

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: TUESDAY, JANUARY 20, 2015

PORTSMOUTH, NH
TIME: 7:00PM

I. CALL TO ORDER (7:00PM)

At 7:00 p.m., Mayor Lister called the regular City Council meeting to order.

II. ROLL CALL

Present: Mayor Lister, Assistant Mayor Splaine, Councilors Shaheen, Kennedy, Lown, Dwyer, Morgan (7:10 p.m.), Spear and Thorsen

III. INVOCATION

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

IV. PLEDGE OF ALLEGIANCE

Larry Cataldo led in the Pledge of Allegiance to the flag.

PRESENTATION

1. Wastewater Treatment Facility Update – Brian Goetz, Deputy Public Works Director; Terry Desmarais, City Engineer; and Suzanne Woodland, Deputy City Attorney

City Engineer Desmarais, Deputy City Attorney Woodland and Deputy Public Works Director Goetz provided a Wastewater Treatment Facility Update. The update addressed Phase I and Regulatory Issues. Staff members recommended to the City Council to continue moving forward with Pease Wastewater Treatment Facility Evaluation.

Engineer Desmarais reported to the City Council that the Peirce Island Wastewater Treatment Facility is 60% completed with the final design. He said that the permitting is ongoing and meetings continue with DES and EPA. He stated that the cost estimates remain at \$80 million. He also spoke to the matter of Lonza notifying the City that they are reviewing their facility for expansion. He said there would be a need for construction to meet their needs and also updates to the facility due to its age. Engineer Desmarais further stated that this is a long term important decision.

Deputy City Attorney Woodland reported there have been ongoing meetings with EPA and DES with the City. Water quality work of the Great Bay has been done and a meeting was held with EPA and DES. She spoke to the ruling by the 8th Circuit Court where there was a favorable decision towards municipalities on secondary treatment options.

Deputy Public Works Director Goetz spoke to attending a Board of Selectmen's meeting in Exeter on the regional concept at Pease. He provided an update on where the City stands on the planning level. He stated that Exeter is soon to enter final design on their project but they will continue on the dual path until we have final numbers on a regional facility at Pease.

The City Council discussed various matters relating to the Pease and Peirce Island Facility, costs, construction and size of plant.

Councilor Spear moved to authorize the City Manager to proceed with next phase of the Pease Wastewater Treatment Alternative Assessment and continue participation in the legal challenge to the EPA's interpretation of the bypass rule. The Scope of work and schedule was reviewed and the life cycle cost estimates are anticipated in late April. Seconded by Councilor Lown and voted.

V. ACCEPTANCE OF MINUTES – JANUARY 5, 2015

Councilor Lown moved to approve and accept the minutes of the January 5, 2015 City Council meeting. Seconded by Councilor Shaheen and voted.

VI. PUBLIC COMMENT SESSION

Bob Hassold spoke to the rental of stores in the downtown and the increase in rents due to landlords passing on increases in taxes to their tenants. He spoke to the difficulties faced by store owners in the winter months and then in the summer the store owners look forward to the tourists but now there is no place for people to park and that will mean stores will see less tourists and make less money which will create difficulties for them to hang on and keep stores open.

Bernie Pelech stated he was speaking as a resident and not representing anyone as an Attorney this evening. He addressed the situation of AIRBNB in the City. He stated it is unfair of the City to only send cease and desist orders to some owners and not others. He further indicated that he does not feel these are violations to the zoning ordinance.

Stephen Erickson spoke in support of the resolution under Assistant Mayor Splaine and Councilor Lown's names for Clean Government. He also thanked Councilor Shaheen for assisting in drafting the resolution. He said he worked in Washington, DC in the past and there is a dysfunction in our government. Mr. Erickson spoke to a popular demonstration he will be holding regarding the need for Clean Government. He also indicated he will be requesting other New Hampshire communities to adopt this resolution.

Steve Little spoke regarding AIRBNB and said he received a cease and desist letter from the City. He said if he charged money that would make him in violation of the zoning ordinance. He said his rentals are regularly to families with children and pets. Mr. Little stated there were 2 incidents unauthorized where people used his home to have a large party. He went to apologize to his neighbors but they filed a complaint with the Zoning Officer. He said he should be allowed to have a permit issued for this use by the City.

Jeffrey Cooper spoke regarding AIRBNB and said in Londonderry, NH he found an ordinance that could work here in the City. He said he submitted an application for home occupation-1 for his home to be used as an AIRBNB.

John Palreiro, Great Bay Taxi, expressed concern regarding UBER operating in the City. He stated they do not carry proper insurance and need to conform to the same regulations as all taxies operating in the City.

