

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: MONDAY, MARCH 3, 2014

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

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

Mayor Lister called the meeting to order at 7:10 p.m.

### **II. ROLL CALL**

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

### **III. INVOCATION**

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

Mayor Lister asked Cub Scouts Joe and Nick Sanner to lead in a moment of silence and the Pledge of Allegiance.

### **PROCLAMATION**

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

Councilor Kennedy read the Proclamation proclaiming the Month of March as “Music in our Schools” month. Mayor Lister presented the Proclamation and gift bag to Steve Cirillo, Performing Arts Coordinator K-12.

Mr. Cirillo thanked everyone for their support of the schools and specifically musical education and is honored to be a part of the fabric of the community. He invited everyone to attend 2 upcoming events; the first on March 12<sup>th</sup>, the all-city vocal concert and secondly, March 19<sup>th</sup>, the instrumental concert also including all 3 grade levels.

### **PRESENTATION**

1. Update on Transportation Projects – Transportation Planner Juliet Walker

Transportation Planner Juliet Walker gave an update on transportation projects with a power point presentation.

Councilor Dwyer asked if the wayfinding project would be completed by this summer. Ms. Walker stated yes. Councilor Dwyer then asked if we have looked at having valet service offered by the City. City Manager Bohenko stated we have looked at the possibility but we need a location and a lot to transition quickly.

Councilor Kennedy asked about the parking shuttle only being proposed for weekend operations and do we know how many stops are going to be required on any given weekend. She stated that the shuttle will need to be consistent and also questioned why there are only 2 locations outside of the downtown area; Sagamore Avenue and Peverly Hill Road. She stated that this is why she wants a Transportation Committee created. City Manager Bohenko stated that it will be consistent but as far as expanding, this is a pilot program and there are associated costs in any expansion. Ms. Walker stated there are a number of initiatives that can tie everything together, including the wayfinding, bikeways, public transit within the COAST system to other outlying areas that pedestrians and bicyclists can access as well.

Councilor Shaheen stated as we look at expanding and informing the public of parking options, she knows that the information is on-line, but would like to see the information distributed through other means such as restaurants. She continued that in regards to the satellite perspective, she wants to make sure that it can accommodate the workers who work late hours so that it can take the strain off of the Parrott Avenue parking lot and High/Hanover parking garage.

City Manager Bohenko stated that part of the pilot process will be determining who is using the service and feels that there will be the ability to make it work for certain groups, such as the hospitality industry and will have to deal with the security issues that come with the lateness of their work hours.

Transportation Planner Walker stated that built into the RFP is the collection of data and monitoring users, times, etc.

Councilor Spear stated that other areas outside of downtown is a challenge and feels it is an ongoing process getting the message out to the community etc. He stated regarding the satellite parking, the Nelson/Nygaard study stated that parking should be within a ¼ mile radius of market square or a 5 minute walk, but there are obstacles such as the traffic light at State/Middle Streets that pedestrians have to wait too long for the light. Ms. Walker stated that this project will address a lot of these issues.

## **V. ACCEPTANCE OF MINUTES – DECEMBER 16, 2013**

**Councilor Shaheen moved to accept the minutes of December 16, 2013, seconded by Councilor Kennedy.**

Councilor Dwyer asked that a correction be made to reflect her as being present at the meeting and not absent. The Clerk stated it was duly noted.

**Motion voted.**

## **VI. PUBLIC COMMENT SESSION**

Mayor Lister stated that there are 20 speakers signed up for Public Comment Session which will run over the 45 time limit. He asked if the Council wished to limit the speakers time below 3 minutes.

**Councilor Shaheen moved to keep the 3 minute time limit. Seconded by Councilor Kennedy and voted.**

Catherine DiPentima - stated that a group of ever-growing residents will be sending letters to the Newington Planning Board through an attorney and are requesting the City Council to support their efforts in requiring a comprehensive safety and environmental impact of the entire project which is allowed via Section 19 of the Planning Board Review regulations which allows the full scope of the project to be evaluated at the expense of the applicant. She stated she is looking for an answer this evening as to the disposition of her request so that it can be included in their letter.

Jane Sutherland – stated that it was announced in the Portsmouth Herald that there is a meeting regarding the Sea 3 proposal being held at City Hall on Wednesday, March 5<sup>th</sup> at 11:00 a.m. which will be open to the public, but the public will not be allowed to speak. She stated she would like the meeting to be opened at the conclusion for public comment as this is a broad regional issue.

