

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, MARCH 3, 2014 TIME: 6:15 PM

AGENDA

- 6:15PM – WORK SESSION RE: UPDATE ON PEIRCE ISLAND WASTEWATER TREATMENT FACILITY

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

PROCLAMATION

- 1. Music in Our Schools Month – Steve Cirillo, Performing Arts Coordinator K-12

PRESENTATION

- 1. *Update on Transportation Projects – Transportation Planner Juliet Walker

- V. ACCEPTANCE OF MINUTES – December 16, 2013

- VI. PUBLIC COMMENT SESSION

- VII. PUBLIC HEARINGS

- A. RESOLUTION AUTHORIZING A BOND ISSUE OF UP TO THREE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$3,500,000.00) RELATED TO THE DESIGN AND CONSTRUCTION OF THE HOBBS HILL LANDING WATER TANK REPLACEMENT

- VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Inserting a New Article 5A – Character Districts (aka Form-Based Zoning) (***Sample motion – move to schedule second reading and public hearing on the attached ordinance entitled Article 5A – Character Districts, at the March 17, 2014, City Council meeting***)
- B. First Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Miscellaneous Conforming Amendments to Implement Character Based Zoning (***Sample motion – move to schedule second reading and public hearing on the attached Ordinance dealing with conforming amendments at the March 17, 2014 City Council meeting***)

- C. Adoption of Resolution Authorizing a Bond Issue of up to Three Million Five Hundred Thousand Dollars (\$3,500,000.00) related to the Design and Construction of the Hobbs Hill Landing Water Tank Replacement (**Sample motion – move to adopt the Bond Resolution up to Three Million Five Hundred Thousand (\$3,500,000) Dollars for the replacement of the Hobbs Hill Landing Water Tank, as presented**) (Please note: Bonding Resolutions require two readings and a public hearing and a two-thirds vote of the City Council)

IX. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Request for Approval of Pole License to install 1 pole and 40' of underground conduit on Salter Street for an electrical service to 13 Salter Street (**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**)
- 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 2014 baseball season (**Anticipated action – move to refer to the City Manager with power**)

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Peter Newbury, SABR Board of Directors requesting permission to hold an Open Streets event on Sunday, September 14, 2014 (**Sample motion – move to refer to the City Manager for Report back**)
- B. Letter from Islington Creek Neighborhood Association Re: Permit renewal for 21 Brewster Street Boarding House

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

Items Which Require Action Under Other Sections of the Agenda:

- 1. First Reading of Proposed Resolution and Ordinance Amendments:
 - 1.1 First Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Inserting a New Article 5A – Character Districts (aka Form-Based Zoning) (**Action on this item should take place under Section VIII of the agenda**)
 - 1.2 First Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Miscellaneous Conforming Amendments to Implement Character Based Zoning (**Action on this item should take place under Section VIII of the agenda**)

2. Public Hearing/Adoption of Proposed Resolution:
 - 2.1 Public Hearing and Adoption of Proposed Resolution for a Bond Authorization of up to Three Million Five Hundred Thousand (\$3,500,000) Dollars for the Design and Construction of the Hobbs Hill Landing Water Tank Replacement (***Action on this item should take place under Section VIII of the agenda and will require a 2/3 vote for passage***)

City Manager's Items Which Require Action:

1. Proposed Purchase of 95 Mechanic Street (LaCava Property)
2. Request for Street and Sidewalk Obstruction License Re: 7 Islington Street, LLC, 40 Bridge Street
3. Annual Renewal of Boarding House Permits:
 - a. 350-352 Hanover Street
 - b. 278 Cabot Street
 - c. 21 Brewster Street
4. Proposed Easement Re: 1475 Lafayette Road
5. Request to Establish a Work Session with General Services Administration (GSA) Re: Federal McIntyre Building

Informational Items

1. Events Listing
2. Report Back Re: Design Review Regulations
3. Report Back Re: Conditional Use Permit
4. Proposed Additional Areas to Implement Character-Based Zoning
5. Sea-3 Update
6. African Burying Ground Update

