

**TOWN COUNCIL MINUTES**  
**Ordinance Committee**  
**February 27, 2023**

Present: Kenneth DiFazio, Chair  
Gary MacDougall, Vice Chair  
John Abbott, Councilor  
Lisa Belmarsh, Councilor  
Arthur Mathews, Councilor

Also Present: Richard McLeod, Town Solicitor  
Robert Luongo, Planning Director  
Kenan Connell, DPW Director  
David Tower, DPW Business Manager  
James McGrath, Asst. Engineer  
Owen MacDonald, Traffic Engineer  
Lt. Brian Morse, WPD

Recording Secretary: Mary Barker

Chair DiFazio called the meeting to order at 6:34 PM.

**22 135- Town Council Code of Ordinances Amendment, Section 8-408 Openings in Street Restricted**

This measure was referred to committee on November 14, 2022. A public hearing was held on February 6, 2023. The chair invited the proponent, Vice Chair MacDougall, to provide an update. The committee held a meeting on 1/31, with the DPW. Some had issue with striking the two words, “in general” as being too restrictive, so he looked at it again to determine an amicable solution; if the town requires a street opening for non-emergency events, a memo to Town Council with no less than 45-day notice, and with a reasonable estimated timeline, so the residents are aware. (copy provided to the committee.) so the change to the ordinance is the notification piece. The amendment was forwarded to the DPW.

Kenan Connell and Jim McGrath spoke to no change in the ordinance. Mr. Connell said the 45-day notification may not be practical. Councilor MacDougall asked if street openings require permitting. Director Connell noted adding additional requirements to the DPW is another burden. Even in emergencies, the Council would not likely know. Director Connell added that this change to the ordinance is unnecessary. Councilor Belmarsh asked how the Mayor’s office is notified. Director Connell responded that it would just be contacting the chief of staff’s office. Councilor Belmarsh stated the committee is not asking for additional work; just to be kept in the loop. She has found it frustrating.

Chair DiFazio pointed out that he would be comfortable with giving the DPW more leeway with a 30-day notice.

Councilor Abbott suggested the change is not burdening the DPW much but that ultimately the ordinance is not where the battles between this Council and the administration should happen. This is a benign and pretty low threshold, and leaves enormous discretion to the DPW.

Vice Chair MacDougall motioned to forward measure 22 135 to the full Town Council with a recommendation for favorable action and was seconded by Councilor Belmarsh. Chair DiFazio asked if it is 30 or 45 days? Councilor Mathews pointed out the motion must be more specific.

Vice Chair MacDougall made a substitute motion to reduce to 30 days from the original 45 days. Councilor Belmarsh seconded the motion and it was unanimously voted after Chair DiFazio read the revised ordinance into the record.

### **22 138-Traffic Regulations – Wharf Street at East Street**

The measure was referred to committee on December 5, 2022. A public hearing was held on February 6, 2023.

Owen MacDonald and Lt Morse presented the measure. Mr. MacDonald noted the BZA set conditions on reuse of the building on Wharf Street--right turn from Wharf to East prohibited. The use is changing from light industrial to residential uses. Commercial street is better able to handle the slight increase in traffic. Station can turn to East Street.

Vice Chair MacDougall motioned to forward measure 22 138 to the full Town Council with a recommendation for favorable action and was seconded by Councilor Mathews. Unanimously voted.

### **22 131-Citizen Petition Proposed New Building Moratorium**

The measure was referred to committee on October 17, 2022. The committee met on November 16, 2022, January 10, 2023 and January 31, 2023. A public hearing was held on December 5, 2022. At the last meeting, they discussed their approach to the information gathered so far. Discussion included a potential standing committee to review ongoing issues with water, over the next 6 months. There was also minor discussion for the necessity of a moratorium. Since, he has received correspondence from the proponent, Kathy Swain, with a list of items that are still unaddressed. The chair reserved time later this week in case this is not resolved tonight. It must be resolved one way or another at the Town Council meeting on March 6, 2023.

