

**TOWN COUNCIL MINUTES
ORDINANCE COMMITTEE**

Town Hall Council Chambers

November 7, Thursday

Present: Ken DiFazio, Chairman
Arthur Mathews, Councilor
Christopher Heffernan, Councilor

Absent: Michael Smart, Vice Chairman
Rebecca Haugh, Councilor

Also Present: Ted Langill, Chief of Staff
Joseph Callanan, Town Solicitor
Richard Swanson, Town Auditor
Robert Luongo, Director of Planning
Owen MacDonald, Traffic Engineer

Recording Secretary: Mary Barker

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

19 097-Traffic Regulation – Bus Stop, Summer Street/Harland Road

Owen MacDonald was invited to the table and made a brief presentation. This matter was deliberated and the public hearing closed, however based on some items brought up in the public hearing, Mr. MacDonald was asked to revisit them. Mr. MacDonald reported that the MBTA revised the plan at the request of the abutter, Theresa Joyce. The new design still allows for mobility challenged to access the bus. Moving the guardrail allows a sidewalk to be installed and the bus stop to remain the original site. He also notified an additional abutter, the Cronin family, who did not respond. Chair DiFazio asked to confirm the owner of the property received the notice. Mr. MacDonald responded that the owner is the resident. Councilor Mathews asked if the measure would be withdrawn. If the bus stop remains in the same position it is no longer a change to the bus stop and not within the Council’s jurisdiction. Chair DiFazio asked that the Planning Department send a letter withdrawing the measure. Councilor Mathews also asked that they send someone out to the non-respondent residence to be sure they have adequate notification.

Route 3 Billboards

19 109-Amendment to Zoning Ordinances-Billboard Relocation Overlay District-Citizen Petition

Chair DiFazio reported that the issue was brought forward by a citizen, and the measure a subsequent action after receipt of the citizen petition. Both matters will be heard together, and the original complainant will be given an opportunity to speak, although it is not typically allowed at these hearings.

Chair DiFazio summarized the deliberation thus far. At the last meeting on October 17, 2019, the committee sent a letter to several parties requesting information/action:

- All parties to the agreement stop permitting and operation. It has been completed.
- No further tree cutting take place while deliberations underway. It has also been completed.
- Participate in good faith negotiations to repeal the agreement with regard to removal of the overlay district, removal of the existing boards at 611 Pleasant Street, and compute a realistic estimate of damages, if any, to back out of the contract.
- The administration shall report results of negotiations forthwith.
- Internal Auditor to conduct an audit of all documents related to the agreement, with respect to revenue, costs, expenses, permitting.

The Town Solicitor provided a written response and he was invited to the table to summarize that response and to address two issues; the negotiation process, a calculation of damages owed by the town, and the legal ramifications of potentially revoking the entire overlay district and the existing permits.

Solicitor Callanan researched the data from Cove and updated recently. The information was consistent. He explained how billboard value was calculated- typical valuation – net income is used to determine the value. (using the capitalization rate)-- \$10 million is a reasonable value in his opinion.

Chair DiFazio noted some negotiation would have to take place with other parties besides Cove- the landowner, LoRusso Bristol Construction, and Bristol Brothers. \$1.9 million for each party.

Fighting a building permit is hard; there is very little discretion compared to others.

Repealing the zoning or breaking the agreement is not just the agreement or zoning which are local action. The state issued the permits. Cove still has permits even if the zoning is repealed. Repealing the zoning would result in legally nonconforming structures (like the existing billboards on 3A.) Passing a petition would not stop or bring them down on 611 and 613 Pleasant Street.

Chair DiFazio asked if they could repeal the entire overlay district, if they could still have the same amount of damages? The Solicitor responded that rushing to pass the zoning would not affect the permit for the two already issued. Councilor Mathews asked if they are permitted to cut the trees now? Atty. Callanan responded that the local jurisdiction over tree cutting is in the wetland area. A billboard permit holder has the right to remove trees on the highway right of way. As a provision of federal law, if you take down a billboard, you are required to pay the value. Federal law is slanted to the billboard owner not the locality.