B. MAYOR LISTER

1. Appointments to be Voted:
 - Dana Levenson reappointment to Economic Development Commission
 - Francesca Marconi Fernald reappointment to Peirce Island Committee
 - Chris Hubbard reappointment to Peirce Island Committee
 - Lisa Louttit reappointment to Peirce Island Committee
 - Steve Marison reappointment to Peirce Island Committee
 - John McVay reappointment to Peirce Island Committee
 - Robert Pollard reappointment to Peirce Island Committee
 - Richard Smith reappointment to Peirce Island Committee
 - Marc Stettner reappointment to Peirce Island Committee
 - Harold Whitehouse reappointment to Peirce Island Committee

- Peter Bresciano reappointment to Taxi Commission
- Dana Levenson reappointment to Trustees of the Trust Fund
- Cliff Lazenby appointment to Citywide Neighborhood Steering Committee
- Shelley Saunders (current alt) appointment to Conservation Commission
- Josh Denton appointment to Sustainable Practices Blue Ribbon Committee

C. ASSISTANT MAYOR SPLAINE

1. Alternatives to Repealing the Conditional Use Permit
2. Portsmouth Transgender Non-Discrimination Policy Resolution

D. COUNCILOR KENNEDY

1. *Establish Transportation Committee

E. COUNCILOR LOWN

1. Parking & Traffic Safety Committee Action Sheet and Minutes of the February 13, 2014 meeting (***Sample motion – move to approve and accept the action sheet and minutes of the February 13, 2014 Parking & Traffic Safety Committee meeting***)

F. COUNCILOR DWYER

1. *JBC Update

XII. MISCELLANEOUS/UNFINISHED BUSINESS

XIII. 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 the June 12, 2013 meeting is available on the City's website for your review
2. Notification that the Historic District Commission Minutes of the May 8, 2013 meeting is available on the City's website for your review
3. Notification that the Historic District Commission Minutes of the May 22, 2013 meeting is available on the City's website for your review
4. Notification that the Historic District Commission Minutes of the June 5, 2013 meeting is available on the City's website for your review
5. Notification that the Historic District Commission Minutes of the June 12, 2013 meeting is available on the City's website for your review
6. Notification that the Historic District Commission Minutes of the June 19, 2013 meeting is available on the City's website for your review
7. Notification that the Planning Board Minutes of the July 18, 2013; August 15, 2013; September 12, 2013; September 19, 2013 and October 10, 2013 are available on the City's website for your review
8. Notification that the Site Review Technical Advisory Committee Minutes of the February 4, 2014 meeting is 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: February 27, 2014
To: Honorable Mayor Robert J. Lister and City Council Members
From: John P. Bohenko, City Manager 
Re: City Manager's Comments on March 3, 2014 City Council Agenda

Work Session:

6:15 p.m.

1. **Update on Peirce Island Wastewater Treatment Facility.** For the March 3, 2014 Work Session, City staff will provide an update on the status of the ongoing design of the new Peirce Island Wastewater Treatment Facility (WWTF). This update will provide a summary of the overall design process, progress of design work to date and next steps.

In addition, Assistant City Attorney Suzanne Woodland will provide a brief update on the release of the Joint Report of the Peer Review Panel of the NH DES' 2009 Numeric Nutrient Water Quality Criteria. The peer review was a collaborative effort among NH DES and the communities of Dover, Portsmouth and Rochester. The entities are individually and jointly evaluating the implications of, and recommendations in, the report.

Presentation:

1. **Update on Transportation Projects.** The Mayor's Blue Ribbon Committee on Transportation Policy Report was completed and presented to the City Council in April of 2013. Since that time, City staff has been continuing to work on implementing the strategies and recommendations from that report. Juliet Walker, the City's Transportation Planner, will present an update on the status of various City transportation initiatives currently in progress. Topics will include Complete Streets, bicycle and pedestrian facilities, parking and wayfinding, and public transit.

