

PERSONNEL/ADMINISTRATIVE AFFAIRS COMMITTEE

DECEMBER 6, 2006

A meeting of the Personnel/Administrative Affairs Committee was held on Wednesday, December 6, 2006 at 7:06 p.m. in the Aldermanic Chamber.

Chair James R. Tollner presided.

Members of the Committee present: Alderman Robert A. Dion, Vice Chair  
Alderman Daniel Richardson  
Alderman Greg Williams (8:30 p.m.)

Members Not in Attendance: Alderman David MacLaughlin

Also in Attendance: Alderman-at-Large David W. Deane  
Alderman-at-Large Brian S. McCarthy  
Alderman Richard LaRose

Chairman Tollner

Alderman Williams was kind enough to notify me that he will be a little late this evening. He is attending his daughter's concert at New Searles. He should be arriving – if we are still meeting at 8:30 p.m. he will be arriving around then.

**MOTION BY ALDERMAN DION TO ADD A PUBLIC COMMENT PERIOD AT THE BEGINNING OF THE AGENDA  
MOTION CARRIED**

PUBLIC COMMENT

Susan Rousso, 8 Donna Street

I was here before, and I attend several Zoning Board meetings as an observer and have also been to the Planning Board. The last time I was here and expressed concerns about re-appointments not, as I said then, of all members. I am really observing all members of both of those boards; you advised that I should discuss it with Planning. I did that. I went to the Planning Board and they advised me that they have nothing to do with anything, that it is the Zoning Board who would be the board responsible for these drastic changes that have occurred. I just wanted to let you all know that when you are making your appointments, people are pointing the finger at the other board. When citizens say they are concerned about the changes in their neighborhood, there really isn't any place to go to express that concern. Although, I am encouraged by seeing tonight on the agenda that this group will be making some changes in how appointments occur, and that whole process is being looked at again.

But, regarding the members of the current board, I guess my feeling on this is that these drastic changes that have occurred in neighborhoods – when variances are granted in small and very particular situations that are used later as citations for precedence setting decisions, those members don't appear to learn from history. The long-term members of the board appear to make the same errors in judgment, in my opinion, repeatedly. It is not as if we see progress as if we see board members questioning changes that completely change the complexion of neighborhoods.

Just in my neighborhood for example, the two streets – I live on a dead end street beside another dead end street, and they hook up. It is like a horseshoe. Fifteen years ago it was a single-family neighborhood. Now 50% of the houses the developers have been granted variances to put multiple family dwellings and 11 more are going up soon. These decisions – I don't know what is worse for a board member not to understand the implications of the small little variance that is granted today on tomorrow or the members that does know that they are setting the stage for bigger decisions. I don't know which is worse, but I think we need to ask members how they feel about the future of Nashua, how they feel about these neighborhoods. I can tell you I am from Massachusetts – I am transplanted here happily to Nashua. I can take you back to my hometown where the board didn't take action soon enough, and in my old neighborhood there are homes in people's backyards. What used to be grass is hardtop and absentee landlords.

The other thing I would like to remind the board about is when they make these variances and grant these variances for developers to have multiple unit dwellings they are not paying attention to the ratio of owner occupied properties in Nashua. That balance has tipped drastically in the last 10 years based on decisions and allowances of projects. These are the things I want to impress upon you that people in Nashua are noticing their neighborhoods changing. They can never change back. They can never get back the feeling of the neighborhood. Property values are – right now the variances that are being granted are worsening the conditions of lowering property values that the slow market has already – the market is slow and now we are putting out into the market many more units than this city could possibly sell. Value of properties is declining.

When you make decisions about appointments to boards, I am asking that you do so and ask the questions about what the person knows about planning. In your future legislation, encourage people who have experience and expertise in these areas to be on these boards. The political appointments, the good old boys, the husbands of the Mayor's office personnel doesn't fly. We talked about this before the meeting that the recent trend in elections, and we can all see what happened – people are tired of business as usual. These decisions that these political plum appointments are affecting the lives of people, and not the wealthiest citizens in Nashua. They don't have to worry, but those of us who live in little neighborhoods like I do we have to worry. I am hoping you will keep these things in mind. Thank you.

Paula Johnson, 15 Westborn Drive

Thank you Mr. Chairman and members of the committee. The reason I am here tonight is because I sat on this committee at one time, and I saw how we rubber stamped appointments right on through, and I remember Mr. Chairman I had asked you that anybody who was up for re-appointment that we got their resume, and that we actively talked about their re-appointment. I am sorry to say here that I am really shocked and I am not really happy that Mr. Duffy is up

again for re-appointment. It didn't pass the last time and he is up for re-appointment again.

Mr. Chairman you are part of the nimby neighborhood now, not in my neighborhood with the cell tower up in your neighborhood so welcome aboard being a nimby now. What is happening up on West Hollis Street is a catastrophe waiting to happen. I attended that meeting with Mr. Duffy running it – complete latitude for the people – the applicants and all of their members that they brought in from the Triangle Credit Union to talk about what a great neighbor they are going to be, but yet the people who opposed this we were held to the letter of the law talking about the fact that how is it going to impact the neighborhood and what are really the legal points. We had a two-sided issue here. I agree with the previous speaker that the good old boy network has got to be broken in Nashua because our neighborhoods are being ripped apart. West Hollis Street can't absorb anything more. We all know what is happening in that area, and yet the applicants come in and there is no hardship and yet I am seeing what is going on and instead of things getting better in Nashua it is getting worse.

I think it is time that the appointments that are made are probably someone who doesn't know the Mayor and/or members of this Board – that they are just new faces in the city that want to come out and save the city whatever is left of the city versus what is going on now. I am speaking not only for myself tonight but many people off of West Hollis Street and Main Dunstable Road – several people called me today, and they are sick and have asked me to please voice their views because Nashua is really a beautiful place, but it used to be even a nicer place before these developers came in and ripped the place apart. Members of the Board just don't understand. I agree with the previous speaker again when a woman who works in the Mayor's office and her husband is on the Zoning Board one must question in everybody's opinion here what goes on. I hope that everybody on this board will take it seriously on who again we are appointing and allowing to sit on the Zoning Board. Thank you.

Chairman Tollner

Is there anybody else out there that would like to provide public comment this evening?

## INTERVIEWS

### Zoning Board of Adjustment

Sean W. Duffy (Re-Appointment) Term to Expire: September 11, 2009

Chairman Tollner

Sean if you would come up. For the record, I think there were a couple of statements made that if I am not mistaken just to clarify it – I think Mr. Anderson is on the Zoning Board, was on the Zoning Board prior to his – the statement may be correct, but I think he was on the Zoning Board a number of years prior to her getting a position in the city. Not that it has any relevance, but just to state the record correctly.

Mr. Duffy if you could start off my stating for the record your name and address. You are already serving on the Zoning Board of Adjustment. Why don't you just take a second and let the committee know why you have interest in continuing to serve on the ZBA, how long you have been on it, and your responsibilities as a member.

Sean Duffy, 9 Cheyenne Drive

Thank you Alderman Tollner. I have been serving just a little over 5 years. I have been lucky enough to help work with some different people on the board. I have served in different roles; secretary, clerk, vice-president, and now Chair. I live at 9 Cheyenne Drive in a very small R9 single-family home, and I really do care about the City of Nashua. That is why I have taken the time to invest my time in learning about the ordinances of the City of Nashua and the state laws, and am trying to continue to make Nashua a better place to be and a better place to live. I have lived here since 1986.

Chairman Tollner

A question we usually ask the individuals who come up, and I am sure you are very familiar with the amount of time commitment and the dedication that you will have to provide to this position.

Sean Duffy

Yes I am. When I was first appointed they barely had three members at that board. One of things that I mentioned in my first interview here was that I would be at all of the meetings, and I believe I have not missed more than maybe 5-10 total meetings in that time – mostly for funerals and work commitments.

Chairman Tollner

Questions from committee members or Alderman?

Alderman Dion

Thank you Mr. Chairman. Mr. Duffy I questioned you the last time you were here. I want to ask you a few questions. One of them is why do you grant postponements when there is a room full of people upstairs there for that particular case and you will grant a postponement because of not a full board even though you have a quorum. I don't see why you shouldn't have a full board. You have plenty of alternates that could be summoned. Even though you have a quorum you still postpone these cases. Sometimes there are snowstorms when these people came out, rainstorms, they have to turn around and go back home again. Is it the fact that you are trying to wear these people down? Why don't you hold these sessions? Why do you postpone them every time there is a member missing that the proponents would like to have there and you postpone the case?

Sean Duffy

Alderman Dion I actually don't postpone the case. The applicant has control in the State of New Hampshire on their application...

Alderman Dion

You have a right not to grant it right?

Chairman Tollner

Alderman Dion let him finish answering.

Sean Duffy

What we do is we are required to actually stipulate and say that if they do elect to go forward with less than a full 5 member board (right now we have 2 full time members and 3 alternates, and that is the way it has been for almost a year now), that they would not be able to be granted a re=hearing process. Under the State of New Hampshire law, that gives them the right of controlling their application and not go forward without a full board. I am one of those members that occasionally might have a work item, but if we have 4 or 3 members we are required by law to make sure that they understand their rights under the law, and they are the people that actually withdraw and postpone a meeting. We don't make that decision the applicants always control – and they may not even show up they may come at a later date or call the Planning Department and say I am ready to be heard tonight, and I would like to have it moved. Our board does not manipulate or try to control ...

Alderman Dion

Well it certainly looks that way, and furthermore don't you have a right to hold the meeting on that case anyway if you have a quorum?

Sean Duffy

We have numerous cases we go forward with only 4 and 3. In the last three months we have had...

Alderman Dion

I was at a meeting where there were 4 members there out of 5 and you still postponed it.

Sean Duffy

Again Alderman Dion respectfully I didn't postpone it.

Chairman Tollner

Alderman Dion to my knowledge it is up to the applicant if there is not a full contingency of the board to ask...I understand where you are coming from that all of the people come and I agree with you it is a considerable inconvenience, but as it stands right now the applicant has the right to have a full 5 member slate hear his/her case. If they don't the Zoning Board does not make a decision to postpone the case it is up to the applicant.

Alderman Dion

Well Mr. Chairman the way I feel is that the Zoning Board should make sure that there is a full board there. If a regular member cannot make it we have alternates. That is why we have alternates.

Chairman Tollner

I agree with you, but right now as Mr. Duffy stated there are 2 full time members and three alternates and nobody else. Unless as you state the alternates show up they are not going to have a full set of 5 members for the ZBA to hear a case. I just want to clarify for you and anybody that is listening the Chairman nor the ZBA does not cancel a meeting or hearing it is the applicant that has the opportunity to go forward with it or not. I will agree with you that it is very inconvenience. I have been to 2 or 3 of those meetings recently where they were postponed and it is a pain in the neck. Right now it is in the hands of the applicant not the ZBA.

Alderman Dion

Well I certainly don't agree with that, and that is why Alderman Teeboom and I have sponsored three pieces of legislation pertaining to the Zoning and Planning boards and quorum. Are you aware of that legislation Mr. Duffy?

Sean Duffy

I am only aware of one piece of legislation that was passed – I think is in the passing phase.

Alderman Dion

How do you feel about that? Is that the one about the quorum?

Sean Duffy

I don't think it is.

Chairman Tollner

I don't think any of them have been passed.

Sean Duffy

It hasn't been passed, but ... I have seen a draft somewhere someone shot to me by e-mail – about the stipend at the end of it.

Alderman Dion

I thought I heard Mr. Duffy that you were against this legislation.

Sean Duffy

From who?

Alderman Dion

Anyhow let's put it this way here – I am not satisfied with the way things are going on Zoning

neither am I happy with some of the things going on in Planning. I think changes have to be made. I don't like the direction we are going. I have been observing these decisions for about 4-5 years now, and the trend is for the developers and their lawyers Mr. Duffy and that is the way you have been voting most of the time. I cannot support your re-appointment.

Alderman Richardson

Chairman Duffy welcome. Are you presently Chairman?

Sean Duffy

Yes I am.

Alderman Richardson

When was the last election of a Chairman?

Sean Duffy

January.

Alderman Richardson

January of last year?

Sean Duffy

Every year a Chairman is elected.

Alderman Richardson

I took the time to try to come to some understanding of past performance on the Zoning Board. What I have done is gone through the entire year of minutes for 2005 – all the decisions that were relative not primary residential zones where there was sub-division and lot line movements. There are a substantial number of them, and I am quite tired. Thank you very much. In doing that, I have noted that there are various things that have come across that make me kind of scratch my head. One of the things that came across was that the agenda is not changed – if there is a change in the agenda it is not changed until the last minute. It is only presented as changed at the meeting. That was a statement by Carter Falk. Is that – do you feel that is a fair way of doing business?

Sean Duffy

In terms of the sequence of the people that are in a certain order or?

Alderman Richardson

Any changes to the agenda are not re-distributed and not re-posted. They are merely put on the new agenda and presented at the meeting itself.

Sean Duffy

An agenda is set ahead of time based on applicants applying and turning in their requests. Once that is established by the Planning Department that comes before us that evening. Again, since the applicants have management or control over whether they are going to go forward or not and different items that happen – people withdraw applications – we take them in sequence and then depending on the nature of the cases for the next meeting – is that what you are talking about?

Alderman Richardson

No I am talking about the agenda for that evening.

Sean Duffy

We usually go with the agenda we receive at least – well we get a preliminary agenda two weeks before the meeting, the Sunday before that Tuesday meeting we will get a final agenda, and then at the meeting we usually just go right down the sequence as to what that is. That has always been the practice since I have been on the board. We don't switch things around.

Alderman Richardson

So you are not familiar with that concept?

Sean Duffy

Again, I think just past practice has been you take it in sequence so that there is no appearance of moving things around I guess. I have never questioned it or thought about questioning it.

Alderman Richardson

Alderman Dion is referring to the – it is very taxing for individuals who are not primary applicants who have no vested interest other than the quality of their neighborhood to continue to show up for things which have been postponed, withdrawn whatever. That is basically where he is going with that. It seems like it is very unfair, but that is as far as I will go with that.

Getting back to your statement about why you would like to continue on the Zoning Board I guess I don't know why you would like to do that. After having gone through an entire year's worth of minutes I can see that it is an extremely stressful and demanding job. A lot of times to me the results, the outcome is not totally clear. There were a few cases though that did stand out to me that were readily identified by the committee as being flag lots. I think it was on the order of 3 out of the entire year. I can't remember all of the addresses exactly. One of them was Ashland Drive where for some mysterious reason things are not terribly clear. They are not verbatim in the minutes. It was readily identified as being a flag lot, but then there was some minor stipulation put onto that particular motion to approve, and it was approved while known as being a flag lot. Why do we have these flag lots? Why do they occur? Why are they approved? Can you tell me that?

Sean Duffy

I will try to answer your first question first, which is why I would like to continue to participate. First and foremost I really feel that I can have a positive impact by understanding the law and understanding what the issues are and trying to visit the neighborhoods to try to word motions so that they do be upheld and can protect the different neighborhoods. If the boards craft things that are not direct and not as clear they are overturned and then those development things that everybody is very concerned about as well as I am, they just happen all the time. That is why I have felt the amount of time I invest to know how to word the things and stipulate does actually help in a very positive way, and that is why I continue to take that time and effort.

On the specific cases you are talking about, again I am one member of that board. We listened to a lot of testimony that evening. Each case that comes before us we try to hear as clearly and directly as we can. We go visit the neighborhoods. We try to hear what the testimony is before us, and then we reach a determination and we stipulate that into the notes of that evening. Every case is looked at independently. Every case is looked at differently. I don't think anything that we have done has been overturned by case law in courts. That is what you really try to strike is we have our ordinances and we know the neighborhoods and try to visit them, and sometimes that New Hampshire state law is really one of the overriding factors based on the testimony that is there. Again, unless there is something specific that you think we misheard the testimony of that – having read the minutes, and I appreciate all the time you invested in that, was there something that stood out to you that you think we might not have considered appropriately or not weighed? I am trying to answer your question without generalizing four different or three different cases because each case sort of stands by itself.

Alderman Richardson

Let me ask the question in general. When we have something, which is obviously a flag lot, which has no frontage – it is a driveway, it is about all you get – there is someone's back yard that they want to build a house in – how does that get approved? Why does that get approved? What allows that to be approved?

Sean Duffy

Again the testimony of the case of that evening goes through what they feel – they share what their configurations of the neighborhood, what the houses are, and the testimony that they have is weighed by the group and a decision is made based on that information that is there that night. Each one individually determines what happens. I am not trying to be evasive either. I wish there was just an answer that said this is it. If it was then the ordinances would be nice and tight, but again usually the case law in the State of New Hampshire ties our hands sometimes for different area variances as compared to usage variances as compared to special exceptions. I think again the record I think that was there that evening, and if you read it, I think it is clear usually what was there, and I don't know what stipulations were tacked on – when you make a motion you have to specifically explain what you are using in the determination and why, and if you don't then it does get overturned easily either by abutters or people that disagree including developers. I think we have done a good job.

Alderman Richardson

That is correct. I guess it doesn't really answer my question unfortunately. We have had a lot of these. These are obviously not in character with the neighborhood when you build another house in somebody's larger backyard. It is not in character with the neighborhood that you would have that situation. That is my viewpoint. I am looking for your viewpoint – how is that because you have to consider all points of law. You have to consider that. You are required to. I was looking for your viewpoint on how that could be considered to be in character with the neighborhood that you would have a flag lot design.

Sean Duffy

Again, just speaking theoretically you have to look at the neighborhood at different items – are there other flag lots in the area, are there other areas with less frontage is one of the things I personally try to look at because the current frontage ordinances a lot of times in these different areas area a lot different and grandfathered. Sometimes they are at the end of cul-de-sacs. Sometimes the lot design was a prior buildable area and had an old house on it at different times. We have actually rejected many flag lots too in the last year and 4 years. We have rejected quite a few of them. I wouldn't say maybe more than 4, but again every case I feel – I didn't evaluate or look at that specifically or think about that tonight coming in.

Alderman Richardson

What you are saying then is that you look at if there are other flag lots in the neighborhood so are we then ascribing to the camel getting the nose under the tent door theory where if there is one in the neighborhood therefore you can allow any number of those in the neighborhood?

