

## CITY COUNCIL MEETING

MUNICIPAL COMPLEX

PORTSMOUTH, NH

DATE: MONDAY, JULY 24, 2023 (Cont. from July 10, 2023)

TIME: 6:00 PM

### III. CALL TO ORDER

Mayor McEachern called the meeting to order at 6:10 p.m. He explained that he had just attended the wake of former Mayor Ted Connors and sent condolences to his family.

### IV. ROLL CALL

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

### XI. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

#### A. CITY MANAGER CONARD

##### *City Manager's Items Which Require Action:*

1. ~~Approval of Tentative Agreement with the Portsmouth School District Paraeducators~~
2. ~~Approval of a Memorandum of Agreement between the City of Portsmouth and Portsmouth City Employees AFSCME 1386A~~
3. Community Space Easement for Property Located at 3548 Lafayette Road

Councilor Moreau explained that she has been informed that public access rights to the public community space had not been included and will ask that this be referred back to the property owners.

**Councilor Moreau moved to request that the property owner go back and add public access rights to the public community space and bring back to the City Council at the August 7, 2023 City Council meeting. Seconded by Councilor Bagley and voted.**

4. Water Service Access Easement for Property Located at 212 Woodbury Avenue

**Councilor Lombardi moved to authorize the City Manager to accept and record a Water Service Access Easement Deed in substantially similar form to the easement deed from Maple Heights Realty, LLC contained in the agenda packet. Seconded by Assistant Mayor Kelley and voted.**

5. Authorization to Release a Portion of the Prescott Park Chain-Link Fence to Seacoast Repertory Theatre

**Councilor Moreau moved that the City Manager be authorized to release a portion of the Prescott Park fence with locks to the Seacoast Repertory Theatre for use on set and/or installation on its property as an artistic element, seconded by Assistant Mayor Kelley.**

City Manager Conard explained The Seacoast Repertory Theatre has expressed interest in acquiring a portion of the fence at Prescott Park which is covered in locks. She continued that the Seacoast Repertory has indicated that it could use a portion of the fence as part of the set in its upcoming production. At the conclusion of the production, the fence used on set could be installed on its property in the front of the theater in the garden area.

Councilor Cook stated she commends the Seacoast Repertory Theater for the offer and agrees that it is important to preserve the fence. She continued that she would rather that this be put out on loan and have the Public Art Review Committee review and determine if it is a piece of public art.

**Councilor Moreau moved to send to the Public Art Review Committee to determine if this is public art and whether the City Manager should release the rights to the Seacoast Repertory Theater, seconded by Councilor Bagley.**

**Councilor Moreau rescinded original motion.**

Councilor Bagley stated the community doesn't want to see this go away and agrees that the Public Art Review Committee should review it.

**Motion passed.**

6. Request to Establish a SAU 52 Site Investigation Committee for Purposes of Exploring a Potential Location for a Multisport Complex

City Manager Conard explained that in May, the City of Portsmouth issued Request for Qualifications (RFQ) 51-23 to initiate a process to investigate the potential for a public-private partnership to develop an indoor multisport complex. The City received two responses to the RFQ, one from The Sports Facilities Companies and the second from Edge Sports Group. She continued that city staff has determined that both firms are qualified to proceed and has preliminarily ranked the two firms (that ranking is not public information at this time). City staff is in the process of requesting additional information from each firm and may interview each firm to better understand the experience of the firm, potential approaches and opportunities, which may result in re-ranking. The City does not intend to select a single firm at this early stage in the procurement process. She further stated that as the City staff continues its investigation to assemble information for a work session with the City Council and Recreation Board this fall, and recommends that an SAU 52 Site Investigation Committee be established. The SAU communities of Greenland, Newington, New Castle and Rye may have properties to serve as a potential site. Based on current information, a minimum of a five-acre site would be needed for the construction and parking associated with an indoor multisport complex. Additional information relative to site options and conditions may be gleaned from the additional process that the staff will be undertaking with the firms that might further inform the work of a Site Investigation Committee.

She concluded stating as described in the RFQ, "After the short-listed firms are identified and ranked, the City anticipates holding a work session with the City Council and Recreation Board to determine what if any next steps will be taken. Next steps may include but not be limited to: a discussion with adjacent communities with the School District, issue a Request for Proposals to lead to a final selection of a firm with whom to partner, or ending the process ..."

Councilor Blalock stated he has some reservations with having other towns represented on the committee. He stated he hopes that Pease is being considered for a site but he doesn't want to keep

delaying this project and is afraid of having too many cooks in the kitchen. He stated that he understands that if we consider only Portsmouth sites, then we are looking at the same locations already being considered for other projects.

