

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: MONDAY, JULY 14, 2014

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

At 6:00PM, An Anticipated "Non-Meeting" with Counsel was held Re: Negotiations – RSA: 91-A:2, I (b-c)

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

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

### **II. ROLL CALL**

Present: Mayor Lister, Assistant Mayor Splaine, Councilors Shaheen, Kennedy (8:30 P.M.), Lown, Dwyer, Morgan, Spear (via teleconference) and Thorsen

### **III. INVOCATION**

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

Mayor Lister asked Nancy Novelline Clayburgh from the audience to lead in a moment of silence and the Pledge of Allegiance.

### **PRESENTATION**

1. Cynthia Scarano, Executive Vice President, Pan Am Railways Re: Sea-3 Terminal  
NHDOT Chief of Design Services – Melodie Esterberg  
NHDOT Rail and Transit Administrator – Michelle "Shelly" Winters  
NHDOT Railroad Inspector – John Robinson  
Peter Britiz, City's Environmental Planner/Sustainability Coordinator

City Manager Bohenko asked Deputy City Manager Dave Allen to introduce the above stated officials in the audience and what they will be speaking about. Deputy City Manager Allen gave a brief introduction of each official and then asked Cynthia Scarano, Executive Vice President of Pan Am Railways to speak first.

Ms. Scarano gave a brief overview of the 3 miles of railway in the City of Portsmouth, out of 13.4 miles, and some of the recent upgrades that have taken place. She stated there are 6 crossings in Portsmouth, all Class I. She then reviewed a map of the crossings and the different types of crossings they are i.e., passive, stop and protect, etc. She concluded stating that since 2009 there have been approximately 1015 cars a year with scheduled service 2-3 times per week.

Assistant Mayor Splaine stated that the concern of the residents is that the speed stays low even if the improvements are made and would like a commitment from Pan Am that they will keep the 10 mph limit even though with improvements they could go up to 25 mph.

Ms. Scarano replied that they cannot make that commitment as they do not administer the classification. She stated she doesn't see the need to go over 10 mph but admitted that it could be done. Assistant Mayor Splaine continued that with the investments for the upgrades to get to Class II, he wonders if the lines were not up to par before the upgrades. He also is concerned with the railway ties and the environmental impact of the treated wood. Ms. Scarano responded that the track was up to standard but they committed to the Town of

Newington to make the upgrades. She continued that the rail ties are treated with creosote but they are not an environmental leachate and assured that there have been extensive studies done on this.

Councilor Dwyer asked how their agreements with the users of the railway are codified. Ms. Scarano explained that each customer has different requirements and places where they are going and starting from etc. Councilor Dwyer asked about Sea-3 specifically and Ms. Scarano stated that she cannot speak about specific customers. She gave an analogy of loads of carrots or paper mill products being shipped and tracked through a computer system from point A to point B.

Councilor Shaheen thanked Ms. Scarano for coming and referred to the 3 miles of railway in Portsmouth being mentioned, stating that to the residents, those are the only 3 miles that matter as it is next to their homes. She stated we need to be certain of safety and asked if Pan Am is willing to disclose their safety records. Ms. Scarano responded that through the Federal Regulatory Authority, safeguards are put in place and monitored with testing done on a daily basis. She stated that a NHDOT employee has FRA qualifications and safety is taken very seriously. Councilor Shaheen continued that the speed limit is able to go up to 25 mph although we are being told it won't, but who decides. Ms. Scarano stated Pan Am decides the speed limit. Councilor Shaheen stated she is concerned that these decisions can be made without any notice to the residents and the city. She then asked if Pan Am supports "quiet zones". Ms. Scarano stated that they are never proponents of quiet zones as they are unsafe and that the whistles are blown for safety reasons.

Councilor Lown stated that Pan Am railways is owned by Boston Maine Airways with common management for Pan Am Airways as well and asked if she is aware of the investigation on managerial incompetence. Ms. Scarano stated she is unaware but can refer this to their attorney.

Councilor Thorsen went back to the "quiet zone" issue asking if they oppose all quiet zones. Ms. Scarano stated there have been quiet zones implemented if the FRA requires them to do so. Councilor Thorsen then asked if the customers specify the routes they want their products delivered by. Ms. Scarano stated that the customer chooses the rail system. Councilor Thorsen asked who chooses the actual route. Ms. Scarano clarified that the only way to get to Newington is through Portsmouth. Councilor Thorsen asked if the Pease railway was an option would they use that route instead. Ms. Scarano stated that this is a dead end at this point. Discussion ensued regarding the Pease route option and feasibility as it is currently only a conceptual plan and would require tens of millions of dollars and property taking to accomplish. Discussion ensued regarding passenger rail service with Ms. Scarano stating that there are liability issues with passenger service and it also takes time away from freight service. Councilor Thorsen asked regarding liability insurance, who has the responsibility of coverage if a train derails and a house catches fire and also what level of insurance is required. Ms. Scarano stated the courts decide in that case. She stated they carry their own insurance and they decide on the coverage and the client is responsible for the coverage on their product i.e. carrots. Councilor Thorsen clarified that there is no government agency requirement on insurance coverage. Ms. Scarano confirmed that to be true.

