

MINUTES
FEBRUARY 10, 2022
CITY COUNCIL SPECIAL MEETING
MCINTYRE

Mayor McEachern opened the meeting at 7:00 p.m.

Roll Call:

Present: Mayor McEachern, Assistant Mayor Kelley, Councilor Tabor, Councilor Denton, Councilor Moreau, Councilor Bagley, Councilor Lombardi, Councilor Blalock and Councilor Cook

Mayor McEachern opened the Public Comment stating that speakers will have 3 minutes and residents of Portsmouth will speak before others.

PUBLIC COMMENT:

Roy Helsel – spoke regarding the partnership with Redgate/Kane stating that they have been too dominant and are not willing to go along with what the City and residents want to do with the project.

Sue Polidura – spoke to wondering what is the motivation of tonight's meeting and that reversing this decision will only lead to more lawsuits from the 600+ people that signed the petition against their project. She further spoke to the will of the people being discarded as Mr. Kane is on record as being against the new plan.

Bill Binney, resident of Rye, NH – stated he is a developer and did not participate in the process originally because he felt it would be a deeply flawed process. He stated he has submitted a bid during the recent RFP process but has had no acknowledgement at all from the City of Portsmouth. He concluded by stating that this type of project is what he does and has done for many years so know he can handle whatever is involved.

Justin Richardson – spoke to his participation in the Portsmouth Listens process and his experience with large public/private partnerships. He requested that the City not go back to the previous agreement as the process was done backwards and should have had the participation and approval of the residents before selecting the developer so that they all had the same plan to bid on.

Rick Becksted – spoke to the previous Council rejecting the ground lease with Redgate/Kane and righting the wrongs that they felt had occurred throughout the process. Secondly, he stated that hearing that no one from the City had reached out to Mr. Binney acknowledging his bid submittal is disheartening just like the signed petition from 600+ residents that was ignored. He continued speaking regarding the work that the McIntyre Sub-Committee had done working together concluding that there was no illegal action taken by the previous City Council and the prior Council to them was the one who violated the laws and asked the Council to have some guts.

Petra Huda – stated she appreciates being able to speak unfiltered on this issue. She stated that 78 days ago the agreement was terminated and now it is being rescinded. She stated she has asked a lot of questions as to how this is justified and would like City Attorney Sullivan to cite his sources. She read a section from the Roberts Rules of Orders which she believes is in conflict with the action being taken by the Council. She concluded by summarizing her reasoning for taking the actions on November 18, 2021.

Doug Roberts – stated he is one of 13 plaintiffs in the lawsuit to invalidate the 11/18/21 vote. He explained the reasoning for filing the lawsuit is to emphasize the importance of good governance. He further cited from RSA's, Rules of Order, etc. which support the move to rescind the 11/18/21 vote. He stated this is not necessarily in support of Redgate/Kane and the option to terminate will still be available, but will be done through better governance.

Peter Whelan – stated he spent thousands of hours and 50 meetings on the McIntyre issue and explained that the actions taken by the City Council on 11/18/21 were legal. He further stated that City Attorney Sullivan was aware that the motion was going to be made at 2:00 p.m. that afternoon. He stated that the actions taken were so the “people’s plan” could go forward and to protect the citizens of Portsmouth from Redgate/Kane who acted in bad faith and negated the thousands of hours spent by the citizens. He stated when a relationship is toxic, it is time to move on. He concluded that the residents are watching this Council and they should not outsource the decision to the City Manager and should not reverse the decision.

Byron Matto – stated he supports the Council and the proposed motion to reverse the 11/18/21 vote and feels it is good governance. He stated the 11/18/21 agenda did not indicate there would be a vote and was advertised as a Non-Public Session with no public comment. He stated that this motion tonight is not meant to help Redgate/Kane but is about good governance.