Sean Duffy

With the Simplex and Vocher case in the State of New Hampshire when we have made those determinations and tried to be more restrictive and to the letter of the law those really have just been overturned – not about flag lots, but about lots that are right next door that have very similar characteristics. I am trying to speak theoretically, but also trying to think about the specific cases you are talking about, and I believe each of the cases in the last year that you have been talking about come to mind there was enough credible evidence in the testimony about the neighborhood either by the abutters and/or the people that own the property and visa versa that was able to lead the board to make those decisions they made.

Alderman Richardson

I have to agree that you don't stand alone in the decisions. A number of the decisions are by majority, by unanimous decision, but be that as it may you are the Chairman and I know that you take a great deal of time because having read all of these cases, which I believe it is like 120 different cases I am very tired, but after having looked at all of those I know that you spend a lot of time understanding the requirements of the zoning ordinances and the RSAs. That is why I asked you these questions because we have a problem. This is occurring a lot. It is occurring too much. These are being approved too much. People that don't live in a neighborhood say did you go see so and so address it is horrible – what a nightmare.

People take note. People are saying these are real problems – how did that get approved? I don't have an answer for them. I don't know how they get approved. I guess that is why I am asking you tonight. If there is a number one problem I think that is the problem. That is a huge problem. It is destroying the character of the neighborhoods. There is not a lot per year, but there are a good number of them every year, and, of course, it is incremental. It is the camel getting his nose under the tent problem. Once you have it start in a neighborhood then it continues.

I went to a ZBA meeting. I don't get to go to a lot of ZBA meetings because when you are having the ZBA meetings we are having an Aldermanic meeting. I don't get a chance to actually see what is going on and hear the direct testimony and hear the decisions made. I can only do it from reading the minutes. It is the same with the Planning Board. There has got to be an answer to how these things get approved. What is the problem with the ordinances that we can solve? Certainly you must have some ideas about that.

Sean Duffy

That is a great question Alderman Richardson. There are two things. One is I think there needs to be an independent forum that tries to listen to the cases, which I think the City of Nashua has as we need to. The ordinances I think the last time we got into a major re-write in the last couple of years it did make a major change and it tightened up the language quite a bit, and I did try to help serve with that committee for quite a while to try to share some of the experiences of how things could be improved and tightened up instead of having anywhere from 14-17 or 18 requests every two week period we are down to 6-8 range maybe now because again we tightened up and made the language very clear.

The problem is there is a lot of case law that happens on a monthly basis at the state level, and that does keep constantly changing the playing field a little bit. Every month or so there are some cases that do come down, and we do try to share those back through different forums and pass things along or the Planning Department does send them along.

I am perceiving a lot more things are happening at the Planning level now. There is more case law than Zoning. There is one thing coming up now for example – just as an example of theoretical items that might happen – we have industrial zones in the City of Nashua. At some point, some developer or lawyer or some property owner may say why does the City of Nashua have industrial zones. I can put anything in there because when was the last time actually Nashua brought in an industrial client. There are all of these little nuances that are always out there that I don't try to pass along. Even members of our board even don't try to spend a lot of

time doing.

I know the last ordinance we passed really did a great job that we have said no to several cases in the last 4-6 months. Specifically tying to the master plan and the new ordinance and the character of the neighborhood. So far that has been upheld and withheld even on requests for appeal. I think the last ordinance was a very good first step. Again simplification, tightening, really clear.

Alderman Richardson

I would love a crisp direct answer.

Sean Duffy

I am trying to. I can't write the ordinances, which I am not even allowed to do.

Alderman Richardson

Actually you are allowed to make recommendations, which with the new potential legislation may be something – but again with by RSA – you are allowed to make recommendations and I guess ...

Sean Duffy

There is an RSA for that now too?

Alderman Richardson

With all of your experience in having served so many years on the board especially as Chairman you have an especially good vantage point in seeing where these things are coming about. You obviously know that people are not pleased with certain developments. Let's say flag lots. You certainly know what it is that you are voting on and you know the law that is allowing these to happen. You are in a particularly good place to be able to say it is right here in the ordinance, that is where it is being allowed, that is where we need to change, here is what we the ZBA would recommend for a change. I guess that is what I am looking for in the future from the ZBA.

Sean Duffy

I don't know if that is a question or not. My training and the seminars that I have been to is one of the things we are asked to do is to not write the ordinance so to speak. That is something I would like to personally investigate a little more because I know if you are supposed to hear it independently I don't know if there is supposed to be a little more displacement of the process. At least based on everything I have seen so far. I do understand that might be something that is very valuable.

Alderman Richardson

Correct. You are there to interpret and apply the ordinances. However, the ordinances now say

also that you can make recommendations. That would be especially appreciated in the future.

Sean Duffy

Okay.

Alderman Richardson

There are a few other things that I wanted to say, but they kind of escape my mind at this point so I will turn it over back to the Chairman.

Alderman Teeboom

I have known Mr. Duffy many many years. He lives just down street. I understand you put in an awful lot of time and you are very conscientious. I would like to pick up on the point where we left off last time. Before I get to that you had withdrawn your nomination and then you substituted it back as a new nomination. Will you tell us why you did that?

Chairman Tollner

I can answer that. Mr. Duffy didn't withdraw his nomination the Mayor withdrew his nomination.

Alderman Teeboom

Do you know why?

Chairman Tollner

Because at that time I think that the Mayor was going to allow Mr. Duffy to serve for at least the rest of the Mayor's term, which has happened numerous times in previous years.

Alderman Teeboom

Just to get more time for Mr. Duffy.

Chairman Tollner

Well yeah until someone else is re-appointed if you are a member of ZBA you can serve until the time where another person has been appointed and approved by the Board of Aldermen.

Alderman Teeboom

Well I know that the Mayor speaks highly of you. I do want to pick up on the question we left off last time. Were you on the ZBA when the McCoy case came before the Hillsborough County Court?

Sean Duffy

McCoy versus who?

Alderman Teeboom

McCoy vs. Nashua or Nashua vs. McCoy. That is the flag lot you are talking about. It was a Planning Board case where the Planning Board turned down a request to build on the flag lot. That is just a pickup from Alderman Richardson's situation. Our attorney, Attorney Connell, prepared a very detailed case. I saw the filing. Then it came before the court and the court slam dunked Nashua and said you have no case. The reason they said you have no case is because a funny thing happened. On the way to the Zoning Board, prior to it coming to the Planning Board, the Zoning Board approved the flag lot. The flag lot included 65-foot driveway to get to the flag lot, and then next to that 65-foot driveway were three more driveways right next to each other to get to the other three homes. There were 4 homes with 10,000 sq. ft. each and a 40,000 sq. ft. lot. The court said hey the ZBA approved it – nothing wrong with that – the Planning Board doesn't have a chance. If you can't coordinate between the two boards it is not for us to try to decide that point. The ZBA and the Planning Board ought to be able to get along. You can't deny the Planning Board not allowing it if the ZBA had approved the variance. I found that very curious, and there is actually under the law it says the boards ought to come together some time and have a joint hearing. How come you don't call a joint hearing?

Sean Duffy

Since I have been on the board that has never happened. I know it is allowed under statute, and I know we have had different seminars together at different places and met up there, but not anything that I have ever been approached by the Planning Board Chairman.

Chairman Tollner

I am very familiar with that since it is literally right across the street from my house. Mr. Duffy wasn't the Chairman at the time. I did attend that meeting. I think that is a legitimate question as Chairman of Zoning now, would Mr. Duffy be open to contacting the Chairman of the Planning Board to set up a meeting so they could open up dialogue between the two boards.

Alderman Teeboom

I would question why haven't you done that when the court says you should do it.

Sean Duffy

It is not something that I have considered as a priority. It is something that again I would assume the Planning Board would be in contact with us first. Maybe that was a mistake on my part.

Alderman Teeboom

I am just responding to Alderman Richardson's questions and Alderman Dion's questioning – how do these things happen. That is how these things happen. They are not communicating. One board allows a variance and the other board just picks up on it and off you go. That gets me to the Simplex case you mentioned. One thing you are involved with a lot is hardship. I am not going to talk about the case before you where you had 100 people in the chambers. What is a hardship? Can you define that?

Sean Duffy

A hardship right now based on case law and our ordinances speak to an area variance only. Because of the Vocher case an area variance has different criteria. It basically applies to a hardship for use variances and not area variances that come before us. Hardship for land might be topography and setup, position of building on the lot, the fact that an application has similar uses directly abutting or in that same neighborhood so to preclude an exclusion for a use variance for something that is directly a similar type of use or a comparable use directly in that neighborhood shows that there is a hardship not being able to grant the applicant use of the development property. There are several other criteria – unique topography of water or wetlands that don't allow for full buildable buildout use.

Alderman Teeboom

I must share with you it used to be for 100 years very simple – if you couldn't build something because of ledge you could ask for a variance to come closer to the boundary, but then sometime in the Simplex case the rules changed. It got so confusing that there have been court cases since then that have confused it even more to try to straighten things out, and now...

Sean Duffy

You mean characteristics of the neighborhood?

Alderman Teeboom

Now it has gotten very confusing. Let me ask you this question is financial hardship a legitimate hardship? If someone comes to you and says I built this development here, but I can't sell all of these homes. I would really like to put up another structure that provides me different level income. I would like to get a variance on what I am trying to build here. Instead of maybe just homes there are condos. Would that be a hardship?

Chairman Tollner

Can I interject for one second? There is a case being heard right now before the Zoning Board,

and I just want everybody to be very careful on how we ask questions because if they answer in a particular way that may prejudice the decision that a Zoning Board member may make a couple of weeks from now.

Alderman Teeboom

You are right. Let me drop it. I am just trying to point out ...

Chairman Tollner

I understand where you are going, and I don't disagree with your question it is just...

Alderman Teeboom

I don't disagree with Mr. Duffy. Things used to be clear. They got confusing with court cases that lead to more court cases and more rules – now we have two kinds of variances. There used to be just one – use variance/area variance. That confuses things. I understand there is a difficult in dealing with that.

Sean Duffy

I believe our Board very specifically when Simplex first passed – there is usually a pendulum that happens and everybody starts rushing to reasonable use – that is not what Simplex is about, and I believe our board did a marvelous job reigning in the potential floodgate situation with people saying reasonable this and that without really speaking to what the Simplex case was addressing. I am very proud of what we did for that first year and a half.

Alderman Teeboom

When you do a site plan stipulation does that have the power of an ordinance? Does that last forever?

Sean Duffy

Does a site plan stipulation last forever?

Chairman Tollner

That is a Planning Board issue.

Alderman Teeboom

Alderman Dion talked to you about the quorum rule. The applicant comes in and says I want the full board to be here. This is in your by-laws, but is that in the law?

Sean Duffy

The law states that we have to make sure that we tell the applicant that if they go forward with a non five-member board that they are giving up their rights to a re-hearing based on the number

of members that are there that evening. In fact, in past practice in the State of New Hampshire they have also given the applicant the right to move forward their application.

Alderman Teeboom

Is that in state law or in practice?

Sean Duffy

State law is the item I mentioned to you specifically right there. It is an RSA that we have to mention that the applicant has the right to have a full board present or they will lose the right of being able to be granted a re-hearing based on their not being a full board present.

Alderman Teeboom

Can you quote the law?

Sean Duffy

I can't quote the law right now. I can get you a copy of that RSA. It is in our by-laws and in our minutes before we start our meeting we say exactly that.

Alderman Teeboom

I would like to see the law because I don't think there is a law. I have researched that in fine detail. In fact, you came over my house and dropped off a bunch of documentation to tell me about this best practices all around the state, and I asked you that night the very same question where is the RSA. You said you would go find it. Where is it?

Sean Duffy

The RSA is – those two RSAs that I dropped off with you, but I did not find the case law that stipulates why as a practice most boards in zoning have done that. I haven't done that yet.

Alderman Teeboom

That is another problem – best practice – it seems like once you start everybody follows the best practice nobody goes back to the law to find out if that best practice still makes sense. I do know you have that in your by-laws. Has it ever occurred to you to just change your by-laws?

Sean Duffy

Every year the board gets together and we talk about the by-laws to suggest recommending changes. Since I have been on the board it has been discussed two different times, and there were changes of minor nature made.

Alderman Teeboom

How long have you been on the board?

Sean Duffy

A little over 5 years. Since I have been Chair we haven't ratified the minutes. I understand and hear the concern, and definitely could be something to be talked about. I am one member of that group to decide.

Alderman Richardson

Mr. Duffy I have to thank Alderman Teeboom for asking the question because that has jogged my memory to a few things I wanted to ask. Since I have been on the Board I have been told by various individuals that one of the reasons why the perception is that the Zoning Board and Planning Board both tend to go to vote for whatever the applicant wants is because they are gun shy. It is because there have been a number of court cases where Nashua has been taken to court and lost. I guess we are notorious losers when it comes to court cases. I have been told that is the reason why we tend to go with the applicant in terms of waiting versus going with the concerns of the neighboring residents.

In looking at the RSAs and looking at the NROs it strikes me that there is an extremely large amount of discretion when it comes to your ability to decide these matters. Granted there are a substantial number of folks each one of them having their own individual opinion, and after having read well over 100 of these cases before the ZBA I can see that there are very individual voices there. It is not group think if you will. Your members do have individual personalities and decision-making powers, which is a wonderful thing. But, I want to ask you the question about the impact of court cases on the decisions that are made by the ZBA from your perspective. Are we in fact sensitized by these court cases to be in a low risk profile in our decisions?

Sean Duffy

In my opinion no. In my opinion we have actually had many cases 3-7 in the recent 6 or 7 months that have come back that have actually been upheld that the decisions we made were actually valid to say no to different things, and they have been upheld. It isn't always that we approve. We don't keep a track record or a count when a case is heard different, but when we actually get a case back of something we have said no to and it is actually upheld that the no is valid that is very rewarding as a member of that board for me personally.

Alderman Richardson

Let me ask you a very pointed question – have you ever been counseled by anybody within the city to sensitize you to court cases?

Sean Duffy

No.

Alderman Richardson

Nobody from the Mayor's office, nobody from Legal, nobody from Planning Department, nobody ever from anywhere?

Sean Duffy

That is correct. As I stated the last time I feel the way I have always looked at cases that in fact people perceived as being developers because we don't see as many cases as developers as most people think. It is usually just neighborhood houses and different things. Personally I kind of feel that a lot of developers and lawyers and the council may even enjoy that we have been as clear and as consistent with what we are looking at.

Alderman Richardson

After having looked at all of these cases I have come to the conclusion that there has been allegations/rumors that there is favoritism and whatever depending on what lawyer is before the ZBA. I can't see that. I don't see that.

Sean Duffy

Thank you. I very much respect that conclusion.

Alderman Richardson

Thank you.

Chairman Tollner

Are there any further questions? Thank you very much Mr. Duffy. We appreciate your time.

Sean Duffy

I thank everyone. Thank you for your time tonight and your consideration.

COMMUNICATIONS - None

APPLICATION TO LICENSE HAWKER'S, PEDDLER'S, ITINERANT VENDOR'S LICENSE -  
None

APPOINTMENTS BY THE MAYOR

Zoning Board of Adjustment

Sean W. Duffy (Re-Appointment) Term to Expire: September 11, 2009  
9 Cheyenne Drive  
Nashua, NH 03063

**MOTION BY ALDERMAN TOLLNER TO RECOMMEND THE CONFIRMATION OF THE RE-APPOINTMENT OF SEAN W. DUFFY TO THE ZONING BOARD OF ADJUSTMENT FOR A TERM EXPIRE TO SEPTEMBER 11, 2009**

**MOTION BY ALDERMAN DION TO HOLD THE RE-APPOINTMENT OF SEAN W. DUFFY UNTIL THE END OF THE AGENDA**

ON THE QUESTION

Alderman Tollner

He wasn't here for the...

Alderman Dion

He is going to be here though according to you Mr. Chairman.

Chairman Tollner

He wasn't here for the interview process Alderman Dion.

Alderman Dion

I still make the motion to put it on the table until the end of the meeting, and then we will vote on it.

Alderman LaRose

I was going to ask for parliamentary inquiry. Since there are 2 members absent and there are 3 Alderman-at-Large my understanding is that our rules allow two Alderman-at-Large to participate.

Chairman Tollner

We have a quorum this evening.

Alderman McCarthy

There is a quorum of the committee present. I suggest we go ahead and vote.

Alderman Richardson

I guess we have a quorum of 3 right?

Chairman Tollner

We have a quorum of the committee, which is 3 members.

Alderman Richardson

So we have not been – I guess if we required more it would be up to you to then induct and Alderman-at-Large or an Alderman in general?

Chairman Tollner

No the only time that we can ask an Alderman-at-Large to step in as a committee member and vote is if you don't have enough members present to provide a quorum. We have a quorum, which is 3 members. There isn't a need to invite. Although I know there are three of them here that would love to, we don't need them.

Alderman Richardson

I guess I would – Alderman Williams was here for the prior interview if you will, and I would like to afford him the maximum latitude so I would be in favor of holding this until the end of the agenda, but then again I don't want to have to cause Chairman Duffy undue duration or agony or wait or whatever. I am kind of left in a quandary as to who do I please. I think in my view of things I think that having the maximum number of voices heard would outweigh the short term evening delay I guess. I guess I would be in favor of holding it until the end. I am not sure what the exact mechanism would be since I am not sure if it is proper to – if the motion is proper. Could you tell me if the motion is proper?

Chairman Tollner

Basically what the motion is requesting is that we just move out of order. If you move out of order to take some legislation – the motion is to table it until the end of the meeting. What we are doing really is to take different items out of order. My concern with Alderman Williams coming back is he wasn't part of any of the interview process. He wasn't here to listen to the questions, listen to the responses. That is my concern. Basically what he will do is he will come in and he will take a vote based on no information, no formal interview because even though Mr. Duffy was here the last time for the most part that is all he will have to go by.

Alderman Dion

Mr. Chairman I would add that Alderman Williams did participate at the last hearing on this subject and that he is well versed ... **tape flipped** ... feel as though he is very capable of making the decision and when he comes in Mr. Chairman if you so desire we could bring it up immediately or at the end of the meeting if he doesn't show up then we will vote on it.

Alderman Richardson

It is a very hard decision for me.

Chairman Tollner

The motion on the floor is to hold.

