

**PORTSMOUTH POLICE COMMISSION**  
**MINUTES OF THE AUGUST 13<sup>TH</sup>, 2014 MEETING**

1:00 p.m. Public Session – Conference Room “A”

John F. Golumb, Chairman  
Gerald W. Howe  
Brenna Cavanaugh  
\*\*\*Unaccepted Minutes\*\*\*

**I. CALL TO ORDER:** The August 13<sup>th</sup>, 2014 monthly police commission public session was called to order at 1:15 p.m. in Conference Room “A”, of Portsmouth City Hall.

**Present during the public session:** Commissioners Golumb, Howe, and Cavanaugh, Chief Stephen DuBois, Judge John Maher, Admin. Manager Karen Senecal, Exec. Assistant Kathleen Levesque, members of the public and the press

**II. PLEDGE OF ALLEGIANCE:** Chief DuBois led the Pledge of Allegiance.

**III. ACCEPTANCE OF THE MINUTES OF THE MEETINGS HELD ON:** July 25<sup>th</sup>, July 16<sup>th</sup>, April 24<sup>th</sup>, April 16<sup>th</sup>, 2014

**Action: Commissioner Howe moved** to accept the minutes and place them on file.

**Seconded by Commissioner Cavanaugh.**

**On a Roll Call Vote:** The board voted to accept the minutes and place them on file.

**IV. PUBLIC COMMENT SESSION:**

Chairman Golumb outlined the parameters of the public comment session, indicating each person would have 3 minutes to speak. (The timer and sign was retrieved from city council chambers for Commissioner Howe to manage the timing of each speaker’s comments.)

Following is a list of residents who spoke during this portion of the meeting, along with a summary of their comments.

1. Mr. Joe Onosko, 27 Shaw Road – Stated Chairman John Golumb violated the city charter; he read the chapter and verse he felt were violated, and read from a prepared statement.

2. Atty. Robert Shaines – Identified his past service to the city as a councilor and commissioner. Mr. Shaines focused his remarks on speaking to the integrity of the commission. He reminded the commissioners they have sole administrative authority in this matter. He said they needed to rectify the public perception of their actions thus far and an independent review was needed.
3. Mr. Mark Brighton – Voiced strong personal suspicions of wrongdoing on the part of the commission and the department, and ended his comments with the statement, “Am I looking down the rabbit hole here?”
4. Ms. Darcey Davidson, 60 T. J. Gamester Dr. – Urged a ‘no’ vote by the commission. She told the commissioners they should look at the department code of ethics, and make sure this kind of behavior is not acceptable and will not be tolerated.
5. Ms. Maureen Foster, 17 Shaw Road – Stated she had become distrustful because of recent events surrounding Geraldine Webber’s will. She called the settlement a rush to divide the spoils before the opportunity of a trial. She told the commission to let justice be served first, and asked they please vote ‘no’ on the mediated agreement.
6. Ms. Barbara Wardwell – Said she was a close friend of Geraldine Webber for 23 years. She said she was with Mrs. Webber at her doctor’s office when she was diagnosed and given a prescription for Aricept. Ms. Wardwell said she used to take Mrs. Webber to the doctors and out to lunch on Friday’s. She described the routine of others who helped Mrs. Webber on different days of the week.
7. Atty. Carol Chellman, Richard’s Avenue. Ms. Chellman thanked the commissioners for their service. She told them she feels the commissioners will do the right thing. She asked the commission to please listen to us (residents), and urged them to do the right thing. Attorney Chellman said this is a matter of public policy, and that is why the issue is not appropriate for mediation. She urged the commission to protect the other officers in the department who would never have done this. She said she agreed with what others have said.
8. Mr. George Dempsey – Mr. Dempsey stated there was nothing about this that is not elder abuse. He felt the department should have fed her (Mrs. Webber). He told the commissioners, “You should be ashamed.”
9. Mr. Bob Pollard, Marcy Street – Said that one member of this department has embarrassed the whole department. He said, “there is no in-between, do what is right; this is shameful.”
10. Kathleen Logan, 21 Blossom Street – Said she agreed this man should not be rewarded with \$425,000. She said she was at the police commission debate last year before elections. She said she sent emails to her friends urging them to vote for Brenna Cavanaugh because she was the only candidate who talked about this Webber case. Ms. Logan said she wants to know how many hours were spent at

Mrs. Webber's house on taxpayer time. She said "he was a predator grooming a victim." Ms. Logan feels the citizens need to know what happened, and we want the day in court; "no closed door stuff".

