriter at closing. A premium is the amount by which the purchase price of a bond is greater than its par value. Under certain market conditions, in order to enhance the marketability of the bonds, bond underwriters will structure their bids with bond premiums. In this case, the City of Portsmouth received a True Interest Cost (TIC) rate of 2.86% and a bond premium of \$2,179,807.65. Under Federal Tax Law and State Statutes, the City is restricted on how to appropriate and use these funds.

RSA 33:3-states that any premium received shall not be used to increase the amount to be spent for the purpose for which the loan was originally incurred. Therefore, the City cannot use this money to increase the costs of the projects set forth for the \$32.4 Million bond issuance. However, the RSA states "a city by a vote of 2/3 of the City Council may authorize the expenditure for the premiums received for any purpose or purposes for which bonds or serial notes may be issued for an equal or longer period of time.

The bond premium of \$2,179,807.65 has been allocated respectively to the General Fund in the amount of \$1,977,973.61 and the Sewer Fund in the amount of \$201,834.04.

In accordance with State Statute, I recommend that the City Council authorize and appropriate the bond premium of to be used for the following General Fund projects:

+	1)	Seawall Repairs	Capital Outlay FY13	\$250,000.00
+	2)	Coakley Road/Cottage Street Pedestrian Improvements	Capital Outlay FY13	\$180,000.00
+ *	3)	Peverly Hill Road new Sidewalk	Capital Outlay FY13	\$50,000.00

4)	Little Harbour Instructional Space	Bonding FY13	\$600,000.00
* 5)	Scott Avenue Bridge Replacement	Bonding FY13	\$725,000.00
* 6)	Portion of the Sagamore Bridge project	Bonding FY13	<u>\$172,973.61</u>
	Total		\$1,977,973.61

+ reduction in FY13 proposed budget (12¢ reduction in proposed tax rate)
* grant match

I also recommend that the City Council authorize and appropriate the bond premium of \$201,834.04 to be used for the following Sewer Fund project:

- 1) Sewer line replacement for McDonough Street.

As these projects have a useful life that exceeds the original bond issue from which the premiums were received, and would be eligible for bonding under the Municipal Finance Act, it is in the best interest of the City to utilize the premium of \$2,179,807.65 to fund portions of the costs associated with the General and Sewer Funds.

Attached are two resolutions: 1) to appropriate the sum of \$1,977,973.61 for expenses relating to various General Fund projects; 2) to appropriate the sum of \$201,834.04 for expenses relating to Sewer line replacement for McDonough Street Sewer project.

I would recommend the City Council move to authorize the City Manager to bring back for public hearing at the May 21st City Council meeting the aforementioned two Bond Premium Resolutions.

3. **Report Back Re: Proposed Closure of Rock Street Park between the hours of 11:00 p.m. and 5:00 a.m.** As you will recall, at your April 16th City Council meeting, you requested that I provide you with a report back regarding the request of the Islington Street Neighborhood Association to close Rock Street Park between the hours of 11:00 p.m. and 5:00 a.m. In following up on that request, I met with Police Chief Ferland to discuss the neighborhood’s proposal. [Attached is a memorandum from Chief Ferland](#) recommending the closure of Rock Street Park between the proposed hours of 11:00 p.m. and 5:00 a.m.

City Ordinance Section 8.208: Park Operating Policy states:

“Except for unusual and unforeseen emergencies, parks shall be open to the public every day of the year during hours designated by the City Manager and approved by the Council. The opening and closing hours for each individual park shall be posted therein.”

As you can see from the aforementioned Ordinance, the City Manager has the power to set the hours in city parks with the approval of the City Council.

Therefore, I would recommend that the City Council authorize me to close Rock Street Park between the hours of 11:00 p.m. and 5:00 a.m. daily. Further, I would recommend

this take effect immediately when proper posting has been made by the Department of Public Works. After one year, it would be my intent to bring this back to the City Council to review the impact on the park and the neighborhood.

Please note the correspondence from Karina Quintans, under Section XIA., regarding this matter with alternative recommendations.

I have asked Chief Ferland to be at Monday night's meeting to answer any questions you might have.

I would recommend the City Council move to authorize the City Manager to close Rock Street Park between the hours of 11:00 p.m. to 5:00 a.m. effective after the proper posting by the Department of Public Works.

