

CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, DECEMBER 2, 2019

PORTSMOUTH, NH
TIME: 7:00 PM

I. WORK SESSION

At 6:00 p.m. a Work Session was held to update the City Council regarding the Prescott Park Master Plan.

II. CALL TO ORDER

Mayor Blalock called the meeting to order at 7:00 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 silence in memory of Bill Mortimer who recently passed away.

V. PLEDGE OF ALLEGIANCE

Mayor Blalock led the Pledge of Allegiance.

PRESENTATION

1. Report and Recommendations on Scholarship Funds Policies from Trustees of the Trust – Thomas Watson, Trustee

Trustee Thomas Watson provided a report with recommendations on the scholarship funds policies of Trustee of the Trust. He said there are 3 goals that the Trustees would like to accomplish:

- a) Adoption of guidelines for future scholarship funds to ensure that they are adequately funded.
- b) Creation of new community scholarship funds.
- c) Consolidation of existing underfunded funds.

He addressed that the Trustees would like to consolidate the underfunded funds into several newly created community scholarship funds in the following areas:

- Study in the fields of Science, Technology, Engineering and Mathematics (STEM).
- Study in the Arts.
- Study in Career Technology (Trades).
- Study in Higher Education generally.
- In recognition of athletic accomplishment.

Mr. Watson reviewed a summary of the recommendations:

- a) Adopt new Policies for the Establishment of new Scholarship Funds
- b) Create New community Scholarship Funds
- c) Merge Existing Small Scholarship Funds into Community Funds

Mr. Watson reported the Trustees would like to consolidate the small, underfunded scholarship funds into community scholarship funds that will increase the amount of principal available to generate income annually for scholarships by over \$280,000.00. He said the adoption of the new scholarship policies will prevent the reoccurrence of unproductive funds in the future.

Councilor Roberts moved to adopt the Trustees of the Trust recommendations regarding this report. Seconded by Councilor Dwyer.

Councilor Dwyer asked if the guidelines shift at some point would the Trustees need to go back to the Charitable Trust Division. Mr. Watson said you would need approval from the Attorney General's office.

Councilor Roberts said he supports this and feels it is a thoughtful way to handle it.

Motion passed.

VI. ACCEPTANCE OF MINUTES – SEPTEMBER 16, 2019, OCTOBER 7, 2019 AND OCTOBER 28, 2019

Assistant Mayor Lazenby moved to approve and accept the minutes of September 16, 2019, October 7, 2019 and October 28, 2019 City Council meetings. Seconded by Councilor Dwyer and voted.

VIII. PUBLIC COMMENT SESSION

There were no speakers this evening.

IX. PUBLIC HEARING ON ORDINANCES AND/OR RESOLUTION

- A. Public Hearing/Second Reading of Ordinance – Zoning Ordinance – Flood Plain Overlay District: ***(Public Hearing continued from November 12, 2019 Council meeting)***

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 this is a continuation of the public hearing regarding the Flood Plain Overlay District. He said we need to comply with the national flood insurance and incorporate measures to address impacts of climate changes. He reported that the storage definition would be to impact storage in the flood plain, not required under the national flood plain insurance. He stated the national flood insurance program does not allow residential buildings to be flood proof as an alternative to being elevated. He indicated lowering the threshold proposed reduction would reduce the cost for property owners. He reported in 2015 the new Building Code requires structure to be 2

feet above base flood elevation (BFE). Environmental Planner Britz stated any improvements less than 40% value of structure are not subject to flood plain construction standards. He stated any new building needs to be elevated 2 feet above BFE.

Councilor Roberts asked how you would raise the building for a basement. Environmental Planner Britz said you elevate the grade with fill.

Councilor Dwyer asked if the building permit is more than 40% are you elevating the full structure or the new part. Environmental Planner Britz said the new part of the building.

Councilor Denton asked is the building going to a foot or two higher overall. Environmental Planner Britz said overall. He said you can't exceed height limits. Councilor Denton asked when the ordinance takes effect. Environmental Planner Britz said in January 2020.

Councilor Becksted asked if we are the first to make these changes. Environmental Planner Britz said Dover, Durham, Seabrook have made the changes and Hampton is currently working on them.

Mayor Blalock continued the public hearing and asked speakers to come forward. With no speakers, Mayor Blalock declared the public hearing closed.

Planning Director Walker advised the Council that the packet shows all the changes and the recommendations covering amendments.