City Manager Conard explained that when the RFQ went out, both Greenland and Newington had ideas of sites in their communities.

**Councilor Bagley moved that the City Manager work with the School Superintendent to establish an SAU 52 Site Investigation Committee relative to the potential development of an indoor multisport complex, seconded by Councilor Tabor.**

Councilor Bagley stated that there is not a lot of available land in Portsmouth and part of Pease is in Newington. He agrees that we don't want to slow the process down but does feel that other towns should be included.

Councilor Blalock asked if we fully understand what can be done at community campus.

City Manager Conard stated not yet but explained that an updated wetlands delineation survey was recently done as the last one had been done 20 years ago. She stated that there needs to be at least 5 acres so it could be challenging.

Councilor Cook asked that once the committee selects a site and if it is not on Portsmouth property, then the agreement is with that community and not us.

City Manager discussed the makeup of the committee and stated that adding a representative of the PDA would be a good idea.

Councilor Cook clarified that there would be no cost to the city if it is not built on city land. City Manager Conard stated that is correct.

Councilor Tabor addressed Councilor Blalocks' concerns stating that if we need a minimum of 5 acres, many of our sites are less than 5 acres and if we have more choices it may speed up the process.

Councilor Blalock stated he agrees but some of the firms have already talked to other towns and he is just looking for a definitive answer on community campus.

Councilor Cook asked once the committee is formed will it come back before the City Council. City Manager Conard stated yes.

Mayor McEachern stated that this has been proposed for several years and people want to not have to travel to participate and practices for their various sports including hockey. He stated he would also like to see it located in Portsmouth, but there are other sites such as the Newington Mall, which cannot be used for affordable housing, that would be a good location in addition to several other sites being looked at.

**Motion passed.**

7. Request to Establish a Public Hearing to Obligate ARPA Funds for Several Projects

City Manager Conard explained pursuant to the recent request for a report back on the potential use of ARPA funds to implement certain recommendations from the COVID Recovery Task Force she and staff are bringing forward options as outlined in her memo. She continued that in addition, as a means to support the City's efforts to provide important improvements designed to maximize functionality at Community Campus for the non-profit tenants and for the City uses, she would also like to include this request for the Council's consideration as part of the discussion relative to use of remaining ARPA funding. She stated that if the City Council is interested in further investigating and potentially obligating ARPA funds for any of the projects listed, a public hearing would need to be established and she is recommending the August 21, 2023 meeting and that City staff (and its partners as appropriate) would be prepared to provide additional information on any of the items at the hearing and to further refine potential costs by obtaining better cost estimates. She concluded that the city has remaining ARPA funds of \$4,478,334.00 of which \$3,700,000 falls in the revenue loss category and \$755,000.00 fall in restricted categories.

**Councilor Bagley moved that the City Council schedule a public hearing to obligate ARPA funds for the projects identified, seconded by Councilor Moreau.**

Councilor Bagley stated the COVID Recovery Task Force met for a year and came back with a big list of requests and several that came to the top including transportation related issues and the gas cards are a small way towards the big issue. He continued that the book mobile is for seniors and younger people who weren't able to interact socially to be able to do so again. He stated that the Health Department has requests as well. He thanked everyone who served on the committee.

City Manager Conard clarified that the public hearing will be scheduled for the August 21, 2023 City Council meeting, which Councilors Bagley and Moreau agreed.

Councilor Moreau asked that at the August 21<sup>st</sup> meeting we understand how much unassigned money will be left so we know where to go from there.

**Motion passed.**

**XIII. PRESENTATIONS AND WRITTEN COMMUNICATIONS**

~~A. \*Presentation Regarding Community Policing Facility—Brief Announcement and Invitation to Attend July 11<sup>th</sup> Public Meeting—Peter Rice, Public Works Director~~

B. Email Correspondence

**Assistant Mayor Kelley moved to accept and place on file. Seconded by Councilor Moreau and voted.**

~~C. Letter from Seth Berg, Student at Portsmouth High School, regarding EPA Regulations of PFAS Chemicals~~

D. Letter from Mark McNabb, McNabb Properties Ltd., regarding Improvement Plans for High Street, Ladd Street and Haven Court as part of the 1 Congress Street Project

**Councilor Tabor moved to suspend the rules to allow Mark McNabb and representatives to address the Council regarding Improvement Plans for High Street, Ladd Street and Haven Court as part of the 1 Congress Street Project. Seconded by Assistant Mayor Kelley and voted.**

Marie Bodi of McNabb Properties stated that they were not prepared to make a presentation this evening but will reiterate the information that was included in the packet. She then reviewed the concept which is to envision what could be as to what currently exists in the outlined area. She stated that Mark McNabb as a citizen and developer has reached out to the City of Portsmouth with the intent to gift these improvements to the city which would not be part of what would typically be included in the approved project for 1 Market Square. She stated that they met with the City on June 7<sup>th</sup> and have a general understanding of the betterment improvements needed to bring life to the area. She stated it was discussed if this was in benefit of their project and it is not, these are a gift to the city and there are some requests they would like the city to engage which are outlined in the packet as well.