4. **Request from Paul R. Frohn, Jr. and Susan C. Frohn for Restoration of Involuntarily Merged Lots Under RSA 674-39-aa.** [Attached is a memorandum from Rick Taintor, Planning Director](#), regarding a request from Paul R. Frohn Jr. and Susan C. Frohn that the City Council restore two lots, merged by City action, to their premerger status ([see attached letter dated March 15, 2012](#)). This is the first request submitted to the Council under a new statute enacted in 2011; and the Frohns have submitted the request using a form that the Planning Department has developed for this purpose ([see attached sample notice](#)).

The new statute, RSA 674:39-aa ([see attached statute](#)), assigns the responsibility for "restoration of involuntarily merged lots" to the City Council. The statute distinguishes between "involuntary" and "voluntary" mergers. The statute states that "The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots."

Unlike other situations where lots are proposed to be merged or separated, there is no role for the Planning Board in this process. The law also does not allow any discretion by the City Council: if the merged lots meet the criteria in the statute, the Council must vote to restore them to their premerger status. The decision of the Council may be appealed to the Zoning Board of Adjustment, but no standards for such appeals are set forth in the statute.

The property that is the subject of this request is shown on the City Assessors maps as Assessors Map 236 Lot 53. It has frontage on both Woodbury Avenue and Meadow Road. The request submitted by the Frohns includes documentation indicating that they received the deeds to the property as two separate lots ([see attached deed](#)). In their letter to the City Council, the Frohns assert that the two lots were merged by municipal action without the consent of the owner, and they "certify that no owner in the chain of title voluntarily merged the lots" as defined in the statute.

As outlined in the Planning Director's memorandum, Planning Department staff viewed the property and reviewed maps and aerial photographs of the neighborhood to assess the merits of this request. However, no title search was undertaken.

[Attached is an orthophoto with parcel lines; two photos showing the view from Meadow Lane; and two aerial photos.](#)

The principal residential structure is located on the Woodbury Avenue end of the property, lined up with the adjacent houses, and there is a small accessory shed on the Meadow Road end. There is no physical boundary or separation between the two parcels. Generally, the property appears to be used as a single property. However, this common use is essentially passive, and there is no indication of "overt action or conduct that indicates an owner regarded said lots as merged" under the terms of the statute.

I recommend that the City Council move to accept the Planning Director's recommendation to approve the Frohns' request for restoration of the lots to their premerger status.

5. **Request from Irene R. Lebel and Frances D. Lebel for Restoration of Involuntarily Merged Lots Under RSA 674-39-aa.** [Attached is a memorandum from Rick Taintor, Planning Director,](#) regarding a request from Irene R. Lebel and Frances D. Lebel that the City Council restore two lots, merged by City action, to their premerger status ([see attached letter dated March 26, 2012](#)). This is the second request submitted to the Council under a new statute enacted in 2011; and the Lebels have submitted the request using a form that the Planning Department has developed for this purpose ([see attached sample notice](#)).

The new statute, RSA 674:39-aa ([see attached statute](#)), assigns the responsibility for "restoration of involuntarily merged lots" to the City Council. The statute distinguishes between "involuntary" and "voluntary" mergers. The statute states that "The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots."

Unlike other situations where lots are proposed to be merged or separated, there is no role for the Planning Board in this process. The law also does not allow any discretion by the City Council: if the merged lots meet the criteria in the statute, the Council must vote to restore them to their premerger status. The decision of the Council may be appealed to the Zoning Board of Adjustment, but no standards for such appeals are set forth in the statute.

The property that is the subject of this request is located at 457 Broad Street and is shown on Assessors Map 221 as Lot 22. The request submitted by the Lebels includes the 1958 deed ([see attached](#)) by which they acquired the property, which indicates that the lot has 120 feet of frontage on Broad Street and 100 feet of depth, for an area of 12,000 square feet.

The lot is located in the General Residence A zoning district, which requires a minimum lot area of 7,500 sq. ft. Accordingly, area variances for both proposed lots (i.e., for the existing house on a substandard lot, and for a future house on the second lot) would be required if the existing lot were to be restored to the two original lots.

In their letter to the City Council, the Lebls assert that the two lots were merged by municipal action without the consent of the owner, and they “certify that no owner in the chain of title voluntarily merged the lots” as defined in the statute.

As outlined in the Planning Director’s memorandum, Planning Department staff viewed the property and reviewed maps and aerial photographs of the neighborhood to assess the merits of this request. However, no title search was undertaken.

