

TOWN COUNCIL MINUTES
ORDINANCE COMMITTEE
Town Hall Council Chambers
June 13, 2006 - Tuesday

Present: Susan Kay, Chairperson
Michael Smart, Vice-Chairman
Arthur Mathews, Chairperson
Gregory Shanahan
Kevin Whitaker, Councilor

Also Present: Kenneth DiFazio, Councilor
Paul J. Leary, Councilor
Jane Hackett, Chief of Staff
James Wilson, Chief Financial Officer

Recording Secretary: Mary Briggs

Chairman Susan Kay called the Ordinance Committee Meeting scheduled for 7:30 PM to order at 7:50 PM, and she apologized for the late start. The prior meeting of the Budget/ Management Committee ran over. The first item on the agenda is the continuing discussion on measure 06 098; Organization Plan - Establishment of the Community Preservation Committee.

06 098 - Organizational Plan-Establishment of the Community Preservation Committee

The chairperson asked if there was any further discussion by Administration on the information provided.

Mr. Wilson reported that there are some amendments that the Mayor has offered for consideration in 3-2-266:

- increase from one to three citizen members
- citizens “not currently holding appointed or elected office”
- at the recommendation of the chair, in section C-1 the addition of the term “annually hold one or more informational meetings.”
- in section 4-“open space not including land for recreational purposes”

The chair opened discussion on the changes.

Councilor Mathews noted he was pleased that the Mayor's Office considered the Council's recommendations from the last meeting, and the public's comments in adding citizen members.

He had additional comments; but would make them after other members of the Committee have had a chance to speak to the amendments. The chair asked if anyone else wished to speak to the amendments; no one did, so Councilor Mathews continued.

He provided the Committee with a copy of the wording from the ballot. He read aloud paragraph two which he highlighted in the copies provided to the Committee:

“A Community Preservation Committee will be established to study potential uses of the funds and to make recommendations to the Town Council, which has the final say on how they should be spent. All Expenditures will be subject to an annual audit”.

He had a question for Solicitor Lane, who was not present. Would a referendum voted by the citizens of Weymouth supersede the Charter? When he read it after it was brought forth by a constituent, the wording is specific that the budget is presented to the Town Council, and not to the Mayor. He has received many phone calls and emails from constituents urging him not to support the motion. Many of the callers feel as though this is not what they voted for. He spoke with Colleen Coleary from the DOR, who advised that the Mayor is within his rights. The town has such a strong charter, and this is one of the problems he has with it. The charter is in conflict with something the people voted; however, relative to what DOR said, he feels the Mayor along with the Planning Board should absolutely be involved with this, but in an advisory capacity. That is his opinion, and he will not be supporting the motion.

Councilor Shanahan spoke to the concept of the Town Council having a say as to how money is spent. While they have a say in every other budget, to see and vote on, they also have the same say in this one. The decision is less about power and more about what was intended--open space, historical preservation and affordable housing. At this time we have an ordinance which will allow us an expedient all-inclusive opportunity to spend the money for what it was intended, and for what the taxpayers are being burdened, and conversely to Councilor Mathews, he will be supporting both measures. He thinks it's time to get going before losing funds.

Councilor Whitaker noted that when he was campaigning, he strongly supported passage. He sent out just under 10,000 pieces of mail asking voters to support this item. In his writings, he often referred to it as an investment in the future. He doesn't want to lose sight of that aspect of what the Community Preservation Act is -the opportunity to receive matching funds and be able to do some things in the community. There were some questions raised at the last meeting of this Committee. There had been some amendments made in consideration of that dialog, and he is pleased to see that. Different aspects were resolved in the amendments. On this particular phase, establishment of the Committee itself, he intends to support it this evening. He understands Councilor Mathews concern about the legal language. He also has difficulty in how this can be parsed, looking at the legislative language, looking at the DOR regulations, and looking at the

charter. In the end, the recommendations do come to the Town Council, and they do have final say on it. He is in accord with the recommended amendments and hopefully it will go forward, and in a few years we will be looking back on the good projects accomplished and we can say we are glad we did it.

