

## **CITY COUNCIL MEETING**

MUNICIPAL COMPLEX  
DATE: MONDAY, AUGUST 19, 2013

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

At 6:00 p.m., a Work Session was held with the Historic District Commission.

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

Mayor Spear called the meeting to order at 7:15 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**

Assistant Mayor Lister led the Pledge of Allegiance to the Flag.

### **PROCLAMATION**

1. Richard Winslow, III

Councilor Dwyer read the Proclamation declaring August 19, 2013 as Richard Winslow, III Night in the City of Portsmouth. Mayor Spear presented the Proclamation to Mr. Winslow and expressed our sincere gratitude and appreciation for the dedication he has given our community over the years. Mr. Winslow accepted the Proclamation stating he was humbled and honored to receive this Proclamation and to be recognized for his work as a historian.

### **PRESENTATION**

1. Wastewater Treatment Plant Update – Suzanne Woodland, Assistant City Attorney and Terry Desmarais, City Water and Sewer Engineer

A Presentation was held regarding the Wastewater Treatment Plant and a review of the proposed schedule modification which changed the expected date of completion from May 1, 2017 to November 1, 2018. Engineer Desmarais reviewed the additional estimated project costs. Also, an update was provided on the scope of the project and the site constraints. Assistant City Attorney Woodland explained if the court does not grant the extension the staff would come back to the Council.

City Manager Bohenko stated that the cost increase is not the only item of concern but there will be impact to the neighborhoods. He said he will continue to keep the Council advised.

## ACCEPTANCE OF MINUTES – AUGUST 5, 2013

**Councilor Coviello moved to approve and accept the minutes of the August 5, 2013 City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.**

### V. PUBLIC COMMENT SESSION

Tom Carroll said the City Council has an obligation for the safety of those that travel on Market Street. He said Grimmel Industries is collecting items within the travel way and storing them in plastic bags at the Port for the Council to view.

Gibson Kennedy stated there is a need to keep the tax rate down and increase the tax base. He suggested the Parking Traffic & Safety Committee increase the parking meter rates which would increase revenues.

Zelita Morgan thanked the City Council and staff for the presentation at the meeting on transportation and sustainability. She asked the City to consider creating two on-line sources with a flow chart to walk people through the building process, showing what stage a project is at in the approval process, and if the project has been approved.

Ralph DiBernardo said he would like to see changes to the Charter. He feels we should do away with the current process of electing a Mayor by the highest number of votes. He stated if someone wants to run for the position of Mayor, they should do so separately.

Aaron Lewis said transportation on weekends is a concern of the Taxi Commission. He also spoke to the importance of having dedicated spaces for bicycles to park and the need for additional bike racks.

### VI. PUBLIC HEARING

- A. ORDINANCE AMENDING CHAPTER 10 – ZONING ORDINANCE, ARTICLE 5 – DIMENSIONAL AND INTENSITY STANDARDS ARE HERE BY AMENDED AS FOLLOWS:
- SECTION 10.531 – TABLE OF DIMENSIONAL STANDARDS – BUSINESS AND INDUSTRIAL DISTRICTS, MAXIMUM STRUCTURE DIMENSIONS – STRUCTURE HEIGHT, CBA 45' OR 3 STORIES, WHICHEVER IS LESS; CBB 45' OR 3 STORIES, WHICHEVER IS LESS;
  - SECTION 10.535 – EXCEPTION TO DIMENSIONAL STANDARDS IN THE CENTRAL BUSINESS DISTRICTS, BY INSERTING A NEW SECTION 10.535.13: INCREASED BUILDING HEIGHT BY CONDITIONAL USE PERMIT

*(The public hearing was continued at the August 5, 2013 meeting to the August 19, 2013 City Council meeting)*

Mayor Spear read the legal notice, re-opened the public hearing and called for speakers.

Planning Director Taintor provided a brief presentation regarding the amendment to the Zoning Ordinance relative to building height in the CBA and CBB districts. He informed the Council the last time building heights were adjusted was in 1982. He indicated that most of the older buildings in the downtown are well below 60 ft in height. Planning Director Taintor reported that the proposed ordinance would reduce the height of buildings in the CBA and CBB districts to 45 ft or 3 stories. The ordinance also authorizes the Historic District Commission to grant a conditional use permit, which would allow for the height to be over the 45 ft requirement.

Gibson Kennedy spoke in favor of the ordinance amendments with the recommendations of the Planning Board. He stated this is a good compromise and would not block out new businesses from the downtown. He thanked the Planning Board and Historic District Commission for their work on this matter.

Duncan McCallum spoke in favor of the 45ft height limit. He said everyone agrees that the change is not perfect, but the staff is moving in the right direction. He addressed the recommendation of the Planning Board and said the decision was rushed at their last meeting. He spoke to the split vote on the conditional use permit and who should be given the authority. Mr. McCallum suggested that conditions and criteria should be established for a waiver to the height limit. He spoke opposed to the Planning Board's recommendation to split the height between the CBA and CBB districts. He also stated it should be the City Council who grants conditional use permits and not the Historic District Commission.

