

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX  
DATE: TUESDAY, NOVEMBER 12, 2019

PORTSMOUTH, NH  
TIME: 6:15PM

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### There was one table for Public Dialogue Session

PRESENT: Mayor Blalock, Assistant Mayor Lazenby, Councilors Roberts, Pearson, Dwyer, Perkins, Raynolds and Becksted

ABSENT: Councilor Denton

John Tabor, Rich Burbine and Ken Bellevue spoke regarding the Prescott Park and how it is important to have a covered stage. Mr. Tabor said the stage would be part of Phase I of the project for the park. He stated he is concerned and would like an agreement for the stage in place sooner than later. He said to have an agreement in place would help assure their \$1.5 million donor to give them some surety.

Mayor Blalock said the plan is to move forward with the stage. He said we would need to put funds aside in the Capital Improvement Plan.

Councilor Dwyer said she is not sure what additional agreement would be needed at this point. She asked are you looking to start Phase I.

Mr. Tabor said phasing in the project would be important.

Councilor Pearson asked about the stage and if plans have been brought forward.

Mr. Tabor said maybe a work session should be held on this matter.

Ken Bellevue said he would like a permanent stage versus a movable one. He said there are donors to fund a permanent stage.

Mayor Blalock said that would come with placement of funds from the Capital Improvement Plan. He said materials used and design would evolve like any project.

Councilor Dwyer said maybe in advance of the Capital Improvement Plan a work session could be held to look at moving into Phase I.

Mr. Tabor said we need a structure that is safe. He said 2021 could be the first season with a covered stage.

Mayor Blalock said it is more likely that the new City Council would deal with this matter.

Paige Trace spoke to the phasing of the project and what Mr. Tabor is asking for is the City Council to approve a permanent stage ahead of Phase II.

Councilor Dwyer asked Public Works Director Rice to speak regarding the phasing process.

Public Works Director Rice said an initial survey took place and then a phasing of work for an underground survey. He stated part of the phasing plan could include a stage but there are questions related as to how to move forward. He stated we need to come back with engineering findings for City Council approval for the master plan. Public Works Director Rice said the City Council needs to review the potential changes and in terms of a report back, it could come back soon, either the December 2, 2019 meeting or the December 16, 2019 Council meeting.

Councilor Becksted said a work session will be held and working with the Public Works Department and City Council is what needs to be done.

Marc Stettner said he wrote a letter to the City Council regarding travelling along Woodbury Avenue and spoke to the medians and feels they are a hardship to vehicles. He said he has seen vehicles making a last minute avoidance of the medians because they're taking up a portion of the road in the center and they are difficult to see.

Public Works Director Rice said a complete streets for traffic calming was approved by a previous City Council. He said a series of meetings with the public took place and what was settled upon was medians and raised intersections, they're tried and true for traffic calming and are not unusual. He spoke to working with residents and signage for speed tables. He said that this was a very public process. Public Works Director Rice stated there will be granite pavers on the medians.

Councilor Reynolds said these are standard plans for speed tables and medians. He said there was a design of the area because of residents on Maplewood and Woodbury Avenues. He urged Mr. Stettner to give the process a change.

Councilor Roberts said some could use lights on the road and stated staff will be monitoring speeds going forward.

Mr. Stettner said he was not included in the meetings with the public. He asked for speed to be reduced and said there is some disparity between neighborhoods. He said there are sidewalks in place on Maplewood Avenue but not Edmond Avenue.

Paige Trace requested an update on the McIntyre and when we will be responding to the National Park Service.

Councilor Dwyer said she feels like it would be at the next City Council meeting. She said responses will be quickly given.

City Manager Bohenko said he could have a report back at the December 2, 2019 City Council meeting.

Councilor Roberts said he does not feel that the ground lease would be signed before the end of the year.

Mayor Blalock explained that there needs to be a plan attached for the National Park Service.

Bill Downey said the reply from the National Park Service was October 21<sup>st</sup> and asked why wasn't it provided to the City Council until today, why was there a three week gap.

Mayor Blalock said we do not receive every correspondence between City departments.

Mr. Downey said there should have been a closer gap in responses and it should have been on the website.

Marc Stettner asked about a walk away agreement for the McIntyre.

