

**TOWN COUNCIL MINUTES  
ORDINANCE COMMITTEE  
VIA ZOOM #880 2744 8332  
November 10, 2020**

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

Also Present: Kathleen Deree, Town Clerk  
Robert Luongo, Planning Director  
Eric Schneider, Principal Planner  
James Malary, Director of Finance  
Owen MacDonald, Traffic Engineer  
Joseph Callanan, Town Solicitor

Recording Secretary: Mary Barker

Chairman DiFazio called the meeting to order at 6:31 PM. Town Clerk Kathy Deree called the roll with all members present.

**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 and Continued from October 27, 2020**

This measure was referred to the Ordinance Committee on March 9, 2020.

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

This measure was referred to the Ordinance Committee on September 8, 2020.

Chair DiFazio explained the agenda items. He asked his colleagues to keep in mind the meeting was called as a result of prior communications between the chair and the administration. On October 6, 2020 the committee met and heard testimony from the constituents and a list of questions for the administration. The chair went through and compiled a list of questions which were submitted to administration. The next meeting was scheduled for October 27, 2020 to give the administration ample time to review the questions and provide responses. On October 26<sup>th</sup>, the Mayor requested a meeting postponement based on need, because of ongoing negotiations. The chair has not received any responses yet. At the meeting on October 27, the Mayor's memo was read into the record. Last night the Mayor called and because they are still looking for solutions, he has requested a further postponement. No vote can be taken until 21 days have passed, but the committee can still discuss. A new proposal is out after a meeting with the residents around 611 and 613, but they aren't aware of what it includes. He entertained comments or questions from the committee.

Councilor Haugh asked why they don't have answers; is there a specific reason? It's been a month. If not by the 17<sup>th</sup>, have other solutions. The chair asked the solicitor to respond.

Solicitor Callanan responded that the problem is with answering before the proposals are before everyone. The meeting last week was with Holly Hill residents. What's going forward? At this time, it is unknown. They proposed lowering the board at 611 and adding light blocking technology. Then they proposed removing 611 and building at 613 and at 0 Finnell, but not before notifying the residents in a public meeting. The committee knew about the alternative before the neighborhood did. The proposal is on the Mayor's webpage. It was presented to the neighborhood and they are now soliciting feedback, but have not made a determination yet. Without a proposal going forward, they are reluctant to answer questions on a previous agreement and that's why they have asked for more time.

Chair DiFazio responded that if the committee meets on the 17<sup>th</sup>, and if the administration cannot answer any of the questions, then so state, so they can review it. The solicitor responded that he would take that up with the Mayor.

Vice Chair Dwyer suggested they try to set up model before the meeting if they are going to have answers beforehand. The residents deserve to know and it's a reasonable request.

Chair DiFazio directed the solicitor to relay that if they choose not to answer, don't wait until the last minute to let the committee know.

Solicitor Callanan responded that by not answering, it doesn't mean they aren't conversing with everyone involved--information is being shared.

Chair DiFazio responded that they don't want to go through this iteration again. He directed they either provide the answers or let the committee know why they won't.

Councilor Mathews noted that when the questions were submitted they conformed with the charter in regards to the subject matter. Is the administration in compliance with the charter? They will have to talk about it next week if they still have no answers. It will be over a month by the time they take it up on the 17<sup>th</sup>. He understands the plan is in flux, but there are questions that could have been answered.

Councilor Heffernan noted this is the 2<sup>nd</sup> meeting with a similar outcome. The constituents have been patient waiting for the responses. The Council needs to go through its protocols and procedures. He is disappointed that this is the second meeting and he is sorry it's had this same outcome.

Chair DiFazio asked if there is anything new or any questions, or does Solicitor Callanan have anything to add?

Councilor Mathews reported the public hearing took place last night. Under state statute, they are required to wait 21 days after the public hearing closes to vote, or until the Planning Board submits its recommendation (which would be December 1st). If they don't receive a recommendation by then, they can proceed on their own. The solicitor provided a legal opinion and had advised that if it is taken up (in his opinion) it won't stand up in court.

Chair DiFazio reported that secondhand information has been circulating regarding Cove's financial standing; it appears that there is a bank placing an injunction. He asked the solicitor if the administration is aware that it appears they are in financial straits?

Solicitor Callanan responded that Needham Bank has filed a collection action in Norfolk Superior Court, because Cove hasn't been able to generate the revenue from advertising, so there is a suit by a bank. They are not in bankruptcy, but are having financial difficulties preventing them from doing what they want to do.

Chair DiFazio asked if based on their financial position could the town offer some relief in negotiation, such as reducing to minimum number of boards. Is that possible?

