

**TOWN COUNCIL MINUTES
ORDINANCE COMMITTEE
VIA Zoom #824 7092 0254
April 29, 2021**

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

Also Present: Robert Hedlund, Mayor
Joseph Callanan, Town Solicitor
Kathy Deree, Town Clerk
Eric Schneider, Principal Planner
Jack Carey, Chair of Charter Review Committee
Kathy Swain, Friends of Finnell
Amy Kabilian, Friends of Finnell
Bob Delaney, Friends of Finnell

Recording Secretary: Mary Barker

Chair DiFazio called the meeting to order at 6:02PM. Town Clerk Deree called the roll, with all members present.

20 010- Review of Measure Number 17 127-Zoning Amendment to Create a Commercial Overlay District (Section 120-25.14)

This measure was referred to the Ordinance Committee on February 16, 2021. A meeting was held on March 3, 2021. Planning Director Bob Luongo, Mayor Hedlund and four members of the Planning Board were present, and the Planning Department gave a presentation. Since that meeting, the only thing that has occurred since, to his knowledge, is that the Council recently received a letter from the Mayor dated April 27, 2021. Mayor Hedlund summarized the contents for the committee and Chair DiFazio read a portion of it for the committee:

Briefly, some time ago the Planning Department and Mayor's office initiated a discussion and took a look at the zoning changes that were implemented with the creation of the overlay of the commercial corridors, and what they found was they had lots of interest. They turn away a lot that come in and realize they are getting a lot of inappropriate submissions and suggestions when developers come in to float ideas. They wanted to take a step back and look at what the successes have been and where they might revisit the overlay as a result of these suggestions and submissions. They started to look at it at the same time the discussions began to take place before the Ordinance Committee and subsequent to the administration's conversations. Since they were happening in parallel paths, the administration wrapped up their discussions to get it to the Ordinance Committee before this meeting. The memo expresses their intent and what actions they

plan moving forward. The timing is good in the sense that projects have been completed that they can look at, analyze and judge and see what the benefits have been. They are engaged in discussions with the state and with a group of town departments looking at water resource issues, which is ongoing. With the Jackson Square study that's being done, they thought this was a good time to take a comprehensive approach while including all of those factors.

Chair DiFazio read the memo into the record:

“Effective today, April 27, 2021, the Office of Planning and Community Development will be pausing the acceptance of new applications for special permits within the Commercial Corridor Overlay District to fully reevaluate the scope and provisions of the town’s existing CCOD overlay. Both the Planning Department and my administration have consistently voiced the need for the continued review of existing zoning. In many ways, the visible deterioration of the assets along our commercial corridors is due to decades of stagnant zoning and the unwillingness to realign zoning with market trends and conditions. The product of this review will be to quickly propose the following for consideration:

- a) Potentially lifting portions of the CCOD; and*
- b) Potentially reducing the density, height and other development incentives along portions of the remaining CCOD.*

As part of the reevaluation, the following issues will be taken into consideration:

- 1. Gauge the positive impacts of the recent infrastructure improvements in mixed-use developments along our main travel corridors. An underlying principle behind this stimulation of private investment through the incentives of the Commercial Corridor Overlay, is the concept that these developments will create a significantly more attractive demographic for future commercial investment. The CCOD has created a new traffic-oriented population center along a much-improved Route 18. If the retail market does come back, this corridor has become an attractive destination for potential investment. This was not true prior to recent events.*
- 2. More fully understand the post-COVID world. The trend toward online shopping had devastated the commercial market a full decade before the onslaught of the COVID pandemic. The subsequent shutdown of the last year certainly exacerbated this decline. It will be intriguing to see if shifts in consumer habits occur as the world reopens, and how commercial entities will respond.*
- 3. Review in-progress land use studies. The Planning Department in conjunction with Harriman Associates is in the final stages of completing a land use plan for Jackson Square. With the exception of the*

tremendously successful reconstruction of Lovell Field, the village center has received minimal attention. Significant investment opportunities exist, given the proximity to the East Weymouth MBTA station, the success of Lovell Field and the potential turnover of significant real estate in that area. Similarly, the Planning Department has committed to continuing a more in-depth study of Bridge Street, which began as a collaboration with South Shore Chamber of Commerce and the Urban Land Institutes Technical Assistance Planner concluded just prior to the COVID shutdown. Also, as plans for an improved intersection in Columbian Square are formalized, we intend to conduct a land use study of that area.

4. *Collaborate with relevant town departments to assess land usage; the Planning Department is a willing participant in this discussion. We have been working with the Department of Public Works, the Conservation Commission and will continue to, with any necessary outside consultants to better understand the constraints of the Weymouth water supply. And last,*
5. *Fully evaluate Governor Baker's new Housing Choice legislation, which Mayor Hedlund opposed. Under the new legislation, Weymouth must allow multi-family developments, as of right, in at least one zoning district to remain eligible for state grants."*

Chair DiFazio asked if Councilor Mathews had comments. The Mayor's letter addressed many of Councilor's Mathews concerns that he brought to the Town Council. The Planning Board, Planning Department and Ordinance Committee will formulate recommendations over the next few months.