Councilor Mathews asked about the federal law to which the Solicitor referred; is there a distinction of local or federal highways? Atty. Callanan responded that it doesn't matter. Councilor Heffernan asked if the case law has been successfully challenged? Solicitor Callanan responded no.

Chair DiFazio reported that the internal auditor was asked to perform an audit of Cove with regard to the agreement. Mr. Swanson sent a certified letter to Cove and the response he received indicated that it would be referred to their attorney and no further correspondence has been received.

When the Solicitor sent out his memo, a meeting took place with most parties. Alternative locations were indicated. At the conclusion, the chair requested a matrix of alternate sites with a rating of each as to adverse impacts to the surrounding neighborhoods. The result of the request is a presentation by Program Manager Christine Howe.

Weymouth Digital Billboards:

Proposals for Potential Mitigation, with a November 12th deadline.

- Brief Background
 - Goals of Project
 - Removing static billboards on 3A
 - Preventing 40B development
 - Preserving open space at Gagnon Park
 - Mitigating impacts of Rt. 18 billboard on the Abington line
 - Held over a dozen meetings and a public forum, and subsequent meetings, discussions to come to an agreement to move forward
 - Initial matrix options- different locations, fewer faces, etc.
- GIS evaluation- 1,000 ft. radius
- Mitigation payments
- Changing overlay district
- Projected costs- mitigation payments
- 6 options discussed, with a final proposal presented on November 1st:

Option 1.

- Install 611 Pleasant with SBT and 2 existing faces, and Finnell Drive (instead of 613) also with SBT
- no action on 613 Pleasant permit
- potentially still receive 42-acre land donation from Bristol abutting Gagnon Park
- determine and pay a settlement to owner of billboard that was taken down on 3A (Cove has been paying monthly and town would have to assume that risk).

Councilor Mathews asked if the other billboards on 3A would stay up with this option. Ms. Howe responded that they could potentially come down, if the leaseholder agrees to buy into one of the other boards or take them down immediately or at the expiration of the lease. He asked about the South Weymouth board. It would still be an obtainable option under this agreement. Chair DiFazio asked if the removal

of all boards in North Weymouth is included in any of these options? Ms. Howe responded that she would explain in the continuation of these options. The Abington billboard would continue through the mitigation process in all of these options.

Option 2.

- 611 replaced with SBT or removed, and 613 is constructed
- town to pay \$6.4 lost revenue and construction
- one billboard at Finnell with SBT
- 611 not construction
- town to settle with Bristol and leaseholder at 3A
- potential to receive donated land

Councilor Heffernan asked if the sightline blocking technology is ironclad in the agreement; because last time they were told that it was included, but it wasn't. Ms. Howe responded yes. Each proposed face will include SBT.

Option 3

- 611 gets SBT or completely removed (and mitigation paid)
- 613 moved further south toward Hingham line
- Finnell not built

(This is the existing agreement; except land may not be donated- revenue may be used to purchase it, and the same situation with 3A leaseholder mitigation)

Option 4

- 611 removed
- SFB on Hingham line
- Finnell installed with 2 SB faces
- (reduction of one face, and mitigation applies)
- land donation applies
- mitigation \$2.6 million
- pay leaseholders on 3A

After a lengthy meeting another proposal came up:

Option 4A

- 611 remains, reduced to one face (facing northbound-southbound drivers would see the face) and SBT
- 2 faces on Finnell with SBT
- 613 with one face and SBT, moved further south, and facing southbound
- 42 acres up for donation
- 3A agreement mitigation
- 611 activated during the 6-8 week installation process

Graphics demonstrated each of these options, showing the proximity of the sightlines to the residential neighborhoods, including the SBT. Councilor Mathews noted that in prior meetings that the boards were proposed at perpendicular angles. Ms. Howe responded

that on the already installed it would not be possible to change the angle. Councilor Mathews responded that as it stands it is an engineering disaster.