Councilor Belmarsh added that she also reached out to EPA and spoke with Wayne LeVangie, chief of the water management resources program, about the water permit renewal application. She asked the status of the renewal application. He responded that there are two items outstanding from Weymouth; the application, and determining what the town's registered water volume should be. There is a question whether figures are based on are raw or finished water. He responded that many applications are before them

and they have to make determinations by April 8, 2023. By the end of the month, the town should have those answers. Once the issue is resolved they will work on the permit, which should have action before the end of the calendar year.

The Chair asked Director Luongo if the moratorium were to be continued 90 days, are there applicants whose projects would find a hardship with the delay? Mr. Luongo explained that there are five or six he knows of that will be filed shortly, or scheduled to be heard before BZA; so, yes. The Chair asked if anyone on the committee is concerned that lack of action at this time is critical? He does not. Mr. Luongo added that they worked with the Council to scale back the commercial corridor overlay zoning, knowing the water usage was getting close. They vet every application, and do not move forward without signoff by all departments. His opinion is that they haven't reached that crisis point yet; however, they have prioritized projects so they won't overdevelop. Currently, the revitalization of portions of the commercial corridors and village centers are constrained, but they cannot tell developers they can't apply. He is not supporting projects outside of these areas.

The Chair asked if the DPW reviews each and confirms the usage is manageable for the town. Mr. Luongo responded that as suggested in previous discussion with the committee, the developers will now be asked to submit approximate water/sewer discharge of each project and DPW will sign off on them. Building Department issues the permit if it complies with the zoning (special permitting, variances). The Chair asked if not allowing development outside of commercial corridors or the Landing is discriminatory. Director Luongo responded that they are not denying the underlying zoning. There would be a problem with picking and choosing.

Councilor Belmarsh pointed out the Council has a responsibility and they need to work together to be aware of what's happening and what is the plan moving forward. It's not a criticism of anyone's work. It's clear there is a water issue and they need to put measures in place to protect the water resource collaboratively. She thinks they are not at a critical point, but they shouldn't wait until it's dire. She is concerned with penalizing developers who want to make Weymouth better. She is supportive of some sort of step between doing nothing or an 18-month moratorium. She agrees with a 3-month period waiting for answers, and she also supports the formation of the committee discussed last meeting to put forward ideas. Vice Chair MacDougall concurred. He wants to plan for ten years into the future; not two. He is concerned with the litigation brought forward by other area towns on PFAS levels in water. He likes the 3-month period, and the committee studying the issue. They need to talk about MWRA soon; it is a solution, and they could keep the ponds only for herring. He also understands the restriction can cause undue harm to the developers.

The Chair asked the administration if there were to be a standing committee of Council, with a member of DPW represented, Planning, 2 councilors, 2 residents, 1 conservation, 1 herring warden- over a 3-month period, will provide all of assurances? Why go through this if they're not thinking it will work? Director Luongo responded that it might be beneficial to establish one, or use the existing DPW (Public Works) Committee, which

could then invite those folks to attend. When they are summoned, they come. If they aren't forthcoming, the public might suspect there are secrets when there aren't. If the Council determined that the administration was not sincere, the proponents could refile a moratorium. He would like the Council to give the administration the chance to be forthcoming. He asked what they would expect with a 3-month wait. What are the benchmarks, and what if they aren't met? Start the process now with the committee and get consensus. It is a matter of trust. Vice Chair MacDougall noted that residents cannot participate in a Council's standing committee. The Chair responded that they haven't historically, but they are the proponents and they need to be involved. Councilor Mathews clarified that the Council's rules allow for the option for participation by members outside of the committee. Vice Chair MacDougall asked if they would entertain adding more people to the committee composition? Chair DiFazio responded that the members suggested were the ones needed to satisfy the outstanding questions.

Councilor Abbott noted that communication between Council representing the citizens, and the administration has come up twice in this meeting. This moratorium is a very narrow focus to address the larger problem of communication between the Mayor and his administration, and the Council. Water, conservation, development are all hot button topics. He does not have an appetite to continue this. He does not believe the ordinances are where they should be waging a battle on communication. If there is to be oversight of water, and he believes there needs to be, it should be with the DPW. It isn't something that should be built into an ordinance. One of the things that has come out of this is to raise the alarm on the town's water situation. If it becomes critical, there will be shutdowns and the decision will be made for them. It is most appropriate for the DPW to be the venue for this. It may not satisfy everyone, but it's not appropriate to change the ordinance in a specific manner to address larger issues.