City Manager Bohenko responded stating that the meeting that Ms. Sutherland referred to was meant to be a staff meeting with NH DOT and staff from other communities to gather information in an effort to keep the City Council informed. He stated there was one line of reference in his comments which was then published as a meeting in the newspaper. He stated it is not a “City of Portsmouth” meeting but the public is welcome to attend as we are not trying to hide anything. He concluded stating that at some point we may try to hold a more regional meeting with better notice to the public, but wants people to remember that this is a Town of Newington project and not City of Portsmouth.

Bob Shouse – began by stating that regarding parking, we need to build the Worth Lot parking garage as soon as possible. econdly, he brought attention to the Portwalk project amendments that were completed without going to the Historic District Commission as required. He stated these were not minor changes and feels that it was blatantly dishonest and deceitful as the building was wrapped in plastic all winter. He stated that the Council should be outraged by this and creates a bad precedent. He stated that they need to be required to go back to the HDC regardless of the cost that may be associated with removing the changes. He asked Councilor Kennedy as the Council representative to the HDC to carry the ball on this going forward.

City Manager Bohenko stated that once city staff became aware of this situation, the City Attorney brought the developer in. City Attorney Sullivan stated that Mr. Shouses’ comments are accurate and within a day of becoming aware, Jeff Johnson and ProCon came to City Hall and met with Planning staff and himself. He stated the result of the meeting was the developer and contractor have agreed to immediately appear before the HDC to seek approval as well as to the Planning Board for the site changes that have occurred. He continued that if these are NOT approved, the developer and owner have waived their right to appeal and will do whatever the HDC and Planning Board decide. He stated there is also an additional \$500,000 bond required so the developer will not ignore either of those Boards. City Manager Bohenko reiterated that the owner and the contractor gave up the right to appeal.

Mayor Lister stated that it was asked where is the outrage and assured the public that there is outrage, but they are trying to go through the proper channels.

Assistant Mayor Splaine asked how we can make sure that other projects are observed and caught doing something inappropriate so this doesn’t happen again. He also asked if the agreement not to appeal is the penalty, or will there be an additional penalty. City Manager Bohenko stated these are dealt with on a case by case situation and feels that giving up on the appeal was the best for this case.

Councilor Spear asked if the HDC and Planning Boards are supposed to look at this case as if the changes hadn’t been made yet or consider the fact that they are already done. City Attorney Sullivan stated that no consideration should be given that the changes are already done and they should apply the criteria as they normally would.

Councilor Kennedy requested that City Attorney Sullivan be present at the Historic District Commission meeting on March 5<sup>th</sup> when this is reviewed.

Councilor Shaheen asked how this could possibly been an “oversight” as she had to appear before the HDC at least 6 times for every change she wanted to make during her renovation process and feels this was blatant and trust has been eroded.

Bill and Tom Sylla – spoke regarding the need for an additional crosswalk on Middle Street at the intersection with Cabot Street.

Carol Hinton – spoke regarding the sale of the LaCava property on Mechanic Street and requested the Council approve this purchase as it is agreeable to the family.

James Boyle, 150 Greenleaf Realty Trust – requested that pursuant to the 02/27/2014 court order, the City of Portsmouth remove the sewer line on his property immediately, or pay him the back rent on the sewer line on his property for the last 10 years as outlined in the letter sent to City Attorney Sullivan.

Julian Long - member of the NH Transgender Steering Committee – spoke in support of the proposed resolution stating that the topic of discrimination comes up all of the time with stories of people being fired and harassed once they are found out to be transgendered individuals and related the fact that was out of work for a long period of time and adjusted resume’ to not relay that was a transgendered individual.

Marilyn (Mim) Easton – spoke as a concerned citizen in favor of the Transgender resolution stating the City of Portsmouth is leading the way because the State doesn’t have a law on this issue and workplace discrimination of any kind is wrong.

Sean Malves - read a statement in support of the Transgender resolution stating that transgender people pay their taxes and deserve the same rights as everyone else.

Janson Wu – staff attorney, Gay and Lesbian defenders, stated that the City of Portsmouth has a great opportunity to be a leader on the Transgender issue. He continued that 17 states have laws with others following, and both Senators Shaheen and Ayotte have voted in favor of federal laws regarding transgendered individuals. He stated that there are a lot of people suffering because of the discrimination they face each day and feels that this also is good for business recruitment and retention. He concluded by stating that the only reason the Governor of Arizona vetoed the bill, was because of intense pressure of the people.