Councilor Denton moved to accept the amendments as contained in the City Council packet of December 2, 2019. Seconded by Councilor Reynolds.

Councilor Becksted said he is concerned with this change and asked how many homeowners and business owners would be affected by these changes. He also asked how many owners have received abutter's notices. Environmental Planner Britz said looking at the structure and sheds there are 168 in the flood plain hazard. Councilor Becksted asked have property owners been notified of these changes. Environmental Planner Britz said abutters notices were not required.

Councilor Dwyer said she would be upset if property owners can't get flood insurance. She said this ordinance is to make sure property owners can get the insurance necessary for their homes.

Councilor Becksted said the owners would be here to speak on the ordinance this evening if they were notified.

Councilor Denton said he would like to do second and third reading this evening but where this is not taking effect until January 1, 2020, there is no reason to.

Motion passed with Councilor Becksted opposed.

Assistant Mayor Lazenby moved to pass second reading on the proposed amendments as revised to the Flood Plain District sections of the Zoning Ordinance and schedule a third and final reading for the December 16, 2019 City Council meeting, as amended. Seconded by Councilor Raynolds and voted. Councilor Becksted voted opposed.

Mayor Blalock passed the gavel to Assistant Mayor Lazenby.

Mayor Blalock voted to suspend the rules in order to take up Item XV. B. – Letter from Rabbi Ira Korinow, Temple Israel Board of Directors regarding Request to display a Hanukkah menorah. Seconded by Councilor Denton and voted.

Assistant Mayor Lazenby returned the gavel to Mayor Blalock.

- B. Letter from Rabbi Ira Korinow, Temple Israel Board of Directors regarding Request to display a Hanukkah menorah

City Manager Bohenko said the menorah and lighting will be on Temple Israel property and they will be running a program through the eight nights. He recommended to accept and place on file the Chabad request as they are working with Strawberry Banke on their program.

Councilor Denton moved to accept the Temple Israel recommendation for a menorah. Seconded by Councilor Roberts and voted.

The City Council agreed to take up Item XV. C. - Letter from Hannah of Seacoast Chabad Jewish Center requesting to place a nine-foot menorah in Market Square (*See attached Memorandum from City Attorney Sullivan*) as discussion ensued regarding this request in conjunction with the Letter from Rabbi Ira Korinow, Temple Israel Board of Directors.

- C. Letter from Hannah of Seacoast Chabad Jewish Center requesting to place a nine-foot menorah in Market Square (*See attached Memorandum from City Attorney Sullivan*)

Assistant Mayor Lazenby moved to accept and place the letter on file. Seconded by Councilor Denton and voted.

- B. Third and Final Reading of Ordinance – Food Licensing and Regulations:

Third and Final Reading of Ordinance amending Chapter 4, Article I, Sections 4.103 – Adoption of Specific Parts HE-P 2300, and Section 4.105 – License

Assistant Mayor Lazenby moved to pass third and final reading of amendments to Chapter 4 (Food Code). Seconded by Councilor Denton and voted.

C. Third and Final Reading of Ordinance – Fire Codes:

Third and Final Reading of Ordinance amending Chapter 5, Article VIII – Alarm Systems and Article IX – Adopted Fire Codes

Assistant Mayor Lazenby moved to pass third and final reading of the amendments to Chapter 5 (Fire Code). Seconded by Councilor Dwyer and voted.

D. Third and Final Reading of Ordinance – International Building Code & International Residential Code & International Plumbing Code, International Mechanical Code, Fuel Gas Installations and National Electrical Code:

Third and Final Reading of Ordinance amending Chapter 12, Part I – International Building Code, and Part II – International Residential Code & Chapter 15, Part I – International Plumbing Code, Part II – International Mechanical Code, Part III – Fuel Gas Installations, and Part IV – National Electrical Code

Assistant Mayor Lazenby moved to pass third and final reading of the amendments to Chapter 12 and Chapter 15 (Building Codes). Seconded by Councilor Raynolds and voted.

E. Third and Final Reading of Ordinance – Conservation Ordinance:

Third and Final Reading of Ordinance amending Chapter 8, Article V – Conservation Ordinance

Assistant Mayor Lazenby moved to pass third and final reading of the proposed amendments to Chapter 8, Article V, as presented. Seconded by Councilor Dwyer and voted.

