

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: MONDAY, SEPTEMBER 21, 2015

PORTSMOUTH, NH  
TIME: 6:00PM

At 6:00 p.m., an Anticipated “Non-Meeting” with Counsel was held regarding Collective Bargaining and Litigation – RSA 91-A:2, I (b).

### **I. CALL TO ORDER**

At 7:45 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, Spear, and Thorsen

### **III. INVOCATION**

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

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

George Remick, former Fire Commissioner led in the Pledge of Allegiance to the Flag.

### **V. ACCEPTANCE OF MINUTES** *(There are no minutes on for acceptance this evening)*

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

Charlie Griffin spoke to the expansion of the WSCA License Agreement to place an 80 foot antenna. He expressed his support for the license and said it is a win, win for City.

Gloria Guyette addressed the City Council regarding Prescott Park Arts Festival and feels that the recent vote of the Council to restrict the functions of PPAF could have been more restrictive to not allow any function at the park on Sunday – Thursday evenings. She said the issues surrounding PPAF need to be resolved.

Beth LaMontagne Hall spoke on the Frank Jones parcel and the funding for the property is a concern. She expressed concern regarding the connector road and the vision for the neighborhood to expand the west end of the City.

Timothy Montiminy sent a letter to the City Council on an issue and only received one reply regarding the Prescott Park Arts Festival vote by the City Council. He said the motion was not introduced on the agenda or with the rules and orders of the Council. He said that the vote will affect the future of PPAF and the downtown businesses.

John Palreiro said the new taxi regulations are not being enforced currently and UBER still has not produced the insurance documents to the City to operate. He asked that UBER not be treated any differently than current taxi businesses in the City.

Joanne Pipkin said the Council painted a narrow corner for ride share companies to operate. She said UBER needs to show insurance. She stated that the insurance was written with the cloak of safety. She spoke to taxi businesses following UBER drivers to get their license plate numbers and report them to the Police Department which is creating an unsafe environment for drivers and passengers.

Paul Mannle said the parking omnibus will be a net decrease of 40 spaces. He addressed the parking with HarborCorp project and said the City is losing public parking. He also stated that the land transfers for Deer Street should be postponed until all funding is in place and that the Frank Jones parcel is a good purchase at \$9,000,000.00.

## **VII. PUBLIC HEARING**

### **A. ORDINANCE AMENDING CHAPTER 7, VEHICLES, TRAFFIC AND PARKING OMNIBUS ORDINANCE**

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

Parking and Transportation Engineer Eby provided an overview of the parking omnibus. He explained the actions of the Parking Traffic & Safety Committee process to bring items forward for the omnibus ordinance. He stated the omnibus ordinance changes include all PTS actions for the prior year that require an ordinance change. He addressed parking spaces with various actions affecting parking for a total net change of +30 to 130 spaces which include HarborCorp project.

With no speakers Mayor Lister closed the public hearing.

## **VIII. APPROVAL OF GRANTS/DONATIONS**

*(There are no items under this section of the agenda)*

## **IX. CONSIDERATION OF RESOLUTIONS AND ORDINANCES**

### **A. Second reading of Annual Omnibus Ordinance Change, Parking and Traffic**

**Councilor Lown moved to pass second reading and schedule third and final reading of the proposed Ordinance, at the October 5<sup>th</sup> City Council meeting, as presented. Seconded by Councilor Spear.**

Councilor Kennedy asked about the HarborCorp Parking Garage spaces of +70 to 170 spaces and if that number included the employees that would be working in the building. Engineer Eby said he does not know the number of employees but the number takes into account the employees that would be using the parking.