**MOTION CARRIED**

UNFINISHED BUSINESS - None

NEW BUSINESS – RESOLUTIONS - None

NEW BUSINESS – ORDINANCES

**O-06-58**

Endorsers: Mayor Bernard A. Streeter  
Alderman-at-Large David Rootovich  
Alderman-at-Large James R. Tollner  
Alderman-at-Large Brian S. McCarthy  
Alderman Michael J. Tabacsko  
Alderman Robert A. Dion  
Alderman Richard LaRose  
Alderman Marc W. Plamondon  
Alderman-at-Large Steven A. Bolton

**PROVIDING THAT CONTRACTS EXCEEDING \$10,000 FOR SERVICES AND OTHER PURPOSES IN CONNECTION WITH THE PENNICHUCK WATER ACQUISITION SHALL BE APPROVED BY THE BOARD OF ALDERMEN RATHER THAN THE FINANCE COMMITTEE**

**MOTION BY ALDERMAN TOLLNER TO RECOMMEND FINAL PASSAGE**

ON THE QUESTION

Alderman Deane

Didn't we not get an opinion from Corporation Counsel on this legislation?

Chairman Tollner

We did. Basically the opinion in a nutshell is that the Finance Committee has the power or authority for the payment of accounts, but as far as contracts that authority or privilege goes to either the Finance Committee, the Board of Aldermen, or another committee is basically what he stated.

Alderman Deane

I have supported this acquisition process in many different ways, but I cannot and will not support this ordinance. This ordinance was put forth because it is my opinion people didn't get their way so to circumvent the Finance Committee this is a piece of legislation that has been filed. I think it sets precedence. Although the majority rules, this isn't a healthy way for the city to be operating. Now what we will see is every time there is a contract that comes forward to the Finance Committee that is not approved we will get another piece of legislation that will say providing the contracts with John Doe Construction be approved by the Aldermen rather than the Finance Committee then we will get another one that says in Jane Doe Construction Company will be approved by the Board of Aldermen instead of the Finance Committee.

I think this is, in my opinion, is a reckless way to be doing business, and you are circumventing what the Finance Committee is all about. If people don't like the questions or the scrutiny that the Finance Committee puts into the current process that is going on – you know it was a long time coming, and I just don't think this is an appropriate way to do business. I think if the Mayor or anyone else had grave concerns about the stance of members on the Finance Committee they could have picked up the phone and asked them what the problem was.

As you say Mr. Chairman all the time a little dialogue. That didn't happen. My opinion is that someone blew a gasket, went upstairs, and had the Legal Department write this up, and then started calling people. I was called to co-sponsor this and I said absolutely not. I am for the acquisition, but I am not for this type of operations associated with the acquisition or any other piece of legislation that will come down the pike that circumvents the Finance Committee. I think it is just plain wrong. Thank you.

Alderman McCarthy

I think in a general case I would agree with Alderman Deane on our average contract that goes to the Finance Committee, but I have a slightly different perspective on this particular acquisition, which is that this is a huge issue. This is one of the largest dollar volume things that has come before this Board in history. As a result, I think the wider the representation that deals with it the better. There is actually one member of the Finance Committee who would be denied a vote on the contract by this ordinance, and that is the Mayor. Every Aldermanic member of the Finance Committee gets to vote as a member of the Board of Aldermen the same as they do as a member of the Finance Committee. What it does allow is for 9 other members of the Board of Aldermen to have their questions answered regarding contracts that have to do with Pennichuck acquisition. As a result, I think it gets us better review not worse, and I think given the scope of the acquisition I think it is a good thing to do.

Alderman Richardson

I have to agree 100% with Alderman Deane, and, of course, in doing so I very much disagree with Alderman McCarthy's position. This has nothing to do with the scope and magnitude of the dollars involved or the trouble involved or whatever. This has to do with law. We have in our Charter provision for the Finance Committee. Finance Committee is a Charter committee. It is, and I will read Chapter 50. It says "The finances and accounts of the City shall be under the supervision of the Finance Committee composed of the Mayor and three Aldermen-at-Large and three Ward Aldermen...." This is not something that is an elective. This is not subject to

modification by Nashua Revised Ordinances. This is in the Charter. I have seen no opinion by the city's lawyer regarding whether we can circumvent the Charter or not. However, my position is that we cannot circumvent the Charter. The Charter stands very very clear on this matter.

I agree with Alderman Deane that this is absolutely no way to conduct business where if you feel as though you will be unsuccessful in the Finance Committee that you will then exercise an option to go to a broader committee where you might have better luck. That is not the way the law works. The law is the law. My view is that the opinion of city counsel is his opinion, and I disagree with his opinion. Thank you very much.

#### Alderman Teeboom

I come from a different direction entirely. First of all on the point of the law, I asked Attorney Connell the direct question whether this in fact follows what Alderman Richardson said – are we violating our Charter. Attorney Connell sent a memo that was written on 8-5-03 responding to Alderman Tollner at the time questioning I think action by the Finance Committee having done so without getting Board of Aldermen approval in the minutes. His interpretation is that the oversight is the Finance Committee's, but the matter of contracting is still set by ordinance, and, therefore, the ordinance establishes the Finance Committee could be changed. That is his opinion. That is not my problem. I will accept Attorney Connell's opinion on this.

I come from a different direction. The committee structure is set up because it allows a lot more latitude. I am on the committee, Alderman Deane is on the committee, I believe you are on that committee, and even though the Finance Committee seems to be rushed because we have a lot of contracts to cover and there is nowhere near the detail that I would like to see examined – we have made some changes and are now on Wednesdays instead of Mondays, which will give us a lot more time to investigate, but it does give you a lot more latitude to investigate the questions than you do at the Full Board. The purpose of the full Board is just to basically look at the legislation and have some questions, but not go into depth on these things. That is not the intent of the full Board. There is just too much legislation at the full Board.

The second point of Alderman McCarthy says no vote, but the other Aldermen can all attend the committee and talk about these things. It is a 7 member of the committee, and it is true there are 8 more Aldermen. They don't have a vote, but you have to remember the big dollars. The big dollars of this acquisition – we are talking specifically about Pennichuck – the big bucks have to be a bond. The bond must be approved by the Full Board as it takes 2/3 vote. The bond cannot go to the Finance Committee. We are talking about contracts. The contracts for Pennichuck are very few and far between. We have a Beck contract I think was \$50,000; we had a Veolia contract I think was \$50,000. I don't think there are any more contracts. The trial is going to start next month, what the 9<sup>th</sup> of January – a 9-day trial, and then a decision can be made by the PUC where do we go from here. I don't see many contracts coming up. I don't see the big dollars. I honestly Alderman McCarthy I don't see the big dollars.

I think I have a sense that someone wasn't happy at the way we discussed one of the contracts. I think I know exactly which contract it was too, but I am not going to go and mention it. We have done some detailed look. The Broad Street Parkway contract has come back what 3 times now, and we finally approved it last Monday. We do examine some things in detail. There is very little money left in the contracts for Pennichuck until the big bang bucks come in and that goes before the Full Board. I think this is a lot to do about nothing. I do think it sets a

rather poor precedent. If someone else has a contract and says I don't like that Finance Committee I want to bypass. They can always do that and come back and I think they can do it for legitimate reasons. This just isn't I think the contract to take or the vehicle to do that at this point. Thank you.

Alderman Deane

My point was basically covered by Alderman Richardson pertaining to moving away from the Finance Committee structure to the Full Board looking for a bigger audience to play to, and looking for better luck. As Alderman Richardson had read out of the Charter, you look at the structure of the Charter and some of it doesn't make sense, and some of it makes a lot of sense. I can go back I think it was 2003 when there were discussions about the authority of the Finance Committee. My colleague Alderman Bolton stated, and I quote "no one rules us". That was about the Finance Committee. I agree with Alderman Teeboom, this sets a dangerous precedence for someone not getting their way and the Finance Committee meetings are open to the public and everybody is more than welcome to come on down and get an agenda and come in and state their side and their views, and we are more than willing to listen to what anybody has to say. I don't think this is necessary this ordinance. Thank you.

Alderman McCarthy

With regard to the committee structure, nothing in this ordinance proposes that such contracts not be referred to a committee. It would be necessary to refer them to an appropriate committee, but what it says is that the Full Board of Aldermen will eventually approve or disapprove those contracts. It means that 8 elected officials of the public will vote on them rather than 4. I guess I would go back a couple of years ago to when the Finance Committee approved the Public Works Department taking money out of various sources and contracting to have automatic vehicle locators put into numerous city vehicles, and the uproar that took place on the Board of Aldermen when that was not approved by the Board. If you want to look at it from the standpoint about who is going to get upset about who gets to vote on it, we have been there before.

Alderman Deane

I would like to comment on that AVL discussion. I believe that was in reference to me was it Alderman McCarthy?

Alderman McCarthy

I was stating a historical fact that we had a case where the Finance Committee by a vote of 4-3 did something that the rest of the Board was up in arms about. I was one of the people who was up in arms about the fact that the Finance Committee had by 4 votes overridden the vote the vote of the 15 Aldermen.

Alderman Deane

I believe that was one of the actions that gave birth to O-03-183, which once funds are identified they are frozen and the expenditures are not allowed to take place until such time as the second reading and the legislation has been disposed of.

Alderman McCarthy

I guess I would just point out that the only case where the outcome, if this ordinance is passed, can be different is the case where a majority of the Board of Aldermen, of the 15 elected representatives, disagrees with 4 or 5 members of the Finance Committee making a decision. If we all agree on it, which is what ought to happen if we are making decisions the right way, then all we have had is broader discussion.

Chairman Tollner

I remember when this was first discussed and I did see a portion of the meeting when we were talking about this contract. I don't think it is that there is a considerable amount of money that is behind it. This one particular item the reason why we are asking for this to be approved was because the services were already performed by the vendor. Is that correct?

Alderman Deane

That is correct.

Chairman Tollner

Some members of the Finance Committee were not comfortable with that, and did not vote for it or if memory serves me correctly was it held?

Alderman Deane

It has never been voted on.

Chairman Tollner

So it is still in Finance Committee now?

Alderman Deane

It has never been brought forward.

Alderman Teeboom

That was discussed in closed session, and was never brought forward for a vote.

Chairman Tollner

I know there are concerns on the vendor's side that they haven't been paid and it would jeopardize - have a domino affect of services or whatever. I think that is the primary impetus of the legislation. I agree and I am an endorser of this legislation because I do think it is only fair for us to pay for those services, and I don't want the relationship with the vendors to be caught up in quicksand. The next Finance meeting we have will be the 26<sup>th</sup>?

Alderman Teeboom

Starting next year it is every 1<sup>st</sup> and 3<sup>rd</sup> Wednesday.

Chairman Tollner

So the next meeting you are going to have is the 15<sup>th</sup> of December.

Alderman Deane

Thank you. This item has never been on the Finance Committee agenda to my knowledge. It has never been brought forward. The hiring and the services received and the okay was done administratively. No one knows whether the Finance Committee would approve payment or not because we have not discussed it at the committee level and it has not been brought forward. I think there is a premonition that someone or maybe everyone on this list much think that we're not going to pay for the services rendered. We all know that we can agree to disagree on a lot of things, but when the services are rendered or the product is received then we are responsible for paying for it. That is another thing that really has me – when I was called about this, why has it not been brought forward to the Finance Committee for action – that has not been done. Instead this piece of legislation is filed to approve that cost item of services rendered that has never been brought to the Finance Committee. That is what has gone on. I don't get it – just bring it to the Finance Committee for discussion and a subsequent vote. Instead this is the byproduct of that.

Alderman Tollner

Let me ask those members that are here tonight that are on Finance, if that was to be put on your next agenda do you think that you would be able to vote on that within short order. I am not asking you how you would vote on it, but if this what this legislation is requesting – basically it is for payment for those services that went above what we were authorized to do – I think we all agree with that, but what we are doing right now as a city is dragging our feet because there are a number of individuals while their opinion may be extremely valid over being upset that it wasn't authorized before the services were done, the bottom line is the city got those services. I remember seeing that gentleman sitting in that seat that night stating that the services were done, and I know there was a particular individual that said go ahead. What I don't want to do is penalize a good vendor over our I guess lack of appropriate approval to get this done.

Alderman Deane

Thank you. There is not an argument about whether the services have been provided or not. My concern is it has never been brought forward to the Finance Committee. That is the

problem. Like anything else, bring it to the Finance Committee, we will have debate as we do, others can join in and give their opinion on the billing and the contract or whatever. We all know what happened. That is the proper way to deal with the unfortunate incident that we have in front of us.

Alderman McCarthy's argument that the whole Board should be voting on it because it is a contract that is fine, but I look at this ordinance coming forward to avoid bringing what happened to the Finance Committee. My feeling is just put it on the agenda and let's talk about it and vote on it. That is how I fell. I do agree with you the services have been provided. We should dispose of it. I think this is kind of like a backdoor approach to disposing of it.

#### Alderman Teeboom

It was brought before the Water Committee and I think the item were' talking about was discussed in non-public session. I will tell you honestly – I am not going to mention details, but as far as I am concerned it was done without authorization, it did not go through channels, it did exceed the amount that is supposed to go to the Finance Committee, didn't go through channels, there were no services ever presented what the services were, no details, no documentation. Call me a strict constructionist, but when it comes to fiscal matters we have a structure in place, and I must say that I pretty much know how I am going to vote on that, and I don't care whether it comes to the Full Board or the Finance Committee.

#### Alderman McCarthy

I think it is actually fairly dangerous for us to have a discussion in public session around the events that took place as Alderman Teeboom points out in a non-public session.

#### Chairman Tollner

I agree.

#### Alderman Richardson

I just want to reiterate – this is contrary to the Charter. It is a matter of law. I have been a supporter of that movement towards acquiring Pennichuck all along. I have a history of asking a lot of questions. I have been nonetheless a continued supported of that movement. This is against the law in my opinion, and not only that, it represents a very smarmy approach to legislation. This is the type of thing that I thoroughly reject. It is not up front it is fishing for votes. I reject it. Thank you very much.

### **MOTION BY ALDERMAN TOLLNER TO HOLD O-06-58 IN COMMITTEE**

#### ON THE QUESTION

#### Chairman Tollner

There will be a Finance Committee meeting on the 15<sup>th</sup>. I will call the Mayor's office tomorrow and ask him to make sure that this is put on the agenda. My number one priority is to make sure the vendor who has provided the work that the city made a commitment to, that they get paid. I

would ask that the Finance Committee process it quickly at their next meeting so we can move forward with it. I do agree with some of the comments that were made this evening that hey it didn't get through Finance so let's find another avenue to get that done. I don't want to set a precedent by doing this. However, if there is no action in the Finance Committee then we should come back here and talk about this again.

I look at the opinion of Legal Counsel. I don't think it is an illegal action. I would agree that we are trying to circumvent the Finance Committee, and I would like to provide the Finance Committee an opportunity to rectify that at their next meeting.

**MOTION CARRIED**

**MOTION BY ALDERMAN TOLLNER THAT THE RULES BE SO FAR SUSPENDED AS TO ALLOW FOR THE REVIEW AND RECOMMENDATION OF ORDINANCE O-06-54, WHICH WAS INADVERTENTLY OMITTED FROM THE AGENDA  
MOTION CARRIED**

**O-06-54**

Endorser: Alderman Daniel Richardson

**ESTABLISHING THE MINIMUM ACCEPTABLE NUMBER OF BIDS FROM RESPONSIBLE BIDDERS**

**MOTION BY ALDERMAN TOLLNER TO HOLD O-06-54 IN COMMITTEE  
MOTION CARRIED**

**O-06-59**

Endorsers: Alderman-at-Large Fred S. Teeboom

Alderman Robert A. Dion

**ESTABLISHING APPOINTMENTS TO THE PLANNING BOARD**

**MOTION BY ALDERMAN DION TO RECOMMEND FINAL PASSAGE**

ON THE QUESTION

Alderman Teeboom

Thank you Mr. Chairman. There are three ordinances being proposed that are being discussed tonight I hope 59, 60, and 63. They all kind of play together. They all deal with land use board legislation. The first one is 06-59 that deals with the Planning Board. The easiest way to deal with this is to look at the analysis. I must say first of all I have a thick folder here – a good part of that is communications back and forth with Attorney Connell whom I sought his advice on everything I am trying to do dealing with a complex subject.

My approach in doing this in gentle terms is you can approach citizen satisfaction in what has been going on in two ways; you can ask the land use boards to do things a certain way, but they are a quazi judicial organization and will do whatever they need to do by whatever means they look at the information. This takes a different tack. I have taken a look at the organization of the Planning Board and of the Zoning Board, what constitutes a quorum, what makes the appointments, what constitutes alternates, and how the whole thing is structured. I looked at

RSAs, the Land Use Code book, which is the complete re-write that was mentioned earlier, Chapter 16 of our ordinances, I contacted the New Hampshire Municipal Association, New Hampshire Local Government Center – they have a lecture series that deals particularly with procedures or basics for planning and zoning (it was mentioned to me by the attorney so I got a copy of that), and I spent quite a bit of time studying this whole situation.

On the first one, if you look at the language it authorizes 5 alternates instead of 3. Basically on a 9-member board here we have currently been allowing 3 members whereas on the ZBA it says 5-member board and allow 5 alternates. That doesn't make much sense to me. It is up to the local legislature, by state law again, a considerable amount of leeway in making specific provisions outside those things nailed down by state law. One of them is the alternates. I propose first of all 5 alternates instead of 3.

The second one is the questions come up about holdovers. When a member's term expires, and we saw that not long ago in some of the appointments where a member's term expires, he is just held over, and if we don't nominate a new person they are just held over. There is nothing in state law that says you need to do that. This says there are no holdovers. It requires the appointing authority, which in this case is the Mayor by state law, to make appointments early and in time so that alternates can be chosen, vacancies can be chosen. Then it talks about some deadlines – I believe it is 2 months that the appointment has to come in, and not wait until after the appointment is expired.

It requires that the interviews be conducted by the board so interviews of appointments, re-appointments, must be done by this committee. Finally, and I am not hard on this, but people on this quazi judicial boards, and that is what they are, put in a lot of time because they have to research all of these applications, many of them are asked to go visit and look at the sites. I thought why not pay them a stipend because the Mayor points out in not being able to make his appointments I can't find qualified people. Now you do have to find qualified people, people that can deal with the laws. These laws are complicated and getting more complicated everyday as they pile decision on top of decision and then revert and change the decision and start all over again. It has been happening at an accelerating pace. We are asking a lot of our members that we appoint to the Planning and Zoning boards. If you ask a lot of their time why not give them a stipend, and I recommend \$2,000.

That in substance without going through every item. The underlined is the new language. There is not much struck out, mostly just added. You can look at RSA 673:2 to see what the state law provision is.