F. Third and Final Reading of Ordinance – Wetlands Protection:

Third and Final Reading of Ordinance amending Chapter 10 – Zoning Ordinance, Article 10 – Environmental Protection Standards, Section 10.1010 – Wetlands Protection

Assistant Mayor Lazenby moved to pass third and final reading to the Wetlands Protection section of the Zoning Ordinance, as presented. Seconded by Councilor Dwyer and voted.

X. MAYOR BLALOCK

1. Appointment to be Considered:

- Beth Moreau appointment to the Rockingham Planning Commission as the Planning Board Representative

The City Council considered the appointment of Beth Moreau to the Rockingham Planning Commission as the Planning Board Representative, which will be voted on at the December 16, 2019 City Council meeting.

2. Appointments to be Voted:

- 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

Councilor Becksted said he would like the City Council not to vote on these appointments and allow the new City Council to act on this matter. He said he had a conversation with City Attorney Sullivan regarding that there are alternates on the board for reappointment and was advised the appointments can carry over until such time as the new City Council could vote on the appointments or someone was found to replace the individuals slots.

City Attorney Sullivan said if the term expires and the appointment does not take place the existing member would continue to serve until a new appointment can be made.

Mayor Blalock said it is his duty to be voting on these appointments. He said the Zoning Board of Adjustment needs institutional knowledge and the ZBA does not interact with the City Council. He said he feels that Councilor Becksted issue is a political move and he is not inclined to not vote on these appointments this evening.

Councilor Reynolds moved to reappoint John Formella and Arthur Parrott to the Zoning Board of Adjustment until December 1, 2024. Seconded by Councilor Perkins.

Councilor Becksted said this is not a political move. He would like the next City Council to make these decisions.

Councilor Denton said he supports Mayor Blalock and the motion because this is the job of the current City Council to make these decisions.

Councilor Roberts said he does not understand the point. He said the appointees have not been acting inappropriately and asked Councilor Becksted what is the point of doing this now. He said he replied to the first 15 messages he received and the only reply he received back, for waiting on the appointments is because they won the election.

Assistant Mayor Lazenby said there is some over thinking on the impact of this. He said the Council serves a two year term, and Mayor Blalock is very much respected and John Formella and Arthur Parrott should continue to serve on the ZBA.

Councilor Roberts said when former Mayor Spear withdrew applicants it was because they were alternates and it was a different situation. He said he is not clear on the objection to not appoint them this evening and stated the appointees deserve respect.

Councilor Pearson said in 2017 this City Council was elected for a 2 year term and she will serve the voters to the end of the term.

Motion passed. Councilor Becksted voted opposed.

Councilor Perkins moved to reappointment Dana Levenson to the Trustees of the Trust Funds until January 1, 2023. Seconded by Councilor Dwyer and voted.

Councilor Reynolds moved to appoint Jonathan Sandberg as a regular member of the Parking & Traffic Safety Committee filling the unexpired term of Ralph DiBernardo, Sr., until September 17, 2021. Seconded by Councilor Roberts and voted. Councilor Becksted voted opposed.

Councilor Reynolds moved to appoint Erica Wygonki as an Alternate to the Parking & Traffic Safety Committee filling the unexpired term of Jonathan Sandberg until August 4, 2020. Seconded by Councilor Roberts and voted.

3. Market Street Gateway Park

Assistant Mayor Lazenby moved to suspend the rules to suspend Council Rule 44 – Naming of Municipal Buildings, Parks and Facilities referring to holding a Work Session. Seconded by Councilor Reynolds and voted.

Councilor Denton moved to unseal the Non-Public Session minutes of October 28, 2019 regarding Naming of the Park. Seconded by Councilor Dwyer and voted.

Councilor Pearson moved to name the Market Street Gateway Park as the Bohenko Gateway Park. Seconded by Councilor Perkins.

Mayor Blalock said City Manager Bohenko has given so much of his life to this City and naming the park after him is an appropriate honor.

Councilor Becksted said one concern was no real monument or structure would be built. He said he has reservations because the public does not get to weigh in on the structure. He said it was discussed that no archway would be done.

Assistant Mayor Lazenby said suspension of the rules was not to have a work session and we did that during the Non-Public Session and the matter was discussed thoroughly.

Councilor Pearson said she recalls discussion of a base of granite structures at the entrances of the park with the name. She said she works all across the State and when she tells people she serves as a City Councilor in Portsmouth, it is known as the gold standard. She said it has been a pleasure to serve the City and people ask how we do it and now we will be losing the special secret sauce, City Manager Bohenko.

Councilor Roberts said the sign will be 7 feet by 2 feet opposite the Sheraton and opposite of the other side of the road.

