

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: TUESDAY, JANUARY 21, 2014

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

- At 6:00 p.m., a Work Session was held regarding the Right-to-Know Law.

### **I. CALL TO ORDER**

Mayor Lister called the meeting to order at 7:25 p.m.

### **II. ROLL CALL**

**PRESENT:** Mayor Lister, Assistant Mayor Splaine, Councilors Shaheen, Kennedy, Lown, Dwyer, Morgan, Spear and Thorsen

### **III. INVOCATION**

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

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

Councilor Lown led in the Pledge of Allegiance to the Flag.

### **V. ACCEPTANCE OF MINUTES** *(There are no minutes on for acceptance this evening)*

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

Tom Carroll said there is still a serious scrap metal problem at the Port. He said it is a continuing problem and a large piece of metal was picked up today and brought to the PDA.

Mark Brighton said linking budgets with cost of living adjustments is not a proper way to measure.

Dick Bagley said he feels the Rules and Orders for the City Council need to be updated. He stated that the City Council is not following Rules 19 and 20. He also expressed his opposition to the policies adopted by the City Council.

Joe Caldarola said he supports all the motions on the agenda and we need to work together. He feels the request of the Economic Development Commission should be broadened to allow participation by residents.

Lawrence Cataldo is an advocate for character based zoning and looking at what the City wants to look like in 50 years. He asked the City Council to give this professional consideration.

Jerry Zelin said he is not against Form-Based Zoning, a conference center or Whole Foods. He looks forward to the development of the north end and how it fits with the character of the City.

Norm Olsen congratulated all that are serving on this council. He reported that the average household income in the City is \$63,000.00. He said the City Council needs to defend residents against further increases and costs.

Jeffrey Kisiel asked the City Council not to eliminate the conditional use permit. The project with Harborcorp is trying to help provide a conference center with parking. He said 45 feet is not an issue and walking between Portwalk development does not feel intrusive.

Caitlyn Hassett spoke regarding the Fire and Ice Festival beginning on Thursday, February 13<sup>th</sup> at the Port Inn.

Erik Anderson spoke concern with residents and businesses that have become vacant and would like the City Council to look into this. He feels there needs to be a collective discussion of the Council on how they want department budgets to come in and the guidelines and purposes.

Chris Thompson Harborcorp, spoke to the conference center and Whole Foods development. He feels the design review process was very helpful and they're working to improve the project.

Bob Shouse said Assistant Mayor Splaine should be duly recognized for getting Martin Luther King recognized in the State of New Hampshire.

Barbara DeStefano asked the City Council to not move forward with the conditional use permit elimination. She said that developers and property owners need consistency. She indicated that she agrees with Councilor Shaheen's proposal to increase the parking back to \$1.00 but does feel that free parking should remain on Sundays.

Paul Mannle spoke in support to eliminate of the conditional use permit. He feels it was never needed. He said that smart developers will always find a way.

Councilor Dwyer asked if City Attorney Sullivan could respond to an ordinance on vacant property. City Attorney Sullivan said we have options under state laws with regards to vacant property.

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

- A. \*Acceptance of Donations to the Coalition Legal Fund
- Town of Moultonborough - \$6,500.00
  - Town of Carroll - \$1,000.00

**Councilor Lown moved to approve and accept the donations, as listed, to be placed in the Coalition Legal Fund. Seconded by Councilor Kennedy and voted.**

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

- A. First reading of Proposed Ordinance amending Chapter 10 – Zoning Ordinance, Section 10.535 – Exceptions to Dimensional Standards in the Central Business District, which would eliminate a Conditional Use Permit under Section 10.535.13

**Councilor Kennedy moved to pass first reading and establish a public hearing and second reading at the March 17, 2014 City Council meeting, and further, that the City Council refer this proposed Ordinance amendment to the Planning Board for report back to the City Council prior to the March 17, 2014 public hearing. Seconded by Councilor Thorsen.**

**Councilor Lown moved to amend and postpone the ordinance until March 3, 2014. Seconded by Councilor Spear.**

Councilor Lown said he understands the intent is to regulate one of many issues with zoning. It makes sense not to enact a height limit.

Councilor Kennedy said she will oppose the motion. She said were not enacting a height limit; it is what is allowed under conditional use. She said Form-Based Zoning will not cover all the concerns.

Councilor Spear said the City has worked hard over the last 2 years. He is excited about Form-Based Zoning coming forward in 5 weeks.

Councilor Thorsen asked about the impact of the change and whether the time frame is a relative issue and what areas are not going to be covered. Planning Director Taintor spoke to the areas that will be covered.

