

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: MONDAY, FEBRUARY 6, 2017

PORTSMOUTH, NH  
TIME: 7:00 PM

### **I. CALL TO ORDER (7:00PM)**

Mayor Blalock opened the meeting at 7:05 p.m.

### **II. ROLL CALL**

Members Present: Mayor Blalock, Assistant Mayor Splaine, Councilors Perkins, Dwyer, Lown, Pearson, Spear (arrived at 8:10 p.m.), Cyr and Denton

### **III. INVOCATION**

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

Councilor Lown led the Pledge of Allegiance.

### **V. ACCEPTANCE OF MINUTES – JANUARY 9, 2017 AND JANUARY 23, 2017**

**Councilor Lown moved to accept and place on file the Minutes of January 9, 2017 and January 23, 2017 City Council meetings. Seconded by Councilor Cyr and voted.**

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

Mayor Blalock opened the Public Comment Session stating that due to the large number of speakers, comments would need to be held to no longer than 2 minutes.

Bill Ellwell – spoke in support of the Prescott Park Master Plan and thanked the committee for their outstanding efforts as well as the consultants from Weston and Sampson, Gene Bolinger, Cheri Ruane and staff. He discussed his history as a music teacher and Trustee of the Trust Funds. He stated regarding the issue of the moveable stage, he doesn't feel that our city government will allow anything that is unsafe to be placed on public property. He concluded that having the stage be able to be removed for 7 months of the year keeps with the "Park First" mission statement.

Dan Corcoran (spoke on behalf of a group of supporters of the Prescott Park Master Plan) – requested that the Prescott Park Master Plan be adopted as presented as it has been through a year-long exhaustive and thorough review. (Full statement submitted for the record)

Esther Kennedy – spoke regarding the recent sewer line breakage on Peirce Island and the lack of notification of the occurrence by the City. She requested that an emergency notification system be implemented on the city website.

Lindsey Carmichael – spoke opposed to the crumb rubber being proposed at the Plains Field and urged the Council to investigate other options as the materials used in the crumb rubber are toxic and contain carcinogens.

Ashleigh Blackington – spoke opposed to the proposed crumb rubber for the Plains Fields.

Mindy Messmer – State Representative for Rye/Newcastle – spoke opposed to the proposed crumb rubber for the Plains Fields.

Jill Capobianco - spoke opposed to the proposed crumb rubber for the Plains Fields.

Katrine Hillman - spoke opposed to the proposed crumb rubber for the Plains Fields.

Zelita Morgan – spoke regarding the recent issue of Sanctuary Cities stating that this is a challenge to think about what we need in the future and the city should be proactive.

Jackie Lucas - spoke opposed to the proposed crumb rubber for the Plains Fields.

Paige Trace – spoke in favor of the Prescott Park Master Plan as presented and stated that it is not perfect for everyone, but we should all work together going forward.

Roger Pittroff – spoke regarding the Jones Avenue Ash Dump site stating that the contaminants are moving towards the Sagamore Creek and these were not addressed originally but standards have been changed and feels the Planning Department shouldn't be making statements about the contaminants and should leave it to the experts.

Patricia Bagley – spoke regarding the Parrott Avenue title restrictions and the memo recently issued by City Attorney Sullivan. She continued that Attorney McGee strongly disagrees with the opinion of Mr. Sullivan.

Erik Anderson – spoke regarding the proposed bag ordinance stating he doesn't feel that an ordinance is necessary and should be a social choice not politically mandated. He stated this should be addressed through educating the public. Secondly, he discussed the all Veterans tax credit stating that there are good intentions on this but this will have an impact on the budget.

Paul Mannle – spoke in favor of the Prescott Park Master Plan stating that the consultants and committee members listened to all of the voices in the community.

Doug Green – Kittery resident – stated he frequently uses the park and endorses the proposed master plan, but is concerned with the parking for people who use the public docks.

Brent Schmitt - spoke opposed to the proposed crumb rubber for the Plains Fields. He urged the Council to reconsider the use of this material as he feels the City will expose itself to substantial legal claims in the future.

**Assistant Mayor Splaine moved to suspend the rules to bring forward Councilor Dwyer Item XI.D.1 of the Agenda for consideration. Seconded by Councilor Dwyer and voted.**

Councilor Dwyer gave a brief history of the process taken by the Prescott Park Master Plan Blue Ribbon Committee.

Assistant City Manager David Moore gave a brief review of the Master Plan being presented for Council approval.

**Councilor Dwyer moved to adopt the Prescott Park Master Plan as presented, seconded by Councilor Lown.**

Mayor Blalock stated it has been his honor to appoint this Blue Ribbon Committee and to participate in the process. He thanked the members of the public, a/k/a the "Breakfast Club", who attended the mostly early morning meetings as well as the members of the Committee, staff and consultants Gene Bolinger and Cheri Ruane.

**Councilor Denton moved to amend to adopt the Master Plan to include a permanent stage, seconded by Councilor Perkins.**

Councilor Denton stated we have heard many reasons why we can't have a permanent stage including the Attorney General letter but feels that people can challenge it and then the courts will have to decide.

