

TOWN COUNCIL MINUTES
Ordinance Committee
Town Hall Council Chambers
October 17, 2019, Thursday

Present: Ken DiFazio, Chairman
Arthur Mathews, Councilor
Rebecca Haugh, Councilor
Christopher Heffernan, Councilor

Absent: Michael Smart, Vice Chairman

Also Present: Joseph Callanan, Town Solicitor
Christine Howe, Project Manager

Recording Secretary: Mary Barker

Chair DiFazio called the meeting to order at 6:31 PM.

Restricting Single Use Plastic Bags

Mr. Yavorsky was acknowledged in the audience. Councilor Haugh prepared a potential ordinance culminated from a number of ordinances proposed or enacted by other towns. The committee reviewed the draft.

Councilor Haugh spoke with people in other towns that have or are enacting it. There is support at the state level; the Department of Public Health supports the action and provides assistance. She tailored her summary to the best of others. She reviewed what the draft includes (banning just check out bags) and what it excludes (deli meat, produce, laundry and dry cleaning, newspaper- single use bags), to get people to use reusable bags. It includes a six-month implementation period and if a retailer needs, it could provide for one six-month extension so that the ordinance would be fully operational within one year. If a retailer chooses to provide paper bags, they may under the ordinance and they would be allowed to charge up to 10¢ per bag. It must be outlined on their receipt, and the retailer would profit from that charge. Enforcement is by the Health Department. First violation results in a written warning; second \$50, and \$100 for each subsequent offense.

Councilor Heffernan will be supporting this. It echoes what is happening at the state level; although it will take longer for the state to enact the legislation. Why not jump ahead now? Other towns have taken similar action and he urged we do also.

Chair DiFazio suggested the draft be forwarded to the full town council and also to the administration for direction.

Councilor Mathews suggested they give the Solicitor and Director of the Health Department time to review.

A motion was made by Councilor Haugh to forward the matter to the full Town Council with a recommendation that they send the draft to the administration for consideration and was seconded by Councilor Heffernan. Councilor Haugh thanked Mr. Yavorsky for the work he put into it, and the towns that have preceded them. **UNANIMOUSLY VOTED.**

Route 3 Billboards

This matter was referred to the committee on September 3, 2019. The committee deliberated on September 26 and October 7, 2019. The Mayor held an informational forum on October 1, 2019. On October 7, 2019, the committee voted to ask the full town council to send a proposed letter to the mayor and select others. It was sent. He believed the Mayor's office and Cove met on October 10, 2019 to discuss calculation of damages related to stopping all action on billboards and repeal the billboard section of the ordinance.

On October 16, 2019, the chair met with several constituents and two Cove representatives to discuss whether the prior meeting discussed the abolishment of the ordinance and what the damages might be. They confirmed that discussion was begun. He summarized the meeting he held on October 16, 2019. What he heard was that many of the constituents do not want any billboards on Route 3, before considering any alternatives. Second, Cove proposed several alternatives. The constituents want the administration to know they do not want any electronic billboards along Route 3, before any alternatives are proposed. Based upon that- there is a serious request for a written evaluation of real damages the town would have to pay to back out of the contract (including potential defense costs) from the administration.

Chair DiFazio invited the Solicitor and Ms. Howe to the table. Solicitor Callanan reminded the committee that he attends the meetings not as a representative of the administration, but as the committee's legal counsel. He can answer questions regarding the legality of things, but not as the administration's representative and from what he understands from Mayor Hedlund, this is the third meeting held on the issue. Ms. Howe is also not present to answer questions on behalf of the administration either. If the committee has any questions or directions, they can get back to them. Ms. Howe's presence is not in conformance with the charter.

Chair DiFazio asked if the solicitor has been involved and if the administration has taken any action. Has Cove stopped work for an official reason; other than that it is being "nice" to them, that can be shared with the committee? Solicitor Callanan responded that he will get back to him. Chair DiFazio reiterated that the committee wants a response from the administration that is complete and as soon as possible, and he would like to know when they will have it. Solicitor Callanan will get back to him.

Councilor Mathews reported that Auditor Swanson provided the committee with a memo that will be provided to the administration. Based on the direction in a letter from Councilor Mathews to the Mayor, the Auditor intends to conduct an audit on this matter, as outlined in the agreement. The Auditor identifies five items that he will focus on to help obtain the true costs of the billboard, permitting, engineering fees, and verify them with the vendors providing materials, and with engineer and the permitting agency. Councilor Mathews is concerned with the number of contradictions in the information Cove has provided. He is suspect of the level of transparency in the matter.