11. Ms. Mary Lin Hanny, 415 Union Street – Thanked the commission for having this hearing today. She said the lack of transparency has harmed the police department. She said she was just here to ask the commission to please do the right thing and vote 'no' on the mediated agreement. Ms. Hanny said she couldn't imagine their vote going any other way. She said the agreement doesn't include all of the parties. She again asked the commission to please uphold the ethics and integrity of this police department.

**V. UNFINISHED BUSINESS: None**

**VI. NEW BUSINESS:**

1. Personnel Items that require action:

**Action: Commissioner Howe moved** to accept the resignation of dispatcher Tara McKinley.

**Seconded by Commissioner Cavanaugh.**

**On a Roll Call Vote:** The Board voted unanimously to accept the resignation of dispatcher Tara McKinley.

**Action: Commissioner Howe moved** to accept the resignation of auxiliary officer Michael Cummings.

**Seconded by Commissioner Cavanaugh.**

**On a Roll Call Vote:** The Board voted unanimously to accept the resignation of auxiliary officer Michael Cummings.

**Action: Commissioner Howe moved** to approve a waiver of the 30-mile radius residency requirement for officers, for Officer Wm. Dubois.

**Seconded by Commissioner Cavanaugh.**

**On a Roll Call Vote:** The Board voted unanimously to approve a waiver of the 30-mile radius residency requirement for officers, for Officer Wm. Dubois.

**Action: Commissioner Howe moved** to appoint Detective Adam Kozlowski and Detective Josh McCain to permanent status.

**Seconded by Commissioner Cavanaugh.**

**On a Roll Call Vote:** The Board voted unanimously to appoint detectives Kozlowski and McCain to permanent status.

2. Mediated Settlement Agreement – Chairman John Golumb asked Judge John Maher if he would come up and speak prior to the commission’s vote on the mediated agreement. The Chair asked Judge Maher to explain the mediation, i.e. what it was and what his role was.

Judge Maher said he was a Portsmouth resident and gave his address as 20 Martine Cottage Road. He explained he was asked some time ago if he would be the mediator in the lawsuit challenging the will of Geraldine Webber. Judge Maher said he has been doing mediation since his retirement from the bench in 2007. He explained his style is different than most other mediators in that he talks with everybody in the case before the mediation begins. He tries to get as much information as possible prior to the start of the mediation process. The judge met with many of the parties; some refused to attend, though all were invited. The mediation took place in Manchester.

He agreed with Bob Shaines’ remarks regarding the importance of independent review, investigation, and perhaps the promotion of regulation as a result of the findings.

Judge Maher stressed the mediator does not make a finding of right or wrong; he brings the parties together to fashion an agreement. The judge said he has spent a lot of time out of Portsmouth over the last year, so he was not privy to many of the articles in the Herald prior to May of this year when he returned. He said he could understand why people are holding a certain point of view. That point of view has been shaped in large part by what they have read in the Portsmouth Herald. He gave an example of a piece of information that appeared in the paper, although the woman supplying the information freely admitted it was just a rumor and she had no reliable source of the information. The judge said he was sure the reporters wanted rest of the story as well.

Judge Maher said in talking with the various parties in this case, it seemed to him there were three main aspects to this case:

- The merits of the case;
- The cost of litigation – this is a very practical aspect; the expense of litigation is profound in this case. Regardless of who wins, Geraldine Webber’s estate will be spent on litigation.
- What is the right forum for this investigation? Judge Maher said he would submit to the public the probate court is not the correct forum for this investigation.

Mr. George Dempsey interrupted Judge Maher and asked, Why did you mediate? The Judge graciously answered the question. He said he was asked by numerous attorneys in this case if he would consider taking it; he said again that he is fair and impartial. He repeated that he does not make assessments or a valuation of the truthfulness of what the involved parties are telling him. His purpose is to bring forth an agreement between/among the parties. This is very hard to do when passions are enflamed and people are saying, “We don’t care what the facts are, we just want certain things to happen!”

Judge Maher said he will repeat this again and again: He is not making an evaluation as to whether Geraldine Webber had testamentary capacity, or if undue influence from another party occurred. The Judge then returned to addressing the three main aspects of the case before him for mediation.

- The merits of the case – The judge had the opportunity to read every deposition that has been taken to date; there are five. He talked to all the parties, excepting those parties whom he was not permitted to talk with. He stated again that everyone was invited to come to the mediation session.

Judge Maher then viewed the video deposition of Geraldine Webber; he viewed it twice. He said when an objective third party views the deposition, Mrs. Webber comes across as someone who has testamentary capacity. The judge explained the criteria for testamentary capacity is different in the eyes of the court than it is in common public perception; namely a person having some difficulty as someone who is 93 years of age does not therefore automatically not have testamentary capacity. The objective party viewing the deposition and applying the criteria of the court would say this is someone who has testamentary capacity.

