

**TOWN COUNCIL MINUTES
ORDINANCE COMMITTEE
VIA Zoom # 878 7009 0588
May 20, 2021, Thursday**

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

Absent: Brian Dwyer, Vice Chair
Christopher Heffernan, Councilor

Also Present: Joseph Callanan, Town Solicitor
Robert Luongo, Director of Planning
Eric Schneider, Principal Planner
James Malary, Director of Municipal Finance
Robert Conlon, Treasurer/Collector
Jack Carey, Chair, Charter Review Committee

Recording Secretary: Mary Barker

Chair DiFazio called the meeting to order at 6:31 PM. A roll call was taken with Councilors Dwyer and Heffernan absent due to work commitments.

21 010- Review of Measure Number 17 127-Zoning Amendment to Create a Commercial Overlay District (Section 120-25.14)

This was referred to the committee on February 16, 2021. The committee met on March 3, 2021 and April 29, 2021, and following with a discussion of the effectiveness of the overlay, the Planning Department was to provide a status report of potential changes.

Mr. Luongo reported that they have created general guidance principals after discussion with the committee and the Mayor. They understood the concern with density and height issues and the need for a more robust commercial component and 10% affordability to proposed developments, and he would consider submitting a measure with the specific proposals for amendment to change it through the formal process, if that is the Council's desire.

Two heights will be proposed- a reduction from 5 to 4 stories, and a further reduction to 3 stories, from the current 4- and 5-story maximum. They propose reducing FAR from 1.0 to 0.5, which is a substantial reduction. They also propose to mandate a minimum of 25% of first floor space dedicated to specifically allowed commercial uses. Where there is podium style (parking on first floor) building, they propose mandating a maximum of 75% of the first floor for parking, so that the 25% commercial space is maintained. It will include a 10% affordability component as well.

Mr. Schneider presented the maps with the proposals. He will have them enlarged to distribute the committee members for review. He reviewed the key components:

- 50% of the town has been removed from the CCOD
- Height reductions across the board
- FAR reduction across the board
- Enhanced commercial requirements

This proposes three categories of zones:

- Low density CCOD
 - Drop to 3 stories,
 - max FAR .5% and
 - parking ratio unchanged
 - as yet undefined affordability component (10%)
- Medium density
 - 5 to 4 stories reduction
 - .5 FAR (from .75-1)
 - Parking ratio unchanged
 - As yet undefined affordability component

CCOD existing projects- those that are already approved and under construction- keep where they are, so they aren't made into nonconforming uses:

- 1400 Main
- 1500 Main
- 1055 Main
- 655 Main
- 1435 Main

Mr. Luongo pointed out they have taken a surgical approach and are looking at every parcel in order to make a determination based on its attributes. They can discuss why they are proposing eliminating some but keeping others. It's a balance, especially when trying to include the affordability component; most developers would be looking for density bonuses to cover the cost of the project. At this stage, reducing FAR to .5 still gives a developer an incentive to build. They don't want the zoning to be a catch 22. Some of the existing zoning in effect for over 20 years allows up to 6 stories, but no one can because the parking is high and the FAR is so low. They want to work collaboratively with the Council and the Planning Board. It was also reviewed with the Planning Board member Greg Agnew, who was very helpful in the decisions.

Mr. Schneider went briefly through the additional maps to show where the same strategy applies across the commercial corridors. For further consideration, they should discuss incentives for affordable units. It's a concession to developers. Is there anything they can do to encourage it? The advantage to the town is that they can count all units in a development if 25% are designated as affordable. They should also consider the percentage of commercial space. In their research, they looked at successful development and a robust 25% was a successful amount.

Mr. Luongo summarized that is the direction this is leaning; he asked if they are on the right path?

Chair DiFazio responded that he is pleased that what he sees is in response to Councilor Mathews' letter and the and Mayor's concerns. He would like to dive further into affordable units with examples. Will these make a dent in reaching the threshold they need by enforcing it more and still encourage developers? Mr. Luongo responded that they are aiming for meeting Safe Harbor instead through land area. They will never be able to attain the number of affordable units based on the 10% of housing units; the gap is in the range of 700 units. The 13 acres of land that is on Washington behind CVS that the town is pursuing for tax title would get to the 1.5% land area. But, they have also heard from the public that the town needs to provide more affordable units so that people can remain in Weymouth. Note- the land behind CVS was not in the prior CCOD, but is now being added.

Councilor Haugh added that this is a good overview that has addressed their concerns.

Councilor Mathews thanked the presenters for putting this together. He needs to see the maps to study, but he appreciates the parcel-by-parcel approach. He asked if the town can legally adopt an inclusionary zone, and designate 5% is affordable and 5% for seniors?