Councilor Dwyer asked if the motion made by Councilor Lown would be better served as a postponement to take it up with the Form-Based Zoning.

Councilor Lown said that was his intention, to combine the two for discussion.

City Attorney Sullivan said tabling is what is currently used, but postponement would be the correct term.

City Manager Bohenko said both ordinances would still come forward.

Councilor Kennedy said at second reading we could postpone the ordinance as well. She said we could still have discussions on March 3<sup>rd</sup> and it would be in place.

Councilor Morgan said she supports Councilor Kennedy's comments. We are not here to talk about Form-Based Zoning this evening. This amendment is important to protect areas outside the Form-Based Zoning area.

Councilor Shaheen said we have invested much time and effort over the months and a piece-mail approach is not good policy. She said we need to provide stability and consistencies over what people will see in their back yard.

Assistant Mayor Splaine said he is against delaying the ordinance. We don't want to get hand cuffed and that is why we should move forward with first reading. This is going through the process the City Council adopted. The City Council should be generating dialogue around the table and with residents by sitting around the table with residents and setting a public hearing to have a fascinating discussion. He said we will not agree with Form-Based Zoning in one meeting and there are many details to review. He said we should not delay this any further and he would like to pass first reading this evening.

Councilor Morgan said she feels it is important to protect the other areas of the City. We need to pass first reading now.

Councilor Shaheen said as she reads the proposal it says the CBD A & B so it would not address the northern tier and Islington Street. She said as crafted it does not do that.

City Manager Bohenko said that is correct. He said the City Council needs to take each ordinance separately.

Councilor Shaheen said we have spent countless public time on this and we need to address this issue as it relates to Form-Based Zoning.

City Manager Bohenko said Islington Street is in CBDB. He said once the legal notice is posted anything in the CBD A & B would be covered. Planning Director Taintor said there are approximately 10 lots in the CB A District abutting the North Mill Pond that would be affected by the change. There are 5 lots adjacent in the CBB District, many are very small house lots and there are 15 lots.

Councilor Spear said staff and Planning Board have been listening to our conversation over the last several months.

Councilor Dwyer said if there are only 15 lots, she does not see a problem putting this ordinance in place and passing first reading. She will vote against the motion to postpone.

Mayor Lister passed the gavel to Assistant Mayor Splaine.

Mayor Lister said he initiated the ordinance because of what he heard on the campaign trail, and we as a City Council need to take a stand on whether we want Form-Based Zoning or not. It is important to do that sooner than later. He said we are working hard on this matter and we need to protect the City. He said he would not support the motion for postponement.

Assistant Mayor Splaine returned the gavel to Mayor Lister.

Councilor Shaheen asked if the City Council could move the first reading up for Form-Based Zoning sooner than March 3<sup>rd</sup>.

Councilor Dwyer said we need time to allow the public to ask questions.

**On a roll call vote 4-5, motion to amend and postpone the ordinance until March 3, 2014 failed to pass. Councilors Shaheen, Lown, Dwyer, Spear voted in favor. Assistant Mayor Splaine, Councilors Kennedy, Morgan, Thorsen and Mayor Lister voted opposed.**

Councilor Spear said the City skyline is most interesting because of the rooftops. He said developers will build to the height allowed in the ordinance. Form-Based Zoning tried to take a creative approach. We are looking at removing the conditional use permit this evening. He read what is allowed under the conditional use permit which will be taken away.

- Publicly accessible open space areas such as widened sidewalks, plazas, pocket parks, playgrounds or other significant public open space areas;
- Underground parking in lieu of surface parking;
- The use of high quality building materials in the building design including, but not limited to: slate or copper roofing; copper gutters and downspouts; restoration brick; granite sills, lintels, foundations, stoops and steps; and wood windows along the façade elevation;
- Significant scaling elements in the building design such as increased setbacks, step backs, reduced footprint and volume, the use of pitched roof forms, banding, quoining and other massing techniques to maintain a pedestrian scale along the façade;
- Significant restoration or reconstruction of a “focal” or “contributing” building;
- Permanent protection of a significant view corridor

Councilor Thorsen said the Board of Adjustment has the ability to grant variances for zoning if we eliminate the conditional use permit and zoning changes need to be approved by the Zoning Board of Adjustment.

Councilor Dwyer said the Zoning Board of Adjustment would have been the better body to make the decision.

Councilor Lown said the Zoning Board of Adjustment should not be granting variances to go higher. He feels it is a bad idea and said this motion will limit development which is what allows the City to be affordable.