Mayor Blalock passed the gavel to Assistant Mayor Lazenby.

Mayor Blalock said it is true that you have done a great job City Manager Bohenko, and now everyone knows where Portsmouth is located. He said it is obvious to those that live here, it is with great pleasure we name this park in your honor. He said the City Manager has brought so much to the City such as all our infrastructure improvements, our AAA bond rating, etc.

Assistant Mayor Lazenby returned the gavel to Mayor Blalock.

Motion passed.

4. Thank you letter from Michael Griffin & Marga Coulp regarding George R. Laderbush Bridge Opening

Mayor Blalock read a thank you letter from Michael Griffin & Marga Coulp regarding George R. Laderbush Bridge opening.

Assistant Mayor Lazenby moved to accept and place on file. Seconded by Councilor Raynolds and voted.

XI. CITY COUNCIL MEMBERS

A. COUNCILOR ROBERTS

1. Parking and Traffic Safety Committee Action Sheet and Minutes of the November 7, 2019 meeting

Councilor Roberts moved to approve and accept the Action Sheet and Minutes of the November 7, 2019 Parking and Traffic Safety Committee. Seconded by Assistant Mayor Lazenby and voted.

Mayor Blalock asked if we will be having a week of free holiday parking. City Manager Bohenko said you could institute free holiday parking and he would place this matter on the agenda for the December 16, 2019 City Council meeting.

Councilor Roberts said generally it is more difficult to park when vehicles are parking all day in the free areas. He said the next City Council might think about the \$120,000.00 in loss revenue being put towards public transportation.

Councilor Dwyer said in the minutes the moving of the COAST bus location for pick up should be announced.

Planning Director Walker said next summer July 2020 COAST will move from its current location. Councilor Roberts said it will now take 30 minutes versus 1 hour with the new location and it will also require taking of four parking spots, with one line of COAST still going through Market Square.

B. COUNCILOR DENTON

1. Request for the Portsmouth High School Eco Club to receive additional City of Portsmouth reusable tote bags to help raise funds at their Craft Fair for their permaculture greenhouse project

Councilor Denton said Portsmouth High School Eco Club has the craft fair as their major fund raiser and would like to use the reusable tote bags for those people purchasing items. City Manager Bohenko said he would check with the Public Works Department to see if we have any bags remaining.

XII. APPROVAL OF GRANTS/DONATION

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

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

XIII. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER

1. 3 Pleasant Street Community Space Easements

City Manager Bohenko asked Planning Director Walker to address this matter.

Planning Director Walker stated this is a request to construct a 4-story addition and new 4th floor on an existing building located at 3 Pleasant Street. She advised the City Council that the Planning Board approved the project to exceed the maximum building height permitted in the zoning district by approximately two feet. She said per the provisions of the ordinance, the development is allowed up to one additional story in height (or up to 10 feet) if at least 20% of the property is assigned and improved as community space with permanent deeded access to the City of Portsmouth.

Planning Director Walker reported that the community space includes a wide pedestrian sidewalk and a plaza accessed by pedestrian alleys from Daniel Street, Pleasant Street, and Penhallow Street. She informed the Council the developer has also proposed a future expansion of the development with the addition of a new building at the corner of Penhallow Street and Daniel Street, which will also include an increase in the community space to 30% of the property area. She advised the Council the proposed expansion is still pending land use approvals.

City Attorney Sullivan spoke to the City holding a restriction from a 1910 conveyance over the 3 Pleasant Street lot to the effect of the following: "the approaches and driveways around the old City Hall building on said premises shall be kept open and unencumbered" (the 1910 restriction). This existing restriction prevents construction of buildings on the two alleyways adjacent to 3 Pleasant Street. He reported that the new easements described will supersede and exceed the 1910 restriction because all the community space in all three parcels will be regulated similarly to a public sidewalk.

Councilor Becksted said he has a question of granting the 2 feet and going beyond. He has not seen the project in HDC or BOA and would like to know what triggered this. Planning Director Walker said the Zoning Ordinance is an incentive overlay and outside the Overlay District to get higher height it is subject to community space. She stated the Planning Board approved the two feet only and the developer would provide 20% of community space. Councilor Becksted asked if this is transferable to another one of Mr. McNabb's projects. Planning Director Walker said no this deals with 3 Pleasant Street.

Councilor Roberts said at the Historic District Commission meeting the developer changed the nature of the top floor for various technical reasons and added the two feet.

