

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, MAY 20, 2019 TIME: 6:00PM

- **6:00PM – WORK SESSION REGARDING COAKLEY LANDFILL – ERIC SPEAR, CHAIRMAN OF THE COAKLEY LANDFILL EXECUTIVE COMMITTEE**

I. CALL TO ORDER

II. ROLL CALL

III. INVOCATION

IV. PLEDGE OF ALLEGIANCE

V. ACCEPTANCE OF MINUTES – MAY 1, 2019 AND MAY 6, 2019

VI. PUBLIC COMMENT SESSION

VII. PUBLIC HEARINGS AND VOTES ON ORDINANCES AND/OR RESOLUTIONS

A. Public Hearing on Resolution Re: Construction of Senior Center

Resolution Authorizing a Bond Issue and/or Notes of up to Two Million Five Hundred Thousand Dollars (\$2,500,000.00) for costs related to Construction of a Senior Center

- **PRESENTATION**
- **CITY COUNCIL QUESTIONS**
- **PUBLIC HEARING SPEAKERS**
- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

B. Public Hearing – Billiards and Bowling Hours

Public Hearing and Second Reading of Ordinance amending Chapter 6, Article II, Section 6.202 – Billiards and Bowling Hours

- **PRESENTATION**
- **CITY COUNCIL QUESTIONS**
- **PUBLIC HEARING SPEAKERS**
- **ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS**

C. Public Hearing on Resolution Re: Supplemental Appropriation for Greenland Well Source Water Protection Land Purchase

Resolution Authorizing a Supplemental Appropriation from Water Fund Net Position for Greenland Well Source Water Protection Land Purchase for the sum of up to Two Hundred Twenty Thousand Dollars (\$220,000.00)

- PRESENTATION
- CITY COUNCIL QUESTIONS
- PUBLIC HEARING SPEAKERS
- ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS

D. Public Hearing on Resolution Re: Elementary School Facility Improvements

Resolution Authorizing a Bond Issue and/or Notes of up to Two Million Dollars (\$2,000,000.00) for costs related to Elementary School Facility Improvements

- PRESENTATION
- CITY COUNCIL QUESTIONS
- PUBLIC HEARING SPEAKERS
- ADDITIONAL COUNCIL QUESTIONS AND DELIBERATIONS

E. Third and Final Reading of Ordinance – Rezoning of 15 Middle Street

Third and Final Reading of Ordinance amending Chapter 10 – Zoning Map 10.5A21A by changing the property with the address of 15 Middle Street from Civic District to Character District 4 and amending Zoning Map 10.5A21B by changing the height requirement area for the property’s street frontages on Porter Street and Maplewood Avenue to 2-3 stories (40’)

VIII. APPROVAL OF GRANTS/DONATIONS

- A. *Acceptance of Donation from Micum Davis – Cornerstone Tree Care to the City Tree Trust - \$610.00 (*Sample motion – move to accept the donation of \$610.00 from Micum Davis of Cornerstone Tree Care for the City Tree Trust*)

IX. CONSENT AGENDA

(ANTICIPATED ACTION - MOVE TO ADOPT CONSENT AGENDA)

- A. Request for License to Install Projecting Sign for James McSharry & Joel Harris owner of Dos Amigos Burritos, LLC d/b/a Mr. Kim’s for property located at 107 State Street (*Anticipated action - move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement 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 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**

- B. Request for License to Install Projecting Sign for Lia Cote owner of Lia Gormley Fine Jewelry for property located at 18 Ladd Street (**Anticipated action - move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement 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 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**

- C. Letter from Chris Curtis, The Music Hall requesting permission to close Chestnut Street for the Telluride by the Sea Film Festival on Friday, September 20, 2019 through Sunday, September 22, 2019 (**Anticipated action – move to refer to the City Manager with power**)

- D. Letter from Mike Young, Portsmouth Babe Ruth requesting permission to place 15 outfield signs on the outer perimeter fencing facing inwards towards Leary Field beginning on June 1, 2019 through August 30, 2019 (**Anticipated action – move to refer to the City Manager with power**)

- E. Request from Girls on the Run New Hampshire to hold the Portsmouth 5k on Saturday, June 1, 2019 at the Pease Tradeport (**Anticipated action – move to refer to the City Manager with power**)