#### Alderman Deane

At one point in time I believe the Zoning Board did receive a stipend and it fell under the privy of the Community Development Division, and I believe the Community Development Director made budget cuts, and since those stipends fell within her operating budget, and there was no ordinance in place, the stipends were removed I think from both Planning and Zoning. Is that correct?

#### Alderman McCarthy

They were removed from the Planning Board, the Zoning Board, and the Conservation

Commission. I would point out that we have some 30+ other boards that are not compensated, and I believe the Director's research showed that we had the only compensated Planning and Zoning boards in the State of New Hampshire.

Alderman Deane

Through you Mr. Chairman to Alderman Teeboom, if we were to compensate the members with a stipend what department would be holding the funding and who would have authority over those amounts? Granted the ordinance would be passed and put in place to set the stipend amount, but the control of the funding and what operating budget?

Alderman Teeboom

I haven't really given that much thought. We would have to pass a separate ordinance to establish that fact – what account and who manages the account. Basically the amount of money you are talking about – you are talking about 9 members of the Planning Board, 5 alternates having a supply of alternates available to hear the cases, 14 members times \$2,000 is \$28,000.

Alderman Deane

That is for Planning.

Alderman Teeboom

That will be the cost and the details Alderman Deane would be brought – if necessary I guess would require enabling ordinance for that funding. That is a different ordinance.

Alderman Deane

Thank you.

Alderman Richardson

I guess since this would be codified in ordinance regardless of who has that in their departmental budget it would be required. It could not be modified. It would be required by law. I guess perhaps it would have something to do with the budgeting process perse. It would be one of those inflexible items wherever it resides. I don't know why it couldn't have a code of its own. Thank you.

Alderman LaRose

I would like to make a few suggestions. Part C – I am not sure if it should be shall appoint up to 5 alternates. I don't see what the problem is with 3. Maybe it should be changed to up to 5 alternates. The reason I say that is because the Planning Board when we have alternate members we allow them to participate in the discussion, and if there is a full contingency of members they cannot vote. If we start adding a lot of members I think we are going to get into a quagmire. I am not sure you want to go with 5. I don't have a problem either way.

Then the confirmation is withheld or denied or the appointment is withheld the Mayor shall submit a new appointment to the Board of Aldermen. I am assuming that means that the person that he originally appointed cannot be brought back in as an appointment.

Chairman Dion

What section?

Alderman LaRose

On the second page on the very top – D. The next one all Mayoral appointments shall be interviewed in public by the Aldermanic Committee unless exempt by the Board of Aldermen. I am assuming the Aldermanic Committee is this committee. Is that what you mean? I think it should state the Personnel/Administrative Affairs Committee because I wasn't sure if it meant the full Board of Aldermen or this committee. The annual stipend of \$2,000 – I don't have a problem with the stipend. My problem is that I think it should state that they have to be at that meeting to get their stipends because you could have 5 alternates and they never show up, and they are going to get \$2,000 for not participating where you have the other 6 members who would qualify for a stipend are doing their duty. I think it should state that they have to sign in and sign out. Just like in the State Legislature for mileage – you don't get mileage unless you are there for the whole meeting.

Then my last one all terms of the appointed members shall being on the first day of April and be retroactive to the day in the case of the first appointments made hereunder. I am not sure if all the appointments are going to be made – I am not sure if the appointments are all on the first day of April because if you notice Mr. Duffy's re-appointment his term expires in September. Are you trying to say that all appointments will start the first of April of each year?

Alderman Teeboom

Very quickly – the last one is actually struck. That is old language I am taking out. The second point about the alternates I am not hung over at heart. If you feel that alternates should only get paid – the full members they should participate fully. If you let the alternates discuss it, it is up to you. If the alternates do not go to all the site meetings – if they don't come to the meeting they probably don't go to all the site visits either so if you want to say I only want to pay \$2,000 to the sitting members not the alternates make that motion. I didn't try to discriminate one way or another. On the point about the new appointments – it says no holdovers, and it forces the Mayor – if it doesn't go through, it gets held and all that, he has got to make a new appointment meaning someone else. I think that answers every question. On your \$2,000 make whatever change you want.

Alderman LaRose

My philosophy is the alternates are members of the committee because you can have an alternate that is sitting in at a meeting because one of the regular members is absent. You are going to get into the difficult part of if you say only the regular members will get paid and the alternates get nothing and then the alternate is sitting in for a regular member – I think that needs some clarification, and I think the easiest way is to set a payment/stipend per meeting and they have to attend that meeting to get the stipend.

Alderman Dion

Getting back to the stipend, I think it was a good idea to put a stipend in to attract more people to be interested in the job. Also as far as missing a meeting and the stipend would be forfeited, this would take a person all year long to figure it out. It is not practical to try to do this. Just like on the Board of Aldermen, we have people that miss meetings. I am sure they have a good reason to miss a meeting. We don't dock these members. I feel as though we are treading on dangerous ground here, and it should be left alone.

Alderman Richardson

When it comes to having stipends I think the whole approach we are trying to take here is we are trying to get people who have an interest in serving get them committed to serving even if it says alternate members, but at least it gets them interested enough to the point where they develop some expertise over time so that they are ready to stand in and serve. Of course, those people have just as much commitment as a full time person does, has put in just as much time in order to be ready to serve – sort of like a standing army instead of active service. That is not a small thing. That is nothing to be dismissed. It takes a lot of time. You have to have a lot of confidence in your abilities and so you need to be prepared. In my view, I would be willing to support and award those people who are willing to do that with a stipend.

When it comes to the number of people involved in being alternates perhaps 5 is too many. Perhaps it should be 3. It is good to have a large standing army if you can afford it. Perhaps Alderman LaRose knows best how many would be appropriate and how many alternates are actually regularly called upon to serve. I think I would be willing to not try to differentiate between people that serve twice in a year versus people that have served full time versus people that serve 20 times in a year. It is a bookkeeping nightmare. I would advise that we might want to avoid that approach. Make it a lot simpler.

The other thing I wanted to do is comment on some actual aspects of the legislation. In paragraph E it says the mayoral appointments shall be interviewed in public by Aldermanic committee. We have discussed that to a certain extend, but also I was wanting to ask the proposer of the legislation what he actually intended here, whether he actually intended that it would read all mayoral appointments and re-appointments shall be interviewed.

Alderman Teeboom

I think that was the intent – all appointments being appointments and re-appointments so that we could review as we have done with Mr. Duffy even though he has certainly served – these are, in my opinion, two key boards. Every member should after 3 years be reviewed by the

committee. That is what this committee is for.

Alderman Richardson

I guess having made that comment you might note that I find that the actual language is a little deficit there in conveying that intention.

Chairman Tollner

I will deal with that when I make some amendments.

Alderman Teeboom

I would like to adjust the 5. It is a 9-member board. It is a very large board. A quorum is 5. So you could probably do with 3. I picked the same number that I picked for the Zoning Board. I will go by Alderman LaRose. If he has experience, and feels that 3 is adequate for the 9 member board I am not – I am just looking at specific ways of improving the personnel on this board, getting people to really be committed and serve, having a review of the people that serve like we have done with Mr. Duffy. That is the structure I am looking for the Planning Board. I am not making any substantial changes to how they conduct their business. You don't see any change here to their by-laws as you will see I would make a change with the Zoning Board. It is just a better structure by which we can review what they do and have members in place. If Alderman LaRose feels 3 is sufficient I am not hard on those things.

Alderman Richardson

I have one other primary item recorded on my copy, which has to do with paragraph b. It says the Planning Board shall consist of the Mayor or his appointed representative who shall be confirmed by the Board of Aldermen, the city engineer, the city engineer, and a member of the ... I am trying to understand why do we have the city engineer in there twice with one of them struck out.

Alderman Teeboom

At one point – it is a mistake. The city engineer shouldn't be listed twice. At one time I had taken it out to say member of Public Works because I felt the city engineer is kind of compromised in a way where he makes decisions on traffic and then sits on the board and makes decisions on where the whole thing works together – I felt it could be a conflict so I wanted to take the city engineer out of the picture. Attorney Connell pointed out to me it says engineer in our Charter so we can't take that out. If you make the change take the first citation to the city engineer out. City engineer has to remain.

Alderman Richardson

It should actually be deleted and not even appear here. It is not being struck out from the ordinance it just shouldn't – that repeated ...

Alderman Teeboom

That was a mistake. The city engineer has to remain as a member.

Alderman Richardson

The other thing has to do with under vacancies – it says paragraph b no member or alternate may hold over after expiration of a term, and a vacancy shall result until the member or alternate is reconfirmed or a successor is confirmed. An alternate member shall vote until the vacancy is filled. That kind of leaves me a little – I don't quite understand what I am reading there.

Chairman Tollner

If there are 5 members and say Alderman Teeboom is a full time member and his term expires, you as the alternate can continue to vote until a full time member is appointed and approved by the Board of Aldermen.

Alderman Richardson

Okay so this is an alternate for the full time member whose term has expired.

Chairman Tollner

He has really combined the two. No member or alternate may hold over after the expiration of the term so that means if you are an alternate or a full time member once your term is expired you are done. And if a vacancy results until the member or alternate is reconfirmed they will be allowed to vote.

Alderman Richardson

But only the alternate member?

Alderman Teeboom

Only for the member. If the member is not reconfirmed then the alternate has to vote for the member to continue to have a 9-member board, and I should say that I am leaving it up to their bylaws to decide how the Chairman selects an alternate. They have 4 alternates and Mrs. Lasky is still let's say the Chairman, she can decide which alternate to pick. She may pick by seniority or just because she likes the guy's nose I don't care. That is not for us to decide.

Alderman Richardson

I don't know if I am clearly illuminating my perception of the problem. It looks like we are saying here that no member or alternate may hold over and a vacancy shall result until the member or alternate is reconfirmed or a successor confirmed. Then it says only – let me interject that only an alternate member shall vote until the vacancy is filled.

Chairman Tollner

To replace a full time member so if there is a full time member whose term has expired that is a vacancy. What he is stating in the legislation changes that an alternate member shall vote until

that vacancy is filled.

Alderman Richardson

Is this alternate member that is mentioned here the one who is expired?

Chairman Tollner

No.

Alderman Teeboom

No.

Chairman Tollner

The previous sentence says if you are an alternate member or a full time member when your term expires you are done. They are not even in play. If you are a full or alternate member and your term is expired you are pretty much out. What it is stating is that until the vacancy is filled an alternate member would be able to vote.

Alderman Richardson

I had trouble getting that out of there because I guess I am quite literal. I had trouble understanding that as the meaning. Thank you.

Alderman McCarthy

Getting back to the stipend issue I don't favor reinstating the stipends at all. Historically when we eliminated them from the Conservation Commission by the way only one member of the commission was actually accepting the stipend. The rest of them were waiving it and not taking it. I understand some of the members of the other boards were as well. No one else is compensating land use boards at this point, and that was one of the reasons why it was removed. People do it because of their commitment to the community. It is not I don't believe necessary. If you are inclined to put it back, leave it per meeting. The argument that it is an administrative nightmare is completely specious. I served on the board 15 years ago; we paid by the meeting then. We have paid by the meeting every time in history up to the point where we stopped paying the stipends. It is not an administrative nightmare it is perfectly easy. Attendance is taken and the Planning Department records who is there and who is not and that is how compensation is done. That is how it has always been done.

Alderman LaRose

I was going to bring up the same thing. When I was a member of the Planning Board as a citizen we had a \$35/meeting stipend and that is exactly what happened – they would take attendance, and every quarter you would get your stipend check just as we get our Aldermanic check every quarter. It isn't something that is a bookkeeping nightmare it is just a little bit of work.

Chairman Tollner

Thank you.

Alderman Williams

I have a question for Alderman LaRose. How many years ago was that the \$35?

Alderman LaRose

I was on the Planning Board up until 2001 I believe. I don't know what the current stipend was prior to when we stopped it at the last budget hearing. You would have to ask the Planning Department.

Alderman Williams

So 5 or 10 years ago?

Alderman LaRose

It probably was up to 2 years ago it was \$35, but I am not sure.

Alderman Williams

I am just trying to measure where this \$2,000 comes in versus what it was then. I heard the argument was made that paying the stipend would entice more people to become involved. Has there been any consideration to any other types of ways to get people besides a stipend? The reason I bring it up is in some other states the land use boards and actually the City Councilors and things of that nature they can participate in the health plans of the community. Has there been any consideration to that? That would be a very enticing thing to offer someone.

Chairman Tollner

No we have not considered that.

Alderman Williams

Thank you.

Chairman Tollner

Are there any other questions?

Alderman Deane

I just wanted to back up some of what Alderman Williams said. I believe the Aldermen in Manchester and some of the other elected officials are on the city health plan. We are not, but ... **tape ended...**

**MOTION BY ALDERMAN TOLLNER TO AMEND O-06-59 IN SECTION (C) BY REPLACING “THE MAYOR SHALL APPOINT FIVE (5) ALTERNATE MEMBERS” WITH “THE MAYOR SHALL APPOINT UP TO FIVE (5) BUT NOT LESS THAN THREE (3) ALTERNATE MEMBERS”, IN SECTION (D) BY REPLACING THE WORDS “A NEW” WITH THE WORD “AN” AFTER “THE MAYOR SHALL SUBMIT”, AND IN SECTION (E) BY REPLACING THE WORDS “ALDERMANIC COMMITTEE” WITH THE WORDS “PERSONNEL/ADMINISTRATIVE AFFAIRS COMMITTEE”, BY DELETING THE ENTIRETY OF SECTION (F), AND IN THE ANALYSIS BY DELETING THE LANGUAGE RELATING TO THE STIPEND**

ON THE QUESTION

Alderman McCarthy

Regarding the words appropriate Aldermanic Committee, if you recall Mr. Chairman all of the references in the ordinances to specific committee meetings were changed at the end of the 94/95 term when we realigned the committees so that the only place where the committees themselves are defined is in Chapter 2 of the ordinances under Aldermanic Committees. I would request that it be left as appropriate Aldermanic Committee so that ...

**AMENDED MOTION BY ALDERMAN TOLLNER TO AMEND O-06-59 IN SECTION (C) BY REPLACING “THE MAYOR SHALL APPOINT FIVE (5) ALTERNATE MEMBERS” WITH “THE MAYOR SHALL APPOINT UP TO FIVE (5) BUT NOT LESS THAN THREE (3) ALTERNATE MEMBERS”, IN SECTION (D) BY REPLACING THE WORDS “A NEW” WITH THE WORD “AN” AFTER “THE MAYOR SHALL SUBMIT”, AND IN SECTION (E) BY INSERTING THE WORDS “AND RE-APPOINTMENTS” AFTER THE WORDS “ALL MAYORAL APPOINTMENTS”, BY INSERTING THE WORDS “THE APPROPRIATE” AFTER THE WORDS “INTERVIEWED IN PUBLIC BY”, BY DELETING THE ENTIRETY OF SECTION (F), AND IN THE ANALYSIS, BY DELETING THE LANGUAGE RELATING TO THE STIPEND**

ON THE QUESTION

Chairman Tollner

Let me speak to the motion. The first one with the up to five no less than three as was previously stated I think Alderman LaRose’s comments were good, but it also maintains the three. With regard to adding “and re-appointments” to Section (e) when you think about it, it is basically what we have in place today so if the policy of this committee is not to ask re-

appointments back, if there isn't an interest in interviewing a re-appointment the Chairman will not get a request. If the Chairman doesn't get a request then the way we work it is they won't be invited back so that really hasn't changed.

Alderman Dion

Mr. Chairman we keep referring to the appropriate committee. I wish you would identify the Personnel/Administrative Affairs Committee as the committee that deals with the appointments.

Chairman Tollner

What was stated a little earlier is back in 94/955 the way we had changed it was that we don't identify the particular committees that the appropriate Aldermanic Committees, and then there is a definition of what would go to which committee. Alderman McCarthy if you want to add to that...

Alderman McCarthy

That is defined in the ordinances. In Chapter 2 Section 2-24 under 5 member committees Personnel/Administrative Affairs Committee includes but is not limited to the following; appointments, personnel classifications, policies, rules and licenses, and elections and returns. The intent was that is the section that is used to determine what committee to send things to. When we made changes to the committees back then there was this nightmare of lots of references to the traffic committee and the rules and licenses committee, etc., and it was found to be a lot easier to have those only in one place. Appropriate Aldermanic Committee means throughout the ordinances the right committee as selected from Section 2-24.

Alderman Dion

I will buy that.

Alderman Teeboom

Just a point about this Section (E), there is a slight change to how we do things today. Today you say re-appointments we are not going to call them in unless someone asks to have them called in. This says they get called in unless someone says we don't need to call them in. That is the difference.

Chairman Tollner

As the Chairman then I will send out a communication and say all re-appointments will be exempted unless... we are talking semantics.

Alderman Deane

I don't know whether it was when Alderman McCarthy just stated the section of the NROs why don't we just mention the NRO in there when we refer to Aldermanic Committee?

Alderman McCarthy

I don't object to that except that there is about 50 references in the ordinances that say appropriate Aldermanic Committee. I know that because I went through at the end of '94 and found them all and drafted the ordinance to change it so that it reflected it. If we every reorganize Section 2 so that section moves you then have the same problem. I think we all know that is where you go to look for the assignments, and the wording appropriate Aldermanic Committee is used everywhere to indicate that.

Alderman Deane

Okay. Thank you.

Chairman Tollner

I think the last piece as far as the stipend I would prefer we don't muddy the water with the stipend. If during the budget time period we want to discuss stipends for different boards we can discuss it then. I would agree with some of the comments. If you are serving on the Planning or Zoning Board or even any other board you are definitely not doing it for the money because you get about \$2.50 an hour. I don't think the fact that there isn't a stipend – I don't think any members have left any boards since.

Alderman McCarthy

I want to add to that the proposed stipend of \$2,000 for a board that meets twice a month represents about \$100 a meeting, and if those meetings run 3-4 hours it is a \$25 an hour stipend, which is a reasonably healthy salary. If we go look at all of the boards and commissions, and there is a list in the back of who is on all of them, it is at least a couple of hundred people. If we were to apply that and say that anyone who gives their time in the city is entitled to a \$2,000 stipend we are talking about the best part of a half a million dollars to pay that to all of our appointed boards and commissions. I am not sure that is a wise thing to do. I think that we get a fair number of people who spend that time one night every two weeks as a commitment to the community. I think we just ought to be careful about it. I certainly wouldn't put it in the ordinance. I would propose that we look at it very carefully, and look at all of the boards and commissions before we take that action.