Councilor Dwyer stated there have been several high profile railroad problems in North America and asked if the industry has developed any policies as a result. Ms. Scarano stated yes quite a few including limiting the maximum speed for hazardous material to 25 mph although the government allows up to 40 mph. She stated there have also been more drills with first responders and extensive training with crews. Councilor Dwyer asked about the maintenance schedule of the local tracks. Ms. Scarano stated that the tracks are inspected weekly.

Assistant Mayor Splaine asked about the speed limit requirements and how many additional propane cars will be allowed if the track is upgraded to Class II. Ms. Scarano stated Class I is 10 mph and Class II is up to 25 mph. She stated that currently there are 6 cars and it can go up to 16 with the upgrade. Assistant Mayor Splaine stated that back in the late '70's B&M Railways invested a lot of money and had an agreement that they would let the Police and Fire Departments know the schedule of hazardous material coming through the city and asked if this could be done again. Ms. Scarano stated that freight service does not have a firm schedule and is on an as needed basis but the Safety Department does get together with first responders on an annual basis and also have constant communication.

Councilor Shaheen asked when the quote of 2-3,000 cars a year which class is that referring to. Ms. Scarano clarified that they do not need the upgrade to Class II to expand and can go up to 3-4 times a day with 75 cars but the upgrade is needed for the cooling facility holding tank. She stated if the expansion is approved they will upgrade to Class II per their commitment with the Town of Newington. Discussion ensued regarding the notification of Police/Fire personnel when hazardous materials travel through town. Councilor Shaheen stated it is terribly troubling that via approval in another town, 2-3 times more cars of these materials will go through Portsmouth and feels this is unacceptable.

Councilor Morgan discussed training requirements and asked if they would be willing to step up the training. Ms. Scarano stated they train on average 2-3 times a year and when there are any issues they have reviews with crews.

Next, NHDOT Chief of Design Services Melodie Esterberg explained the upgrades taking place at highway crossings stating there are 300 crossings in the State of NH and that there are 6 crossings in the City of Portsmouth with 4 being programmed in the upgrade assessment. She stated that the Market Street/Maplewood crossings were not programmed yet.

Environmental Planner Peter Britz briefly explained the process of designating "quiet zones" stating that there are none designated in the State of New Hampshire but there was one recently approved in Freeport Maine. Councilor Shaheen asked if he uncovered any data that showed a "quiet zone" being removed after it was approved. Mr. Britz stated no. Councilor Shaheen asked if it would be beneficial to know what upgrades would be required going forward as part of the 130 crossing upgrade process.

NHDOT Railroad Inspector John Robinson explained that there are a lot of nuances involved and that Portsmouth contains only 3 miles and all are passive intersections and signalized. Councilor Shaheen stated that research shows there are 40 quiet zones in the State of Maine and asked how those crossing are paid for. Ms. Esterberg stated that the 130 funds might not be able to be used on quiet zones because they are to be used for same orders @ current

crossings, not different orders. Councilor Dwyer asked how much money is set aside and who decides where it goes. Ms. Esterberg stated \$1,000,000 a year and it is the communities who are willing to work with them that are on the list.

Mayor Lister passed the gavel to Assistant Mayor Splaine.

Mayor Lister stated there have been good questions asked by the Council and stated that the Council's task is to advocate for and protect the citizens in Portsmouth. He stated he is concerned that decisions made in another town impact us and we have no say. He stated we need to have continued dialogue with Pan Am and a commitment for our safety but feels the answers are not clear. He stated the speed limit being able to be raised to 25 mph without notification concerns him as he feels that decisions could be made because of deadlines needing to be met etc. He stated we have been in touch with our State representatives and we are looking forward to the appeal process. He stated it is upsetting to the residents and a general frustration that we have no control over our 3 miles of railway and we need to continue the dialogue.

Assistant Mayor Splaine returned the gavel to Mayor Lister.

Assistant Mayor Splaine stated he is concerned that there is only one State Inspector for 800 miles of railway in New Hampshire and that we have to rely on self-inspection by Pan Am. Mr. Robinson stated that there are 450 miles of active track so yes he is busy, but he gives a lot of credit to the State DOT for funding this position. Discussion ensued regarding inspection and citizens are able to request the reports filed by Pan Am through the FRA. Councilor Kennedy asked how long the reports are kept on file. Mr. Robinson stated one year.

Mayor Lister thanked everyone for attending the meeting.

**Councilor Shaheen moved to suspend the rules to address Mayor Lister Item 2 on the Agenda, seconded by Councilor Thorsen. Motion passed on an 8-1 roll call vote, Councilor Kennedy voted opposed.**

2. Proposal to Allow the City Manager to Enroll in the NH Retirement System and Buy Back Years of Service and to Amend the City Manager's Employment Agreement Section 14, Paragraph B Re: NH Retirement System

Mayor Lister explained that due to an e-mail received by the Human Resources Director an hour before the meeting from NHRS, the Council will not be acting on this item this evening.

Assistant Mayor Splaine asked City Manager Bohenko to give a brief summary of this issue for the public.

City Manager Bohenko explained that as a result of an audit which found that the Council had never voted to exempt him from the New Hampshire Retirement System, at this point he would have to buy back all of his years of service at 93% in order to comply with the current rules of the retirement system. He stated he would appreciate this going through but is fine if the Council needs to postpone.