Solicitor Callanan responded that he doesn't think so. When spending tax dollars there is a public benefit rule; it must be spent for the public benefit and can't use taxpayer dollars to bail out a private business. Cove will have to pay MassDOT to cut trees on public property. The trees in Weymouth are on state property and Cove is paying for it. The state is taking the money and putting it into the general fund. They have helped them with government regulators but can't give them cash.

Councilor Mathews asked how much is the tree-cutting permit?

Solicitor Callanan responded that he is reluctant to answer. He understands the concept, but not the specifics. Christine Howe has the specifics. Councilor Mathews responded that he is looking for a broad answer. The solicitor responded that Cove has already paid \$100K for tree cutting. Councilor Mathews asked if that is for the cutting or just the permit? The solicitor responded that the permit is a nominal amount, but the larger costs are the mitigation. Councilor Mathews noted that when he saw the preliminary injunction, and in discussing Cove's financial woes, he has grave concerns that with \$150K needed to install the light blocking technology, that they can't even afford to do that. Asking for the town to help pay for the fees to the state concerns him. It's not right that the town should be punished because Cove didn't review the engineering before they threw up a sign in three days and the Century Road residents are dealing with the consequences.

In all of this, Cove hasn't lived up to any of its obligations and he is worried about them having money to complete the rest. His personal opinion is they should not be doing all of this at the same time. Fix the board at 611 first. They have deals tied to other entities that are tied into their finances. It's time for the town to put some poison pills in the agreement to force them to meet the time or financial obligations. The town could be

stuck with more billboards when this was supposed to be a reduction. In the first agreement, language indicated the boards on 3A would come down within a year; and now, according to some of the correspondence Ms. Kabilian shared, they are being told it will not be until the end of the leases. When the Council voted the ordinance, they were not informed of this. He apologized that the Council was not aware. Cove has already breached the contract and if they won't live up to it, put a forfeiture mechanism in place. He doesn't believe Cove has the money to defend a challenge in court.

Solicitor Callanan responded that the administration is also frustrated with Cove. They are trying to get to a point where they can mitigate the impact with as many of the original intents of the agreement as possible, to protect residents, and mitigate the impact on Century Road also. It's not a simple solution. They have permits for 4 signs. Fight leads to no guarantees. Alternative means that we probably won't see boards come down, open space and possibly a build-out of the site for industrial use.

Councilor Mathews noted that the financial deal; in the latest proposed amendment that Ms. Howe provided- all of the amendments are subject to Cove obtaining financing. If Cove has a preliminary injunction by Needham Bank that is also tied into the permits for 611 and 613, what financial institution will give them funding to move forward and mitigate? Any deal going forward will be subject to Needham Bank or a judge. He asked the solicitor if the town has issued building permits? The solicitor responded no. Councilor Mathews asked then why can't it be used as leverage until they repair the existing problems? The solicitor responded that they haven't requested permits. In prior proposals, they would surrender the permits for 613 and in the last several weeks they haven't requested permits because they are still working with the town for a solution. The town hasn't gotten to the point of threatening while working with them.

Councilor Mathews stated he believes the town should start using it as leverage, if they can't come to an agreement.

Councilor Heffernan noted the other item on the agenda is contingent upon communication from the Planning Board. He would like to know at least 24 hours ahead of the next meeting whether the information they requested will be provided. Chair DiFazio will communicate it to the Mayor the week earlier.

Councilor Haugh said she believes the new proposal is to move 611 to 613 and they want to build 613 first before taking 611 down and she does not agree with this. She realizes that they have to wait for the Planning Board's recommendation. She is in favor of reducing the billboards to 2, since she has no faith in the company. The town has no desire to ever have more than 2. At this point she has no faith and no trust they will put up 613 without taking 611 down first, and then put up 0 Finnell. Can a deal be signed that allows for this? The Mayor doesn't need their opinion to sign a contract. She doesn't see this having a good ending, having double the number when the whole purpose was to reduce the number of billboards.

Solicitor Callanan stated that at Thursday's meeting, he doesn't recall the answer but does recall the reaction was different than the proposal. It's a proposal to use the structure of 611 to be used to build 613. There may be days or a few weeks while 613 is being built but it won't be a situation where both would run at the same time. In the construction sequencing there may be 2 structures up at the same time. This is a broad idea put before the neighborhood. There will never be the opportunity to have 3 boards and they wouldn't be allowed to operate the 2 boards during the construction phase. The Mayor can negotiate while the citizen petition is going forward. It won't affect 0 Finnell.

Councilor Haugh understands the proposal is to build 613 and then take down 611. There will be 3 existing permits. Solicitor Callanan responded that the amendment that they did see included surrendering the permit for 611. There won't be any scenario allowing them to operate 3 billboards.

Councilor Mathews stated that the Town Council may have to consider sending communication to the Mayor and perhaps to the state on the operation of Cove. Possibly send a communication to Mr. Romano for contingency in the permit to remove the first before the next goes out. Or have the town withhold the building permit until then. Chair DiFazio to the solicitor- can they require 611 be removed before 613 built?

