

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, MARCH 18, 2013

PORTSMOUTH, NH
TIME: 6:00 PM [or thereafter]

At 6:00 p.m., a work session was held regarding a request for additional appropriation for Middle School project.

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

Mayor Spear called the meeting to order at 7:55 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 Kennedy led the Pledge of Allegiance to the Flag.

PROCLAMATION

1. Music in Our Schools Month – Steve Cirillo, PHS – Performing Arts Department Head

Assistant Mayor Lister read the Proclamation declaring March as Music in Our Schools Month and Mayor Spear presented it to Steve Cirillo, Performing Arts Department Head for Portsmouth High School. Mr. Cirillo accepted the proclamation with thanks and appreciation.

Councilor Novelline Clayburgh thanked Mr. Cirillo for his work over the years stating that her 3 children all participated in the program and had fantastic experiences. She also thanked the Parents Music Club for their support as well.

PRESENTATION

1. *Report Back Re: Recreation Department Transition from Old Connie Bean Center to New Connie Bean Center

Recreation Director Rus Wilson and Middle School Principal John Stokel gave a brief update of the transition of the Connie Bean Center and the positive impact on both recreation programs and school physical education and after school programs.

Councilor Novelline Clayburgh asked if the sign from the old Connie Bean Center has been brought to the new center. Recreation Director Wilson stated yes. Councilor Novelline Clayburgh stated that she has only heard complaints about one issue which is the whistle blowing during basketball games being heard at the other courts. Recreation Director Wilson stated that is true, but they get used to the sounds as they play.

Councilor Novelline Clayburgh asked if we still need more courts or does this meet our needs. Recreation Director Wilson stated we still need more as we really haven't gained anything, we just run the programs more efficiently.

Assistant Mayor Lister stated that this has been a successful collaboration and is a major focal point of the City.

Councilor Kennedy stated we did gain as the space is now used on weekends where it wasn't before. Councilor Kennedy asked if there is a savings in the budget. Recreation Director Wilson stated yes and it is being used on the senior services coordinator. City Manager Bohenko clarified that the costs are not necessarily split down the middle but confirmed that there is a slight savings.

Councilor Dwyer asked if there were any issues with the flooring as this was mentioned during the work session. Recreation Director Wilson stated no.

V. ACCEPTANCE OF MINUTES – MARCH 4, 2013

Councilor Coviello moved to accept and place on file the Minutes of March 4, 2013 City Council Meeting. Seconded by Assistant Mayor Lister and voted.

VI. PUBLIC COMMENT SESSION

Tom Carroll – spoke regarding his ongoing issue regarding the rust dust and debris on Market Street and stated that there was a response to his right-to-know request, but feels it wasn't written based on his request, but because others had complained as well. He stated that it was stated that the Legal Department researched for 8.5 hours and wonders why it would require that much time. He stated that this issue should be taken to the State Legislature as it is not only a problem on the street but is now in the driveway of the Noble Meadows Condos.

Bob Hassold – spoke in support of building a parking garage on the Worth Lot stating that the parking problem is growing steadily each year. He stated the Council talks about it, conducts studies, then ignore the studies and feels that people are being short-sighted when ruling out the Worth Lot site. He stated that the same thing happened when the High/Hanover garage was built, as businesses were inconvenienced during construction but are now reaping the benefits of busy streets. He stated that the idea of having satellite parking around the City is not a solution and there should be one central spot in the downtown. He concluded by stating that he has spoken with people who will no longer shop downtown because of the lack of parking.

Natalie Hassold – stated she agrees with the previous speaker and wishes more people would speak out in favor of the Worth Lot. She referred to a recent editorial by Jim Splaine which spoke against the Worth Lot and stated she respectfully disagrees. She stated it could be built unobtrusively to fit into the area and then the McIntyre site could be developed with more open space and less parking. She concluded by stating that this must be built now.

Bob Shouse – began by speaking in support of the request for additional Portsmouth Middle School Funding stating that we cannot stop at this point. He stated we are preserving a building and the location in the downtown next to the library is ideal. Next, he discussed the parking issue stating that the Chamber of Commerce and Economic Development Commission are both supporting and urging that a parking garage be built on the Worth Lot. He stated the problem is acute and the solution is well overdue. He stated whether it is on the Parrott Avenue Lot or the WorthLot, it needs to be done as soon as possible.