Councilor Spear said this ordinance was passed to give the land use boards more time. He asked since September how many projects have been granted a conditional use permit. Planning Director Taintor said one project. Councilor Spear spoke to 2 Council meetings held in 2007 that were 3 hours which discussed increasing the height of the Harborcorp from 50ft to 60ft.

Councilor Shaheen said if we do Character Based Zoning right we don't need this motion. We don't need a conditional use permit or a height restriction. She said we all agreed that there was something about the process that did not work.

Councilor Thorsen said Councilor Spear is right that the conditional use permit has not been in place very long. The permit process is a very long process and asked how many projects currently are in queue. Planning Director Taintor said there are 3 projects and there are no other projects that could get design review process before March 3<sup>rd</sup>.

On a roll call 5-4, voted to pass first reading and establish a public hearing and second reading at the March 17, 2014 City Council meeting, and further, that the City Council refer this proposed Ordinance amendment to the Planning Board for report back to the City Council prior to the March 17, 2014 public hearing. Assistant Mayor Splaine, Councilors Kennedy, Morgan, Thorsen and Mayor Lister voted in favor. Councilors Shaheen, Lown, Dwyer and Spear voted opposed.

## IX. CONSENT AGENDA

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

- A. Acceptance of Donation to the Fire Department
  - Newburyport Five Cents Savings Bank - \$500.00***(Anticipated action – move to approve and accept the donation to the Fire Department for the fire donation fund)***
  
- B. Letter from Jeanine Sylvester, Runner's Alley, LLC, requesting permission to hold the 17<sup>th</sup> Annual Runner's Alley/Redhook Brewery Memorial 5k on Sunday, May 25, 2014 ***(Anticipated action – move to refer to the City Manager with power)***
  
- C. Request for Approval of Pole License to install 1 pole at the intersection of Adams Drive and FW Hartford Drive to accommodate a new underground electrical system in the Woodlands area ***(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. Letter from Becky Coliandris, Alzheimer's Association, requesting permission to hold the Seacoast Walk to End Alzheimer's on Sunday, September 28, 2014 ***(Anticipated action – move to refer to the City Manager with power)***
  
- E. Letter from Caitlyn Hassett, on behalf of the Chamber of Commerce, requesting permission to hold a city wide 'Fire and Ice' Festival President's Day weekend, February 13-17, 2014 ***(Anticipated action – move to refer to the City Manager with power)***

**Councilor Kennedy moved to adopt the Consent Agenda. Seconded by Assistant Mayor Splaine and voted.**

## X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Town of Exeter Request to Explore Alternative Options for Shared Wastewater Services

**Councilor Thorsen move to refer to the City Manager for report back. Seconded by Councilor Kennedy.**

Discussion followed on where the sewer would go if we were to allow Exeter onto our system.

Councilor Kennedy spoke to the concern in her neighborhood surrounding this matter. City Manager Bohenko said we would not look at Peirce Island for this; we would look at the Pease Plant.

Councilor Morgan asked if the report back would have an impact on the future at Pease. City Manager Bohenko said absolutely.

**Motion passed.**

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

### **A. CITY MANAGER**

#### **1. Elderly and Disabled Exemptions**

City Manager Bohenko reviewed the elderly and disabled exemptions and the 3 options that are available for the City Council to consider.

**Councilor Kennedy moved to authorize the City Manager to proceed with Option B and to bring the Resolutions back for first reading at the February 3, 2014 City Council meeting, as presented. Seconded by Councilor Shaheen.**

***Option B: The income and asset levels for both the elderly and disabled taxpayers by the Social Security increase of 1.5%; this would increase the limits (rounded up) as follows:***

- **Single**                **\$35,704.00 increase of \$528.00**
- **Married**            **\$44,044.00 increase of \$651.00**
- **Asset Limit of**    **\$119,016.00 increase of \$1,759.00**

Councilor Shaheen stated she agrees that the CPI would be the more appropriate benchmark but would not vote to bump someone out. If this is helping keep people in the City she is ok with that.

**Motion passed.**

#### **2. Letter from Steven Wilson, for property located at 143 Daniel Street (former Connie Bean Center), for Exchange of Easements**

City Manager Bohenko addressed the letter from Steven Wilson.

**Councilor Lown moved to accept the recommendation of the Planning Board, regarding the request of Steven Wilson for an exchange of easements, as presented. Seconded by Councilor Thorsen and voted.**

3. New Hampshire Department of Transportation Exit 7 Project Acceptance

City Manager Bohenko spoke to the Exit 7 project and that it is a federally funded project. He reported this was 80% funded with State funds and 20% by the City.

