

## **SPECIAL CITY COUNCIL MEETING**

MUNICIPAL COMPLEX  
DATE: MONDAY, JULY 17, 2023

PORTSMOUTH, NH  
TIME: 6:00 PM

### **CALL TO ORDER**

Mayor McEachern called the special meeting to order at 6:00 p.m.

### **ROLL CALL**

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

Mayor McEachern asked City Attorney Morrell for an update.

City Attorney Morrell explained that we have received a letter from Holland and Knight LLP after having been engaged by Ted Jankowski to review the terms of Section 408 of Title IV of the Consolidated Appropriations Act of 2004 to determine its enforceability. She continued reviewing the history of the mandated process for the GSA to convey the McIntyre Federal Building to the City of Portsmouth under SB 1598. She stated that some of the requirements occurred, including relocation of the federal employees and purchase of property to build a new federal building. She stated that the GSA remains stalwart in their position despite many efforts by city officials and members of our delegation to get them to convey the property pursuant to that law. She stated that Holland and Knight believe they have enough contacts in the GSA and Congress that they can be persuasive to have GSA halt the current auction process and convey the property to the city. She stated the city held a non-public with Holland and Knight who recommended pursuing lobbying instead of a civil suit. She stated they provided a scope of work which include milestones with the first order of business to be getting the GSA to stop the auction of the property to have time to lobby the appropriate people. She concluded they are looking for Council approval for Holland and Knight to make this effort on behalf of the city.

Councilor Tabor asked if these funds will be unbudgeted monies that need an appropriation.

City Manager Conard stated that there are remaining funds available in the McIntyre Design account so it will not need an appropriation.

Councilor Moreau stated we had already requested the GSA to transfer the property based on this law but their response was "No" in June.

City Attorney Morrell explained that the Mayor had sent a letter in May to Flavio Perez of the GSA requesting that the property be conveyed based on the law which was rejected and similar to the types of response that has occurred going back to 2013. She stated that because they didn't build the new building, they maintain that all of the conditions were not met and therefore not obligated to convey the property.

Councilor Cook asked if we have ever had anyone try to lobby on our behalf.

City Attorney Morrell stated she found a letter from 2014 inquiring about lobbying but doesn't know how far those efforts went.

Mayor McEachern stated that Holland and Knight mention in their letter that the city needs to reach consensus on the engagement to seek the conveyance of the McIntyre building and to develop a concrete plan for the economic development purposes for acquiring the McIntyre Building asking if that is correct.

City Attorney Morrell stated that their advice is to engage the community and get a clear voice of what the community wants and to put together a plan for municipal use of the property. She stated they feel the lobbying process would be more successful if that was done.

Councilor Cook asked what the general carrying cost is of the McIntyre Building currently and are there any big ticket items coming up.

City Manager Conard stated that it is \$310,637.00 for operation and maintenance costs to date. She stated that currently we are maintaining the property in a moth-ball status but there could be unanticipated expenses.

Councilor Cook asked what is the parking revenue currently for a year and does that offset the carrying costs.

City Manager Conard stated that parking revenue collected to date is around the same amount as the operating/maintenance costs to date.

Councilor Cook asked about the scenario of putting public housing in the McIntyre where previously it wasn't feasible when the purchase price was \$25 million and would it change under this scenario.

City Manager Conard stated that it would change the scenario considerably by removing the \$25 million purchase price.

Councilor Cook asked if there is any scenario in which the existing federal building becomes affordable public housing.

City Manager Conard stated that would be an answer that an affordable housing developer could give as we have done an estimate on renovating the building, but may not be relevant to that purpose.

Councilor Cook stated that the estimate to renovate the building for a city hall use was \$36,000,000.00.

City Manager Conard stated that those were the estimates in April and were conservative so they may be different now.

Councilor Bagley asked if the city was to acquire the building through this process, would the principal building be able to be taken down or not.

City Attorney Morrell stated it is unclear if the property is conveyed to us by the GSA if it would come with the same restrictions as it would have with the monument program.