Paul McEachern spoke against the ordinance and said height is not the problem. He said the ordinance has a 60ft limit with a minimum of 2 stories in the downtown. He stated the Kline Building is no taller than the Keefe House located across the street. Mr. McEachern said that we should not freeze frame the downtown.

Christine Davidson spoke strongly in favor of a height limitation. She said more often than not new developments not only go up in height they also increase in width. She said we need to preserve what we have and increase communication.

Zelita Morgan said change happens and is part of human nature. She urged the Council to slow down and make sense of what is happening with development and growth in the City. She expressed her support for a height limitation of 45ft for both the CBA and CBB districts. She stated the conditional use permit should be granted by the City Council and not the Historic District Commission or the Zoning Board of Adjustment.

Gerry Zelin spoke in support of the height limitation amendment by the Planning Board. He said we need to act now before more project applications are filed. He stated the way our ordinance defines height is liberal. Mr. Zelin said if the conditional use permit is not remaining with the Historic District Commission it should go to the Zoning Board of Adjustment.

Susan Denenberg stated the reason for the proposal is to serve as a place holder until the form based zoning is adopted. She said it is important to get this done with developments coming in now under the current provisions. She also expressed concerns with the exceptions in the ordinance.

Ralph DiBernardo spoke regarding the process of the current zoning ordinance and the proposed amendments. He feels the City should put a height limit in effect now.

Erica Dodge spoke in support for the height ordinance. She feels we need something in place and need to cherish and protect our City.

Peter Loughlin spoke in support of the Planning Board recommendation for the height ordinance. He has heard criticism on all the buildings over the last 25 years. He stated he is proud of the City and asked why we would try to discourage and limit buildings to 3 stories.

George Dodge said we are not Any Town, USA and we need to take into account the need to preserve what we currently have.

Claire Kittredge, Portsmouth Now, urged the City Council to approve the original height limit to protect our downtown. She said they don't want to stop change, but new limits need to be put in place on the height of buildings. She stated that the Council should be given the authority to grant conditional use permits.

Tony Bradford spoke in support of the ordinance and feels that the height of buildings impact parking as well.

Aaron Lawson spoke in favor of the ordinance and the need to make sure we maintain our historic area in the downtown.

Duncan McCallum said he does not support a conditional use permit and feels variances should be required. He spoke to the difference between the two.

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

At 9:25 p.m., Mayor Spear declared a brief recess. At 9:35 p.m., Mayor Spear called the meeting back to order.

**Councilor Smith moved to suspend the rules in order to take up Item XII. A.1. – Brewster Street Boarding House Permit Extension. Seconded by Assistant Mayor Lister and voted. Councilor Lown abstained from voting on this matter.**

City Manager Bohenko stated that the Boarding House Permit expires tomorrow.

**Councilor Smith moved to suspend the rules in order to allow Attorney Hoefle to speak on behalf of Brian Hogan and present the Boarding House application for 21 Brewster Street. Seconded by Assistant Mayor Lister and voted.**

Attorney Hoefle stated he is representing Mr. Hogan who was unable to attend the meeting this evening due to recent health issues. Attorney Hoefle presented and read a letter from Mr. Brabazon which outlines the activity over the last three months at Brewster Street. Attorney Hoefle stated Mr. Brabazon is available 24/7 and a sign is posted on the side of the building with instruction to reach him if there are any issues.

Attorney Hoefle informed the Council there has been 12 police reports filed since the last consideration of the permit by the City Council.

Councilor Thorsen asked how many hours per week does Mr. Brabazon spend on the premises. Attorney Hoefle stated the business manager is on site and would contact Mr. Brabazon with any issues of concern.

Councilor Dwyer addressed the matter of a professional management company and asked if Mr. Hogan would be working towards hiring a professional property management company. Attorney Hoefle stated presently there are no professional property management companies interested in the position.

Assistant Mayor Lister said it is a concern of the Council not having a professional management company. Attorney Hoefle said with the business manager and Mr. Brabazon things are working and have improved. Assistant Mayor Lister suggested that Mr. Hogan invest in having a professional sign for the property made indicating no loitering.

**Assistant Mayor Lister moved to extend the Boarding House Permit for 3 months, permit to expire on November 19, 2013. Seconded by Councilor Novelline and voted. Councilor Lown abstained from voting on this matter.**

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

- A. Acceptance of Donation for Bench in Triangle Park - \$1,433.33 – Friends of the South End

**Councilor Smith moved to accept the donation from the Friends of the South End for a bench in Triangle Park, as presented. Seconded by Councilor Novelline Clayburgh and voted.**

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

- A. First reading of Proposed Ordinance amending various sections of Chapter 7, Vehicles, Traffic Parking Omnibus Ordinance

**Councilor Smith moved to pass first reading and schedule a public hearing and second reading on the proposed Ordinance, as presented, at the September 3, 2013 City Council meeting. Seconded by Councilor Dwyer and voted.**

B. Second reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance, Article 5 – Dimensional and Intensity Standards, are here by Amended as follows:

- Section 10.531 – Table of Dimensional Standards – Business and Industrial Districts, Maximum Structure Dimensions – Structure Height, CBA 45’ or 3 Stories, which ever is less; CBB 45’ or 3 Stories, which ever is less;
- Section 10.535 – Exception to Dimensional Standards in the Central Business Districts, by Inserting a New Section 10.535.13: Increased Building Height by Conditional Use Permit

**Councilor Dwyer moved to pass second reading, as presented. Seconded by Assistant Mayor Lister.**

City Attorney Sullivan advised the City Council if amendments are made that significantly change the ordinance there would be a need for a new public hearing.

