



## **SPECIAL CITY COUNCIL MEETING**

**DATE:** TUESDAY, JANUARY 28, 2020  
**LOCATION:** CITY HALL – EILEEN DONDERO FOLEY COUNCIL CHAMBERS  
**TIME:** 6:30 PM

### **A G E N D A**

- I. Call to Order – Rick Becksted, Mayor
- II. Roll Call
- III. McIntyre Project
- IV. Written Correspondence
- V. Public Comment
- VI. Adjournment

KELLI L. BARNABY, MMC/CNHMC  
CITY CLERK



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December 30, 2019

*BY EMAIL (RPSULLIVAN@CITYOFPORTSMOUTH.COM)*

Robert P. Sullivan, City Attorney  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH 03801

Re: Development Agreement and Agreement to Lease (the "Agreement") made as of August 29, 2019 between the City of Portsmouth (the "City") and SoBow Square, LLC (the "Developer")

Dear Mr. Sullivan:

We represent the Developer under the Agreement, which sets forth the terms under which the City will acquire and the Developer will develop the McIntyre property.

The Agreement will result in a redevelopment of the McIntyre property that will be of immense and transformative benefit to the City. The Agreement is binding on the City, both as a matter of law and by its terms. The Agreement was entered into after a lengthy public process and is a fair allocation of risk and reward. My client is absolutely committed to this project to which it has already devoted thousands of hours and millions of dollars. Yet public comments by incoming City Council members have raised doubts about the City's intentions to honor its obligations under the Agreement, threatening the project and harming leasing efforts with the project's lead office tenant Hubspot.

Please be advised that my client will take all appropriate steps to protect its rights under the Agreement including by litigation against the City if necessary. In any lawsuit, the Developer will be entitled to recover significant damages, one measure of which will be the financial projections of the City's own consultants to the project, and/or to obtain injunctive relief to preserve the benefit of its bargain under the Agreement.

We hope litigation does not become necessary. We look forward to a continued positive and productive private public partnership with the City to bring the McIntyre project to fruition.



Robert P. Sullivan, City Attorney  
December 30, 2019  
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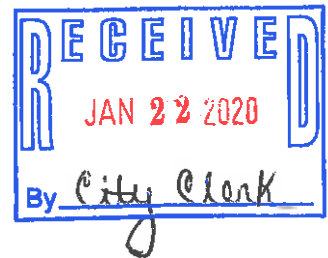
Yours very truly,

*/s/ Bruce E. Falby*

Bruce E. Falby

BEF:mas

cc. Robert D. Ciandella, Esq. (by email)  
John H. Sokul, Esq. (by email)



**THADDEUS J. JANKOWSKI, JR.**  
27 Franklin Street  
Portsmouth, NH 03801  
e-mail: thaddeusjj@gmail.com

January 22, 2020

The Mayor and City Council  
1 Junkins Ave.  
Portsmouth, NH 03801

Re: The McIntyre Building

Dear Mayor and members of the City Council,

In preparation for the January 8, 2010 City Council meeting on the McIntyre building, I reviewed the "McIntyre Project Frequently Asked Questions" on the city's website and found a grave and misleading error, which I pointed out during the public comment session. Under the attached question, "I heard the City was supposed to be given the property for \$1 years ago. What has taken so long", under key dates it states – "April, 2013 – Funding for relocation is removed from federal budget." This is **not correct**. In April of 2013, the city was blindsided by a proposal in President Obama's Proposed FY 2014 Budget to remove the funding for the McIntyre. In 2013, over the course of several months on behalf of Portsmouth Now, I worked closely with the staff of our Congressional delegation to ensure that the proposal was removed from the budget and the funds were saved. I have a total of 55 emails from that timeframe, which I am happy to share with anyone.

However, most significantly is that we were assured that the funds for the McIntyre were safe in both the FY 14 and FY 15 (10/1/14-9/30/15) Federal budget. I have copied and pasted that information below.

