

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

JULY 16, 2002

A meeting of the Planning and Economic Development Committee was held on Tuesday, July 16, 2002 at 7:10 p.m. in the Aldermanic Chamber

Chair McCarthy

We are short one member of the Board for the quorum that is required to hold the Public Hearing. Alderman Tollner is on his way down. What I will do is call the regular meeting of the Planning & Economic Development Committee to order, and we will take up the agenda of the committee. Then we will recess for the public hearing when Alderman Tollner arrives.

Chairman Brian S. McCarthy presided.

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

Members Not in Attendance: Alderman Lori Cardin

Also in Attendance: Alderman-at-Large Steven A. Bolton
Alderman-at-Large David W. Deane
Alderman-at-Large Paula I. Johnson
Alderman-at-Large James R. Tollner, arriving at 7:20 p.m.
Mike Lowe, Planning Board Liaison
Kathy Hersh, Division Director, Community Development
Mark White, Land Use Consultant
Mike Santa, Manager, Building Department
Bill Walsh, Building Official, Meredith
Roger Houston, Planning Director

COMMUNICATIONS – None

UNFINISHED BUSINESS – RESOLUTIONS – None

UNFINISHED BUSINESS – ORDINANCES

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 NICKERSON TO HOLD O-02-74 PENDING THE PUBLIC
HEARING
MOTION CARRIED

NEW BUSINESS – RESOLUTIONS – None

NEW BUSINESS – ORDINANCES

O-02-85

Endorser: Mayor Bernard A. Streeter

AMending the language describing flood plain district delineation

MOTION BY ALDERMAN NICKERSON TO HOLD O-02-85 IN COMMITTEE
PENDING THE PUBLIC HEARING SCHEDULED FOR AUGUST 6, 2002 AT 7:00
PM IN THE ALDERMANIC CHAMBER
MOTION CARRIED

MOTION BY ALDERMAN MCAFEE TO TAKE FROM THE TABLE O-02-61
MOTION CARRIED

O-02-61

Endorser: Alderman Scott A. Cote

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

Chair McCarthy

At our last meeting we made some amendments to the ordinance, which are now reflected in the golden rod copy that was attached to this evening's agenda. I had commented at the last meeting that I thought we ought to – there is a reference to site plans in the body of the ordinance, and I had commented that I though we ought to move those criteria into the site plan ordinance itself. The copy that I just handed out is a proposed amendment, which does that. It is substantially the same down to the middle of the fourth page. Form there you will notice there is some strike through text, which is the reference to the site plan. The sections after that add the purpose from the front of the ordinance to the subdivision and site plan purpose section and a requirement in the site plan that the hours of operations, the types, and the photometric plan

be included in the site plan and charge the Planning Board with reviewing the site lighting to be consistent with the purposes expressed in Section 6100.

Alderman Deane

I didn't attend the last meeting, but I had a question. It says for lighting a total allowable illumination of lots located in the city so this basically is lots along parking lots – this doesn't include playing fields, etc.?

Chair McCarthy

Lots refers to subdivided tracts of land so playing fields probably are in fact subject to the ordinance.

Alderman Deane

I saw a section where it said that the poles are not to be any higher than 25-30 feet.

Alderman Cote

On page 2, paragraph 2 there was an amendment that was added on the bottom. It says "The maximum height of the luminaire shall not exceed 30 feet. The pole shall not exceed 25". What that is intended to deal with is that historically in most parking lot areas you have a concrete base that the light pole sits on and that base is below the frost line and certainly above a certain level within the parking lot for snow removal purposes and to prevent somebody from backing into it with an automobile and what have you. Most of the standard pole heights now are roughly 25 feet. We assume that you may have a certain level of a base that will come out of the ground itself with the pole itself on top of that base, and then by the time you add the fixture to the top of the pole you want to be under that 30 foot level.

Alderman Deane

My next question would be where would rectangular or baseball field lighting poles be in this for height because those go anywhere from 60-120 feet I would imagine. How would this ordinance apply to that lighting if it does at all?

Alderman Cote

I don't think it provides for any special exception relating to the ball fields. If there was an additional ball field renovation that was going to go on or a new ball field installation you would have to go to the ZBA or something to ask for a special exception wouldn't you?