Cove included a timeline under this option. The sign at 611 would turn on and they would sell advertising to raise revenue for SBT for 611. Tree cutting would also resume and the construction of the rest would take place before removing one single face from 611. 613 permit would be amended to move it further south. Cove would apply for permit for double face at Finnell. Positive impacts- still negotiate with Bristol to acquire open space land, alleviation of development of the site. Removal of south-facing sign on 611 would lessen the impact on Century Road neighborhood and not require the town having to settle with Bristol. Moving the 613 would lessen the potential impacts to Holly Hill Circle and Century Road. 3A signs would be removed, and town would have to renegotiate some of its revenue share. A rendering of the tree removal was shown and reviewed (trimming and some removal, but not clear-cutting). The overlay district was shown with each of the proposed boards.

Chair DiFazio noted that when the overlay zoning was approved, the goals weren't part of the overlay presentation. At that time, these goals were unknown and it's significant for the public to know. If they had been known, they may not have voted it.

Under option 4A it's still not guaranteed that the 3A billboards will come down or the 42 acres donated to the town. Solicitor Callanan responded that discussion of the removal of the 3A billboards would need to include Clear Channel. This is a 10-party deal. They want to see if the Council and public support this before going to the other parties. Only zoning and permits were ironclad; the rest are proposals and not guaranteed or enforceable. Solicitor Callanan noted that under this proposal arrangement, the Route 3A billboards come down at the end of their leases, or immediately with Clear Channel.

Chair DiFazio asked if they feel that these are the best options considering each of the sites? His opinion is wherever they are placed, this is a disaster at 611 Pleasant Street. Ms. Howe responded yes. Short of a benefactor, this is the most viable solution.

Councilor Mathews noted that at the end of the day, this is the Mayor's call. Any that cost money will be up to him to submit a measure to the Council. Asking for the Ordinance Committee and the Town Council to make a recommendation that the Mayor might not agree with; the Council does not have the jurisdiction; it's ultimately still a recommendation. Option 4A is the only one that doesn't cost money. The angle of the billboard with no SBT is a nightmare and will not help the neighbors. Even with SBT, the height prohibits the blocking. Ms. Howe noted 613 Pleasant is perpendicular; 611 Pleasant is not. Why not scrap the pole and relocate? It's the cost of deconstruction and it would kick off mitigation. Lowering would require more tree removal. Councilor Mathews had hoped both sides would face the same way.

Councilor Heffernan noted he wished that the goals were known before the zoning was voted-and he is disappointed. They should have had to put more detail forward, and he wishes they had been included in the discussion. The best way this committee, Council

and administration have a long way to go; these options need more study and have a deadline of Tuesday. The site visit is on Monday and he hasn't seen it yet. He wants the time to do this the right way. There are four options- the positives are immediately offset by negatives. This is not an issue that should pit neighborhoods. The time is needed to make the right decisions with the best possible information available.

Ms. Howe noted that these were not the only options under discussion; the deadline is a reality. They need to come to an agreement prior to the deadline.

Councilor Heffernan responded that this is the first time he has seen it, and the rest of the Council hasn't yet. With a deadline approaching, it doesn't seem effective or reasonable. He is disappointed with the time crunch they are faced with.

Chair DiFazio noted that this presentation will be delivered to the Town Council at the public hearing on Tuesday.

Mr. O'Sullivan of Cove Outdoor reported that he will not apologize for anyone who is surprised at this late date. They are trying to exercise their rights as the owner. He appreciates the comments, but the reality is they are losing money right now. They have let it play out. They will not stand for someone trying to block the permit to clear the trees. Councilor Heffernan responded that he this is the first he is learning of these options and is doing his due diligence. The audience applauded his remarks. (During this discussion, Councilor Haugh joined the audience at 7:56 PM.) Mr. O'Sullivan noted that he could turn the lights on now, as it is his right.