Councilor Dwyer stated that the terminology is incorrect and should not be permanent/temporary but should be referred to as a moveable stage. She continued that all of the things that the stage will require for use, including electrical, etc. will all be there year round, but the stage itself will be moved off-season. She stated that the whole plan would have to be redesigned to incorporate a permanent stage, which is not recommended by the consultants. She concluded that the Building Inspector and City of Portsmouth will not allow anything that is not completely safe and solid and feels that people are concerned that if the stage isn't "permanent" then the Arts Festival may not be either.

Councilor Perkins commended the committee on the master plan process. She continued that she seconded Councilor Denton's motion because it has been a concern that they have all heard that a permanent structure doesn't ensure a permanent place for arts in the park, but it seems the consensus building that has gone on is more protective of the arts than anything else. She continued that there is language in the report that there is potential to move the stage to mitigate sound and asked what governance protections there will be if someone wants to move the stage a little.

Councilor Dwyer clarified that the moving of the stage is in relation to seasonality not adjusting per event.

Ms. Ruane of Weston and Sampson Design explained that they consulted with sound engineers who recommended this particular spot in the park for a moveable stage based on the permanent structures in the park and the infrastructure would be imbedded underground.

Councilor Lown stated that 2 years ago there was rancorous discussion about noise levels in the park and feels that this process has brought people together. He continued that the cost of \$16 million is no small amount, but the upgrades needed to the existing park are at \$12 million anyway. He stated that we will be able to bond the project in phases and is worth doing for the future of the city. He stated he will vote against the permanent stage and feels that having the park have that open space during the 7 off season months is staying within the original intent of the Prescott sisters.

Mayor Blalock passed the gavel to Assistant Mayor Splaine.

Mayor Blalock stated that he held his opinion regarding the stage for a long time as he wants to make sure that Arts will be a permanent feature in the Park and he is making the commitment that it will be, but agrees with the recommendation of Weston and Sampson that a moveable stage is the way to go forward.

Assistant Mayor Splaine returned the gavel to Mayor Blalock.

Assistant Mayor Splaine stated he will support the master plan and supports the reasons for having a moveable stage. He stated that there is a lot more work to be done and feels the work done by the Prescott Park Master Plan Blue Ribbon Committee is a good example of the community working together and meeting the needs of the community, neighbors and respecting the intent of the Prescott sisters.

Councilor Pearson stated she enjoyed being on the committee. She continued that she appreciates the intent of the motion as a member of the Arts community but opposes having a permanent stage. She stated she is cautiously optimistic regarding the stage although they haven't been able to find an exact replica, but agrees that the issue of the Arts being permanent will be addressed through the licensing agreements. She concluded that she is excited about the necessary cooperation and coordination that will take place between the City of Portsmouth and the Prescott Park Arts Festival as has not occurred in the past.

Councilor Cyr stated he understands that the licensing agreements will address the Arts Festival concerns, but is concerned with the timing of the upcoming season.

Mayor Blalock stated if this is adopted he will form the Advisory Committee at the next Council meeting.

Councilor Dwyer stated that the goal is to have in place the agreements for the upcoming season and then begin working on the longer term agreements for next January.

**Motion to amend failed on a 1-8 roll call vote. Councilor Denton voted in favor.**

Councilor Spear stated that this project will be done in phases but he would like to know about funds that are raised and will there be a trust established to put money into as it comes in.

Councilor Dwyer stated it would be similar to the African Burying Ground Trust fund.

Councilor Lown stated that the Prescott Trust has other trusts set up as well and feels that the City Manager could also get money from the Prescott Parks Arts Festival as they are very successful.

**Motion to adopt the Prescott Park Master Plan as presented passed on a 9-0 roll call vote.**

**Councilor Denton moved to suspend the rules to bring forward Acting City Manager Item #X1.A.6 of the Agenda for consideration. Seconded by Councilor Lown and voted.**

6. Recommendation Re: Artificial Turf at the Route 33 Athletic Complex

Councilor Dwyer asked about the timing of the decision and bid stating that this issue is not concluded and there are various studies and analysis still pending.

Public Works Director Rice stated that the Council can direct the delay of the project and he understands the concerns of the public. He stated that in reviewing the data, there is a consistent acknowledgement of there being no risk of playing on the fields. He continued that he was charged with making this decision and did so with the information he was provided with, but if told to wait, he will wait.

Mayor Blalock asked what other materials are available.

Public Works Director Rice explained the various materials available including coconut husks, which can also contain a level of arsenic. He continued that the performance of different materials varies and that injuries occur on fields that are compacted which occurs with regular soil. He continued that all materials, including natural, have levels of arsenic, lead, etc. so the key to any material used is monitoring.

Acting Manager Colbert Puff stated that the Recreation Advisory Board had a substantive presentation on this issue and can forward the information to the Council.