Councilor Mathews thanked the Mayor for his letter. He did have concerns and had hoped specific recommendations would have been brought forward at this time. He stated that they have to consider:

1. changing the FAR
2. reducing density in some of the proposed developments
3. reducing the maximum height allowances
4. consider inclusionary zoning in new developments; a component of affordable housing;
5. perhaps 10% set aside for senior housing. They have all heard from their constituents as to the need.
6. Leasing office/fitness center as commercial space in a proposed apartment development. Do they want to continue to allow this or refine it when the BZA is deliberating a proposal?
7. other proposals have parking garages on the first level, eliminating commercial space.

He hopes they can review these and come to a consensus. He understands that development is stagnant, but recalled during the Mayor's first meeting that he indicated

developers were coming to his office thinking they had won a lottery ticket. He doesn't want to see them push anything on the community and he does not like that the planning office has to negotiate with developers before they bring forward proposals to the BZA.

Chair DiFazio added an additional item:

8. Require applicants to provide proposed water usage for any developments

Councilor Mathews pointed out that Director Luongo had wanted to be present and part of the discussion, but he had another commitment.

Mayor Hedlund added that most of the bullet points are under discussion now. Some of the proposed changes to the overlay are in the works and it will address height and density. He cautioned that if they include an affordable housing mandate, from what the market shows, they may not see desired positive results and if they make a project non-profitable for someone to make the investment. The example Councilor Mathews cited with parking on the 1st floor and a fitness center as commercial component; that's one particular project and not par for the course. They are quite happy with a lot of the projects to date. They have taken blighted properties. The intention of the overlay has worked out. It is solely on the basis of strong new growth, that allows them to fulfill the hefty school budget request. It was not because of an increase in state aid or local receipts. They want to balance development and most of the new ones have done that. He looks forward to working with Council on it. \$1.8 in new growth is only new increase in revenue this year.

Councilor Haugh commented on the (1439) Main Street project (Aeronaut) that is getting most of the attention; it looks really impressive online. Most of them living in Weymouth live in the typical single-family homes, but they do have to attract the younger owners. She asked how close to completion is it and do they have tenants yet? Mr. Schneider responded that they have 3 interested- two restaurants and a retail market. He echoed her comments with regard to the quality of the project. He recently toured the top two floors and it is top of the line. They run a risk and will have to digest results of a reduction in density; they don't want to see a reduction in quality and amenities of projects. They have been successful over the last years in getting developers to commit to quality materials inside and out. To provide affordable housing is usually a result of being able to afford based on the overall profitability of the project. In the last eighteen months, they've seen that developers don't want to do the commercial component; they'll do it to make the project work, but they are on the hook to make sure it's quality retailer so it's an amenity for their residents. They are taking a first look at the ordinance. Greg Agnew of the Planning Board, who is well-versed in commercial construction will work on this with Eric and Bob and take a look at the map and ordinance and bring suggestions back to the next Planning Board meeting and here. He thinks they can accomplish this quickly.

Mayor Hedlund added that they will see with Aeronaut with two strong restaurant tenants, and the Gratta building is bringing in the type of coffee shop that people want. Delegas' construction will attract a quality retailer also. The one comment they all hear is the concern with the impact to the schools. None of these projects will impact the

schools. With current declining enrollment, the town is able to absorb students. As the construction on projects take place, they can be visually jarring, but once they are completed and it's operating it will be a good fit. It will be better judged once they are finalized and have landscaping and final details in place.

Chair DiFazio added that the developer of the Aeronaut project is also redeveloping the Boston Motel site, and he has promised the same type and quality of amenities there.

Councilor Haugh responded that she understands Councilor Mathews' concerns with water and density, but in the bigger picture, they have to embrace change. It's exciting for Weymouth. It will attract young professionals who will change Weymouth's dynamics. She sees a positive in all of this.

Councilor Heffernan has brought up his concerns with developments that are marketed as transit oriented, and the problem they will see once they return to the new normal post-COVID is that a lot of people will depend on the two commuter rail routes and bus routes. They will see increased ridership, and if not, they will see more cars on the road. He asked, has the administration addressed this with the MBTA? The state has been pushing transit-oriented development but the capacity on certain rail lines is just not there. The Mayor responded that they are pushing it even more with the Governor's new housing bill, and the town will need to determine if it's worth it or will it forego grants. It is tougher to communities further south than Weymouth. The T is trying to fix this, but it's is not a short-term fix. The Greenbush / Plymouth line merger is the biggest problem with capacity. Of some help, the MBTA is reinstating commuter boat service. Councilor Heffernan responded that he can see a concern as more move into these developments and they will want to use the nearby service. The capacity is just not there and it will take time to fix. Mayor Hedlund noted this is one of the post-COVID changes they are apt to see. More remote work may remain in place.