Councilor Dwyer said you would need to review the agreements that are on-line. Councilor Perkins said our outside counsel should respond to that question.

At 6:50 p.m., Mayor Blalock closed the session.

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## **I. WORK SESSION**

*There was no Work Session this evening.*

## **II. CALL TO ORDER**

Mayor Blalock called the meeting to order at 7:10 p.m.

## **III. ROLL CALL**

PRESENT: Mayor Blalock, Assistant Mayor Lazenby, Councilors Roberts, Pearson, Dwyer, Denton, Perkins, Raynolds and Becksted

## **IV. INVOCATION**

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

## **V. PLEDGE OF ALLEGIANCE**

Mayor Blalock led the Pledge of Allegiance.

## **VI. ACCEPTANCE OF MINUTES**

*There are no minutes on for acceptance this evening.*

## **VIII. PUBLIC DIALOGUE SUMMARY**

Councilor Dwyer gave a brief summary of the topics discussed during the Public Dialogue Session - Prescott Park Stage/Project; New Road Medians on Woodbury Avenue and Maplewood Avenue; and National Park Service Re: McIntyre.

**Assistant Mayor Lazenby moved to suspend the rules in order to take up Item XIII. A.1. – Minor Amendment to Portsmouth Historical Society Lease. Seconded by Councilor Perkins and voted.**

City Manager Bohenko said this is a minor amendment to make bathrooms ADA compliant and available to the general public. He said people want bathrooms in the downtown and another area available to the public. He said no local tax dollars are being spent.

**Assistant Mayor Lazenby to authorize the City Manager to execute the attached lease amendment. *The amendment would bring bathrooms into compliance with the Americans with Disabilities Act (ADA).* Seconded by Councilor Dwyer and voted.**

City Manager Bohenko said the Historical Society have been great steward of the building.

Mayor Blalock said the building has been well taken care of and great work has been done to the building.

## **IX. PUBLIC HEARINGS ON ORDINANCES AND/OR RESOLUTION**

### **A. Public Hearing/Second Reading of Ordinance – Food Licensing and Regulations:**

Public Hearing/Second Reading of Ordinance amending Chapter 4, Article 1, Sections 4.103 – Adoption of Specific Parts HE-P 2300, and Section 4.105 – License

Health Inspector McNamara said the ordinance updates are to separate the food processing plants as a separate code, as they are not the same businesses. She reported the code is over 600 pages and the new ordinance on processing plants is 6 pages and will be consistent with national standards on specialized foods and ingredients. She spoke to the informational meetings held on the changes.

Councilor Perkins asked about any new changes for the processing plants. Health Inspector McNamara said there are no new changes in the updates.

Mayor Blalock declared the public hearing open and called for speakers. With no speakers, Mayor Blalock declared the public hearing closed.

**Councilor Roberts moved to pass second reading and schedule third and final reading of amendments to Chapter 4 (Food Code) for the December 2, 2019 City Council meeting. Seconded by Assistant Mayor Lazenby and voted.**

### **B. Public Hearing/Second Reading of Ordinance – Fire Codes:**

Public Hearing/Second Reading of Ordinance amending Chapter 5, Article VIII – Alarm Systems and Article IX – Adopted Fire Codes

Fire Marshall Howe said the adoption of the ordinance are for housekeeping issues with no change to substance.

Mayor Blalock opened the public hearing and called for speakers. With no speakers, Mayor Blalock declared the public hearing closed.

**Assistant Mayor Lazenby moved to pass second reading and schedule third and final reading of the amendments to Chapter 5 (Fire Code) for the December 2, 2019 City Council meeting. Seconded by Councilor Dwyer and voted.**

- C. Public Hearing/Second Reading of Ordinance – International Building Code & International Residential Code & International Plumbing Code, International Mechanical Code, Fuel Gas Installations and National Electrical Code:

Public Hearing/Second Reading of Ordinance – International Building Code & International Residential Code & International Plumbing Code, International Mechanical Code, Fuel Gas Installations and National Electrical Code

Building Inspector Marsilia provided a presentation on the ordinance. He stated this is an update to administrative codes which the Governor approved in July. He said updates from 2009 to 2015 are included in Chapter 12 and Chapter 15. He informed the Council that a public informational meeting was held on October 21<sup>st</sup>. Building Inspector Marsilia said there are links on the website to the codes and are all read only documents. He stated copies are on file in the City Clerk's office, the Library and Inspection Department.