Assistant Mayor Splaine stated he doesn't usually question the recommendation of a Board or Commission, but feels that this needs more exploration. He stated he is concerned that the testing hasn't been thorough and that studies he has looked at, depending on the heating, freezing, wear and tear, can have an impact.

Councilor Lown stated this is a similar issue to the Coakley Landfill that the City Council is being asked to make scientific judgements based on conflicting information. He stated we do need the fields but would like Weston and Sampson to make a presentation to the Council.

Councilor Cyr stated that as he is on the Recreation Board and were presented with a half dozen options and since this hasn't gone out to bid yet, he would like more than one alternative presented.

Public Works Director Rice stated that each type of in-fill has a different padding/cushioning system so it can become more expensive.

Councilor Denton stated that perceptions become reality and feels that the fields may not be used if people are concerned.

**Councilor Spear moved to postpone action pending a presentation by Weston and Sampson regarding the crumb rubber in-fill, seconded by Assistant Mayor Splaine.**

Councilor Dwyer would like to add a second alternative of under fill be presented as well, stating that there are other fields coming up in the future and this will help make those decisions.

**Motion to postpone action pending a presentation by Weston and Sampson regarding the crumb rubber in-fill and to include an option an alternate under fill passed on a 9-0 vote.**

*Mayor Blalock called for a brief recess at 8:45 p.m. Meeting reconvened at 8:55 p.m.*

## VII. PUBLIC HEARINGS

- A. RESOLUTION AUTHORIZING A BOND ISSUE AND/OR NOTES OF UP TO FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00) FOR THE ACQUISITION OF ONE FIRE APPARATUS

Chief Achilles gave a brief history and scope of the Fire Apparatus being replaced.

Mayor Blalock opened the public hearing asking if anyone wished to speak. Seeing no one, the Mayor closed the public hearing.

- B. RESOLUTION AUTHORIZING A BOND ISSUE AND/OR NOTES OF UP TO SIX HUNDRED TEN THOUSAND DOLLARS (\$610,000.00) FOR COSTS RELATED TO IMPROVEMENTS TO FIRE STATION 3

Chief Achilles gave a brief history and scope of the Fire Station 3 improvements.

City Attorney Sullivan stated that the Pease Development Authority owns Fire Station 3.

Mayor Blalock opened the public hearing asking if anyone wished to speak.

Rick Becksted – stated that he had brought up 3 years ago the issue regarding the Pease Development Authority being exempt from paying taxes which was part of a deal 20 years ago and should be looked at again. He then discussed the fire truck stating that the current situation of how they hook up the trailer takes a lot of time and causes a delay in their response time. He stated that this department is the only one that actually brings in revenue and feels that they always have made due with what they have been given by the city, but their responsibilities continue to grow with tourists, etc.

Paul Mannle – stated that this part of the process is a formality because the Council already approved the FY17 CIP as part of the budget process. He stated he cannot say enough great things about the Fire Department as it is extremely well run and brings in \$5 million to the budget.

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

- C. ORDINANCE AMENDING CHAPTER 7, ARTICLE I, SECTION 7.101 – PARKING METERS – DEFINITION

Public Works Director Peter Rice and Parking and Transportation Manager Joey Giordano gave a brief presentation regarding the parking ordinance changes.

- D. ORDINANCE AMENDING CHAPTER 7, ARTICLE I, SECTION 7.102 – PARKING METER ZONES – DOWNTOWN HIGH OCCUPANCY ZONE

Mayor Balock opened the public hearing asking if anyone wished to speak. Seeing no one, the Mayor closed the public hearing.

- E. ORDINANCE AMENDING CHAPTER 7, ARTICLE 1, SECTION 7.105 – PARKING TO INCLUDE MOBILE PHONE APPLICATIONS AND PARKING METER FEES SHALL BE ENFORCEABLE MONDAY THROUGH SATURDAY, FROM 9:00AM TO 8:00PM

Mayor Balock opened the public hearing asking if anyone wished to speak.

Rick Becksted – stated that he feels that these changes are double dipping as they are increasing the number of hours of enforcement as well as increasing the price. He stated that the intention of the tourists being the ones who are paying these fees is incorrect because residents also like to go downtown and enjoy the restaurants and the workforce also will be hurt by this. He stated when he goes downtown he plans it for when the meters are not being enforced but if it is later, he will not go. He concluded by discussing the current discounts in the parking garage and feels that this is the area that needs to be looked at and changed.

Seeing no one else, the Mayor closed the public hearing.

- F. ORDINANCE AMENDING CHAPTER 7, ARTICLE III, SECTION 7.324 – LIMITED PARKING ONE HOUR, SECTION 7.325 – LIMITED PARKING THIRTY MINUTES, SECTION 7.326 – LIMITED PARKING FIFTEEN MINUTES, SECTION 7.327 – LIMITED PARKING TWO HOURS, SECTION 7.328 – LIMITED PARKING THREE HOURS, SECTION 7.328-1 – UTILIZATION OF MULTIPLE PARKING SPACES AND SECTION 7.329 – LIMITED PARKING FOUR HOURS BETWEEN THE HOURS OF 9:00AM AND 8:00PM MONDAY – SATURDAY AND BETWEEN 12:00PM AND 8:00PM SUNDAY, HOLIDAY EXCLUDED

Mayor Blalock opened the public hearing asking if anyone wished to speak. Seeing no one, the Mayor closed the public hearing.

