

SPECIAL CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: TUESDAY, JANUARY 28, 2020

PORTSMOUTH, NH
TIME: 6:30PM

I. CALL TO ORDER

Mayor Becksted called the Special City Council meeting to order at 6:30 p.m.

II. ROLL CALL

Present: Mayor Becksted, Assistant Mayor Splaine, Councilors McEachern, Whelan, Lazenby, Kennedy, Huda, Tabor and Trace

III. MCINTYRE PROJECT

Mayor Becksted passed the gavel to Assistant Mayor Splaine.

Mayor Becksted said he will provide information on what has happened over the last several months. He stated with the change of the City Council, questions were asked regarding the McIntyre Project. He indicated on January 2, 2020, he came in for a meeting to establish an agenda for the January 8th Special City Council meeting. He stated during the makeup of that meeting he was made aware of a letter of litigation threat dated December 30th. Mayor Becksted said time is of the essence that is why we are having this Special City Council meeting. He stated it is time that the City Council moves this issue forward.

Assistant Mayor Splaine returned the gavel to Mayor Becksted.

Councilor Trace moved that we take action and not approve, we deny the current draft form of the Ground Lease dated December 7th, written for use between the City of Portsmouth and SoBo Square, LLC also known as Redgate/Kane. Seconded by Councilor Whelan.

Assistant Mayor Splaine said we need to hold off the lawsuit.

City Attorney Sullivan said given that we are under threat of serious litigation, he recommended entering into Non-Public Session to further discuss matters.

Councilor McEachern moved to enter into a Non-Public Session to discuss the draft Ground Lease. Seconded by Councilor Lazenby.

Assistant Mayor Splaine would like to listen to the public before entering into Non-Public Session and act on the motion.

City Attorney Sullivan said the motion should be to restructure the agenda to hear public comment.

Assistant Mayor Splaine moved to restructure the agenda to allow public comment before entering into a Non-Public Session. Seconded by Councilor McEachern. *Motion not acted upon.*

Councilor Trace moved to suspend the rules to allow anyone present to speak during Public Comment. Seconded by Assistant Mayor Splaine and voted.

V. PUBLIC COMMENT

Bill Downy thanked the City Council for this meeting. He asked City Attorney Sullivan about the application period ending October 7th and clarification on the matter. He said he does not feel this is a last minute decision.

Bernard Mulligan said the project is important and expressed concern over what the building will look like with the project before the Council. He said he wants the post office to return to the downtown. He stated we need to provide a lease to the building that will house the post office and make it a separate building with a lease at little to no cost. Mr. Mulligan said the City Council needs to consider that it would be up to \$2,000,000.00 for a post office building and this should be a separate question.

Ted Jankowski said he submitted a letter for this evening for the City Council to review. He spoke to this being a complicated project and the City has dealt with complicated projects before. He spoke to when the City hired a national firm to handle the base closure and said that is what you need in this instance. He said it has been 18 years and not once have you gone to Washington, DC. He urged the City Council to authorize the City Manager to hire an outside expert.

Allen Nelson thanked the City Council for listening to both sides of this issue. He stated the McIntyre Project is a serious matter and the public has not been made privy to all the issues. He spoke to when Senator Judd Gregg talked about the City getting the building for \$1.00. Mr. Nelson said this matter can be resolved by thinking outside of the box. He stated downtown is under stress and it is not just a building, it is important and will have a big effect on the area.

Dave MacDonald said unfortunately you have to deal with this issue that was created by the previous City Council and people did not like the way the project was being managed. He questioned whether the City is bound by the decisions of the former Council. He said almost everyone agrees that this is not the project for the City. Mr. MacDonald said you need to start over and make a statement on what direction you want the project to go.

Senator Martha Fuller Clark said the entire burden does not rest with the City Council. She stated she asked Michael Kane to come up with a different proposal and think of a compromise for the design. She said that this is the most significant piece of property in our downtown and we need to find something more appropriate.

Danielle Lee said the worst case scenario is not getting sued by Redgate/Kane, the worst case would be getting what the residents don't want. She would like to see Redgate/Kane come forward with a new design that everyone can agree upon.

Nancy MacDonald said the City Council was elected to change the Redgate/Kane project and this is a serious vote. She stated Redgate/Kane does not benefit the City.

Justin Richardson said there is an opportunity, and he has experience negotiating public/private partnerships. He spoke to his surprise on how the public/private partnership was designed and set up. He stated we need to go through preservation review and suggested asking this to go back to the developer. Mr. Richardson said the application has been rejected by the National Park Service and recommended going back and negotiating a better deal for the City.

Mark Brighton said any talk about the current City Council lacking transparency is inaccurate. He stated there were back room deals by the former Council.

Jane Zill spoke to the 600 signature petition asked the prior City Council to look at the project. She applauded the City Council for taking the City out of this process.

Mayor Becksted closed the Public Comment.

Assistant Mayor Splaine said we need a Non-Public Session and hear from the City Attorney on this matter. He said the City Council would come back to the Chambers at the close of the Non-Public Session.

Councilor Lazenby echoed the remarks of Assistant Mayor Splaine to take careful consideration on this matter. He said we will need time and are spending time working on this matter.

On a roll call vote 4-5, motion to enter into a Non-Public Session to discuss the draft Ground Lease failed to pass. Assistant Mayor Splaine, Councilors McEachern, Lazenby and Tabor voted in favor. Councilors Whelan, Kennedy, Huda, Trace and Mayor Becksted voted opposed.