Chair McCarthy

No, you – it is not – there is no provision for an exception and you would have to ask for a

variance. We are unlikely to be able to establish cause for variance. I guess perhaps what we want to do then is to add an addition to the exceptions list.

Alderman Deane

I know with some of the products they have out now like the muscular lighting they have those 30 degree angle bulbs and they have the shields that force the light down onto the ground as compared to the old metal or mercury vapors that push the light up.

Alderman Cote

I think the easier solution – if we are going to look for some form of an exception for that – I think everybody needs to understand that some of these ball fields and the lighting on the ball fields can be equally as offensive as anything else that is identified within this ordinance. There needs to be some form of control on that or some form of review process. I don't think what we can do is unilaterally exempt the ball fields from the process. I think I would be inclined to say that if you want to give it some form of an exception that exception would be subject to some sort of review from the Planning Board.

Chair McCarthy

I think that is a reasonable thing to do. You could put under exceptions a – Planning Board may accept public recreation facilities from the provisions of this ordinance at its discretion.

Alderman McAfee

Does the Planning Board have that authority? I didn't think they had authority over ordinances.

Chair McCarthy

If we give it to them they do. They review plans within the scope of the ordinances. If the ordinance gives them discretion then they have it.

Alderman McAfee

The discretion we are giving them is only outdoor athletic fields?

Chair McCarthy

Yes.

Alderman McCarthy

Actually they have some responsibility within this ordinance itself.

Chair McCarthy

Correct.

Alderman Nickerson

You mentioned public recreational facilities. Do we want to just state recreational facilities since there are actually colleges or a private entity that may have some type of club type of facility that we may want to allow them to have lighting on it as well?

Alderman Bolton

I think you have to say more than within the Planning Board's discretion. I think you have to set standards for them to review – unfettered discretion is generally frowned upon as delegation of the legislative authority, which is given to the Board of Aldermen. That having been said I also don't believe it is appropriate that if the voters of this city, if their elected representatives, this Board, the Board of Aldermen, and the Mayor determine that a recreational facility is necessary of a certain type and appropriates the money to provide for it that an un-elected board such as the Planning Board ought to have the right to frustrate that will of the people. I don't think that is the appropriate action to take. If the desire is to make sure that some standards are adhered to then I think that ought to come from and be within the control of the legislative and executive branches of city government rather than delegate it to the Planning Board's review. There is no reason why the Board of Aldermen should take out of its hands the ability to deal with situations such as Holman Stadium and Stellos' Stadium and other needed public facilities. This is our responsibility and we should not be pushing it off on someone else.

Mike Lowe

Wouldn't it be easier just to do a height restriction ... tape inaudible ... you also have public ... tape inaudible ... they have a ball field ... tape inaudible ... it should be sports facilities. Tape inaudible.

Alderman Cote

I just wanted to respond to some of Alderman Bolton's comments. I don't think it is anybody's intention to shirk off legislative responsibility to the Planning Board. I think it is more how do we provide appropriate language in here that will provide some form of review. The Planning Board is the appropriate body to be able to review that sort of thing. What we want to try to do whether it is a recreational facility or any other type of outdoor facility is to make sure that there isn't unreasonable trespass of light into adjacent properties that are there. If we want to get into some very specific details as to what they can do, but it strikes me that during the Planning Board presentation process that there would be a fair amount of information provided in that form that would explain the lighting that is proposed and that it will be in accordance with some

form of a standard that either already exists within the city or exists for athletic fields or something in that regard. I am not sure we can write exactly what that is within this legislation.

Alderman McAfee

I just wanted to speak to Alderman Bolton's remarks, and I think they are right on line and I follow them, but as you mentioned Stellos' Stadium and also the hockey rink – we felt that was a public purpose yet the Planning Board frustrate is the word that you use – how does that fit in, and why aren't your remarks aimed at both of those facilities like Stellos' with the noise. That is the Planning Board's authority.

