

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

JULY 2, 2002

A meeting of the Planning and Economic Development Committee was held on Tuesday, July 2, 2002 at 7:42 p.m. in the Aldermanic Chamber

Chairman Brian S. McCarthy presided.

Members of the Committee present: Alderman Scott A. Cote, Vice Chair
Alderman Kevin McAfee
Alderman Timothy B. Nickerson
Alderman Lori Cardin

Also in Attendance: Alderman Marc W. Plamondon
Alderman-at-Large Paula I. Johnson
Mike Lowe, Planning Board Liaison

PRESENTATIONS

- Alan Manoian, Deputy Manager, Downtown Programs gave a presentation on his recent attendance at the Chicago Marketers Boot Camp.

COMMUNICATIONS - None

- UNFINISHED BUSINESS – RESOLUTIONS – None

UNFINISHED BUSINESS – ORDINANCES

O-02-58

Endorsers: Mayor Bernard A. Streeter
Alderman Brian S. McCarthy

AMENDING THE ORDINANCE ESTABLISHING THE CITY INDUSTRIAL DEVELOPMENT AUTHORITY TO APPLY TO “BUSINESS” AS WELL AS “INDUSTRIAL” FACILITIES

MOTION BY ALDERMAN MCAFEE TO RECOMMEND FINAL PASSAGE OF O-02-58

MOTION CARRIED

NEW BUSINESS – RESOLUTIONS - None

NEW BUSINESS – ORDINANCES

O-02-61

Endorser: Alderman Scott A. Cote

AMENDING THE ZONING ORDINANCE TO REGULATE GLARE AND OTHER ADVERSE IMPACTS OF OUTDOOR LIGHTING

Alderman Cote

I will make a couple of motions for a few minor amendments to this legislation, but before I do that I want to take a few minutes to speak to some of the comments that were made during the public hearing portion of this. I would encourage the only speaker who was opposed to the legislation, Mr. Whitney, to get a copy of the legislation before you leave because I think many of the concerns that you had brought up are actually addressed within the legislation, and you need not be concerned.

The intent of the legislation is not only to try to improve the starry sky but it is also to try to improve safety, efficiency, and the overall character of the community. I will get you a copy before you leave. I think many of the concerns that you expressed actually were addressed in there.

Earlier today I had the opportunity to speak to a couple of members of the community who looked at the legislation and generally were pleased by it, and they were member of the development community as well. There were a couple of suggestions that they wanted to make for amendments, and I would like to share those with you. One of the things that we need to do in our legislation is to be as specific as we possibly can so that our planning and enforcement staff can have something that they can actually work with to be able to either manage it or enforce it. One of the areas that was a little bit of concern was that of light trespass, which is under the definitions, which is page 2. As that currently reads now it says “the shining of light produced by a luminaire beyond the boundaries of the property on which it is located” what we want to try to do is define that a little bit further. What we don’t want to happen is we don’t want light from one commercial property to spill over onto another that may find it objectionable. The recommendation that was actually made by a lighting engineer to somebody else to me was to add simply in there that light levels at property lines shall not exceed 0.2 foot candles, which essentially is almost nothing. Light is something that actually is something that is difficult to control, but 0.2 is nothing – but something that you can measure in terms of enforcing that or having some sort of a guideline.

MOTION BY ALDERMAN COTE TO AMEND O-02-61 TO ADD UNDER THE DEFINITION OF LIGHT TRESPASS THE FOLLOWING SENTENCE “LIGHT LEVELS AT PROPERTY LINES SHALL NOT EXCEED 0.2 FOOT CANDLES

ON THE QUESTION

Alderman McCarthy

I like the amendment, however, one of the things that I don't like to do in our ordinances is to put regulatory information in the definitions. I guess I would suggest let's do that for now and think about where to move it.

MOTION CARRIED

MOTION BY ALDERMAN COTE TO FURTHER AMEND O-02-61 UNDER CONTROL OF GLARE – LUMINAIRE DESIGN FACTORS, PARAGRAPH (2) TO STATE “THE MAXIMUM HEIGHT OF THE LUMINAIRE SHALL NOT EXCEED 30 FEET”, AND TO ADD A SENTENCE TO THE END THAT STATES “POLES SHALL NOT EXCEED 25 FEET”