The chair added that they will be working with the Planning Department to pursue any changes. Any Councilor who wants to be involved in the process should let him know.

20 079- Charter Review Committee Report

This measure was referred on April 20, 2021. Committee Chair Carey reported that the committee's work has been submitted. Because of COVID, they were unable to meet deadlines and a home rule petition may be necessary to waive those conditions.

Solicitor Callanan explained that the committee got a late start and certain deadlines were not met because of the pandemic. It should have been presented to the Council last year. They can file home rule petition and ratify the work of the committee and the Council even though the deadlines weren't met. A home rule petition wouldn't necessarily be required. Deadlines in the charter are what's called precatory and are not deadlines that would nullify the work of the committee. They could go forward with the recommendations or do a home rule petition after the fact. Expecting the legislature to pass a home rule petition in the middle of a budget season in order to meet a November ballot placement would be unreasonable. They could also submit a home rule petition that

ratifies the results of the voters as opposed to ratifying the vote of the committee. There are several ways it can be accomplished.

Chair DiFazio noted that the correspondence from Solicitor Callanan to the Charter Review Committee dated October 13, 2020 outlined the motions that delineate the changes that the Charter Review Committee is proposing. At this time, Mr. Carey vacated the meeting due to a prior commitment, and Councilor Haugh presented the motions for review while Solicitor Callanan explained the motions:

Solicitor Callanan responded that in the earlier meetings, the committee solicited input from the Mayor, department heads; then broke out the charter into its sections and the members reviewed each and suggested proposed changes. A list of changes was compiled which became the motions:

- a. Elimination of publication by local paper – with ordinance change. (This is to update the charter to include 21st century changes with regard to publication procedures and an ordinance will be drafted on the manner of publication that will now be required.)
- b. Eliminated the section needed in the initial charter, but now that the whole charter is in effect, it is no longer necessary
- c. Related to Town Council’s interaction with executive departments and the ability to interact with other departments- it was broken out into two parts
- d. This was determined to be beyond the scope of the committee, so it was not adopted
- e. British spelling changed to American spelling of the word “Councilor.” This appears many times in the charter.
- f. Extend temporary appointments from 90 to 180 days
- g. Reduce the time of action on budget, to conform to the fiscal year parameters
- h. Eliminate scrivener errors as identified by Council staff and E-code
- i. Modify the timeline for review of the charter to coordinate with review of the ordinances
- j. Technical amendment to pass changes and have them take effect after ratification, or until the Town Council has time to pass changes to implement the charter changes

Chair DiFazio recalled that some Councilors may have proposed amending how the Town Council may interact with administration or department heads? Solicitor Callanan responded yes; it’s motion “c.” Solicitor Callanan responded that these changes are in section 12, 15 and 18. The big change is section 12.

Councilor Mathews asked the Town Clerk if they were to go forward with motion a, can it be done- will there be any predicament? Ms. Deree responded it will not change how they do it; they go by the ordinance. Solicitor Callanan added that this takes away the charter requirement but there may be other requirements. (“in any other manner as required”- if the state law requires notice in a newspaper, then this is what must be followed.)

Chair DiFazio announced the names of the committee members. He suggested that the Ordinance Committee will meet again in the next few weeks; he is open to suggestions as to the disposition. Councilor Mathews suggested this would be time to discuss with the town clerk as to the process to move it, similar to what was done ten years ago. The formatting may not be acceptable to the Secretary of State or in ballot format if the Council decides to move it forward. Ms. Deree responded that that the Council would determine what is considered a substantive change and then turn it over to the solicitor to write the ballot language. The solicitor would provide a summary for each proposal. The Council still has to conduct a public hearing before the Ordinance Committee makes its recommendations. The Council should consider wrapping it up before recessing for the summer. There is a less than two month's window to do all this. Chair DiFazio will schedule another Ordinance Committee meeting to work around the public hearing.

Solicitor Callan added that the solicitor's explanations for the voters will be done after the Council and Mayor approve it, and it goes to the Attorney General's office. The Mayor has made his intention clear that he will veto the sections ("c") so they were packaged separately. If he vetoes it, under the Massachusetts Constitution and state law, they will not go forward. The Council may consider packaging the motions differently than the Charter Review Committee did. They considered it. The Charter Review Committee voted to bundle them, but the Council is not bound by the committee. The Council decides how many questions will go forward.

Councilor Haugh asked if the Mayor does veto that motion (2-3 and 2-7), does it come back to the Council for override consideration like a traditional measure?