Bob Gibbons – spoke in opposition of the proposed Sea-3 expansion and stated he appreciates all of the effort by the City Council and City Manager and asked those efforts be continued. He stated that Pan Am has exhibited blatant disregard to residents of Westford, Massachusetts after the derailment in that town. He stated Pan Am’s position is that they “followed the letter of the law” and weren’t required to notify the towns and he feels that we will be treated the same way.

Devon Chaffee – Executive Director, NH Civil Liberties Union – spoke in support of the Transgender resolution stating they have been fighting for advancing civil liberties in New Hampshire for 40 years, including transgendered individuals. She thanked Assistant Mayor

Splaine for his leadership and the Portsmouth Herald for their editorial on the issue. She concluded that it is fitting for the City of Portsmouth to be leading the way on this issue as it is an accepting and welcoming community.

Richard DiPentima – stated in 2009 as a State Representative, he voted in favor of the transgender resolution and it passed the House, but was defeated in the Senate, so he is glad this issue is being discussed. Secondly, regarding the Sea-3 project, he thanked everyone for their efforts this far stating that no one asked for this fight but it has been thrust into our back yards. He stated this will have a profound impact on the lives of many citizens and has to be dealt with appropriately. He stated we need to make sure the Town of Newington follows their own ordinance and get a comprehensive study of the entire project with the cost being deferred to the applicant.

Jerry Zelin – spoke regarding the proposed repeal of the height limit stating that he proposes a compromise that it be suspended for 6 months to have the city develop a mini master plan for the north end. He continued that zoning is supposed to be based on the Master Plan and 10 years ago there was very little mention of the north end, and the north end and downtown have the same conditional use criteria. He stated that some say that form-based zoning will solve the problems but it doesn't include the north end and the north end only has 10 more available lots and he doesn't want to see 10 more Portwalks.

Julie Ross - member of the Islington Creek Neighborhood Group - stated they have been in front of the Council 4 other times regarding the Brewster Street Boarding house and they are now asking that the renewal of their permit be denied in light of new violations that have been brought to light. She continued that the owner has had multiple chances to correct the issues but now it is up to the City Council to end this problem and if need be, they can go to Court. She stated that this property has an absentee landlord and this facility needs to be shut down, with a specified time for the tenants to find alternative arrangements, as they deserve better.

Jay Dennett – spoke regarding the Brewster Street boarding house stating that enough is enough and they have not complied with the agreement so the permit should not be renewed.

Larry Cataldo – stated he also feels that the Brewster Street permit should not be renewed and feels that someone is trying to make fools of city officials by not complying with the agreement. He stated it is shameful for the city to not act responsibly but understands also that the tenants need to be taken care of as well. Secondly, he stated he supports the Transgender resolution.

Karina Quintans – representing 12 people in the audience from the Islington Creek Neighborhood Assoc., stated that Brewster Street Boarding House has been in non compliance of city code for more than 30 years. She stated the City has tried for the last 8 years to come to an agreement and asked that this be the last time dealing with the issue. She stated that the renewal of the permit should be denied for non-compliance and we need to show integrity in following our own regulations and put the health and safety of citizens over business. She concluded that anything short of denial is unacceptable.

Joe Caldarola – stated he supports Councilor Kennedy's request for the formation of a Transportation Committee and feels this could be done in conjunction with work already being done regarding parking. Secondly, regarding Brewster Street he stated it is time to deal with this once and for all. Next, he discussed Sea-3 stating that the citizens have made a credible

argument but Sea 3 and the railway with push back, so it is important to keep on top of this issue. Finally, regarding Portwalk, he stated it is required to have an as-built bond, but wonders if there should also be an architect bond which would certify that it is built as approved.

**Assistant Mayor Splaine moved to suspend the rules to bring forward item XI.A.3 (c) on the agenda. Seconded by Councilor Shaheen and voted.**

c. 21 Brewster Street

**Assistant Mayor Splaine moved to deny the permit and to establish a non-meeting with Counsel on a date to be determined to discuss legal options, seconded by Councilor Morgan.**

Mr. Brian Hogan spoke from the audience asking if he could address the Council.