**Motion passed. Councilor Kennedy voted opposed.**

**X. CONSENT AGENDA**

- A. \*Acceptance of Donation to the Coalition Legal Fund:
- Town of Moultonborough - \$6,500.00

***(Anticipated action – move to approve and accept the donation as listed, to be placed in the Coalition Legal Fund)***

- B. Letter from Andrea Abbott, Portsmouth Halloween Parade, requesting permission to hold the 21<sup>st</sup> annual Portsmouth Halloween Parade on Saturday, October 31, 2015 ***(Anticipated action – move to refer to the City Manager with power)***

- C. Request for License from Lisa Shah, owner of LIT Boutique for property located at 19 Congress Street for a projecting sign located on Congress Street on an existing bracket ***(Anticipated action – move to accept the recommendation of the Planning Director with the aforementioned stipulations and approve the request of Lisa Shah, owner of LIT Boutique for a projecting sign located on Congress Street on an existing bracket and, further, authorize the City Manager to execute License Agreements for this request)***

**Planning Director's Stipulations:**

- ***The license shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of the projecting sign, for any reason, shall be done at no cost to the City; and***
- ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***

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

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

- A. Letter from William Guernier regarding Transportation Network Services Ordinance

Assistant Mayor Splaine moved to accept the letter and refer it to the City Attorney for review and report back. Seconded by Councilor Shaheen.

Assistant Mayor Splaine said the letter is positive and the City has worked well to create a ride share ordinance and we need to find a way to allow a ride share or taxi company to operate in the City. He said there may be some technical changes that would need to be made if UBER does apply they can begin the process and find a way to meet our ordinance. He asked about the current status of UBER and enforcement of the ordinance.

City Attorney Sullivan said we are only in a few days of operation but everything about the ordinance is positive. He said that the City Clerk has issued 10 transportation service providers. The application is in the UBER legal department and they would be filing their application soon.

Councilor Kennedy said the City Council did not vote against ride sharing. She encouraged the newspaper to write a letter on this matter.

Councilor Dwyer said she heard one UBER driver presented an insurance policy to the Police Department and they were not allowed to operate. City Attorney Sullivan said an individual driver could go through UBER or could qualify individually. He further stated that the new ordinance will create some growing pains, as the regulations are completely new.

**Motion passed.**

## **XII. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS**

### **A. CITY MANAGER**

1. Approval of Land Transfers for Proposed Municipal Parking Structure at 165 Deer Street

City Attorney Sullivan said the garage would be constructed with a major private developer Deer Street Associates and we will need to cross over their land and they would cross over our land. He spoke on the requirement of acquiring land. The administration needs authority from the City Council to make items proceed forward.

Planning Director Taintor explained in detail the Disposition Plan, consisting of Sheet C1 and Land Ownership and Sheet C2 Easements.

**Councilor Spear moved to acquire from Deer Street Associates a parcel of land off Deer Street and Bridge Street containing 54,017 ± s.f. (1.2401 ac.) for construction of a municipal parking garage and associated access and utility improvements, and to acquire or convey any further property interests necessary to implement the intent of this acquisition.**

**Said parcel is shown as Lot "A" on the Disposition Plan, Sheet C1 – Disposition Plan Land Ownership, prepared by Ambit Engineering, Inc., dated July 2015 (amended 9/15/15). Easements to be created, terminated or relocated in connection with this acquisition are shown on the Disposition Plan, Sheet C2 – Disposition Plan Easements, prepared by Ambit Engineering, Inc., dated July 2015 (amended 9/15/15).**

**Voted to transfer to Deer Street Associates the City's right, title and interest in a parcel of land at the intersection of Deer Street and Bridge Street, containing 1,717 ± s.f. (0.0394 ac.).**

**Said Parcel is shown as Lot "B" on the Disposition Plan, Sheet C1 – Disposition Plan Land Ownership prepared by Ambit Engineering, Inc., dated July 2015 (amended 9/15/15).**

**Voted to acquire from the John W. Gray Revocable Trust and the Bradford A. Gray Revocable Trust a triangular parcel of land off Bridge Street containing 421 ± s.f. (0.0097 ac.) for construction of access and utility improvements, and to acquire or convey any further property interests necessary to implement the intent of this acquisition, including an 8-foot sidewalk easement between said parcel and Bridge Street.**