ON THE QUESTION

Alderman Cote

This paragraph specifically deals with essentially the height of the luminaries, which I think the biggest problem that we have with some of the new developments that are out there are those 60 and 80 foot poles that are out there that may even have some cut off lighting, but just the simple fact that they are so high or have fixtures on there that are called acres of light – they are certainly not kidding because you certainly do get acres of light out of that. The suggestion on the last sentence was that the maximum height of the luminaire shall not exceed 25 feet. The luminaire is actually the system itself. It is the pole and the fixture. In talking to people the actual standard height for light poles is 25 feet. When you have a light pole and you add a fixture to it you are already above the 25 foot level, but more importantly in this part of the country we actually take our light poles and put them on usually a 2 or 3 foot concrete pier so that they are protected during snow removal and cars backing into them, etc. The poles themselves will still be 25 feet, but may sit upon a concrete pier and the fixture itself that sits on top of that may yet be another foot.

Alderman Nickerson

Under Exceptions number 6 it also mentions 25 feet. Were you going to deal with that?

Alderman Cote

That should actually be 30 feet. Actually that is fine because that is an exception relative to streetlights. Municipal streetlights are actually exempted from this. For people that are in the audience that don't have a copy of the legislation it just says luminaries used for public street illumination may be installed at a maximum height of 25 feet and may be positioned at that height up to the edge of any bordering property. I think that is still okay.

Alderman Nickerson

Actually I am looking at number 6.

Alderman Cote

That is actually dealing with signs.

Alderman Nickerson

You are okay with that at 25 as well?

Alderman Cote

Yes, because it indicates that it is subject to the restriction of the sign provision of the ordinance.
MOTION CARRIED

MOTION BY ALDERMAN COTE TO FURTHER AMEND O-02-61 UNDER ADMINISTRATION TO ADD A SENTENCE STATING “THE APPLICANT SHALL PROVIDE A SITE PLAN THAT OUTLINES SITE LIGHTING LOCATIONS AND A PHOTOMETRIC PLAN OF THE SITE”

ON THE QUESTION

Alderman Cote

Under administration paragraph h section 1 where it simply reads “The city building permit and other land use applications shall include a statement requiring details of any outdoor lighting” the suggestion was made that if we are going to do this that we should provide our planning staff the mechanism to be able to have something to actually review to make sure it complies because you could certainly stand before the Planning Board now and say we will comply with the ordinance, but not provide you with the documentation to suggest that you are doing that. I wanted to add a sentence to the end of that, and I think it will clear up some of the concerns that you may have had as well – it says the applicant shall provide a site plan that outlines site lighting locations and a photometric plan of the site, which is essentially a site plan that shows what the lumens is supposed to be for each of those fixtures. We currently now require site plans to have pole fixture locations on them and where they will be located. What this will require is actually how much lighting is going to be at those pole locations and where the photometrics of that particular requirement will go.

Does that actually clear up one of the concerns that you had?

Chair McCarthy

Yes, well let’s vote on that and then I will talk about it.

MOTION CARRIED

Chair McCarthy

What I would like to do if you don't have a strong objection is to hold this until our next meeting, and I want to talk about why.

Alderman Cote

Actually it has been referred to the Planning Board, and I am not sure if they have had a chance to look at it yet.

Chair McCarthy

That would be reason number one – we don't have a referral from the Planning Board yet.

Alderman Cote

I wanted to make the amendment to this before it got sent to them.

Chair McCarthy

Our land use consultant will be here at our next meeting, and I think it would be interesting to run it by them and see if they have some ideas for us. I actually absolutely wholeheartedly endorse everything that is in here and more. I want to make sure that we can get this – there were two issues that were brought up – there was one that was brought up tonight of whether we can deal with replacement fixtures as maintenance issue, and I would like to look into that. I also think technically one of the things that you added about the site plan – I would like to figure out where to put that in the site plan regulation as well so that it is listed in the criteria. Also, to add control over hours of operation of lighting. It is kind of interesting that was something we forgot to do in O-02-33, which to be honest was supposed to address lighting and that just didn't happen in that ordinance. One of the things about Maplewood is that although the lighting is offensive to me parts of it get turned off at night – it is never offensive when it is off. Certainly I think we ought to give the Planning Board the ability to say what you ought to do with the lighting when the businesses aren't open, and in addition to what you have already done – I thank you for bringing it in.

The other thing I would like to understand is 1,800 lumens actually seems to me like it is probably fairly bright, and that is the first place where it kicks in. I guess I would like to encourage the members of the committee to also understand – if we could find some lights to understand how bright they are and look at them I might want to reduce that number to make this have more affect.