**Concilor Shaheen moved to postpone action on this item until the City hears back from the New Hampshire Retirement System regarding issues conveyed by NHRS shortly before meeting. Seconded by Councilor Lown and passed on a 9-0 roll call vote.**

#### **V. ACCEPTANCE OF MINUTES – APRIL 7, 2014**

**Councilor Thorsen moved to accept and place on file the minutes from April 7, 2014 City Council meeting. Seconded by Councilor Dwyer and passed on a 9-0 roll call vote.**

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

Tom Carroll – stated he would like the Dept. of Environmental Services to monitor the air quality stating that the report (see 07/14/2014 meeting folder) that he distributed shows alarming results from the dust that is coming from the scrap pile. He stated this preliminary report is missing key elements that need to be followed up. He listed the various issues and concluded by asking that the City Manager file a motion to request these answers. He concluded by stating that Grimmel Industries may not comply with vacating by December 31<sup>st</sup>.

Bob Hassold – stated he doesn't understand why we are having discussions with Pan Am at all as we are about to end our contract with Grimmel Industries because of it negative impact but instead we are going to allow propane to travel through the city. He continued listing recent incidents of train derailments with propane tanks involved and doesn't understand why they have to go through a major intersection such as Market Street. He stated they should go through Pease and it is the responsibility of the City Council to ensure the safety of our citizens.

Beth Margeson – stated that she feels that the abutters of Prescott Park should be allowed to participate in the review of the Prescott Park Arts Festival noise issue the same as any development project with notification to the abutters because this issue affects property values and quality of life.

Tom O'Leary – resident of Panaway Manor, spoke regarding his history of living in the neighborhood and the effects of the noise since the Interstate 95 was built. He stated in 60 years the New Hampshire Department of Transportation has not shown any concern to their questions of pollution, noise, etc. He stated when travelling along other interstates, there are state-of-the-art sound barriers and it is only in New Hampshire that this isn't done as a part of the project. He asked the Council to address these concerns.

David Lafevers – spoke regarding the motorcycle noise and drivers going through the stop sign on Daniel Street on a regular basis stating it is unsafe.

Raymond Faulkner - Eliot Maine, spoke regarding the Sea-3 Expansion asking what is the real concern because ships already travel up the waterway with fuel and there have been incidents with ships breaking away and hitting a bridge. He stated all modes of transport have risk.

Rich DiPentima – discussed various issues that have been disclosed in other areas with this issue, including environmental and liability coverage. He continued that in a recent case where there was an accident, it was found that there is no entity that has enough liability insurance to cover the costs involved with rebuilding. He stated that the DOT should do a study on the impact of transporting hazardous materials through densely populated areas.

Lou Salome – began by asking who has been inspecting the rails up to this point as he has walked the line from Market Street to Maplewood Avenue which has presumably been restored and it is a disaster. He cited several areas where spikes are missing, ties are broken etc. and said that the work has been haphazard and needs to be monitored regularly.

Catherine DiPentima – thanked the Council for the presentation this evening but as a resident within 100 feet of the rails, she doesn't feel any safer. She continued that there are no assurances that they will not go over 10 mph and the analogy of "carrots" being transported is very different than 33,000 gallons of explosive liquid per car. She stated there are still no answers regarding insurance coverage, notification to residents, quiet zones, etc.

Erik Anderson – spoke regarding derelict buildings which he spoke of several months ago and has since walked the neighborhood with Assistant Mayor Splaine. He stated the Council was presented with pictures and is looking for an answer as to where this issue currently stands. He stated the State statutes are ineffective and this is not a property rights issue but a property respect issue.

Aaron Garganta – began by thanking all of the Councilors past a present who have supported the Panaway Manor Neighborhood I-95 Sound Barrier issue. He gave a brief history of the issue since the highway was built and urged the Council to continue pursuing this with the State of NH DOT and legislation.

Joan Hamblett – resident of Panaway Manor, stated the 2 biggest detractors of the neighborhood are 2 abandoned buildings and the highway without a sound barrier and urged the Council to alleviate these problems.

Ben Anderson – Executive Director of Prescott Park Arts Festival – thanked the Council for approving the long-term agreement with Prescott Park and gave a brief overview of the various activities and benefits to the citizens and patrons of the Arts Festival and the many free season passes that are distributed to those who may not be able to donate. He stated that he is concerned with the drop in donations by approximately 50% at a recent event, which he feels is because of questions of where the money goes.

Claudette Barker – President of the Prescott Park Arts Festival – thanked the Council for their support and stated she is looking forward to continuing a successful season.

Mark Brighton – stated he was going to speak about the City Manager Retirement buy-in but because it has been pulled he will just comment that recent a recent newspaper quote by Councilor Lown that only a "few people complain" is demeaning to those who have a dissenting opinion.

Arthur Clough – discussed contracts that are coming up for ratification and insurance increases that will be coming including the Cadillac tax and feels that these issues need to be reviewed and looked into more closely.

Joe Caldarola – discussed the Portwalk project stating he can't believe the Historic District Commission has been lured into allowing it to continue when there are still issues that need to be addressed. He stated that because of the economic impact on the employees, there needs to be a way for the hotel to open for the summer.