**Assistant Mayor Splaine moved to suspend the rules to allow Mr. Hogan to address the Council. Seconded by Councilor Spear and voted. Councilor Lown abstained.**

Brian Hogan, owner of 21 Brewster Street boarding house, stated that there have been falsehoods stated by the neighborhood association, but that bedbugs are an ongoing issue in many facilities. He stated they have taken much effort to exterminate them and the Health Department has deemed the property clean. He stated any complaints are not coming from the tenants and there has never been a water or electricity shut off in the building. He continued that being called an absentee landlord isn't fair and feels that the neighbors have never been into the building to see for themselves. He stated that he feels the ordinance was specifically put in place to put him out of business. He stated he is very concerned for his tenants and asked that they look at the building before putting him out of business.

Councilor Shaheen stated that the Council has 3 options in front of them and finds it hard to imagine extending the permit with current violations. Mr. Hogan responded that he has been dealing with bedbugs for years but there have been no infestations and he has been treating the problem religiously. Councilor Shaheen stated that the facts speak otherwise and the directive was to treat the entire facility but Mr. Hogan has only gone floor by floor. Mr. Hogan stated he now does the entire building quarterly and has the exterminator on call.

Mayor Lister stated this conversation needs to be limited as it may end up in legal proceedings.

Assistant Mayor Splaine stated it is clear there is a problem there and feels it can only be remedied by denial of the permit. He stated this is about the residents and neighbors safety and health and the city is obligated to find alternatives for people to live.

City Manager Bohenko asked that the motion include "denied in accordance with reports of city staff".

Councilor Kennedy asked what will be done to allow tenants time to find a place to live. City Attorney Sullivan stated this is what needs to be discussed in non-meeting.

**Motion to DENY the permit in accordance with staff reports and to establish a non-meeting with Counsel on a date to be determined to discuss legal options, passed on an 8-0 roll call vote. Councilor Lown abstained.**

City Attorney Sullivan stated the tenants do not have to vacate and are not being forced out.

Councilor Dwyer stated she would like to have the non-meeting at the end of regular session.

**Councilor Kennedy moved to go into a non-public session after the meeting, seconded by Assistant Mayor Splaine. City Attorney Sullivan clarified it would be a non-meeting with Counsel. Roll call vote was taken and passed 8-0 with Councilor Lown abstaining.**

**Councilor Shaheen moved to suspend the rules to bring forward item XI.C.2 on the agenda. Seconded by Councilor Thorsen and voted.**

2. Portsmouth Transgender Non-Discrimination Policy Resolution

**Assistant Mayor Splaine moved to adopt the Portsmouth Transgender non-discrimination Policy resolution, seconded by Councilor Spear.**

Assistant Mayor Splaine read the resolution and stated that all of the comments from the public as well as the Portsmouth Herald editorial have contributed to the powerful conversation about human beings. He continued that he has been gay all of his life and doesn't understand what it is like to be straight, but he is 99% like everyone else in every other way. He stated this is the same for transgendered individuals and just because people are different doesn't mean they should be discriminated against.

Councilor Lown asked for clarification in the fact that he thought this vote had already occurred at a previous meeting. Assistant Mayor Splaine stated it was proposed to come forward previously. Councilor Lown also asked for clarification that this was brought forward not because discrimination has occurred, but to raise awareness.

Councilor Thorsen stated it is important to make a statement on non-discrimination and that it is not just an affirmation but is pragmatic. He stated that the legal uncertainty of this issue at the State level means this is putting the cart before the horse because the State doesn't define the term "transgendered". He stated if there is no legal definition then it is problematic to set a policy in terms of accommodations, etc and he stated he is glad we are sending a letter to the State, but when we are labeled on our birth certificates it becomes legal. He continued that transsexuals physically change gender and go through a legal process, but it is not the same for transgendered individuals. He stated we cannot just say we are against discrimination, but need to look at the legal ramifications. He stated he is in favor of putting this back to the State level and feels this is an important discussion.

Councilor Shaheen asked for clarification that the language in the resolution is adequate to more than just affirm but to also protect. City Attorney Sullivan clarified that there is a footnote in the policy to define "transgendered" but this is only applicable to city employees.

Councilor Dwyer stated that the definition is clear and makes a distinction between transgender and transsexual. She continued that similar things were said about the equal rights amendment and it was never passed but went forward anyway. She stated we can't wait for the State to act first.

Mayor Lister passed the gavel to Assistant Mayor Splaine.