He further explained the court’s criteria for testamentary capacity is a lower threshold. He said a person can have it on Monday, and not have it on Tuesday, and have it on Thursday, and someone in that state meets the criteria.

Judge Maher said attorney Bill Besh was the state examiner for Probate for 30 years. All of us (judges) know Bill Besh. Judge Maher said he has Attorney Besh’s deposition, and would just like to read a couple of things out of it. He relayed excerpts from a discussion Bill Besh had with his paralegal Susan. The excerpt follows: (Parenthetical emphasis is ours for clarity.)

“...and I think, if we had been signing a will that day (with Mrs. Webber)...she (Susan, the paralegal) would have said, okay, I’ll witness that (signature), because I think she (Mrs. Webber) is competent to do so.”

Again, Judge Maher reiterated, there is a difference between lawyers’ understanding of testamentary capacity and laypeople’s. Laypeople look at it differently; they are not schooled in what constitutes testamentary capacity.

The judge was interrupted again by an unidentified resident’s question: “Did you ever make a judgment here?”

Judge Maher said he never had to come to a complete conclusion. He said he thought Mrs. Webber was very clear on several things and that she knew all of the things she would have to know to demonstrate testamentary capacity.

Again, John Maher asked the attendees to please understand that he did not and was not making the finding that she had testamentary capacity. That was not his role.

Attendees began interrupting Judge Maher with comments and accusations in an emotionally charged fashion.

Chairman Golumb gaveled the meeting back to order, and asked everyone to allow the judge to finish his presentation.

Resuming, Judge Maher said he is only saying that when one looks at mediation, one looks at both sides. He went on to cite Johns Hopkins, and a report from the Bureau of Elderly and Adult Services (BEAS), dated August of 2012. The report says an investigator went out to see Mrs. Webber on August 29<sup>th</sup> and interviewed Geraldine Webber, Aaron Goodwin, and a neighbor. John read excerpts from the BEAS report. As Judge Maher cited at the beginning of his presentation, the neighbor’s comments have appeared in the Herald, although the woman herself said she did not have credible information that what she had heard was true.

Attorney Gary Holmes met with Mrs. Webber in September of 2011, and worked with her until May of 2012. Over that period he formed the opinion that she had testamentary capacity. John Maher said he has not seen any evidence of undue influence in anything he has read in connection with this case. He stated further that undue influence has a high threshold to meet.

- Cost of Litigation – The judge said it is important for you to know the following:

Attorney Eby's charges are over \$400K right now; his office has taken five depositions. They have 17 more to take; add that to several weeks of trial costs.

The judge feels the spirit and intent of what Gerry Webber was thinking regarding beneficiaries has been met in the mediated agreement. In one sense, a person looking at it from the outside would say, "not everyone is happy here." However all of the persons/institutions named in the mediated agreement will get a significant amount of money *if* the litigation is stopped now.

- The right forum for the investigation – The judge wrapped up his presentation by saying the last thing he would like to address about a mediated settlement is the forum. He thought people would be thrilled that Chairman Golumb wanted an independent investigation to be conducted.

Probate Court is the wrong forum to talk about police procedures. He said the probate court judge has a narrow focus when considering the factors and certain aspects of the case will not be addressed.

As Judge Maher concluded his presentation, Commissioner Howe clarified the city charter gives the police commission the authority to conduct that investigation, and not the mayor. He said Mayor Lister is aware of this, and for this reason, the mayor said the city council would not go forward with its own independent investigation.

Commissioner Howe asked if the mediated settlement precludes the police commission from taking disciplinary actions if wrong doing were to be found. City attorney Robert Sullivan stepped forward and explained it would not preclude disciplinary action and indicated that language protecting that ability to take action was expressly requested by Chief DuBois. He said the police chief specifically asked for wording that would protect the freedom of the department to take disciplinary actions if they are warranted. Judge Maher repeated one of the purposes of the mediated settlement is to stop the bleeding of the estate's assets.

Commissioner Howe said he will move to get the settlement on the table for discussion.

**Action: Commissioner Howe moved** to bring the mediated agreement forward for discussion.

**Seconded by Commissioner Cavanaugh.** Commissioner Cavanaugh added that while she seconded the motion to bring it forward, she will not support it. She feels the public outcry and public integrity are more important.

**On a Roll Call Vote:** The Board voted unanimously to bring the mediated agreement forward for discussion.

Commissioner Howe said he feels the agreement sells the integrity of the city cheaply and the commission should not support it. Commissioner Cavanaugh said she does not support approval of the agreement.