Pat Ford – discussed the history of the alternative railroad route through Pease which used to be used 30 years ago and is referred to as the Newington Spur. She stated that the right-of-way is still viable and the Spaulding Turnpike has a plan to incorporate that under the bridge and she feels this should be looked at as a way to detour the trains from downtown.

Nancy Novelline Clayburgh – stated she is here to speak on the City Manager's retirement issue stating that she has worked with him for many years as a School Board member and City Councilor and he has done many things to improve the City of Portsmouth and save the taxpayers money. She also commented on the Prescott Parks Art Festival issue stating she has confidence that the PPAF Board and Trustees of the Trust Fund will resolve their issues.

**At 10:00 p.m. voted on a 9-0 roll call to continue meeting past 10:00 p.m.**

*Mayor Lister called a 10 minute recess and reconvened at 10:10 p.m.*

*Councilor Spear has left the meeting via tele-conference.*

**Councilor Dwyer moved to suspend the rules to address City Manager Item 9 on the Agenda. Seconded by Councilor Shaheen and voted.**

9. Request for License to Occupy a City Sidewalk for South Church Exterior Wood Louver Repair

**Councilor Kennedy moved to authorize the City Manager to enter into a license with the South Church to facilitate repair activities to the structure along Court Street. Seconded by Councilor Lown and voted.**

**Councilor Shaheen moved to suspend the rules to address Consent Agenda as a whole. Seconded by Assistant Mayor Splaine and voted.**

## **IX. CONSENT AGENDA**

**Councilor Shaheen moved to adopt the Consent Agenda. Seconded by Assistant Mayor Splaine.**

Councilor Kennedy stated she would once again like to urge some of these events to take place in other areas of the City besides the South End.

**Motion voted.**

- A. Letter from Amanda Morneault, The Harbor Agency, Re: Reserving Four Parking Spots for Wednesday, July 16, 2014 for Tour Bus and Trailer **(Anticipated action – move to refer to the City Manager with power)**
- B. Letter from Doug Bates, President, Greater Portsmouth Chamber of Commerce, requesting permission to close Pleasant Street from State Street to Congress Street on Wednesday, August 6, 2014 for conducting the 2014 Greater Portsmouth Chamber of Commerce Annual Dinner: Street.life! **(Anticipated action – move to refer to the City Manager with power)**
- C. Letter from Mary-Jo Monusky, Arts In Reach, requesting permission to hold a 5K Walk on Saturday, October 18, 2014 from 9:00 a.m. – 11:00 a.m. **(Anticipated action – move to refer to the City Manager with power)**
- D. Letter from Matthew Raffio, Arthritis Foundation, requesting permission to hold the Jingle Bell Run on Saturday, December 13, 2014 at 10:00 a.m. **(Anticipated action – move to refer to the City Manager with power)**
- E. Acceptance of Donations for Art-Speak
- 3S Artspace - \$150.00
  - Star Island Corporation - \$150.00
  - Proximity Lab LLC - \$150.00
  - The Portsmouth Music and Art Center - \$150.00
  - Players' Ring - \$125.00
  - Albacore Park - \$125.00
  - Pro Portsmouth - \$125.00
  - Barbara Jenny - \$25.00
- (Anticipated action – move to approve and accept the donations to Art-Speak, as listed)**
- F. Acceptance of Donation to the Coalition Legal Fund
- Town of Carroll for \$1,000.00
- (Anticipated action – move to approve and accept the donation, as listed, to be placed in the Coalition Legal Fund)**
- G. Donation to Fire Department from Bruce J. and Victoria A. Kennedy two pieces of fitness equipment Elliptical Machine and BowFlex Ultimate **(Sample motion – move to accept and approve the donation of equipment to the Fire Department, as presented)**
- H. Letter from Donna Hepp, Granite State Wheelmen, Inc. requesting permission to hold the Tri-State Seacoast Century Bicycle Ride on Saturday, September 20, 2014 – Sunday, September 21, 2014 **(Anticipated action – move to refer to the City Manager with power)**
- I. Request for Approval of Pole License to install 11 temporary poles located on Stark Street as part of the Stark Street Bridge Replacement Project over the Route 1 By-Pass **(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)**



- J. Request for Approval of Pole License to install 2 temporary poles located on Woodbury Avenue as part of the Woodbury Avenue Bridge Replacement Project over the Route 1 By-Pass (***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***)

## VII. APPROVAL OF GRANTS/DONATIONS

- A. Acceptance of Grant from the Our New Hampshire Heritage – a fund of Northeast Auctions, an advised fund within the New Hampshire Charitable Foundation for Restoration of the Kearsarge Fire Pumper - \$15,000.00

**Councilor Kennedy moved to approve and accept the grant from the Our New Hampshire Heritage – a fund of Northeast Auctions, as advised fund within the New Hampshire Charitable Foundation, as submitted. Seconded by Councilor Shaheen and voted.**

## VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. First reading of Ordinance amending Chapter 10 – Zoning Ordinance, Article 15, Definitions, Section 10.1530 – Terms of General Applicability, are hereby amended by adding the following new term and definition: Building Footprint – The horizontal area of a lot covered by the building, excluding (a) gutters, cornices and eaves projecting not more than 30 inches from a vertical wall, and (b) structures less than 18 inches above ground level such as decks and patios

**Councilor Dwyer moved to pass first reading and schedule a public hearing and second reading on the proposed Ordinance amendment at the August 4, 2014 City Council meeting, as presented. Seconded by Councilor Lown and voted.**