Solicitor Callanan responded that this was brought up at an earlier meeting, but he is unsure it can be counted. Subsidized housing cannot be limited by age or residency, but he will check with the housing coordinator. It can be done, but it can't be counted against the 10% affordable housing stock. He also clarified that he contends the town presently meets the 40B Safe Harbor in land area. DCHD says no, with the new calculations.

Councilor Mathews noted 25% of the units would allow counting of the whole development as affordable units. It would also count towards the land area.

Councilor Mathews suggested they could increase the FAR to .6 or .7 to incentivize a developer, but he would not be comfortable going more than .7.

Mr. Luongo conclude that this is a good start. He thinks they will be able to reach something that will work and still encourage investment in the town. He added that they are debating the Shaws and Stop & Shop; whether they should keep them as retail, assuming the retail market will rebound, or eliminate those two properties from the DDOC. On Route 3A, the Arbor Inn and Tufankjian properties; should that be a special area? Do they want to keep 5 stories there? That side of Bridge Street has great views of the water and no residences there. There are a lot of grey areas that need to be reviewed property by property. He will start drafting a measure that includes a dialog before submitting it.

21 079- Charter Review Committee Report

The chair reported that this measure has already had a public hearing and been presented to the Town Council. Charter Review Committee chair Jack Carey was invited to the discussion. Councilor Mathews responded that he missed the meeting but viewed the

video recording. Councilor Haugh reported that she served on the committee and voted in favor of all of the recommendations. Solicitor Callanan added that there was some question as to whether the recommendations would be packaged and submitted as a whole or separately. It was debated at the committee level and the committee voted to submit as a whole. The solicitor has a concern from the legal perspective. The questions to the voters should be related to the charter. He recommends dividing it into two questions because section C, which is related to the Town Council's interactions with the town departments, are related to each other but not all the rest of the other changes. The rest are non-substantive- correction of style, word choice, etc. He recommends taking the relatedness questions 12, 15 and 16 together and the rest together separately, and presenting the voters with two questions. Councilor Haugh responded that it should be voted as the committee voted. She does not have a problem with bundling. The solicitor explained "relatedness" as it pertains to other votes. It can be broken up however the committee determines, but there are legal questions. There is a lot of litigation about initiative question. Most of the changes are minor, but 12, 16 and 17 are new language. He recommends breaking into two questions, but it is up to the Council. Councilor Mathews reminded them that there was a question at the last meeting as to whether the Mayor could override the veto and has researched further and read MGL 43 §10. His personal opinion is to leave the measure the way the committee submitted it and send it to the full Town Council as written.

Councilor Haugh made a motion to forward Measure 21 079 to the full Town Council, as recommended by the Charter Review Committee and was seconded by Councilor Mathews. Councilor Mathews thanked the chair, Jack Carey and the members and the solicitor, for a job well done, despite the pandemic.

A roll call vote was taken: Councilor Haugh-Yes, Councilor Mathews-Yes , Chair DiFazio-Yes. UNANIMOUSLY VOTED.

21 090- Changes to the Town's Ordinances as Proposed by the Ordinance Review Committee

James Malary reported that the committee reviewed the town's ordinances, by section, with a focus on non-substantive changes. The proposed changes were presented in a report to the Town Clerk on May 3, 2021.

Chair DiFazio asked Solicitor Callanan if any of these changes are related? The solicitor responded that they are all non-substantive changes, and all are considered related. The chair reported a public hearing will be held on June 7th, and a vote will be taken after the hearing has closed. He thanked the committee for their work, and that the report was submitted on time. He was on the committee, and was impressed by the work of the rest of the members.

21 082 – Proposed Amendments to the Town's Tax Title Payment Agreements Ordinance

This measure was referred first to Budget/Management on May 3, 2021, and then reconsidered and referred to the Ordinance Committee on May 17, 2021. James Malary

and Bob Conlon reported out. The proposed amendment adds more substance to the ordinance by adding specificity as it relates to MGL Ch. 60, 62A: eligibility requirements, schedule of payments requirements, 25% initial down payment, interest waiver of up to 50%, and terms of payment. Section 2 requests striking out the expiration. On April 23, 235 letters were sent to owners of record, and as a result 25 were removed from the rolls of those scheduled for tax title auction. He provided a history of tax-takings. He has worked through the neglected backlog of tax titles with David Leary and received 111 responses, resulting in 44 payment plans, and 19 defaulted and are null and void. Updating the ordinance will allow holders to make payment and put them in good standing. They are actively working with the Mayor and other departments preparing for the next auction. Mr. Conlon outlined the benefits to the owners to get their accounts in good standing, as well as bringing in revenue to the town. Payment plans take them off the auction list and avoid the land court process.