[Attached is an Orthophoto with parcel lines; two photos showing the view from Broad Street; and two aerial photos.](#)

Because the 1958 deed describes the property as a single lot, and because the property has been developed in such a way as to preclude separate use of the two lots, a voluntary merger of the two original lots has taken place. Therefore, the statutory criteria for restoring the lots to their premerger status are not met.

I would recommend that the City Council move to accept the Planning Director’s recommendation to deny the Lebls’ request for restoration of the lots to their premerger status.

6. **Applications for Sidewalk Cafes Providing Alcohol Service.** As you know, on March 19, 2012 the City Council adopted City Council Policy No. 2012-02 ([see attached](#)) regarding use of City property for sidewalk cafes providing alcohol service. As you also know, during the 2011 season the City Council allowed the pilot use of City property in the downtown for two sidewalk cafes providing alcohol service -- Popovers on the Square and The District. The purpose of the pilot was to determine the public benefit and efficacy of such sidewalk café operations. Each of the two establishments operated under an Area Service Agreement that specified certain terms and conditions of operation and design.

The City has now received applications from five (5) establishments: Popovers on the Square, The District, RiRa, the Surf Restaurant and State Street Saloon. City staff, including representatives of the Police, Fire, Inspections, Public Works, Health and Legal Departments conducted on site reviews and measurements at each of the establishments with chairs and tables in place. Layout modifications were made where needed in order to address various requirements specified in the City Council-adopted policy regarding this matter. Following the site visits, the Legal Department prepared Area Service Agreements for each of the five establishments and these are described below as separate items so that the City Council may take action on each one individually. The Area Service Agreements incorporate the requirements specified in City Council Policy No. 2012-02.

The Council will recall that the fee for use of the public “Area” subject to the Area Service Agreement is \$10.00 per square foot, with a minimum season’s fee of \$2,000 and no proration of the fee. The term of the Agreements is for six (6) months from mid-April through mid-October and is not assignable to other parties. The Agreements may be suspended at the sole discretion of the City on an administrative basis and revoked in their entirety by vote of the City Council. Hours of operation are until 10:30 p.m. Monday through Saturday and until 10:00 p.m. on Sunday, with no smoking allowed in the “Area” at any time. Use of the “Area” may be precluded, modified or made subject to special conditions to accommodate municipal events. The sidewalk café Area will be separated from the public pedestrian space by black decorative metal fence similar to what was used by Popovers and The District during last year’s trial season.

- a) **Application for Sidewalk Cafe Providing Alcohol Service from Popovers on the Square.** I am bringing forward for City Council action the [attached Area Service Agreement for Popovers on the Square](#) for the 2012 season. City staff have reviewed Popovers’ application and are recommending its approval as presented. Please note that the “Area” to be used by Popovers, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

9 4-top tables
1 2-top tables
38 chairs
Area: 723 square feet
Area Service Fee: \$7,230.00

I would recommend the City Council authorize the City Manager to enter into an Area Service Agreement with Popovers on the Square for outdoor alcohol service on City land for the 2012 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.

- b) **Application for Sidewalk Cafe Providing Alcohol Service from The District.** I am bringing forward for City Council action the [attached Area Service Agreement for The District](#) for the 2012 season. City staff have reviewed The District’s application and are recommending its approval as presented. Please note that the “Area” to be used by The District, along with a table-chair layout, is included as an attachment to the Agreement. In the case of The District, the Council should be aware that the public sidewalk area to be used is located on the Vaughan Mall and is contiguous with the privately-owned area on Congress Street that is also used by The District for outdoor dining with alcohol service. The particulars of this application are as follows:

0 4-top tables
17 2-top tables
34 chairs

Area: 467 square feet
Area Service Fee: \$4,670.00

I would recommend the City Council move to authorize the City Manager to enter into an Area Service Agreement with The District for outdoor alcohol service on City land for the 2012 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.

- c) **Application for Sidewalk Cafe Providing Alcohol Service from RiRa.** I am bringing forward for City Council action [the attached Area Service Agreement for RiRa](#) for the 2012 season. City staff have reviewed RiRa's application and are recommending its approval as presented. Please note that the "Area" to be used by RiRa, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

5 4-top tables
5 2-top tables
30 chairs
Area: 447 square feet
Area Service Fee: \$4,470.00

I would recommend the City Council move to authorize the City Manager to enter into an Area Service Agreement with RiRa for outdoor alcohol service on City land for the 2012 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.