**Councilor Kennedy moved to accept the New Hampshire Department of Transportation Exit 7 Market Street and Kearsarge Way Intersection and Traffic Improvement Project. Seconded by Councilor Lown and voted.**

City Manager's Informational Items

1. *Update on Snow Removal Budget*

City Manager Bohenko reported that 65% of the snow removal budget has been expended and there may be a need to come forward for a special appropriation from the Contingency Fund if we were to expend all the funding within the snow removal budget.

**Councilor Kennedy moved to suspend the rules in order to take up Item XI. E.1. – Report Back on Fire Study Committee. Seconded by Councilor Thorsen and voted.**

**E. COUNCILOR LOWN**

1. Report Back on Fire Study Committee

Councilor Lown thanked Chief Achilles for his participation and assistance during the Committee's work. He said we want to look at staff times, use of volunteer fire fighters and overtime.

**Councilor Thorsen moved to authorize the City Manager to work with the Fire Chief and the Fire Study Committee to initiate a Request For Qualifications (RFQ) for a consultant to review the summary as outlined in the Portsmouth Fire Department Study, as presented, and further to extend the Fire Study Committee by 120 days. Seconded by Councilor Lown.**

Councilor Dwyer said the Committee was not recommending the use of a private ambulance company.

Councilor Kennedy expressed her opposition to privatization of the ambulance services for the City.

**Assistant Mayor Splaine moved to amend the motion to remove recommendation #4 of the Committee's Report to Analyze the advantages/disadvantages of using private ambulance services in Portsmouth. Seconded by Councilor Kennedy.**

Chief Achilles said the Fire Department support any items that could improve services. He said it is important to provide data driven information.



**On a roll call 5-4, voted to amend the motion to remove recommendation #4 of the Committee's Report to analyze the advantages/disadvantages of using private ambulance services in Portsmouth. Assistant Mayor Splaine, Councilors Shaheen, Kennedy, Dwyer and Morgan voted in favor. Councilors Lown, Spear, Thorsen and Mayor Lister voted opposed.**

**On a roll call 8-1, voted to pass main motion as amended. Councilors Shaheen, Kennedy, Lown, Dwyer, Morgan, Spear, Thorsen and Mayor Lister voted in favor. Assistant Mayor Splaine voted opposed.**

**Main motion passed as amended as follows:**

**Voted to authorize the City Manager to work with the Fire Chief and the Fire Study Committee to initiate a Request For Qualifications (RFQ) for a consultant to review the summary as outlined in the Portsmouth Fire Department Study, as presented, with the removal of recommendation #4 of the Committee to Analyze the advantages/disadvantages of using private ambulance services in Portsmouth and to extend the Fire Study Committee by 120 days.**

**Councilor Kennedy moved to suspend the rules in order to continue the meeting beyond 10:00 p.m. Mayor Lister indicated he would like to adjourn the meeting at 10:45 p.m. Seconded by Councilor Spear and voted.**

At 10:10 p.m., Mayor Lister declared a brief recess. At 10:15 p.m., Mayor Lister called the meeting back to order.

2. Parking and Traffic Safety Committee Action Sheet and Minutes of the December 12, 2013 meeting

**Councilor Spear moved to approve and accept the Action Sheet and Minutes of the Parking and Traffic Safety Committee meeting of December 12, 2013. Seconded by Councilor Thorsen and voted. Councilor Kennedy voted opposed.**

#### **B. MAYOR LISTER**

1. Appointments to the Senior Sub-Committee of the Recreation Board
  - Carl Diemer, Chair; Todd Henley, Kory Sirmaian, Judith Bunnell, Maureen O'Leary, Diane Share and Cindi Shanley

Mayor Lister announced that he has appointed the following individuals to serve on the Senior Sub-Committee of the Recreation Board: Carl Diemer, Chair; Todd Henley, Kory Sirmaian, Judith Bunnell, Maureen O'Leary, Diane Share and Cindi Shanley.

#### **C. COUNCILOR SHAHEEN**

1. Parking Rates at High Hanover Parking Garage

Councilor Shaheen said she heard from countless people that this change needs to be made.

**Councilor Shaheen moved to request that the City Manager report back on the impact of the elimination of the first hour free parking at the High-Hanover Garage, and, further the impacts of increasing the rate from \$.75 per hour to \$1.00 per hour at the High-Hanover Garage. Seconded by Councilor Lown and voted.**

**D. COUNCILOR KENNEDY**

1. Visual Time Lines for Land Use Boards

Councilor Kennedy said she is looking for the Planning Department to provide a visual time line of when a person starts a process and how it goes from one board to another. City Manager Bohenko stated he would assign this task to a staff person.