Solicitor Callanan responded that the 611 structure is more dependent on 0 Finnell because parts of 611 will be used to build 0 Finnell. They can restrict by not allowing operation at the same time. It would be a construction scenario they would like. They would be resistant to the alternative because it cuts into their advertising time.

Chair DiFazio asked isn't there a large constituency who don't want 0 Finnell Drive and will be going through this all over again or have they acquiesced to avoid a 40b or industrial development?

Solicitor Callanan noted that they have not acquiesced. They are opposed and there are those who are opposed to any development whatsoever. By right they could have industrial uses. There is a desperate desire for the land. Amazon has talked about building a distribution site. 40B could be proposed in all discussions, he is willing to forego development with revenue from the billboard. In the amended agreement, by forfeiture the town share of the billboard revenue, it will acquire the land. It's not a donation- just not paying the fair market value. He estimates the revenue at \$1.2 million, which is less than the value of the land. There is a "donation" element. If they don't build a billboard they will see other uses that the neighbors may more strongly oppose.

Chair DiFazio asks if any plans going forward will include 0 Finnell. There is a greater benefit to putting the board up and maintaining the open space. Moving forward assumes it is the best thing for the town to put the board up. Do they know or agree with it?

Solicitor Callanan responded that the light impact of an Amazon warehouse or 350 units of housing and the related traffic would be greater impact than a billboard.

Chair DiFazio suggested they need to offer an agreement. Some of the residents are looking for real strong contingencies guarantying no development of that land.

Councilor Haugh noted she still has concerns putting up 613 before 611 comes down and that it would be a hardship on them because they have private contracts, but they haven't fulfilled an existing contract with the town. Why is a private contract more important? If all of these billboards require a town permit too, can Town Council place a moratorium on these until there is relief at 611? The plan is convoluted and she is really concerned with the Century Rd. residents, and the possibility of a second structure they will have to look at.

Solicitor Callanan noted she had several questions in there.

Councilor Haugh responded that this is just casual dialog, voicing her concerns. Would they allow construction on another billboard before taking down a problematic one?

Solicitor Callanan responded regarding the question on whether they could enact a building moratorium. Yes, building permits are required. 611 received one before it was erected. They haven't asked for one for 613. Can Council pass a moratorium? Building moratoriums are difficult. The attorney general's office does not enforce town ordinances, but when other towns have had building moratoriums, the AG's office talks about it being for a limited time. Commercial cannabis moratoriums had them built in that the AG's office allowed so that they had time to develop their regulations. So if the Council were to would pass one, he doesn't think they could do it for more than 3-6 months.

Vice Chair Dwyer noted that he hopes the answers are ready for the next meeting, but maybe they could discuss moratoriums once they have complete answers to the questions.

Chair DiFazio reported that he will send a memo to the Mayor regarding answering the questions. If he complies, they will schedule a meeting next week.

Councilor Mathews responded that we must comply with OML and post within 48 hours and would have to notify administration accordingly.

Councilor Mathews responded that they need a date to let them know they are ready to present. They will need to hear back from the Mayor whether he is prepared before they can schedule a meeting. Councilor Haugh responded that the charter gave more than the required 5-day notice on October 14<sup>th</sup>.

Town council has absolutely complied with OML. The question is whether the Mayor is going to answer. It's been delay after delay. And we still have to wait for a recommendation from the Planning Board. Councilor Mathews wants to go through each question. He didn't have a conversation with the Mayor, so he is unsure what the delay is. He is just as frustrated as the committee is.

Chair DiFazio added that he wants the answers in writing. Once they know, then they can schedule a meeting. He will request the date, hopefully in the next week.

Councilor Haugh responded that she doesn't live in the affected neighborhood. She assumes there is a lot more discussion with other Councilors who do. Could the Mayor sign a new contract and have no reason to have the questions? Or is he signing soon or waiting for more neighborhood feedback?

Solicitor Callanan responded he is unsure. Right now, there is nothing on the table.

Chair DiFazio, through the solicitor, urged the Mayor not to sign a contract until the discussion happens. It would not go over well with all the work which has been conducted in an effort to obtain resolution. He urged the Mayor to present to Councilors before signing an agreement. There has been a lot of work done for something to be signed before presenting it to the Council.

Solicitor Callanan responded that he hasn't said anything that would lead anyone to believe that is the Mayor's intent. He doesn't know what the next step is.

#### ADJOURNMENT

At 7:42 PM, there being no further business, a motion was made by Councilor Mathews to adjourn and was seconded by Councilor Haugh.

A roll call vote was taken:

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

Respectfully Submitted by Mary Barker as Recording Secretary

Approved by Kenneth DiFazio as Ordinance Committee Chairman  
Voted unanimously on 21 December 2020