The solicitor responded that it is not like the traditional veto that can be overridden. In Article 89 of the MA Constitution that is the home rule amendment (section 4), these charter *amendments* (vs. revisions) need the concurrence of Mayor and Council. This is repeated in state law (43B, sect. 10a or b). if the Mayor withholds his concurrence it can't go to the voters, or to the Attorney General's office for review. Councilor Haugh confirmed; if the Council passes each motion, but the Mayor doesn't like one, then there is no vote on the charter? Solicitor Callanan responded yes. Chair DiFazio asked if the Mayor intends to veto both sections? Solicitor Callanan responded that is what he said last summer; he's unsure if it has changed.

Councilor Mathews responded that he is looking at 43B section 10 which refers to charter commissions; not charter review committees. He is also looking at section 11. He does not agree with the solicitor's interpretation and asked for case law to support it. He said it would be unfortunate if the Mayor was to veto it and not give democracy a chance to decide. He would need time to review this.

Solicitor Callan responded that a charter commission revises a charter. This is a special committee that makes recommendations to the Council to amend the charter. It's an important distinction to understand. The charter commission procedure deals with

revisions; this is amendments. In Article 89, Section 4 of the MA Constitution: *every city or town shall have the power to amend its charter in the following manner: The legislative body of the city or town may by two-thirds vote propose amendments to its charter, provided that*

- 1. May propose only with the concurrence of the mayor, in every city that has a mayor*

Then, in MGL 43B, section d, which states that *amendments to a city or town charter previously adopted or revised under this chapter may be proposed by the city council of a city, or the town meeting of a town by a two-thirds vote, in the manner proscribed by the section, provided that amendments of a city charter may be proposed only with the concurrence of the mayor in every city that has a mayor.*

He went on to state that MGL 43B, section 11 deals with charter revisions and that would be a charter commission. His resource is from the 1995 Charter Review committee's procedure local charter procedure. That is what the original charter review committee relied on and he has not seen updates to it. He will provide the documentation.

Chair DiFazio asked the solicitor to provide a memo documenting the information he has provided here.

Councilor Haugh noted that in the third paragraph of the MGL 43B, the public hearing and vote are required within a certain time. The solicitor explained that after the Council's action and the Mayor's action, the mailings to the voters must go out a certain number of days before election. There are a lot of deadlines to consider.

Councilor Mathews outlined the sections that the Mayor is considering for veto. Per the current charter language, section 12, the Town Council is prohibited from talking to department heads. They suggested this change because they don't want to dictate and they aren't looking to interfere with the administration or its daily workings, but they want to be afforded the opportunity to speak to department heads. Any constituent can call a department head, but the Council has a memorandum from the Mayor directing Town Councilors not to speak to department heads directly. That memo was shared with the Charter Review Committee. He does not think it's right. The reason for it is that if a constituent contacts the administration and they don't get a response he would like to be able to reach out to assist the resident in getting the information. In their role, the Councilors represent the people, and are not being allowed to do so. Previous Mayors had not enforced it and Mayor Hedlund is the first and only Mayor to direct it in writing. It restricts the Council. He supports the recommended change in the language. Chair DiFazio agreed; the language is a good compromise. He would be interested in hearing from the Mayor directly on it.

The committee will meet again soon on this matter.

Update – Route 3 billboards

Chair DiFazio reported that the Ordinance Committee has followed this matter for three years. On December 21, 2020, the Town Council passed 20 117 – Town Council Zoning Ordinance Amendment to Section 120-64.7.1 Billboard Relocation Overlay District (One Year Moratorium on New Permit Issuance). Since then, the committee hasn't had an update from the residents in some time. He has been in contact with two who stayed involved and asked them to provide an update on either the existing or new board. Council President Mathews issued a memo on April 13, 2021 which indicated activity going on in the town that may have violated the moratorium.

Councilor Mathews asked if someone from administration could provide an update first. Solicitor Callanan responded that he was not prepared to address it at this time. The Council staff requested that Ms. Swain make a presentation.

Amy Kabilian read the following statement to the committee on behalf of the residents.

“Hello

I am here tonight to give you an update on the status. I am the designated neighbor representative and have had regular emails and phone calls with Ed O’Sullivan for the last few months.

As many of you know, the new agreement was signed in early January. The agreement said a light blocking would be ordered within one week. Because the town and Cove could not agree on a vendor, nothing was ordered until 2/23.

Next was the Conservation Committee about the tree cutting. That went well and the tree cutting was approved.

Cove had begun to line up delivery on the new faces as well as the tree removal. Tree removal was set for 4/12 and new faces 4/19. However; this ended up being cancelled. Cove was unable to submit the materials needed for the agenda to the state in time. A new permit is needed to lower the sign and light block the sign, and it needs to get approved. Cove argued it could be done administratively. John Romano at the state indicated in his 6 years there, he has never done these administratively. Therefore, Cove was placed on the May agenda and the work that was scheduled was cancelled. I even spoke with Senator O’Connor’s office about this; it was clear that Cove had not submitted the paperwork and no exceptions were being made. Nothing has been done on the 611 board yet.