Councilor Becksted thanked Building Inspector Marsilia and said he is pleased that questions will be asked and questioned when the new code ends and the new one begins. Inspector Marsilia said anything submitted prior to September 15<sup>th</sup> are under the 2009 codes.

Councilor Perkins said there are no substance changes to the City amendments, more administrative changes. Councilor Perkins said the 2015 code was adopted but not 2018. Inspector Marsilia said that is correct.

Mayor Blalock read the legal notice, opened the public hearing and called for speakers. With no speakers, Mayor Blalock declared the public hearing closed.

**Councilor Denton moved to pass second reading and schedule third and final reading of the amendments to Chapter 12 and Chapter 15 (Building Codes) for the December 2, 2019 City Council meeting. Seconded by Assistant Mayor Lazenby.**

Councilor Denton said he is excited about the renewable climate changes. He said that this is a start and is pleased we are doing this.

**Motion passed.**

D. Public Hearing/Second Reading of Ordinance – Zoning Ordinance – Flood Plain Overlay District:

Public Hearing/Second Reading of Ordinance amending Chapter 10 – Zoning Ordinance, Article 6 – Overlay Districts and Article 15 – Definitions – Flood Plain District

Environmental Planner Britz said public information sessions were held on these ordinances. He said the purpose is to protect the wetland areas and adjacent upland areas. He addressed the amendments to the Ordinance. He stated that a description of wetland areas and elevation of the areas need to be reviewed.

Councilor Perkins asked about boundary installation and what would be a trigger for that. Environmental Planner Britz said it would come as part of the wetlands application but you need to show where you are putting the wetlands boundaries.

Councilor Dwyer asked if there would be a checklist provided to applicants. Environmental Planner Britz said they could provide a checklist and put that on-line. He said providing information does not mean approval.

Environmental Planner Britz spoke regarding a 100 year flood area and said we must have an ordinance in place to keep up with insurance requirements. He said maps and the Federal Government are not ready for us to adopt and in order to be ready we need to have ordinance changes in place. He spoke to other ordinance changes regarding vehicles, climate changes and expanding the flood plain area. He spoke to the current substantial improvements to properties require 50% more and would need to elevate the property but this is only for new construction.

Councilor Roberts asked how many properties would be effected. Environmental Planner Britz said currently we have 158 flood areas. He said today they're paying flood insurance.

Councilor Becksted said you are creating the ordinance before the maps. Environmental Planner Britz said the map would not change, only the data. Councilor Becksted asked would we enforce the changes with a map. Environmental Planner Britz said if you live in the flood plain you would require flood insurance.

Mayor Blalock said we would be enforcing the ordinance based on the current map in 2006. Environmental Planner Britz said this is in keeping with the federal flood insurance.

Councilor Denton asked about overall height of building of the land grade and if that could be changed from 2 feet to 4 feet. Environmental Planner Britz said you may want to update this in 10 to 15 years.

Mayor Blalock read the legal notice and opened the public hearing regarding Flood Plain Overlay District.

Jim Ferland said he understands the intent of the ordinance but said it lacks of definition makes it difficult to apply some of the changes. He said some of the changes will place a heavy burden on property owners and there is no consideration for historical age of the property. He spoke to there being no definition of storage of equipment or materials. He asked if it was limited to storage on the land and stated there are many ambiguities in the language. He stated based on definitions you would need a building permit, which will add significant burden to waterfront businesses. He said there is also language that is contradictory in the ordinance surrounding flooding around buildings. He said that this ordinance creates a financial hardship.

Esther Kennedy said we are talking about new initiatives and she would like to continue the second reading to see what the differences mean. She said we need to look at flood, proofing the residential areas and it was difficult to move forward with insurance for her and now were looking at another flood change. She said she would like to receive more information because raising her whole house would be quite expensive.

Paige Trace asked why we are doing this right now without discussion on how this will effect development projects. She would like to hear more about how it would affect commercial development. She said she does not want to close the public hearing and have a more general overview provided. She said she won't be effected but is concerned for others.