Alderman Bolton

Actually it is not. Actually that is an ultravarus authority. State law does not even authorize us to delegate that authority to the Planning Board. It so happens that in this city we are conscious of these things and we take the Planning Board's responsibility seriously and actions seriously, but it is what is known as ultravarus. We do not have the state authority to subject public facilities to Planning Board review although we do do that. If challenged that would be in my judgment overturned. The fact is it does apply to these other facilities, and we run the risk in these situations of having the elected representatives as I said before of the people make decisions that will be overturned by people who are un-elected. In their wisdom, in their good judgment and in their honest and heartfelt efforts, but they are not the people that have been elected. They do not represent the representative democracy by which we run city government in the same way that those folks who are elected do. It is not the correct way to do things and this perpetuates something that is not appropriately done. I think Stellos' Stadium is a good example. Before the Board of Aldermen decided to do or not do that public project many, many more people were invited in and considered and given the opportunity to express their opinion on it. At the various Planning Board meetings vocal numbers of people appeared and spoke, but by no means did that represent the will of the community as a whole, which had been expressed to the much more public process that the Board of Aldermen went through.

Alderman Johnson

I just wanted to say that I was one of those vocal people with Stellos' Stadium as a citizen as an elected official at that point. My concern with this when you come down to the sports facilities is if you are going to change it and amend anything I would like to see recreational or recreational use because this way it covers a broad variety. My concern is here that we implement these regulations on people, contractors, but when it comes time for us to do it somehow we shuffle the deck and we ourselves as a city do not follow our own zoning regulations. That is what concerns me. I have said that over and over again with the first paragraph of the zoning book. That we need to abide by our own zoning codes. That is what concerns me, and anybody who has build before it is basically grandfathered in – anything prior to this piece of legislation. We're only talking about new projects coming up. When we talk about glare if you look at our streetlights and what is coming out of Stellos' and Holman Stadiums those are big lights with the

glare. I just want to let everybody know because I know when we had the presentation here the very next gentleman talked about if you look at the sky you can't see the stars. I have been able to see them whether I am in or out of my neighborhood because it is still open – you still have some open land here. Not all of the lights fog everything the way that it was presented to us. I would like to make sure that all recreational facilities are included in that and if we are going to put tough legislation out there that we ourselves as a city start following our own rules and regulations.

Chair McCarthy

I would like to make a suggestion. I think that the purpose Alderman Deane mentioned can be affected by exempting recreational facilities from the pole height regulations but continuing to hold them to the property line illumination regulation.

Alderman Cote

I think that is a good point.

Alderman Deane

Will that be possible?

Chair McCarthy

It ought to be. We ought to be finding lighting that does that.

Alderman Bolton

I picked up another issue. This is sort of a technical drafting standard, but generally speaking you should not put the regulatory language into the definitions. You ought to define things and then put the definition or the regulation in a regulation section.

Chair McCarthy

I made that comment at the last meeting as well.

Alderman Bolton

I would suggest that – one of the things I am hoping is that this great amount of money we are spending to re-write our planning and zoning will result in proper drafting techniques. Rather than add to the burden that they will face we ought to try and put new legislation in that does adhere to that. I would suggest in the definition of Light Trespass, one of two things be done; you either just define light trespass as any light level at the property line exceeding 2/10 foot candles and then somewhere else define light trespass as a violation, or just leave the first

sentence of the definition, which indicates that light trespass is the shining of light beyond the boundary lines and then indicate that light trespass – later on in a regulatory section – at levels beyond 2/10th foot candles is a violation. It very often escapes attention when you insert the regulatory substance in the definition.

Chair McCarthy

I guess I would also point out listening to that, that the regulatory aspect of light level at the property line is not actually reflected in site plan regulations but only in the zoning regulations at the moment.

Alderman McAfee

The light trespass item – do you know if Holman Stadium – if the lights from across the field from right field onto the left field side do you know if that .02 foot candles – have we tested that or is that?

Chair McCarthy

Holman is a big piece of property that is entirely owned by the city. There are a lot of buffers around it.

Alderman McAfee

I know, but again, let's be – Ledge Street...

Chair McCarthy

We haven't tested it, but I suspect that Holman actually meets that standard.

Alderman McAfee

Ledge Street – the basketball courts along with those lightings spilling over into neighbors' properties. It is pretty difficult to light a sports facility with the intensity that you need to at least play the game safely and then maintain that. I think it would be pretty difficult.

Alderman Deane

Do we possess the equipment to check the candlepower?

Chair McCarthy

Probably not at the moment.

Alderman Deane

That is something that you will have to buy. Who will be out at night enforcing the lighting regulations with this device to check the candlepower and what are the fines going to be?

Chair McCarthy

The fines would be derived from the standard fines for violations.