Lawrence Cataldo, Taxi Commissioner, provided a brief status update on the public input session held last week on UBER by the Taxi Commission. He said the Taxi Commission will meet tomorrow and decide how to find middle ground for ride sharing companies to work together in the City.

Clare Kittredge would like to have broader rules on financial disclosure. She stated 7 of the sitting City Councilors have said during the election process they would seek financial disclosure for the land use boards. She suggested that outside legal counsel should be hired to look at this ordinance.

Arthur Clough said residents should feel comfortable to get up and speak in front of the City Council. He said people no longer like coming into Portsmouth due to the number of large buildings. He also advised the City Council that his water and sewer bill is his highest utility bill.

Mark Brighton spoke regarding commercial assessments and the process our Assessor wants to follow. He said he supports the income and expense survey being sent by our Assessor to commercial property owners in order to have the proper value placed on these properties. He said it is important for the Assessor to have this quality information to appraise properties.

Councilor Spear moved to suspend the rules in order to take up Item XI. D.1. – Commercial Properties and the potential Assessors letter being sent out by the City. Seconded by Councilor Dwyer and voted.

XI. D.1. – Commercial Properties and the potential Assessors letter being sent out by the City.

Councilor Kennedy stated that this is more information than we should be asking for and it is intrusive and wrong not to let the public know that it is voluntary. She asked where the information would be kept and that she is against requesting property owners being asked to complete this income and expense survey.

Councilor Kennedy moved to have the City Manager not send the Income and Expense Survey letter to Portsmouth commercial property owners. Seconded by Assistant Mayor Splaine for discussion purposes.

Deputy City Manager Allen said what has been handed out is a memorandum from Finance Director Judie Belanger to City Manager Bohenko on the income and expense survey.

Finance Director Belanger spoke to her memorandum to City Manager Bohenko which was prepared this afternoon. She said the information provided to the Assessor will be kept confidential. She stated she contacted Stephan Hamilton, Director of Municipal and Property Division, at the NH DRS on this matter and he advised as follows:

1. If adopted, the motion may usurp the statutory authority of the City Assessor to determine and take those steps necessary to perform her legal duty to maintain proportionality among all assessed property valuations in the City. In order to properly perform that duty she needs to collect as much data as possible with regard to actual property valuations in the City. While residential properties may be valued by the observation of market activity such as MLS and other readily available resources, commercial properties, such as those which would receive the letter discussed by the motion, require the type of information sought by that letter.
2. It is the Assessor's duty to establish the "full and true value" of all property in the City, see RSA 75:1. Property values must be based upon objective, provable data.
3. Income and expense surveys such as that proposed by the City Assessor are a standard practice of all municipalities in the state and are a valuable tool in providing accurate and equitable assessments.
4. If income and expense surveys were not utilized by the City, it would present a departure from generally accepted assessment practices. The Citywide revaluation would have to extensively document that departure to the Uniform Standards of Professional Appraisal Practices (USPAP). This could call into question the validity of the entire citywide valuation.

In addition to Mr. Hamilton's concerns, the Council should be aware of the following facts:

- a. Any action of the City Council which sought to prohibit the City Assessor from following accepted assessment practices would have the effect of seeking to compel her to violate her ethical and constitutional duty to value all properties in the City in a full, fair and proportionate manner.
- b. Members of the City Council should be aware that the information sought by the survey is aggregated and pooled to be used in preparing valuation figures which are applied to all appropriate properties and are **not** used to value the individual properties of the survey responders.
- c. The income and expense information provided during the survey is kept confidential in the City Assessor's office and not made available to the public.
- d. If the values in the revaluation are determined to be disproportionate as a result of not being able to collect the necessary data the Board of Tax and Land Appeals could order an entirely new Citywide revaluation using contractors chosen by the Department of Revenue Administration, at the direction of that agency, and at the Portsmouth taxpayers' expense.
- e. The revaluation contract between the City and Property Valuation Advisors (Steve Traub) was conditioned in writing on the mailing of income and expense questionnaire by the City.

Councilor Lown moved to have the question (motion) voted on. Seconded by Councilor Shaheen.

Mayor Lister said he would allow some discussion on the question.

Assistant Mayor Splaine said it is important to listen to the Finance Director and Assessor. He said he would oppose the motion but seconded it to allow for discussion.

Councilor Thorsen said we are voting to move the question to not allow discussion on the motion at all. He said he is against the motion to move the question.