Alderman Cote

One of the things when you are looking at legislation like this is that you are treading on interesting ground especially if you are not a so called expert in the field, and you have to be relying on other people to tell you what they think is the best thing for your to do. I felt comfortable putting the document forward because it went through the office of state planning so clearly there is some effort involved at the state level that suggests that this is certainly the right way to go. I know now after discussing this afternoon with a couple of people from the community that a lighting engineer has looked at the document, and has indicated that it is a good piece of legislation – that it is putting us in the right direction. I agree that we should really look closely at the replacement end of things and whether or not we can do something there without being too overly restrictive, but I think you can just look yourself over the past year at the significant redevelopment that has occurred along in this community and how influential this document would have been in the redevelopment of – I can think of at least two malls – perhaps others can think of more.

Chair McCarthy

Frankly I dismiss out of hand the notion that it is too late to address this problem.

Alderman Cote

Absolutely.

Chair McCarthy

Tow years ago I could go out to the Main Dunstable Elementary School, and stand on the soccer fields and have a perfectly good view of the sky depending only on the weather conditions. Right now I can't do that. If that set of lights got turned off I would be able to look at it again. It is not too late to fix this. All of the fixtures that we have in place now will not be there in another probably 20 years, and if we're patient about solving problems.

Alderman Johnson

I'm kind of curious here about are we going to be planning on doing the city street lights also eventually that put out a lot of glare – somebody mentioned the south end of town – down on Daniel Webster Highway – there are a lot of lights and glare over there and downtown Nashua. How far do we want this legislation eventually to go? Are we just looking at developers or are we going to be looking at the city also to start changing their lighting to really conform to what we are asking the private developers to do?

Chair McCarthy

I had that same question of why do we want to exempt streetlights.

Alderman Cote

We have to take a few steps forward in time – I think we should look at it and see how it goes. I think whenever you introduce legislation like this you will find one or two projects that will come up over the next couple of months that there is something in here that wasn't addressed properly that you need to change a little bit. I am certainly not opposed to it if it is the right thing to do. To a certain extent I agree with some of what Mr. Whitney had stated when he indicated that you do need to have some minimum levels of lighting in certain areas to provide security and safe passage, and I will be the last one to sit here and confess to you that I know what that is.

Alderman Johnson

I guess when we talk about glares the street lights really put out the glare when you are driving especially at night. At dusk and Dawn it is not too bad, but let's face it when you are driving those streets at night and everything is hitting you and you have the street lights above you that is what is putting out the glare.

Chair McCarthy

There are by the way cut off versions of those overhead fixtures that we use – that pull the bulb back up a little bit and put a flat diffuser on it instead of the round one. It makes it much better.

Alderman Johnson

You still have a lot out there right now. The other thing is when we look up at the skies – I guess they were also talking about Holman Stadium and Stellos' Stadium – those lights put out a lot for the surrounding neighborhoods also. What are we going to be doing about that to direct it more where it needs to be in the stadium versus all over the neighborhood? I am lucky in my neighborhood I can still see the stars. My neighborhood is tucked in more and we don't have any new development there other than Stellos, but we don't have a problem with the lights basically other than the noise. That is another thing that you have to look at. I think the city's lights are about the worst out there. Then again I am lucky that I don't have any new development around us and there is nothing else that they can really put down on West Hollis Street at this point. The landfill saves us I guess.

Alderman McAfee

When would this be retro – when redevelopment would kick in at what point in time – I know we do it with the building codes, electrical, plumbing things like that – at what point in time would a business or even a residence have to change their form of lighting?

Alderman Cote

That would come in with a site plan change.

Alderman McAfee

Lumens I guess I know – I am more familiar with foot candles. Do you know how those crate?

Alderman Cote

It is in the definition. I actually went on to make sure that I understood that as well. A lumen is a unit of lumen flux – a one-foot candle is one lumen per square foot.

Alderman Cardin

I have had some constituents call me about offensive lighting from the automotive village and where it is in such close proximity to the neighbors on South Main Street. This has been an ongoing problem, and I certainly do support this. Even with redevelopment – Mobil stations and the like that are built right up against ...

Chair McCarthy

On the corner of Harbor Avenue where you can read in the middle of the intersection at midnight?

Alderman Cardin

Pretty much. I definitely support this. I don't know a lot about lumens or foot candles, but I know when lighting is offensive to neighbors, and it certainly seems to be happening.