X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Email Correspondence (**Sample motion – move to accept and place on file**)
- B. Letter from Ben Anderson, Prescott Park Arts Festival requesting permission to host a Food Truck Festival on Saturday, August 10, 2019 and temporarily closing Marcy Street between Court Street and Hancock Street (**Sample motion – move to refer to the City Manager with power**)
- C. Letter from Mark Puffer, PretiFlaherty regarding Gosling Road Fuel Line Crossing License Agreement (**Sample motion – move to refer to the City Manager power**)

XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS

A. CITY MANAGER

City Manager's Items Which Require Action:

1. 145 Brewery Lane Easements and Deeds
2. Report Back Re: 27 Thaxter Road Involuntary Lot Merger
3. Proposed Charter Amendments

City Manager's Informational Items:

1. Upcoming FY20 Budget Work Sessions

B. MAYOR BLALOCK

1. Appointment to be Considered:
 - Reappointment of Cyrus Beer to the Historic District Commission
 - Reappointment of Martin Ryan to the Historic District Commission
2. Appointments to be Voted:
 - Appointment of Jeffrey Mattson as an Alternate to the Building Code Board of Appeals
 - Reappointment of Margot Doering as an Alternate to the Historic District Commission
 - Reappointment of Reagan Ruedig to the Historic District Commission
 - Reappointment of Jonathan Wyckoff to the Historic District Commission
 - Reappointment of Kory Sirmaian to the Recreation Board

C. COUNCILOR ROBERTS

1. Parking & Traffic Safety Committee Action Sheet and Minutes of the May 2, 2019 meeting (***Sample motion – move to approve and accept the May 2, 2019 Action Sheet and Minutes of the Parking & Traffic Safety Committee meeting***)

D. COUNCILOR PEARSON

1. *City Options to Obtain Carey Cottage

E. COUNCILOR DENTON

1. Proposed Rule Change – Rule 7 Order of Business (***Sample motion – move to accept the proposed attached Rule 7 Order of Business amendment to take effect at the June 17, 2019 City Council meeting***)
2. *Destination Electric Initiative

XII. MISCELLANEOUS/UNFINISHED BUSINESS

XIII. ADJOURNMENT

**KELLI L. BARNABY, MMC, CMC, CNHMC
CITY CLERK**


** Indicates verbal report*

**CITY OF PORTSMOUTH
PORTSMOUTH, NH 03801**

Office of the City Manager

Date: May 16, 2019

To: Honorable Mayor Jack Blalock and City Council Members

From: John P. Bohenko, City Manager 

Re: City Manager's Comments on May 20, 2019 City Council Agenda

Work Session 6:00 p.m.

1. **Work Session Re: – Coakley Landfill – Eric Spear, Chairman of the Coakley Landfill Executive Committee** The Chairman of the Coakley Landfill Group Executive Committee, Eric Spear, would like to present to the Portsmouth City Council. Eric will provide an update on the deep bedrock investigation, proposed legislation, and emerging contaminants and answer any questions the City Council has with regard to the remediation efforts of the Coakley Landfill Group.

Public Hearings & Votes on Ordinances &/or Resolutions

1. **Public Hearing on Resolution Authorizing a Bond Issue and/or Notes of Two Million Five Hundred Thousand Dollars (\$2,500,000) for Costs Related to the Construction of Senior Center** At its meeting on May 6, 2019, the City Council voted to bring forward this project for bonding at its May 20th meeting. Under Section VII of the Agenda, [attached is a Bond Resolution](#) of up to Two Million, Five Hundred Thousand Dollars (\$2,500,000). This funding will be combined with approximately One Million, Five Hundred Twenty Five Thousand, Two Hundred Dollars (\$1,525,200) from the Daniel Street Trust, which the City Council, at its May 6th meeting, approved the City Manager's authorization to request from the Trustees of the Trust. Together, a total of Four Million, Twenty Five Thousand, Two Hundred Dollars (\$4,025,200) will be available for construction completion of the Senior Center.

In February, 2019 the deed to the Paul A. Doble U.S. Army Reserve Center located at 125 Cottage Street was transferred to the City of Portsmouth after numerous years and efforts to acquire this property for the purpose of a new senior activity center.