Alderman Cote

I would have to believe that this will probably fall to our code enforcement area and it will be dealt with as complaints come in. I think Alderman Bolton makes a good point, and I think what he is suggesting under the Light Trespass is that if that simply reads "light levels at property lines exceeding .02 foot candles shall be considered light trespass." That makes it better for you?

Alderman Bolton

I guess I would recommend that light trespass be defined as the shining of light produced by a luminaire beyond the boundaries on which it is located at levels exceeding .02-foot candles and then somewhere down under C or D you ought to say somewhere that light trespass is a violation.

Chair McCarthy

You also need a similar reference in the .. Actually what I would like to suggest is that we finish up...

Alderman Bolton

In the site plan regulations it should be site plan shall be designed so as not to permit light trespass.

Chair McCarthy

My suggestion would be that we hold this until our next meeting so that we can do some amendments. Our next meeting is before the next full Board meeting anyway. Let's just make sure we have all of the issues captured.

Alderman Cote

I will speak with Attorney Connell about what he thinks would be appropriate language

concerning the Planning Board's responsibility with this. I think the idea of creating an exception to the pole height for recreational facilities is appropriate because there isn't necessarily restrictions on the amount of light that can be directed or focused within certain areas on the bounds, it is really just the outside glare.

Alderman Bolton

Baseball to somewhat a lesser extent football, and there may be other games as well, but those two particularly and baseball more so you need light at a level far above the field because balls are hit up there and it is not enough to have the ball escape into the darkness and then come back down into the light. The light has to be enough so that a fielder can follow the ball in its entire arc. It is a safety factor. In many stadiums they arc the light up so as to catch the balls because it is high. You have to consider some of that. If someone thinks this is funny they ought not to be there when someone gets hit by a ball falling down from a great height.

Kathy Hersh

Mark White, our land use consultant, is here, and he would be happy to give an overview of lighting ordinances in different communities that he has worked in. That might be helpful if the committee is interested.

Chair McCarthy

I would like to dispose of the public hearing first.

MOTION BY ALDERMAN MCAFEE TO RECESS AT 7:36 P.M.
MOTION CARRIED

Chair McCarthy called the committee back to order at 7:51 p.m.

Mark White

First of all I will give you a couple of I think items of overview and considerations to keep in mind when you are drafting the ordinance. I have a lot of resources and information from agencies such as the International Dark Sky Organization, which has published a lot of very good information on its website about lighting ordinances just so that you have some guidelines to consider as you are preparing this because the staff will have to administer this and applicants will have to live with it. If it is not done right it can be awfully burdensome for staff as well. I think somebody pointed out that you may need a meter or equipment to measure the intensity of light under this ordinance. First of all I don't think that you have that equipment today, and second of all somebody will have to be trained to operate it. From what I have read – I am not a lighting engineer – that is probably not a simple a task as a lot of people think it might be.

Alderman Cote

This wasn't just thrown together.

Mark White

I am not suggesting that it was.

Alderman Cote

It also doesn't require brain surgery to operate a light meter either. The Office of State Planning put together a model of a lighting ordinance, and that is what this ordinance follows. We have a couple of issues that have come up concerning some ball fields and so forth and we have had some discussions with some local developers and engineers associated with this, and they feel it is good legislation. I don't want you to sit here with the impression or leave the impression with our viewing audience this evening that there wasn't an effort in terms of creating a model that is appropriate and is balanced. This was put together by the Office of State Planning of New Hampshire.

Mark White

I am not suggestion that it was thrown together. I am just throwing out some ideas that I would suggest. I have been asked my opinion about the ordinance so I am giving it to you about things that I would urge you to consider and you can do what you want with them. I have provided information to staff as well. One of the recommendations of the IDA and also of the International Commission on Illumination, which is matters that light levels distinguish different areas of the city. One of my first reactions when I read the ordinance is it seems to have a one size fits all approach for the entire city. This city is very diverse in terms of its environment and they have a number of zones ranging from places such as your rural areas that are usually dark at night to places like downtown that might want different levels of illumination and where different levels of illumination are appropriate. The second is – and this is based on their recommendations – to create design flexibility. They have a lumens per acre cap that they suggest, which would eliminate the need for even light meters because you can base that on the aluminates specifications that the manufacturer provides with the lights. A third is – and this is the way some ordinances are drafted – it is not something that you need to do, but an idea – is basing the requirements on the types of lamps. For example, in a low pressure sodium lamps are a lot less intense than other types of lamps so might not need the same types of shielding requirements. We have also written ordinances that base whether a light has to be fully shielded, partially shielded or just filtered on the types of lamps as well. So low-pressure sodium lamp wouldn't need any shielding or filtering because the intensity is inherently low.