- d) **Application for Sidewalk Cafe Providing Alcohol Service from State Street Saloon.** I am bringing forward for City Council action [the attached Area Service Agreement for State Street Saloon](#) for the 2012 season. City staff have reviewed State Street Saloon's application and are recommending its approval as presented. Please note that the "Area" to be used by State Street Saloon, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

5 4-top tables
0 2-top tables
20 chairs
Area: 340 square feet
Area Service Fee: \$3,400.00

I would recommend the City Council move to authorize the City Manager to enter into an Area Service Agreement with State Street Saloon for outdoor alcohol service on City land for the 2012 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.

- e) **Application for Sidewalk Cafe Providing Alcohol Service from the Surf Restaurant.** I am bringing forward for City Council action the [attached Area Service Agreement for the Surf](#) for the 2012 season. City staff have reviewed the Surf Restaurant's application and are recommending its approval as presented. Please note that the "Area" to be used by the Surf, along with a table-chair layout, is included as an attachment to the Agreement. The particulars of this application are as follows:

2 4-top tables
2 2-top tables
12 chairs
Area: 324 square feet
Area Service Fee: \$3,240.00

I would recommend the City Council move to authorize the City Manager to enter into an Area Service Agreement with the Surf Restaurant for outdoor alcohol service on City land for the 2012 season subject to City Council Policy No. 2012-02 regarding use of City property for sidewalk cafes providing alcohol service.

7. **Report Back Re: Public Service of New Hampshire Easement at Prescott Park.** As you will recall, at its April 2nd meeting, the City Council referred the Public Service of New Hampshire (PSNH) easement request for placement of service at Prescott Park to the Planning Board for report back to City Council.

[Attached is a memorandum from Rick Taintor, Planning Director](#), regarding this matter. The [attached plan](#) shows the layout plan for installation of the new transformer pad.

At the April 19, 2012 Planning Board meeting, the Board voted unanimously to recommend that the City grant an easement to PSNH for installation of a transformer pad and conduit as shown on the plan.

I would recommend the City Council move to accept the recommendation of the Planning Board, as presented, and further, authorize the City Manager to execute the easement deed with PSNH.

8. **Report Back Re: Request of New Hampshire Department of Transportation for an Easement under the Scott Avenue Bridge in support of the Memorial Bridge Project.** As part of the Memorial Bridge Replacement Project, the New Hampshire Department of Transportation has requested an easement to locate a permanent backup generator and utility transformer cabinets on City property under the Scott Avenue Bridge. At its February 6, 2012 meeting, the Council referred this easement request to the Planning Board for a report back to the City Council.

The [attached memorandum from Rick Taintor, Planning Director](#), outlines the proposed Utility/Generator Easement area under the Scott Avenue Bridge as well as the generator,

utility pad and transformer. Also, [attached is a plan titled “Pavement Marking/NHDOT Maintenance Parking/Generator Area”](#) dated February 22, 2012.

At its meeting on April 19, 2012, the Planning Board voted unanimously to recommend that the City grant the necessary easement(s) to the New Hampshire Department of Transportation for installation and maintenance of a permanent backup generator and utility transformer cabinets on City property under and adjacent to the Scott Avenue Bridge.

I would recommend the City Council move to accept the recommendation of the Planning Board, as presented, and further, authorize the City Manager to negotiate and execute an easement deed with the State of New Hampshire.

9. **Report Back Re: Commerce Way Conditional Road Layout and Betterment Assessment.** As you will recall, at its March 19, 2012 meeting, the City Council referred a request from Attorney Malcolm McNeill, representing Commerce Way, LLC, to the Planning Board for report back to the City Council, regarding a proposal to make the necessary upgrades to Commerce Way to become a City street.

[Attached is a memorandum from Rick Taintor, Planning Director](#), outlining Commerce Way, LLC’s proposal for the reconstruction of the road. Following completion of the roadway improvements, Commerce Way would be deeded to the City. The public roadway will be conditionally laid out as provided for in RSA 231:28; and the cost of construction will be paid for by the abutting private property owners through the betterment assessment process in accordance with RSA 231:29-33.