Mayor McEachern stated that for clarity that this is just meant to be a pre-read and not a formal presentation and no vote to be taken tonight.

Councilor Denton stated he was considering making a motion.

Mayor McEachern stated not this evening.

Councilor Tabor stated they have proposed changes to the parking garage entrance area and discussed the recycling/trash issue in the area and proposal to have a community trash area at High/Hanover garage and asked if there doesn't end up being a community trash room, what will they do with their own.

Ms. Bodi explained that there are 3 entries to the garage and they see people circling the area looking for parking instead of entering the garage. She stated that once they begin their construction, there will be a calming that will happen as a result and then it will prove itself whether that access is needed or not. In regards to the community trash room, they have plans that have a room within their own building so this is to service the surrounding area. She clarified that the package information is what could be, and not being proposed.

Mark McNabb stated that if the community trash area isn't incorporated then the city would continue to have the current situation with a big dumpster and individual trash areas. He stated the city is 400 years old and we need a more comprehensive solution to the problem. He stated the gift is not conditional on this but would like to see it happen as the dark spots created by the garage are not conducive to a retail area.

Mayor McEachern stated he does use the entrance in question for the garage after making a loop and feels many others do the same. He stated that many people use the 15 minute spaces and feels there would be a significant pushback from the community if eliminated. He stated he likes the idea of revisiting the idea after the construction to see if people are used to it but not be linked to a proposal that they vote on.

Mr. McNabb stated he will not go forward if those 3-4 spaces aren't eliminated.

Mayor McEachern asked Mr. McNabb if it will mean a full stop of the proposal if the spaces remain.

Mr. McNabb stated that is correct.

Assistant Mayor Kelley asked if the removal of those spaces have been discussed with the neighboring businesses that would be affected by the loss of those spots.

Mr. McNabb stated that he can't speak to exactly who has been contacted but they have presented it to the condominium association for the building and others and they have liked the proposal and support it. He stated that they need the width for sidewalks and accessibility and compared it to the Music Hall area that needed room on the narrow street.

Assistant Mayor Kelley stated she is concerned with the possible loss of 20 spaces and asked if they had asked the businesses about moving their trash location to the community area. Mr. McNabb stated not yet because it is not theirs to offer, it is up to the city.

Councilor Bagley discussed the traffic pattern/flow of the area and understands that people like the 15 minute spaces, but people also are requesting that Congress Street be closed to traffic and that would eliminate the looping. He feels that this is a win/win for the city and the area.

Councilor Cook asked about Haven Court, specifically the staircase, and asked how this will be made accessible to everyone.

Ms. Bodi referred to the letter from the Planning Board and stated that Councilor Moreau had asked the same question about accessibility and there are other ways to get to the spot without using the stairs.

Councilor Moreau stated she was concerned with that when the Planning Board reviewed the area several months ago and as long as there is another optional accessible way from point A to point B then it is allowed.

Councilor Cook stated she understands there are other ways to get to Fleet Street, but what about from the bottom of stairs to the viewing platform. Secondly, she asked about the neighbors on Ladd Street who have parking for their buildings.

Ms. Bodi stated it is not different than any other city project where there would be a temporary road closure as part of the CMP process similar to 60 Penhallow Street project.

Mayor McEachern stated that regarding the Construction Management Program he feels that it should be a part of the presentation prior to approval and get abutters understanding beforehand.

Ms. Bodi stated that the packet currently is a request to give a gift to the City and they are not prepared to do a CMP before city support.

Mayor McEachern feels that having a CMP in place would help get the support because he feels they learned a lot of lessons from the last project and should use those lessons.

Mr. Chagnon explained how they could address the parking issue on Ladd Street during construction.

Councilor Cook stated she is concerned with the parking areas behind Ladd Street as well because they should also be considered abutters. She stated that they are often renters and not owners so may not be notified properly.

Councilor Cook asked how this project will dovetail into the Market Square Master Plan process so it doesn't curtail that process.