I concur with the comment – just some specifics about the ordinance. I would point out that there are some regulatory language in the definitions, which makes it difficult to find them. Also the IDA recommends against limits – also suggests that you carefully consider whether you want to have a limit on the height of poles. When you limit the height of poles landowners often

compensate by providing more light poles. You can actually end up with a lot more light clutter than you would have had if you allowed several tall lights. That is something to think about as well to avoid unintended consequences. Also I would suggest that perhaps more specificity be put in the ordinance in terms of what types of things had to be included with the application. For example, there is a requirement that the applicant submits a photometric plan, but there is no guidance as to what has to be in a photometric print. I don't think that is something that most people understand. A lot of engineers don't even prepare photometric plans on a customary basis. The ordinance might be improved by having some guidance as to what the contents of that type of plan would be.

Those are just my thoughts and reactions to the ordinance. I do know that the Office of State Planning produced the model ordinance. I have read it and looked at it, but those are some issues that might come up as the ordinance is administered. Thank you for your time and consideration.

Chair McCarthy

Thank you.

Alderman Bolton

I would just point out that one of the problems in relying on a draft by the Office of State Planning is they are not drafting for our specific situation where we try and subject municipal projects to this kind of regulatory review. They would be assuming that those were exempt from regulation.

MOTION BY ALDERMAN COTE TO HOLD O-02-61 IN COMMITTEE
MOTION CARRIED

MOTION BY ALDERMAN MCAFEE TO TAKE FROM THE TABLE O-02-74
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

Chair McCarthy

We had some questions about fees that we were going to put off until the committee discussion. Now would be the time for them.

Alderman McAfee

Following along the same idea as Alderman Deane proposed building this fee structure out of costs of operation – Was there any thought put into – I guess I am assuming this is one fee scheduled for commercial operations as well as residential.

Kathy Hersh

Yes.

Alderman McAfee

Businesses that operate say home builders or big mall developers the cost of their electrical inspection will be the same as my next door neighbor who is putting in a bathroom – needs building and electrical inspection – those would be the same?

Kathy Hersh

Except that what happens is there are numerous – when you have a larger project there are numerous inspections that are – for one thing if you have a bathroom you may end up with one electrical inspection in a residential.

Alderman Cote

It is by device.

Alderman McAfee

I understand. It is just that you have residential people that are going to be impacted by this increase in fees where they are already taxpayers where the city is supposed to be providing services at the lowest cost possible. It is almost hitting them double. If you could prove me wrong I would appreciate that.

Kathy Hersh

I wouldn't prove you right or wrong, but I would state that certainly all of the property owners whether they own residential, commercial, or industrial properties are all paying taxes and are all taxpayers. It is really a policy decision of this Board how much you want to charge as part of fees, but there is a cost to delivering the services and the cost is either bourn by the people who

pay the fees – the applicants or by the taxpayers. It is providing the service that is being asked to be provided in order to make sure that the buildings are safe, etc. It is really a policy decision in most ways about how you want to allocate those costs for providing the inspections and the permitting that we need to make sure that our buildings are safe.

Alderman McAfee

I agree and I am in favor of increasing the fees because they have been low for long enough, but I see that distinction where that homeowner who is already paying taxes and some say they are paying more than they deserve others not, and you have people that are operating commercial businesses that might be paying taxes, might be a new development from an out of town company that is putting up a shopping mall or even a housing development. Why should those two fees be equal?

Alderman Cote

They are not. For example for a commercial project that the medical center might be engaged in the fee structure for example for the electrical inspection will be – the electrical permit will be based on one a set fee and then the bottom line calculation of the total cost of that permit will be based on the number of devices that are put in there so if I am putting in a 20,000 sq. ft. addition on to a major building and am adding 100 outlets, at \$3 an outlet you can figure out what the cost of the permit will be, but if I am building a home with 40 outlets you can figure out what that will be. The fee structure in here is really by unit and is prorated based on the size of the project and the number of inspections that are required. That is what makes it I think a little bit more equal.