Items Which Require Action Under Other Sections of the Agenda:

1. First Reading of Proposed Resolution and Ordinances.

- 1.1 **First Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Inserting a New Article 5A – Character Districts (aka Form-Based Zoning).** As a result of the January 13th City Council meeting, I am presenting for first reading the attached proposed amendment to the Zoning Ordinance to implement Character-Based Zoning (aka Form-Based Zoning) in the downtown area. As you know, the Planning Department and the City’s consultants, Town Planning and Urban Design Collaborative (TPUDC), worked throughout 2013 to develop new “form-based” zoning standards for the historic core of the downtown. This approach was taken in order to address a recognition that the scale and style of new developments as permitted under current zoning is not always consistent with the downtown’s historic character.

The proposed ordinance will add a new Article 5A – Character Districts to the Zoning Ordinance. The development standards in Article 5A are based on the historic design character of downtown Portsmouth and seek to encourage new buildings and developments that fit in well with the surrounding context. The goal of this effort is to create zoning regulations that promote development that not only respects the historic character, but actually strengthens and enhances that character by filling in holes in the urban fabric with high-quality buildings.

The Planning Board originally considered these proposed amendments in a public hearing on October 24, 2013, and a special meeting on October 31, 2013, and voted unanimously to recommend that the City Council adopt the new Article 5A, along with several amendments to other sections of the Ordinance. On October 21, 2013, the City Council scheduled first reading on the proposed zoning amendments for November 18, 2013. However, at the November 18 meeting, the Council voted to postpone the ordinance until January 2014, in order to provide for additional review and input. At its meeting on January 13, 2014, the City Council voted to schedule the proposed Character-Based Zoning for first reading on March 3, 2014, with a public hearing and second reading at the March 17, 2014 City Council meeting.

To provide residents with an opportunity to ask questions about the proposed Character-Based Zoning and to make suggestions for changes, the Planning Department held a public informational drop-in session and forum on January 29, 2014. Both the afternoon drop-in session and the evening forum were well attended and generated much discussion and input.

Based on comments from residents and further internal review, the Planning Department prepared a revised draft of the proposed Character-Based Zoning ordinance. This draft was posted on the Planning Department’s website (<http://planportsmouth.com/formbasedzoning.html>) and reviewed in a public hearing

at the Planning Board's February 20th meeting. As a result of the public hearing, the Planning Board voted to make several additional revisions to the proposed ordinance, and voted unanimously to recommend that the City Council enact the proposed ordinance as amended.

The revised proposed ordinance incorporating the changes recommended by the Planning Board is *attached*. In this revised draft (dated March 3, 2014), text that is new or changed from the version presented for first reading in November 2013 is highlighted in yellow. In addition, footnotes indicate areas where text has been deleted from the previous version. Also *attached* is a memorandum from Planning Director Rick Taintor summarizing the substantive changes from the previous version. On Monday evening, the Planning Director will make a presentation on this matter.

I would recommend the City Council move to pass first reading and schedule second reading and public hearing on the attached Ordinance entitled Article 5A – Character Districts, at the March 17, 2014, City Council meeting. Action on this item should take place under Section VIII of the Agenda.

1.2 **First Reading of Proposed Amendments to Chapter 10 – Zoning Ordinance, Miscellaneous Conforming Amendments to Implement Character-Based Zoning.**

As a result of the January 13th City Council meeting, I am presenting for first reading the *attached ordinance* which includes a set of proposed amendments to the Zoning Ordinance that will be required if the Council votes to adopt the proposed Article 5A – Character Districts. These “conforming amendments” to other sections of the Zoning Ordinance would make the following changes:

- Add references to the new Character Districts in the listing of Zoning Districts (Sec. 10.410), the description of the Downtown Overlay District (Sec. 10.641.10) and the listing of Sign Districts (Sec. 10.1230);
- Incorporate into the Zoning Map, by reference, the Regulating Plan maps, along with two other maps that describe areas subject to special zoning regulations;
- Add a cross-reference in Article 15 to definitions in the new Article 5A.

The proposed “conforming amendments” also include several substantive changes to the off-street parking provisions of the Downtown Overlay District: parking setbacks from certain streets are reduced from 30 feet to 24 feet, the list of such streets is expanded, and the setback requirement is changed to apply only to above-ground parking areas (i.e., off-street parking in basement levels would not have to be set back from the street).