- G. ORDINANCE AMENDING CHAPTER 7, ARTICLE IV, SECTION 7.406 (A) & (B) TO BE DELETED IN THEIR ENTIRETY

Mayor Balock opened the public hearing asking if anyone wished to speak. Seeing no one, the Mayor closed the public hearing.

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

- A. First reading of proposed Ordinance amending Chapter 7, Article I, Section 7.115 – Sign Permit Required for Private Parking Lot

Acting City Manager Colbert Puff explained that this ordinance addresses private companies making deals with existing property owners to use their lots, but they are not part of the City parking lots and there has been confusion. She stated this will require signage to clarify that it is not a City lot.

Parking Manager Joey Giordano explained that this is not up and running as of yet because we need to have the ordinance in place first. He stated that there are 1000-1500 under-utilized parking spaces in the city which private companies are now making agreements to be used by other companies in off hours but they are not clearly marked and this will require clearly marked signage.

Councilor Cyr stated he recently had an experience with one of these lots and asked if there will be a template for all signs to be the same.

Parking Manager Giordano stated they will all be a certain style but will be different from a city lot sign.

Councilor Dwyer stated that there is also confusion as to the times that the lots are available and would like times on the signs as well.

Councilor Pearson asked if these lots will be added to our current inventory on the website. Mr. Giordano stated yes it continually evolves as things are added and updated.

**Councilor Perkins moved to pass first reading and schedule a public hearing and second reading of the proposed ordinance at the February 21, 2017 City Council meeting. Seconded by Councilor Pearson and voted.**

- B. Second reading of proposed Ordinance amending Chapter 7, Article I, Section 7.101 – Parking Meters – Definition
- C. Second reading of proposed Ordinance amending Chapter 7, Article I, Section 7.102 – Parking Meter Zones – Downtown High Occupancy Zone
- D. Second reading of proposed Ordinance amending Chapter 7, Article I, Section 7.105 – Parking to include mobile phone applications and Parking Meter Fees shall be enforceable Monday through Saturday, from 9:00 a.m. to 8:00 p.m.
- E. Second reading of proposed Ordinance amending Chapter 7, Article III, Section 7.324 – Limited Parking One Hour, Section 7.325 – Limited Parking Thirty Minutes, Section 7.326 – Limited Parking Fifteen Minutes, Section 7.327 – Limited Parking Two Hours, Section 7.328 – Limited Parking Three Hours, Section 7.328-1 – Utilization of Multiple Parking Spaces and Section 7.329 – Limited Parking Four Hours between the hours of 9:00 a.m. and 8:00 p.m. Monday – Saturday and between 12:00 p.m. and 8:00 p.m. Sunday, Holiday Excluded
- F. Second reading of proposed Ordinance amending Chapter 7, Article IV, Section 7.406 (A) & (B) Parking in Meter Space to be deleted in their entirety

City Attorney Sullivan stated that the effective dates of Ordinances B-F will be May 1, 2017 and should be so noted as an amendment when moving third and final reading.

**Councilor Lown moved to pass second readings of Items B-F and to schedule third and final readings of the proposed ordinances with effective dates amended to May 1, 2017, at the February 21, 2017 City Council meeting, seconded by Councilor Perkins.**

Councilor Dwyer referred to the Acting City Manager comments, page 3, asking if the rates are going to be changing again soon and also what are the 2 zones.



Public Works Director Rice explained that there are already 2 zones and further explained that the current rate structure doesn't include the after-hours data and we need to augment that with real time data and this is acknowledging that the systems are changing.

Acting City Manager Colbert Puff stated there will be a work session when this information is available.

Councilor Dwyer asked if there is a way to allow flexibility so that the rates don't have to be done via ordinance change every time.

Public Works Director Rice stated that is their hope, but currently the RSA's don't allow for that.

Councilor Dwyer would like the legislative committee to look at this issue.

Councilor Denton asked about the 25 cent resident rate reduction.

Parking Manager Giordano explained with the Easy-park device it was done with a code, now with the Passport parking it can be done with the phone app and residency will be determined via vehicle registration if the information is made available to the Parking Clerk's office via the Tax Collector's Office which they are working on currently.

Councilor Spear asked about changing the various time limit requirements for consistency i.e., 30 minutes to 2 hours.

Parking Manager Giordano stated he would love to remove all time limits and control the spaces by pricing but we are not at the point to be able to do so yet.

Public Works Director Rice stated that the intent of these changes are to deal with the reality of the budget and didn't want to add too much complexity to the ordinance at this time but can do it in the future.

Councilor Spear stated he agrees that the revenue issue needs to be addressed now but feels the other issues could be done incrementally.

