

SPECIAL CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: WEDNESDAY, APRIL 6, 2022

PORTSMOUTH, NH
TIME: 5:30PM

III. CALL TO ORDER

Mayor McEachern called the special meeting to order at 5:30 p.m.

IV. ROLL CALL

PRESENT: Mayor McEachern, Assistant Mayor Kelley, Councilors Tabor, Denton, Moreau, Bagley (via zoom), Lombardi, Blalock and Cook

III. PUBLIC COMMENT SESSION

Paige Trace said this is not a public hearing, but you intend to vote on this matter this evening. She expressed her opposition to authorizing \$2 million dollars and said how much more money would be authorized under this agreement. She stated the Council has curbed the public comment session to 3 minutes rather than having an appropriate public hearing based on the amount of money that is being expended.

Peter Whelan said Redgate Kane has violated the Development Agreement, and the agreement you have before you this evening is awful. He stated this is a great deal for Redgate Kane and there is nothing to stop them from going back to the original deal.

Sue Polidura said the City is going to be on the hook for a whole lot of money that the public doesn't know how much. She said she is sure the Council will vote for the agreement, and this will be a never ending proposition. She stated that the Council is putting a large liability on the residents of the City.

Roy Helsel said if Redgate was partners with the City they never acted like partners. He said nothing in the agreement tells residents what the City Council is voting for this evening.

Rick Becksted said the residents must make an assumption that there will be a vote this evening on the agreement. He said Michael Kane is not the best person to make a deal with for the City. He said Mr. Kane has sued the City multiple times and yet we are making a deal with him. He stated he hopes there will not be vote this evening. He said that there should have been a public hearing on this matter and requested that Mayor McEachern keep the meeting open to allow for further public comment.

Esther Kennedy said we are talking about expending \$2 million dollars and there has not been a public hearing. She said the residents want to be heard and asked who the agreement is for, the residents or Michael Kane the developer.

Petra Huda said if you vote on this you will be in violation of the Charter again. She suggested you view the public hearing of July 31, 2019 and pay attention to the words of Paul McEachern. She stated that staff has taken over this process and the agreement is being ramped through. She said it appears that this agreement has already been filed with the court and taxpayers have been left in the dark.

Pat Bagley asked if the City Council has already decided on how they will vote on this agreement. She spoke to all the Non-Public Sessions the Council has had relative to the McIntyre, which left residents out of the conversation. She asked if the GSA doesn't grant an extension, what do we do, go back to the original agreement. She said this agreement is written for the benefit of the developer. Ms. Bagley said that the City Council is not serving the best interests of the residents.

Clare Kittredge said in reviewing the agreement there is no protection for the City. She stated she does not see the full costs associated with the agreement and the residents have a right to know.

Dick Bagley said there is an issue with this agreement, it is transparency. He said the City must follow the law as the facts present themselves. He expressed his opposition to the agreement.

Tom Nies said he never commented on the McIntyre project before, but he is concerned with the draft agreement. He asked how the City Council could agree to an unspecified amount and there are not many elements to protect the City's interest. He urged the City Council to take a breath, and include protections for the City.

Marylou McElwain asked where the \$2 million dollars is coming from and will the project leave the residents out in the lurch. She said the residents need more information regarding the finances of the project.

Mark Brighton asked what the City Council is hiding and said that this is disgraceful.

Mayor McEachern said the agreement was posted to the agenda last evening. He requested City Attorney Sullivan walk through the timing of this, and address the deadline we are under as well as protections with previous litigation as the document entails.

City Attorney Sullivan said the settlement of the case was driven in large part by the GSA. We have been engaged in acquiring the property for a number of years. The GSA advised the City Manager that time was running out, and tomorrow is the deadline. He said GSA would then dispose of the property and sell it at fair market value. He stated the City Manager began negotiations that very day, to try and get over the preliminary huddle and get the building for one dollar. He said the negotiations were intense and continuous, he spoke to the confidentiality of the negotiations. He reported that the City Council was participating in those negotiations, for which the results of were not reached until 4:30 p.m. yesterday. He reported that within minutes the agreement was posted to the website for the public to review.

City Attorney Sullivan said our form of government is an elected City Council to do the business of the City. He stated at 4:30 p.m., we received a proposed agreement and it was immediately posted. He spoke to the protections within the agreement, which are located in exhibit 1 that states all claims against and among the parties may be marked as follows: *"Neither party, no costs, no interest, no attorney's fees, no further claims for any cause of action arising prior to April 5, 2022. With prejudice."*

Mayor McEachern asked City Manager Conard where the \$2 million dollars will come from. City Manager Conard stated the money will come from fund balance. She stated that at the April 18th City Council meeting we would request for a public hearing and vote, to appropriate these costs.