On 4/20 we received an email from Joe Callanan stating that Friends of Finnell is wondering if a special permit is needed to lower 611 and Joe confirmed one is needed. This email gave some details what Cove should do next and gives them legal advice. After receiving this email many of the neighbors where alarmed, we were shocked that the town was offering outside vendors legal advice, I believe many of you have seen this email but seeing things in writing like I quote: “If you apply and the BZA denies the permit, which we will do everything we can to prevent, but is a slim possibility, then you

can appeal and argue the new ordinance is illegal, does not apply, the board is not non-conforming, and we will take nominal status after conceding the new ordinance is illegal. That potential litigation should be quickly resolved in your favor.”

We are very concerned as residents that the town is not acting in our favor, rather an outside vender. I did speak with the solicitor 1:1 , because I could not believe I would be an intended recipient of such an email. Anyways, the next day the neighbors, town and Cove met. It was determined that Cove would apply for a special permit. A stand out moment in the meeting for me was when Cove’s lawyers represented that they did not legally have to remediate the billboard; they only had to “try.” I left this meeting concerned.

One point on clarification- Peter McClary has sent emails to some of you indicating because of this special permit the work was cancelled, however in the interest of transparency I want it to be known that the work had already been cancelled due to not making the state agenda. There seems to be a lot of information floating around and some of it is misguided.

In the meantime, we have been working on trying to resolve some of the other items that need to be completed; neighborhood trees being one. We have been asking about this for weeks. This has been frustrating for a few reasons. First, Peter McClary called one neighbor saying only certain neighbors could request trees, because it hasn’t been lowered yet and they don’t know the impact. It does not state anywhere that Cove can pick and choose who gets trees.

I asked them to please go through me as the designated neighborhood representative. Next, Peter asked me to give out the arborist’s phone number, so I did, and when one resident called he told her he hasn’t spoken with Peter in a year. Right now, someone is supposed to be visiting the neighborhood Saturday to talk to some neighbors, but then once the sign is lowered, other neighbors can request trees or fencing if they want. We feel like this is just delaying but it’s all that’s happening.

Also, we wanted to plant the trees on the opposite side of the highway where the billboard is. We have been told this won’t happen until the tree cutting happens. We are concerned this is just delaying and will fall outside the planting season.

Late last night most of us received an email from Ed O’Sullivan. This email gave a timeline of events and expressed that the billboard could be turned back on, as soon as tomorrow. Needless to say, my neighborhood is very concerned.

This billboard was constructed over 2 years ago now and our neighborhood is beyond frustrated that there has been no real resolution. It may go off, but then comes back on and now that it is off and now, we’re being threatened that it’s going to just go back on. I spoke with you at town council about my concerns about the agreement because it feels like the town and Cove are unable to execute the agreement as written. And unfortunately, over the last few weeks it feels that was again, boards were not picked and

ordered according to the timelines, work has been scheduled & cancelled, and now the board is potentially going to light up our neighborhood again. We feel defeated, discouraged and out of options.

Thank you for giving me the opportunity to update you tonight.”

Chair DiFazio responded that he understands their frustration with the ongoing saga. They are considering turning it back on? Ms. Kabilian responded that she doesn't quite understand the legalities. The agreements indicate Cove will no longer be responsible for the board, as of April 30th. Whoever is their investor may take over the remediation and they can turn the board back on.

Councilor Haugh pointed out that Mr. O'Sullivan has sent weekly email updates, and mentioned that the signs ordered at a cost of \$302,000 were supposed to be delivered mid-February and delivery was postponed. Where are they being stored now? Ms. Kabilian responded that it is her understanding that they have not been ordered.

Mr. O'Sullivan (Cove) responded that it is in storage in a suburb of Atlanta, GA, awaiting delivery instructions.

Mr. Delaney was invited to address the committee, and he read the following comments into the record:

“On March 8, 2021, Metrovision (the billboard content expert hired by Cove) filed a Notice of intent to build a "driveway" to 0 Finnell. The construction of this "driveway" was alleged to be for the purposes of accessing the 0 Finnell property for future development. In response, Council President Mathews submitted a letter to the Administration, Council, and other interested parties reminding them that there is a billboard moratorium in place, and the Notice of Intent should not be considered at this time. The Mayor and his administration remained silent.

In what may be considered a pushback to Councilor Mathews' letter, Metrovision withdrew its NOI later in the month. Shortly thereafter, an almost identical NOI was submitted by Bristol Brothers. Councilor Mathews again submitted a letter reminding the Administration of its Executive Powers and responsibility to adhere to the moratorium. Again, there was no public response from the Administration.