Councilor Smart noted he is also pleased with the compromise the Administration was willing to offer in increasing the number of residents, and taking to heart what was recommended at the Committee level, and he commended and thanked them for that. There was much discussion of oversight. His opinion is the Council still has oversight. Colleagues here today have mentioned oversight, and whether it's under the administration's jurisdiction. All of the appointments, for Historic, Planning, Housing, Conservation and all of the residents, are appointments which are approved by Council—which are put forward by the administration. The Council approves the budget. It comes before Council, who can certainly say they don't want a particular project. With the addition of any of the colleagues who may be chosen for the CPC, that particular Councilor can report back and say there were ten projects, but only nine are in the budget put forward to the administration. It would be the Council's job to call administration out and ask what happened to that project. Not to say it will happen, but if it did, the Council can ask for an explanation. It's important to have a Councilor on the committee for that reason; further oversight.

Councilor Leary was pleased that the Mayor added additional citizens, since he believes it should be a citizen's committee. He pointed out to the Committee that one of the members appointed to the CPC will be a Planning Board member, so to say there is no oversight by the Planning Board -he doesn't believe that's true.

Councilor DiFazio noted that irrespective of the outcome of 06 099, which is the other matter in discussion, his only suggestion is that each Councilor attempt to explain to the constituents that in fact the Administration is only set up to be a support to this Committee, there's nothing lost from the independence of the Committee.

He doesn't want it misunderstood; he is not in favor of the next item, 06 099. He realizes people are still going to feel that just because the Mayor has to sign the final appropriation, they somehow have lost something, and he is not quite sure they have. He notes he usually is on the other side of these things. He is not sure it doesn't keep the Committee autonomous, which was in the first letter he submitted to the Committee.

Councilor Kay reported she is very glad for the concessions made. It was important to add the additional two members as citizens-at-large; however, her concerns as expressed previously are related to the Capital Planning Committee and their review. Not that she doesn't think it is appropriate, but in Section 322.6, #2, and she is sorry to bring it up at this time, but she didn't notice it earlier. Under the Preservation Committee layout, "by October 1st of each year, the Community Preservation Committee shall give to the Capital Planning Committee information on all capital projects anticipated by them as needing Town Council action." She requested clarification; she is of the opinion that all action presented by the Committee would need Town Council action.

Ms. Hackett responded that the language was taken directly from p.24 of the municipal code under the Capital Planning Committee. It was a copy of the process which currently exists for all town agencies.

Councilor Kay wanted to be sure in applying it to Community Preservation, that there is an ability for the Capital Planning Committee to say this should go to Council, or this should not.

Ms. Hackett responded they do not have that authority, anywhere. The entire role of the Capital Planning Committee in establishing the Capital Improvement Plan is solely advisory. They have no authority whatsoever to reject any insertion of any item by any Department Head or by any agency into the Capital Improvement Plan.

Councilor Kay reported she is also grateful that “annual” was inserted as requested, even though it was inferred in the wording, and that there will be hearings annually. She appreciates that and her colleague asking for the inclusion of land not coming from recreational in the open space area. She feels most of the concerns have been addressed. She shares Councilor Mathews concern, because throughout this act, and she is convinced the intent of this act is that the legislative body is very much involved, if not all, in the final say as to where the appropriations go. Certainly with our form of government, and it is complex, with a strong Mayoral, must we admit that inclusion of the Mayor’s decisions to appropriations does apply.

Councilor Whitaker made a MOTION to recommend FAVORABLE ACTION on item 06 098, AS AMENDED BY THE MAYOR, to full Council and was seconded by Councilor Shanahan. Vote was 4/1 with Councilor Mathews voting NO. MOTION CARRIED.