Mayor McEachern opened the Public Comment:

Ted Jankowski – thanked the City Council for following up on his letter stating that this will be a great opportunity to go forward without a partnership. He stated that he feels this will be a great location for affordable housing as it could be comparable to a public housing building in Austria which is also a tourist attraction due to its architecture.

Sue Polidura - stated that workforce housing is not suitable for the McIntyre building due to the materials in the building. She stated the goal should be to get the building first. She stated that she has been following the Historic Archives Committee and a major concern is that there is no space for historical collections and feels that this would be a good use and could also be a museum. She feels that spending the \$30,000-\$40,000 for these attorneys is nothing in comparison to what has already been spent and wants to see our legislative delegation engaged in the process. She concluded by stating that possession is 9/10<sup>th</sup> of the law.

Bill Downey - stated that this is a unicorn opportunity and we have been deprived of all other options so should explore this one. He thanked Mr. Jankowski for bringing this opportunity forward and was impressed with the attorneys when he spoke with them and they are confident in proceeding with this. He stated to not explore this would be a mistake.

Peter Whelan – stated he applauds Ted Jankowski and feels it is a no-brainer to spend the \$30,000.00 on Holland & Knight. He stated that the \$22,000,000.00 allocated to relocate the federal building was reallocated to a project in Alabama and the GSA owes us. He stated that the Mayor should go to Washington D.C. and get the congressional delegation involved and to have a photo op with our Senators and Congressman in front of the McIntyre.

Jim Lee – stated that as a realtor, he feels that the GSA will have a tough time selling the property to someone else because this law is on the books so it will not have a clear title.

Petra Huda – stated it is not clear if we are here to support the decision or asking for an opinion. She stated her opinion is to go forward with this but it isn't clear if we are mixing what happened before with this opportunity. She stated we need to take the first step to get the building and let the citizens know if we can get it in accordance with the law that was not repealed.

Paige Trace – stated doing what they perceived to be the best decision for the city at that time, a Senator signed off for the GSA to take the money and buy another building. She stated the rest of the story is that the government agencies moved into a building owned by Kane Company. She stated the GSA chose something else on their own accord. She stated that regarding Senator Gregg, he intended in the law for the building to be demolished and then go to the 1/3, 1/3, 1/3 disposition. She stated the city deserves one last try at this building.

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

Mayor McEachern passed the gavel to Assistant Mayor Kelley.

Mayor McEachern began by stating that he has spent a lot of time thinking about the McIntyre Building. He stated there are currently 2 camps regarding this issue; the first are those that are tired of the whole thing and the second are those that feel if we can get the building for \$1.00, then we should do it.

He continued that the City Councilors did not sign up to be Councilors to not do hard things but understands that people are tired of the issue. He referred to a letter that was distributed in 1986 outlining issues that are similar to today. He stated that the letter he wrote once the path with the GSA had ended, was that the mission for the building had ended and that had never happened previously because we were tied to a developer. He stated it wasn't possible back in 2013 because the GSA was slow-walking the process and were never going to move the agencies out of there. He stated now there are no tenants there now so we can go forward. He stated that people are saying that we don't need a plan to go forward with this process, but he feels we do. He listed various uses that have been considered and the question before us now is even before we consider spending the \$15,000.00 for each of the next two months, is what to do with the building. He stated the risks are too high to spend \$25,000,000.00 on the building, but for \$1.00 it is worth pursuing. He stated that people are concerned with all of the condos that are going up in the city but that is on private property, and we have the opportunity to pursue something on city property. He stated he hopes he has a strong amount of support of the Council to give a strong message that this is something we have a responsibility to pursue.

Assistant Mayor Kelley returned the gavel to Mayor McEachern.

Assistant Mayor Kelley asked if we have engaged with the other legislative delegation since receiving this letter.

City Manager Conard stated yes, we had previously been talking primarily with Senator Shaheens' office but have moved forward with Senator Hassen and Congressman Pappas.