Alderman McAfee

Thank you.

Kathy Hersh

Can I invite other members of my staff to come up because they are dealing with this on a daily basis. They may be able to answer these questions a little more clearly.

Chair McCarthy

Sure. I would be happy to have them join us.

Mike Lowe

What I have is a letter from the Planning Board, which doesn't have the fee structures in it. I don't have that.

Alderman Deane

I have a general question on fire alarm systems. My question is since this is a life safety code issue doesn't this fall under the jurisdiction of the Fire Department except for the power that actually feeds the panel in a commercial application?

Mike Santa

Basically the Fire Marshall is regulating and determining his own fees at this point, but we reviewed this change with him because it has always been part of our fee schedule, and he concurred that was an appropriate change.

Alderman Deane

When you go to install one of these systems the plans have to be approved by the Fire Marshall's office and the permitting is done through the Fire Marshall's office and the inspections are done by the Fire Marshall's office as well so the only thing your department will do is to make sure that the power that feeds the enunciator panel is fed properly and after that...

Mike Santa

Don't get me wrong, these costs are taken in by the Fire Department. It goes into their budget. A year or two ago we used to collect all of their fees and issue all of their permits, but they have moved over to Conant Road now and have set up their own cash receipt system. They get all of that money. That money goes to them.

Alderman Deane

In these applications the base fee is 20 and then it is \$.65 per sprinkler head and then a CO2 dry chemical foam system is \$40. Does that include the fire suppression in the kitchen as well or is that just – is there another?

Mike Santa

We have our own fees in the mechanical section of the ordinance that deal with some of the hoods that you are asking about. These are just the system that we go in as a fire suppression system within the hood.

Alderman Deane

This has to be inspected by the Fire Department as well and you. Bruce would inspect these exhausts systems as well as the Fire Department.

Mike Santa

Yes he would.

Alderman Deane

There are two different inspectors going out there, but there is only one charge. Same with the fire panel – there are two different parts of the city that – your department and the Fire Department going out to do inspections, but there is only one charge. If the Fire Department disagrees with what you have approved are they the ones that have the final say?

Mike Santa

Well we work cooperatively. They are really looking at different aspects of the systems. We may as you alluded to originally look at the service to the panel, but then they are looking from the panel to all of the alarm devices. We are using different expertise.

Alderman Deane

On their plan review, it would seem to me that some of the Fire Department items should be done separately. That is just my opinion.

Mike Santa

They do their plan review separately. They don't happen to have any fee for that, but that is something that I think Mike Vacarro will be looking at. Right now the only fees that they are charging are for these fire suppression systems and alarm systems.

Alderman Deane

If I bring a commercial set of plans in your department doesn't even look at the fire alarm or sprinkler system.

Mike Santa

We look at it to a point, but they look at it in detail. We look at it for whether it is required or not then they look at it as to the actual details of the system.

Alderman Deane

Same with the digress signs and – all of the life safety code things should be separated from this. The Fire Department in my estimation carries the big stick – if you don't meet the life safety codes you don't get an occupancy permit right?

Mike Santa

And if you don't meet the building code you don't get an occupancy permit so ..

Alderman Deane

Yeah, but when you get to the end the Fire Department has the final say.

Mike Santa

No. It is a cooperative effort. It is an accumulation of approvals that allows the CO to be issued. We can't issue a CO to a restaurant that isn't approved by the Health Department. We can't issue a CO if the Planning & Zoning Department haven't signed off. I can't say that one department holds more weight than another.

Alderman Deane

A lot of this I agree with, but I think the items that pertain to life safety or with the Fire Department should be done separately. I think it is – not that you run inspections or whatever – it seems – how did you derive these figures if they are the ones doing the inspections? We had to deal with the Fire Department and there was one guy that goes out and does all of this stuff and that one guy was being retrained at a seminar to get his accreditations up, which by law he is required to do, and there was nobody left to do the job. We waited for a while. I don't know how you come across that fee structure without ...

Mike Santa

If you don't mind I will ask Bill Walsh to come up because he actually had the conversation with the Fire Marshall regarding his fees. Again, his fees have always been in our ordinance. It isn't until recently that they have actually collected it and used it – basically taken into the general fund through their department.