Chairman Tollner

Thank you.

Alderman Deane

I would agree with Alderman McCarthy we should forego that language and remove it from the legislation. When we get into the budget season we could deal with it at that point in time.

Alderman Richardson

Through you Mr. Chairman I have a question for Alderman McCarthy. Earlier in discussions I had indicated that the accounting for individual meetings being paid per meeting would be an accounting nightmare. I believe your comments Alderman McCarthy were that such commentary if specious. I don't happen to have a dictionary with me, but I was wondering if you could comment on the definition of specious in your terms.

Chairman Tollner

Very quickly because this has nothing to do with the amendments that are on the table.

Alderman McCarthy

I said the argument was specious meaning it has no basis. Since we have done it that way as common practice for to the best of my knowledge 50 years I suspect there is no basis to the claim that it is an accounting nightmare. No one has ever complained to this Board that it is an accounting nightmare that we had to fix.

Alderman Richardson

I will accept that explanation of what the definition of specious is. Thank you very much.

Chairman Tollner

Okay.

Alderman Teeboom

Alderman McCarthy it is about \$100 a meeting, but these members do put in a lot of extra time doing site walks and all that. It is more than just sitting at a meeting.

Chairman Tollner

Everybody understand the amendments?

Alderman LaRose

On the confirmation if you change it from "a new" to "an" appointment, what stops the Mayor from continuously bringing forward the same appointment? It just says an appointment. It doesn't say – if you are trying to get a new appointment because the previous appointment was denied or withheld or withdrawn doesn't mean that appointment can't come back forward if you put down "an" as far as I can see.

Chairman Tollner

I will give you an example of where I was coming from was if there is someone that served on the Planning Board for a while and was ill, maybe they resigned – and it has been a period of time then he or she comes back and says I am better now and they bring a wealth of experience

– say he had withheld it because they were ill and didn't renew he or she, then he wants to bring them back. The whole piece is also covered because it still has to be approved by the Board of Aldermen.

Alderman Teeboom

He could come back and re-appointment. You are asking him to make a new appointment – he can say I am appointing the same guy all over again and that is something that was not desired. The desire was to get a new appointment and that is a different appointment.

Chairman Tollner

If there is a time period of say a year when that person has not served that person is no longer a re-appointment because he presented is not an appointed person/individual. He couldn't be looked at under this legislation as a new appointment because he has already served.

Alderman Teeboom

Not is not what it says. This deals with an appointment that is held in committee, not affirmed, we just don't want a holdover. It says you have to get a new appointment in before the term is over. If you have a vacancy it forces the Mayor to come up with a new appointment not the same appointment just to meet the technicality of the law.

Chairman Tollner

Withheld by who?

Alderman Teeboom

By the Board.

Chairman Tollner

It doesn't say that.

Alderman Teeboom

That is what I meant.

Chairman Tollner

It doesn't say that. Withheld could have been – the Mayor has held appointments for quite some time. The bottom line is I think we are all talking semantics here because if the Mayor tries to re-appoint someone that the Board has already denied the Board is going to continue to deny that. We're covered. The concern is you have someone that serves on the board for a

long time and for whatever reason decides hey I am moving or I got transferred and I am coming back, I can tell you right now being on the Board for as long as we have been, there is someone that will come up and say he can't re-appoint him because ....

Alderman Teeboom

I am not hard on that.

Chairman Tollner

I am just giving us a little bit more flexibility.

Alderman LaRose

I was going to submit a different word. Instead of "a new" how about "a different appointment"? That would cover the scenario that you gave where someone was ill and came back, and a vacancy occurred and the Mayor wanted to appoint that person.

Chairman Tollner

You don't think there is ever going to be anyone on the Board to say Mr. LaRose wants to come back and someone won't say O-06-59 it is still Mr. LaRose this says it has to be a different person?

Alderman Teeboom

That is the intent.

Chairman Tollner

I know that is what the intent was, but what I am saying is you are shutting out people that would want to come back for whatever reason because they have already been an appointment. The Aldermanic Committee if they didn't like them before they are not going to like them again.

Alderman Williams

My question is to Alderman Teeboom. Before we vote on this I just want to make sure I understand the intent of this section d. Was the intent to always have a fresh supply of new faces on the board?

Alderman Teeboom

The intent was not to have a holdover and to make sure to give the Mayor another shot because he has to make an appointment two months before. For whatever reason the Board of Aldermen does not act we want to make sure that the Mayor makes another appointment. My question is is he going to make the same nominee he is not going to make the same because he didn't make it the first month he will not make it the next ten years.

Alderman Williams

Why don't you change the language to what you just said?

Alderman Teeboom

That was the point to make it a different appointment, a new appointment, a appointment...

Alderman Williams

Another appointment – different, another... if the Chairman is concerned about length of time from taking it verbatim it says if the confirmation is withheld or denied you can assign a timeframe for that – if confirmation is withheld or denied within the last 90 days. I am not suggesting it.

Chairman Tollner

I am going to leave my amendments the way they are and we can vote on all of them and then we can move from there.

Alderman Dion

Mr. Chairman I like the amendments so far except for the one on stipend. This idea of let's wait until budget time and we will take care of it then is not going to happen. You know it and I know it. In the heat of battle in trying to cut the budget and stabilize the tax rate the furthest thing from anybody's mind will be a stipend. Therefore, I will not vote to eliminate the stipend. I would vote to reduce it from \$2,000 to \$1,500 and give \$500 to the alternates and that would cost us the total of \$20,000, which I think is cheap money in order to attract more people. I cannot support the amendments without the stipend.

Alderman Richardson

There is one further change to this document, which had been mentioned earlier but is not in the apparent list of changes, and that is to paragraph b we have the city engineer is a redundant entry which is crossed of and should not appear there at all. I would like that to be expunged. To not only be crossed off, but be expunged out of this ordinance change.

**AMENDED MOTION BY ALDERMAN TOLLNER TO AMEND O-06-59 IN SECTION (B) BY DELETING THE STRUCK OUT WORDS “~~THE CITY ENGINEER~~” ENTIRELY, IN SECTION (C) BY REPLACING “THE MAYOR SHALL APPOINT FIVE (5) ALTERNATE MEMBERS” WITH “THE MAYOR SHALL APPOINT UP TO FIVE (5) BUT NOT LESS THAN THREE (3) ALTERNATE MEMBERS”, IN SECTION (D) BY REPLACING THE WORDS “A NEW” WITH THE WORD “AN” AFTER “THE MAYOR SHALL SUBMIT”, AND IN SECTION (E) BY INSERTING THE WORDS “AND RE-APPOINTMENTS” AFTER THE WORDS “ALL MAYORAL APPOINTMENTS”, BY INSERTING THE WORDS “THE APPROPRIATE” AFTER THE WORDS “INTERVIEWED IN PUBLIC BY”, BY DELETING THE ENTIRETY OF SECTION (F), AND IN THE ANALYSIS, BY DELETING THE LANGUAGE RELATING TO THE STIPEND**

ON THE QUESTION

Alderman Richardson

I further request that we vote on each of these individually.

Chairman Tollner

All of those in favor of voting on them individually say eye. Let's go.

**MOTION BY ALDERMAN TOLLNER TO AMEND O-06-59 IN SECTION (B) BY DELETING THE STRUCK OUT WORDS “~~THE CITY ENGINEER~~” ENTIRELY**

ON THE QUESTION

Alderman McCarthy

I guess I want to be clear as to what the effect of that is.

Chairman Tollner

It is typed in twice so what Alderman Richardson wants to make sure is it is not typed in twice with one crossed out. It is still going to be in there it is just expunging ...

Alderman McCarthy

If we take it out completely then we have removed it. It needs to be in there without a strikethrough to indicate the effects...

Chairman Tollner

It will. We are just taking out the one that – it is in there twice.

Alderman McCarthy

Okay. That is not what I understood the motion to be. The motion from Alderman Richardson was to expunge the one that has the strikethrough.

**MOTION CARRIED**

**MOTION BY ALDERMAN TOLLNER TO AMEND O-06-59 IN SECTION (C) BY REPLACING “THE MAYOR SHALL APPOINT FIVE (5) ALTERNATE MEMBERS” WITH “THE MAYOR SHALL APPOINT UP TO FIVE (5) BUT NOT LESS THAN THREE (3) ALTERNATE MEMBERS”**

**MOTION CARRIED**

**MOTION BY ALDERMAN TOLLNER TO AMEND O-06-59 IN SECTION (D) BY REPLACING THE WORDS “A NEW” WITH THE WORD “AN” AFTER “THE MAYOR SHALL SUBMIT”**  
**MOTION FAILED**

**MOTION BY ALDERMAN WILLIAMS TO AMEND O-06-59 IN SECTION (D) BY REPLACING THE WORD “NEW” WITH THE WORD “DIFFERENT” AFTER “THE MAYOR SHALL SUBMIT A”**

**MOTION CARRIED**

**MOTION BY ALDERMAN TOLLNER TO AMEND O-06-59 IN SECTION (E) BY INSERTING THE WORDS “THE APPROPRIATE” AFTER THE WORDS “INTERVIEWED IN PUBLIC BY”**  
**MOTION CARRIED**

**MOTION BY ALDERMAN TOLLNER TO AMEND O-06-59 BY DELETING THE ENTIRETY OF SECTION (F)**  
**MOTION FAILED**

Alderman Williams

I would concur with an earlier statement I heard from Alderman Dion that I am not sure I want to make it \$2,000 and for every single person. I think there must be some middle ground we could fine. His suggestion of \$1,500 for full members and \$500 for alternates is certainly something worth consideration. I just want to talk about how many members there are that would be alternates – would be 3 or 5 is that right?

Chairman Tollner

Yes.

Alderman Williams

And then full members?

Alderman Teeboom

There are 9 members total on the board plus up to 3-5 alternates.

Alderman Williams

May I direct my question to Alderman LaRose who serves on the board please? Would you please answer how many exactly?

Alderman LaRose

The answer is there are six members of the general public on the Planning Board. The other three members are the Mayor’s representative, the City Engineer, and myself as the Liaison from the Board of Aldermen.

Alderman Williams

So under the idea tossed out by Alderman Dion, \$1,500 times 6 is \$9,000, and then an additional 3-5 people at \$500 each is that right?

Chairman Tollner

After you guys add this up you will be dealing -- when they back the truck up and all of these other committees ask for stipends as well. You will put legislation in and be willing to...

Alderman Williams

What I said was I wanted to discuss it. I am not sure I understand it correctly.

Chairman Tollner

That is exactly what is going to happen.

Alderman Williams

I think this is definitely worth some consideration. I would like to hear what Alderman Teeboom has to say.

Alderman Richardson

Whatever the amount is I think it should be enough to cover the personal expenses that somebody who so kindly volunteers his time and is so civic minded that he is going to be driving around, using his car, using his personal computer, doing mailings, using paper, going to Staples and buying printer cartridges. It should be enough to cover that. Perhaps \$2,000 is more than adequate and should be played down quite a bit, but it should not be zero. I disagree with making it zero. We as Aldermen do this job and to be quite honest with you I didn't even look into whether this job as Alderman paid anything at all. At the time I was running I didn't even care.

It was actually after I won office that I realized it was a paid position. That was not the point. It was nice to know that there are some funds there to cover because I do spend a lot of my funds going and trying to cover these miscellaneous expenses. This is something we should do for any board who puts in as much time and is required to be as aware of the laws as these particular boards, the land use boards, have to be. Definitely I am in favor of making it something – whatever it is agreed upon. Thank you.

Alderman Teeboom

These are quazi judicial boards. They basically act like judge and jury on very important issues. They are required to keep up with the law, a lot of law. They are required to do reviews and look at the sites. They are required to do it. Flag lots – they better take a look at that site. If they don't do it they are not doing their job. The Mayor's appointment now is Mr. Lowe. He is not paid by anybody. Mr. Lowe is a senior. He has been doing this. He ought to get a stipend. It is the 6 members of the citizens, the Mayor's representative, which in this case is also a citizen, but he could be a member of his administration, the City Engineer, but the City Engineer is putting in a lot of extra time in as well. I don't really see to differentiate and pull the three guys out. We are not talking about a huge amount of money.

Chairman Tollner

I am opposed to putting any money in because what are you going to do when the Zoning Board or the Conservation Commission or any of the other boards that come back? It is not a point of not giving anybody money, we just finally moved away from this, and it is not by the way for those of you who think it is only going to be \$18,000 it is not going to be \$18,000 it is going to be \$18,000 times 6 or 7 when these other different boards come in or make a request because they don't have a stipend. When it comes budget time people that are in favor of putting these stipends in I hope you are the ones that make the motions to add the money to the budget.

I am just saying once you make a decision on the stipends here you are opening up Pandora's box, and you are going to have to offer stipends to all of the other different boards or commissions or you should. I shouldn't say you have to. You should.

Alderman McCarthy

In regard to the actual expenses incurred by those boards, it is mostly the driving. There is the time. I don't believe that there is a reason why members of those boards should be engaging in mailings to do with the work that is before them. In fact, a quazi judicial board for them to have communications other than those that come to them in the public hearings is probably a breach of the process and the way it should work. I also don't want to have the possibility of any of the designees who are city employees receiving stipends. I think we have been over that. I don't know for example whether the City Engineer participates in the pension – what pension plan he participates in, but when we pay him an additional stipend to go to the Planning Board that has a long term ramification in that it ups his wages from the city as applied to the pension plan so we are looking at additional expense beyond that.

I agree with you Mr. Chairman. I think if we are going to have this we should have it as a discussion in the budget and not tangle up the ordinances with demanding that a stipend be paid that won't be funded in the budget at some point in the future. If we are going to do that we ought to mandate that it be recorded in the Aldermen's budget so that we will be sure to make sure that it gets appropriated each year.

**MOTION BY ALDERMAN RICHARDSON TO AMEND O-06-59 IN SECTION F TO READ “AN ANNUAL STIPEND OF ONE THOUSAND DOLLARS (\$1,000) SHALL BE PAID TO EVERY CITIZEN APPOINTEE SERVING ON THE PLANNING BOARD.”**

ON THE BOARD

Chairman Tollner

And you will find a way to get that funded?

Alderman Richardson

I have no problem providing some small amount to any quazi judicial board that must be right in their filings and whose judgments need be able to withstand some scrutiny in the courts. I have no problem with that.

Alderman Dion

I have a problem with the City Engineer and the Aldermanic Liaison members on both the Zoning and Planning Boards. I would say they should not receive a stipend.

Chairman Tollner

They are not. That is what this says.

Alderman Dion

Is that part of it?

Chairman Tollner

Yes.

Alderman Dion

How about the alternates?

Alderman Richardson

Citizen appointees.

Alderman Dion

So the alternates would not be getting a stipend?

Alderman Richardson

Citizen appointees – that would be anybody...

Alderman Williams

They would be.

Alderman Dion

So it is not fair for the alternates to get the same as the full-time members.

Alderman Richardson

I don't have a problem with that.

Alderman Teeboom

Can you make that residents instead of citizens because you use the term residents under b.

Alderman Richardson

The concern with residents would be that the Aldermanic representative would get a stipend, the city engineer – if they are a resident they would get it.

Alderman Teeboom

Look at the language in b and c it specifically mentions residents of the city who are appointed.

Chairman Tollner

They are not going to be appointed unless they are a resident so you don't have to put that in there.

Alderman Teeboom

Alderman Richardson was talking just about the 6 appointees correct?

Alderman Richardson

I was talking about citizen appointees. Those who are citizens who are not employees of the city who are not Aldermen who are not working in the city in any capacity other than being an approved appointee by the Mayor.

Alderman Teeboom

What about the alternate to the Mayor?

Alderman Richardson

They are probably a citizen appointee.

Alderman McCarthy

Regard to the Mayor's appointee if the Mayor wants to appoint a citizen he ought to find one who is willing to do it as a volunteer. If he wants to appoint a member of his staff fine. I want to address the issue of alternates because I served as an alternate on the Zoning Board of Adjustment, and at that time being an alternate on the ZBA meant every two weeks sometime between 6:30 and 6:45 p.m. I would get a phone call from the Planning Department saying we are not going to have a quorum can you get down here by 7:00 p.m., and I would do it. That happened enough that I took to just coming down and sitting through the meetings anyway

because that way I could watch them. Frankly I wasn't getting paid for them at the time on the \$25 scale because I was an alternate who was not voting. If you are going to do this you ought to make the people who take the time to get down and sit through the meetings be treated with equal value.

It would offend me to no end if I went there and sat next to someone – if I went as a guarantee that there would be a quorum and found that I was getting paid less because this board thought that position was less important than the person who did show up and was a regular member.

Alderman Deane

Can I make a suggestion to the committee that you take that portion of the ordinance out, and file a separate ordinance associated with compensation for the other land use boards or any other boards in general, and then you can have a full blown discussion on attendance requirements and everything else you can think of under the sun instead of sitting here and beating this around for an hour. I think that would be the most appropriate thing to be doing. Thank you.

Chairman Tollner

I think we heard that about ½ an hour ago. I agree with you. Thank you.

Alderman Williams

It sounded better from this side of the room.

Alderman Richardson

I believe enough business has transpired between the original failed motion and the present time so that you can introduce the same motion.

**MOTION WITHDRAWN**

**MOTION BY ALDERMAN TOLLNER TO AMEND O-06-59 BY DELETING THE ENTIRETY OF SECTION (F)**

**MOTION CARRIED**

**MOTION BY ALDERMAN TOLLNER TO AMEND O-06-59 BY REMOVING THE REFERENCE TO STIPEND IN THE ANALYSIS**

**MOTION CARRIED**

**MOTION BY ALDERMAN TOLLNER TO RECOMMEND FINAL PASSAGE OF O-06-59 AS AMENDED**

**MOTION CARRIED**

**MOTION BY ALDERMAN RICHARDSON TO TAKE FROM THE TABLE THE APPOINTMENT OF SEAN W. DUFFY TO THE ZONING BOARD OF ADJUSTMENT**

**MOTION CARRIED**

Zoning Board of Adjustment

Sean W. Duffy (Re-Appointment) Term to Expire: September 11, 2009  
9 Cheyenne Drive  
Nashua, NH 03063

**MOTION BY ALDERMAN TOLLNER TO RECOMMEND THE CONFIRMATION OF THE RE-APPOINTMENT OF SEAN W. DUFFY TO THE ZONING BOARD OF ADJUSTMENT FOR A TERM EXPIRE TO SEPTEMBER 11, 2009**

ON THE QUESTION

Alderman Dion

Mr. Chairman I will not support that motion. I can give you about 6 reasons why. I will try to be brief. The 5 points of law from the ZBA are not being met. No doubt about it. Alderman Teeboom talked about hardship. Is it a hardship not being able to make more money? That is exactly what it boils down to money most of the time. Spot rezoning and granting variances are out of control. I won't go through the postponement agenda we have already talked about – how the people leave here with a bad taste in their mouth. I won't go through that again.