Councilor Heffernan stated that this is first and foremost, and the action is to see that the neighborhood is made whole again, by taking the billboards down and totally scrapping the project; either in a good faith negotiation or legal action. As well, make sure they are dealing with an honest broker, through the efforts of the town's Auditor.

Councilor Mathews noted he sent a letter to the Mayor on September 9th regarding the application submitted by Cove. Under 700 CMR 3.15, it states that the written approval of the municipality is required before submitting, unless otherwise exempted. The agreement is dated 106 days after the submission of the application. If that was to be challenged legally, his personal opinion is that it might be upheld. The application was not submitted with the required supporting documentation. He asked the Solicitor to comment. Solicitor Callanan responded that it is an unlikely reason in which to get the permit revoked. The application was received in April, but wasn't acted upon until July. MassDOT was well aware of this, and held it up until they had the agreement, by placing it on an agenda in August and then issuing the permit. No harm was done by keeping it on the docket.

Councilor Mathews responded that the state did not adhere to their own regulations. He disagreed with the Solicitor's opinion. Solicitor Callanan responded that MassDOT held the application until they had the agreement. There are many times that documents are submitted without being complete. It's a standard that no court would impose on a municipality. Councilor Mathews responded that it doesn't make sense that it's in bold print at the top of the application if it isn't a requirement. Solicitor Callanan responded that it is similar to the process of the new Real ID. Councilor Mathews responded that he appreciated it, but that is the opinion of the solicitor. Solicitor Callanan responded that it is his opinion and is based on his experience.

Chair DiFazio pointed out that this is one example of what the committee is looking at.

Councilor Haugh asked a procedural question. If everyone was unaware, what was the procedure with hiring Cove? What are the requirements for a company to come in? Who picked them? If they are stuck with this ordinance, can a company come in and buy out Cove and do it right? Solicitor Callanan responded that he will pass the question on to administration.

Chair DiFazio asked for a definition of an electronic billboard? Each so far is 2-sided. If he had read that in the ordinance from the beginning, he would have questioned it. Based on the current contract, is there any chance of minimizing it? Was it based on a one-sided face? Solicitor Callanan will look into this- there is a question over single face, three faces or three structures and what the zoning allows. He believed the intent was based on structures and not faces.

Chair DiFazio noted that given the timeline, the earlier the response, the better. That is the clear message from the constituents. Get that accomplished, and then the committee will act on those results.

Councilor Haugh commented that in her six years as a member of the council, this is the first time she can recall being in a meeting and still can't get answers. Usually at subcommittee, it's an open dialog. She thought there would be more feedback. This is frustrating. What is the process?

Solicitor Callanan responded that when representatives come before committee, it's an issue initiated by administration. This was initiated by council. There is a provision in the charter to follow; submitted with five days notice and in writing. In the first two meetings, the administration did provide answers.

Councilor Mathews responded that it's great that this is a charter review year. This will be on the list of the many items to be discussed. He wants that clearly defined.

Ms. Howe responded that they would prefer to provide full clear answers and ultimately a resolution and a proposal that works.

Chair DiFazio senses that he is hearing negative feedback with regard to meeting a number of times. This is sensitive to the constituents. Administration has some culpability. He is trying to appease constituents and get them information as soon as possible. He feels as though they are working as a buffer with administration. He is not looking to make more work but wants to obtain information as quickly as possible.

Councilor Mathews responded that for the record, the neighbors asked for the committee to meet, after Cove requested a meeting with them. This was a result of Cove wanting to meet with the constituents. They are trying to help with their concerns. He didn't know the administration met with Cove. He is trying to get information back to constituents and they are at a stalemate. This is unique to him –and this is the first time in 18 years he's encountered it.

Councilor Heffernan reported that he is committed to make sure the constituents are made whole, whether it takes 3 or 30 meetings. Constituents have come in several times. It shows there is not only a flaw in the billboard process, but in the whole process. They need to take a look at it in charter review and he will submit any questions in writing to the administration if that's what it takes to make the constituents whole.

Constituents Amy Kabilian and Kathy Swain were invited to the table. Both and Bob Delaney are in daily email contact with the chair.