- B. First reading of Ordinance amending that the following lots be rezoned from Industrial (I), Office Research (OR) or Municipal (M) to Character District 4 (CD4):
- Assessors Map 163, Lots 33, 34 and 37;
  - Assessors Map 165, Lots 1, 2 and 14
  - Assessors Map 172, Lots 1 and 2;
  - Assessors Map 173, Lots 2 and 10

and including Cate Street between Hodgson's Brook and Bartlett Street, as shown on the attached exhibits title "Areas Proposed To Be Rezoned to Character District 4 (CD4)", and further that the Zoning Map referenced in Chapter 10, Article 4, Section 10.420 (District Location and Boundaries) of the Ordinances of the City of Portsmouth be revised accordingly

City Manager Bohenko asked Planning Director Rick Taiintor to give background on this proposed ordinance.

Planning Director Taintor reviewed that the City Council voted to refer to the Planning Board a request to consider rezoning the east side of the Route 1 Bypass from Islington Street to the Traffic Circle. This area includes several zoning districts with differing contexts and development opportunities and constraints. Of particular interest at present is the area between the railroad tracks and Hodgson's Brook, which includes the Frank Jones Conference Center and adjoining parcels which are currently being offered for sale, along with adjacent parcels such as the former Nissan dealership and the U-Haul parcel. This area has long been considered for a future road connection between the Route 1 Bypass and Bartlett Street, which would advance the goal of creating a new connection between Route 33 and the downtown. The parcels in this area are currently zoned Industrial, which limits their redevelopment potential and is contrary to City goals for upgrading the area in a manner compatible with adjoining residential and business uses.

He continued that the Planning Board has not yet had an opportunity to study the area covered in the City Council's request. However, much of this area is slated for study for an expansion of Character-Based Zoning, and the Planning Department anticipates that the final recommended zoning will be either Character District 4 (CD4) or a variant of that district. Therefore, as an interim measure, the Planning Department has suggested that the Council consider rezoning the area bounded by the Route 1 Bypass, Hodgson's Brook, Bartlett Street and the railroad tracks to CD4. The effect of the suggested rezoning would be to allow residential and retail uses (which are not permitted in the Industrial district), while requiring site and building design to be consistent with the standards established for the downtown area. Character-based zoning thus expands the development potential for the property owner while strengthening the City's ability to ensure a high quality of development.

**Councilor Dwyer moved to pass first reading and schedule a public hearing and second reading on the proposed Ordinance amendment at the September 22, 2014 City Council meeting, as presented, and further, refer to the Planning Board for report back to the City Council. Seconded by Councilor Thorsen and voted.**

**Councilor Lown moved to suspend the rules to address City Manager Item 4. Seconded by Assistant Mayor Splaine and voted.**

4. Request from John G. Pappas for Restoration of Involuntarily Merged Lots at 1474 Islington Street under RSA 674:39-aa

**Councilor Lown voted to approve the request for restoration of Involuntarily Merged Lots at 1474 Islington Street, seconded by Councilor Thorsen.**

Councilor Lown stated that Planning Director Taintors' memo explained it clearly that the City has the burden of proving that the previous owner purposely merged and that cannot be determined. He stated that in that case, the City is required to approve the unmerging of these lots in accordance with State statute.

Councilor Kennedy stated that in the past the Planning Director has give his opinion on these requests but did not do so this time and asked why. City Manager Bohenko stated that the facts have been laid out in accordance with the State RSA.

**Motion voted.**

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

- A. Letter from Josh Henry, Founder/Brewer, 7<sup>th</sup> Settlement Brewery, requesting permission for sales of beer in growlers at the Portsmouth Farmers' Market

**Councilor Low moved to authorize the City Manager to negotiate and execute an amendment to the Farmer's Market agreement with Seacoast Growers Association to allow for the sale of beer in growlers by 7<sup>th</sup> Settlement Brewery, seconded by Councilor Dwyer.**

Councilor Shaheen asked for clarification on "growlers" and that they are not open containers. City Manager Bohenko stated that was correct.

Councilor Kennedy asked what the Liquor Commission feels about this product at a Farmer's Market. City Manager Bohenko stated they have no problem with it.

Councilor Thorsen stated he is generally okay with this but doesn't want this to become a brewery showcase instead of a Farmer's market. City Manager Bohenko stated the Seacoast Grower's Association votes on who is able to participate in the market.

**Motion voted.**

- B. Letter from Mark Hiza, Nottingham Orchard, requesting permission to sell hard cider at the Portsmouth Farmers' Market during the months of August through November 1<sup>st</sup> on Saturday during the hours of 8:00 a.m. to 1:00 p.m.

**Councilor Kennedy moved to authorize the City Manager to negotiate and execute an amendment to the Farmer's Market agreement with Seacoast Growers Association to allow for the sale of hard cider by Nottingham Orchard, seconded by Councilor Lown.**

Councilor Shaheen again asked if these are open containers. City Manager stated no and the liquor commission doesn't allow that.

Councilor Kennedy stated we keep bringing these forward and wonders if there is a certain allowable percentage of alcohol booths to food stands. Councilor Dwyer clarified that this particular vendor also sells apples and not just wine.