Per the recommendations of the Mayor's Blue Ribbon Senior Committee Report in December, 2013 and Recreation Board's Senior Sub-Committee in May, 2015, City staff

have been making plans for an adaptive reuse and renovation of the property into the future home of the Portsmouth Senior Center. With funding support from the City's U.S. HUD Community Development Block Grant program, design and engineer plans have been completed by AECm from Newmarket, and architects, Mannypenny & Murphy from Portsmouth. Additionally, asbestos abatement was completed in April.

As the next phase of this project advances, the City is preparing to go out to bid for a construction contractor. The total project cost is \$4.5 M. Of this total, approximately \$400,000 has been expended to date and there is \$1.6 M currently available to spend. Those available funding sources are from the Daniel Street Trust and the FY 16 & FY 17 General Fund-CIP. Additional funds of \$2.5 M are needed to complete the new senior activity center as designed and envisioned.

I recommend the City Council move to adopt the Resolution, as presented. Two-thirds vote is required.

- 2. Public Hearing and Second Reading of Ordinance Amending Chapter 6, Article II, Section 6.202 – Billiards and Bowling Hours** At the City Council meeting on May 6, 2019, the Council voted to authorize the City Manager to bring back ordinance **Chapter 6, Article II Billiards and Bowling**, as amended, for a public hearing and second reading. [Attached is the referenced ordinance.](#)

I recommend the City Council move to pass second reading and schedule third and final reading for the June 3, 2019 City Council meeting.

- 3. Public Hearing on Resolution Authorizing Supplemental Appropriation from Water Fund Net Position in the Amount of Two Hundred Twenty Thousand Dollars (\$220,000) for Costs Related to Source Water Protection Project – Purchase of 3.11 Acres of Undeveloped Land Adjacent to the Greenland Well** At its meeting on May 6, 2019, the City Council voted to bring forward a supplemental appropriation from Water Fund Net Position at its May 20th meeting regarding costs related to Source Water Protection Project – Purchase of 3.11 Acres of Undeveloped Land Adjacent to the Greenland Well. Under Section VII of the Agenda, [attached is a Resolution](#) of up to Two Hundred Twenty Thousand Dollars (\$220,000) from Water Fund Net Position. This funding will be offset with approximately Ninety Thousand Dollars (\$90,000) from grant funds from the New Hampshire Drinking Water & Groundwater Trust Fund, which has been awarded by the Governor and Council for this purpose. Together, a total of Two Hundred Twenty Thousand Dollars will be available for purchase of the 3.11 acre parcel of land.

The City's Water Division has negotiated the purchase of a 3.11 acre parcel of undeveloped land that is located within the Sanitary Protective Area (SPA) of the Greenland Well ([see attached map](#)). The SPA is defined by the NH Department of Environmental Services as the area within a 400 foot radius from the well that should be maintained in natural conditions and under the control of the water system for the purpose of protecting the source water quality. The parcel was subdivided in 2003 and approved

by the Town of Greenland as a buildable lot. If a house was built on this lot, water quality of the Greenland Well would be threatened by potential septic system contamination or failure, impervious runoff loading, and land use activities such as vehicle maintenance and lawn treatments.

Since the Greenland Well was improved with a replacement well and new building in 2016, negotiations with the nearby property owner, Mr. John Chick, Jr., have been ongoing. A purchase and sale agreement between the property owner and the City of Portsmouth has been signed by the property owner. The proposed purchase price is \$220,000 for the parcel.

Grant funds from the New Hampshire Drinking Water & Groundwater Trust Fund have been awarded by the Governor and Council for this purchase. The amount of 48% of the purchase cost, up to a maximum of \$90,000 has been awarded. [A copy of that award letter is attached.](#) Acceptance of these funds requires the addition of deed restrictions to prevent uses that could affect the groundwater quality. The parcel will also need to be surveyed and appraised, and a baseline report of the parcel conditions will need to be prepared.

A separate two-thirds vote of the City Council following a public hearing will be needed in order to utilize water enterprise fund net position for this purchase (\$130,000 + \$90,000 = \$220,000).

I recommend the City Council move to adopt the Resolution, as presented. Two-thirds vote is required.

4. **Public Hearing on Resolution Authorizing a Bond Issue and/or Notes of Two Million Dollars (\$2,000,000) for Costs Related to New Franklin Elementary School Facility Improvements** At its meeting on May 6, 2019, the City Council voted to bring forward project bonding at its May 20th meeting. Under Section VII of the Agenda, [attached is a Bond Resolution](#) of up to Two Million Dollars (\$2,000,000) for facility improvements of the New Franklin Elementary School, as it has been identified in the FY2020 Capital Improvement Plan.