Chairman Tollner

Alderman Dion can I just stop you for one second?

Alderman Dion

Sure.

Chairman Tollner

I think what you are presenting is issues that you have with the Zoning Board as a whole, the frustrations that you have with the ZBA as a whole.

Alderman Dion

No I am talking on the motion.

Chairman Tollner

Okay so when you are making these comments they are with regard to Mr. Duffy?

Alderman Dion

That is correct.

Chairman Tollner

Maybe what I can do since Alderman Williams wasn't here, and I don't mean to interrupt you, but just to clarify, earlier this evening Alderman Dion asked Mr. Duffy as the Chair why they allowed hearings to be postponed. The fact is it is state law that an applicant who wants...

Alderman Williams

Has the right to a full board...

Chairman Tollner

Right. Mr. Duffy has nothing to do...

Alderman Williams

I am aware of that.

Chairman Tollner

That was one of the things we discussed. What was the first item that you mentioned Alderman Dion?

Alderman Dion

I spoke about postponement of cases before the ZBA.

Chairman Tollner

That is not up to the Chairman. Because he wasn't here I want to make sure we clarify everything. So the Chairman doesn't decide to postpone a meeting. That is the result of state law based upon the applicant's opportunity to have a full board present...

Alderman Dion

But Alderman Teeboom Mr. Chairman brought out the fact that they have bylaws that could be amended and they have never amended them.

Chairman Tollner

No what Alderman Teeboom stated was that they can look at their bylaws. However, he wasn't necessarily in agreement that it was state law. Mr. Duffy says it was state law, and we are going to get Alderman Teeboom a copy of that state law correct?

Alderman Teeboom

No Mr. Duffy is going to get that.

Chairman Tollner

Mr. Duffy is going to get it. I am just saying it is state law. It wasn't the bylaws of the ZBA.

Alderman Deane

We don't know that.

Alderman Teeboom

Let me clarify that.

Chairman Tollner

Hold on a second. We don't know that it is the bylaws of the ZBA that is that policy. Mr. Duffy who has been on the ZBA for a number of years stated that is the state regulations. Now people may not believe it and think they know differently, but let not the committee believe that Mr. Duffy is wrong. Let's give the guy a little bit of credit. He has been on the ZBA for 5 years. He will get us a copy of the state law.

Alderman Teeboom

If he can find it.

Chairman Tollner

If he finds it you can crumple it up and put a little ketchup and mustard on it and people can eat it right?

Alderman Teeboom

Good luck Mr. Chairman.

Alderman Dion

Like St. Thomas I have to see it to believe it. The average people they go to the ZBA and oppose some of these cases and don't have the money to fight this in court. It costs between \$7,000 - \$10,000 to hire a lawyer to get to court. How many people can afford this not knowing whether they are going to win or not. Members of the ZBA know this, and they won't have to worry about court cases. That is why so many of these variances have passed. I have been observing this for several years. Believe me I have been watching this Mr. Chairman. This injustice has to come to an end. The end is changing the composition of these boards, which has been started already with a couple of new members.

There are three pieces of legislation that have been submitted regarding the Planning and

Zoning boards and we just discussed some of them. That is why these changes have been made because of these injustices that have been going on. I can name you just in my Ward the amount of projects that have been approved that are completely out of character with the neighborhoods. 192 Kinsley Street is one. 189 Kinsley Street is another one. Sixty Lake Street I don't know if you saw this Mr. Chairman, but if you go in front of the old International Show Factory and take a look at that mess that was build across there. You can't even sell the apartment. It is still vacant. I think there is one that has been sold. I am talking about Cox Street, about the former Nightingale Nursing Home on Main Street, Wellington Street, Lawndale Street, Sawyer Street – we have had houses moved off of foundations and passed by the ZBA to get another house in there. On Sawyer Street especially there is a garage attached to this house – they granted a variance to bring the garage down to build a house on the lot and even give a variance to boot...

Chairman Tollner

Alderman Dion do you know how Mr. Duffy voted on those?

Alderman Dion

He voted yes.

Chairman Tollner

On all of those?

Alderman Dion

Yes. That is just to name a few. I can't remember them all there have been so many. That is one of the reasons – I should say a dozen of the reasons I am not voting for this re-appointment.

Chairman Tollner

Thank you very much.

Alderman Richardson

We had a lengthy discussion about various subject matter. I am not really sure if I want to go into all of that. I guess one of the things that I would convey is that one of the things that disturbs people the most are these flag lots. It is one of these things where there is no specific person that stands out. Most of these votes were taken in unanimity. There is no person that is kind of leading the pack. There is discussion that happens before they vote. They see their way fit to pass on some of these things that I don't know if it is 20/20 hindsight or whatever, but they turn all bad. What I did is I went through the entire year of 2005 and looked at all of the decisions that were made regarding purely residential zones and where these types of lot line movements and re-arranging to stuff in new houses – flag lots. Substantially I only found about say 3 or 4 of those. I know that Alderman Dion has quite a list here of different places that – I have not specifically looked at these. I don't believe that those fell into the year 2005 that I looked at.

Substantially I believe that a great deal of good judgment was used in the vast majority of cases by all the members of the ZBA. There are always those nagging few that make you wonder what happened. Particularly I cited the case of Ashland Street, which everybody seems to ask me if I have seen it, and I go yes I have seen it. I have mixed feelings about that. Even at that I guess I can't find my way to deny Chairman Duffy re-appointment. I don't see the smoking gun there with regard to the information that I have looked at, but I do reserve the right to change my vote at the full Board upon further investigation. Tonight I will probably be voting for re-appointment.

#### Alderman Williams

It has been some time since Mr. Duffy appeared before us voluntarily without notice. At that time a resident had provided me with some photographs of some flag lots. I had asked him if he could explain them and he couldn't. At that time I found that surprising because I didn't know we had done so many that we couldn't recollect what they looked like. That took me back for a while. Then his name was withdrawn, and now he is back here again. I understand he has been serving for quite some time. It must be something within him that wants to continue to serve under fire. I applaud that. I don't know Mr. Duffy, and I don't know his decisions, but I do know that he is willing to come down here again and speak to us. I think I will go ahead and vote for him.

#### Chairman Tollner

As I stated at the last meeting when we interviewed Mr. Duffy I look at him as a moderate on the ZBA. I fully agree with the concerns that Alderman Dion had stated earlier, and I think most of the Board shares those same concerns about those properties on Kinsley Street and Lake Street, and I have seen them all. I guess as we move forward as a city I guess to ask both the ZBA and the Planning Board to explain to the public when they make their decisions – a lot of times people walk away utterly confused, and a lot of times I think those boards make their decisions based on state law where the board knows that if they were to vote otherwise it would be challenged, the city would go to court, and as someone said tonight in a New York minute the city would lose their case. I think what we need to do moving forward is explain it more effectively to the citizens that come.

I have been to a number of ZBA meetings and I do think they are run effectively. The one thing I would ask the ZBA as well as the Planning Board there has to be some mechanism to require the ZBA members to call in 24 hours ahead to let people know that they cannot attend because I have been to a lot of those meetings – the cell towers is a perfect example – I think that thing was postponed at least 1 or 2 times, and I know how many people came down there that night. I think Alderman Dion and someone else mentioned tonight there has got to be a mechanism where we can communicate to the public 24 hours minimum in advance that we are not going to hear that case that night. To find out about it at 6:30 p.m. or something doesn't do anybody any good. If you are frustrated with the process to begin with and you are charged up – again imagine how you would feel when that issue is important to you and you are told there is not a quorum tonight so we are going to postpone it to the following month. I think the public's perception at times is hey let's postpone it 1-3 times and maybe we will have 100 people the first time then 75 and then by the time we are ready to hear it there will be 20 people, and that is not fair.

Over the years, I think that Mr. Duffy has done a pretty decent job. I don't always agree with his opinions, but I think that is pretty much the way it should be so long as those decisions are based on state law. I will support him.

Alderman McCarthy

I am going to make two sets of comments; one about the process in general that we sort of talked about here, and one set about Mr. Duffy. I won't for a minute contend that I think I am happy with the decisions we get out of our land use process, but I am not sure that those come from any individuals. We have a morass of state law and case law that is often even difficult to find. Bear in mind the case law that is more than about 10 years old at this point has to be researched by going to a law library and looking through volumes and volumes of NH reports. It is tough to find. It is tough to understand that stuff.

It is not on the Internet if it is more than 10 years old. The Supreme Court has put its opinions on the Internet for about the past 10 years. Often what is relief upon is Superior Court precedent from elsewhere in the state, which is not readily available by electronic means either. It is not easy to find. We don't have legal staff that is full time assisting the ZBA in finding those things and often we don't even know whether there is precedent or not that would support or deny our position from other places. What we do need to do is get the process to be better.

One of the things I would propose particularly around things like the flag laws – we ought to get together with the ZBA and have not a witch hunt, but an examination of some of those cases, and what are the factors that lead to them being approved. There are probably things we could be fixing and we are looking at fixing to address some of those things. In some of these cases, and I have sat on the ZBA as a citizen member, I have sat on the Planning Board as the Aldermanic representative, I have sat on this board for years and years looking at these issues from that side. It is complex issues, and it has to do with us getting our master plan in order, us getting our zoning ordinances to match the master plan, us asking for consistent enforcement of those ordinances by the boards. We have had cases in the past where we as members of these boards have urged the ZBA to grant variances, which in my opinion we should actually never do because that is a quasi judicial process. If there are land use things that require Aldermanic intervention that should be by changes to the policies expressed in the ordinances, and we ought to be doing that.

I will talk to Mr. Duffy after this evening about getting a joint session of the Planning & Economic Development Committee and at least the Zoning Board of Adjustment to talk to some of those things with the caveat that I expect the Board not to engage in lambasting members of that board if they will attend that meeting. I would like to have just a factual understanding of things like the flag lot issue. We should not be granting those. Our ordinances prohibit them. There is no reasonable – in most cases there is no reason why they should be granted so let's take a look at that.

With regard to Mr. Duffy, I have known him since he has been serving on our land use boards, and I think that he is a reasonable member who looks at the cases and does diligence on them. If that board is not providing answers that we like then we ought to be understanding the criteria under which those decisions are made and if we can control them we should control them. If it turns out that people are just wildly granting variances then we ought to resort to control of the personnel. I don't think that is the case. I think that we are constrained by things that we have in our control and things that we don't have in our control, and we need to look at those things.

I would also point out Alderman Richardson had asked Mr. Duffy about giving input as to what changes we should make in the ordinance. I just want it to be clear that he has actually done that in the extreme. That when we formed the committee to look at the re-write of the land use ordinances Mr. Duffy participated in that, and was there day after day when that committee met on normal work days from 9-5 during the day Mr. Duffy would come in over and over again and sit through those sessions and offer his expertise in terms of problems that we had with the existing land use code. I think that is exactly what Alderman Richardson had in mind with the legislation that was recently introduced regarding the ZBA. I think here is a case where someone has done exemplary work in feeding back what should be changed in the ordinances. I praise him for that. I am glad that this committee seems willing to re-appoint him to the Zoning Board.

Chairman Tollner

Thank you. Is there any further discussion?

**MOTION CARRIED**

**MOTION BY ALDERMAN TOLLNER TO GO OUT OF THE REGULAR ORDER OF BUSINESS TO TAKE UP O-06-65**

**MOTION CARRIED**

**O-06-65**

Endorser: Alderman-at-Large Fred S. Teeboom

**CLARIFYING THE EX OFFICIO STATUS OF THE PRESIDENT OF THE BOARD OF ALDERMEN**

**MOTION BY ALDERMAN TOLLNER TO RECOMMEND FINAL PASSAGE**

ON THE QUESTION

Chairman Tollner

This is clarifying the status of the President of the Board of Aldermen. Basically after lengthy conversation with Corporation Counsel today, he is very comfortable with this particular piece of legislation, and it is really just tightening up .... **tape flipped** ... Finance Committee and also adds Cable Television Advisory Board as an additional committee. Alderman McCarthy just before you leave, O-06-28, the facilities division, I don't want to keep you here – when can we – after the first of the year or March/April?

Alderman McCarthy

That would be fine. I had asked that a meeting be set up with the School Department and the Parks Dept. to talk about where we were with respect to budgeting, and I have not heard back about scheduling that. I will follow up and see that we do that. I don't think there is any urgency to move forward with the legislation at this point. I think we are doing the process the way it was envisioned.

#### Chairman Tollner

Okay so then you and Alderman Deane will get together with those people and work on it. Then I am getting some questions – I got a call today from someone who didn't even know we had a traffic commission.

#### Alderman McCarthy

I introduced that one because a question got raised about it and it was something I have been meaning to do anyway because I had seen it in the ordinances. We have on the books a traffic commission that is sort of randomly formed that has not met in to the best of my knowledge in more than a decade, and that overlaps the function of both the Infrastructure Committee and the staff. I think it is at this point a legislative dinosaur. There is not reason to have that committee declared that way in the ordinances, and it seems to me like we ought to just expunge that language from the ordinances for now and worry about if we want a different traffic process how we ought to do it.

#### Chairman Tollner

Okay. We will take care of that tonight then. Thank you. Going back to O-06-65, in the conversation that I had with Corporation Counsel today, and we went through the entire legislation, all it is is pretty much housekeeping and for the most part tightening it up. He was very comfortable with it after the conversation I had with him, and I was very comfortable with it.

#### Alderman Teeboom

When I started looking at that, and I talked to Alderman Rootovich saying to him there has to be more to what you do than standing there once or twice a month and looking pretty. There has to be more to your function. As I looked into that Attorney Connell sent me a memo dated October 28, 2002 where he explained what Ex Officio means. It is not defined anywhere in our ordinances. It is not really defined in the Charter either. It just says Ex Officio. Back on October 28, 2002, Attorney Connell – I can make the letter available if you want to – he addressed a whole bunch of stuff in a page in a half. Basically what this does is take that letter and puts that into the form of a code basically on top of 224 before it goes into those committees. I said to him we might as well add the CTAB to it as an extra bonus.

It does say, and you have to understand what this means, the President of the Board has a lot of power. If you look at the paragraph that is underlined, he can come into the committee, he can vote in this committee. Because of the quorum question he counts as a member in counting the quorum because otherwise he would be a body that would not be counted. He adds to the quorum. If you are missing a member – he is not necessarily the Alderman-at-Large that is pro tem. He is not a pro tem member. He is an Ex Officio so he is a member of every committee except for Finance.

He can also be the Chairman of the committee and could walk in and say Alderman Tollner I don't like the way you are chairing this committee – the members of the committee have a challenge in these kind of things. It adds a lot of flavor as I call it to his position. It makes his position have substance. I know that the President of the Board does a lot of stuff that is not written down anywhere. In our case, President Rootovich I think does too much over and above. This is Ex Officio. This is official duty. That is what Ex Officio means official status. If you think this is nice – I like the fact, not because I have any ambition to become President of the Board, but it just helps anybody forward looking to see oh that is my job, and there would be no discussion trying to find a memo from back in 2002 that probably nobody would have known if Attorney Connell hadn't sent it to me – how would they know what Ex Officio means, and that is what is nice about putting this all in the package.

Chairman Tollner

That is exactly what his comments were that this legislation is doing putting it in the package. This legislation doesn't necessarily create new powers for the President it just clarifies it and puts it in a more buttoned up form.

Alderman Teeboom

In code so he can refer to it and we all can.

Alderman Richardson

I have a problem with paragraph c. It says when the standing committee lacks a quorum of members as provided in subsections (a) and (b), any Alderman-at-Large who is present where said meeting is held shall be deemed to be a member of said committee pro-tem for the purposes of establishing a quorum thereof and voting. It doesn't limit the number of Alderman-at-Large. You can have all 6 Alderman-at-Large show up, and they will all be members of the committee.

Chairman Tollner

No. Only the one.

Alderman Richardson

Which one?

Alderman Teeboom

The question is ...

Chairman Tollner

When the meeting starts, if Alderman Deane came in and we were waiting for a quorum, he is the voting member of that committee. If I come in 20 minutes later he is still the one that is going to vote.

Alderman Richardson

We had the meeting tonight; we had Alderman McCarthy and Alderman Deane. Say for instance we didn't have enough for a quorum and we needed one of them to make quorum...

Alderman Dion

First one here would have been...

Chairman Tollner

First one here would have been Alderman Deane.

Alderman Richardson

Which one here was the first one here?

Chairman Tollner

Say they both walked in holding hands, then we would just make a decision prior to the start of the meeting.

Alderman Richardson

It doesn't say that. It doesn't say the person...

Alderman Teeboom

I can help out on this point. If you look at the last struck out sentence on the next page, it said before I did define – in kind of an arbitrary way, which I struck out. If you read the last struck out sentence in C it says members at large who sit for regular members of standing committees shall fill vacancies, shall step down is a regular member arrives, in the order determined by reference to the alphabetical order of their sir name. If Alderman Teeboom walked in and before the meeting started, but much later Alderman Deane walked in he would get taken because his sir name starts with an earlier letter. I didn't like that definition. I thought we could leave it up to the Chairman to pick the Alderman-at-Large. It seems to me it is the Chairman's choice. I took that language out. If you want to specify Chairman's choice that is up to us to define. Right now it doesn't define.

Alderman Deane

I just wanted to state that in my 5 years with coincidental attendance at meetings to be part of a quorum has only happened twice. One was for like a 45 second Human Affairs meeting and another one was a Planning & Economic Development Committee, but it has only happened twice to me in 5 years.

Chairman Tollner

As a matter of fact for that Planning & Economic Development Committee meeting they called me, I was on my way down, they also called Alderman Deane who lives closer to City Hall. They asked me where I was, I said half way down, and they said Alderman Deane had already arrived. I turned around and went home.

Alderman Richardson

Be that as it may, still the wording does not clarify it.

Alderman Teeboom

What I recommend is you take the sentence I struck, which is alphabetical, and create the new sentence in that part.

Chairman Tollner

The Chairman of the committee will decide.