Councilor Thorsen stated that if the Seacoast Growers Association approves who participates then why are the City Council voting on them as well. City Attorney Sullivan stated that from its inception the City has made the determination in regards to alcohol sales. He further explained that once they are approved by the Council they are added to the list and are part of the agreement in future contracts.

City Manager Bohenko stated he will look into the percentages question and report back.

Mayor Lister stated this is a family event so we need to be cognizant of what is being sold.

**Motion voted.**

- C. Letter from Peter Taylor, Property Manager, Anchor Property Management, requesting the Worth dumpster area be enlarged so it can accommodate two 10 year containers

**Assistant Mayor Splaine moved to refer to the City Manager for report back, seconded by Councilor Kennedy.**

Assistant Mayor Splaine stated he supports referring to the City Manager for a report back, but he spoke to Mr. Taylor several weeks ago about the dilemma as to where to put the dumpster and doesn't want this issue to delay the work at the Worth Lot. He stated there is also a concern of smell in that area.

City Manager Bohenko stated he is looking at totes versus dumpsters.

Councilor Kennedy stated the issue of trash in the downtown in general needs to be looked into and a plan developed. She stated there is a lot of trash on the sidewalks on collection day and wonders if adding an additional collection day would help. City Manager Bohenko stated he agrees and they are working on this issue.

**Motion voted.**

- D. Letter from Peirce Island Committee in support of the Phase II Study of the Middens that have been discovered on the island

**Assistant Mayor Splaine moved to refer to City Manager for report back, seconded by Councilor Shaheen.**

Councilor Kennedy stated that Steve Marison, Chair of the Peirce Island Committee, is in attendance. She stated this is an important issue and a rare opportunity.

Mayor Lister stated we also need to see how this all can tie into our upcoming 400<sup>th</sup> Anniversary event.

**Assistant Mayor Splaine moved to suspend the rules to allow Mr. Marison to address the Council on the issue. Seconded by Councilor Kennedy and voted.**

Mr. Marison stated they have been working with the architect who did the test pits and there is no other place that has had this opportunity to see how life was lived in two different eras; the Revolutionary War and War of 1812.

Councilor Shaheen asked how the study will be funded. City Manager Bohenko stated the Peirce Island Committee proposes it come from the CIP, but he will need to review if it meets the criteria but it may need to come from contingency.

Councilor Thorsen asked how much it is projected to cost and are there any grants available. City Manager Bohenko stated \$65,000.00 and that will be a part of his report back.

**Motion voted.**

- E. Letter from The Concerned Stakeholders of Commercial Alley requesting enhanced lighting of Commercial Alley

**Councilor Shaheen moved to refer to the City Manager for report back, seconded by Councilor Kennedy.**

Councilor Shaheen stated she has heard from several business owners and the need for lighting. City Manager Bohenko stated they type of lighting and location all need to be worked out.

**Motion voted.**

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

**A. CITY MANAGER**

- 1. Request for Approval of a One-year Contract Extension between the Portsmouth School Department and the Association of School Administrators'

City Manager Bohenko asked Human Resource Director Dianna Fogarty to address the comment made by a citizen during the public comment session.

Human Resource Director Fogarty explained the health plan was designed by School Care to address the Affordable Care Act with higher deductible plans and will have an option for the employee to fund reimbursement accounts. She further explained that the cost to the city and the employee would be significantly lower and is a change in philosophy of what the employees are used to, but is what we are facing as part of the Affordable Care Act.

**Councilor Shaheen moved to adopt the proposed Agreement between the Portsmouth School Board and the Association of Portsmouth School Administrators to expire on June 30, 2015, seconded by Councilor Lown.**

Councilor Kennedy stated that this addresses only one year and the affordable care act doesn't go into effect until 2018, so we will be able to address changes in the meantime.

Councilor Dwyer stated she understands the confusion of the public, but for one year, there will be significant savings and is what people have been asking us to do, address insurance costs.

**Motion voted.**

- 2. Resolution Re: Rescission of the Four Million Dollars (\$4,000,000.00) balance from the Borrowing Authorization for the construction of the Madbury Water Treatment Plant

**Councilor Lown moved to approve the Resolution rescinding the remaining borrowing authority with regard to Resolution #13-2008 adopted by the City Council on November 10, 2008. Seconded by Councilor Shaheen and voted.**

3. Cemetery Improvement Trust and Cemetery Action Plan

Community Development Director David Moore gave a brief presentation explaining the Trust creates a repository for all funds authorized, contributed, or received by the City of Portsmouth for the conservation, restoration, and repair of cemeteries, burial grounds, and burial sites owned by the City of Portsmouth. If adopted, the Trust would be able to accept donations and grant funds given or awarded to the City to aid in carrying out future projects, such as those identified in the Cemetery Assessment and Conservation Plan completed in 2013. The Trust would be managed by the Trustees of Trust Funds and all expenditures would be authorized by the City Council. He further stated that this would provide training opportunities for the Department of Public Works employees in regards to sensitivity of these sites.

**Councilor Kennedy moved to adopt the Portsmouth Historic Cemetery Trust, and further, to authorize the City Manager to execute the Portsmouth Historic Cemetery Trust, as presented, seconded by Councilor Shaheen.**

Councilor Dwyer stated that because we also have the African Burying Ground Trust she would like to make sure that a clarification between the two trusts will be clear. City Manager Bohenko responded that by virtue of the fact that it is managed by the Trustees of the Trust Fund it will be clear and it is our responsibility to ensure the division of the two.