Assistant Mayor Lister moved to suspend the rules to move Item X.C.1 on the agenda for consideration. Seconded by Councilor Coviello and voted.

C. COUNCILOR DWYER

1. *Middle School Project Re: Additional Appropriation

Councilor Dwyer moved to bring back for first reading a Bonding Resolution up to \$3.3 million dollars at the April 1, 2013 meeting, seconded by Assistant Mayor Lister.

City Manager Bohenko reviewed the timeline stating that if the first reading is held on April 1st, then the public hearing would be held on April 15th and at that time it could be voted on and would require a 2/3rd vote. He stated the Council could also choose to postpone the vote.

Councilor Lown stated he will respectfully oppose putting this on the taxpayers. He stated that this is a complex issue with engineering, political and legal aspects. He stated that he commends the JBC on their work but is disappointed that we are here. He then addressed the various points stating that politically the Council who approved this project gave their promise that this project was a guaranteed maximum price project with a built in contingency, but now we are back looking for an additional \$3.3 million. He stated he doesn't dispute anything that the JBC has presented and agrees that the timing was right to do the project, etc. He stated that from a legal viewpoint, the contract contains a section regarding unknown conditions and he is not convinced that all of the issues discussed fall under that category. He continued that Guaranteed Maximum Price means just that and the taxpayers should be able to rest easy that the project will come in at that Guaranteed Maximum Price. He concluded that now 3 years later, it is not guaranteed and is 8% higher than the original commitment and the taxpayers are not responsible for the delays, etc. He stated he will vote in favor of a public hearing, but will not support the bonding of additional funds.

Councilor Kennedy stated she agrees and encourages the public to speak on the issue. She continued that she also wants a written statement from the State and the School Board on what will happen if this is not funded. She stated that this is actually a 6 million dollar overage as originally we gave up \$2.8 million and now are looking for \$3.3 million additional. She concluded that she feels we should have known that the pilings were bad as this was the same issue when the library was built and she feels that the Clerk of the Works was responsible, not the Joint Building Committee.

Councilor Coviello stated that even if there was outright deception and we are angry, he will not risk the tens of millions of dollars at stake to meet the State reimbursement criteria. He stated he agrees with the sentiments expressed, but feels we need to finish the project.

Councilor Dwyer stated she appreciates Councilors Lowns' comments regarding this being a political issue but she doesn't care about that. She stated that she does care about the legal aspect and is why Assistant City Attorney Woodland has worked so hard on this. She stated that reading contracts requires an expertise as there are terms that laymen may not be able to interpret. She stated she is glad these questions are being asked but there are gray areas. She stated we are talking about a 40% reimbursement from the State including the \$3.3 million and we can't take it out of the Connie Bean fund or we wouldn't get the reimbursement.

Councilor Thorsen stated that this Council will make sure we have a middle school and it will be done properly, but we need to answer the question of how much is our back against the wall. He stated he doesn't want to spend more than necessary and whether or not he votes for the bonding will depend on how the questions are answered. He stated we may need to hold a non-public session for the answers, and concluded that there isn't anyone that doesn't want to get the job done.

Motion voted.

VII. APPROVAL OF GRANTS/DONATIONS

- A. *Acceptance of COAST Community Funds Grant Award

Councilor Kennedy moved to approve and accept the COAST Community Funds Grant Award and further, authorize the City Manager to execute the agreement. Seconded by Assistant Mayor Lister and voted.

VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance – Article 12 – Signs

Councilor Novelline Clayburgh moved to pass first reading and schedule a public hearing and second reading on the proposed Ordinance, at the April 1, 2013 City Council meeting, seconded by Councilor Smith.

Councilor Kennedy stated she didn't understand why the signs are going from 16 feet to 12 feet. Planning Director Rick Taintor explained that the existing sign allowance is 16 sq. ft. and they are reducing it to 12 sq. ft. because 16 feet is excessive for the narrow sidewalks. He stated there will be a presentation at the April 1st meeting. Councilor Kennedy wants an explanation why it is allowed elsewhere.