Ted <thaddeusjj@gmail.com>  
To: "Zabel, Andrew (Shaheen)" <Andrew\_Zabel@shaheen.senate.gov>  
Cc: "Holmes, Sarah (Shaheen)" <Sarah\_Holmes@shaheen.senate.gov>, "Vallone, Matthew (Matthew.Vallone@mail.house.gov)" <Matthew.Vallone@mail.house.gov>, "Gilboy, Chuck" <Chuck.Gilboy@mail.house.gov>, "Thomson, Simon (Ayotte)" <Simon\_Thomson@ayotte.senate.gov>

Hello Andrew - The President's budget is now out. Can you please tell me if there is any new language similar to Sec. 525 in last year's budget that impacts the McIntyre building?

Thanks so much

Zabel, Andrew (Shaheen) <Andrew\_Zabel@shaheen.senate.gov>

Cc: "Holmes, Sarah (Shaheen)" <Sarah\_Holmes@shaheen.senate.gov>, "Vallone, Matthew (Matthew.Vallone@mail.house.gov)" <Matthew.Vallone@mail.house.gov>, "Gilboy, Chuck" <Chuck.Gilboy@mail.house.gov>, "Thomson, Simon (Ayotte)" <Simon\_Thomson@ayotte.senate.gov>

Ted,

I've done a pretty thorough scrub of the budget and I believe that GSA has not included language in its FY 2015 request similar to what the agency requested last year on the McIntyre Building.

So the bottom-line is that the funds were still available in Federal FY 15. On January 9<sup>th</sup>, the day after my discovery of the error, I contacted Senator Shaheen's office to get an accounting of the funds since September 30, 2015. A total of \$24.8 million was appropriated for the relocation of the McIntyre tenants. To my knowledge, only \$3.8 million was used for the purchase of a site at Pease and for building design. If these funds are still available, that would leave over \$21 million for the relocation of the tenants. Despite my efforts, I still have yet to receive an answer from the Senator's Office. However, what this points to is the need for the city to hire its own lobbyist/lawyer, who is an expert on the GSA and on the disposal of Federal property laws.

It is time for the city to fight for the property, which it already owns under Senate 1589, and which the GSA has been paid. You know Senate 1589 did not just drop out of the sky. When Congressman Sununu obtained an \$11.1 million earmark to renovate the McIntyre in 2002, the city seized on the opportunity. With the assistance of Senator Gregg's office, we did a customer survey by zip code of who used the Social Security Office and the IRS. The majority were not from Portsmouth, but from Dover, Somersworth, and Rochester. This was a further argument for moving the offices out to Pease with parking.

I do not know how or when the National Park Service got involved, but it is time that we fight for our rights under Senate 1589 and the ownership of 2.2 acres in the heart of our city. With a new Mayor and City Council, this is once in a lifetime opportunity to set Portsmouth on a new course to positively change our city for generations to come.

Regards, 7

  
Ted Jankowski

## **I heard the City was supposed to be given the property for \$1 years ago. What has taken so long?**

The City and its Congressional delegation have made diligent and intensive efforts to obtain the property over the past 13+ years – during that time, the federal land acquisition process, and changes in building design requirements, tenant needs/project scope, and funding availability all impacted the schedule.

In 2003, the GSA proposed a major renovation of the building, and the Historic District Commission held a work session to review the plans. At that time, the HDC noted its strong preference for the GSA to relocate to Pease in order to facilitate demolition of the building and transfer of the property to the City. Passed by Congress in 2004, Public Law 108-199 Section 408 reallocated funding from the renovation towards relocation to Pease, and addressed conveyance of the downtown property to the City.

Ensuing years saw various changes impact the project's schedule. Some key dates include:

- November, 2006 – GSA acquires 11.57 acres at 234 Corporate Drive.
- January, 2009 – City receives status report that indicates a reduction in the scope and funding of the construction at Pease.
- August, 2010 – GSA indicates the project is delayed due to redesign and need for additional federal authorizations.
- September, 2012 – GSA explains additional delay due to new federal regulations pertaining to construction of federal buildings (post-9/11/11).
- April, 2013 – Funding for relocation is removed from federal budget.

By summer 2016 the GSA made a determination that their space needs had changed dramatically since they first considered construction of a new building. In fall of 2016, the GSA began to search for leasable space for its remaining tenants, and began its disposal process for the McIntyre property.