**Motion voted.**

4. Request from John G. Pappas for Restoration of Involuntarily Merged Lots at 1474 Islington Street under RSA 674:39-aa (**Action taken previously**)
5. Portsmouth Housing Authority Communication Re: Cottage Senior Housing (Sample -motion)

**Councilor Lown moved to refer this matter to the CDBG Citizens Advisory Committee for a report back. Motion passed on a 7-0 vote, Councilor Shaheen abstained.**

6. Request for a License Agreement Re: 75 Congress Street (Ben Franklin Block Buildings)

**Councilor Kennedy moved to authorize the City Manager to enter into a license with Michael De La Cruz to facilitate restoration activities at 75 Congress Street. Seconded by Councilor Lown and voted.**

7. Request for License Agreement Re: 311 Marcy Street (Hunking Holdings LLC)

**Councilor Lown moved to authorize the City Manager to enter into a license with Hunking Holding, LLC to facilitate construction activities at 311 Marcy Street, seconded by Councilor Shaheen. Motion passed on a 7-0 vote, Councilor Kennedy abstained.**

8. Request for First reading of Ordinance Re: Parking Omnibus

**Councilor Lown moved to schedule a First Reading of the proposed ordinance amendments to be incorporated into Chapter 7, Vehicle, Traffic and Parking Ordinance, as presented, at the August 4<sup>th</sup> City Council meeting, seconded by Councilor Shaheen.**

Councilor Kennedy stated she would like to know how many parking spaces are lost or gained with these changes. Parking Division Director Mark Nelson will have that figure on August 4, 2014.

**Motion voted.**

9. Request for License to Occupy a City Sidewalk for South Church Exterior Wood Louver Repair (**Action taken previously**)

### **Informational items**

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

1. Appointments to be Considered:
  - Robert Capone to the Cable Television and Communications Commission
  - Matthew Cardin to the Conservation Commission as an Alternate
  - Vincent Lombardi to the Historic District Commission as an Alternate
  - Mary Lou McElwain to the Parking and Traffic Safety as an Alternate
  - Lisa Louttit to the Recreation Board
  - Jeremiah Johnson to the Zoning Board of Adjustment as an Alternate

The above appointments were considered and will be voted at the August 4, 2014 City Council Meeting.

2. Proposal to Allow the City Manager to Enroll in the NH Retirement System and Buy Back Years of Service and to Amend the City Manager's Employment Agreement Section 14, Paragraph B Re: NH Retirement System (see attached memorandum) (**Action taken previously**)
3. Meeting with Port Advisory Committee on September 17, 2014 at 6:00 p.m.

Mayor Lister stated that the meeting will be held at the Port Authority and is not a Council work session.

Assistant Mayor Splaine stated that Mr. Hassold had requested this meeting and requested that all Councilors try and attend. He also asked that the report Mr. Carroll distributed during the public comment session be made a part of the minutes.

Councilor Kennedy stated she hopes that everyone will listen to each other during this meeting and reminded everyone that the Port Authority meetings are and always have been open to the public and it will be the first time any of the people who have requested this meeting are attending.

4. Request to establish a date for a City Council Retreat – Saturday, October 4, 2014

Mayor Lister stated that as a result of the Council's request to start the budget process early, a Council Retreat is being scheduled and he is looking for consensus as to whether Saturday October 4<sup>th</sup> will work for everyone. He stated he would like Councilors to send him any items they would like added to the agenda, but doesn't want to see it over scheduled either.

Councilor Kennedy asked if the Master Plan will be included. Mayor Lister stated it could be.

The consensus of the Council was to begin at 9:00 a.m. on Saturday October 4, 2014.

5. Appointment of Howard Altschiller to the Portsmouth Public Media Television Board of Directors

**Councilor Shaheen moved to approved the appointment of Howard Altschiller to the Portsmouth Public Media Television Board of Directors as the City of Portsmouth representative, seconded by Councilor Lown.**

Councilor Thorsen explained that he had been an original member of the board when this first began and explained that this is a Mayoral appointment and is to replace the previous appointment of Chase Bailey who served for many years.

Councilor Kennedy asked why this was not on for consideration first. City Manager Bohenko explained that this is a special appointment made by the Mayor for a city representative to the Board.

Mayor Lister stated he worked with Assistant City Attorney Woodland on this appointment.

Councilor Dwyer asked for clarification as to if this is a 501c-3 non-profit. Councilor Thorsen stated this is a stand-alone non-profit organization and this is not a part of the City's Boards and Commissions. He stated it is included in their Charter by the City to fulfill certain functions of public broadcast and the owner of the public broadcast in the City.

Councilor Kennedy asked what is the term of the appointment. Mayor Lister stated it is an indefinite term. Councilor Kennedy asked if this can be rescinded as she is concerned that this appointee owns other media. Mayor Lister stated that is why he consulted the Legal Department.

**Motion passed on a 7-0 vote, Assistant Mayor Splaine abstained.**



**C. ASSISTANT MAYOR SPLAINE**

1. Portwalk Status, Other Development Projects, and Compliance with Approved Requirements

Assistant Mayor Splaine stated he is not looking for a motion but would just like the concerns raised previously to be addressed.

