

**TOWN COUNCIL MINUTES
ORDINANCE COMMITTEE
Town Hall Council Chambers
June 4, 2007**

Present: Sue Kay, Chairperson
Michael Smart
Arthur E. Mathews
Greg Shanahan
Kevin Whitaker

Recording Secretary: Janet Murray

Chairperson Kay called the Ordinance Committee meeting to order at 6:35pm.

06 125-Utility Applications/Petitions Proposed Changes

This item has been in committee since 6/19/06. The Committee has met several times. The item was proposed by Councilor Mathews for details and additional information to abutters.

All utility companies would be required follow a set procedure regarding providing information to abutters or the utilities would reimburse the town for expenses incurred to notify abutters. Chairperson Kay noted that it would cost \$386 per petition; the town currently charges \$25. Solicitor Lane advised the committee that it is within the town's right to make the request of the utility companies.

Solicitor Lane has attempted to speak to National Grid and Verizon. He stated that an analysis had been conducted in order to determine the cost. He noted that Verizon never responded to any inquiries and National Grid expressed interest in working with the town.

Councilor Kay stated that a regulation be set forth that the package submitted to Council by the utility companies meet certain requirements as set forth by the Council President and Town Council staff. She stated that if the application is incomplete, the public hearing would be delayed until such information was received by the town.

Councilor Mathews stated that his intent in putting forth this measure was to get more detailed maps to the abutters.

Councilor Smart stated that the Council should not hold public hearings until such information is provided.

Councilor Whitaker suggested that the utility company could email the pdf file of the maps to then be downloaded to the town's website.

Councilor Shanahan stated that the request to the utility company is reasonable.

Councilor Kay noted that there had been a question as to why Keyspan had not been coming before Council for approval on petitions. She noted that Keyspan responded that they generally

have short term projects and they go directly through DPW. She stated that she would like to see a list of projects so Councilors are aware of work in progress.

Councilor Whitaker stated that he has received complaints from residents regarding shut off of utilities due to work being performed.

A MOTION was made by Councilor Whitaker to recommend formulation of a regulation for item number 06 125 and was seconded by Councilor Smart and was UNANIMOUSLY VOTED.

07 026-Rezoning Request-DF Haviland/King

Councilor Kay stated that this item was referred on 3/5/07. The committee met on 3/19/07, 5/23/07, and this evening, 6/4/07. At the 5/23/07 meeting the matter was continued pending a legal opinion from Solicitor Lane.

A joint public hearing with the Planning Board was held on 4/17/07. The Planning Board submitted a recommendation on 5/15/07 for favorable action.

Solicitor Lane submitted his ruling on the ability to rezone to R-1 which concluded that there was a strong case for rezoning. In response to questions to motivation for the rezoning, Solicitor Lane stated that regardless of the motivation, the case is still strong for the zoning change.

Solicitor Lane stated that he spoke to Attorney Tocchio, for Mr. Herlihy. Mr. Tocchio inquired if an R-3 zoning change would be considered. Mr. Tocchio asked that the meeting this evening be continued in order to explore this possibility.

Solicitor Lane stated that there is a deadline of July 16, 2007 for a decision or the entire process would have to begin again.

Mr. Herlihy is no longer able to continue in the clutch business due to health reasons and the decline in the clutch repair business. He stated that he would experience gross deprivation of value if the property were rezoned to R-1.

Attorney Mackin stated that the residents oppose the R-3 zoning change request. It is the residents' opinion that the R-1 zoning is the appropriate zoning. In his opinion an R-3 change would be spot zoning.

Councilor Whitaker asked about the vote requirement from 2/3 to 3/4 . He also asked if this measure were defeated if that would preclude the town from taking action in the future. He also questioned how objections would affect the vote.

Solicitor Lane stated that under Chapter 48, section 5, on any rezoning, 2/3 (8) of all Town Council members are required to pass this measure.

Solicitor Lane stated that repetitive petitions apply to the Board of Zoning Appeals -- if a petition is denied by the BZA

Solicitor Lane did not think that this provision would apply, he stated that he would look into this and have an opinion before the Council meeting this evening..

Councilor Whitaker asked Attorney Mackin if the residents maintain their opposition if the required number of votes increased from 2/3 to 3/4. Attorney Mackin stated that the residents would want to stay with the recommendation of R-1 zoning and feel confident in the committee's vote.

Councilor Mathews asked about the legal cost to defend an appeal. Solicitor Lane said that it could cost from \$5,000 to \$10,000. It could also take up to a year for the process to be completed.

Solicitor Lane stated that it was his opinion that a 3/4 vote would be required at the council level, which would be nine votes. Solicitor Lane stated that a protest by 20% of the area affected would need to be made prior to the action by the full council.

A MOTION was made by Councilor Shanahan to recommend FAVORABLE ACTION on measure number 07 026 for a change to R-1 zoning and was seconded by Councilor Smart and was UNANIMOUSLY VOTED.

07 062-Rezoning Measures and Public Notice

This measure was submitted by Councilor DiFazio. It was referred on 5/7/07. The committee met on 5/23/07 and was continued to this evening.

Bob Luongo, Economic Development Planner, was present this evening.

Councilor DiFazio stated that his intent was to have all residents in an area made aware of potential zoning changes being requested in their neighborhood, even if they are not a direct abutter. He stated that he had no preference as to whether it was an ordinance, regulation, or procedure.

Solicitor Lane stated that there is existing notification under 40A, the zoning enabling act, which precludes other considerations which are inconsistent with the existing requirements. He stated that there does exist a notice requirement as stated.

Councilor DiFazio questioned if it would be possible for Councilors to informally notify other abutters other than those required to be notified.

Solicitor Lane stated that it would be wise to do this informally.

Councilor Whitaker noted that lack of notification is not allowed as a reason to deny a rezoning request, unless it was proven that it was intentional or some other heightened standard. He stated that he was concerned about taking on this type of responsibility.

A MOTION was made by Councilor Smart to recommend NO ACTION on item number 07 062 with the suggestion that each councilor consider sending out notification to their constituents and was UNANIMOUSLY VOTED.

At 7:20 pm, there being no further business, A MOTION was made by Councilor Smart to ADJOURN and was seconded by Councilor Shanahan and UNANIMOUSLY VOTED.

Approved by: _____
Sue Kay, Chairperson