Councilor Lombardi asked City Attorney Sullivan to address what the implication would be to not reaching an agreement at this time with Redgate Kane. City Attorney Sullivan reported that we have been in serious litigation for damages, which Redgate Kane claims is a breach of contract and could seek damages in the tens of millions of dollars.

Assistant Mayor Kelley asked City Attorney Sullivan what plan is reached in this agreement. City Attorney Sullivan said the plan is aimed entirely at developing the property under the community or people's plan and does not allow for any other option, but that.

Mayor McEachern asked City Attorney Sullivan to confirm that the City Council has not acted on this agreement. City Attorney Sullivan stated at the Mayor's insistence this matter would not be brought forward to the Council until it was signed by the other side.

Mayor McEachern said he is one vote in this agreement. He said there were two distinct things he has been working on, the first, was to settle the litigation without a doubt and second, building the peoples plan. He stated it was incredibly important to reach this point and have the suit settled with prejudice. He indicated the desire to build the community plan was important for him to see through. Mayor McEachern said he has spent a great deal of time working on this, and he was elected for his judgement. He stated he brings this agreement forward because it is the best path for the community plan.

Councilor Lombardi moved to grant the authority to the City Manager to sign and execute the Settlement Agreement dated April 5, 2022 with SOBOW SQUARE, LLC. Seconded by Councilor Blalock.

Councilor Moreau said the City Council wants what is best for the City and our main concern is costing the least amount of money and looking at every direction.

Councilor Bagley said the City has limited time and resources in this matter. He said this vote is difficult and has been consuming his thoughts.

Councilor Tabor said he would be pleased to vote in favor of the agreement. He said the settlement is important for the City to move ahead and settle two of the three suits. He stated he does not hear criticism on building the community plan. He stated it is his belief that the community plan can bring the residents together with pride and a sense of place for the project. Councilor Tabor said no one realized how many people would take part in the Portsmouth Listens process but it provided community dialogue. He indicated he looks at this as a restart agreement, and he will do what he can to make the vision a reality. He spoke to the renovations in Market Square back in 1977, which created a defining place for the City at the cost of \$2 million dollars. He stated Market Square is the most valuable piece of property in the City. He said if we create something that enhances the downtown and has a public benefit, it will pay for itself.

Councilor Denton said he has been involved in this process the longest of those currently serving on the City Council. He said he wanted to get the building after being elected in 2015. He said three options were provided at that time, the first, a negotiated sale, or let the building go on the market and be sold or the National Park Service Program where the City would receive some revenue and have some say on what the developers would do with the building. He said currently, do we want to move forward with the community plan? He said there are some things we don't love as a City Council, but we must decide. Councilor Denton stated if this falls apart the building will be sold for fair market value. He said if the public wants to see the community plan succeed, this is the best opportunity. He stated if residents feel we should walk away from the project, the building will be sold through the GSA and a developer could do what they want to do with the building under our zoning.

Councilor Cook said sometimes as City Councilors we are faced with making decisions that are not ideal. She said the Council needs to weigh all options and you may not like them, but in this case we're making a decision on the least worse option. She said this limits costs to the taxpayers which we don't know the potential outcome with the pending litigation, but we do know that the litigation will continue if a decision is not reached. She indicated that this has been a difficult and challenging time for the City Council. Councilor Cook said there is not an ideal option for the City, but this is the best option right now.

Councilor Blalock echoed some of the points of Councilor Cook. He said in every decision he wants to do what is in the best interest of the City, today, tomorrow and in the future. He stated this has not been the easiest process, but what he decides tonight, is the best decision financially for the City.

Councilor Lombardi said he made the motion because after reviewing the data, this would be the best avenue to achieve the community plan. He stated there are still risks, and GSA holds the key. He indicated the community plan is what needs to happen for the City. He said he would much rather spend the money making the community plan than paying off a lawsuit.

Assistant Mayor Kelley said she echoes the sentiments made by the City Council. She said she is concerned with the overall costs of the project. She stated she would have preferred to find out the costs before everyone fell in love with the community plan. She said we are all taxpayers and understand the importance of moving forward with the project. Assistant Mayor Kelley said a key factor was having the lawsuit dismissed with prejudice. She stated that this is a difficult position for the City Council but we are trying to be the best representatives of the City.

On a roll call vote 8-1, motion passed. Assistant Mayor Kelley, Councilors Tabor, Denton, Moreau, Lombardi, Blalock, Cook and Mayor McEachern voted in favor. Councilor Bagley voted opposed.

At 6:35 p.m., Councilor Moreau moved to adjourn. Seconded by Assistant Mayor Kelley.

On a unanimous roll call vote 9-0, motion passed.

A handwritten signature in black ink that reads "Kelli L. Barnaby". The signature is written in a cursive, flowing style.

KELLI L. BARNABY, MMC/CNHMC
CITY CLERK