**Councilor Dwyer moved to amend the motion for the Maximum Structure Dimensions - Structure Height 45’ or 3 ½ stories, whichever is less for both the CBA and CBB Districts; to accept the Planning Board recommendations for Conditional Use Permit with the Zoning Board of Adjustment replacing the Historic District Commission as the granting authority; and to accept the Planning Board’s recommendation to insert in Article 15 definitions for the terms “Story,” “Half Story” and “Story Above Grade Plane.” Seconded by Councilor Kennedy.**

Councilor Dwyer stated 92% of our buildings in the CBA and CBB districts are 45ft. She said there is a reason to stay at the 45ft and the discussions by the Planning Board and Historic District Commission were very clear.

Councilor Kennedy said she supports the amendment and as City Councilors they’re being asked to make decisions about the future of the City. She said we need to make improvements to the Zoning Ordinance.

Councilor Smith asked City Attorney Sullivan if having a conditional use permit go through the Zoning Board of Adjustment would create a conflict between the Historic District Commission and Zoning Board of Adjustment. City Attorney Sullivan stated that decisions of Historic District Commission are appealable by the Zoning Board of Adjustment and court.

Councilor Thorsen said he feels this is a step in the right direction.

Councilor Coviello said he feels we are taking a tool away from the Historic District Commission with the conditional use permit authority should be a requirement of the Historic District Commission.

Councilor Lown stated he does not feel we are destroying the heritage of the City if building height is not limited. He also feels the Historic District Commission should have the authority to grant a conditional use permit.

**Amendment to the main motion passed.**

**Councilor Smith moved to hold a Public Hearing and Second Reading on the Ordinance, as amended at the September 3, 2013 City Council meeting. Seconded by Councilor Novelline Clayburgh and voted.**

**At 10:30 p.m., Councilor Smith moved to suspend the rules in order to continue the meeting beyond 10:00 p.m. Seconded by Councilor Thorsen and voted. Councilor Coviello and Mayor Spear voted opposed.**

## **X. CONSENT AGENDA**

**Councilor Smith moved to adopt the Consent Agenda, as presented. Seconded by Councilor Coviello and voted.**

- A Letter from Chris Curtis, The Music Hall, requesting permission to close Chestnut Street throughout the weekend of September 20, 2013 – September 22, 2013 for the Telluride by the Sea film festival (***Anticipated action – move to refer to the City Manager with power***)
- B. Letter from Allison Brownell, Susan G. Komen Race for the Cure, requesting permission to hold the Race for the Cure on Saturday, May 10, 2014 (***Anticipated action – move to refer to the City Manager with power***)

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

- A. Letter from JerriAnne Boggis, Portsmouth Black Heritage Trail, requesting permission to hold a parade on Wednesday, August 28, 2013 from 3:00 p.m. – 4:00 p.m. from Middle Street to Chestnut Street

**Councilor Smith moved to refer to the City Manager with power. Seconded by Councilor Thorsen and voted.**

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

### **A. CITY MANAGER**

#### ***Informational Items***

- Status of Doble Army Reserve Center

City Manager Bohenko informed the City Council that the National Park Service has approved the application for a Public Benefit Conveyance for the Doble Army Reserve Center.

City Manager Bohenko also stated that the Park Service has requested that the Department of Army assign the property to the Park Service so it can move forward with a property transfer to the City.

**B. MAYOR SPEAR**

1. Appointment to be Voted:
  - Stephen Scott Gerrato – Taxi Commission (Taxicab Representative)

Mayor Spear postponed the appointment of Stephen Scott Gerrato to the Taxi Commission.

2. Establish Work Session Re: Transportation

Mayor Spear announced that a Work Session will be held prior to the regular City Council meeting on September 16, 2013 at 6:00 p.m.

Councilor Thorsen stated he does not feel an hour is enough time to get through the items on transportation. He indicated he would like time to review the matrix in advance of the Work Session.

**C. COUNCILOR SMITH**

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the August 8, 2013 meeting

**Councilor Smith moved to approve and accept the Parking and Traffic Safety Committee action sheet and minutes of the August 8, 2013 meeting. Seconded by Assistant Mayor Lister. Councilors Coviello and Kennedy voted opposed.**

**XIII. MISCELLANEOUS/UNFINISHED BUSINESS**

Councilor Dwyer reported the Middle School will be ready to open on Tuesday, August 27, 2013. She also informed the Council the connector will be completed for the opening of school and the entrance will remain the same until construction is completed.

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

**At 10:45 p.m., Councilor Coviello moved to adjourn. Seconded by Councilor Novelline Clayburgh and voted.**



Kelli L. Barnaby, CMC/CNHMC  
City Clerk