By virtue of his office, Mayor Hedlund is required to adhere to Section 3-2 of the Charter and enforce the moratorium unanimously supported by our Town Council. The president of the Town Council should not be required to remind the administration of their accountability to the community. In addition, the lawyer for the town, Joe Callanan, should not be at liberty to pick and choose which elements of the Charter the Mayor will or will not adhere to.

As of this date, the Mayor has not yet stepped in and is, in fact, allowing Bristol Brothers to move forward with a ConComm hearing set on May 25th.

Questions continue to arise as to why the Mayor seemingly endorses corporate interests over the community he swore to represent:

Why is the Mayor, counseled by the Town Solicitor, permitting a private company to file an NOI without any objection?

Why is the Mayor not questioning the intent of this access road, given the years-long controversy regarding repurposing of 0 Finnell?

Why does the Mayor see nothing wrong with establishing access to an industrial park through a clearly defined residential neighborhood?

Why is the Mayor continuing to put the interests of developers over his constituents who have entrusted them to make decisions for the good of the community?

Years ago, TJ Lacey championed truck restrictions on Front Street. This legislation was designed not just to limit noise, but to protect families from excessive traffic and the threat of accidents in an area heavily populated by families with young children. Do the Mayor and Town Solicitor intend to rescind this to facilitate Bristol Brothers' planned conversion of Charlotte Street into an industrial access road?

For months, communities have been incredulous as to why the Mayor and his administrative staff advocate for, and show extreme favoritism, to the corporate interests of Bristol Brothers, Metrovision, and Cove over the residents. However, last week, an email from the Town Solicitor was inadvertently shared with a member of our community action group. In this email, Joe Callanan outlines a strategic plan for Bristol/Cove to skirt around the policies and procedures in place to protect the community so they may emerge victorious with the Century Road and Finnell Drive billboard schemes. The Solicitor and Mayor seem to be doing everything they can to provide support to an outside corporate entity at the expense of the community. I would therefore like to share the contents of this letter with the Town Council, if the committee approves. It is worth noting, the timestamp on this email occurs when Solicitor Callanan was "on the clock" for the town."

Chair DiFazio granted permission for the solicitor's memo it to be read into the record:

Begin forwarded message:

From: JCallanan@weymouth.ma.us

Date: April 20, 2021 at 3:46:05 PM EDT

To: "Edward E. O'Sullivan" <eosullivan@capitalassociates-inc.com>, peter mcclary <petermcclary@citivisions.com>, David Sterrett <dave@massvtlaw.com>

Cc: RHedlund@weymouth.ma.us, RLuongo@weymouth.ma.us, Amy Kabilian <amykabilian@comcast.net>, palmerej@comcast.net, rsjp@comcast.net, ESchneider@weymouth.ma.us

Subject: 611 Pleasant St lowering - special permit needed - need you to apply by Friday

The Friends of Finnell asked the Town about how Cove intended to comply with the Town's Ordinances about changes to non-conforming uses. Their argument is that the new ordinance, passed over the Mayor's veto and we argue is illegal, requires all new billboards to receive a special permit. They argue that order 20 100 (attached) now makes the 611 Pleasant Street billboard a legally non-conforming use, which is debatable, even if the ordinance was legal, which it is not.

If the 611 Pleasant Street billboard were a legally non-conforming use, then a particular section of our zoning code comes into play. That zoning ordinance reads as follows:

§ 120-40. Extension or change by special permit.

Any lawful building or structure or use of a building or structure or premises or part thereof at the time this bylaw or any amendment thereto is adopted **may be extended or altered, provided that no such extension or alteration shall be permitted unless there is a finding by the Board of Zoning Appeals that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood, subject to the conditions and requirements of Article XXV [Special Permits] of this bylaw.**

Instead of getting into a fight whether these sections apply, I think it would just be easier for you to apply for a special permit. We have other fights in the future regarding Finnell about these illegal new ordinances.

You would only need to show the BZA that the lowering is not "substantially more detrimental than the existing nonconforming" height, which should be easy to demonstrate.

You would not have to meet the conditions within order 20 100, just § 120-40. Order 20 100 was added to article XVI, Signs, of the zoning code, while § 120-40 only requires you to fulfill the "conditions and requirements of Article XXV," which deals with Special Permits. All these zoning sections can be found here >> <https://ecode360.com/30091162>

You could apply for the special permit without conceding that the 611 Pleasant Street billboard is legally non-conforming. I just think applying for this special permit is much easier than getting into a fight that the zoning provisions do not apply, and Friends of Finnell immediately filing suit.

If you apply, the BZA grants the special permit, then Friends of Finnell will have nothing to litigate over.

If you apply and the BZA denies the permit, which we will do everything we can to prevent, but is a slim possibility, then you can appeal and argue the new ordinance is illegal, does not apply, the board is not non-conforming, and we will take nominal status after conceding the new ordinance is illegal. That potential litigation should be quickly resolved in your favor.