Motion voted.

- B. First Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance – Article 5 – Dimensional and Intensity Standards and Article 15 – Definitions

Councilor Novelline Clayburgh moved to pass first reading and schedule a public hearing and second reading on the proposed Ordinance, at the April 1, 2013 City Council meeting, seconded by Councilor Lown.

Councilor Kennedy stated she would like to know if there will be a control on the noise issue i.e. HVAC, power generators etc.

Councilor Dwyer stated they would still need to meet the noise ordinance requirements.

Motion passed 8-1, Councilor Kennedy voted opposed.

- C. First Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance – Article 6 – Overlay Districts, Section 10.630 - Historic District and Section 10.635.2 – Work Sessions

Councilor Coviello moved to pass the first reading and schedule a public hearing and second reading on the proposed Ordinance, at the April 1, 2013 City Council meeting. Seconded by Assistant Mayor Lister and voted.

IX. CONSENT AGENDA

Councilor Coviello moved to adopt the Consent Agenda. Seconded by Assistant Mayor Lister and voted.

- A. Letter from Jill Teeters, March of Dimes, requesting permission to hold the 2013 Seacoast March for Babies on Saturday, May 18, 2013 from 9:00 a.m. to 1:00 p.m. (***Anticipated action – move to refer to the City Manager with power***)
- B. Letter from Kathie Lynch, Portsmouth Little League, Inc., requesting permission to install temporary signage to be located at the Plains and Hislop Park baseball fields during the 2013 baseball season (***Anticipated action – move to refer to the City Manager with power***)
- C. Request for Approval of Pole License to install 6 poles on Islington Street in conjunction with the NH DOT's Islington/By-Pass Bridge replacement (***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***)
- D. 2013 Omnibus Sidewalk Obstruction Renewals – See Attached Listings (***Anticipated action – move to refer to the City Manager with power***)
- E. Letter from Robert L. Sutherland, Jr., St. John's Lodge requesting permission to hold the 5k "Out of Hibernation" Road Race on Saturday, April 13, 2013 (***Anticipated action – move to refer to the City Manager with power***)

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

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

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. City Council Policy No. 2010-02 – Pertaining to Sidewalk Materials on Richards Avenue

City Manager Bohenko explained the background of the request stating that as the result of on-going water, sewer and roadway improvement projects, we have received a number of requests from residents to install sidewalk materials other than those currently specified as part of City Council Policy No. 2010-02 which prescribes sidewalk materials to be brick in the Historic District which have historically been brick to be allowed based on a vote of the City Council. He continued that as part of the on-going Richards Avenue Sewer Separation project, City Staff has received a petition from residents on the Middle Street end of Richards Avenue to allow brick sidewalks from Middle Street to Parrott Avenue. He concluded by stating that the goal of the Public Works Department is to provide sidewalks which are safe, constructed of consistent material and are easily maintained. If brick materials outside of the Historic District are allowed, staff recommends that an entire block is of a consistent material to avoid a patch-work of materials. Additionally, the staff recommends that any additional cost to construct the brick sidewalks be borne by the requesting property owners which has been done in the past with property owners paying their proportional share.

Mayor Spear stated that other similar projects are coming up so others may request the same. City Manager Bohenko stated that is correct.

Councilor Lown asked if we know if the other property owners are willing to pay or not or what if one of them doesn't want to pay for it.

Assistant Mayor Lister asked if this is paid in one lump sum or can it be paid over time. City Manager Bohenko stated either way, it is up to the Council.

Discussion ensued regarding brick versus concrete sidewalks.

Councilor Novelline Clayburgh moved to approve the use of brick sidewalks in the area from Middle Street to Parrott Avenue with all property owners agreeing to pay the difference in costs from concrete to brick, seconded by Councilor Lown.

Councilor Coviello stated he feels this is opening up a can of worms although he likes this option because of the commitment of the residents to contribute.

Councilor Lown asked if concrete or brick is more cost effective. Public Works Director Parkinson explained that both are durable but brick actually lasts longer as concrete does deteriorate from salt. He stated that either one is fine.

Councilor Lown moved to suspend the rules to allow a speaker. Seconded by Councilor Kennedy and voted.