Assistant Mayor Splaine stated he voted against the first readings of most of these and will vote against them again. He stated he doesn't want to eliminate the 15 and 30 minute spaces as they are there for a reason. He continued that he feels that \$2.00 an hour is a lot just to go downtown for a cup of coffee and feels there needs to be a balance for residents and employees.

Councilor Pearson stated she agrees with Assistant Mayor Splaine but there are 6 free lots within walking distance to downtown for the workers as well.

Councilor Dwyer stated she would be interested in knowing how many downtown employees are able to park in private lots provided by their employers and hopes that these don't get eliminated because they can make a profit.

Parking Manager Giordano stated that one of the companies they are currently working with are keeping a certain percentage for employees.

**Motion passed on an 8-1 roll call vote. Assistant Mayor Splaine voted opposed.**

- G. Adoption of Resolution Authorizing a Bond Issue and/or Notes of up to Four Hundred Thousand Dollars (\$400,000.00) for the Acquisition of One Fire Apparatus

**Assistant Mayor Splaine moved to adopt the Bonding Resolution for One Fire Apparatus in the amount of Four Hundred Thousand (\$400,000) Dollars, as presented, seconded by Councilor Perkins. Motion passed on a 9-0 roll call vote.**

- H. Adoption of Resolution Authorizing a Bond Issue and/or Notes of up to Six Hundred Ten Thousand Dollars (\$610,000.00) for Costs Related to Improvements to Fire Station 3

**Assistant Mayor Splaine moved to adopt the Bonding Resolution for Improvements to Fire Station 3 in the amount of Six Hundred Ten Thousand (\$610,000) Dollars, as presented, seconded by Councilor Perkins.**

Councilor Dwyer asked if there is a definite life-span of the renovations as various time frames were given in the presentation of 7-15 years.

Chief Achilles explained that the renovations are expected to last 7-10 years but because that part of the city keeps growing, an aerial device will be needed but there isn't anywhere to put it at Fire Station 3.

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

## **IX. CONSENT AGENDA**

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

- A. Letter from Ashleigh Tucker Pollock, The Music Hall, requesting permission to hold the 26<sup>th</sup> annual Kitchen Tour fundraiser event on Saturday, May 13<sup>th</sup> from 10:00 a.m. to 4:00 p.m. in the Little Harbour neighborhood (***Anticipated action – move to refer to the Acting City Manager with power***)
- B. Letter from Bruce MacIntyre, Portsmouth Maritime Folk Festival, requesting permission to hold the 18<sup>th</sup> annual Portsmouth Maritime Folk Festival on Saturday and Sunday, September 23<sup>rd</sup> and 24<sup>th</sup>, 2017 (***Anticipated action – move to refer to the Acting City Manager with power***)
- C. Eversource License Agreement #63-0627 for the following:
- Four (4) replacement poles on Chase Drive
  - One (1) replacement pole at the northeast corner of Michael Succi Drive and Market Street
  - Seven hundred and forty (740) feet of conduit along the northeast side Market Street in the grass behind the sidewalk from the corner of Michael Succi Drive to across from Albacore Park
  - One (1) buried access vault half-way along the conduit
  - One (1) 25kva pad-mount transformer at the end of the conduit across from the Albacore Park
- (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)***

- D. Eversource License Agreement #63-0621 for the licensing of one (1) replacement pole and push-brace at the southwest corner of Pleasant Street and Junkins Avenue, near the entrance to the Parrott Avenue Parking lot (***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)***)
- E. Eversource License Agreement #63-0626 for the licensing of one (1) new anchoring pole on the south side of Little Harbor Road, just before the Wentworth Coolidge Mansion driveway (***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)***)
- F. Letter from Emily Christian, National Multiple Sclerosis Society, requesting permission to hold the 2017 Bike MS NH Seacoast Escape on Saturday, August 26, 2017 (***Anticipated action – move to refer to the Acting City Manager with power)***)

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

- A. Letter from Attorney Christopher Mulligan, Bosen & Associates, P.L.L.C., Re: Request for Release of Paper Streets Pursuant to RSA 231:51 and 231:52 26 Moffat Street (Tax Map 243, Lot 69)/Swett Avenue (Tax Map 243, Lot 23)

**Councilor Lown moved to refer to the Planning Board for a report back. Seconded by Councilor Perkins and voted.**

- B. Letter from North Hampton Select Board regarding Public Meetings of the Coakley Landfill Group

**Councilor Lown moved to refer to the Coakley Group for a report back and to request that the meetings be open to the public, seconded by Councilor Spear.**

Assistant Mayor Splaine asked if this group falls under the State right-to-know laws. He also asked who appointed City Attorney Sullivan to the Group.

City Attorney Sullivan stated no as they are not elected officials. He stated he was appointed by the City Council and for the last 25 years they have held monthly meetings which have produced minutes and the next meeting date has always been published in those minutes.

**Motion passed.**

- C. Letter from The Residents of Wentworth Senior Living regarding the deteriorated sidewalks on Pleasant Street

Acting City Manager Colbert Puff stated that this project was already scheduled for the upcoming summer and following spring and she will report this to Wentworth Senior Living.

## XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

### A. ACTING CITY MANAGER

Mayor Blalock stated that in accordance with City Council Rules and Orders #37 the Acting City Manager items will be voted as a Consent Agenda.

Councilor Denton requested Item #1 be removed from the Consent Agenda.

Councilor Spear request Item #2 be removed from the Consent Agenda.

**Councilor Lown moved to adopt the Acting City Manager's Consent Agenda, Items #3-5. Seconded by Councilor Dwyer and voted.**

3. Report Back Re: Request that the Involuntarily Merged Lots at 70 Sims Avenue be Restore to their Premerger Status (***Sample motion – move to accept the Planning Board's recommendation, as presented***)
4. Report Back Re: Request that the Involuntarily Merged Lots at 21 Elwyn Avenue be Restored to their Premerger Status (***Sample motion – move to accept the Planning Board's recommendation, as presented***)
5. Report Back Re: Acceptance of Street Re: New Parking Garage (***Sample motion – moved to accept the aforementioned recommendation of the Planning Board as part of the municipal parking garage project.***)
6. Recommendation Re: Artificial Turf at the Route 33 Athletic Complex (*Action taken previously on agenda*)
1. Report Back Re: Schiller Station Resolution (*remaining item from January 23, 2017 City Council Meeting*)

Acting City Manager Colbert Puff explained that at the January 9, 2017 City Council meeting, several concerned citizens brought to the City Council's attention a resolution relative to Schiller Station. The City Council was asked by the citizens to adopt the resolution. The City Council voted to refer this matter to the Acting City Manager for report back to the City Council. Staff recommends a different course of action after the bidding process is complete rather than adoption of the proposed resolution.

Deputy City Attorney Woodland referred to her memo stating process involving energy generating assets across the State of New Hampshire. Divestiture of these assets arises from State legislative efforts that began in 1996 to restructure the electricity market. As is commonly known, and recently reported in the local news, New Hampshire has some of the highest rates for electricity in the country. The legislature has found that divestiture of PSNH's generation plants is in the public interest. (RSA 369-B:3-a, I(2015)).

This divestiture process is being overseen by the Public Utilities Commission (PUC) which is an independent state body that has regulatory authority over utility providers such as Eversource (PSNH). The Office of the Consumer Advocate, who represents the interests of residential rate payers has been a party to the various proceedings along with environmental groups (the Conservation Law Foundation and the Sierra Club), the State Office of Energy and Planning, the

IBEW, and two state senators (Bradley and Feltes). Various energy providers and interests in addition to Eversource/PSNH have also participated, along with the municipalities of Berlin and Gorham.

The auction effort arises out of settlement agreements in 2015 and 2016 approved by the PUC pursuant to an express statutory directive in RSA 369-B:3-a, II. As part of those agreements, the following conditions (simplified) are imposed on the sale of the assets:

- (1) Power-generating assets must remain operational for at least 18 months after the close of the sale;
- (2) Certain collective-bargaining agreements must remain in place for at least 2 years after the close of the sale; and
- (3) Eversource will participate this month in an annual auction process that takes place in the energy markets to ensure adequate future energy capacity – this participation typically results in contractual commitments to supply energy three years out.

As a consequence, Schiller Station is likely to continue to operate in its current form for at least several years. In addition, Schiller Station is unlikely to be sold independently of other Eversource assets. Likely bidders are those that will be seeking to acquire multiple assets within the Eversource portfolio given the existing operational interrelationships among the various assets.

The PUC will look to that bidder or collection of bidders that will maximize the value of the entire Eversource energy-generating portfolio.

City staff recommends against the adoption of the proposed resolution because the only effect the resolution may have is to dissuade a potential bidder or to lower the price offered by a potential bidder. The resolution will serve only as a signal that Portsmouth is perhaps not a business friendly environment for continued operation of the asset as required by the existing PUC Orders. A lower price for the Eversource assets not only negatively impacts electric ratepayers but also could result in a diminishment of the taxes that the City collects from the Schiller Station property. The resolution will not impact any of the sale conditions outlined above.

Certainly over the course of next several years as the energy markets continue to change and the terms of the sale are fulfilled and no longer become an impediment to reuse, a potential future owner may determine that Schiller Station is best transformed into a different use. The time to weigh in on future uses is not now.

As a final note, the bidding process is currently on hold because of an appeal to the Supreme Court of one the recent PUC orders relative to certain elements of the bidding process.

Councilor Dwyer stated that if this was done as a block sale with multiple items together, the buyers would want to have done a lot of the groundwork.

Deputy City Attorney Woodland stated that is correct there have been inquiries and due diligence done so they are sending a signal that it may not be black and white in terms of zoning.

Planning Director Rick Taintor stated that this property is zoned as Waterfront Industrial District which means it can only have a warehouse if it is marine dependent which the power plant is and if anything else came in for that property it would require a variance and site plan review which is when the city would become involved.