Councilor Kennedy said she is opposed to the motion to move the question. She said this matter only came forward because the City Manager had the item under his name at the last meeting. She said she may have pulled the item from the agenda if she had received this information at the last meeting.

Councilor Shaheen said she seconded the motion to move the question because the motion will not pass. She said based on the memorandum it should not be supported.

Finance Director Belanger said we are in a revaluation and under a strict deadline. She said this expense and income survey is common practice. She further stated the survey should have been sent out by now and we are behind and does not want to get any further behind.

Councilor Kennedy said she would withdraw her motion. She was told because it was under the City Manager's name last City Council meeting she stated she would bring this forward at the next meeting. She said she is receiving this memorandum now as she is making her motion.

Councilor Kennedy withdrew the motion and Assistant Mayor Splaine his second to the motion.

Based on the withdrawal of the motion the motion to move the question is no longer necessary.

Councilor Dwyer said the kind of information asked in the expense and survey is the kind that are asked during a sale of a property. She said sales data is important and there is nothing in the memorandum we don't already know, it is State statute.

IX. CONSENT AGENDA

A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA

- A. Letter from Jeanine Sylvester, Runner's Alley, LLC, requesting permission to hold the 18th Annual Runner's Alley/Redhook Brewery Memorial 5k on Sunday, May 24, 2015 at 11:00 a.m. (***Anticipated action – move to refer to the City Manager with power***)

- B. Letter from Richard Wagner, Seacoast AIDS Walk, requesting permission to hold the 19th Annual Seacoast AIDS Walk and Dog Walk on Sunday, May 3, 2015 from 10:00 a.m. to 5:00 p.m. (***Anticipated action – move to refer to the City Manager with power***)

Councilor Splaine moved to adopt the Consent Agenda. Seconded by Councilor Lown and voted.

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Letter from Adam Diorio, Public Service of New Hampshire, regarding Proposed Borthwick Avenue Switchgear Yard with Associated Improvements

Councilor Lown moved to refer to the Planning Board and Public Works Department for report back. Seconded by Councilor Shaheen.

Deputy City Manager Allen said that the Planning Board has approved the easement and this has gone through the Public Works Department so it just requires approval by the City Council at this time.

Councilor Lown withdrew his motion and Councilor Shaheen withdrew the second to the motion.

Councilor Lown moved to approve the request of Public Service of New Hampshire for Proposed Switchgear Yard Site Improvements and Driveway Easement on Borthwick Avenue. Seconded by Councilor Shaheen and voted.

- B. Letter from The Citywide Neighborhood Steering Committee requesting the City add a mechanism to the Capital Improvement Plan to regularly measure the geographic distribution of projects and expenditures throughout the City

Councilor Spear moved to refer to the City Manager for report back. Seconded by Councilor Shaheen.

Councilor Spear said he does not see what kind of geographic information the Citywide Neighborhood Steering Committee is seeking and the request is not clear. He said the tools are available in the Capital Improvement Plan (CIP). He spoke on who benefits from improvements made throughout the City. He said the direction this is going is complex. He said there is room for better communication but with that said we have the most transparent government in the State and maybe in New England. The City staff could work with the Citywide Neighborhood Steering Committee and repackage the CIP to them. He has worked with the CIP for a decade now and the staff could work with the Committee to identify projects and their time line. Councilor Spear said he feels this is a better way to handle the approach.

Councilor Shaheen said it makes more sense to refer to the City Manager at this time. She would love to hear where the gaps are from the Neighborhood Committee.

Councilor Kennedy said she is concerned that they want to get this as part of the Master Plan which would be through the Planning Board. She agrees with Councilor Spear it would be difficult to quantify things such as bridges and sidewalks. Councilor Kennedy said she would like to see this referred to the City Manager and Planning Board for report back. She asked Deputy City Manager Allen what stage we were at in terms of the Master Plan. Deputy City Manager Allen said we are currently selecting a consultant and there will be an extensive public process with the Master Plan. He said another way of doing this each year prior to the project starting, the Public Works Department or Planning Staff could go out to the neighborhoods and receive feedback from the neighborhoods on projects. Councilor Kennedy said that is a great idea.

Mayor Lister passed the gavel to Assistant Mayor Splaine.

Mayor Lister said he supports the motion and the Neighborhood Committee wants to be heard and he wants to support them. He feels the letter should just go to the City Manager and not the Planning Board.

Assistant Mayor Splaine returned the gavel to Mayor Lister.

Motion passed.

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

1. Request for First Reading Re: Elderly and Disabled Exemptions

Deputy City Manager Allen said this is to request first reading of resolutions for the elderly and disabled exemptions. He said the Council has two options either increase the exemptions by 1.7% or keep them level.