The Planning Board originally considered these proposed amendments in a public hearing on October 24, 2013, and a special meeting on October 31, 2013, and voted unanimously to recommend that these amendments be enacted. Following the public informational forum on January 29, 2014, the Planning Department drafted several

additional amendments, and the Planning Board held another public hearing on the amended proposed ordinance on February 20, 2014. After closing the public hearing, the Planning Board voted unanimously to recommend that the revised amendments be enacted. On Monday evening, Planning Director Rick Taintor, will make a presentation on this matter.

I would recommend the City Council move to pass first reading and schedule second reading and public hearing on the attached Ordinance dealing with conforming amendments at the March 17, 2014 City Council meeting. Action on this item should take place under Section VIII of the Agenda.

2. **Public Hearing/Adoption of Proposed Resolution.**

2.1 **Public Hearing and Adoption of Proposed Resolution for a Bond Authorization of up to Three Million Five Hundred Thousand (\$3,500,000) Dollars for the Design and Construction of the Hobbs Hill Landing Water Tank Replacement.**

As a result of the February 18th City Council meeting, under Section VIII of the Agenda, I am bringing back for public hearing and adoption the proposed Resolution authorizing a bond issue of up to Three Million Five Hundred Thousand (\$3,500,000) related to the design and construction of the Hobbs Hill Landing Water Tank Replacement. The following is a description of the proposed project funded through the water enterprise fund:

This project was identified in the Phase I Water System Master Plan and confirmed again as part of the Water Supply Update performed in 2012. The Hobbs Hill Landing Water Tank was constructed in the 1950's in conjunction with the building of the Pease Air Force Base and has reached the end of its useful life and requires a replacement tank.

This project had been slated as a FY15 project in the current CIP with design anticipated in fall-winter 2014 and construction commencing in the summer of 2015. However, due to ongoing construction of new buildings adjacent to the existing water tank and a new business relocating its corporate offices into one of the new buildings, we are proposing to bring this before City Council for bond authorization now. This will enable design to commence this winter in anticipation of bidding the project in a few months so that it can begin construction this summer. We will be bidding and selecting the contractor based on price, tank style and proposed construction timeline. Demolition of the existing Hobbs Hill tank will occur after the new tank is completed and in service (see [attached Resolution and attachments](#)).

I would recommend the City Council move to adopt a Bond Resolution of up to Three Million Five Hundred Thousand (\$3,500,000) Dollars for the replacement of the Hobbs Hill Landing Water Tank, as presented. (Please note that Bonding Resolutions require two readings and a public hearing and two-thirds vote of the City Council.) Action on this item should take place under Section VIII of the Agenda.

City Manager's Items Which Require Action:

1. **Proposed Purchase of 95 Mechanic Street (LaCava Property).** As you will recall, on February 3, 2014 the City Council had a non-meeting with Legal counsel to discuss the negotiation of the purchase of 95 Mechanic Street (LaCava Property). At this non-meeting staff briefed City Council on the importance and benefit of acquiring this property. The City Council then expressed interest that the City Manager negotiate the purchase of this property. The history of the negotiations is as follows:

- August 2011– Property owner approached City, offering City sale of 95 Mechanic Street (LaCava Property) for approximately \$780,000
- September 6, 2011 - City Council Refers to Planning Board
- October 20, 2011 - Planning Board recommends moving forward with purchase of property
- November 21, 2011 - Council Authorizes City Manager to negotiate purchase of property
- November 2011 to Present – City continued negotiation of purchase
- City had Independent appraisal which valued the property at \$490,000 (see attached memo from City Attorney Robert Sullivan for additional details on negotiation history)
- Negotiated purchase price is \$450,000

Attached is a copy of a Purchase and Sales Agreement which requires City Council ratification (see paragraph 16 of agreement) which was drafted by the City Attorney. It should be noted that if the City Council fails to ratify this agreement, the agreement shall be null and void. The purchase price as stated above is \$450,000. (Please note that no funds have been expended regarding this proposed Purchase and Sales Agreement as of this date.) If approved by the City Council, funding for this purchase has been appropriated in the FY13 Sewer Enterprise Fund.

