

**TOWN COUNCIL MINUTES
ORDINANCE COMMITTEE
October 6, 2020**

Present: Kenneth DiFazio, Chairman
Brian Dwyer, Vice Chairman
Christopher Heffernan, Councilor
Arthur Mathews, Councilor

Also Present: Joseph Callanan, Town Solicitor
Robert Luongo, Planning Director
Christine Howe, Program Manager-Grants & Procurement
Attorney Adam Sherwin of Sherwin Law Firm

Recording Secretary: Diane Hachey

Chairman DiFazio called the Ordinance Committee meeting to order at 6:00 PM. Diane Hachey called the attendance roll call as follows:

Councilor Heffernan-Yes, Councilor Mathews-Yes, Vice Chair Dwyer- Yes, Chair DiFazio-Yes

Ms. Hachey noted that Councilor Haugh was not in attendance.

It was noted the Councilor Haugh had a prior commitment and would not be in attendance.

Robert Delaney of 27 Belmont Street-Discussion on Electronic Billboard Agreements-matter referred by the Town Council to the Ordinance Committee on August 10, 2020

20 100- Citizen Petition-Request to Change Zoning Ordinance Section 120-64.7.1-Billboard Relocation Overlay District

Chair DiFazio stated that the electronic billboard issues have been reviewed for six months in this committee. He noted that Chief of Staff Langill sent a request that Christine Howe is only available until 6:50 PM, due to a prior commitment and asked that she be allowed to present first.

She noted that she forwarded a copy of the amended agreement to those involved and it isn't yet finalized. She is not able to disclose some information relative to the amended agreement as it is under consideration.

Chair DiFazio questioned the status of the 613 billboard under the amended agreement. She cited that the goal is to not pursue, but instead look at 0 Finnell Drive as it is the only other permissible area- according to the overlay district.

Chair DiFazio asked her to address the billboard in S. Weymouth. Under the revised agreement the plan is to maintain the S. Weymouth billboard.

Chair DiFazio asked her to explain the end of lease dates for the billboards. Ms. Howe explained that they are 3,4, and 5 years out (2022, 2023,2024).

Chair DiFazio asked if the Town of Weymouth can be assured that Cove will take down the Route 3A billboards. Ms. Howe noted that they have agreements in place with landlords of the boards. There is space allotted to advertise, which expires 4 years from 2018.

Councilor Heffernan asked if the committee can have a copy of the agreement with the landlords, in order that it is reviewed.

Solicitor Callanan confirmed that he has the agreement, but it is confidential between Cove and the landowners, and he will have to get permission prior to releasing. If allowed to be shared-it would be only with Council and town staff, not for public distribution.

Councilor Heffernan asked that if not allowed to be released, at a minimum they provide a summary of the contents.

Councilor Dwyer asked when the agreement is expected to be finalized, to which Ms. Howe responded that their hope is that it would have been already, but it is based on Cove's ability to meet their obligations, and many outside facts effect this and the town is the closest they have been to a signed agreement.

Councilor Mathews reviewed the proposed amended agreement and there was no mention of the South Weymouth billboard. Many residents spoke at the public hearing He is wondering why this isn't part of the agreement. Ms. Howe indicated that the amendment only lists changes made to the original agreement. He continued that he is not happy that the Century Road mitigation work has been pushed back as it is not good for the neighborhood He noted that on Sunday he was just informed that there is a billboard meeting, hosted by the state, and is wondering if administration is planning on signing an amendment prior to that meeting. Ms. Howe is not aware of this.

Chair DiFazio noted for the record that MASS DOT is holding a meeting on October 8, 2020 at 11 AM and those wishing to attend must sign in today or tomorrow. He highlighted that 0 Finnell Drive's permit is indicated on the agenda.

The new proposal states that the permit for 613 will be renewed shortly, and he is wondering when they anticipate obtaining the permit. Ms. Howe clarified that no permit has yet been issued. Solicitor Callanan stated that his understanding is that 0 Finnell Drive is currently under agreement and is always included on their agenda.

Councilor Mathews stated that Cove is asking the town to waive fees for a permit to cut trees and he is concerned that they do not have the funding for this and further that their overall lack of funding is a problem.

Ms. Howe agrees that there is a concern with Cove's finances-Councilor Mathews reiterated that the town never received an answer regarding their finances.

Chair DiFazio stated that Mr. Delaney and Mrs. Swain have retained an attorney and he wants Solicitor Callanan to rule that it is legally permissible for the attorney to speak. Councilor Mathews motioned to take 20 100- Citizen Petition-Request to Change Zoning Ordinance Section 120-64.7.1-Billboard Relocation Overlay District_ out of order and continue the 2nd topic following this discussion. Motion seconded by Councilor Heffernan. Roll call vote taken as follows:

Councilor Heffernan-Yes, Councilor Mathews-Yes, Vice Chair Dwyer- Yes, Chair DiFazio-Yes. Unanimously voted.

Solicitor Callanan confirmed that it is permissible to hear from their attorney as it is merely a discussion and no voting will take place.