Councilor Lown moved to approve Option A and authorize the City Manager to bring back the Elderly and Disabled Exemptions Resolutions for first reading at the February 2, 2015 City Council meeting, as presented. Seconded by Assistant Mayor Splaine and voted.

2. License Request Re: 61 Washington Street

Deputy City Manager Allen said that this property is in Strawberry Banke and the project has gone through the HDC. He said the project is very complicated and detailed due to the nature of the museum quality work and additional time is needed, therefore Bedard Preservation and Restoration LLC is requesting an extension to the license for the sidewalk encumbrance.

Councilor Lown moved to authorize the City Manager to negotiate and enter into a license with Bedard Preservation and Restoration LLC to facilitate construction activities at 61 Washington Street. Seconded by Councilor Dwyer and voted.

3. Request to Establish Work Session Re: Proposed Parking Garage at 165 Deer Street, Thursday, February 5, 2015 at 6:30 p.m.

Assistant Mayor Splaine moved to establish a Work Session on Thursday, February 5, 2015 at 6:30 p.m., in the Eileen Dondero Council Chambers, as presented. Seconded by Councilor Shaheen and voted.

Councilors Kennedy and Dwyer stated that they will not be in attendance for the Work Session.

4. Citywide Sidewalk Policy Review

Public Works Director Rice stated in 2010 the policy was adopted on the materials used for sidewalks. He said there have been a number of requests for changes to the policy. He explained the changes to the policy regarding the use of materials and the process of appealing the decision of the Public Works Director.

Councilor Lown moved to adopt the revisions as shown to the City Council Policy 2010-02 Regarding Sidewalks and Driveway Aprons. Seconded by Councilor Shaheen.

Councilor Shaheen requested that the following language be added to provision #4 so it will read as follows: "The preferred standard material for all other sidewalks will be concrete."

Councilor Dwyer requested that the following language be added to provision #5 so it will read as follows: "Driveway aprons in the City shall be continuous bituminous asphalt from the edge of road to property line. Sidewalks, if any, shall terminate on either side of driveway apron."

Main motion passed with the inclusion of the referenced changes as outlined above to City Council Policy 2010-02 regarding Sidewalks and Driveway Aprons.

5. Proposed Early Retirement Re: Police Department

Councilor Lown moved to approve a proposed early retirement incentive for the Police Department for FY 2015, as presented. Seconded by Councilor Thorsen.

Police Chief Dubois explained the Department would offer early retirement incentive to employees with 20 years or more of service. He said there are currently 6 employees that this could affect.

Councilor Lown thanked Chief Dubois for bring this idea forward.

Motion passed.

6. Budget Schedule Revision

Deputy City Manager Allen said there is a request to move the all day Budget Work Session from Saturday, May 2nd to Saturday, May 9th.

Councilor Spear moved to reschedule the City Council Budget Work Session to Saturday, May 9, 2015, as presented. Seconded by Councilor Shaheen and voted.

City Manager's Informational Items

- *Withdrawal of Heavy Rescue Fire Truck Bonding Request*

Councilor Shaheen asked how the Council explains to the public that the Fire Department has withdrawn their request of a Heavy Rescue Fire Truck. Deputy City Manager Allen stated he spoke with Chief Achilles regarding this matter and the Chief feels where the Council has voted the request down twice he would prepare a better way of presenting the request for the next budget session.

Councilor Dwyer said this item is in the current CIP that we will be looking at on Monday evening and we could make the funding available for the coming year.

Councilor Shaheen said the request has been made in previous years. She does not want to postpone it further.

B. MAYOR LISTER

1. Appointment to be Considered:
 - Phyllis Eldridge – Reappointment to the Trustees of the Trust Funds

The City Council considered the reappointment of Phyllis Eldridge to the Trustees of the Trust Funds which will be voted on at the February 2, 2015 City Council meeting.

2. Appointments to be Voted:
 - Jay Leduc – Appointment to the Planning Board as a regular member (current alternate)

Councilor Spear moved to appoint Jay Leduc to the Planning Board as a regular member (currently serves as an Alternate) until December 31, 2017. Seconded by Assistant Mayor Splaine and voted.

- Reagan Ruedig – Appointment to the Historic District Commission as a regular member (current alternate)

Councilor Spear moved to appoint Reagan Ruedig to the Historic District Commission as a regular member (currently serves as an Alternate) until June 1, 2016 filling the unexpired term of Tracy Kozak. Seconded by Assistant Mayor Splaine and voted.