Mr. Chagnon stated they are asking for approval of the gift and then will start the process of stakeholder meetings etc. but need the city to give the go ahead.

Discussion ensued regarding the CMP and whether it should be in place prior to acceptance of the gift.

Assistant Mayor Kelley asked if these projects would occur concurrently.

Mr. McNabb stated that yes, that would be the plan but this would need to be worked out within a year as they already have a start date for their own project.

Assistant Mayor Kelley asked if it would be possible to have his staff communicate with the abutters and give feedback to the Council as part of the presentation on August 7<sup>th</sup>.

Mr. McNabb stated not within 2 weeks but would do so after the presentation has been given and the process gets started. He stated he has had ongoing conversations with most of the people in the area for a year and a half and they like what they are going to do. He stated he expects and wants conditions from the Council in regards to going forward including abutter notifications. He stated he is not interested in going back to zero and understands abutters need to be involved and will continue to be, but we are not at the beginning of the process.

Councilor Lombardi stated he sees something that is consistent to what we are trying to do in the city as was discussed on previous committees and feels this is a good opportunity. He stated he would like to resolve the issues and find an avenue to move this forward. He stated regarding the aesthetic he doesn't want it to duplicate something that already exists. He stated that the Arch at the Music Hall was a very successful public/private partnership that did benefit the Music Hall and feels this would benefit Mr. McNabb's project as well.

Mr. McNabb stated regarding the Arch he put up \$25,000 to design it and form a committee 10 years prior to it being completed and donated private land for the benches. He stated he isn't trying to rush this but if the timing isn't right then it isn't right.

Councilor Blalock stated he appreciates Mr. McNabbs' selfless contributions and improvements to the city and feels that this is a huge improvement as well. He stated the Council represents the public and he is also concerned with the 15 minutes spaces and the garage entrance that he knows his employees and family members do utilize.

Mr. McNabb stated he has his opinion on vehicles downtown but doesn't mean it is right.

Councilor Denton stated that improvements like these will benefit all of Portsmouth and agrees that the eliminated parking spots are not a stopper for him if it improves the street, but can't speak to if the community trash area will work there. He stated that it did improve the Ceres Street area when it was done there. He stated we need to take the step at some point to lessen vehicular traffic in the downtown area. He stated if the Council does go forward with the MOU, then set it up to compartmentalize the various steps.

Councilor Tabor stated he is sure they are wondering why it is so difficult to give the city improvements worth a great deal of money, but it isn't the Council's property, it is the public's property. He stated there are 3 city streets involved and we need to include a public process from this point forward.

Councilor Bagley stated there were 3 options on the Union Street project and the least pedestrian friendly was picked and feels that if the public were to choose the option today, it would be different. He doesn't feel that there will be pushback to removing the jersey barriers in the area and has noticed that there are vacant offices in the area because it is not the most desirable area in the city. He stated if the public wants us to make these improvements with little to no cost to us, then we should consider it.

Assistant Mayor Kelley asked if it was possible to also have staff opinions available for the next meeting.

City Manager Conard stated that she can do that, but there may not be enough information available for them to weigh in yet.

Councilor Moreau stated that we should try to envision the future of Market Square with 15 – 30 minute spaces and long-term parking in the garage. She stated it is a changing of mind-set.

Mr. McNabb clarified that there are 2 public streets as Haven Court is a private street.

Mayor McEachern asked if that is the opinion of the legal department.

City Attorney Morrell stated it is in dispute whether the prescriptive rights that have accrued over the years have made it a public street. She stated we have had dialogue with Mr. McNabb and his team and attorneys about how to resolve the conflict between their perception and ours of the legal status of the street and have come up with a solution to preserve both sides rights to share access and responsibility of the maintenance of the area.

Mayor McEachern clarified that Mr. McNabb thinks it's a private street and we disagree with that but Mr. McNabb has given us all of the rights that go along with a public street going forward.

Mr. McNabb stated more or less in that there is a license agreement in place for the uses associated for public use and access through the area but it has never been on any plan as a city street but as a private way. He stated that has never needed to be litigated because he wants to see it used the way the city wants it to be used.

Mayor McEachern stated he would like to see where the difference lies between "more or less" and whether it is a public street or not.

City Attorney Morrell stated we have drafted a joint use agreement that sets forth the city's rights to use the street and sets forth our obligations and the same for Mr. McNabb in preserving his improvements and upgrades and allowing the city to use the area as a public right-of-way without litigating the issue. She stated she feels it is resolved with exception of who is paying for the improvements.

Mr. McNabb stated he agrees with that assessment and he plans to pay for the improvements. Councilor Tabor asked if there was a site walk for the Planning Board.