**Councilor Denton moved to adopt the Resolution as a statement, seconded by Assistant Mayor Splaine.**

Councilor Denton stated that the purpose of this is to maximize the return of investment and although it does not have a lot of impact, it would make a statement.

Councilor Perkins stated she appreciates the presentation but feels that adopting the resolution as a statement would send a negative signal to the community.

**Motion failed on a 3-6 vote. Assistant Mayor Splaine, Councilor Cyr and Councilor Denton voted in favor.**

**Councilor Pearson moved to instruct the City Manager to reach out to the successful bidder regarding reuse of the Schiller Station and environmental concerns expressed in the citizens' submitted resolution. Seconded by Assistant Mayor Splaine and voted.**

## 2. Islington Street Utility Lines

Public Works Director Rice gave a brief power point presentation regarding buried power lines and stated that this would delay implementation by 6-8 months and cost an additional \$4.7 million for that entire corridor so they are not recommending it be done.

Councilor Spear stated he has talked to people who think this is a great idea but they also haven't seen the report yet. He stated he isn't comfortable taking action without public input and wants to make the decision more collaboratively.

Councilor Perkins stated she agrees and suggested having a West End meeting similar to the upcoming Ward 2 neighborhood meeting being held on February 8<sup>th</sup> to inform people.

Public Works Director Rice state that he doesn't believe that it has ever been stated that we were going to bury the lines.

Councilor Perkins asked if there are any figures available on what kind of savings there may be by burying the lines.

Public Works Director Rice stated that having the utilities overhead ensures accessibility for maintenance but they would have to be dug up if they are buried.

Councilor Perkins stated that this would be mostly aesthetic then.

Public Works Director Rice stated he likes underground utilities and it is appropriate in some locations.

Councilor Dwyer asked if this is a potential TIF opportunity and also wonders if there is any newer technology or pole types that don't look so bad.

Public Works Director Rice stated that there are laminated poles but the city would have to pay the difference in cost. He stated we are trying to work on a system that will work for the next 50 years instead of being reactionary.

Assistant Mayor Splaine stated he is in favor of underground utilities and had sponsored legislation on this years ago and done a lot of research but it was met with opposition. He stated he doesn't think it costs that much more to beautify the overhead utilities and would like the utility companies to eliminate guy wires.

**Councilor Spear moved to postpone for one month and bring back for a public input session. Seconded by Assistant Mayor Splaine and voted.**

**Councilor Cyr moved to suspend the rules to continue the meeting past 10:30 to finish the agenda. Seconded by Councilor Dwyer and voted.**

### **Informational items**

1. Events Listing (*January 23, 2017 City Council Meeting*)
2. Report Back Re: Text Services for Snow Ban Notification (*January 23, 2017 City Council Meeting*)
3. City Council Work Session Re: Capital Improvement Plan
4. Notification Re: City's Tax Office
5. Parrott Avenue Lot Re: Title Restrictions

Mayor Blalock stated the has an issue that is not on the Agenda, but he wanted to correct a recent appointment to the Historic District Commission of Molly Bolster which should have been as an alternate member and to appoint current alternate John Mayer to the regular position vacancy. He further explained that he has spoken with all parties involved and everyone is agreeable.

**Councilor Pearson moved to rescind the appointment of Molly Bolster as regular member to the Historic District Commission voted at the January 23, 2017 City Council meeting. Seconded by Councilor Denton and voted.**

**Assistant Mayor Splaine moved to appoint current alternate John Mayer to fill the regular Historic District commission vacancy and to appoint Molly Bolster to fill the alternative position. Seconded by Councilor Cyr and voted.**

### **C. ASSISTANT MAYOR SPLAINE**

1. Environmental Matters – to schedule a work session with town officials of Greenland, North Hampton and Rye about Coakley Landfill concerns; requesting more thorough testing of surface water abutting the Jones Avenue Landfill; asking for data concerning the chemical content of the city weed control program, and alternative options

Assistant Mayor Splaine stated that he will not be making the motion this evening but will bring it back when City Manager Bohenko is back from medical leave. Next, he asked that staff bring back options regarding weed control as this report back was asked for a while ago. Finally, he discussed the Jones Avenue Landfill stating that he has visited this site several times and it is not the same as the Sagamore Creek property, but the landfill material is going into the Creek. He stated that as the water levels rise, the Creek is encroaching onto the landfill land. He held up a

rusted horseshoe which he found during a recent site visit stating that there are many rusted items sitting in that landfill and that previous old reports didn't mention PSP's but they are in there and we need to keep on top of it like Coakley and Pease. He asked Acting City Manager Colbert Puff for a proactive plan regarding protecting the Sagamore Creek before lawsuits start coming in.

Councilor Dwyer stated that as environmental issues keep coming up, the Council needs an agreed upon set of principles regarding scientific issues. She continued that there needs to be time for the Council to understand the information that is being presented and not have to react immediately. She requested that guidance in a policy and/or principles regarding environmental and scientific issues be drafted as well.

Assistant Mayor Splaine stated that he agrees, but the "don't worry, be happy" attitude that happens when experts have weighed in may not be the correct one, i.e. the information regarding Pease wasn't released to the public for a week which gave time to "spin it".