- Richard Shea – Appointment to the Historic District Commission as an alternate member

Councilor Spear moved to appoint Richard Shea to the Historic District Commission as an alternate member until June 1, 2015 filling the unexpired term of Reagan Ruedig. Seconded by Councilor Lown and voted. Councilor Kennedy recused from voting. Councilor Morgan voted opposed.

Councilor Morgan said she is opposed to the appointment because she feels we have enough architects on the Historic District Commission and would like a different appointment made.

C. ASSISTANT MAYOR SPLAINE & COUNCILOR LOWN

1. The Portsmouth Resolution In Support Of The New Hampshire Clean Government Convention to be held during the 2015-2016 Presidential Primary

Assistant Mayor Splaine read the resolution to the City Council and to make the public aware of what the City Council will be voting on this evening.

Assistant Mayor Splaine moved that the Portsmouth City Council adopt The Portsmouth Resolution In Support Of The New Hampshire Clean Government Convention to be held during the 2015-2016 Presidential Primary. Seconded by Councilor Lown.

Assistant Mayor Splaine said that this is an important issue and cause. He said we need the system to be as non-partisan as possible.

Councilor Lown commended Steve Erickson for bringing this to the City Council. He believes that government is broken and we can make a small statement in the State by adopting this resolution. He said the only way to address what is broken in our system is through a constitutional amendment. Councilor Lown further stated that we are in a position of power having the first in the nation Presidential Primary.

Councilor Shaheen thanked Assistant Mayor Splaine, Councilor Lown and Steve Erickson for bringing this forward. She said the process has dissolved. She said ordinary citizens need to stand up and make sure that this is a Government of the people, by the people, for the people.

Councilor Thorsen said it is important that the City Council encourage this kind of dialogue.

Councilor Dwyer said she likes the way it was introduced by Assistant Mayor Splaine to begin discussion. He said it is important to have a focal point and the interests come together. She said term limits should be part of a dialogue.

The City Council agreed to change the word in the first paragraph of the second page from would to "could". The sentence will now read as follows: "That we should work together for a Clean Government Amendment to the U.S. Constitution that could have as its goals:

Mayor Lister passed the gavel to Assistant Mayor Splaine.

Mayor Lister said government in Washington is broken and we all realize that. He asked Assistant Mayor Splaine and Councilor Lown what does voting on this resolution binds us to do and what does this have to do with other issues and initiatives.

Councilor Lown said the City Council is responsible for nothing and it ends when the vote is taken.

Assistant Mayor Splaine returned the gavel to Mayor Lister.

Assistant Mayor Splaine said that this does not bind the City Council to anything. The opportunity and affect is to bring together all the groups to have a dialogue on how to clean up government.

Councilor Morgan thanked Assistant Mayor Splaine and Councilor Lown for bringing this forward. She agrees with the resolution and will support it.

On a roll call 8-1, voted to pass the main motion with the change requested. Assistant Mayor Splaine, Councilors Shaheen, Kennedy, Lown, Dwyer, Morgan, Thorsen and Mayor Lister voted in favor. Councilor Spear voted opposed.

E. COUNCILOR LOWN

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the December 11, 2014 meeting

Councilor Shaheen moved to approve and accept the action sheet and minutes of the Parking and Traffic Safety Committee meeting of December 11, 2014. Seconded by Councilor Lown and voted. Councilor Kennedy voted opposed.

2. Parking and Traffic Safety Committee Action Sheet of the January 8, 2015 meeting

Councilor Shaheen moved to approve and accept the action sheet of the Parking and Traffic Safety Committee meeting of January 8, 2015. Seconded by Councilor Lown and voted. Councilor Kennedy voted opposed.

XII. MISCELLANEOUS/UNFINISHED BUSINESS

Councilor Kennedy requested that Finance Director Judie Belanger's memorandum regarding Income and Expense Survey be placed on the Assessor's Webpage.

Councilor Morgan asked that any documents that are submitted be provided to the City Council ahead of time and not at the desk the evening of the meeting. She said the memorandum from the Finance Director should not have been provided this evening.

Councilor Shaheen asked when the testing of the wells would take place at Pease. Deputy City Manager Allen said there is no clear date from the State but he would get information to the City Council. Councilor Shaheen asked staff to provide anything that could be done to expedite the well testing.

Councilor Spear requested that Councilor Dwyer provide an update on the Joint Building Committee for the Portsmouth Middle School at a future City Council meeting.

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

At 10:00 p.m., Councilor Lown moved to adjourn. Seconded by Councilor Spear and voted.

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

Kelli L. Barnaby, MMC, CMC, CNHMC
City Clerk