Councilor Belmarsh added if the matter is in Public Works, it will be run under public meeting guidelines; if it is established informally, it allows for freer communication and suggestions. Councilor Mathews responded that the Council's rules indicate the chair of a Town Council committee may invite testimony, including from members of the public, through request or invitation. Councilor Belmarsh is referring to establishing a temporary standing committee which is not covered in the Council's rules, but is in the code of ordinances.

Chair DiFazio read the section of the Council's rules; 3-101 (b). A structured forum will be critical with the number of people and the importance of the subject, while minimizing the impact. Director Luongo agreed; there should be a free flow of information. Whatever format allows for the flexibility to do that is what should be used; the goal is to work collaboratively. Councilor Mathews noted that what they are doing is what the committee could be; going around and around. When the DEP issues a permit, then they need to determine what's needed and how. Invite the DPW and the public when the report comes out, and discuss the changes/restrictions, and that should be the basis of the discussion. He would not be in support of establishing a committee, when it isn't even up for motion.

Councilor Belmarsh noted this is not just about bad communication but how to move in a prudent manner. There are a number of projects ready to go. Losing the petition is keeping them motivated; keeping it open makes a good faith effort to develop a plan. It would be nice to have a group working together while the moratorium is in effect.

Councilor Belmarsh motioned to forward measure 22 131 to the full Town Council with a recommendation for favorable action, with the change of 18 months be changed to 3 months and was seconded by Vice Chair MacDougall. Councilor Mathews noted this is a zoning change. He does not believe she can include the language in the motion. Councilor Abbott asked if inserting the change is a material change to the ordinance. Solicitor McLeod responded that inserting language in the motion establishing a committee cannot be included; it would have to be a separate and distinct motion. Creating a standing committee can only include members of the legislative branch. Including members of the administration is a conflict of interest, but they can be invited to give testimony.

Mr. Luongo added that a moratorium in Massachusetts must outline specific parameters; they can change the timeline but not tinker with the language of the scope. All were well intentioned but it should have gone to the Public Works Committee first; then to the Ordinance if they were not satisfied. It does not prohibit refiling.

The Solicitor added that they have the option to file the moratorium. If the committee votes on it, it cannot be brought forward again unless it was substantially different. He explained the “filed” process. If no action is taken, it is deemed filed. If there was no action, it could be brought back. The chair asked if they can be assured they will have cooperation from the administration if this is moved to the Public Works Committee. Mr. Luongo responded that they show up when they are invited. Councilor Mathews asked if the Solicitor suggests a no action vote, or not act on it? The Solicitor responded action is required at the March 6<sup>th</sup> meeting; if the Council does not take any action, it is deemed filed. The Council could also vote to take no action; placing the moratorium in a filed status. If they know their true intent, he suggested they make the motion on it.

Councilor Mathews reviewed how actions taken on the billboard petition determined the options available to the petitioners. The proponents submitted a petition requesting the abolition of the billboard zoning district. The Council voted it down. The proponents were required to wait two years before bringing it back, but in the meantime the Council approved a one-year moratorium. If the Council decides to vote this down, this is the path it will take. He suggested that Councilor Belmarsh withdraw her motion. The Chair suggested they file it and the matter will be handled within the Public Works Committee.

Councilor Belmarsh withdrew her motion and was seconded by Vice Chair MacDougall.

Councilor Mathews suggested they not make any motion tonight. The Solicitor responded that motions can be made on March 6<sup>th</sup> at Town Council. Councilor Mathews asked if it requires a vote; if the Ordinance Committee makes no recommendation, and they just let the time lapse, is it considered filed? The solicitor responded that if the committee

makes a recommendation for no action, he will submit the appropriate language. Councilor Mathews did not want to recommend something that would prohibit the Council from action on it within that two-year period. The Chair added that he believes there is an open item in Public Works Committee, and Councilor Mathews confirmed it. Mr. Luongo added that this gives the residents some assurances that the discussion continues.