Chair DiFazio noted that by expanding the plan, the town and homeowners' benefit, without going through the land tax taking process.

Councilor Mathews noted that the external auditors in the past have commented that the town needed to take a more aggressive approach to collecting on these tax takings. How would Melanson see these changes? Would they put something in a management letter year-to-year?

Mr. Malary agreed that the auditors have pointed this out. Now it's a matter of collecting on the receivables. They have chosen to reach out to the taxpayers and work with them. It is in response to the auditors' recommendation. Councilor Mathews responded that he supports it, and doesn't want the auditors to take issue with it.

Chair DiFazio reported a public hearing on the matter is scheduled for June 7, 2021. A vote will take place by the committee after the hearing is closed. He thanked Mr. Malary and Mr. Conlon for their presentation.

Update- Route 3 Billboards

The chair reported this is an ongoing issue. He appreciated receiving a draft of the minutes from the April 29, 2021 Ordinance meeting so quickly since there was much new information presented at that time.

Solicitor Callanan provided an update from the administration. Mayor Hedlund signed an amendment to the relocation agreement in January, that will keep the billboard off until the mitigation work (lowering the sign, planting trees on the north and south sides) is complete. Cove needed approval from the town for the type of light-blocking technology it would use and the administration vigorously and strenuously vetted the options to ensure what Cove would deliver would be what they promised back in the beginning of the process. After multiple back and forths with Cove, its vendors, and the town's GIS, to ensure mitigation is completed for the affected homes, which took 7 weeks. Cove ordered the billboard light-blocking technology and then ran into problems with OOA with securing a permit. The permit amendment scheduled to be heard in June. The permit to

cut trees (through Mass Highway) will be granted the same day as OOA grants lowering the board. As of April 20th, they were notified they needed a special permit for nonconforming use (as a result of the ordinance change voted by Council; subsequently vetoed and overridden.) It needs a special permit. It is a legally nonconforming structure and to alter it requires a special permit. They are not making it more or substantially more nonconforming, so it's a reasonable request. It doesn't meet the height, size and light-blocking technology standards under the new ordinance. BZA meets on the application next Wednesday, May 26, 2021 in order to discuss.

As far as Zero Finnell, an NOI was submitted along with a legally existing easement, that Bristol Brothers has- paper street Charlotte out to Front Street laid out in 1926. It's a paper street, but that property has had the easement and has had it for over 100 years. Bristol applied to the Conservation Commission for the right to cross two streams to access it. The application will be heard before the Conservation Commission beginning on Tuesday, May 25, 2021.

The solicitor noted that he was intending to respond to questions the residents brought up, but is still drafting the responses.

Chair DiFazio asked if there is anything going on that is in violation of the moratorium? The solicitor responded no, because the moratorium relates to permits under the zoning, while the NOI comes under Article 6, Local Wetlands permitting. Zoning is construed narrowly; restriction on property, and is interpreted narrowly. Conservation initially refused to hear it, but it was scheduled to be heard under due process. If a statute is passed that isn't constitutional, he can't follow it. The moratorium that the Council passed is not legal for multiple reasons; the solicitor has a legal obligation to uphold the law. It is beyond the scope of the home rule amendment. He will indicate in his memo the case law that supports it. His report will be submitted to the committee in the next few days, but he provided verbal responses here:

- Why isn't the town enforcing the moratorium?
 - just because the Council passed it, if it is not legal, they are under obligation to follow the law.
- Why is the Mayor permitted to allow the developer to file a notice of intent without objection?
 - We have to let them apply- it is the basic due process
- Why is the Mayor not questioning the access to an industrial park through a clearly defined residential neighborhood?
 - They reviewed the title work – they have record rights to the easement over Charlotte
- Why is the Mayor putting interest of a developer over residents?
 - He isn't. The Mayor signed an agreement and is obligated to follow through
- Who is the town solicitor working for?
 - The town of Weymouth. The Charter says the Mayor is in charge. He takes direction from the Mayor.

He will follow it up in writing. If anything was omitted, he asks that people let him know so he can address it.

Councilor Mathews responded that he does not agree with the solicitor's opinion on the moratorium. Municipalities have done moratoriums for things related to zoning. This is legal in his opinion.

Chair DiFazio invited Amy Kabilian to provide an update. She reported that there is not much in terms of fulfilling the mitigation. They are working through type of plantings allowed. The billboard remains off. There are rumblings that Landmark is taking over ownership and will request the town let them turn the board back on. They hope that the special permit goes through so the board can be lowered. She asked if someone appeals, will they have to wait again- Solicitor Callanan has spent a lot of time easing neighborhood fears.