The 95 Mechanic Street property is adjacent to two City properties (see attached figure), the Mechanic Street Pumping Station and a small section of a City park. The Mechanic Street Pumping Station was built in 1963 as part of the original Peirce Island Wastewater Treatment Facility. The Station is an integral part of the City's wastewater system pumping all of the sewage flow to the Peirce Island Wastewater Treatment Facility with the exception of Pease International Tradeport. This pumping station will be a critical part of our new \$63M wastewater treatment plant. Acquiring the property adjacent to the pumping station would have the following benefits:

1. Significant cost savings during construction of the new pumping station by allowing the existing station to remain in service rather than requiring bypass pumping. The

Division's analysis of these cost savings range from \$400,000 to \$500,000 which is approximately the purchase price of the property. The additional space would allow more room for contractors to work and stage equipment and materials.

2. Creates opportunity to improve public access to the waterfront.
3. Creates an opportunity to improve overall aesthetics of the site as well as improved noise and odor control.
4. Leaves open the opportunity to relocate the pumping station to Peirce Island by allowing for the necessary space for piping and flow control systems to install a siphon under the river while operating the existing pump station. This alternative will be fully evaluated as part of any upgrade to the existing pumping station.

If someone else purchases this property, it would preclude all the benefits listed above and would restrict our options for future upgrades at this pumping station.

For the reasons stated, City Staff and I believe the purchase of this property adjacent to the existing pumping station is integral to the long-term operations of the City's new wastewater treatment facility on Peirce Island. At Monday evening's meeting, I have asked Peter Rice, Director of Public Works and Brian Goetz, Deputy Director of Public Works to make a presentation to further discuss the salient points of the importance of purchasing this property.

I would recommend that the City Council move to ratify the Purchase and Sales Agreement dated February 21, 2014, and further, authorize the City Manager to complete the acquisition of the property at 95 Mechanic Street from the Estate of LaCava.

2. **Request for Street and Sidewalk Obstruction License Re: 7 Islington Street, LLC., 40 Bridge Street.** On April 19, 2012, 7 Islington Street, LLC obtained site plan approval from the Planning Board for the construction of a building located at 40 Bridge Street, Tax Map 126, Lot 052. 7 Islington Street, LLC requests a license to encumber the sidewalk and four parking spaces abutting 40 Bridge Street to construct a four story mixed use building with associated site improvements. [See attached License Plan and attached aerial photo showing the area to be encumbered.](#) The applicant seeks to encumber the sidewalk and four parking spaces along Bridge Street to facilitate construction activities for the duration of the project from March of 2014 through April of 2015. The fee for the License will be for 4 parking spaces. The charge per space will be the construction permit meter bag daily fee of \$30 pursuant to Chapter 7, Article 1, Section 7.114A of the City Ordinance. Anticipated monthly license fee revenue will be \$3,600 per month.

I would recommend the City Council move to authorize the City Manager to negotiate and enter into a license with 7 Islington Street, LLC to facilitate construction activities at 40 Bridge Street, which includes a license fee of \$30 per parking space per day.

3. **Annual Renewal of Boarding House Permits.** As you are aware, annually, the City Council considers and takes action on the renewal of the following Boarding House Permits.

- a) **350-352 Hanover Street.** Pursuant to Article VIII: Boarding Houses, Section 9.804: Permit Renewal, I have [attached a draft Permit](#) for the boarding house located at 350-352 Hanover Street (12 rooms). This facility was inspected on February 4, 2014 by the Code Enforcement Officer and Health Officer. All deficiencies that were found during the inspection were corrected in the follow-up inspection conducted February 13, 2014 ([see attached report](#)).

I would recommend that the City Council move to approve the Boarding House permit for 350-352 Hanover Street for a one year permit to expire March 3, 2015.

- b) **278 Cabot Street.** Pursuant to Article VIII: Boarding Houses, Section 9.804: Permit Renewal, I have [attached a draft Permit](#) for the boarding house located at 278 Cabot Street (12 rooms). This facility was inspected on February 4, 2014 by the Code Enforcement Officer and Health Officer and recommended for the reissue of the permit ([see attached report](#)).