Again, if you do not apply, once you start work, Friends of Finnell could drag you in front of BZA anyway. Then you would be appearing before the BZA in a less than favor posture.

*The one problem with this solution is the next meeting of the BZA is 5/26. Technically, you are past the deadline to get on that meeting, but if you complete the attached application **by the end of this week**, we should be able to get you on the agenda of the next meeting on 5/26.*

Please complete the attached application (skipping the last page as it only applies to variances) and submit copies of everything to sent to MassDOT District 6 and OOA as back up. That should be enough for the application, but I will defer to the board.

I am willing to discuss this solution if you would like. Let me know when you would be free tomorrow or Wednesday. Thanks.

*Joe Callanan
Town Solicitor
t: (781) 789-2669
jcallanan@weymouth.ma.us*

Sent from outside my office in Town Hall.”

Mr. Delaney asked, in that document, who the town solicitor is working for? Is he employed by the town of Weymouth, receiving taxpayer money in giving free legal advice to an entity that is trying to circumvent the process by inquiring of him the best way to handle it. His response is as such. The Friends of Finnell asked about how Cove intended to. He finds that letter just as offensive and just as troublesome as Amy Kabilian previously stated. He thanked them for allowing him to speak.

Chair DiFazio noted that the last time they met with constituents, who then made accusations and provided voluminous information, it doesn't seem fair to expect immediate answers. The information that's been provided needs to be reviewed. He invited questions, but would like to get the minutes to review questions for the administration.

Vice Chair Dwyer agreed the committee should get the information in writing but he also encouraged a timely response from the administration; at times it has taken time to get responses and before they pose a barrage of questions, he would like a commitment that they will get it in a timely fashion. Chair DiFazio agreed; he would like to take the minutes and asked the administration to be prepared, based on the minutes, to discuss them with the committee; within a week or so.

Councilor Haugh asked Ms. Kabilian and Mr. Delaney for forwarding their prepared comments for the recording secretary can get a transcription out quickly. The chair agreed and both parties agreed.

The chair thanked the residents and reported that the committee will review the minutes and go over them with the administration. He does not want to invite comments from Cove directly at this time. Councilor Mathews pointed out that he can't support a motion to adjourn without giving the solicitor a chance to comment on the email. Solicitor Callanan responded that the email was not sent to Ms. Kabilian and the residents, as designated by the billboard relocation agreement, inadvertently. This was a significant event that he thought they should be aware of.

Councilor Mathews noted he has been on the Council many years, and never in 20 years has he seen or received an email from a solicitor giving a private entity legal advice on how to circumvent the laws of the Town of Weymouth. In addition, it talks about preferential treatment to the developer, circumventing guidelines in general. He was horrified when he saw the email, and is really disappointed in the solicitor. It borderlines on unethical, in his opinion. That is his personal opinion.

The solicitor responded that it is absolutely not.

Councilor Mathews continued that the solicitor should not be giving legal advice to a private entity circumventing laws, whether he agrees with the moratorium or not. He does not want to see that. The solicitor represents the Town of Weymouth and this body, and if this goes to legal action, and this town gets in some type of legal dilemma, whether it's with Cove or the residents' group, the solicitor must represent the Town of Weymouth. If he were an attorney representing a group, he would use this email as Exhibit A against the town's position. He thinks a judge in a court of law would review that very thoroughly. He has concerns about what this is doing and where it's going. He is disappointed, to say the least, just speaking as an individual Councilor.

Solicitor Callanan responded that, as a government lawyer for more than twenty years he has defended hundreds, if not thousands of cases for governments. He knows how to defend governments, more so than many people they can find. There are very few lawyers who have spent more time defending government entities than he has. He certainly knows how to defend the Town of Weymouth. Everything in that letter was to the best he could, with his tens of thousands of hours of experience as a municipal government lawyer, to defend the interests of the Town of Weymouth. The idea that it's unethical to explain to an applicant how they are supposed to apply; it is done all the

time, in the Building Department, with the Conservation Commission, it's in the Planning Department, the Health Department; you tell applicants how they apply so they don't apply and get tripped up with simple mistakes that they're not aware of. It's done by every single government regulator at every single level of government. Cove was not aware they had to apply for the special permit, so he was delivering that news to them, and he wasn't trying to have them shirk or get around anything. The deadline he referred to is a soft deadline; the actual deadline is the legal notice which hasn't come yet. The Planning Department has a soft deadline of four weeks before the Planning Board requires applications to get in. The actual deadline is two weeks before because that's when the legal notice must be submitted to the newspaper. There is nothing unethical; there is nothing out of sorts. BZA staff and BZA do that all the time. If they didn't provide Cove with that ability, they would be able to sue, because it would be imposing a stricter rule than they do to all other BZA applicants. And, yes, the moratorium is illegal and yes, there is even another reason it isn't included in the memo he sent to them. It is beyond the authority in the home rule amendment. That is not what this was about. They were applying an existing provision of the ordinances, assuming that special permit ordinance applied, and this other existing provision of zoning ordinance- "Alterations to nonconforming uses" did apply. That's why they need to apply for a special permit. There're excellent arguments that it doesn't apply. It's much simpler for them to apply without prejudice, which is an already established procedure for applicants to apply to a regulator, seeking approval even though he didn't think they needed it. It was done before; it's not the first time for Cove, or around here and not even the first time he had applicants do it. It's a procedure applicants can do to seek the authority of the regulating body, even if they think it doesn't apply. This Council has gotten into a habit of accusing him of being unethical often. If they think it's unethical, bring it to the Ethics Commission like they have several times before, and never got the time of day back from the Ethics Commission. He has no problem with any judge reading what he wrote, because it's exactly the best advice a 20-year government lawyer can give on behalf of the government entity he represents.