**Said parcel is shown as Lot "C" on the Disposition Plan, Sheet C1 – Disposition Plan Land Ownership, prepared by Ambit Engineering, Inc., dated July 2015 (amended 9/15/15). The sidewalk easement is shown as Easement "12" on the Disposition Plan, Sheet C2 – Disposition Plan Easements prepared by Ambit Engineering, Inc., dated July 2015 (amended 9/15/15). Seconded by Councilor Shaheen.**

Councilor Spear said that this is in line with the vision of the City Council and meets the Councilors expectations.

Councilor Kennedy asked when money would be exchanged for the land and where does this come into play.

City Manager Bohenko said the motion approved by the City Council was a bond to build the garage and purchase land we have the authority to do that and the key is, the purchase and sales agreement.

City Attorney Sullivan said the first funds to be exchanged would be \$5,000,000.00 to Deer Street Associates for the purchase and sales we are working on and the document will come to the City Council for approval.

Councilor Kennedy said we are doing this work and we do not have a purchase and sale agreement right now. City Attorney Sullivan said the vote this evening does not transfer property it allows the City Manager to do so when the purchase and sales agreement is final.

City Manager Bohenko said he would let the City Council know when we borrow money and how much. He also stated that a pro-forma would be done for the entire project.

Assistant Mayor Splaine said the City Council voted unanimously on this matter and does not want to see any more delay. He said we need the parking and we will see more tourists. He said we need to make sure that this is done as quickly as possible.

Councilor Thorsen wants to insure if something changes that the City Council would not be responsible for granting the easements, land swap and purchase. He asked when the trigger is pulled on this project and when does that happen.

City Attorney Sullivan said we will negotiate tomorrow and the purchase and sales would be put together and signed with conditions. He said we adopted the approach to solved the major conditions and satisfy everything before we have a purchase and sales. He said if all conditions are satisfied and resolved we may have a more simple purchase and sales agreement.

Councilor Morgan said she does not understand where we are in the process. She wants to see a letter or a plan of where we are and what happens next. She said the City Council needs to see a road map, and not just a snap shot.

City Attorney Sullivan said the road map is a big book and we are early into writing it. He assured the City Council that the things we need are major items in the purchase and sales and if they can't be resolved there would not be a transfer and it would not bind the City Council this evening. He said this is one step in the process.

Councilor Morgan said she would like the City Council informed on a regular basis on where we are in the process. City Manager Bohenko said he would work on a schedule but it would not have dates but would outline the critical path to be followed.

Councilor Shaheen said the Council voted unanimously on the purchase of the property and all things were contingent to have transfers and easements.

City Attorney Sullivan said things would come back to the City Council before any property is accepted.

Councilor Thorsen asked if we should add that language. Councilor Spear agreed to add the language "**Contingent upon the Purchase and Sales Agreement.**"

**On a unanimous roll call vote 9-0, motion passed.**

**Councilor Lown moved to suspend the rules in order to take up Item XII. A.3. – License Agreement Re: WSCA. Seconded by Councilor Spear and voted.**

3. License Agreement Re: WSCA

**Councilor Spear moved to authorize the City Manager to amend the existing WSCA License to allow an 80-foot free-standing antenna and to make such other minor amendments to the agreement as may be necessary to accommodate the change. Seconded by Councilor Shaheen and voted.**

2. Proposed Land Acquisition (Frank Jones Center Property)

City Manager Bohenko said he met with Brian Thibeault of Portsmouth Land Acquisition LLC, owner of the property and he is willing to sell 8.4 acres for \$9,000,000.00.

**Councilor Kennedy moved that the City Manager continue to negotiate and look at making a counter offer. Seconded by Councilor Morgan.**

Councilor Kennedy said we need to look at affordable housing and the Police Department is looking for a new place to go and this may be a nice option. She also mentioned the construction of a Transportation Center. She said we are always reacting and she would like to see the Council be proactive.