Commissioner Golumb said that at this point, he feels we should not support the mediated settlement. However, he wanted to make it clear to everyone that by not supporting the agreement, it means the case will go to trial in probate court, and by doing that, it means Aaron Goodwin could wind up getting more money, or all the terms of the contested will because of the narrow focus of the probate court.

**Action: Commissioner Howe moved** the commission vote on acceptance of the mediated agreement regarding the contested will of Geraldine Webber.

**Seconded by Commissioner Cavanaugh.**

**On a Roll Call Vote:** The Board voted unanimously not to accept the mediated agreement regarding the contested will of Geraldine Webber.

The residents in attendance responded with applause. Chairman Golumb declared a five-minute recess of the meeting at 2:22 p.m.

Chairman Golumb called the public session back to order at 2:27 p.m.

## **VII. A. CHIEF OF POLICE:**

### **1. Grants & Donations:**

**a. Action: Commissioner Cavanaugh moved** to accept a grant in the amount of \$5,898.43 from the Dept. of Justice for replacement of bullet-proof vests for sworn officers.

**Seconded by Commissioner Howe.**

**On a Roll Call Vote:** The Board voted unanimously to accept the grant and forward to the city council for their action.



**b.** The following donations were made specifically to defray the cost of producing and airing Public Service Announcements regarding the department's opiate addiction initiative:

- A donation in the amount of \$1000 from Mr. Gerald W. Howe and his wife, Ms. Jocelyn Frechette;
- A donation in the amount of \$500 from Mr. James Frechette;
- A donation in the amount of \$250 from Mr. & Mrs. Peter Frechette.

At this point Commissioner Howe indicated that an additional amount, he believed it to be \$3,000, would be coming from The Banyon Fund, which is the Howe-Frechette Charitable Giving Fund, toward the same purpose.

**Action: Commissioner Cavanaugh moved** to accept the three donations as listed above.

**Seconded by Commissioner Howe.**

**On a Roll Call Vote** – The Board voted unanimously to accept the three donations listed above and forward to the city council for their action.

2. Financial Report – Karen Senecal reported that we are 7.69% through the fiscal year, and are currently about 7% expended. She indicated we are still in the process of closing out the prior fiscal year, and believes we will be returning approximately \$8,000 back to the city from the prior year's budget.

Karen then brought forward the request to waive the bid process in order to acquire a replacement vehicle for cruiser #30. Karen reviewed the waiver and gave the commission some details on the opportunity to acquire a nearly new vehicle considerably under the vehicle's market value.

**Action: Commissioner Howe moved** to waive the bid process to acquire a replacement vehicle for cruiser #30, as per the terms of the waiver as written. A copy of the waiver is included in these minutes.

**Seconded by Commissioner Cavanaugh.**

**On a Roll Call Vote:** The Board voted unanimously to waive the bid process to acquire a replacement for cruiser #30, as per the terms of the waiver as written.

## **VIII. PATROL SERVICES DIVISION**

This report is contained in the commission's packet.

#### **D. CITY PROSECUTOR REPORT**

This report is contained in the commission's packet.

#### **IX. MISCELLANEOUS OTHER BUSINESS:**

**Action: Commissioner Howe moved** to accept the division reports and place one copy on file.

**Seconded by Commissioner Cavanaugh.**

**On a Roll Call Vote:** The board voted unanimously to accept the division reports and place one copy on file.

**Action: Commissioner Cavanaugh moved** to go into non-public session for the purpose of discussing personnel matters as per RSA 91-A:3, II.

**Seconded by Commissioner Howe.**

**On a Roll Call Vote:** The board voted unanimously to go into non-public session at 2:36 p.m.

**Chairman Golumb called the public session back to order at 2:56 p.m. in the Conference Room "A", Portsmouth City Hall.**

There being no further business before the commission, the Chair asked for a motion to adjourn.

**Action: Commissioner Cavanaugh moved** the August 13<sup>th</sup>, 2014 monthly police commission be adjourned.

**Seconded by Commissioner Howe.**

**On a Roll Call Vote:** The board voted unanimously in favor of the motion at 2:56 p.m.

#### **X. NEXT MEETING: WEDNESDAY, September 17<sup>th</sup>, in the Eileen Dondero Foley Council Chambers, Portsmouth City Hall, at 6:00 p.m.**

*Kathe*

*Respectfully Submitted By Kathleen Levesque, Executive Assistant*

*Reviewed By Commissioner Cavanaugh, Clerk of the Commission*

*Brenna Cavanaugh*