I would recommend that the City Council move to approve the Boarding House permit for 278 Cabot Street for a one year permit to expire March 3, 2015.

- c) **21 Brewster Street.** Pursuant to Article VIII: Boarding Houses, Section 9.804: Permit Renewal, I have [attached a draft Permit](#) for the boarding house located at 21 Brewster Street. This facility was inspected on February 4, 2014 by the Code Enforcement Officer and Health Officer ([see attached report](#)).

As you may recall, this facility has received five interim permits over the past year. Each of those permits included a series of conditions regarding the facility operations for the permit period. The most recent permit was issued on December 17, 2013. That permit included 2 provisions related to the management of the facility; the first titled "[JOB DESCRIPTION FOR MANAGEMENT AT 21 BREWSTER STREET](#)" and the second titled "[CODE OF CONDUCT: 21 BREWSTER STREET, PORTSMOUTH, NH.](#)" These documents are attached to the draft permit in your packet.

The facility, in general continues to show improvement in the physical condition of the building. There are however two conditions in the permit where compliance is less clear.

The first is the condition of the management as described in the "job description" document. Based on a [letter report provided by Richard Brabazon, dated February 22, 2014, attached](#), it was not clear that the hours worked fully meet all of the hours as defined in that "job description" document. It should also be noted that Mr. Brabazon included an entry in the log on 1-16-14 that "Brian expressed concern that he could no longer pay me for the time needed. He instructed me to go back to what I was initially doing when I first started in April 2012. I have since adjusted my time and schedule."

From that time forward there were no visits after 10 pm as described under Item A, Work Hours in the job description document.

Secondly, bedbugs were found during the inspection of the facility on February 4, 2014. The Health Officer has expressed concern about the effectiveness of the current system of pest management being performed on the facility. It is her recommendation that any permit renewal include the stipulation that full-building pest control treatment of all rooms and hallways be performed quarterly. That stipulation has been included on the draft permit in your packet.

The City Attorney has been involved in the on-going permit issues with this property and has provided a memo that outlines the three options for the City Council's consideration regarding this matter. Those options are "extend the permit for its full term of one year, deny the permit or extend the permit for some period less than a full year in order to allow for further discussions and negotiations between the parties in interest." The City Attorney further went on to advise that if the Council votes to deny the permit, that a non-meeting with counsel be scheduled in order to discuss the litigation goals and options.

The following are proposed motions on this issue:

1) Move to approve the Boarding House permit for 21 Brewster Street for one year to expire March 3, 2015; or

2) Move to extend permit for 3 months in order to allow for further discussions and negotiation between the parties; or

3) Move to deny and establish a non-meeting with counsel to discuss legal options.

4. **Proposed Easement Re: 1475 Lafayette Road.** On May 20, 2013, Cumberland Farms, Inc., obtained site plan approval from the Planning Board to redevelop the property at 1475 Lafayette Road (corner of Elwyn Road) as a gas station/convenience store. The site plan was approved by the Planning Board subject to certain stipulations, including the grant of easements to the City and the New Hampshire Department of Transportation for road widening and sidewalk improvements.

Attached are a plan and an aerial photograph showing the proposed easement areas.

I would recommend the City Council move to authorize the City Manager to accept a right-of-way easement on Elwyn Road from Cumberland Farms, Inc.

5. **Request to Establish a Work Session with General Services Administration Re: Federal McIntyre Building.** I have contacted Robert Zarnetske, Regional Administrator for the General Services Administration (GSA) regarding a work session with the City Council. He is available for a work session on Monday, March 31, 2014 at 6:30 p.m. I have also invited representatives from Senator Shaheen, Senator Ayotte, and Congresswoman Shea-Porter's offices. (See attached letters from Mayor Lister to GSA Regional Administrator Robert Zarnetske and the Congressional Delegation requesting additional information prior to the Work Session.)

I would recommend the City Council move to establish a work session for Monday, March 31, 2014 at 6:30 p.m.