The chair invited Bob Delaney to the table who was accompanied by Kathy Swain. He noted the common denominator in all these proposals. He asked if anyone has evidence that the donation of the land is an ironclad byproduct of these discussions? The chair responded that there isn't any; it's an objective. Mr. Delaney responded that all of the proposals benefit Cove only. Residents listened to a verbal presentation and now want them to submit that any one of these proposals are fluid. When the light projection data study was done; where are the answers and who paid the cost? Chair DiFazio responded that only Cove could provide that answer.

Mr. McClary responded that the chief engineer of digital products attested to the light studies at no cost. The slides presented are the result of 2 engineers at 2 different companies. (Toronto, Canada, and Atlanta GA); neither is a MA company. Mr. Delaney asked why go to CA and GA when it's MA properties? Mr. McClary responded that there are only 2 companies who make the technology. The chair asked if there isn't another location in MA that uses the technology? It was confirmed that there is not as the technology is only 2-3 years old.

Chair DiFazio noted that LBT was not mentioned in the agreements. It was not required. Mr. McClary responded that this was not required and that the installed technology has the same parameters. Mr. Delaney responded that the illumination study was conducted at no cost. How would they get paid for something that doesn't incur a cost? Once they sell

the signs, if they install the technology, if it doesn't work they don't get paid. Mr. Delaney asked if the study was done by an engineering firm licensed to do impact studies on light blocking technologies in MA. Mr. McClary responded that they did the Google Earth drawings and overlaid the technology. Mr. Delaney noted comments earlier by the Solicitor about a park developed around the billboards. Signs were in place before the park, and the park was built around it. Why do the billboards not have to take into consideration the people in the neighborhood; be built around a neighborhood? Solicitor Callanan refused to respond. Mr. Delaney noted the Solicitor's quote, "Of course I know the agreement, I wrote it". Why were there no regulations for LBT, height, size, and parachute in place? The chair noted his questions will be taken under advisement. He would have to wait for the public hearing.

The chair noted the petition was proposing to repeal the ordinance. Mr. Delaney asked if the council agrees with it? Have they had a chance to deliberate? The chair responded no, they have not. But if repealing the whole thing, there are two nonconforming uses. Mr. Delaney noted that all residents that are impacted- all streets- should be taken into consideration. He knows for a fact that Jim Bristol is not donating until he has a potential revenue stream that is beneficial to him. The numbers are fluid. Cove has not complied with the Auditor's request He finds that troubling and suggest they should justify the numbers. They can't project revenue that doesn't exist and if they can, show it.

The chair invited Amy Kabilian to the table. She noted that the neighborhood thought repealing the zoning change would remove all billboards, but now knows that won't happen. The current billboard located at 611 Pleasant Street will remain, with the probability of no SBT, 99 trees would be cut and there is no way to amend the contract around the hours of operation, height, etc. Unfortunately, the open space issue, 3A and Abington billboards issues have all been saddled into their neighborhood and they received nothing in return. She attended the site visit. She showed the committee a photograph of the sign taken at her driveway. Even as a single faced board it will still be intrusive to the neighborhood. The billboard has been off only at night since April; it was shut off in August. In the radius maps, her house is included within the 1,000 ft. radius bounds for billboards for 611 and 613. This is creating a depressed neighborhood and significantly impacts her house. She asked if there was a physical site survey that included height elevations? They were told an impact study was done, but they have not seen it. The chair asked the administration or Cove to provide this answer by the public hearing. If there is one, please forward to the Council.