Councilor Dwyer and Councilor Pearson took exception to the statement made by Assistant Mayor Splaine.

**D. COUNCILOR DWYER**

1. Adoption of Prescott Park Master Plan  
(Action taken previously on agenda)

**E. COUNCILOR LOWN**

1. Parking & Traffic Safety Committee Action Sheet and Minutes of the January 5, 2017 meeting (January 23, 2017 City Council Meeting)

**Councilor Perkins moved to approve and accept the Action Sheet and Minutes of the January 5, 2017 Parking and Traffic Safety Committee meeting. Seconded by Councilor Dwyer and voted.**

Councilor Lown relayed a request on behalf of a Parking and Traffic Safety Committee member that a policy be drafted regarding nighttime walkers, joggers, bicyclists, etc.

**F. COUNCILOR LOWN AND COUNCILOR DENTON**

1. Plastic Bag Ordinance (January 23, 2017 City Council Meeting)

**Councilor Lown moved to request City Attorney Sullivan to draft an ordinance similar to previously presented draft ordinance but eliminating the previously proposed fee, seconded by Councilor Denton.**

Councilor Denton explained that there is currently a bill pending in the State Legislature giving cities authority regarding single-use bags but they are bringing this forward now because this has been going on for a long time. He continued that they are also asking that the implementation date be one year from adoption. Finally, he explained that previously there was a 10 cent fee that would be imposed for not using the bag but now this is being eliminated.

Councilor Spear asked if the Legislative Delegation has weighed in on this issue.



Councilor Denton stated they did last year.

Assistant Mayor Splaine stated he supports going forward with this ordinance being drafted and has received a lot of comments on the issue. He suggested people go to Youtube to research the impact of plastics on animals, oceans, etc.

**Motion voted.**

### **G. COUNCILOR SPEAR**

#### 1. Motion to Reconsider Veterans Tax Credit Vote

Councilor Spear stated that he would like to reconsider the recently passed \$500.00 Veterans Tax Credit as he feels that not enough debate was held on the \$250.00 amount which would hold harmless all other taxpayers. He stated he is not interested in delaying the credit for another year and asked City Attorney Sullivan to advise as to the best process.

City Attorney Sullivan explained that the rules can be suspended to reconsider.

**Councilor Spear moved to suspend the rules in order to reconsider Veterans Tax Credit vote on January 23, 2017, seconded by Councilor Perkins.**

Councilor Denton stated he would like to rescind the vote entirely and start from square one.

Discussion ensued regarding the best way to approach the reconsideration/rescind of the Tax Credit.

Consensus of the Council was to refer to the February 21, 2017 Council meeting due to the lateness of the hour.

**Councilor Spear withdrew his motion, seconder agreed.**

### **H. COUNCILOR SPEAR AND COUNCILOR DENTON**

#### 1. Request to Schedule Work Session Re: Union Participation in Public Projects

Councilor Denton stated that this was previously brought up when the Wastewater Treatment Plant project was being bid and it was decided that it wasn't the time to do it then. He stated he feels the climate is appropriate to do so now so that when the next big project comes along, there will be an ordinance in place.

**Councilor Denton moved to request that a work session be scheduled regarding union participation in public projects, seconded by Assistant Mayor Splaine.**

Assistant Mayor Splaine stated he made this motion back when the Wastewater Treatment Plant was being discussed and it did not pass, but he feels that union laborers do better work and that the State is looking to destroy unions.

Councilor Lown stated he will vote against this as he does not feel a lot can be accomplished during a work session but also because we did solicit bids from companies with union labor.

Councilor Dwyer stated she doesn't want this to be confused with Right-to-work legislation but even if we include unions, there are very few in the State of New Hampshire with 9% union work force, which includes police, fire and teachers, so they would be coming from other states.

**Motion passed on a 7-2 roll call vote. Councilor Lown and Mayor Blalock voted opposed.**

## **V. MISCELLANEOUS/UNFINISHED BUSINESS**

Assistant Mayor Splaine asked for an update on the Sanctuary cities issue and the recent decision regarding the Toyota Lawsuit.

Councilor Lown stated that it is 11:20 p.m. and those are 2 big issues.

Mayor Blalock stated he agrees. He stated regarding the Sanctuary Cities he feels that it is inappropriate to discuss it at this point and had only recently received calls about the issue.

Councilor Dwyer stated that New Hampshire is the only State without a Sanctuary City.

Assistant Mayor Splaine stated that the Durham Town Manager made some good points in the news article and would like the City of Portsmouth to say the same thing in a news release. He also wants a news release regarding the Toyota Lawsuit verdict.

Councilor Pearson stated that she has been contacted by 6 residents regarding the Sanctuary City and feels it is an important issue.

## **VI. ADJOURNMENT**

**Councilor Spear moved to adjourn at 11:25 p.m. Seconded by Councilor Lown and passed unanimously.**

Respectfully submitted,



Valerie A. French  
Deputy City Clerk