Mayor Lister stated he will support this and acknowledged all of the people who came out to support it this evening.

Assistant Mayor Splaine passed the gavel back to Mayor Lister.

City Manager Bohenko stated we already have a non-discrimination policy and this will be included in the existing policy.

**Motion passed on a 9-0 roll call vote.**

## **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

Mayor Lister read the legal notice, declared the public hearing open and called for speakers.

Maria Skole, Engineer, Pease Development Authority – stated this tank is located on the Pease Tradeport and was built back in the 1950's and does need to be replaced sooner than later and is glad it has been moved up in the Capital Improvements Plan. She concluded by stating that she appreciates the hard work and professionalism of the city staff in all the various aspects of working with the PDA.

Seeing no one else wishing to speak, Mayor Lister closed the public hearing.

## **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)

**Councilor Spear moved to schedule second reading and public hearing on the attached ordinance entitled Article 5A – Character Districts, at the March 17, 2014, City Council meeting, seconded by Councilor Lown.**

Councilor Kennedy stated she went to the Planning Board meeting to suggest changes, and she also believes that the amount of coverage is less than the original zoning. She stated she will hear from the public and then make amendments.

City Manager Bohenko stated he feels it will be more effective to give a full presentation at the March 17<sup>th</sup> meeting, but if the Council prefers to hear it now, then they are ready.



Councilor Spear asked after passage of the ordinance, how many properties would be conforming versus non-conforming and what would the ration be after.

Discussion ensued regarding current zoning versus proposed amendment with Planning Director Taintor explaining the differences.

Councilor Kennedy stated she is concerned that this will be successful but is only for a minor area and wants consistency and not have to redefine at another level.

Councilor Shaheen stated she wants the public to engage in the process and feels it is a dense subject with lots of information to digest.

Discussion ensued regarding whether more time should be allowed for public input on the issues. The consensus was that there have been and will be more opportunities for public input so the public hearing should proceed as scheduled on March 17, 2014.

**Motion passed.**

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

**Councilor Spear moved to schedule second reading and public hearing on the attached Ordinance dealing with conforming amendments at the March 17, 2014 City Council meeting. Seconded by Councilor Lown and voted.**

- 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

**Councilor Spear moved 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. Seconded by Councilor Lown and passed on a 9-0 roll call vote.**

**IX. 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***)

**Councilor Spear moved to adopt the Consent Agenda as presented. Seconded by Councilor Dwyer and voted.**

**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

**Councilor Lown moved to refer to the City Manager for report back. Seconded by Councilor Kennedy and voted.**

- B. Letter from Islington Creek Neighborhood Association Re: Permit renewal for 21 Brewster Street Boarding House

**Councilor Kennedy moved to accept and place on file. Seconded by Councilor Spear and voted.**

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

**A. CITY MANAGER**

1. Proposed Purchase of 95 Mechanic Street (LaCava Property)

City Manager Bohenko gave a brief history and asked Deputy Public Works Director Goetz to give a brief presentation on the purchase recommendation.

Deputy Public Works Director Goetz reviewed the history of negotiations beginning in August of 2011 with the owner approaching the City offering the property at approximately \$780,000 through the present with a negotiated sale price of \$450,000.00. He explained the benefits of the purchase would include a cost savings during the Mechanic Street Pumping Station upgrade process as there would be no need for bypass pumping because the existing station can remain in operation during construction of the new station. He stated there would be more room for contractor to stage and do work with an estimated cost savings of \$400,000 - \$500,000. Also, there would be an opportunity to improve public access, more options to improve the aesthetics and site layout, better noise and odor control with new technologies and enclosed space and finally, leave open the option to move the station across the harbor.

Councilor Kennedy asked have we met with abutters. Public Works Director Rice stated we have contacted the existing aesthetics committee and left messages and spoke with some abutters directly. Councilor Kennedy stated she had lunch with some of the abutters who were unaware that this was going to be voted on tonight. She continued that the LaCava property is within 50' of the high tide line which makes this a change of use. She stated she has also been told that this would go up to the Prescott land and wonders what that does to our agreement with them. She concluded that haven't been any discussions since 2011 and feels the community needs to know what is going on.

Deputy Public Works Director Goetz stated there is no current design as there would not be any proposal brought forward until the property has been purchased. Public Works Director Rice addressed the 50' tide line issue stating that approvals would have to be secured, but again specified that there are no plans as of yet until the property has been secured. He stated that the project will benefit from having additional space and it will be a public process.