Deputy City Manager Dave Allen reviewed a memorandum distributed to the Council reviewing the history of the HDC Review of the Portwalk Project and the changes that have been approved to date (available on the city website).

Assistant Mayor Splaine asked what the timing is for an appeal process. Deputy City Manager Allen stated that as part of the agreement, the applicants cannot appeal.

Councilor Shaheen urged the public and Councilors to attend the HDC meeting and give their opinions. Councilor Thorsen suggested the Council draw up a resolution instead of separate sets of opinions.

Assistant Mayor Splaine stated he considered doing a resolution but feels that we should have confidence in our Boards and Commissions and give them the teeth to do what they need to do.

Councilor Dwyer stated she agrees with Assistant Mayor Splaine as there are no details available to make a recommendation and may put us in legal jeopardy if we don't agree. She stated that there is no substitute for attending the meetings and the role of the Council is that of a sitting Board in terms of the law.

Councilor Kennedy stated it is unfair to allow the Board to have to revisit this. She continued that it is the role of the Council to beef up the process and not let this happen again. She stated she wants to start this conversation sooner than later. She stated they didn't follow the rules and shouldn't have been given an occupancy permit. She stated they made a choice and we are going through all of this because of corporate decisions and feels that the city should be reimbursed for all of the extra staff time involved.

**D. COUNCILORS SHAHEEN AND THORSEN**

1. Sound Barriers on I-95

Councilor Shaheen thanked Councilor Thorsen for fighting the fight on this issue that stems from the I-95 expansion in the late '80's and the impact on the neighborhoods should have been mitigated at that time.

Councilor Thorsen reviewed the history of the attempts by the neighborhoods to get the State DOT to install sound barriers as this is a serious health and quality of life issue. He stated we have gone as far as the process allows us to go but wants this Council to be the one that resolves this issue after decades of following the process.

Discussion ensued regarding the criteria involved to get a sound barrier and that the State

legislature needs to propose legislation to change the criteria to rectify this issue.

Mayor Lister will send a letter to the Governor and other pertinent State and Federal government officials regarding the Sound Barrier request for various areas along portions of I-95 in the City of Portsmouth.

**E. COUNCILOR LOWN**

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the June 12, 2014 meeting

**Councilor Thorsen moved to approve and accept the action sheet and minutes of the June 12, 2014 Parking and Traffic Safety Committee meeting. Seconded by Councilor Dwyer and voted 8-1, Councilor Kennedy voted opposed.**

**F. COUNCILOR DWYER**

1. African Burying Ground Updates

Councilor Dwyer reported that Piscataqua Landscaping has been selected for the project the groundbreaking date will be announced soon. She stated that Chestnut Street will be closed permanently once the project begins.

**G. COUNCILOR MORGAN**

1. Building and Development – Compliance with Land Use Board approved plans

Councilor Morgan stated she wants to look at how the Council as a group moves forward and how the process will be different so that a “Portwalk type” issue doesn’t happen again.

City Manager Bohenko will report back at the August 4, 2014 City Council meeting.

2. Request for a non-public meeting to discuss Contract negotiations and new Health Plan options

City Manager Bohenko stated he will arrange for a report back on Health Care options and concepts at an upcoming meeting as well as a timeline for ongoing contract negotiations.

3. Quality of life in our neighborhoods: helicopters, motorcycles and speeding

City Manager Bohenko stated he, as a member of the PDA, testified and voted against allowing the helicopters at Pease but the FAA has full responsibility over this activity. He stated that large cities such as Los Angeles and San Francisco are fighting this issue as well, but the cities have no control and neither does the PDA.

Councilor Kennedy stated she agrees that we don’t have a lot of recourse but we can ask the company to cooperate.

Councilor Shaheen stated we should encourage the PDA and Congressional Delegation to be invited to discuss this issue as well.

Mayor Lister stated that regarding the motorcycle noise and speeding issue, he will communicate with the Chair of the Police Commission regarding these concerns.

#### **H. COUNCILOR THORSEN**

##### **1. Gambling Ordinance**

Councilor Thorsen stated that we already have a prohibition against gambling as we have no allowable uses for gambling so by omission from the list, it is restricted. He stated that he feels that gambling needs to be specifically defined in our ordinance and the City Attorney has agreed to bring back language defining gambling.

Councilor Dwyer asked if this is being defined in the zoning ordinance shouldn't the Planning Board be addressing it. City Attorney Sullivan stated yes, but we can refer to Planning at the first reading.

#### **XII. MISCELLANEOUS/UNFINISHED BUSINESS**

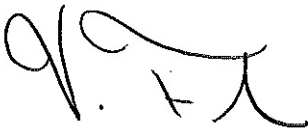
Councilor Shaheen stated she will not be able to attend the August 4, 2014 Council meeting.

Councilor Kennedy stated that another noise concern that has been brought up by citizens is at the Gas Light and asked if these have been addressed. City Attorney Sullivan stated the City has been working with the owners and it has dramatically improved but they will continue to monitor.

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

**Councilor Lown moved to adjourn at 12:25 a.m., July 15, 2014. Seconded and voted unanimously.**

Respectfully submitted:



Valerie A. French  
Deputy City Clerk