Jeffrey Cooper – began by stating that he read the newspaper and felt the headline was misleading as it indicated “reuniting with Redgate/Kane” instead of rescinding the 11/18 vote and feels that was inappropriate. He supports rescinding the vote and now the question will be whether or not Redgate/Kane will work with the city to build what the people want or just go forward with his own project. He concluded by stating that we shouldn’t work with them if they aren’t willing to go with the new plan and we shouldn’t work with people who sue us.

Ken Goldman – stated that the issue is being confused tonight as it is supposed to be about rescinding a vote taken on 11/18/21 and not about the design of the project and that should be the focus.

Bill Downey – stated that the agenda does refer to the SoBow Square v. City of Portsmouth lawsuit so it is up for discussion. Secondly, he stated that there are 2 present Council members who were on the previous Council who participated in the 11/18/21 meeting and did not oppose continuing the meeting so he is confused. He stated he also agrees with Mr. Binney that he should have received some acknowledgement of his bid submission. He stated he understands that the contract does not allow the City to engage with any other developers, but it doesn’t prevent them from acknowledging the bidder. He concluded by stating that his group had previously worked with the late Attorney Paul McEachern and were advised that there would be no exposure to the city if they terminated after September 2021.

Esther Kennedy – stated that the Mayor and all of them have emails that indicate that the 11/18/2021 meeting was set appropriately by the city. She stated it had been nothing but threats of lawsuits for 2 years and was not abnormal for Mr. Kane. She stated they knew that the people’s plan needed to be built and in order to do the “Peoples’ Plan” they had to stop the contract. She stated that she had wanted the non-public minutes unsealed and she shared everything that she would have said at the Non-Public Session but she was met with resistance by other Councilors. She discussed the RFP that was sent out and responses received and should have been acknowledged. She stated the question before the Council tonight is what they are going to put in the contract with Mr. Kane and will it be the people’s plan.

Dick Bagley – stated that the focus of this meeting is whether or not the previous meeting was called appropriately or not and does not know why Councilors McEachern and Tabor did not call out that meeting as improper at that time and instead participated in the vote. He stated that we always talk about the Becksted 5 but never about the Blalock 8. He stated this is a sad day for the City because for reasons that they won't explain, just like the Webber case, they are hiding behind lawsuits.

Pat Bagley – stated she is confused as to why the previous vote was incorrect since our developer said that they wouldn't build what the people of Portsmouth wanted. She stated that this meeting is also a Special Meeting and there is a motion, so does that mean it is a predetermined vote. She concluded that the violation of trust will be with this Council if they rescind the 11/18/21 vote.

Chuck Raye – stated he is thankful that this Council is taking the step to rescind the previous vote so that they can proceed on the right track to get out of the lawsuit.

Paige Trace – stated that she is wondering if the Councilors have already made up their minds but hopes they are listening to the speakers. She continued that she was one of 9 Councilors who supposedly called an illegal meeting but the Mayor called that meeting the same as the Mayor called this one. She stated she showed up to the duly noticed meeting and if it was not, then the City Attorney could have said that it wasn't. She stated Councilor Whelan made a motion, which the Mayor said he could do, and she listened intently because it was the first time she had heard it, then she seconded it and it was voted. She stated that she can't tell the Council how to vote, but they work for all of the residents now. She concluded that the City Attorney and City Manager could have said it was illegal, but they didn't.

Mike Oakes – stated he feels this is a shame because Redgate/Kane is the wrong developer so the previous vote was good. He stated if Kane's go-to move is always a lawsuit, then they are the wrong partner, but if the City of Portsmouth doesn't end up with the property, it's probably the best thing.

Kate Hatem (via Zoom) – thanked the Council for trying to handle this issue with courtesy and rationality and for making responsible decisions.

Seeing no one else wishing to speak, the Mayor closed the Public Comment.

Mayor McEachern explained that this meeting isn't to dig into the legality of the November 18, 2021 Special meeting and it is also not to reunite with Mr. Kane. He stated it was called based on the advice of Counsel that the best path forward is to rescind how the contract was terminated. He stated he appreciates the passionate thoughts regarding the McIntyre but that is not the purpose of this meeting.

