

TOWN COUNCIL MINUTES
Ordinance Committee
Town Hall Council Chambers
February 1, 2016, Monday

Present: Kenneth DiFazio, Chairman
Michael Smart, Vice Chairman
Jane Hackett, Councilor
Arthur Mathews, Councilor
Patrick O'Connor, Councilor

Also Present: Joseph Callanan, Interim Town Solicitor
Jeff Richards, Director, Building Inspections
Dan McCormack, Director, Health Department
Rebecca Haugh, Councilor
Thomas J. Lacey, Councilor

Recording Secretary: Mary Barker

Chairman Ken DiFazio called the meeting to order at 6:22 PM.

15 006 - Ordinance Amendment- Chapter 7

Councilors Haugh and Lacey were invited to the table to present the measure. It was referred to the committee on January 20, 2015. The committee reviewed on March 30, 2015 and a public hearing was held on June 1, 2015. At a meeting on November 23, 2015 it was determined that the matter should be moved forward. On January 15, 2016 a red-lined proposal was presented. Per Health Department Director Dan McCormack this needs further review by the administration and it's not prudent to continue the review until then. Councilor Lacey expressed his surprise at this. He noted the timeline of over a year, and stated he has been patient and has done due diligence. There were several meetings with the former administration and the red-lined (for edits and redundancies) copy has been vetted and should be up for consideration, unless there is some reason why it shouldn't. He and Councilor Haugh have been cooperative and supportive and he is concerned and frustrated with this additional delay.

Councilor Haugh echoed his comments. She noted that the issues Solicitor Lane brought up last June had been addressed. They changed legal definitions and removed redundancies and have finalized a good ordinance that can be enforced. She would like to know why there is a need to procrastinate further.

Councilor DiFazio confirmed the red-line comments were vetted by the prior solicitor, but there are still comments that may suggest further conversation is necessary. Councilor Lacey responded that the comments prompted conversation, but were not problematic.

Councilor Mathews noted that since this was initially referred, it is now under review by the third town solicitor. He asked Solicitor Callanan if he wanted to add comment. Solicitor Callanan responded that not only is he the third solicitor, but two

administrations have now reviewed the measure. There are redundancies that still exist, citing daily fines; it still needs some work because the redundancies create ambiguities. Mayor Hedlund supports the intent of the ordinance and what it hopes to address, particularly in the Wilson Avenue and Landing areas and abandoned properties. He would like the opportunity to allay the concerns with the ordinance as proposed without it causing a long delay since it furthers the town's ability to address the problem.

Jeff Richards and Dan McCormack both requested an opportunity to review and compare the latest versions. Councilor Mathews suggested the administration meet with the proponents as soon as possible and come back to the committee with a final document. Councilor Lacey responded that was done and is not necessary again. He would like to give the new administration the opportunity to sign off on it and he is open to a collaborative effort but he believes they should have been given a forewarning before delaying it again. The new administration is key to the ordinance's success and partnering makes sense. He also noted that a public meeting is already planned, but is unsure if it has been scheduled.

A Motion was made by Vice Chairman Smart to continue 15 006 to the next meeting and was seconded by Councilor Mathews. UNANIMOUSLY VOTED.

16 002 - Rezone Request for 1081 Washington Street (Map 34,Block 402, Lot 11) from Residential (R1) to Limited Business (B1) submitted by Carl Kelso

Carl Kelso, Richard Kelso, and Eric Schneider--Principal Planner presented the measure. Since the proponents were not represented by legal counsel, Chairman DiFazio explained to the owners that this was referred to the committee to deliberate the matter and to decide whether it should go forward for review by the full Town Council. He asked if the Solicitor has reviewed. Mr. (Carl) Kelso provided a map. He owns two separate lots, one behind the other, with two paths of egress to the left and right of the property (10 and 12 feet wide) He pays taxes on both lots and there are a couple of easements for utilities.

Chairman DiFazio noted that other town departments would be called upon to review going forward as necessary. During this discussion, at 6:40 PM, Councilor Hackett arrived. Mr. Kelso noted that the back property has no inlet or outlet for the water on the property; Chairman DiFazio referred to it as a vernal pool. Mr. (Richard) Kelso reported that he brought a botanist to the property several years ago. According to the botanist, an illegal dam was put in on Lakehurst Avenue. The 100' buffer zone is in a hole and the high water mark is where the buffer zone stops. Chairman DiFazio asked if the botanist issued a report. Mr. (Richard) Kelso responded that DEP would have to issue a report.