Item 06 099 - Organization Plan-Establishment of the Community Preservation Act Division with the Department of Planning and Community Development

Chairman Kay noted that this the organizational plan establishing the Committee as a division in the Department of Planning. She asked if the Administration would like to add anything. They did not.

Discussion to the measure began with Councilor Whitaker, who noted he will not be supporting this particular measure. He believes with the formation of the Committee and the process it will go through has adequate oversight. His preference lies with the recommendation made by Councilor DiFazio, to remove the inclusion of the planning language and put it at the end where it’s more of an accessory instead of falling directly beneath the Planning Board. There was a lot of sentiment expressed on keeping this Committee separate, distinct and outside of the organizational structure framework, and he believes the Committee has enough built in oversight coming through the Mayor’s office and also coming to the Council. He does not think another piece added to that is necessary. He will be voting no to this measure.

Councilor Shanahan noted he neglected to say earlier that he supported the CPA in the last election and he is glad he did. It's an excellent tool and he fully expects Weymouth will make great use of it. He fails to see why this is coming down to who is in charge, and who has power and authority. Why can't this be about who is doing the best job for the town? He understands his colleagues' reluctance in placing it under Planning, but the first time they have the ability to purchase a large piece of land or can complete a bid project by combining CPA and general funds, they'll see why it's a good tool. Relying on Planning, Conservation or all of the people who are going to be on the Committee only adds to the tools at hand to prevent development of open space. He fails to see why this is a hindrance and not a help. The original goal was to use taxpayer money to benefit the taxpayers.

Councilor Mathews stated he will not be supporting this measure. He does not read anywhere in the enabling legislation which tells the Committee that this should fall under Planning and Community Development Department. He feels there will be enough input between the Planning Board member, with the administration fees paid to the Planning Board for their help, as well as Mr. Wilson's department. He feels the Committee should stand individually on this, and it shouldn't be with the Planning Department. He feels the measure is unnecessary, and will not support it at this time.

Councilor Kay noted she too, in addition to fellow Councilors will not be supporting this measure. The composition of the Committee clearly takes care of all areas within town hall relative to Planning and Development. There is a member of the Planning Board, a member of the Historical Commission, a member of Housing, one from Recreation, a Town Councilor, the members appointed by the Mayor. Additionally the projects will be reviewed through the capital budget which is under the direction of Planning. She thinks this is planning, upon planning, upon planning. She does not believe it is necessary and thinks it would suffice to have the recommendation of a fellow Councilor who is recommending that it will remain 5 of multi-member bodies which will include the Community Preservation Committee in with other Committees such as Historical, Fair Housing and Waterfront- she believes that is the appropriate place for it to be and she will not be supporting this measure.

Councilor Mathews made one additional comment. He does want the Planning Board and administration involved in this; it's a big budget, and there's a lot to be done, and in order for it to succeed, everyone will have to be involved, but he would like to see them involved in strictly an advisory capacity.

Councilor Whitaker noted that another reason he will not support this measure is that he still hasn't resolved some of the management issues related to the actual legislation which was passed, as opposed to the code. He believes they may be relegating some powers that the Council may hold with respect to nonprofit organizations. He is unsure if that issue has been resolved yet through legal opinion of Solicitor Lane or anyone else. He does not want to concede that point until it's been fully reviewed, and the Council is sure it's not giving up any power they may wish to retain in the future.

A MOTION was made by Councilor Whitaker to recommend UNFAVORABLE ACTION on item 06 099 to the full Town Council and was seconded by Councilor Mathews. The VOTE was 3/2, with Councilor Shanahan and Councilor Smart voting NO. MOTION CARRIED.

Adjournment

At 8:12PM, there being no further business, a MOTION to adjourn was made by Councilor Smart, and seconded by Councilor Mathews . UNANIMOUSLY VOTED.

Approved by: _____
Susan Kay, Chairman