Alderman Richardson

That is kind of addressing it after the fact. I am talking about appointing people in the first place. That belongs back here.

Chairman Tollner

How about this, when a standing committee lacks a quorum of members as provided in subsections (a) and (b), any Alderman-at-Large who is present can be selected by the Chairman of the committee as a pro tem member?

Alderman Richardson

Unfortunately you are baking that in right in the middle of a clause. How about any Alderman-at-Large, chosen by the Chairman of the Committee, who is present for said meeting is held shall be deemed to be ...

**MOTION BY ALDERMAN RICHARDSON TO AMEND O-06-65 IN SECTION (C) BY INSERTING THE WORDS “,CHOSEN BY THE CHAIRMAN OF THE COMMITTEE,” AFTER THE WORDS “ANY ALDERMAN-AT-LARGE”**

**AMENDED MOTION BY ALDERMAN RICHARDSON TO AMEND O-06-65 IN SECTION (C) BY INSERTING THE WORDS “SELECTED BY THE CHAIRMAN OF THE COMMITTEE” AFTER THE WORDS “WHERE SAID MEETING IS HELD”  
MOTION CARRIED**

**MOTION BY ALDERMAN TOLLNER TO RECOMMEND FINAL PASSAGE AS AMENDED  
MOTION CARRIED**

**MOTION BY ALDERMAN TOLLNER TO RETURN TO THE REGULAR ORDER OF  
BUSINESS  
MOTION CARRIED**

**MOTION BY ALDERMAN TOLLNER TO TAKE FROM THE TABLE O-06-44  
MOTION CARRIED**

**O-06-44**

Endorser: Alderman-at-Large Brian S. McCarthy  
**ELIMINATING THE TRAFFIC COMMISSION**

**MOTION BY ALDERMAN TOLLNER TO RECOMMEND INDEFINITE POSTPONEMENT**

ON THE QUESTION

Alderman Deane

Can you please go over your pretense for indefinitely postponing this?

Chairman Tollner

As Alderman McCarthy said .. I don' recall in my 12 or so years the Traffic Commission ever meeting. I couldn't even tell you who is on it. Alderman McCarthy stated that probably shouldn't be in the ordinances.

Alderman Deane

If you are going to eliminate it would you not motion for passage for elimination instead of indefinite postponement?

**MOTION WITHDRAWN**

**MOTION BY ALDERMAN TOLLNER TO RECOMMEND FINAL PASSAGE**

ON THE QUESTION

Alderman Richardson

I guess I don't understand the urgency to simply dump this. I don't know what it hurts by just remaining on the books. It is a good mechanism in the event we ever want to use it to form a

committee to study traffic. We have had notorious developments in the city, which have resulted in our famous one-way system through the downtown, and perhaps we would want to stress that same sort of thing in the future and have a commission to do that. I am not terribly sure that the Infrastructure Committee is so well prepared to concentrate all that much time on that particular issue at any given point in time. They have a lot of business to deal with. Not to usurp the power or the duties of that committee, but having this on the books in the event we ever want to exercise it, I do not see such a problem as it just remaining there.

Chairman Tollner

This probably was in existence when we had I forget the name of the committee, but somewhere around 1993 or '95 for instance we used to have a committee called the Rules and License Committee, which became the Personnel Committee. What we did is we combined Rules & License, Stationary, and something else. The last Chairman of Stationary was Alderman Teeboom.

Alderman Teeboom

We never met.

Chairman Tollner

What we did was we combined those committees. There was a committee years ago and maybe the Alderman to my right can help me, streetlights, lands and buildings and things like that – basically what we decided to do then was to take those 2-3 committees and create the Infrastructure Committee. At that time, one of the things we probably forgot to do was to eliminate the Traffic Commission, which hadn't met. Anything that the Traffic Commission would deal with absolutely would go through the Infrastructure Committee. Is that correct Alderman Dion?

Alderman Dion

Yes.

Alderman LaRose

Alderman Richardson mentioned the one-way system in downtown. I would just remind him that was done when they hired consultants to do it. It wasn't done by the Traffic Commission. It wasn't done by the city perse. They spent money for a traffic consultant to come up with the one-way system.

Alderman Richardson

I appreciate Alderman LaRose's comments about that. My intent in mentioning that was that perhaps we would want to straighten that out and fix it instead of let it remain the way it is – some time in the future.

Alderman Teeboom

It is an Ad Hoc Committee. It is not listed as one of the standing committees.

Alderman Deane

Had we voted on getting the Charter Commission in place they probably could have addressed a lot of these.

**MOTION CARRIED**

**MOTION BY ALDERMAN TOLLNER TO RETURN TO THE REGULAR ORDER OF BUSINESS**

**MOTION CARRIED**

**O-06-64**

Endorser: Alderman-at-Large Fred S. Teeboom

**REFERRING MULTI-YEAR CONTRACTS NOT FUNDED IN SUCCEEDING FISCAL YEARS TO THE BOARD OF ALDERMEN FOR APPROVAL**

**MOTION BY ALDERMAN TOLLNER TO RECOMMEND FINAL PASSAGE**

ON THE QUESTION

Chairman Tollner

I also met with Corporation Counsel on this one. Basically again this just tightens up and eliminates any potential budget deficit in subsequent years, and may encourage multi-year savings otherwise indeterminable. The ordinance states the procedure of referring multi-year contracts not funded in succeeding years to the Board of Aldermen for approval. He looked at this as a good piece of legislation just tightening it up and more or less ... we do it all the time already. This isn't really creating anything new.

Alderman Teeboom

This basically came out of some questions we had at Finance one time about unfounded – contract not funded in our years. I started looking into this. Attorney Connell and I must have exchanged on all of these different things maybe 100 e-mails. At one point I was not his favorite at all. Attorney Clarke also helped. This is good legislation because it further tells the Finance Committee what its parameters are, which right now are not very well defined for outfunded contracts. It is not just contracts it is also obligations. This is for whatever is in reserve. It gives the Finance Committee greater guidance on what they can approve. Now the Board of Aldermen can pick this up and approve anything they wish. I think it says that the Board of Aldermen can override all of this, but the Finance Committee cannot.

**MOTION CARRIED**

**O-06-66**

Endorsers: Alderman-at-Large Fred S. Teeboom  
Alderman-at-Large David W. Deane  
Alderman Mark S. Cookson  
Alderman Robert A. Dion

**DEFINING RECONSIDERATION PROCEDURE**

**MOTION BY ALDERMAN TOLLNER TO RECOMMEND FINAL PASSAGE**

ON THE QUESTION

Chairman Tollner

This would expressly incorporate several positions concerning reconsideration in the Board's ruling. Upon successful motion to reconsider the original vote is cancelled and the matter again is in order for various motions as follows Masons Section 468 – basically what this first bullet is stating is once the successful motion for reconsideration is made everything is back on the table and any motions thereon can be made. After reconsideration, if the measure is amended and passed it is subject to reconsideration. That is implicit, but now in this legislation it would be expressed. The third piece is the committee would be allowed to reconsideration a recommendation on a measure at any time before the full Board votes on the measure and a motion to reconsider may be made by any committee member. This also is consistent with Mason's Manual where it speaks of a committee reconsidering an amendment while it is in its possession.

Let me give you an example – say a committee has a meeting on Thursday night and we made a decision to vote for a piece of legislation. That committee, even though it has already voted to send it to the full Board, they can have another meeting, prior to the next BOA meeting and someone can make a motion for reconsideration in committee, they can bring it back, can change it if they want, and they can vote on it again.

Alderman Deane

That piece of legislation is still hanging in the breeze and is still under the possession of the committee because it has not been brought forward to the full Board. Even though amendments were made and votes were made, that can still be dealt with.

Chairman Tollner

True. This just clarifies it and expresses it in a way where the example I used was there is a meeting on Thursday night and then someone says I have changed my mind, the committee can call a meeting say at 6:30 p.m. the night of the BOA meeting and a member can say I would like to make a motion for reconsideration, make some changes, and then send it along to the full Board. It just clarifies if people in the past thought well once the committee sends it off to the full Board they can't do anything else with it, but they actually can.

Alderman Teeboom

This came out of precisely that point – how long does the committee have possession. This goes strictly according to Masons. The committee first of all has possession of legislation until the Board reads that at the next meeting. I remember this came up last year. In fact, I arranged this with Alderman LaRose. I said Alderman LaRose you can reconsider the contract for CTAB and he said no we cannot, and I in fact very graciously apologized. The reconsideration motion is probably the most complex motion we have in our entire slate. I will tell you Masons is not easy to ready. There are a lot of pages, and a couple of pages of internal conflict. I must have written more e-mails on this piece than any other piece that we are talking about on the agenda tonight.

In committee there is latitude. Any member can make a reconsideration of vote – doesn't matter whether you were in the affirmative or negative. Any member can do it at any time. There is a limit, and that is what the amendment is going to be – the committee has enormous latitude that you don't have at the full Board. The third one is when is something reconsidered – what action do you have if it fails to be reconsidered, what action do you have if it passes reconsideration – if a vote is reconsidered that vote is cancelled. That is a whole new game. As an example, the union contract if that were being reconsidered it would have to be 8 members instead of 7 and it would have to be voted to reconsider to have it come back in – then it is like brand new slate and discussion starts anew. That is an important point. These are fine points, and you have to do a lot of reading in Masons to figure this out. I finally said after reading this thing about 50 times and finally said I am going to write it down.

I would like to capture this point, and we can see later on how to handle it – there were two points remaining after I introduced this that bothered me. One of them was how often can you reconsider – again in Masons one place it says there is no limit and another place it says only once. I have chosen and I will read it to you, but I refer you to Section 457 – you can reconsider once. If you look at the bold face of the page I just handed out, in the first paragraph it tells you that – if a motion to reconsider fails that is it it cannot be reconsidered a second time. I just put some finality otherwise you just keep looping around and looping around and it doesn't help anything as you can see from the last time when the union vote if you could have reconsidered it again think of all of the confusion. This bends it down and says just do it once.

The second one is it defines what reconsideration is. You have to have a decision. You cannot have a tie vote. To reconsider it takes a positive/affirmative vote. Under Item C if you make an amendment if it is substantially a different proposition and you pass it you can reconsider it because it is effectively like a new motion. The word substantial means substantial. You can't just come up and play a trick and say well I think change the word "a" to "an" like we did tonight. Now I can't reconsider that it is not substantial. It has to be a substantial change. Now in the end it will be the definition of whoever comes up with substantial, but if you look in the dictionary what substantial is – in Masons it means a very comprehensive change.

Alderman Deane

I just have one question on that. In Section C you just discussed when you go to Section 457 and look at when a motion has been so changed as to present a substantially different proposition it can be reconsidered again in the new form. What the language states in the ordinance is as a new measure. Why would we deviate from...

Alderman Teeboom

Because I like to stick with the language we use. To us a measure is an ordinance or a resolution. Those are the only two things we deal with as measures. I used the word measure throughout this definition, and would like to stick with the same definition. We don't have to have the words exactly. This is a very complex motion. It is not something you do on a moment's notice.

The last one is that reconsideration in committee is subject to the same rules as the full Board meaning how many times can you reconsider at committee – this says you can only do it once. Again, Masons says you can do it as often as you want to, but it is up to the rules. We have to get to a point where we allow it to be done once. This says at the next meeting not the same meeting. There you are starting to get into wait until Alderman Williams appears and then we will do a reconsideration so we don't want to do any of that. Is that all clear? I don't know how you want to handle it. This would be the amendment to the initial one.

**MOTION BY ALDERMAN TOLLNER TO AMEND O-06-66 WITH THE BOLD FACED COPY PRESENTED TO THE COMMITTEE THIS EVENING  
MOTION CARRIED**

Alderman LaRose

On the D reconsideration in committee, you mention something about well at 6:30 p.m. before the Aldermanic meeting the committee could reconsider. Don't we have to post...

Chairman Tollner

That was a bad example – 24 hours notice.

Alderman Dion

The only question I had is the bottom of the amended version under Section D, reconsideration in committee is subject to the same rules as the full board, except a committee may reconsider its recommendation on a measure at any time before the full Board of Aldermen votes to consider the measure, and reconsideration of a vote may be moved by any member of the committee. I thought it was a member that voted in the affirmative that could...

Chairman Tollner

Not in committee. In committee, anybody can do it. At the full Board you have to be on the prevailing side.

Alderman Deane

If you have some free time on your hands and you go to Chapter 58, Section 632 it explains the committee procedure, less formal, and it is pretty interesting reading. This is almost boilerplate to the way we operate the Budget Committee meetings except for reconsideration vote, but the rest of it is – a lot of latitude, and that is what the committees are about.

Alderman Richardson

The new language inserted in Paragraph D and again we are talking about reconsideration in committee is subject to the same rules as the full board. Where is it said that these are the rules of the full board? It doesn't say that.

Alderman Teeboom

This is it. There are no other rules.

Alderman Deane

There is an NRO in place.

Alderman Richardson

It says reconsideration in committee is subject to the same rules as the full board. Where are the rules for the full board?

Alderman Teeboom

That is A and B and C.

Alderman Richardson

It doesn't say that.

Alderman Teeboom

There is no other location other than Masons Rules that deals with a vote.

Alderman Richardson

It doesn't say that Paragraph A is for the full board. You are implying that now, but it doesn't say that.

Alderman Deane

Section 242.

Alderman Teeboom

We should clarify that.

Chairman Tollner

Reconsideration in the committee is subject to the same rules as the full board as stated in section 242?

Alderman Deane

Aforementioned in A, B, and C.

Alderman Richardson

How about saying no vote shall be reconsidered by the full Board of Aldermen in paragraph A?

Chairman Tollner

It says Board of Aldermen. You don't have to say full Board of Aldermen.

Alderman Richardson

It says full board in paragraph D.

Chairman Tollner

The same rules as the full board. We'll change it on the bottom and just say as the Board of Aldermen.

**MOTION BY ALDERMAN RICHARDSON TO FURTHER AMEND O-06-66 IN PARAGRAPH D BY REPLACING THE WORDS "FULL BOARD" WITH "THE BOARD OF ALDERMEN"**

ON THE QUESTION

Alderman Dion

I am a little persistent on this – on Section D reconsideration in committee is subject to the same rules as the full Board of Aldermen. The full Board of Aldermen says reconsideration can only be made by a member that voted in the affirmative.

Chairman Tollner

Right, but then the word after that it says except.

Alderman Dion

But now they say anybody on the committee can make that motion. Well it is not the same rules as the Board of Aldermen.

Alderman Teeboom

That is what the except is for.

Alderman Dion

It doesn't say except. Yeah afterwards it does.

Chairman Tollner

What this is saying is the same rules apply except that in the committee any committee member can make the motion. If a committee member made the motion that was any committee member say she was on the losing side and it failed, can't bring it back again in committee because the rules are to make a motion for reconsideration once, if it fails you can't do it again.

Alderman Deane

This isn't consistent with Masons though.

Alderman Teeboom

That is consistent with Masons.

Alderman Deane

No it isn't. It says reconsideration in a committee is generally subject to the same rules as in the body. The principal variations are that even when there is time limit on motion to reconsider in the main body a reconsideration can be moved at any time while the matter still remains before the committee. We understand that. Then reconsideration may be moved by any member even though that person was absent when the vote was taken.

Alderman Teeboom

Absent or any member. If Alderman Williams had not been here at the meeting at all he can come back at the next meeting and make a motion to reconsider even though he wasn't there. In the committee you look for maximum flexibility to try to move things along. The idea being that you may do things in haste or just because he was absent does not mean that he shall not be valued. When it goes to the full board the rules are different. I don't think this point has been very well understood in the past.

Alderman Richardson

I guess what I heard Alderman Deane reading was that motion for reconsideration can be made by someone who was absent. I didn't hear the words that somebody on the losing side could make that motion.

Alderman Teeboom

Any member.

Alderman Richardson

You are saying that Masons then does address that?

Alderman Teeboom

Absolutely.

**MOTION CARRIED**

**MOTION BY ALDERMAN TOLLNER TO RECOMMEND FINAL PASSAGE AS AMENDED  
MOTION CARRIED**

**O-06-63**

Endorsers: Alderman-at-Large Fred S. Teeboom

**ESTABLISHING QUORUM FOR THE LAND USE BOARDS**

**MOTION BY ALDERMAN TOLLNER TO RECOMMEND FINAL PASSAGE**

ON THE QUESTION

Chairman Tollner

The basis of this one is that the NRO 16-925 governed the organization meetings, rules of the Planning Board, and RSA 673, 676, and NRO 16-952 governs the Zoning Board of Adjustment. Both the Planning Board and the Zoning Board of Adjustment are charged with the adoption of rules of procedure.

To the Planning Board this ordinance makes it explicit that the quorum rules and other provisions already in state law under RSA: 674:33 III, three affirmative votes are required for a decision in favor of the applicant. The more I think about this based upon some of the comments made earlier this evening by Mr. Duffy, this legislation would be if there were 3 members of the board present they would go ahead with the hearing, and it wouldn't leave it up to the applicant who right now has the choice of having 5 members present.

Alderman Teeboom

Look at rule H of the next page over. Remember there is one for quorum for Planning Board and one for Zoning Board. This is the most significant change we are talking about tonight. Look at Rule H. H says specifically that the ZBA shall make no rule – we prohibit them from making a rule that allows the applicant to require more members than a quorum to be present for a decision of the application. He may withdraw and the question Attorney Connell came up with is there any harm. He can withdraw his application, re-submit his application, file a fee whatever the ZBA decides is the new application fee, and he goes back.

The elemental point here is, and I brought this up to Attorney Connell who went into his research mode to try to find the law, and it says you can ask for 4 members to be present or 5 members to be present. Now the state law says and it says in here too, you need 3 votes to pass a variance. If you have a quorum of 3 you need all 3 to affirm. What happened is, and I

think this is supposed to help the citizens to make it more difficult to get the application passed.

What seems to have happened, and it happened in a number of communities because I will tell you Mr. Duffy came by and dropped off a stack of stuff this thick, it became common practice to say that is not fair to the applicant to ask for 3 members to vote affirmative to his application and if there are only 3 members there it is too hard so we have to give them some additional latitude. We are going to let the applicant decide I can ask for 4 or the applicant can ask for 5 after paying a little filing fee. It is easier to get 3 out of 5 and more difficult to get 3 out of 3.