I recommend the City Council move to adopt the Resolution, as presented. Two-thirds vote is required.

5. **Third Reading of Ordinance amending Chapter 10 – Zoning Map 10.5A21A by changing the property with the address of 15 Middle Street from Civic District to Character District 4 and amending Zoning Map 10.5A21B by changing the height requirement for the property’s street frontages on Porter Street and Maplewood Avenue to 2-3 stories (40’):** On February 4, 2019, Attorney Phoenix submitted a letter to the City Council on behalf of his client, James McSharry, requesting that this property be re-zoned from CIVIC to Character District 4 (CD-4). At the February 19, 2019 City

Council meeting, the Council voted to refer this request to the Planning Board for a recommendation.

The Planning Board held a public hearing on this request at the March 21, 2019 meeting and voted 6 to 1 to recommend to the City Council that this property be re-zoned as follows:

1. From CIVIC District to Character District 4 (CD4)
2. From no height standard to 2-3 stories (40')

The City Council held a public hearing at the second reading of this zoning amendment on May 6, 2019. At that time, the Council voted to pass second reading and schedule third and final reading for May 20, 2019.

I recommend the City Council vote to pass third and final reading at the May 20, 2019 City Council meeting.

Consent Agenda:

1. **Request for License to Install Projecting Sign** Attached is a request for permission to install a projecting sign that extends over the public right of way for James McSharry and Joel Harris, owners of Dos Amigos Burritos, LLC d/b/a Mr. Kim's at 107 State Street, as follows:

Sign dimensions: 28" x 42"
Sign area: 8 sq. ft.

The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed.

I recommend the City Council move to approve a revocable municipal license, subject to the following conditions:

1. *The license shall be approved by the Legal Department as to content and form;*
2. *Any removal or relocation of the sign, for any reason, shall be done at no cost to the City; and*
3. *Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the 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.*

2. **Request for License to Install Projecting Sign** Attached is a request for permission to install a projecting sign that extends over the public right of way for Lia Cote, owner of Lia Gormley Fine Jewelry at 18 Ladd Street, as follows:

Sign dimensions: 30” x 10”

Sign area: 2 sq. ft.

The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed.

I recommend the City Council move to approve a revocable municipal license, subject to the following conditions:

1. *The license shall be approved by the Legal Department as to content and form;*
2. *Any removal or relocation of the sign, for any reason, shall be done at no cost to the City; and*
3. *Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the 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.*

City Manager’s Items Which Require Action:

1. **145 Brewery Lane Easements and Deeds** In an effort to promote more housing opportunities and community space in the West End, the Planning Board approved a multi-family project at 125 – 155 Brewery Lane on April 29, 2018. This development consists of a new 92-unit, 4 story apartment building on an 18,430 square foot footprint, and also includes two new pocket parks, a square, widened sidewalks, and the preservation of a natural park. Chinburg Properties (d/b/a Portsmouth West End Development, LLC) is the developer. This property is located within the *Character District 4-W* (West End), which allows for a wide range of mixed uses, however, there are height and footprint restrictions. In conformance with the *West End Incentive-Based Overlay District*, the developer agreed to construct publically-accessible, community space on the lot in exchange for exceeding the ordinary requirements in the West End. This proposal is contingent on City Council approval, and certain conveyances to and from the City, which are described in detail below.

In much of the West End, buildings may not exceed 3.5 stories or have a footprint in excess of 15,000 square feet. The West End Incentive Overlay District, listed under Section 10.5A46, allows the Planning Board to approve a development with a full four stories and a larger building footprint, provided at least 20% of the property is comprised of so-called “community space”. Under Section 10.5A45.10, community space includes,

but is not limited to, wide pedestrian sidewalks, pocket parks, squares, greenways and other public spaces. Such areas shall be designated at the full discretion of the Planning Board and include deeded public access.