Informational Items:

1. **Events Listing.** For your information, attached is a copy of the Events Listing updated after the last City Council meeting on February 18, 2014. In addition, this can be found on the City's website.
2. **Report Back Re: Design Review Regulations.** At its meeting on January 13, 2014, the City Council voted "to request that the Planning Board evaluate its design review regulations to investigate and further request a report back to the City Council at the March 3, 2014 City Council meeting."

During the January 7, 2013 City Council public hearing on a Zoning Ordinance amendment relating to building height, concerns were raised about the impact of proposed zoning amendments on development proposals that had been proceeding through the City's permitting process for many months. In response to these concerns, in March 2013, the Planning Board amended its Site Plan Review Regulations by establishing a "design review phase" as authorized by State statute (RSA 676:4,II). The purpose of the design review phase is to provide an opportunity for nonbinding review of a development proposal before it is finalized and submitted for formal review. However, because the design review phase requires formal public notice, it also provides an opportunity for an applicant to lock in the current zoning by submitting a fairly well developed set of engineered site plans.

To date, the Planning Board has held public hearings on design review requests for four proposed development projects: 111 Maplewood Avenue (June 20, 2013); 173-175 Market Street (July 18, 2013); the Harborcorp project on Russell Street, Deer Street and Maplewood Avenue (December 19, 2013); and a proposed second building at 30 Maplewood Avenue (also December 19, 2013). Of these, only the 30 Maplewood Avenue and Harborcorp design review requests were submitted at a stage at which Planning Board comments might influence the final application for site plan review.

On February 20, 2014, the Planning Board held a public hearing to consider the request by the City Council that the Board evaluate the design review process. Following the hearing, the Board postponed discussion of the issue to its next meeting on March 20, 2014.

3. **Report Back Re: Conditional Use Permit.** At its meeting on January 21, 2014, the City Council voted to pass first reading on a proposed amendment to the Zoning Ordinance to delete Section 10.535.13 – “Increased Building Height by Conditional Use Permit (Central Business A and B Districts).” The effect of this proposed amendment would be to reduce the allowable building height in the entire Central Business District to the lesser of 45 feet or 3½ stories. Any increase in building height above this level would require a variance from the Zoning Board of Adjustment.

Since 1982, the Zoning Ordinance has set the maximum allowable building heights in the downtown at 50 feet in the Central Business A (CBA) district and 60 feet in the Central Business B (CBB) district. In response to several existing and proposed development projects, the City Council in 2013 enacted two zoning amendments relating to these height limits:

- On January 22, 2013, the Council amended the Ordinance by inserting a new Section 10.535.12, establishing the maximum building elevation above street level as 50 feet in CBA and 60 feet in CBB. This amendment was intended to address a concern resulting from the method of determining building height as the average height around all sides of the building.
- On September 16, 2013, the Council further amended the Ordinance by establishing the lower of 45 feet or 3½ stories as the maximum height allowable by right, and by inserting a new Section 10.535.13 that allows buildings to reach the previously permitted heights by obtaining a Conditional Use Permit from the Historic District Commission.

To date, there has been only one application for a Conditional Use Permit under the provision adopted in September. This was for the proposed project at 173-175 Market Street, which had been under review by the Historic District Commission for many months.

The Planning Board held a public hearing on the proposed Zoning Ordinance amendment on February 20, 2014. As a result of that hearing the Planning Board voted 7-2 to recommend that the criteria Conditional Use Permit be retained but that the criteria for approval be modified to require that a proposed development address a total of four elements, two relating to building design and two relating to site planning. [Attached is a memorandum from Planning Director Rick Taintor](#) explaining the recommended amendments to the approval criteria.

This matter is scheduled for public hearing and second reading on March 17, 2014. No action is required at the March 3 City Council meeting.

4. **Proposed Additional Areas to Implement Character-Based Zoning.** In May 2013, the City Council requested that staff consider extending the form-based zoning study to additional areas around the periphery of the downtown. At that time, the Planning Department identified three potential areas for study, shown on the attached map and described as follows:

1. The “Northern Tier” area between the railroad tracks and North Mill Pond, currently zoned Central Business A, containing about 15 acres and 15 existing parcels;
2. A small area on the opposite side of the Maplewood Avenue bridge, currently zoned Mixed Residence Office, containing about 3 acres and 16 parcels; and
3. A corridor along Islington Street with expanded areas at the north end (Hanover and Hill Streets) and the south end (Brewery Lane, Chevrolet Ave., Plaza 800 and the Button Factory area), with various Business, Mixed Residential and Residential zoning designations. This area encompasses about 73 acres and contains 140 parcels.