Councilor Moreau stated there was a city site walk which the Planning Board attended.

Mayor McEachern referred to a letter from the Planning Board regarding the project but wasn't on the Planning Board agenda so does this need to go back to the Planning Board?

Councilor Moreau stated the Planning Board Chair brought it up at the meeting and it is a letter of general support.

City Attorney Morrell clarified that Mr. McNabbs project has already been approved and the remaining issue is the improvements on city property so they don't need to address it again by the Planning Board.

Councilor Blalock stated he agrees with Councilor Moreau that if we are going to be adding more 15 minute spaces in Market Square in the future then he could support this.

Mayor McEachern stated that the trick is determining how this washes out in terms of fees that may be waived in exchange for the improvements. He continued that reading the letter and seeing that it is a done deal if certain things are not done, was difficult as we need to get the public response and engagement. He stated that this is a considerable change on city property and we want to spend the time for due diligence.

Councilor Cook asked if there could be a site walk before the next meeting.

Mr. McNabb stated they will work with the city to set that up and wants to clarify that he does understand that there needs to be more public engagement.

City Manger Conard stated she will work with the City Clerk's Office to set it up and properly notice.

No action taken.

- E. Letter from John Singer and Ruth Kennedy regarding Proposal for Permanent Outdoor Dining

**Councilor Moreau moved to refer to the City Manager to be shared with consultant for Market Square Redesign Plan, seconded by Assistant Mayor Kelley.**

Councilor Cook stated she is excited to see this letter and excited to get the process started.

**Motion passed.**

#### **XIV. MAYOR McEACHERN**

1. Appointment to be Voted:
  - James Hewitt to the Safe Water Advisory Group (SWAG)

Mayor McEachern explained that Mr. Hewitt was recommended by the Chair of the Committee to fill a current vacancy and will serve the remainder of the term through this year.

**Councilor Bagley moved to approve the appointment of James Hewitt to the Safe Water Advisory Group (SWAG). Seconded by Assistant Mayor Kelley and voted.**

2. Resignation of Jan Fonseka from the Board of Library Trustees

**Assistant Mayor Kelley moved to accept the resignation of Jan Fonseka from the Board of Library Trustees with thanks and appreciation of service. Seconded by Councilor Moreau and voted.**

#### **XV. CITY COUNCIL MEMBERS**

##### **A. COUNCILOR TABOR**

- ~~1. Update from Legal Department on Letter from Holland & Knight~~

##### **B. COUNCILOR MOREAU**

- ~~1. Planning Board Recommendation for Density Incentives~~
2. Request for First Reading regarding Zoning Ordinance Use Regulations

Councilor Cook stated she has reviewed this proposed change and feels there are 2 problems. She stated that the first with the term “government use” as she feels it is ill defined and what it would include. Secondly, she doesn’t understand why the roles of the City Council and Planning Board would be changed and feels that it would expand the Planning Boards powers and decrease the Council ability to act on issues that weren’t defined under “government use”.

**Councilor Bagley moved to accept and place on file, seconded by Councilor Cook.**

Councilor Moreau stated she agrees with the points made by Councilor Cook that there could be unintended consequences.

**Motion passed.**

#### **~~XVI. APPROVAL OF GRANTS/DONATIONS~~**

*~~(There are no items under this section of the agenda this evening)~~*

## **XVII. CITY MANAGER'S INFORMATIONAL ITEMS**

### **1. Update on First FlashVote Survey Results**

City Manager Conard gave an update to the work that Monte Bohanan has done in reviewing the responses to questions number 4 and 5 stating that housing affordability and pedestrian/bike improvements are top concerns. She urged people to sign up for FlashVote.

### **2. AAA Bond Rating Announcement**

City Manager Conard stated that the City received its 11<sup>th</sup> consecutive affirmation of our AAA Bond Rating and has resulted in reduced principal payments and interest rates.

### **3. Update on Community Power Rates**

Councilor Tabor stated we continue to have lower rates through Community Power and will be dropping to 10.2 cents in August.

Mayor McEachern asked what the savings will be for the City as a whole.

Councilor Bagley stated it would be \$4,000,000.00 over a year.

## **XVIII. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING**

Councilor Blalock announced that the Portsmouth 12 and under Little League will be in the State Championship game on Saturday, July 29<sup>th</sup>.

## **XIX. ADJOURNMENT [at 10:30 p.m. or earlier]**

**Councilor Moreau moved to adjourn at 7:55 p.m. Seconded by Councilor Bagley and voted unanimously.**

Respectfully submitted:

Valerie A. French  
Deputy City Clerk