Councilor Spear said he would vote against the motion. He said he would not spend \$9,000,000.00 on something that is hypothetical right now. Councilor Spear said there are many projects that are part of the CIP that need to be done.

Assistant Mayor Splaine said no one is asking to purchase the land right now. He said we need to open the access to the property and consider the possibilities of our future.

Councilor Shaheen said she is opened to continue the conversation and putting forward a recommendation to move forward.

Councilor Lown said he is voting against the motion because the City doesn't need the property right now. He said the City Councilors wanting to vote in favor of this are the ones that voted against the study for the Fire Department and this is an enormous amount of money.

Councilor Morgan said no one asked for the City to make an enormous investment. She said we have had discussion on the need for a new Police Department we brought forward several ideas to the table to start somewhere.

Councilor Dwyer said she would like to allow for continued negotiations and the Council needs to decide what portion of the land we want.

**In a roll call vote 6-3, motion passed. Assistant Mayor Splaine, Councilors Shaheen, Kennedy, Dwyer, Morgan and Thorsen voted in favor. Councilors Lown, Spear and Mayor Lister voted opposed.**

4. License Request for 386-390 State Street

**Councilor Lown moved to authorize the City Manager to enter into a license with FA Gray to facilitate the completion of painting activities for 386-390 State Street. Seconded by Councilor Shaheen and voted.**

5. Polling Hours – November 3, 2015 Municipal Election

**Councilor Spear moved to set the polling hours from 8:00 a.m. to 7:00 p.m. for the Municipal Election on Tuesday, November 3, 2015. Seconded by Councilor Kennedy and voted.**

At 9:20 p.m., Mayor Lister declared a brief recess. Mayor Lister called the meeting back to order at 9:30 p.m.

**D. COUNCILOR KENNEDY**

1. Concerns with Property Assessments

City Manager Bohenko asked Finance Director Belanger and Assessor Maurice Lentz to come forward to discuss the revaluation.

Finance Director Belanger discussed the tax rate and the law requiring us to conduct a revaluation every 5 years. She indicated that property taxes make up the majority of funds for municipal services. She said the tax levy may change the tax rate as the preliminary numbers come in. She stated that an increase in value is a decrease in the tax rate to \$16.97 which represents a 6.3% decrease. She explained how some taxpayers may see an increase in their taxes, some a decrease and others will remain the same. Director Belanger spoke regarding the elderly and disabled exemptions and that the asset levels will be reviewed but would not be effective for this tax bill, but for next year.

Assessor Maurice Lentz said there are 8,843 taxable properties in the City with 83% being residential. She explained that there is a 2% shift in values for the comparable 2015 median house valued at \$346,450.00 was 8.6% from last year. She stated there are differences between properties and neighborhoods and that she will review all data collected by the consultant to set the values.

Councilor Kennedy stated that people were not given ample time to set appointments from the time the letters were sent out by the Assessor's office. She suggested that the letters be color coded so people will realize it is not a normal correspondence issued by the City but it is regarding the revaluation. She asked to see the formula used in setting values and said some neighborhood people have seen prices increase; some decrease and others remain the same. She feels there are a great deal of inconsistencies and spoke to there being big differential land values.

Assessor Maurice Lentz stated that the DRA determines our values and they were accurate during the 2010 revaluation. She said there will be different values on different streets as prices change based on what people are looking to purchase. She indicated there is no given formula it is what people are willing to purchase a property for.



Councilor Kennedy said it would be helpful to present the model for residents to hear. City Manager Bohenko said we would set something up in the Levenson Room before the tax bills are mailed out and before the tax rate is set. He said we would publicize the date and location of the presentation.

Councilor Shaheen asked how many property owners requested a hearing. Assessor Maurice Lentz said about 450 residents.