The approved site plan at 125 – 155 Brewery Lane shows a 92-unit, 4-story residential apartment building with a building footprint of 18,430 square feet. The approved building contains 45 subsurface or basement parking spaces and an additional 128 surface parking spaces for a total of 173 spaces. This new construction will be in addition and adjacent to the two existing brick commercial buildings on the property. Additionally, the approved community spaces include wide pedestrian sidewalks, pocket parks, a square, and a natural park along Chevrolet Avenue. These public spaces comprise nearly 30% of the property area. The City already has permanent access to the natural park along Chevrolet Avenue via an easement conveyed to the City in 1999.

As part of the approval process, the applicant is required to submit new deed easements to the City for these community spaces. Furthermore, the developer must relocate the sewer line currently crossing the property, because its current location interferes with the proposed apartment building. Similarly, the drainage easement from Plaza 800, owned by the Griffin Family Corporation, must be relocated. Thus, the Legal Department requests authority from the City Manager to accept the following deed easements as listed below:

Easements for 125 – 155 Brewery Lane

1. [Community Spaces and Access \(see Exhibit 1\)](#)

Exhibit 1 – Easements for Public Access and Use of Parks, Community Space and Sidewalks.

The Public Access Easement ensures permanent public access to sidewalks, the two pocket parks, a square, and reaffirms public access to the natural park.

- Pocket Parks: conveying the permanent right for the public to use and enjoy two pocket parks, including 9,900 square feet (Area C) and 3,606 square feet (Area E).
- Square: conveying the permanent right for the public to use and enjoy this public space, including 13,351 square feet as indicated at Area D.
- Sidewalks: conveying the permanent right for the public to use and enjoy sidewalks at least 12 feet wide, and consisting of 2,110 square feet at Area A and 7,721 square feet at Area B.

Access Easements: conveying the unobstructed, permanent right for the public to access the above-described areas, via Proposed Access Easement 1, Proposed Access Easement 2, and Proposed Access Easement 3.

2. [Public Sewer Easement to the City and Drainage Easement to Plaza 800 \(see Exhibit 2A & 2B\)](#)

Exhibit 2A – Griffin Family Corporation (Plaza 800) Drainage Easement Deed

The Drainage Easement Deed conveys drainage rights to Plaza 800, and has been approved by the grantee, the Griffin Family Corporation. City Council approval will allow this drainage system to tie in to the existing City drainage system.

Exhibit 2B – Public Sewer Easement

The sewer line over this lot must be moved to prevent the line from passing under any building. This 8,456 square foot easement will ensure the public sewer line passing over this lot will not have any buildings or structures constructed over it in the future, and it grants the City the perpetual right to lay, construct and maintain the sewer line. The construction of the new line shall be completed at the sole expense of the developer. Further, this easement must be recorded, and the work completed, prior to the extinguishment of the existing sewer line easement described in Exhibit 4.

3. [Terminate all existing sidewalk easements along Plaza 800 & Chevrolet Avenue \(see Exhibit 3\)](#)

The Termination of Sidewalk Easement will extinguish the City's rights to the existing sidewalks, as these sidewalks will be replaced by the new, expanded sidewalks described in Exhibit 1.

4. [Partial Termination of Existing Utility Easement \(see Exhibit 4\)](#)

Exhibit 4 – Partial Termination of Permanent Utility Easement

This document serves to extinguish the existing public utility easement in favor of the public sewer easement described in Exhibit 2B. In 2017, Portsmouth West End Development, LLC purchased the subject property, subject to certain easements. Among these easements was a utility easement, which ensured the City's right to

maintain the existing sewer line. As described above, the developer, at its sole expense, shall move the sewer line. This easement deed completely terminates the existing utility easement, however, the document conveying these rights also conveyed certain rights of way, a conservation easement, a siren easement, and a sidewalk easement, none of which are addressed by Exhibit 4.

I recommend the City Council move to authorize the City Manager the authority to negotiate, discharge and extinguish the following:

Any outstanding easements which may interfere with the proposed development, as approved by the Planning Board;

Any easements that might be necessary to allow the development of 125 – 155 Brewery Lane as outlined in attachments 1 – 4 prepared by Portsmouth West End Development, LLC and as recommended by the Planning Board.

2. **27 Thaxter Road Involuntary Lot Merger**

On February 21, 2019, [Attorney Mulligan submitted a request \(attached\)](#) on behalf of his client, Chad Callihan to restore two involuntarily merged lots to their premerger status.