Mike Lowe

I would like to congratulate Mr. Cote. It is well done and well needed. Many years ago I spent a year in Switzerland, and I always marveled at how well the lighting was, but I never could figure out why. The reason why is this is what they do. They do cutoff fixture lighting. I think if we did it – you can see everything, but there is no glare. There is nothing to blind you. I saw it in Switzerland, and I never knew why it was so much better, and tonight I found out why.

Alderman McAfee

Being on the Planning Board we had the Allen Mello dealership come in front of us, and I think the Planning Board had a step up that was leading right down this path because the neighborhood was complaining, and the Planning Board told Mellos that if you could see the point source of light off your property then that is intrusive in the neighborhood and we would like to keep that from happening. F course that was a compromise for the site plan approval. I think the Planning Board gets a lot of this and neighborhoods hear about it as we hear about it from the neighborhoods. I think it is a great piece of legislation.

MOTION BY ALDERMAN COTE TO HOLD O-02-61 IN COMMITTEE PENDING A RECOMMENDATION FROM THE PLANNING BOARD AND SOME ADDITIONAL INFORMATION AT OUR NEXT MEETING
MOTION CARRIED

O-02-65

Endorsers: Alderman Brian S. McCarthy
Alderman-at-Large James R. Tollner
Alderman Kevin McAfee

AMENDING THE ZONING ORDINANCE TO PROHIBIT GROUND AND SURFACE WATER BOTTLING PLANTS IN ALL DISTRICTS

MOTION BY ALDERMAN NICKERSON TO RECOMMEND FINAL PASSAGE PENDING A FAVORABLE RECOMMENDATION FROM THE PLANNING BOARD

ON THE QUESTION

Alderman Cote

I think we are going in the right direction. I was actually surprised when Attorney Prunier got up and spoke that – he started out on the right path because I think he was saying that I don't think you are going to get what you are trying to accomplish. Then he said you will lose the tax revenue. I'm not sure if that was what we were trying to accomplish. I think what we are trying to accomplish is the depletion of our surface and ground water, and to protect that. That is where I thought you were going with it at first. I'm not sure that this is the right thing to do either because certainly our ground and surface water extends far beyond the boundaries of Nashua – it goes into Merrimack and other surrounding communities in that area and they certainly can put a bottling plant up there and draw from it. I think they can put it in a truck and take it across the line as well. I am not sure what else we can do if there is any additional amendments that can be made to prohibit that. Water is a commodity.

Chair McCarthy

There is one feature in there that – it does prohibit – there is an exclusion in there for the water company obviously who already pumps water to existing customers outside of the city, but that also precludes sending the water out of the city with the intent that it be sent to a bottling plant elsewhere. I don't know if that addresses the concern or not. I would like to do more about that if anybody has ideas.

Alderman Johnson

I am a little bit concerned with this piece of legislation too. First of all you can't stop Pennichuck from doing what they are doing because they can always come back and say this is legislation

now, we have been doing it for years.

Chair McCarthy

They have not been bottling water and transporting it outside of the city.

Alderman Johnson

If they were you probably could not stop them.

Chair McCarthy

That is probably correct.

Alderman Johnson

They are a private corporation and for you to try – I would bet you would probably wind up in court. Do we have anybody coming here now that wants to bottle water that we know of?

Alderman Nickerson

There is actually one business in existence off of Amherst Street on the southern end between Amherst Street and the railroad tracks – I think it is Monadnock Spring Water.

Alderman Cote

Don't they bring the water in?

... tape inaudible...

Chair McCarthy

I also believe that we will within the next year have a proposal for a major bottling plant if we don't take action.

Alderman Johnson

Nobody knows what they buy in the bottle of water unless you know what brand it is – your store brand you have no idea – a lot of stores take tap water and put it in a bottle where all they have to do is filter it. I personally don't like Pennichuck water – I filter mine twice and distill it because that is how much I fear what is in the water.

I just don't know if this is the right piece of legislation. I don't mind telling anybody what I do with it. Mr. Lowe assures me it is good water. I keep saying I don't know if it is good water or not, I

take precautions. I just don't know what you are doing if you are really going in the right direction. I think maybe there is a piece missing out of this legislation that needs to be added, and I haven't quite grasped it yet, but it is missing something here.