Chair DiFazio took note of their cooperation and said the worst thing to do is to turn the board back on at this time. Solicitor Callanan responded that it is not the best introduction to Landmark. They can't step in and change things and threaten to not lower the board. If not, then September 30, they would forfeit the permits. He urged they focus on the future and not the many missteps by Cove.

Bob Delaney asked the solicitor whether there is a legal avenue outside of his "opinion" to support the position on the moratorium while there is a disagreement.

Solicitor Callanan responded that he wrote a memo to the Council in January, citing why the moratorium is illegal. He posed several arguments, and discovered a further one since. They haven't heard a case as to why it's not wrong. He is open to changing his mind if there is evidence to support that it is more convincing than what he has. So far, there is none. Mr. Delaney responded that the solicitor refers back to "your opinion". If it's not in agreement with others in the majority, is there a line of adjudication? Eventually, this will come to a head. The solicitor is in this situation deep, from the beginning of the project, that projects having a deeper interest with the parties instead of the town. What avenue is there that he could suggest to get a binding opinion? The solicitor responded that it would have to come from courts, but the solicitor has more experience than anyone else when it comes to defending billboard issues. Mr. Delaney suggested the solicitor should file instead of the residents to get a binding opinion.

He also asked what his opinion is of the legal truck restriction currently in place on Front Street, and if so, is it his interpretation that it will be enforced so that Front Street can't be used by Bristol for access. The solicitor responded that truck bans can't prohibit a driver to use a roadway to arrive at a destination on the road with the ban, but bans through traffic on the roadway. If the ban isn't state-approved, it isn't legal. He will do some research, on the type of ban and whether it was approved by the state.

Mr. Bristol asked if the solicitor has seen the document Bristol has that gives them legal rights over Charlotte Street and could he share it with the Town Council? The solicitor responded that they are available on the Conservation Commission webpage but if they are not, he will share them, and the two letters from the title attorneys. Land was subdivided in 1926 and created an implied right over the easement to the subdivided abutting lots and these are now owned by Bristol. Mr. Delaney asked if the lots are in the land description of lots taken by DPW in 1977, also known as a sewer easement for plan of Weymouth Gables? The solicitor responded that refers to a sewer easement 200-300 feet in the opposite direction from Charlotte- it's a separate easement for sewer only. Charlotte is an easement for access. Chair DiFazio asked the solicitor to forward it to the Town Council as well. The solicitor will send the link to the web access.

Gary MacDougall, 151 Southern Avenue asked the solicitor if Bristol has access from Finnell, why is there a preference for Charlotte and not the fact that they have access from Finnell already and disrupt the neighbors and bring trucks and traffic into that neighborhood? Why not use existing access? The solicitor responded that it's a plan that was developed in 1926. They bought the land for subdivision. Mr. MacDougall asked how did they buy for a subdivision if the land is zoned for industrial use. The solicitor responded that it was laid out in 1920 before zoning and Charlotte was set out as a residential subdivision. Access has to run over frontage in a residential access. The access over Charlotte is for the land. He is unsure when it became industrial.

Mr. MacDougall asked if Charlotte Street is being opened up and they already have access from Finnell, then why is the town allowing egress from Charlotte? Why is the developer being allowed to upset the rest of the neighborhood? The solicitor responded that the question of "allowing" is before the Conservation Commission. The wetlands impact is far greater by coming in from Finnell. The zoning provision applies to residential access. The driveway has to go over frontage. Commercial property developers typically want more than a single access point. This is a residential neighborhood with industrial access already. Now they seek the okay to move it to go down Front and into the property.

Mr. MacDougall responded that it disrupts 100 years of residents. There is already access in one area that's going to be moved to a different residential area. That's why there was a truck ban. It's moving the problem. This is helping a developer to make a profit on a plan that will negatively impact the neighborhood. He understands the developer has rights, but he already has rights on Finnell. Solicitor Callanan responded that they are not helping by changing the zoning. He has access to it. The case before Conservation is to be able to cross two streams. Mr. MacDougall asked who raised the suggestion of using the easement for access. The solicitor responded that Bristol raised it when he broached using the area for a nine-hole golf course and a memory care facility. Before there was an agreement with Bristol Brothers, Mr. Bristol brought up the fact that he has an easement and could access property from there.

ADJOURNMENT

At 8:33PM, there being no further business, a motion was made by Councilor Haugh to adjourn and was seconded by Councilor Mathews.

A roll call vote was taken: Councilor Haugh-Yes, Councilor Mathews-Yes, Councilor DiFazio-Yes. UNANIMOUSLY VOTED.

Respectfully Submitted by Mary Barker as Recording Secretary

Approved by Ken DiFazio as Budget/Management Committee Chairman
Voted unanimously on 30 August 2021