Steve Parkinson, Public Works Director, has worked closely with Tighe & Bond and Commerce Way, LLC on the development of these plans. Mr. Parkinson affirms that the plans meet City standards and are acceptable to the City. [Attached is the proposed Roadway Improvements Commerce Way Plan.](#)

At its meeting on April 19, 2012, the Planning Board voted unanimously to recommend that the City Council accept Commerce Way as a City street upon completion of improvements to bring the roadway up to City standards in accordance with the Roadway Improvement Plans.

The effect of passage of this matter would be to authorize staff to begin the work necessary to initiate the next step in the betterment assessment process. At a future point in time, the Council will be requested to establish a public hearing on the matter pursuant to RSA 231:28.

I would recommend the City Council move to accept the Planning Board’s recommendation for Commerce Way for the Conditional Road Layout in accordance with RSA 231:28 subject to the road improvements funded through the Betterment Assessment Process in accordance with RSA 231:29-33.

10. **Report Back Re: Letter from David Mikolaities, Lieutenant Colonel, NH Army National Guard, regarding the Acquisition of a Portion of the Right of Way along Market Street and Site Improvements for Access to the National Guard Readiness Center on 803 McGee Drive.** As you will recall, at its April 2, 2012 meeting, the City Council referred the aforementioned request to the Planning Board for report back to the City Council (see attached memorandum to Steve Parkinson, Public Works Director from David Mikolaities, Lieutenant Colonel, NH Army National Guard and proposed site plan prepared by Tighe & Bond)

Attached is a memorandum from Rick Taintor, Planning Director, explaining the site improvements to the NH Army National Guard property and the purpose of their request for a Right of Way to access their site at 803 McGee Drive.

At its April 19, 2012 meeting, the Planning Board voted to recommend that the City convey a portion of the Right of Way along Market Street to the State of New Hampshire for access to the National Guard Readiness Center.

I would recommend the City Council move to accept the Planning Board's recommendation, as presented, and further, authorize the City Manager to negotiate and execute an easement deed.

11. **Report Back Re: Request of Barbara Devanna and Robert Cohen for an Access Easement over Pine Street Park for property at 55 Meredith Way (previously identified as 55 Pine Street).** As you will recall, at its March 5, 2012 meeting, the City Council referred the aforementioned request to the Planning Board for report back to the City Council.

Attached is a memorandum from Rick Taintor, Planning Director, outlining this matter and referring to the attached map which shows the relationship of the subject parcel to Meredith Way, Pine Street Park and Pine Street. Although the parcel technically has frontage on Meredith Way, the paved portion of Meredith Way does not extend to this parcel, and therefore its actual access is from Pine Street. The existing driveway from the parcel to Pine Street crosses the northerly corner of Pine Street Park, and the owners are requesting an easement to formalize this existing condition.

Also, attached is a memorandum from Robert Sullivan, City Attorney, opining that if the City Council wishes to grant the request, the City should specifically authorize access over both the paper street and the adjacent park property.

At its meeting on April 19, 2012, the Planning Board voted unanimously to recommend that the City Council authorize the owners of 55 Meredith Way to cross the paper portion of Meredith Way and a portion of Pine Street Park in order to access Pine Street, in such manner as the City Attorney and City Manager determine appropriate.

I would recommend the City Council move to accept the Planning Board's recommendation, and further, authorize the City Manager to negotiate and execute any necessary documents.

Informational Items:

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on April 16, 2012. In addition, this now can be found on the City's website.
2. **Installation of New Historic Markers.** For your information, [attached is a news release along with photographs of new historic markers](#) that were installed earlier this spring as part of a project to reproduce historic marker signs, which were once scattered in various locations through the downtown and the South End. Residents and visitors can find the newly installed markers in the following locations:

Historic Marker Topic	Location
First Printing House in N.H.	In landscaped area at the corner of Howard & Pleasant Streets
Haven Park	In Haven Park facing sidewalk along Pleasant Street
John Samuel Blunt, Painter	In Moffatt-Ladd Garden, facing the sidewalk on Market Street
Powder House	In Powder House Park at Islington Street and Essex Avenue along brick walkway
Portsmouth Navy Yard	In Prescott Park on waterfront path, facing Navy Yard
Portsmouth's South Mills	Along Marcy Street sidewalk near the Fish Market
Marcy-Pettigrew Shipyard	In landscaped area at Marcy and South Mill Streets

3. **Budget Work Session Agenda.** [Attached is the agenda for the City Council Municipal Budget Work Session](#) scheduled for Tuesday, May 8, 2012 at 6:30 p.m., in the Eileen Dondero Foley Council Chambers.