Chair McCarthy

When we find it I would vote to... Here is my concern. We have a watershed, which at its earliest produced 16 million gallons a day of water, which coincidentally is somewhere around what Nashua consumes on an average day. That watershed due to whatever actions have been taken now produces less than 6 million gallons a day during the summer. What we drink here during the summer is Merrimack River water, which has been pumped up stream and then filtered. I am offended by the idea that we might take water out of the Pennichuck system, which we would do upstream of where the Merrimack water enters the systems by the way and send it off somewhere else, and at the same time we are drinking essentially Manchester sewer affluent. This is a river that 50 times a year untreated sewerage is dumped into the river upstream of us, and there is no plan to fix that. What do we do? We turn off the pumps and we don't pump water out of the river for a couple of days while this stuff floats by. Then we treat the water and send it out to our residents and we say it must be okay. That concept bothers me that we would do that while we don't have adequate water to provide for our own community.

Alderman Johnson

Now you know why I double filter and distill my water. I think this piece of legislation is basically talking here somewhat of what will come in because they are taking it from above – I don't know if this will serve – maybe something else needs to be done. I tend to agree with Attorney Prunier here because I don't know if this is really going to go where we want it to go. I understand what your intent is but I don't know if we are going to get there with this piece of legislation. Maybe it just needs to be done with our state legislators requiring certain regulations of what is coming out of our rivers and what can come into the state to bottle and take out of our previous water supply. Here we sat and talked about everything with Pennichuck Water. For years we saw our watershed going and going and nice beautiful houses sitting on our watershed. Some day they will enjoy the fruit of our water maybe in their basement. The issue is here that it is gone and there is nothing we can do. We have to try to preserve what we have and not have a bottling plant come in here, but I think it is more than just Nashua. I think it is really surrounding towns, and maybe the state legislature that has to come in and enact something here.

Chair McCarthy

I agree that it is the surrounding towns, and one of the things that we have recently done is to found the Pennichuck Watershed Committee, which can help to address the issue with other towns. I would encourage the surrounding towns to adopt similar provisions. This is not a Nashua problem. Water is going to be a problem for every community in the Northeast, every community in the west, and probably every community in the middle within the next 20-25 years. It is something that I think we need to take action on while there is still time to do

something about it.

Alderman Johnson

I think that is why, and I think Mr. Fuller is doing an excellent job with that watershed committee. I think he is really starting to get people involved in that, but I think that they all need to get together and go up to Concord and start getting regulations here on what can be done. One community can't stop everything. It needs all of the surrounding communities to put a halt to this thing and then legislation I think can work here in Nashua, but you need more than just us at this point in time.

Alderman McAfee

What would be the difference between a bottling plant or a heavy intensive user like Corning? You are still taking it out of the stream. Do you regulate the amount of water that a certain corporation can use on a daily, weekly or monthly basis?

Chair McCarthy

I don't know. At some point you may. It is in fact one of the things that we are granted authority over by the state to deal with the burden on public utilities of development. Whether at this point we are in straits that are dire enough that you would do that or not I don't know. I was in fact concerned when the Corning proposal came before us that it did use a lot of water. We have other places that use a lot of water and some that use very little. The point is that we're ultimately – we were going to get significant benefit out of the existence of that plant here as well from its other product and its water use was coincidental to that prosperity that we were generating. You don't get nearly so much out of a plant that is bottling that water. I would also point out that the 250,000 gallons a day or whatever that Corning would have used is actually very small compared to what someone in the water business would use and has a consumption of over 2 million gallons a day.

Mike Lowe

Does this ordinance here protect the existing water company in the city?

Chair McCarthy

Zoning ordinances by nature grandfather any existing usage.

Mike Lowe

That is my only concern that we would lose a viable business within the city.

Chair McCarthy

The existing business would in fact be protected.

MOTION CARRIED

O-02-74

Endorsers: Mayor Bernard A. Streeter
Alderman Brian S. McCarthy
Alderman Scott A. Cote

AMENDING THE FEE SCHEDULES OF THE CITY BUILDING REGULATIONS
AND

AMENDING THE FEES ASSOCIATED WITH SUBDIVISION, SITE PLAN,
REZONING,

SPECIAL EXCEPTION, VARIANCE, CONSERVATION COMMISSION,
HISTORIC

DISTRICT COMMISSION AND LAND USE APPLICATIONS

MOTION BY ALDERMAN COTE TO HOLD IN O-02-74 IN COMMITTEE PENDING
THE PUBLIC HEARING SCHEDULED FOR JULY 16, 2002 AT 7:00 PM IN THE
ALDERMANIC CHAMBER

MOTION CARRIED

DISCUSSION

ADJOURNMENT

MOTION BY ALDERMAN NICKERSON TO ADJOURN

MOTION CARRIED

The meeting was declared adjourned at 8:25 p.m.

Scott A. Cote, Committee
Clerk