With no further questions, Mayor Blalock passed the gavel to Assistant Mayor Lazenby.

**Mayor Blalock moved to keep the public hearing open and postpone second reading until December 2, 2019. Seconded by Councilor Becksted.**

Councilor Dwyer said she would like to continue making comments on the ordinance.

Councilor Denton said he would oppose the motion because staff might be able to answer questions this evening. He said FEMA maps have been an issue for years and no one knows when the new maps will come out. He said raising the building is far more reasonable than replacing the building. He would like to make sure that this ordinance passes.

Councilor Roberts said he understands Councilor Denton's concerns but there are questions that need to be answered.

Councilor Dwyer said if the questions could be answered this evening she would like to ask some questions and see if we can receive answers.

Councilor Dwyer said if a person wants to make an improvement they would need to raise their whole house. Environmental Planner Britz said it is only for new construction that would need to elevate the house 2 feet. Councilor Dwyer asked if development related to substantial improvements. Environmental Planner Britz said it would not affect what we are trying to protect. Councilor Dwyer asked about the storage of equipment. Planning Director Walker said there are many that have exemptions. She said they relate to living areas that exclude storage areas because it would not address many items. She said a list of the exemptions listed could be provided to the Council.

Councilor Perkins said development comes into play when substantial construction comes forward. Environmental Planner Britz said the trigger is the building permit. Councilor Perkins said there is some confusion on zoning and insurance interaction. Environmental Planner Britz said the bank would require you to have flood insurance to get a loan. He said we need the ordinance in place to allow for the insurance to be provided and more protection in flood plain areas.

Mayor Blalock said storage of equipment would be the definition and intent. Environmental Planner Britz said by storing the equipment it would not enact the change.

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

Assistant Mayor Lazenby returned the gavel to Mayor Blalock.

**Councilor Roberts moved to suspend the rules to bring item IX. F. – forward Public Hearing/Second Reading of Ordinance amending Chapter 10 – Zoning Ordinance, Article 10 – Environmental Protection Standards, Section 10.1010 – Wetlands Protection. Seconded by Assistant Mayor Lazenby and voted.**

F. Public Hearing/Second Reading of Ordinance – Wetlands Protection

Public Hearing/Second Reading of Ordinance amending Chapter 10 – Zoning Ordinance, Article 10 – Environmental Protection Standards, Section 10.1010 – Wetlands Protection

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

Esther Kennedy spoke regarding wetlands and tidal zones and taking an evaluation review before any building takes place in the wetlands.

Jim Ferland spoke regarding changing fencing standards and dimensions around the wetlands.

With no further speakers, Mayor Blalock declared the public hearing closed.

Environmental Planner Britz said 3 inches is the standard size for a fence in the wetlands.

Councilor Reynolds asked is it possible that we limit fence post to 3 inches or would we be driving people to chain link fences. Environmental Planner Britz said it relates to the size of the fence not the post.

**Councilor Denton moved to pass second reading on the proposed amendments to the Wetlands Protection section of the Zoning Ordinance and schedule third and final reading for the December 2, 2019 City Council meeting. Seconded by Councilor Perkins and voted.**

E. Public Hearing/Second Reading of Ordinance – Conservation Ordinance

Public Hearing/Second Reading of Ordinance amending Chapter 8, Article V – Conservation Ordinance



Deputy City Attorney Woodland provided a brief overview of the ordinance. She reported that the ordinance is a tool for the Conservation Commission. She indicated this is where they can recognize changes to the property. She said this update adds one property on Lois Street in the ordinance and we would remove one property that should not have been there. She indicated the Conservation Commission contributed \$30,000.00 toward the purchase of the Lois Street parcel. She spoke to the parcel that was removed which is a postage stamp size parcel off of Heritage Avenue that has a sewer line underground. She said sewer line and language for maintenance of the public infrastructure has been added to the ordinance.

Councilor Becksted asked if the land is going to be extended. Deputy City Attorney Woodland said this ordinance is to put the parcel into the ordinance.

Mayor Blalock opened the public hearing and called for speakers. With no speakers, Mayor Blalock declared the public hearing closed.

**Assistant Mayor Lazenby moved to pass second reading on the proposed amendments to Chapter 8, Article V and schedule third and final reading at the December 2, 2019 City Council meeting. Seconded by Councilor Denton.**

Councilor Becksted said he has concerns with the property and not support the ordinance.