The parcel at 27 Thaxter Rd ([Assessor Map 166, Lot 39 – attached as Exhibit A](#)) appears to have been created from 3 previous existing lots (referred to as lots 44, 45, and 46), which the owner’s representative indicates were described in the City’s tax records as recently as 1971. According to the City Assessing records ([attached as Exhibits B – F](#)), in or around 1940 a garage was constructed that straddled two of the three lots (lots 44 and 45). Therefore, it would appear that those two lots were merged voluntarily through this overt action by the owner at the time. However, the third lot (46) has remained undeveloped. The owner is requesting that lot 46 be unmerged and restored to its premerger status measuring 2,580 square feet. The remainder of the lot (created by the merging of lots 44 and 45) will measure 10,000 square feet. This request is being made pursuant to RSA 674:39-aa, Restoration of Involuntarily Merged Lots.

Statutory Requirements

RSA 674:39-aa requires the City Council to vote to restore “to their premerger status” any lots or parcels that were “involuntarily merged” by municipal action for zoning, assessing, or taxation purposes without the consent of the owner. Unlike all other lot divisions, there is no statutory role for the Planning Board in this process, but the City Council refers such requests to the Board for its review and report back. The Planning Board also holds a public hearing after noticing abutters.

The statute defines “voluntary merger” and “voluntarily merged” to include “any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line” (RSA 674:39-aa, I). It is, therefore, the City Council’s responsibility to determine whether a merger was voluntary (i.e., requested by a lot

owner) or involuntary (implemented by the City without the owner's consent). If the merger was involuntary, the Council must vote to restore the lots to their premerger status. Following such a vote, the City GIS and Assessing staff will update zoning and tax maps accordingly. It will then be up to the owner to take any further action to confirm the restoration to premerger status, such as recording a plan at the Registry of Deeds.

It is important to note that the granting of a request to restore lots to their premerger status does not mean that the resulting lots will be buildable or, if already developed, will conform to zoning. The statute states that "The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing land use ordinances" (RSA 674:39-aa, V). For example, the restored lots may not comply with current zoning requirements for lot area, frontage and depth, and the re-establishment of a lot line between any two pre-merger lots may introduce a new nonconformity with respect to maximum allowed building coverage or a minimum required side yard where a building already exists on one of the premerger lots. In such cases, the owner(s) of the applicable lot(s) would have to apply to the Zoning Board of Adjustment for the necessary variances to restore zoning compliance or to allow future development.

Analysis

While no original subdivision plan has been provided by the owner, a cursory review of the Rockingham County Registry of Deeds records by the Planning Department found a recorded deed (Book 0943, Page 0498) dated August 10, 1938 that described these lots as lots 44, 45 and a part of 46 as shown on a plan entitled "Plan of part of Westfield Park, drawn by John W. Durgin, C.E., dated August, 1933 and recorded in Rockingham Records, Plat 25, Page 2". Further search of the County Records located the plan (#0782) dated August, 1933 which appears to show the lots referenced in the deed. The lots described on these two documents from the Registry are also consistent with the dimensions provided in the tax cards provided by the owner in his request to restore the lots to their premerger status. As there is evidence that a structure (garage) was constructed over the lot line of two of the lots, the Planning Department would agree that this constitutes an overt action to merge two of the lots in question. However, there is no evidence that any such action was taken to merge the third lot.

Planning Board Review

The City Council referred this request to the Planning Board at its March 4, 2019 meeting. The Planning Board held a public hearing on this request at its April 18, 2019 meeting. At that time, the Board voted to recommend that the City Council restore the lots to their premerger status with the stipulation that Planning Department Staff meet with one of the abutters to go over her concerns raised during the public hearing. After meeting with Ms. Jennings, the Planning Department staff is recommending restoring the lots to their premerger status of two distinct lots (after the garage was constructed in the 1940s.)

I recommend the City Council vote to restore the two involuntary merged lots at 27 Thaxter Road to their pre-merger status.

3. **Proposed Charter Amendments** The City Council has authorized the process to commence on placement of two proposed Charter amendments to be put on the ballot for referendum vote at the municipal election schedule for November 5, 2019. The authorizing determination and the proposed amendments are as follows:

Proposed Charter Amendment #1 - Compensation of City Councilors

At the City Council meeting on February 4, 2019, the Council voted to commence the Charter amendment process with respect to deleting from the Municipal Charter the last sentence in section 4.6, which reads “However, no City Councilor, except the Mayor, shall receive more than Fifteen Hundred (\$1,500) Dollars during any calendar year.”