Councilor Lown stated it seems obvious to buy this property and we are not competing with private purchasers right now but discussions might stimulate interest.

Councilor Dwyer stated she agrees and is in favor of buying the property and we are not voting on what will be going on it. She stated there has been constant activity on this and it is time to act on it as the owner is willing to sell.

Councilor Thorsen stated he has 4 quick points to ask; what happens to the Gate Street stub; what happens to the access to the pier; what happens to the LaCava property and if it is torn down, can we widen the street.

**Councilor Spear moved to suspend the rules to go past 10:00 p.m. to no later than 10:45 p.m., seconded by Councilor Dwyer. Motion voted.**

Deputy Public Works Director Goetz stated that those questions haven't been vetted as of yet until the property has been secured. Public Works Director Rice stated regarding widening the street that would be a significant improvement.

Councilor Kennedy stated she is not in favor of voting with no plan in place and because the residents didn't have a chance to speak on it. She stated the last public hearing was in October 2011 and the public is concerned with what can be built there.

Councilor Spear stated we are voting to open up our options to open up access, improve aesthetics, improve noise and odor issues, etc. and if we vote against this purchase and sales agreement, then it goes away. He stated this makes economic sense and there is no plan to design/build anything at this point and the Council will have to vote on anything that is proposed in the future.

**Councilor Spear moved 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, seconded by Councilor Dwyer. Motion passed on an 8-1 roll call vote. Councilor Kennedy voted opposed.**

2. Request for Street and Sidewalk Obstruction License Re: 7 Islington Street, LLC, 40 Bridge Street

**Councilor Spear moved 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). Seconded by Assistant Mayor Splaine and voted.**

3. Annual Renewal of Boarding House Permits:
  - a. 350-352 Hanover Street

**Councilor Lown moved to approve the Boarding House permit for 350-352 Hanover Street for a one year permit to expire March 3, 2015. Seconded by Assistant Mayor Splaine and voted.**

- b. 278 Cabot Street

**Councilor Lown moved to approve the Boarding House permit for 278 Cabot Street for a one year permit to expire March 3, 2015. Seconded by Councilor Dwyer and voted.**

- c. 21 Brewster Street *(Previously addressed)*

4. Proposed Easement Re: 1475 Lafayette Road

**Councilor Spear moved to authorize the City Manager to accept a right-of-way easement on Elwyn Road from Cumberland Farms, Inc. Seconded by Councilor Dwyer and voted.**

5. Request to Establish a Work Session with General Services Administration (GSA) Re: Federal McIntyre Building

**Councilor Kennedy moved to establish a work session for Monday, March 31, 2014 at 6:30 p.m., with a site walk to be held at 5:30 at the McIntyre Federal Building, and for the congressional delegation to be invited as well. Seconded by Assistant Mayor Splaine and voted.**

**Mayor Lister called a recess at 10:15 p.m. and reconvened the meeting at 10:30 p.m.**

#### **Informational Items**

1. Events Listing
2. Report Back Re: Design Review Regulations
3. Report Back Re: Conditional Use Permit

Councilor Spear asked if it would be appropriate to make the amendment of striking out the conditional use section in its entirety as recommended by the Planning Board, during the second reading of the ordinance. City Attorney Sullivan stated it would change the original proposal and would require another public hearing.

Councilor Spear moved to, at a time the Mayor deems convenient, come back with a first reading to adopt the Planning Board recommendation. No second.

4. Proposed Additional Areas to Implement Character-Based Zoning

City Manager Bohenko stated he received a quote of \$97,000 and wanted to make the Council aware, but feels this would be premature until the Council enacts the initial study area.

Councilor Shaheen stated she appreciates the City Manager's point that this may be premature, but character based zoning only relates to downtown and she feels it would be helpful to collectively consider the expanded areas.

Councilor Lown stated he is inclined to expand the area but feels it does make sense to wait until third reading. City Manager Bohenko stated yes.

5. Sea-3 Update

City Manager Bohenko stated there is a link on the city website with all of the Sea-3 update information. Secondly, he stated that regarding the meeting previously mentioned, it is a staff meeting to research the issue, but people are welcome to attend to observe.

Assistant Mayor Splaine stated that maybe people can let the City Manager know ahead of time what questions they have.