Chris Norwood of 19 Richards Avenue, President of his condo association - stated that 24 properties are in the area of the request but wonders why the City wouldn't pay for the portion that is in the Historic District (7 properties). He stated he is in favor of this request but just wants clarification.

City Manager Bohenko explained that the policy states that the portion greater in length is what the entire street is supposed to be which is concrete so if they want the brick on the sidewalk this vote will set the precedent, it needs to be continuous by block and not piecemeal.

Councilor Thorsen stated he is agrees that this should not be done piecemeal but he supports this as the residents will be paying for it. He wonders if having brick in front of a property increases property value or not which if so, it could be an investment in the tax base.

Councilor Kennedy stated she has been on the Historic District Committee since June and knows how hard it is to get any changes so she would have a hard time not granting this request.

Councilor Novelline Clayburgh amended original motion by adding “over a period of 5 years”, Councilor Lown, the seconder, agreed.

Discussion ensued regarding the precedent this would be setting and potential divisiveness amongst neighbors who may not be willing to pay their share. City Manager Bohenko stated he will work with the neighbors.

Voted 8-1 to approve use of brick sidewalks in the area from Middle Street to Parrott Avenue with all property owners agreeing to pay the difference in costs from concrete to brick over a period of 5 years. Councilor Coviello voted opposed.

Councilor Dwyer stated that this isn't going to be good for the staff to have to administer and feels that the Council needs to review the Policy again at a future date.

2. Request for License Agreement Re: 135 Bow Street, Harbour Place, Insurcomm

Councilor Smith moved to authorize the City Manager to negotiate and enter into a License Agreement with Insurcomm to work on the fire project at 135 Bow Street, Harbour Place, seconded by Assistant Mayor Lister.

Councilor Kennedy asked about the reference to July 30th in the request. City Manager Bohenko clarified that was the original request but he did not agree with that so it will expire on May 31st, with an option for an additional 30 days if deemed necessary.

Motion passed.

3. Request for License Agreement Re: 110 State Street, Insurcomm

Councilor Smith moved to authorize the City Manager to negotiate and enter into a License Agreement with Insurcomm to work on the fire project at 110 State Street. Seconded by Councilor Lown and voted.

Informational Items

1. Events Listing
2. Report Back Re: Artwill Avenue
3. Work Session Re: Neighborhood Commercial Use
4. Update on Upcoming Budget Schedule

City Manager Bohenko stated that regarding the upcoming budget schedule, he would like to dedicate April 16th to Water/Sewer budget as that will require a thorough review and April 29th will be the final budget review if needed.

5. Report Back Re: Wright Avenue Parking Lot

City Manager Bohenko stated that the new design provides 38 spaces instead of the original 45 spaces due to the Fire Department requirements of providing a 22 foot wide aisle adjacent to the proposed redevelopment of the old Rosa Restaurant lot.

Councilor Kennedy is concerned with the loss of 9 parking spaces and feels this needs additional discussion.

City Manager Bohenko reiterated that this changed is based on the Life Safety Code requirements.

Councilor Dwyer stated she agrees with having a review of that entire area in general due to all of the changes occurring there.

Mayor Spear stated that he would also like to announce that he is calling for a work session to be held on Monday, April 8, 2013 regarding Water/Sewer which is meant to be a follow up of their recent meeting on March 13th and was less than an hour long. He stated this is a complex issue and we are getting to the point where the consent decree requires a final design by July 1st.

B. MAYOR SPEAR

1. Appointments to be Considered:
 - Ruth Griffin – Reappointment to the Portsmouth Housing Authority
 - Shelley Saunders – Reappointment as an Alternate to the Conservation Commission

The reappointments of Ruth Griffin to the Portsmouth Housing Authority and Shelley Saunders as an alternate to the Conservation Commission were considered and will be voted at the April 1, 2013 Council Meeting.

C. COUNCILOR DWYER

1. Middle School Project Re: Additional Appropriation (Previously addressed)

D. COUNCILOR SMITH

1. Citizens Committee for the 2023 Quadricentennial Celebration

Councilor Smith stated that he has brought forward an outline of what community groups and organizations should be involved in the planning and overseeing of the year-long 400th Anniversary. He stated the planning needs to begin now as it involves marketing, advertising, scheduling, promotions, etc. He stated the names of people can be brought forward at a later time and the Chamber of Commerce, School Department, etc. can appoint their own designees.