The Planning Department requested the City’s current consultants for the Character-Based Zoning ordinance, Town Planning and Urban Design Collaborative (TPUDC), to submit a proposal for conducting the planning study and preparing form-based zoning standards for these three areas.

In order to allow for an efficient planning process and comprehensive outcome, TPUDC recommended that the public input process and work product for all three areas be conducted as one project. The project would be similar to the initial study, except that TPUDC would be completely responsible for survey work and would run a longer charrette, reflecting the broader scope of the expanded study. TPUDC has proposed to complete the planning and zoning services for these three areas for a fee of \$97,000 including expenses.

At this time, I feel that it would be premature to embark on a planning study of these additional areas until the City Council has voted to enact Character-Based Zoning in the initial downtown study area. If the proposed zoning ordinance is enacted for the initial study area, it is recommended that the City Council appropriate the funds necessary to implement Character-Based Zoning in the three areas identified above. This amount would include a contingency for local expenses and supplemental services that may be necessary.

5. **Sea-3 Update.** City staff continues to follow the progress of the SEA-3 terminal expansion and work with the various stakeholders to understand and mitigate the impacts that the proposed project would have on the City. To that end, City staff has been working with staff in the towns of Newington, Greenland and Stratham as well as the staff from the New Hampshire Department of Transportation. Information related to these efforts is can be found on the City of Portsmouth website at <http://www.cityofportsmouth.com/Sea-3.html>
The following is a brief overview of work done on this issue and current project status:

- A staff meeting was held with the Town Administrators from Greenland, and Stratham, and Newington Town Planner along with the Chief of Design Services and the Railroad Inspector/Investigator to discuss DOT involvement in railroad operations

as well as coordinate efforts between the affected municipalities. An overview of that meeting is included on the webpage.

- A letter from Mayor Lister was sent to members of the Congressional Delegation including Senators Shaheen and Ayotte and Congresswoman Shea-Porter requesting inspection records from the Federal Rail Administration (FRA) and requesting that staff from the FRA come meet with communities in the region to outline how safety of the residences and businesses along the proposed rail corridor can be assured.
- A joint news release was posted by Senators Shaheen, Ayotte and Congresswoman Shea-Porter and a letter was sent to the Administrator Szabo of the FRA requesting an inspection of the Portsmouth and Newington Industrial tracks of Pan Am railroad and that FRA staff convene a public forum to address community concerns.
- The SEA-3 application has been postponed by the Newington Planning Board and will next be heard at their meeting on March 10, 2014.
- Staff is working with a firm specializing in risk and vulnerability assessments to develop a scope to help the City better understand its vulnerabilities with the proposed expanded rail traffic.
- Staff from the City along with Newington, Greenland, and Stratham will be meeting with Pan Am on March 5th.

6. **African Burying Ground Update.** As you are aware, the African Burying Ground Committee and a group of fundraising volunteers have made progress in raising funds for the construction of the African Burying Ground Memorial Park – We Stand in Honor of Those Forgotten. To date, over \$1 million dollars has been raised. At this time, in order to make preparations for eventual construction of the project, City staff is preparing to release a Request for Qualifications (RFQ) document that will begin the process of selecting a qualified construction contractor. After a group of two to three contractors are pre-qualified, they and their teams of subcontractors will be invited to submit a full proposal as part of a Request for Proposal (RFP) process, which will include interviews. We will continue to update you and members of the African Burying Ground Committee on developments associated with RFQ and RFP. At this time, no “ground breaking” has been determined and is largely dependent upon the timeline for ordering materials, including several custom granite and stone materials critical to the project. In the near future, I will be working with the City Council to take the necessary steps to authorize expenditures from the African Burying Ground Trust for construction of the park.