Adam Sherwin of Sherwin Law Firm introduced himself as a real estate litigation attorney, who has been retained by Mr. Delaney and Mrs. Swain, and has reviewed Solicitor Callanan's ruling regarding this matter.

He noted that there are vast differences between the 2019 and 2020 petitions, namely the initial petition requested a complete prohibition of all billboards thus eliminating Section 120-64.7.1 from the zoning ordinance. This petition seeks to change the regulation of billboards, and is not requesting that they are banned.

He believes that this should receive proper consideration as the prior petition seeks an overall prohibiting of billboards and the petition before the committee is requesting a change in the approval process. He doesn't agree with Solicitor Callanan's ruling that the Council cannot vote and as such doesn't agree that a court would invalidate changes to the ordinance, if so voted successfully by the Council.

Chair DiFazio requested that Attorney Sherwin's letter of explanation be entered into the record.

Solicitor Callanan responded that it is common that attorneys have differing opinions. He stands behind his ruling and feels confident that it would stand up in court. If Mr. Sherwin disagrees it is fine but he needs substance to stand up in court.

Attorney Sherwin reiterated that his clients seek to prevent versus eliminate billboards and believes that Solicitor Callanan's cases as cited don't apply here.

Councilor DiFazio noted that Solicitor Callanan erred on the side of caution when ruling in an effort to protect the town, but he also understands Attorney Sherwin's ruling as well.

Chair DiFazio asked to hear from Mr. Delaney, Ms. Swain and Ms. Kabilian at this time.

Robert Delaney noted that the current petition seeks to amend and not delete, noting that there is a clear distinction, he agrees with Attorney Sherwin's ruling and not Attorney Callanan's-which is flawed.

On October 17, 2019, the town received a petition from him with 22 signatures. The current petition seeks to amend, not delete, therefore the differentiation between the two is very clear. He deferred to Amy Kabilian for her comments at this time.

Her goal is to update the committee on the status of 611 and prove that Cove is not fulfilling its obligations to the residents of Weymouth.

The neighbors signed a remediation agreement with Cove and the town on December 18, 2020- and agreed to the following, to be completed within 3-6 months: the billboard height will be lowered, install light blocking faces, plant trees on neighbor's property, and the area behind the tree cutting to create a barrier from the Quarry; in addition to building fencing for those residents effected.

She realized that there is a pandemic but then they began operating the billboard in June- till 11 PM.-without telling anyone. Her and the neighbors had a meeting with the Mayor and representatives from Cove on June 26, 2020 and the following was agreed upon: Cove would meet with the manufacturer for sight blocking and give a timeline on delivery and installation; advertisers would be asked to scale back to 10 PM, and once trees are cut, would investigate dimming the lights until light blocking technology is installed.

She stressed that not one promise has been kept and the neighborhood is left unprotected. When she personally questioned why nothing has been done they claim the remediation agreement is not legally binding and there is nothing she can do about it. Additionally, a marijuana ad is being displayed on the billboard.

She noted a recent FOI request made to the state, which resulted in some new and enlightening information that the Mayor's office has withheld.

Ms. Kabilian noted numerous letters from the attorney for Clear Channel, which were sent to the state and also cited a letter from Joe Callanan responding.

She is requesting the following:

Ask the state to not extend the permit for 613 – it is set to expire in October; ask the state to suspend 611 license renewal on December 30, 2020; ask that the Mayor not sign a new agreement and ask for penalties for non compliance; any contract needs to list hours of

operation and not to sacrifice revenue; review current ordinance for violations; find out from Mayor's office when the 3A billboards will come down; investigate the claims from Clear Channel that the contract is illegal and lastly the proposal should change from 3-1 not 3-2.

Chair DiFazio thanked Ms. Kabilian for her comments.

Mr. Delaney concurs with Ms. Kabilian and questions why the Solicitor would continue to conduct business with a company who doesn't live up to their agreements.

He states that the agreement has been deemed by Mr. McClary as not a legal and binding agreement, therefore questions why the Mayor would sign it. It is his understanding that John Romano extended the 613 building permit to October 7, 2020. The original billboard relocation agreement between Cove and the town was predicated on false pretenses—therefore he believes that negates the validity and legality of the agreement, and gives us ground to cancel the agreement.

Mr. Delaney doesn't understand the concept of continuing to conduct business with people who don't fulfill their agreements. So in the end, it's the residents who are going to bear the brunt of all their misgivings; the town gets no revenue, and the 42 acres of land is non-existent. The only people benefitting from this are Bristol Brothers as they own the property where the billboards stand.

He questions if anyone in the administration is concerned about "contract zoning or if it is even legal. He wants clarification as to how much the town would lose if they broke the agreement as administration claims that it varies from 6-13.5 million dollars. He questions why the administration continues to work with and appease Cove, when they are not fulfilling their end of the agreement and haven't for the last two years; and the residents who are negatively impacted get nothing. Residents of Zero Finnell don't deserve what is yet to come and 613 doesn't deserve what they have been given. Administration needs to represent the citizens who pay taxes and not Cove or Clear Channel, who do nothing to benefit the town. He asks that administration walk away from this as they broke the agreement, then look at removing 611 billboard.