Councilor DiFazio asked what the objective is by changing the zoning. Mr. (Carl) Kelso responded that he wants to sell the property. Lot 11 was highlighted on the map. Jeff Richards noted that the highlighted lot zoning would be the only change.

Councilor Hackett asked if there is a building on the lot. Vice Chairman Smart noted that water on the property is too large to be considered a puddle, and is a small pond.

Vice Chairman Smart asked them to focus only on the highlighted property. The one lot that they want rezoned to sell would bring in more money rezoned. Chairman DiFazio asked if they had read the requirements to petition for a change and noted it was lacking in many areas. He asked the Solicitor whether this is considered “spot zoning.” Solicitor Callanan noted that the surrounding properties are zoned HT (Highway Transition); if the request was to change the lot from R-1 to HT, there would be a lower standard to meet, concerns to address, and decreased likelihood of problems in the future; however, where the surrounding is not B-1 zoning, and there are no adjacent B-1 properties you may run into the issue of spot zoning- a simple definition of a complex problem. It would be an easier question if just the boundary lines are changed. To review as presented requires further investigation.

Chairman DiFazio asked why the property needs to be zoned B-1 to bring the highest price? Mr. (Carl) Kelso responded that he knows he would get more money if it was rezoned. He asked why would he have to rezone a whole street? Mr. (Richard) Kelso responded that if the property above the water line were sold as B-1 it could be used for other uses. Rezoning would allow a buyer to come in and tear down the existing house and build multi-family.

Chairman DiFazio asked Mr. Richards if they changed their request to change zoning to HT would it still be attractive to a potential developer. Mr. Richards responded that changing it to B-1 would make it less attractive; in B-1 zone, housing is not allowed. It is allowed in HT. This limits it further and makes it more nonconforming. Chairman DiFazio noted that the request poses two problems; spot zoning is illegal and they think they can build multifamily homes on the site – it can’t be done in a B-1 zone. They should probably have considered changing the petition to a request to rezone HT.

Vice Chairman Mathews asked if the proponents received the letter from Conservation Administrator Mary Ellen Schloss and Principal Planner Eric Schneider. It indicates the land was mapped by National Heritage as a potential vernal pool. Mr. Carl Kelso noted that the prior owner of the property polluted the property and it had to be cleaned. The pond used to have abundant wildlife but doesn’t now. Vice Chairman Mathews suggested the proponents meet with the Conservation Administrator before considering a rezoning change or the sale of the property. It could impact whether the land can be developed. Chairman DiFazio suggested they take the letter and have it reviewed with their botanist or another expert. If the Conservation Commission has already given some warning that developing the land may not be possible, then maybe they should not consider it. Councilor Mathews noted that local Conservation and DEP will have some say in the ability to develop. Councilor Hackett suggested they need to get some expertise to navigate the complicated process. During this discussion, at 6:57 PM, Councilor O’Connor arrived. Chairman DiFazio responded that the town will assist once they have further explored with expert advice.

Chairman DiFazio noted the committee must review and refer back to committee within a set time. Deadlines have to be met. He noted that the two-week continuance would be reasonable. Vice Chairman Smart agreed. He believes it’s 45 days to public hearing and

120 days to decision and the application is time-stamped January 8, 2016. Councilor Mathews asked for a map with all surrounding zoned color-coded. Chairman DiFazio suggested that gives the proponents minimal time to retain expertise. If the application is left as is, there is the potential it will be denied. Mr. (Richard) Kelso suggested if they withdrew their application now, they could resubmit at another time. Chairman DiFazio asked if they want to withdraw their petition at this time? Chairman DiFazio asked the Solicitor if they need to take any further action if they approve the withdrawal? Solicitor Callanan responded that the committee can take a vote on their request to withdraw. Mr. Kelso asked if they can have a copy of what has been discussed here. Chairman DiFazio responded that they will have a record when the minutes have been submitted.

A Motion was made by Vice Chairman Smart to accept the proponents' withdrawal of the petition and was seconded by Councilor Mathews. UNANIMOUSLY VOTED.

A Motion was made by Vice Chairman Smart to forward item 16 002 to the full Town Council with a recommendation for no action and was seconded by Councilor Mathews. UNANIMOUSLY VOTED.

ADJOURNMENT

At 7:11PM, there being no further business, a Motion was made by Vice Chairman Smart to adjourn and was seconded by Councilor Mathews. UNANIMOUSLY VOTED.

Respectfully submitted by Mary Barker as Recording Secretary

Approved by Kenneth DiFazio as Chairman
Voted unanimously on 7 March 2016