Councilor McEachern said we have spent a great deal of time dealing with this matter but not talking about it is wrong. He said he has not heard any information since the Non-Public Session and has strong objections to put the City in jeopardy. He said we need to negotiate in good faith. He stated we have a responsibility to the public and he appreciates that we want to act on this matter but we have not addressed the answers to go back to the National Park Service that addresses the issue of mass of the building and financials. Councilor McEachern said this motion is hasty and we have not finished the conversation from the last Non-Public Session.

Councilor Tabor said he voted yes to hear from the City Attorney on his legal opinion.

Councilor Whelan said we open the dialogue between us as a City Council. He said he was elected in November and the first communication from Redate/Kane was a threat of litigation. He said we are sending the proper message to Redgate/Kane that we want to look at the project. He indicated he would make another motion on receiving feedback regarding where we stand with the National Park Service.

Councilor Lazenby said the form of Ground Lease drafted is dated December 7, 2019, that we received in an email in January, is that document on the website and available. He said he is concerned that we are trying to move forward with public input and the form of the Ground Lease has not been available for the public to review and it does not feel clear to him or transparent.

Councilor Kennedy said she was voted on the City Council regarding the McIntyre Project. She tried to get the developer to get the design changed. She said the Ground Lease has not been voted on and it is time to make a decision and move on. She stated we need to make sure that GSA does not give up on us. She stated it is time to listen to Councilor Trace's motion and called for a vote.

Assistant Mayor Splaine said 25 months ago on December 20, 2017, the vote was 8-1 to set up the process, and led to the selection of Redgate/Kane for the project. He said he has been involved in this matter since day one. Assistant Mayor Splaine said not getting the advice from the City Attorney whether we agree with it or not, we need to listen to City Attorney Sullivan. He stated we need to hire someone that can give expert advice, we need to revisit the McIntyre Project, and not get us in a law suit. He said he is concerned we are not moving into Non-Public Session.

City Manager Conard said she agrees with Assistant Mayor Splaine and urges the Council that we go into Non-Public Session because we have new information to rely to the City Council.

Councilor Tabor moved to reconsider and enter into Non-Public Session. Seconded by Councilor McEachern. On a roll call vote 4-5, motion failed to pass, a two-thirds vote was required. Assistant Mayor Splaine, Councilors McEachern, Lazenby and Tabor voted in favor. Councilors Whelan, Kennedy, Huda, Trace and Mayor Becksted voted opposed.

Councilor Lazenby said he echoes much of what Assistant Mayor Splaine has said, and he does not feel we will move ahead to do what is in the best interest of the City Council.

Mayor Becksted passed the gavel to Assistant Mayor Splaine.

Mayor Becksted said he has worked hard on this over the last three weeks. He respects City Attorney Sullivan and what is being asked for the Ground Lease but this negates nothing, the partnership still stands and we need to come up with a plan to move forward.

Assistant Mayor Splaine returned the gavel to Mayor Becksted.

Assistant Mayor Splaine asked City Attorney Sullivan if he could share any of the new information, which has come forward.

Councilor McEachern asked City Attorney Sullivan if he is able to share any of the legal advice shared with Mayor Becksted.

City Attorney Sullivan said he cannot share the new information unless we were in Non-Public Session.

On a roll call 6-3, voted to pass main motion that we take action and not approve, we deny the current draft form of the Ground Lease dated December 7th , written for use between the City of Portsmouth and SoBo Square, LLC also known as Redgate/Kane. Councilors Whelan, Kennedy, Huda, Tabor Trace and Mayor Becksted voted in favor. Assistant Mayor Splaine, Councilors McEachern and Lazenby voted opposed.

Councilor Whelan moved to instruct the City Manager to arrange a meeting with the entire City Council and the National Park Service as soon as possible. Seconded by Councilor Kennedy.

City Attorney Sullivan said in terms of whether a lawsuit will be forthcoming is the opinion of Redgate/Kane and their feeling whether the Council will act in good faith, but it is his belief that the City Council is continuing to act in good faith and work to come up with a new Ground Lease.

Assistant Mayor Splaine supports the motion and taking steps the National Park Service as we need to act.

Mayor Becksted passed the gavel to Assistant Mayor Splaine.

Mayor Becksted said mistakes were made by having a small committee on the McIntyre Project. He said the entire Council will be aware of any matters and we will work together in good faith.

Assistant Mayor Splaine returned the gavel to Mayor Becksted.

Assistant Mayor Splaine said we need proper expertise and expert legal advice.

Councilor Kennedy thanked Mayor Becksted for standing strong and being a leader.

Councilor Trace said she looks forward to meeting with the National Park Service and hearing their concerns and that is part of acting in good faith. She stated the Council needs to take the interest of the 600 that signed the petition. She said we need to look at the answers that we are going to hear from going into Non-Public Session.

Councilor Tabor said we need to plan for a meeting with the National Park Service and operate in good faith with our developer, and learn what the National Park Service thinks about the project.

Councilor McEachern said in the spirit of this he would like to set aside time to discuss answers that are in edited form and discuss them as a group. He said the Council needs to discuss answers before meeting with the National Park Service and meet with staff on how we get there.

Assistant Mayor Splaine suggested that on February 3rd the Council plans a Non-Public Session with the City Attorney to review the updates he has at that time.

Mayor Becksted said he will be meeting on setting the agenda tomorrow and will plan for a Non-Public Session.

Motion passed.

VI. ADJOURNMENT

At 7:45 p.m., Mayor Becksted adjourned the meeting.



KELLI L. BARNABY, MMC/CNHMC
CITY CLERK