Councilor Abbott took issue with leaving it an open-ended moratorium. Having the Council sitting on an open moratorium is not something he is comfortable with. Per the charter, Council has the ability to create a standing committee for an important issue like water, but appending the moratorium to be pulled out at a moment's notice is the route they should take for water management. The Chair added that it could be 24 months. Councilor Abbott responded that if they change the purpose or the timeline of the moratorium, then it's not the same measure. The Chair responded that he likes that it allows the proponents assurances, and if they do not get the outcome, they can then bring out the moratorium. Councilor Abbott responded that he struggles with implementing an 18-month moratorium as a punitive measure on the administration. It's an adversarial response to what came out of a nonresponsive meeting with the administration and the reaction was a proposed moratorium. It doesn't directly address water or have clear outcomes. He is not comfortable with the continued use of a development moratorium as a tool to achieve it and that should not be the avenue of this Council.

Councilor Mathews pointed out if the Council votes down the moratorium, it cannot be brought back up for two years. If its left on the table and DEP comes back with water restrictive measures, then the Council could do nothing on it for two years. Councilor Abbott responded that the purpose of the moratorium is to get a water study done. Councilor Mathews pointed out that is just part of it. Not voting it up or down gives them flexibility to do anything in the future. Councilor Abbott disagreed. He stated it is not appropriate for the Building Department for the residents to exist with a tool that the Council has, that is not directly related to what the moratorium represents. Councilor Mathews disagreed; it is not a tool being used against the administration. Councilor Abbott suggested that furthering one-upmanship is not what the Council wants to be doing. They are there for the benefit of Weymouth. There are loud concerns about development in town, not just because of water, and he does not want to see anti-development sentiment used to maintain this for an indeterminate amount of time. Councilor Mathews disagreed with the assessment. He worked with the administration on the overlay district. There were several meetings hashing it out to streamline a better outcome. The Chair noted both points are well-taken.

Vice Chair MacDougall pointed out it's a zoning change; not a tool. It's a pause while they look at the issues at hand. More budgetary items are coming out addressing water, so it's a good thing. The concern is around water capacity and the concept of a study. He asked Mr. Luongo if they pause, the building department can begin issuing permits after March 6<sup>th</sup>. It's not admonishment, but looking at all the issues.

Solicitor McLeod added that if it becomes filed, the process begins again. A report would have to be provided as to what has taken place in the interim. As Councilor Mathews pointed out, it allows for it to happen within the two years. Councilor Mathews noted developers do this at the table at the BZA. Mr. Luongo asked the Solicitor if the measure is filed, does it have to be resurrected within the two years? The Solicitor will research. Mr. Luongo asked if it would prohibit the Council from creating another moratorium with different criteria? There has to be an end result to a moratorium. The Solicitor responded no.

Councilor Belmarsh pointed out this is not a punitive or adversarial action by the Council. She quoted from the moratorium language. The purpose is to resolve the water issue and come up with a plan.

Councilor Mathews asked if they should wait on a motion for the Solicitor to provide language for the Council's vote? The chair added that it's a simple action or none by the committee. Vice Chair MacDougall motioned to forward the measure to the full Town Council with no recommendation of action and was seconded by Councilor Belmarsh. Unanimously voted.

Chair DiFazio will plan to hold Public Works Committee meetings over the next three months; he anticipates meeting once a month and will invite the moratorium proponents and residents who provided valuable input. Councilor Mathews suggested if the Mayor has a collaborative group working on a water solution, he might consider adding member(s) of the Council.

#### ADJOURNMENT

At 8:30 PM, there being no further business, Councilor Mathews motioned to adjourn and was seconded by Vice Chair MacDougall. Unanimously voted.

Attachment:

Respectfully Submitted by Mary Barker as Recording Secretary.

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Approved by Kenneth DiFazio as Ordinance Committee Chairman  
Voted unanimously on 20 March 2023