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

At 8:40 p.m., Mayor Blalock declared a brief recess. At 8:45 p.m., Mayor Blalock called the meeting back to order.

## **X. MAYOR BLALOCK**

1. Resignation of Ralph DiBernardo, Sr., from the Parking and Traffic Safety Committee effective November 7, 2019

**Councilor Roberts moved to accept with regret and to send a letter thanking Mr. DiBernardo for his service to the City. Seconded by Assistant Mayor Lazenby and voted.**

2. Appointments to be Considered:
  - John Formella reappointment to the Zoning Board of Adjustment
  - Arthur Parrott reappointment to the Zoning Board of Adjustment
  - Dana Levenson reappointment to the Trustees of the Trust Funds
  - Jonathan Sandberg appointment as regular member to the Parking & Traffic Safety Committee
  - Erica Wygonik appointment as an Alternate to the Parking & Traffic Safety Committee

The City Council considered the appointments listed above which will be voted on at the December 2, 2019 City Council meeting.

Councilor Becksted asked Mayor Blalock to hold off on making these appointments until the new City Council is in place.

Councilor Roberts said if the reason to hold off on a vote is not about the people then would Councilor Becksted vote to reappoint the individuals at the next City Council meeting.

3. Appointment to be Voted:
  - Craig Jewett to the Portsmouth Housing Authority

**Councilor Perkins moved to appoint Craig Jewett to the Portsmouth Housing Authority until April 1, 2024 filling the unexpired term of Amy Schwartz. Seconded by Assistant Mayor Lazenby and voted.**

4. 2020 City Council Meetings and Work Sessions Calendar

Mayor Blalock said if changes are necessary they could be made after the new City Council is sworn into office.

**Councilor Becksted moved to approve and accept the 2020 City Council Meetings and Work Sessions Calendar. Seconded by Assistant Mayor Lazenby and voted.**

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

1. Acceptance of Donation to the Coalition Fund – Town of Rye - \$5,000.00

**Assistant Mayor Lazenby moved to approve and accept the donation, as listed, to be placed in the Coalition Fund. Seconded by Councilor Perkins and voted.**

2. Acceptance of Police Department Grants and Donation:
  - a) Grant from US Department of Justice for Internet Crimes Against Children Task Force in NH - \$371,122.00
  - b) Grant from the NH Department of Justice expenses incurred for services provided to victims - \$30,000.00
  - c) Donation from the Friends of the South End to the Portsmouth Police Explorer Cadets - \$650.00

**Assistant Mayor Lazenby moved to accept and approve the grants and donation, as listed, to be placed in the Coalition Fund. Seconded by Councilor Perkins and voted.**

## **XIV. CONSENT AGENDA**

*There are no Consent Agenda items on this evening.*

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

- A. Email Correspondence

**Councilor Perkins moved to accept and place on file. Seconded by Councilor Roberts and voted.**

- B. Letter from Attorney James G. Noucas, Jr., requesting Re-Zoning of the St. Nicholas Greek Orthodox Church back lot from SRB to Gateway 1

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

- C. Letter from Rabbi Berel Slavaticki requesting permission to place a nine-foot Menorah at Market Square in Downtown Portsmouth

**Councilor Perkins moved to refer to the City Attorney's office for report back for December 2, 2019. Seconded by Assistant Mayor Lazenby.**

Councilor Dwyer said it is important for the Council to hear from the local Temple Israel. City Manager Bohenko said he reached out and said that the Temple Israel does their own lighting.

Councilor Roberts said he reached out to his friends and said that all came down to not putting a religious symbol on City property.

City Attorney Sullivan said the policy decision belongs to the City Council and needs to be framed with first amendment rights. He said he would provide legal framework on the decision.

**Motion passed.**

**XVI. CITY MANAGER'S INFORMATIONAL ITEMS**

*There are no City Manager Informational Items on this evening.*

**XVII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING**

**XVIII. ADJOURNMENT**

**At 9:05 p.m., Assistant Mayor Lazenby moved to adjourn. Seconded by Councilor Reynolds and voted.**



KELLI L. BARNABY, MMC, CNHMC  
CITY CLERK