Councilor Moreau moved that all actions taken by the City Council at its meeting on November 18, 2021, including but not limited to termination of the Development Agreement between Redgate/Kane, d/b/a/ SoBow Square LLC and the City, are hereby rescinded. Seconded by Assistant Mayor Kelley.

City Attorney Sullivan stated that the City is in an extremely complicated and high stakes situation with a lawsuit with Redgate/Kane involving millions of dollars. He stated the actions taken created complicated, interlocking developments with exposure of the City as well as a second case, which assists the Redgate/Kane case. He continued that this Council will be called upon to make a series of difficult decisions regarding these actions. He stated this first step is a baby step towards this but not a final result. He stated this Council had a lengthy non-public discussion with Attorney Connolly and himself which cannot be discussed because it is legal and confidential. He stated this is analogous of a chess game whereas you don't tell your opposition your next step, you take one at a time. He stated depending on what happens, then next step will be determined. He stated we have to trust the Council just like the

last Council that worked hard on the community plan and is a goal, but have to take the first step on the path. He concluded by stating there was a great deal of wisdom spoken tonight by the speakers and the Council is listening and to go forward they have to start somewhere.

Councilor Moreau stated that by voting on this motion tonight we are not dictating what will get built on the property, it is just a first step forward.

Councilor Tabor stated it is good to hear from everyone and it has helped him to reflect on his own opinions and to do his own gut-check. He stated the vote on 11/18/21 was a problem for people because it wasn't on the agenda in any way and wasn't good process. He stated the majority of the Council voted not to hear from legal counsel which wasn't good process either. He stated this vote will remove an impediment in the process. He reviewed the public process previously taken concluding that we never got to answer the question of whether the community plan is feasible and whether we can do it and he wants to be able to answer that question and get something built on-site.

Councilor Denton stated he wanted to highlight what Mr. Downey and Mr. Cooper discussed in that the contract which was terminated in November had a clause in it which gave the city a way out of that contract. He continued that by rescinding that vote, we still have a way out in that contract if we can't come to an agreement with Mr. Kane on something that resembles the people's plan which is what most people want.

Councilor Blalock stated he appreciates everyone being here because we all care about Portsmouth. He stated we are here to right some wrongs. He continued that he was here on the night of 11/18/21 but wasn't going to come because it was listed as a non-public session and no public comment. He stated it is not predetermined how he will be voting, but tonight is about moving forward.

Councilor Bagley stated he wasn't here on 11/18/21 as he was out of town and feels that it should have been better noticed, but that is not what he is concerned with at this time. He stated now as a city representative we are faced with significant legal situations and we need to listen to advice of Counsel both inside and outside. He stated he has not heard anything tonight to dissuade him from following the legal advice.

Councilor Lombardi stated there is a lot of talk of old Council, new Council but there have been hundreds of Councilors over the years and he is humbled to be a part of that. He stated he has listened to Counsel and he wants to see something good at the McIntyre and the people's ideas are better and this is the first step to get there.

Assistant Mayor Kelley stated that all citizens are represented by the City Council and all have opinions. She stated that this isn't to invalidate all of the past work or opinions but is a step forward. She stated we can't move forward if we are tied up in litigation.

Councilor Cook stated we are here to act on the advice of legal Counsel to move forward and feels that all of the Council are trying to act in the best interest of the city and this is that first step. She thanked everyone for their thoughts and stated she will always listen.

Mayor McEachern stated he appreciates everyone coming out tonight and appreciates the civility. He stated it is difficult for him to hear there is a lack of trust and clarified we are not representing one group or another. He stated he loves the city like everyone else does. He addressed comments made regarding his father, Paul McEachern, who also gave him advice which was "always listen to your attorney". He concluded by stating that he noticed this meeting not because of prior actions but because Legal Counsel advised to do so.

Motion passed on a 9-0 roll call vote.

ADJOURNMENT:

Councilor Moreau moved to adjourn at 8:15 p.m. Seconded by Councilor Denton and voted.

Respectfully submitted:

Valerie A. French
Deputy City Clerk