**Councilor Tabor moved that staff seek enforcement of the transfer of the McIntyre property to the city at no cost under Senate Bill 1589, and retain appropriate counsel for such purpose, so the city can use the property for the public benefit of the community with a report back on status at the September 18, 2023 Council meeting, seconded by Assistant Mayor Kelley.**

Councilor Tabor stated that the return of investment of \$30,000.00 for the property is one thing, but we aren't in the property business. He stated we have an extensive Capital Improvements Plan for the city but we have land constraints for the various projects that need to be done. He stated that this property could be the missing piece for long-term municipal needs. He continued that in terms of the rest of the property, it would be great to do a legacy project if the property was free. He referred to surveys that had been done in the past with consistent opinions that the McIntyre property be a gathering place and not a 4-story building. He concluded that he agrees with the Mayor that people are tired of this subject, but the Council is elected to fight for the citizens.

Councilor Denton stated he was previously involved with this process as the representative of Congresswoman Shea-Porter back in 2014. He stated the City Council at the time was frustrated after 10 years of dealing with this and it was palpable. He stated all of the legislative delegation was represented and they put their full weight on the issue which resulted in the National

Monuments process. He stated that members of Congress do not have any obligation to respond to a law firm and feels the time to hire a lobbyist was in 2004 to have had Senator Gregg and Acting City Manager Jankowski clarify the intent of the legislation. He stated that since then, in 2016, the City Council voted to do a public/private partnership, of which he was one of two dissenting votes, and since then there have been at least 2 robust discussions with the public for what they want to see the land used for. He stated if we move forward with this tonight, we will have to decide quickly what we want to do with the property. He stated that we know that it is going to take a lot of money to rehabilitate this building and we may end up holding the bag. He stated that will mean tough decisions on what other city projects won't get done.

Councilor Lombardi stated that the community has been divided over this project but he feels that no matter what happens, our opportunity to unify the community is to have it under the control of the city.

Councilor Blalock thanked Mr. Jankowski for introducing the city to Holland and Knight. He stated he feels it is important to explore all of our options and we are in a different situation than we had been previously as we are no longer in a development agreement. He stated that spending \$30,000.00 is not lost on him, but the opportunity for more space when we are in need of it and he supports this effort.

Councilor Cook stated she promised her constituents that she would ask all of the questions before deciding on the issue based on reality. She stated that the parking costs are currently offsetting the carrying cost of the building and if we have this firm working for us to see if they can get something accomplished, it isn't going to change that situation. She stated it will change if we acquire the building, but not right off. She stated there will be a remediation cost of \$4,000,000.00 which isn't a huge cost until it then is redeveloped. She stated that the decision of what to do with the building can be made later, but we should pursue this opportunity. She stated we need workforce housing and have very little land to build it, so she would like to see it there.

Councilor Bagley stated that the millions of dollars that have been spent on this issue already could have gone to other pressing issues and feels that it has caused division of the citizens. He listed various projects and issues that need to be addressed and feels that this should not go forward. He stated that this is the time to re-address our priorities. He stated that if the Council decides to move forward, we should engage on a contingency basis.

Assistant Mayor Kelley stated that the takeaway for her is the opportunity and a chance to do something that we haven't done before. She stated we owe it to our residents and the future of our community and loves the idea of a gathering space and less mass at the site. She stated she couldn't justify the cost but now she feels we need to try and get the correct result and hopes the community will rally to get this done.

Councilor Moreau stated she had asked a lot of questions of staff over the last week and was undecided coming to this meeting. She stated that there needs to be positive movement at the end of the 2 months, but with the covered costs at this time, she is willing to go forward and see what comes of it and work towards the possibility of work-force housing.

Mayor McEachern stated he understands the consternation that this has brought to the city. He stated that it is difficult when trying to figure out how to develop a parcel for public benefit as well as public gain all at once. He stated he agrees with Councilor Denton voting in 2016 to go into a public benefit only, but he is hopeful that this vote will spark some unity now that the private element is out of it.

**Motion passed on a 7-2 roll call vote. Councilor Denton and Bagley voted opposed.**

**Assistant Mayor Kelley moved to adjourn at 7:15 p.m. Seconded by Councilor Blalock and voted unanimously.**

Respectfully submitted:

Valerie A. French  
Deputy City Clerk