Councilor Dwyer said there is confusion about what people do if they want to file for abatement. Assessor Maurice Lentz said once final values are posted on the website people can bring any information to the office and they have until March 1, 2016 to file for abatement.

Councilor Morgan asked if we could put our resources to meet with neighborhoods that are having meetings regarding their revaluations. City Manager Bohenko said he would like to speak with the Finance Director and Assessor on how to approach this.

**Councilor Shaheen moved to go briefly beyond 10:00 p.m. Seconded by Councilor Kennedy and voted.**

**B. MAYOR LISTER**

1. Appointments to be Considered:
  - Reappointment of Shari Donnermeyer to the Parking & Traffic Safety Committee
  - Appointment of Jennifer Pyke to the Portsmouth Housing Authority

The City Council considered appointments listed above which will be voted on at the October 5, 2015 City Council meeting.

2. Appointments to be Voted:
  - Appointment of Richard Winstanley to the Cable Television and Communications Committee
  - Appointment of Jolanda Fannin to the Library Board of Trustees filling the expired term of Jody Record until October 1, 2015
  - Reappointment of Ernie Greenslade to the Library Board of Trustees
  - Reappointment of Ronald Cypher to the Parking & Traffic Safety Committee
  - Reappointment of Frederick (Ted) Gray, Jr. to the Parking & Traffic Safety Committee
  - Reappointment of Harold Whitehouse to the Parking & Traffic Safety Committee

**Councilor Lown moved to appoint Richard Winstanley to the Cable Television and Communications Committee until April 1, 2016; appointment of Jolanda Fannin to the Library Board of Trustees until October 1, 2018; reappointment of Ernie Greenslade to the Library Board of Trustees until October 1, 2018; reappointment of Ronald Cypher to the Parking & Traffic Safety Committee until September 17, 2018; reappointment of Frederick (Ted) Gray, Jr. to the Parking & Traffic Safety Committee until September 17, 2018; reappointment of Harold Whitehouse to the Parking & Traffic Safety Committee until September 17, 2018. Seconded by Assistant Mayor Splaine and voted.**

**C. ASSISTANT MAYOR SPLAINE**

1. Thanking John Connors

City Attorney Sullivan said Mr. Connors has filed a federal law suit against the City in excess of \$500,000.00 and statements made by the City Council as a whole would be admissible in a trial and request that the City Council as a whole not take any action on the matters to be discussed.

Assistant Mayor Splaine said John Connors was not treated as well as he should have been and he wanted to thank John Connors. He said he would not ask for the City Council to take a position on the statement he had on the agenda.

**E. COUNCILOR LOWN**

1. Parking & Traffic Safety Committee Action Sheet and Minutes of the August 13, 2015 meeting
2. Parking & Traffic Safety Committee Action Sheet and Minutes of the September 3, 2015 meeting

**Councilor Dwyer moved to approve and accept the minutes of the August 13, 2015 and September 3, 2015 Parking & Traffic Safety Committee meetings. Seconded by Councilor Shaheen.**

Councilor Dwyer spoke regarding the request for angle parking and would like to see the Parking & Traffic Safety Committee revisit this request. Councilor Lown said he would have PTS revisit the matter.

**Motion passed with Councilor Kennedy voting opposed.**

**F. COUNCILOR DWYER**

1. Motion to request that the City Council engage the expert in police facility construction to make a presentation to the Council about the particular requirements for a police facility

Councilor Dwyer said we need more information for specific requirements for a police facility to inform us on getting to a decision.

**Councilor Dwyer moved to have a presentation to the City Council on the requirements for a police facility. Seconded by Councilor Shaheen and voted.**

**G. COUNCILOR THORSEN**

1. Recent Vote Restricting PPAF Operation, and Motion to Reconsider

Councilor Lown indicated he would need to recuse himself from discussion and voting on this matter. Councilor Lown left the City Council meeting.

City Attorney Sullivan explained that a two-thirds vote is required to suspend the rules to reconsider motions.