6. African Burying Ground Update - *No discussion on this item.*

**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

**Councilor Spear moved to approve the aforementioned appointments. Seconded by Councilor Lown and voted.**

**C. ASSISTANT MAYOR SPLAINE**

1. Alternatives to Repealing the Conditional Use Permit

Assistant Mayor Splaine stated that a lot of people are concerned with the height issue in the downtown as he had learned through his various neighborhood walks. He stated there have been a lot of suggestions and alternatives presented but feels that we need to find out one way or another whether Harbor Corp is vested or not before March 17<sup>th</sup>. City Manager Bohenko stated that the City Attorney has ruled that they are vested as they had already gone to the Planning Board.

Councilor Shaheen stated that the challenge moving forward with character based zoning is we will have to address the height issue as well. She stated her concern with Harbor Corp. is the amount of time that has gone into the vesting process and then the limits are changed and the project is compromised. She stated that if the risk is substantial enough to challenge the vesting status, then the conditional use permit become irrelevant. She stated that is why we need to do the Character based zoning right.

Councilor Dwyer stated that Senator Clark thought people voted to get rid of conditional use because they didn't know what they were voting for. She explained that when a project is vested, the Boards have already done their reviews and feels it is important not to cloud issues with things that are not feasible. She stated we should deal with form based portion first and not be distracted.

Councilor Spear reviewed the recent history of the conditional use permit which was meant to be a compromise and feels that the Planning Board works with this issue all of the time and this ordinance needs time to bear fruit.

Councilor Thorsen stated that Harbor Corp is vested but it is going to fail because its design is improper.

Councilor Kennedy stated she will wait for the public to speak on the issue and feels that even the form-based zoning only deals with one area of town and leaves out another entirely.

Councilor Splaine stated he wants to see Harbor Corp come in by March 17<sup>th</sup> with exactly what they want to do and if they don't want it repealed, they should tell us what it is going to look like.

Councilor Shaheen stated the decision shouldn't hinge on Harbor Corp alone and a mandate on height should apply everywhere and the scope should be extended to include the north end. She stated we need to put forward a procedure that isn't contradictory.

Councilor Lown stated we need to respect the process we have gone through the past months and doesn't feel it is fair that Harbor Corp loses vesting if they choose to lessen the height and there should be a distinction between these. City Attorney Sullivan explained that this is statutory vesting and the project Harbor Corp presented is vested. He stated if they bring in a different proposal, the Planning Director would have to determine if it is close enough to the original plan to remain vested.

Councilor Morgan is concerned that both items are coming forward and wants to know how we can add the north end and Islington Street as they are both important. She stated she wants to hear from the public on both issues and weight the risks.

2. Portsmouth Transgender Non-Discrimination Policy Resolution (*previously addressed*)

**D. COUNCILOR KENNEDY**

1. Establish Transportation Committee

Councilor Kennedy stated that she would like this brought back to the next meeting as there was a motion that was supposed to be included.

**E. COUNCILOR LOWN**

1. Parking & Traffic Safety Committee Action Sheet and Minutes of the February 13, 2014 meeting

**Councilor Lown moved to approve and accept the action sheet and minutes of the February 13, 2014 Parking & Traffic Safety Committee meeting. Seconded by Councilor Spear and voted 8-1, Councilor Kennedy opposed.**

Councilor Spear asked that Mr. Sylla's request for a crosswalk be referred to the Parking and Transportation Committee for review.

**F. COUNCILOR DWYER**

1. JBC Update

Councilor Dwyer gave a brief update on the Middle School project and explained that there was a conversion of contract with the construction manager with a lump sum agreement which memorialized the workscope change and delays, etc. She stated the Joint Building Committee voted on this on February 26, 2014.

Councilor Lown stated he doesn't want to release any delay claims. Councilor Dwyer clarified that the JBC has the authority to make that decision and they are not releasing all claims. City Attorney Sullivan clarified that the City Council controls the money, the school produces the design and the Joint Building Committee acts upon those directions.

Councilor Dwyer stated this has been done within the funding allotted by the City Council. Councilor stated he wishes to have his objection noted for the record.

**XII. MISCELLANEOUS/UNFINISHED BUSINESS**

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

**Councilor Kennedy moved to go into a non-meeting with Counsel at 11:35 p.m. Seconded by Assistant Mayor Splaine and voted.**

Respectfully submitted:



Valerie A. French  
Deputy City Clerk