Chair DiFazio thanked Mr. Delaney for his comments.

Kathy Swain spoke next and does not advocate for one site over another and asks that we move swiftly and not to pit one neighborhood against another.

She noted that the Ordinance Committee reported its findings to the Town Council in January of 2020; citing that the implementation of the billboard relocation agreement has resulted in several negative impacts to surrounding residents. The committee further recommended that the 2 faced billboards be reduced from 3-2.

She acknowledged that the Ordinance Committee recognizes the need for a special permitting process in order that electronic billboards are safely sited—adding Section E assures that this process exists in the regulations.

Amy Kabilian stated that responsibilities by parties which were agreed upon 4 months ago, have not been completed by Cove-as they claim they are not legally binding she cited the marijuana ad which was to be taken down as one such example She requests that the permit for 613 not be extended, and to pull the permit for 611 and that Mayor doesn't sign the new amended agreement. Additionally that the current ordinances are reviewed for violations. Lastly, that the town investigate claims that the contract was entered into illegally.

Councilor Mathews noted that we do not have all the information and it is very discouraging if Clear Channel is filing litigation, that selling point was a reduction and removal of billboards on route 3A. Information is not being shared with the Council, nothing from the day the Council voted to the day the billboards were erected. Cove isn't being transparent with neighbors or the state and he questions how they operate.

Solicitor Callanan notes that allegations of Clear Channel were based on inaccuracies to MASS DOT and the town. He has correspondence to this effect and will share with the committee. He stated that the remediation agreement is not yet completed, combination of the pandemic and Cove not having funds to remediate.

Chair DiFazio asked what is the recourse for the town entering into a non binding agreement and nothing is delivered; he questions why can't we consider termination of the agreement.

Solicitor Callanan said that no town permits to renew have been issued as the state has limited ability to not renew. An alternative to not doing a deal is the boards do not get lowered and light blocking technology isn't installed. They are trying to incentivize with Cove and mitigate by planting trees and restoring visual barriers. Once Cove does a deal they should be able to comply and install light blocking technology within 8 weeks time.

Councilor Heffernan noted that this is not the first time the residents were promised light blocking technology to be installed in certain time frame. Peter McClary committed to this being operational 10 months ago and he doesn't trust them. The common denominator is that Cove is not providing what they promised.

Councilor Mathews asked Solicitor Callanan if the state is aware of the problems inherent at the 611 billboard location that Ms. Kabilian and Councilor Heffernan have alluded to. If they knew the magnitude maybe they wouldn't be willing to continue with other billboards.

Solicitor Callanan acknowledges that the state is aware and is insisting on an amendment to lower and transfer to 0 Finnell. The recommendation is that Cove has to reapply for 611 to have light blocking technology installed.

Chair DiFazio reiterates that the residents are asking that 611 lowered and light blocking technology installed.

Chair DiFazio requests that once the minutes from this meeting are complete that he will formulate questions to administration for them to answer.

Chair DiFazio requested that all documents referred to this evening are submitted to the Town Council office. He requested that the minutes are given priority as well.

Councilor Mathews suggested that we obtain the answers to the questions in writing in lieu of having administration appear before the committee to answer. So moved by Councilor Mathews.

Motion seconded by Councilor Heffernan. Roll call vote taken as follows:
Councilor Heffernan-Yes, Councilor Mathews-Yes, Vice Chair Dwyer- Yes, Chair DiFazio-Yes. Unanimously voted.

Chair DiFazio announced that he will meet in two weeks.

Councilor Mathews noted that the committee has to decide if they agree with the Solicitor. A public hearing would be scheduled jointly with the Planning Board and they could weigh in differently; should the committee vote against the Solicitor's opinion and the Planning Board agrees-- there could potentially be an issue.

Chair DiFazio believes as the public hearing is the next step that we proceed and see what happens. The Planning Board can deliberate or not and he suggests scheduling the hearing and see what the Planning Board states in their required report to the Council.

Councilor Mathews is concerned that the Planning Board may not participate in the joint hearing and the Chair believes that we will cross that bridge when we come to it. He heard residents crying out for representation and believes we should proceed with the zoning change process.

Councilor Heffernan concurs with the chair, and wants to proceed with scheduling public hearing and reassess later.

Councilor Mathews noted that Attorney Sherwin's letter was copied to the Planning Board.

ADJOURNMENT

At 8:46 PM, there being no further business, a MOTION was made by Councilor Mathews to adjourn and was seconded by Councilor Heffernan.

A roll call vote was taken:

Councilor Heffernan-Yes, Councilor Mathews-Yes, Vice Chair Dwyer- Yes, Chair DiFazio- Yes. UNANIMOUSLY VOTED.

Respectfully Submitted by Diane Hachey/Recording Secretary

Approved by Kenneth DiFazio /Ordinance Committee Chairman
Attachment October 5, 2020 letter from Attorney Adam Sherwin
Voted unanimously on 9 November 2020