Councilor Mathews suggested rather than getting into a back-and-forth with the solicitor, he agrees with certain aspects of the email. He appreciates the solicitor telling them they have to go before the Board of Zoning Appeals for a special permit, for alteration of a nonconforming structure. There are certain aspects of the email giving the developer legal advice on how to circumvent the laws. That is his personal opinion, and as one Councilor speaking on ethics and whether to bring it forward, it isn't a subject he brought up tonight. The solicitor responded that Councilor Mathews has accused him of being unethical. Councilor Mathews continued that he has never seen an email like that in twenty years on this body, or from previous solicitors. He is disappointed.

Chair DiFazio responded that there will be future opportunity to speak further on this. The solicitor's response was what he thought it would be and added that it is a peculiar situation and highly volatile situation that many constituents are upset with. It bothers him that the solicitor claims the moratorium is illegal because they passed the moratorium, and the solicitor's client, the town of Weymouth, passed the moratorium, and instead of adhering to it he is taking his legal that it is not even legal and shouldn't

be worried about. The chair has a problem with that, but he doesn't want to discuss it further now, Better opportunity to discuss as a committee and a town, is to review the minutes from tonight and meet again soon to discuss it further.

Councilor Haugh noted there are a lot of people here for the billboard issue. She has a lot of concerns about the email update they received last night from Mr. O'Sullivan around 11 PM. She asked will it be addressed in a future meeting with the other items? She believes there are some threats to turn on the billboard and she would like a discussion or dialogue and not a back-and-forth, on the record, so the public can hear in a formal setting.

The chair agreed; he asked to have the email sent to all. This is like the last time, when he made a similar threat, back in January. He would prefer to leave it as a separate issue and discuss at the next Ordinance Committee meeting.

Councilor Mathews reported that he responded to it today and he had it forwarded it to all Councilors. Late today, he received an additional response, that he will read when he gets a chance.

Chair DiFazio asked to have responses in writing provided to all Councilors.

Councilor Mathews responded that he will read the follow up and will provide to all Councilors.

Mr. O'Sullivan added that he knows more about the subject than anyone and is available for questions. He sent a response to Councilor Mathews. Ms. Kabilian made some comments that need clarification, and other representations that he will not comment on at this time, especially in the characterizations. He can go point-by-point in the agreement that Cove has with the Town of Weymouth and the Bristol Brothers about the obligations of Cove. He would like some time at the next meeting of the Council to segregate in detail the work that's been done and continues to be done and will provide it in writing.

Chair DiFazio suggested he submit in writing anything for the next meeting. There will be two issues discussed at the next meeting of the Ordinance Committee, probably within two weeks. One will be the letter he just sent to the Council on issues Ms. Kabilian may have had with conversations they've had. He will afford Mr. O'Sullivan the opportunity to speak then. Mr. O'Sullivan added that he is available to speak at the next Town Council meeting as well. Chair DiFazio suggested it isn't appropriate at this time.

Councilor Mathews added as a point of information, that the agenda for the next Council meeting has been set and this subject matter is not on it.

The chair reported that the Ordinance Committee will be scheduled as soon as practicable and asked that transcription of the minutes be expedited.

ADJOURNMENT

At 8:09 PM, there being no further business, a motion was made by Councilor Haugh to adjourn and was seconded by Councilor Heffernan.

A roll call vote was taken: Councilor Haugh- Yes, Councilor Heffernan- Yes, Councilor Mathews- Yes, Vice Chair Dwyer- Yes, Chair DiFazio- Yes. UNANIMOUSLY VOTED.

Attachments:

1. Memo dated 3/27/21 from Mayor Robert Hedlund to the Town Council
2. Memo dated 4/28/21 from Ed O'Sullivan to the Town Council, and the response from Council President A. Mathews

Respectfully Submitted by Mary Barker as Recording Secretary

Approved by Ken DiFazio as Budget/Management Committee Chairman
Voted unanimously on 17 May 2021