Councilor Denton said he is excited for the project.

Councilor Denton moved to grant authority for the City Manager to release the existing rights retained by the City in 3 Pleasant Street in the 1910 Deed. Seconded by Councilor Pearson.

Councilor Reynolds asked about the effect of the city granting the easements, does it mean the use of the public way becomes as if it was City property. City Attorney Sullivan said the developer would have to follow the same requirement for outside dining. Planning Director Walker said there are areas and portion that have outside dining allowed. City Attorney Sullivan said it is the easement areas that are treated like a sidewalk.

Motion passed.

Assistant Mayor Lazenby moved to grant authority for the City Manager to accept the Easement Deeds in a form similar to those attached. Seconded by Councilor Perkins and voted.

2. Market Street Property – Recommendation for Acceptance of Sewer Line Easement

City Manager Bohenko said the Deputy of Public Works wants to make repairs to the area and sewer line and it is not in any recorded easement. He stated the Planning Board recommended to accept the easement on August 15, 2019. He advised the City Council prior to the meeting of September 3, 2019, it was brought to the attention of the Legal Department that the underlying parcel was to be sold. He reported that Port Harbor Land LLC has since purchased this parcel and legal representatives have agreed to honor the previous agreement.

Councilor Dwyer moved that the City Manager be authorized to negotiate, execute and accept a sewer easement from Port Harbor Land LLC. Seconded by Councilor Perkins and voted. Assistant Mayor Lazenby recused from voting on this matter.

3. Lafayette Road Sewer Extension Into Rye

Deputy City Attorney Woodland reported over a year ago the Town of Rye approached the City to work with private property owners to extend the sewer system off Lafayette Road up to Washington Road in Rye. She advised the City Council that the proposed extension would be at no cost to the City of Portsmouth or the Town of Rye, funded entirely by the benefiting property owners. In addition, the extension would be built to City specifications and owned by the City once complete and operational.

Councilor Becksted asked what type of businesses are users as part of this. Attorney Phoenix reported there are 18-24 properties down the road what they have now is undeveloped. He said there a hotel, frame shop, air field and other various businesses.

Mayor Blalock said the benefit to the City is additional rate payers. Attorney Phoenix said the line would be turned over to the City and there are also environmental benefits.

Councilor Becksted said this has to do with what is there and would houses be constructed. He asked if we would have a right to say what would be built. Attorney Phoenix said the Town of Rye would cover the issue through their Zoning Ordinance.

City Engineer Desmarais spoke regarding the amount of waste water that would be generated in the area. Councilor Becksted asked if we would be responsible for the pipe. City Engineer Desmarais said we are doing this so we are not responsible for that in the future.

Deputy City Attorney Woodland said she asked the questions of the capacity of the new system and was taken into consideration and the amount of flow we would see and it was considered.

Councilor Denton moved to bring forward for consideration at the December 16, 2019 City Council meeting an International Agreement between the City of Portsmouth and Town of Rye to extend sewer service at no cost to the City along a portion of Lafayette Road / Route 1 in Rye. Seconded by Councilor Reynolds and voted.

XIV. CONSENT AGENDA

- A. Request for License to Install Projecting Sign for owner Donald N. Gorvett of Piscataqua Fine Arts for property located at 123 Market 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. Letter from Lilia Potter-Schwartz, Education For All Children (EFAC) requesting to hold the 5th annual Race to Educate on Sunday, May 24, 2020 at 12:30 p.m. (***Anticipated action – move to refer to the City Manager with power***)

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

XV. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Email Correspondence

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

- D. Letter from Attorney Derek Durbin regarding Release of Interest in Tax Map 206, Lot 1 (Off Brackett Lane)

Assistant Mayor Lazenby moved to refer to the Planning Board for report back. Seconded by Councilor Dwyer and voted.

XVI. CITY MANAGER'S INFORMATIONAL ITEMS

1. Board / Committee Input to the Guiding Parking Principles

City Manager Bohenko provided the report back to the City Council on the Board / Committee Input to the Guiding Parking Principles. No action required.

XVII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

Councilor Pearson announced that the Button Project is back on display in the Chambers from the 911 Exhibit. She said each button represents a life that was lost on September 11th.

City Manager Bohenko read some parting remarks to the City Council on his upcoming retirement and outlined some of his many accomplishments during his 22 years with the City of Portsmouth.

XVIII. ADJOURNMENT

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



KELLI L. BARNABY, MMC, CNHMC
CITY CLERK