**Councilor Thorsen moved to suspend the rules in order to bring a motion for reconsideration. Seconded by Councilor Dwyer.**

He stated from his memorandum dated September 16, 2015 that the Council should not have voted to restrict the operation of the Prescott Park Arts Festival (PPAF), although the concern over scheduling is a valid one. He said that this vote was rushed, and on further consideration even thwarts the ability of the parties to work out a creative and successful agreement. He further stated the better approach would be to give the negotiating process as much flexibility as possible, providing guidelines at most rather than absolutes, and allow the parties to come to an agreement satisfactory to all.

Councilor Kennedy said she does not believe the motion was right but believes the outcome was. She said this is a concert people didn't think about and the evening of the event it was extremely loud.

**Motion passed. Mayor Lister voted opposed and Councilor Lown abstained.**

**Councilor Thorsen moved to reconsider the recent vote restricting the PPAF operations. Seconded by Councilor Shaheen.**

Councilor Thorsen said he wants to see a creative solution to this matter.

Councilor Dwyer said we made progress moving forward and how a stage plan would be done. She said the Trustees of the Trust Fund are in the driver's seat of Prescott Park and the vote by the Council must have made them feel like a fifth wheel. She further stated to do a complete prohibition seems wrong. Councilor Dwyer said we need to come to a similar solution and a strategic plan and hear from the community.

Councilor Kennedy said things improved this summer but Wednesday evening it was much louder than past performances. She would vote against the motion to reconsider and that the past two years is where the problems have arisen.

Councilor Morgan said she agrees with Councilor Kennedy and that Prescott Park is a gift to the City and the Trustees of the Trust Fund have had an obligation and would like them to be part of the meetings with the subcommittee. She said we need to move quickly with a long term plan for the park.

Assistant Mayor Splaine said the process followed by the City Council at the last meeting was not the best and there was not a discussion and he comes down on the side that we find a solution for all the parties.

Councilor Shaheen said she is in favor of the reconsideration because it does not seem like the process was right. She said we need to advance the work and that PPAF has the assurances they need. She said it is best to weigh on the side of a better, more open process and we need to get to a long term agreement.

Mayor Lister passed the gavel to Assistant Mayor Splaine.

Mayor Lister said he would not support the motion. He said the working group has had a review of PPAF. He said they met on a regular basis and opened up communication. He said the interest was not to hear just about noise and these activities should not take place on school nights. He further stated there were 83 performances this year and there were 2 performances that could have been moved to another weekend. Mayor Lister said he does not want to get to the point that affects a long term agreement. He said a report back will come from the working group.

**On a roll call 5-3, voted to reconsider the recent vote restricting the PPAF operations. Assistant Mayor Splaine, Councilors Shaheen, Dwyer, Spear and Thorsen voted in favor. Councilors Kennedy, Morgan and Mayor Lister voted opposed. Councilor Lown was not present for the vote.**

Councilor Thorsen would like to see negotiations prior to the long term agreement. He said there needs to be an agreement in place before operations. He said he would leave this to the people in the working group.

Councilor Shaheen said the goal was to work with Trustees of the Trust Fund on a general understanding how the season would work to come forward with a long term plan.

Councilor Kennedy said she would like to know a date when the group will have a report back.

Councilor Dwyer said we can't do this until we have an agreement and the group has brought a report forward 3 times this summer. She said the Trustees of the Trust Fund have had a year to year agreement and there is nothing new to report from the 3 previous reports. She said the strategic plan needs to come forward and that should be done by December.

Councilor Shaheen said the group has heard a tremendous amount of public input and it is feedback that will weigh in on the report.

Councilor Morgan said she would like a report on who is leading the long term plan.

**XIII. MISCELLANEOUS/UNFINISHED BUSINESS**

**XIV. ADJOURNMENT**

At 11:00 p.m., Councilor Thorsen moved to adjourn. Seconded by Councilor Shaheen 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