Proposed Charter Amendment #2 - Police Commission Vacancies

On January 22, 2019, after voting to appoint Stefany Shaheen to fill a vacancy on the Police Commission, the City Council discussed the process for filling vacancies on the Commission. Apparently, without taking any formal vote, the Council then requested a proposed Charter amendment to reconcile the process of filling vacancies on the Police Commission with State law as opined by the Office of the Attorney General in 2015. The Attorney General opinion was based upon the provisions of [RSA 105-C:3 \(attached\)](#), a statute relating to statutory police commissions in towns. That opinion calls for vacancies on the Police Commission to be filled by vote of the Council, whereas the Charter looks to the last election to fill vacancies.

PROCEDURE

The process which governs the handling of the proposed amendments by the Council is described in state law RSA 49-B, relevant portions of which are attached ([RSA 49-B:4-a and RSA 49-B:5 I](#)). Briefly, the statute requires that if the Council wishes to proceed with these proposed amendments, it shall provide for notice and a public hearing. The notice must be published in the newspaper at least seven (7) days prior to the hearing. The notice must contain both the text of any proposed amendment and a brief explanation. Subsequent to the public hearing, if the Council wishes to proceed with any amendment, the City Clerk shall be so advised and she should report to the Attorney General, the Secretary of State, and the Commissioner of the Department of Revenue Administration under RSA 49-B:4-a. Within seven (7) days of receiving approval from the Secretary of State, the Attorney General and the Department of Revenue Administration under RSA 49-B:4-a (see below), the City Council may order the proposed amendment to be placed on the ballot at the next regular municipal election held not less than sixty (60) days after that order is passed.

STATE APPROVALS

After the City Clerk files a report with the Secretary of State, the Attorney General and the Commission of the Department of Revenue Administration, those officials “shall review the [proposed Charter Amendments] to ensure that [they are] consistent with the general laws of this state.” If any of those officials do not approve, the proposed Charter Amendment(s),

“shall not be placed on the municipal ballot.” However, “failure to specify objections to a proposed Charter or Charter Amendment within forty-five (45) days shall constitute approval by the Secretary of State, Attorney General or the Commissioner of the Department of Revenue Administration.”

TIMELINE

For Council guidance on the timing of its actions regarding Charter amendments, please be advised of the following:

<u>Action</u>	<u>Time Required</u>	
A. City Council vote to hold a public hearing	Seven (7) day notice required plus two (2) days to place advertisement in newspaper	9 days
B. Notice to State Agencies	Fourteen (14) days	14 days
C. State Agency Response	Forty-five (45) days	<u>45 days</u> 68 days

Given that the City Clerk must file her final ballot form for printing no later than September 10, 2019, the first step in the foregoing process must take place prior to July 4, 2019. Given the current schedule of City Council meetings it would appear that the last possible regular Council meeting date at which the Council must vote on a specific Charter Amendment in order to meet the foregoing timeline is June 17, 2019.

The foregoing assumes the minimum possible deadlines for achieving the various actions required by stature. It assumes, for example, that the City Clerk can get a notice of hearing published in two (2) days and not three (3). Thus, in order to allow sufficient time for every step to be taken and still have some time to accommodate procedural issues which might arise, it is recommended that the City Council vote on any proposed Charter Amendment no later than the Council meeting of June 17, 2019.

Attachments:

- (1) Proposed Charter Amendment #1
- (2) Proposed Charter Amendment #2
- (3) RSA 49-B:4-a
- (4) RSA 49-B:5 I
- (5) RSA 105-C:3

I recommend the City Council establish a public hearing on proposed Charter Amendments #1 Compensation of City Councilors and #2 Police Commission Vacancies on June 17, 2019 at the City Council meeting, and further, vote on each of the aforementioned Charter Amendments to be placed on the November, 2019 ballot no later than the June 17, 2019 City Council meeting.

Informational Items:

1. **Upcoming FY20 Budget Work Sessions** Next week's FY 2020 Department Budget Work Sessions will be held on Wednesday, May 22nd at 6:30 p.m. for the Budget Review, and Thursday, May 29th at 6:30 p.m. for the Budget Review Follow-up (if necessary).