Mr. McClary responded that impact studies were conducted, but he is not sure which. What are the parameters? Ms. Kabilian noted that if the sign were activated now, will it be two faces with no SBT? 99 trees are scheduled to be cut; they have significant value. She also noted that the Conservation Commissioner asked for some items to be submitted by Cove in a memo to the administration. Was that done? The chair noted that the phone picture she showed shows an imposing structure. Councilor Mathews noted that it's 80 ft. tall, and visible to the whole area. There is a huge exposure over the tree line. Mr. McClary had offered to reduce the height and they have been trying to figure out a compromise. The alternative is to leave it as is. They can't seem to come to a consensus

with the neighborhoods. The state arborist did not want to lower the sign because more trees would then need to be cut.

The chair responded that they have been working on a compromise and proposals are on the table. Cove has given the town a deadline of November 12th. He asked they consider the citizens of Weymouth one more time. No recommendations will be made on Tuesday. The committee will need to meet again after the close of the public hearing to bring anything forward to the full Town Council.

Mr. McClary responded that when they met, the option that seemed the best was explained. Removing 611 Pleasant, move the other to the Hingham line and Finnell Drive. It's seems to be an option that was discussed but doesn't seem to be anything that anyone wants to address. The chair responded that it's up to the Mayor to decide. The chair requested that Cove hold off on lighting up 611 until the 18th of November. Mr. McClary responded that he had agreed to that when option 4A came up in the last few days. The chair responded that he would not commit to any option at this time.

Councilor Mathews explained the process. This was the result of a referral from citizens. Town Council cannot take any action until the Planning Board makes a recommendation. He asked that we obtain the Powerpoint presentation from Ms. Howe and forward to all Council members for review before the public hearing. Mr. McCleary responded that they had been working for resolution since sign went up. it's not a threat, but they have to come to some conclusion. There were supposed to be throngs of people attending site visits, but few actually did.

Councilor Mathews clarified for the record that they can't have 3 Councilors together on a site visit; it is a violation of Open Meeting Law. Mr. McClary responded that if citizens want to see the electronic billboards, go to the site visit on Monday.

Councilor Heffernan responded that he respects that they are trying to run a business. 8 members of the Council have not seen the proposals. This needs to be transparent and that's what they are trying to accomplish.

Mr. McClary responded that he believes this has been transparent. The common denominator is that 611 Pleasant Street gets lit up. He won't do anything until November 18th, but will still push forward.

Ms. Kabilian noted that Mr. McClary said they already lost the 4th quarter. Why do they have to light it up? No revenue was gained from having it lit. Going forward, with the sign lit-- it will garner revenue. She asked would it be possible that the town could pay for the LBT to avoid the 8-week construction period?

Mr. Delaney noted that the 18th is the deadline; based on what was said, who is going to come back on the 18th with a deal that includes Finnell and a donation of land by Bristol? The chair responded that it would have to come from the Mayor.

Bob Luongo noted the public hearing is on the zoning amendment. He further noted that they can't interject Mr. Bristol or any deals into this; the focus needs to be on repealing or modifying, but not using it as a mechanism to negotiate. They need to have another mechanism to have that discussion.

Councilor Mathews responded that the Solicitor composed a 5-page memo and talked about what would happen with the repeal of the zoning. Mr. Luongo responded that the zoning amendment has nothing to do with the billboards coming down. The chair responded he takes issue with that; there are objectives in the zoning that were encompassed in 611 and 613 Pleasant Streets. The Solicitor's response is that if you repeal, it will have an effect on 611 and 613. Mr. Luongo suggested they could get an opinion from the Solicitor in that regard.

Councilor Mathews requested the presentation get forwarded so it can be included with the council packets on Friday.

ADJOURNMENT

At 8:45 PM, there being no further business, a motion was made by Councilor Mathews to adjourn and was seconded by Councilor. Heffernan. UNANIMOUSLY VOTED.

Attachment: Power Point presentation

Respectfully Submitted by Mary Barker as Recording Secretary.

Approved by Ken DiFazio as Budget/Management Committee Chairman
Voted unanimously on 18 November 2019