Councilor Kennedy said she would like this on the website.

City Manager Bohenko said the Planning Department understands what the public is looking for. He said there are many variances and we need to put many disclosures on the chart. He said they will not be absolute and that there is a tremendous work load in the Planning Department right now, and we will work on the request.

Councilor Kennedy requested a report back on the Planning Department looking at providing a visual time line for projects that includes what happens when a person starts the process, how the process goes from one board to another and at what point in the process would the person expect to go to the various boards. (No action taken).

**F. COUNCILOR DWYER**

1. Update on African Burying Ground

Councilor Dwyer provided a brief update on the African Burying Ground project and announced they have reached the \$1,000,000.00 mark in the fundraising campaign with part of those funds coming from receiving an LCHIP Grant. (No action required).

**G. COUNCILOR MORGAN**

1. \*Form-Based Zoning

Councilor Morgan said she is supportive of Form-Based Zoning going to the next process of input by the public. She stated it is important to have dialogue and she would like to have a side by side document to show what exists now and what is being proposed. She said that having a side by side representation would be beneficial for everyone.

Councilor Morgan requested the Planning Department to prepare a side by side comparative zoning document involving our current zoning and proposed Form-Based Zoning ordinance, indicating where one supplements or supplants the other, to be made available during the upcoming Form-Based Zoning meeting on January 29, 2014, along with maps to make the discussions on January 29<sup>th</sup> as meaningful as we can.

Planning Director Taintor indicated they will provide maps which show heights and footprints of buildings. Also, large poster size draft tables have been put together which go through each zoning chapter and listing what chapters are not effected at all by Form-Based Zoning or character base zoning. Councilor Morgan suggested that a log of questions and proposals by individuals with the answers or solutions be created. City Manager Bohenko indicated the staff will work on what has been described in the spirit of Councilor Morgan's suggestions.

Councilor Dwyer said most people will be interested in the dimensional tables.

City Manager Bohenko said we will try to work on what has been discussed and does not feel there is a need for a motion as he will direct staff on this matter.

#### **H. COUNCILOR SPEAR**

##### 1. Parking Garage Location

**Councilor Spear moved that the Council request the Economic Development Commission report back with a suitable location for a downtown parking garage that is not the Worth Lot. The Committee will consider privately held properties and municipal properties and/or a public-private partnership. Seconded by Councilor Lown.**

Assistant Mayor Splaine said that the time is right to move this and he would rather see the Council come to a resolution sooner than later.

**Councilor Morgan moved to amend the motion to include the Parrott Avenue Lot as not being a suitable location for a downtown parking garage. Seconded by Assistant Mayor Splaine.**

Councilor Shaheen asked Councilor Spear why he suggested the Economic Development Commission over the Parking and Traffic Safety Committee. Councilor Spear said the Parking and Traffic Safety Committee has looked at this for 6 months last year and we did not move forward with their recommendations. He stated that the Economic Development Commission is motivated and we are working towards private entities getting involved with the City.

Councilor Lown thanked Councilor Spear for bringing this matter forward. He said that this is for a report back.

**Amendment passed.**

**Councilor Thorsen moved to suspend the rules to continue the meeting to 11:00 p.m. Seconded by Councilor Morgan and voted.**

Councilor Shaheen said we cannot delay this matter any further.

**Main motion passed as amended as follows: Voted that the Council request the Economic Development Commission report back with a suitable location for a downtown parking garage that is not the Worth or Parrott Avenue Lots. The Commission will consider privately held properties and municipal properties and/or a public-private partnership. Further the City Manager is permitted to initiate negotiations with private parties to achieve the same.**

**I. COUNCILOR THORSEN**

1. Financial Disclosure Ordinance Amendment

Councilor Thorsen provided a handout to the Council and suggested a Work Session be held prior to the June 30, 2014 deadline for submitting Financial Disclosures and that the establishment of the date for this Work Session is at the discretion of Mayor Lister.

City Attorney Sullivan said that we need to look back at the 1987 City Council records to see at that time what the City Council was looking to do.

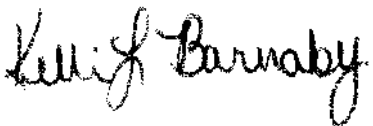
Mayor Lister said we should hold a Work Session in public because this has far reaching implications.

Assistant Mayor Splaine said there are many concerns about potential conflicts.

**XII. MISCELLANEOUS/UNFINISHED BUSINESS**

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

**At 11:00 p.m., Councilor Spear moved to adjourn. Seconded by Councilor Morgan and voted.**



Kelli L. Barnaby, CMC/CNHMC  
City Clerk