Kathy Swain spoke first, on behalf of Bob Delaney. She noted it was made clear at the meeting with Cove that they just wanted to speak with her and Bob Delaney. Reportedly, Peter McClary and Jim Bristol spoke earlier in the day, and Bristol is possibly willing to donate 42.5 acres to the town as open space if they would come on board with putting a billboard up on Finnell Drive. When they asked what happens to Century Road, the response was that the billboard would stay there. They responded that they were not interested. They went back and forth on light-blocking technology and tree cutting and Peter McClary can now move the billboard. First they couldn't; then they can. Amy interjected that they couldn't move it because the Mayor's office told them they couldn't. Kathy continued; they have a permit for 611 and 613 Pleasant, they want a permit for Finnell and now he wants a permit for Libbey Parkway and doesn't know why that was never mentioned or included in the zoning regulations. He also said he could remove all of the billboards in North Weymouth and install an electronic billboard at the bridge. This is what they listened to; they worked to try to find a solution. Now they are up to 8 if each side is counted. How many permits does Cove want? They want to know.

After, she and Bob spoke. They realize the only way to get no impact on any neighborhood is to prohibit all billboards on the Route 3 corridor. They did discuss the Finnell location; Kathy opposes because it would be directly across from condos on Tirrell Drive without a tree buffer. When she mentioned that it could affect their property values, the response was that most of them are LLC's with rental property. The gist was it didn't matter. She and Bob Delaney have been working on this since November 2017. At that time, the Mayor

mentioned he might be able to do something and it revolved around billboards and with light-blocking technology. They are not backing a billboard at Finnell. If they do, they have no control over the content, which is under state jurisdiction. The plan is to put up four, and two will immediately be sold (maybe to Clear Channel?). They didn't deny or confirm it. What happens when the billboards are old and in need of repair? What happens if Cove sells them to a company that isn't reputable? They were told in the meeting last night that light-blocking technology needs to be updated every 7 years. What happens if they decide at that point not to use it? It costs about \$300,000 to install. Once the billboards are up, they are up forever, and as a community they lose control over their own backyard. They appreciate Peter and Ed listening to their concerns, and are considering workable solutions and they will be submitting options going forward. Bob and she in good faith, will not support a billboard on Finnell Drive. She urged the Mayor to not approve the required waiver.

Chair DiFazio asked the Solicitor and administration to factor in the cost of the North Weymouth billboards and to be taken into consideration in factoring costs.

Amy Kabilian addressed the committee. She urged they use any and all legal tactics to walk away from this. Billboards do not fit with any neighborhood in Weymouth. During the meeting last night several items came up:

- Moving the 611 to 613 but pushing to Hingham line- they didn't like that when Abington did that to Weymouth
- Told they weren't aware of their neighborhood
- Requested, but did not receive, impact studies. Does this mean they won't get them for any new ones either?
- Still haven't received health studies- don't know the health implications of the billboards or light-blocking technology
- Agreement indicates one face will be sold; that will result in lost of control over the advertising (same problem as what occurs on 3A)
- Peter McClary indicated in the meeting that Clear Channel was brought in to meet with the Mayor. They were not aware of this meeting. (Clear Channel owns most of the billboards on 3A and the content is an issue.)

Councilor Mathews asked if the Mayor or administration met with Clear Channel? Solicitor Callanan responded that he will get back to the committee on it.

Ms. Kabilian continued with her points:

- In p.5 of the agreement, (CMR 3.07 3b) it states no permit would be issued if it would not be in harmony with the surrounding neighborhood. When they questioned Cove about it, they were told this is the town's determination to make.
- Permits expire on the last day of the year. Can they request the town not renew?

Chair DiFazio asked why these last items can't be used as a defense of the action. There are ramifications, but this information should be included in the analysis.

Councilor Haugh asked who told Ms. Swain that the cost is \$300,000 to install light-blocking technology? She responded that it was Cove. The chair asked why it was installed without the technology and if it was included in the agreement? Ms. Kabilian responded that they were told at the October 1st forum that it was included in the landlord agreement between Cove and Bristol but was not in the Town's agreement. Cove will not share their agreement

or confirm whether it is in there. They are unsure if it was in there, or had been modified out.

Councilor Mathews asked if the town has amended their agreement? The chair requested a copy of the agreement. Solicitor Callanan responded that he will get back to the committee.

Amy continued- with the sale of the billboard, Cove mentioned they could put some regulations on content. The overlay district language only talks about interactive signs.

Chair DiFazio asked who has the ability to revoke the deal? If the landlord walks away, is the deal done?

Chair DiFazio noted the committee will reconvene once the information they requested is received from administration.

Councilor Haugh asked the auditor to include scrutiny of the quotes Cove received and whether any pricing included light-blocking technology.

ADJOURNMENT

At 7:28 PM, there being no further business, a motion was made by Councilor Heffernan to adjourn and was seconded by Councilor Haugh. UNANIMOUSLY VOTED.

Respectfully Submitted by Mary Barker as Recording Secretary.

Approved by Ken DiFazio as Budget/Management Committee Chairman
Voted unanimously on 18 November 2019