We found no such citation in state law, and I can guarantee Chairman Tollner the attorney looked for it. He was rather surprised that no one picked up on this. What happens is probably an organization like municipal government comes out, but they didn't mention it here either. There is no mention in this document about the a4 or 5 vote requirement. It is written up in guidelines and guidebooks, but not in the law. The big problem we have is 100 people come in, sit there, and the applicant says I am going to ask for 4 members to be here and everybody goes home mad. This stops that.

#### Chairman Tollner

What about for reasons that Mr. Duffy made earlier this evening that if you go ahead with the 3 you are foregoing your opportunity to appeal. I am not saying you can't do it. You can. Suppose you had a business and you were going before the ZBA, this legislation says they will hear it with three, state law says that if you do hear it with 3 out of the 5 you lose your right to appeal.

#### Alderman Teeboom

Where does it say that?

#### Chairman Tollner

That is the legislation he is going to find for us right?

#### Alderman Teeboom

He is not going to find any such thing. If you wish – this is the most important thing before us because it will structurally change what people have been doing. I got advice from another attorney that specializes in planning and zoning, and after some research on his part he agreed with me. If you wish, if you want to hold this thing, and have Mr. Duffy produce then I will eat my words. Why don't you hold it? It is important for us to make sure that we are doing the right thing.

**MOTION BY ALDERMAN TOLLNER TO HOLD O-06-63  
MOTION CARRIED**

**MOTION BY ALDERMAN RICHARDSON TO ADJOURN  
MOTION FAILED**

**O-06-60**

Endorsers: Alderman Robert A. Dion  
Alderman-at-Large Fred S. Teeboom

**ESTABLISHING APPOINTMENTS TO THE ZONING BOARD OF ADJUSTMENT**

**MOTION BY ALDERMAN TOLLNER TO RECOMMEND FINAL PASSAGE**

ON THE QUESTION

Chairman Tollner

This provision provides that 5 members of the ZBA are appointed in a manner prescribed by the legislative body, provides that the local legislative body may provide up to 5 alternates appointed by the appointing authority under statute and case law. Holdover members of the municipal board serve until successors are qualified in the absence of a provision to the contrary. Currently the appointments to the ZBA are made by the Mayor and they are subject to the Board of Aldermen. This ordinance would make the following substantive changes; appointments would be made by the President of the Board of Aldermen, no member or alternate may serve as a holdover after the expiration of the term, deadlines for appointments and action on confirmation are prescribed, interviews shall be required unless exempted by the board, and stipends for \$2,000 per member or alternate.

**MOTION BY ALDERMAN TOLLNER TO AMEND O-06-60 BY DELETING SECTION H  
MOTION CARRIED**

Chairman Tollner

Basically in a nutshell Alderman Teeboom this legislation takes the appointments that are now the responsibility of the Mayor and moves it to the President of the Board of Aldermen.

Alderman Teeboom

When I looked at the McCoy case it was said these boards ought to coordinate. It seems to me the Mayor makes appointments to the Zoning and Planning boards - to make certain members of a certain stripe appointed to both boards. State law allows no latitude on the Planning Board. The Mayor makes appointments to the Planning Board. The state law allows full latitude on the ZBA and also the building board, which we don't have. I said why not get the President of the Board to make those appointments and we will get a better balance between the boards, a better mix of members. In fact, Alderman Dion had an ordinance in place for membership, and Attorney Connell called me and said why don't you coordinate with Alderman Dion, and the

memorandum for Alderman Dion had a bunch of questions raised by Attorney Connell. He called me and I said I think I have all of these questions all answered. Alderman Dion and I got together and started crafting this language.

What we basically have is something that mimics the Planning Board. There is a lot less because there is a lot less writing in the Planning Board ordinance to start with. Basically mimics the membership, how long they serve, the fact there are no holdovers. The big difference is the President of the Board makes these appointments subject to approval by the Board of Aldermen as opposed to the Mayor making the appointments subject to approval by the Board of Aldermen. It is effective as of 4 weeks following passage to allow for transition.

Alderman Richardson

Through you Mr. Chairman to the sponsor of the legislation – in paragraph b the last sentence – an alternate shall vote in the absence of a member. In paragraph e – the same sentence. Excuse me that is different. My mistake. I thought they said the same thing.

Alderman Teeboom

I should say it is more complexly written in the Planning Board because there is less language to start with.

**MOTION BY ALDERMAN RICHARDSON TO AMEND O-06-60 IN PARAGRAPH G BY INSERTING THE WORDS “AND RE-APPOINTMENTS” AFTER THE WORDS “ALL APPOINTMENTS”  
MOTION CARRIED**

Chairman Tollner

Again the same statement I made the last time – unless exempted by the Board of Aldermen. If the Chairman of Personnel/Administrative Affairs sends the statement out to the Board of Aldermen that ... **tape ended** ...

Alderman Teeboom

... after a concurrence from the full Board. I asked that this be accepted – get the...

Chairman Tollner

An e-mail goes out because we are not planning on bringing in Alderman LaRose to get interviewed for the Planning Board unless I hear from any members by such and such a date with plenty of notice – if you don't then that person is exempted.

Alderman Teeboom

It is not quite the same because you have to get concurrence with the full Board.

Chairman Tollner

But the concurrence is if no one responds to the e-mail and they are in receipt of it, unless I hear otherwise.

Alderman Deane

What if my computer breaks?

Chairman Tollner

We will make sure you get a copy of it in your mailbox. Now the other thing is I understand the intent of the legislation, but if people think that this is going to provide a membership on the ZBA that is more either more neighborhood friendly or more developer friendly it really all depends on the board as well as who is sitting in the corner office. Five years from now you could have someone who at one time served on the Conservation Commission let's say and you could have an elected board that – people should be aware of that.

Alderman Teeboom

Mr. Chairman I look at it as a balance. What if, what ifs – someone sitting in the corner office makes appointments to the Planning Board, we elected a President and that president appoints members to the ZBA. In all cases, the Board of Aldermen has to approve and interview. The appointment starts with the person that is appointing. You can't interview someone that hasn't been appointed. Therein is the big difference.

Chairman Tollner

I guess – this is taking a considerable amount of authority from the Mayor who just like the Board of Aldermen is responsible for the economic engine of the city, but ...

Alderman Teeboom

I would like to make one more point. If it doesn't work it is an ordinance not a Charter change. The Aldermen can come back and change it all back again. I am proposing a change. I am proposing the citizens tell us they don't like what is happening. We cannot change what the courts do. We cannot make these decisions. I am trying to change law to protect the neighborhood and I am stuck in all kinds of paperwork. This I think is an attempt to make change. Will it work I can't guarantee that.

Alderman Dion

I crafted part of this legislation. Alderman Teeboom then joined me, and that is what you see before you. I think it is a good comparison/good balancing point. The Mayor appoints the Planning Board and the President of the Board appoints the ZBA instead of the Mayor appointing everybody. We're dividing it. The other good feature of this legislation is the fact there will be no holdovers. People will be re-appointed on time. If not, re-appointed new

appointments will be immediately done. The holdovers of a year and a half or two years are coming to an end, and that is the part of the legislation I like the best.

Alderman LaRose

I would like an explanation of I.

Alderman Teeboom

That is not a change that is just a numbering change.

Alderman LaRose

You are right. I am sorry.

Chairman Tollner

Basically that is our out to remove them.

Alderman Deane

I too think this is a good piece of legislation, and think it will add a little diversity on the two different boards. It will give the sitting Board of Aldermen when they go to elect a President I think they will hopefully sit down and explain to the two candidates or however many candidates there are what they are looking for. I will also state that I feel if this goes before the full Board and if it does pass I strongly believe the Mayor will exercise his veto power on this one. I think that is going to happen. I think it is good to have a little diversity between the two groups instead of having too much like-mindedness in this area that has long lasting effects on the landscape of the city.

Alderman Richardson

I have to voice my support for this also. I feel that it is extremely important to have the diversity. I don't think this says anything about the present Mayoral appointments. What I think this says is that this is a new tact, this is a new direction, we have found an improved way of creating diverse opinion, and we've got a way of having the appointing bodies, the appointing authority to be diverse and perhaps even as responsive of more responsive to the citizens of the city, which is fundamentally what we want. We want accountability and responsiveness. We accomplish that through the Mayor also, but to a less direct extent.

The Mayor has stated many times that he has trouble finding appointees, finding people willing to serve. Certainly the President of the Board of Aldermen has a number of people that he can call on for resources also. This increases the pool of potential appointees. Certainly with 15 Aldermen we have many sources of appointees that we could volunteer names for. I don't think that we would have trouble finding people willing to serve on land use boards who would be credible candidates. I think this is an exceptionally good piece of legislation. It makes a number of changes otherwise that are very important besides just the appointing power. Principally, when it comes to addressing the timeliness of the appointments and re-appointments. That has been lacking, the requirement thereof has been lacking in the past not

codified. I think that is an extremely good development also.

We have removed the stipend and I think the rest of that is exactly what I have been looking for. Thank you very much.

Chairman Tollner

I am going to vote for this. I think if people are looking for a silver bullet that by passing this legislation we think we are going to find a difference – there isn't. If we really think we are going to find a whole different group of people to serve I don't know how many people on this committee have forwarded names to the Mayor for appointments for the ZBA. Yes we do have 15 people if this legislation passes that will be able to provide names to the President of the Board of Aldermen, but...

Alderman Deane

I have never been asked Alderman Tollner.

Alderman Dion

Neither have I.

Chairman Tollner

I don't know whether people have been asked, but it has been mentioned many a time if anybody has recommendations to submit them to the Mayor's office whether it is this committee or other ones. The only reason I say it is if this legislation passes I still don't think we are going to get busloads of people to serve on this committee. This is a very tough board to be on and you have to dedicate a ton of time to it. That is why you look at people like Mr. Duffy tonight and everybody else that serves on the Zoning and Planning boards that regardless of whether you agree with them they spend a ton of time. There are some people I know for a fact that they go out to look at those sites every single time. Now there are some that never do, and I have a problem with that because if you are going to make a decision that is going to impact the neighborhood you better get out there and go take a look at that site.

Alderman Dion

Just a quick comment – I have to agree with Alderman Richardson. I think with the President of the Board making these appointments it will be a lot easier for the Board of Aldermen, the 14 members of the Board of Aldermen to communicate with the President of the Board that doesn't communicate with the Mayor as far as new appointees are concerned. I think this could be an added asset to a pool of people that would be available.

**MOTION BY ALDERMAN TOLLNER TO RECOMMEND FINAL PASSAGE AS AMENDED  
MOTION CARRIED**

**MOTION BY ALDERMAN TOLLNER TO TAKE FROM THE TABLE O-06-50  
MOTION CARRIED**

**O-06-50**

Endorser: Alderman-at-Large Fred S. Teeboom

**DEFINING VETO PROCEDURE FOLLOWING RECONSIDERATION**

**MOTION BY ALDERMAN TOLLNER TO RECOMMEND FINAL PASSAGE**

ON THE QUESTION

Chairman Tollner

Very simply put this ordinance will clarify procedures applicable to the Board of Aldermen action on vetoed items by specifying that; a) the board may after successful motion for reconsideration table, refer the vetoed item to committee, and preserve the option of veto override, and b) vote on a motion to override whether successful or not may not be reconsidered.

**MOTION BY ALDERMAN TOLLNER TO AMEND O-06-50 BY REPLACING IT WITH THE  
AMENDED VERSION PROVIDED  
MOTION CARRIED**

Alderman Teeboom

The reason it was held in committee if you remember right Alderman Bolton raised a series of questions of what ifs. The simple language we had originally it did not address the what ifs. It turns out this was another complex situation. What we have here is something that tracks very closely to the reconsideration vote we just considered. Again, it tells you what you can do in case you fail to reconsider – you can reconsider one more time. A failed vote to reconsider may be reconsidered again one more time. The motion to reconsider is to take up the veto. That is reconsideration motion. If you fail to take up the veto you can do it one more time.

Chairman Tollner

Are these changes that you went over with Attorney Connell?

Alderman Teeboom

That took a while too because we kept coming up with changes. What you see here is all approved.

Chairman Tollner

For my own sake, conversation I had with him today on this one as well he was comfortable with this ordinance. My question to you is you discussed your amended version with him right?

Alderman Teeboom

Yes, and I have it in writing.

Chairman Tollner

I just want to make sure what he was comfortable with is the amended version we are discussing right now.

Alderman Teeboom

Because of the complexity I wasn't about to do it without him. If it is too complex to deal with you can hold it if you wish.

Chairman Tollner

I spoke with him tonight so I am comfortable with it.

Alderman Richardson

The only question I have about this is paragraph b – the added language stating A failed vote to reconsider may be reconsidered at the next regular meeting of the board, but not following that meeting's adjournment. This is a failed motion to reconsider?

Alderman Teeboom

A failed vote. The motion to reconsider a veto, which is the first item on the agenda following acceptance of the veto, is technically not a reconsideration motion as Masons explains it. Because it is technically not a reconsideration motion if it fails, you don't get the necessary majority vote; you can reconsider that at the next meeting.

Alderman Richardson

If the motion to reconsider fails then the prevailing side is those that voted against it, and they can then make a motion later to reconsider the motion to reconsider.

Alderman Teeboom

Yeah, you are given a second shot at this thing.

Alderman Richardson

So you can reconsider the motion to reconsider?

Alderman Teeboom

Yes because reconsideration of a veto is technically speaking – you reconsider the veto; you have to get it back into the board – that is the motion to reconsider the veto – that is the first motion. If that should fail you have one more shot at it at the next meeting.

Alderman Deane

Like you stated obviously you would have to be voting against it initially to be on the prevailing side to reconsider it at the next meeting.

Alderman Richardson

That is the other thing. Does it say in here that you have to be on the prevailing side?

Alderman Teeboom

Yes under A. Let's take the Zoning Board thing we just went through – it goes to the Mayor and the Mayor is going to veto it – well 5 guys that didn't vote in favor of it and 10 guys did – any of the 10 can vote to reconsider. It is a standard requirement of the full board over reconsideration. If you fail to reconsider you have one more shot at it. If you don't want that you can change that. There is nothing in Masons that says you have to do it this way. I had it in the draft both ways, and finally Connell advised to keep this option. If we decide not to keep that option we can take it out.

Alderman Richardson

I understand what it is saying now, and just wanted to clarify that was your intent. It does seem a little nested, kind of snake's nest. I understand it and I appreciate the fine point there.

Alderman Teeboom

Any reconsideration motion is a complex motion. These two, the one we just talked about and this one are the two most complex motions on our plate.

Alderman Richardson

The only other thing I have a question about in here is you are codifying the requirement to have an affirmative roll call vote. Is that a matter of practicality or is there...

Chairman Tollner

That is how you do it now.

Alderman Richardson

Paragraph D.

Alderman Deane

If the Mayor's veto is overridden by an affirmative roll call – the only way you can count your 10 votes...

Alderman Teeboom

You have to do a roll call.

Alderman Richardson

You can't just have the President say it looks like 10 votes to me?

Chairman Tollner

It has to be documented.

Alderman Deane

You know Mr. Chairman ...

Alderman Richardson

Don't we do that already?

Alderman Deane

That is our fault if we are letting that slide. Mr. Chairman although I am not a member of this committee, I would like to spend some quality time with this and look at different scenarios that may exist, and I would like to be a little more comfortable with it. I like the idea, but I just want to – we just spent – some of us spent some time looking at different angles – this is something that I would like to make sure that we can look at all of the scenarios associated with defining the veto procedure following reconsideration because I think this...

Alderman Teeboom

I think this is pretty solid. I don't mind you saying at 11:30 p.m. dealing with this is not easy. I can understand that.

Alderman Deane

I would rather look through my Masons Manual of Rules.

Chairman Tollner

Alderman Teeboom you have worked with Alderman Bolton on this particular piece of legislation?

Alderman Teeboom

I got initial input from Alderman Bolton, but then when I asked him about how many times can you reconsider, he didn't any longer communicate. I started communicating with Attorney Connell. I did get inputs from him initially like the word reject. It has a thing here from C to amend or reject – I said I have never heard of a reject motion, and he pointed out to be standing here where it says reject in Masons so I put that in.

Chairman Tollner

Could you do me a favor and just forward him a copy of this?

Alderman Teeboom

Absolutely.

Chairman Tollner

We are going to spend some more time and think about it. I am trying to look ahead that if we approve this at our next meeting I don't want to have similar conversations at the full Board of Aldermen meeting.

Alderman Deane

For Attorney Connell?

Chairman Tollner

For Alderman Bolton. Send a copy to Alderman Bolton, he can take a look at it, and maybe provide us with some advice as any other Alderman could, but that way we won't have a number of questions that come up at the full Board when it hits the full Board.

Alderman Teeboom

I will send a copy.

**MOTION BY ALDERMAN TOLLNER TO HOLD O-06-50 AS AMENDED IN COMMITTEE  
MOTION CARRIED**

TABLED IN COMMITTEE

Ordinances

**O-06-28**

Endorsers: Alderman-at-Large Brian S. McCarthy  
Alderman-at-Large David W. Deane

**CREATING A FACILITIES DIVISION AND PROVIDING FOR A PROCESS FOR  
THE EVALUATION AND PERMANENT ESTABLISHMENT OF SAID DIVISION**

**O-06-49**

Endorser: Alderman Daniel Richardson

**DELETING UNENFORCEABLE NON-PUBLIC MEETING PROVISIONS AND URGING  
BOARDS TO INVITE MAYOR AND ALDERMEN TO PARTICIPATE**

PUBLIC COMMENT

Unidentified Speaker

Expressed pleasure with the proposed legislation. Also mentioned how interesting she found it to be in attendance rather than watching the meeting on television. She remarked about seeing an Alderman who did an enormous amount of research and making his conclusion. He also mentioned not hearing any Alderman mention consultation with constituents, a non-member present only until appointment was voted on here as a voice for the appointee. She expressed concern that the Chairman interjected to clarifying issues that could be construed as clarifying for the benefit for Mr. Duffy, and commented on her impression of personal judgments of Aldermen.

DISCUSSION

Alderman Tollner stated his interruption was to clarify a statement made by Alderman Dion. He went on to state the level of effort that goes into acquiring the opinions and concerns of the constituents with regard to issues before the Board.

Alderman Richardson stated his due diligence in gaining the opinions of constituents.

Alderman Williams mentioned receiving input from the previous speaker, and discussed how he came to his own decision on his vote.

ADJOURNMENT

**MOTION BY ALDERMAN DION TO ADJOURN  
MOTION CARRIED**

The meeting was declared closed at 11:48 p.m.

Alderman David MacLaughlin  
Committee Clerk