Assistant Mayor Lister stated he appreciates the passion but wonders what the difference is between a Citizens or Council Committee and a Mayor Blue Ribbon Committee.

Discussion ensued regarding the difference between the two types of committees.

Mayor Spear stated he was intending to bring forward a Blue Ribbon Committee, but feels we do not need two committees. He stated if this Citizens Committee is formed, he will not support it.

Councilor Dwyer stated that the key is to find the right structure that can last a long time and have continuity. She stated it should be set up like a Board with member terms.

Councilor Novelline Clayburgh suggested that Mayor Spear could form a Blue Ribbon Committee and appoint Councilor Smith as the Chair.

Councilor Smith stated he doesn't care how the committee is set up it just needs to be done now. He stated he has already been working on this for 6 months and knows people that want to be involved. He stated this has many facets including fundraising, advertising, a history book is being written, etc. He stated there are only a couple of other communities that are older than us and they have already started planning. He concluded by stating he is not interested in the politics of it.

Councilor Kennedy moved to form a Council Committee for the 2023 Quadricentennial Celebration, seconded by Councilor Smith.

Councilor Thorsen stated that even though the committee will dissolve in 9 ½ months, the charge of the committee should be to set the long-range plan and give feedback to the Council.

Councilor Lown stated this is reminiscent of the famous "Rule 23" issue.

Motion voted.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Lown asked for an update regarding the status of the Parking and Traffic Safety Committee recommendation of a parking garage site and why the issue of the Worth Lot cannot be voted up or down by the committee.

Councilor Smith stated that when their work is done on the issue, they will present their recommendation. He stated that the Council voted the Worth Lot off the table. He stated the committee has decided to take a diversified approach with decks throughout the downtown area and Parrott Avenue Lot is the first area that will be evaluated by the staff.

Councilor Lown asked “hypothetically” if someone on the committee wanted to vote on the Worth Lot, could it then come back before the Council. Councilor Smith stated this was brought up and there was no second.

Councilor Dwyer stated that people are now contacting the Economic Development Commission members in support of the Worth Lot. She stated that the Council did not vote down the Worth Lot as a site, but voted not to discuss it. She asked for clarification if it requires a Councilor on the prevailing side of the vote to bring it back for reconsideration, or can any Councilor do that. City Attorney Sullivan stated that to bring back a vote for reconsideration, then a Councilor on the prevailing side would have to bring it forward. Any Councilor can bring back a different motion.

Councilor Coviello stated it is unclear among the members of the Parking and Traffic Safety Committee that they can bring up the Worth Lot for consideration. Councilor Smith disagrees and asked City Manager Bohenko to clarify as he was in attendance.

City Manager Bohenko stated that he doesn't feel that it was clear that there was not a second to a motion rather than the conversation moved on to something else. He stated that meeting was intended to be informational as a report from the Chair regarding the informal public input gathering.

Councilor Coviello stated he would like Councilor Smith to clarify to the Parking and Traffic Safety Committee members that they can vote on the Worth Lot as an option. Councilor Smith stated they know that but are looking for a more distributed parking system downtown.

Councilor Kennedy stated that Councilors should attend the Parking and Traffic Safety Committee meetings if they are interested in the actions being taken. She stated she attended the informal gathering at Bagel Works and people wanted them to move on from the Worth Lot and provide sustainable, walkable solutions. She stated she doesn't feel that we should be “directing” a Councilor on how to conduct his meetings and that Councilor Smith is following the mission that was given to the committee.

Councilor Coviello stated that he shouldn't have to attend all other committee meetings to be able to ask questions of the Council representative.

Councilor Novelline Clayburgh stated that if they do put a parking deck at the Parrott Avenue Lot then they should have a green space on the top which would provide a nice view of the pond.

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

Councilor Novelline Claburgh moved to adjourn at 9:40 p.m. Seconded by Councilor Coviello and voted.

A handwritten signature in black ink, appearing to read 'V. French', written in a cursive style.

Valerie A. French
Deputy City Clerk