Bill Walsh

The Board of Aldermen may recall that when it adopted the 200 Building Code there was an amendment. That amendment, at the request of the Fire Department, was to share jurisdiction with Article 9 between the Building Department and the Fire Department – the building official and the fire official. The life safety code formerly in the '40s known as the building exits code. It is not a building code. When one considers that more than 50% of the content of the building code is directed towards things related to fire safety then one understands that Article 9, various sections of the code particularly to the structural aspect of fire resistance, fire walls, etc., which are in other places besides Article 9 -- Article 9 I should recap are fire protection systems. The

building code sets the requirement for when you shall have a sprinkler system, a standpipe, a fire alarm system whether it be automatic, manual, etc., therefore, we gave this joint jurisdiction to the Fire Department so that the Fire Marshall could actually implement and administrate the enforcement of the specific standards referenced by the code for the installation and operation – the nuts and bolts of sprinkler systems, etc. You see this is truly a cooperative thing.

The reason you will find and you have for many years because I am sure from the beginning found the fees for these particular systems to be present in the building code ordinance is because the requirements and much of the definition of terms also lives there. It is appropriate for them to be there. The Fire Marshall may quite probably – I know that he is giving consideration to looking at the full range of their services with respect to fees and I think such things go far beyond this handful. Things that happen to be at home in the building code defined and implemented there. If there are any further questions I would be happy to go on a little more.

Alderman Deane

Thank you.

Mike Lowe

Is the surcharge new? Is that a new fee? It is at the bottom of almost every page - \$250.00 it says.

Bill Walsh

No, it is not a new fee?

Mike Lowe

It is on the books now?

Bill Walsh

It is on the books and it is for the last ten years has been on the books with a maximum, which is no more than 1 day's fine would be. You see it having been changed – the fact that it now is \$250 – I don't think that there really is any change in there, but we have raised that because fines have been changed in the State of New Hampshire.

Alderman Cote

We should define that as being more than a surcharge. It is a surcharge levied against individuals who have started work without a permit.

Bill Walsh

I don't think the surcharge should exceed a fine.

Alderman Cote

We should define what a surcharge is. It shouldn't be considered just as an additional charge.

Kathy Hersh

I think it does define it.

Alderman Cote

For the viewing public we are calling it just a surcharge.

Bill Walsh

A surcharge is to recapture the additional costs of having to deal with construction, which has begun without a building permit.

Alderman Cote

Perfect.

Chair McCarthy

Could you go over the area that requires amendment to the sign permit fees?

Kathy Hersh

The fees for the signs are both in the beginning section and under where the building permit fee schedule is – No. 7, and they also are in – if you look in our current ordinances you will see that this is the way that the situation is now – they are also if you follow to page #13 under administration, chapter 16, there are fees for signs noted there as well. Those fees should have been updated to the same fee increases as in the building permit fee section.

Chair McCarthy

I just noticed they are not broken down the same way. The ones that are in the building permit go 50 sq. ft., 350 sq. ft. The ones that are in the zoning ordinance are 50 and 150.

Bill Walsh

Let me say that – I think we have all easily over the years found rather easily without much trouble where these fees lived and they have lived in our building permit fee schedule. The truth is that they are also in the planning ordinances but I don't think staff on a day-to-day basis took much cognizance of that. I know that when I updated the building permit – when I recommended updating the building permit fees in 1994, I was unaware of the existence of a reiteration of sign permit fees. In fact I don't think I have been aware of it until this year. I neglected it in 1987 and I neglected it in 1990 and in 1994 because I didn't know it was there. What the planners did was under their charge from their manager to look at the fees that were found in the articles which they administer and they dutifully did so, but they were unbeknownst to them out of date. What I would recommend to secure the intent would be to take the fees for signs as it appears on item 7 on your page 3 and transfer that verbatim to section 16-483, Section C and so on. That will secure the intent.

Chair McCarthy

I actually have a slightly different suggestion, which would be that in the building permit fee schedule we ought to change the sizes to be 50 sq. ft. or less, 51-149 sq. ft., 150 sq. ft. and over and that in 16-483 we simply change it to read fee calculated per sign in accordance with the fee schedule set forth in the building regulations so that we don't run into that problem in the future and we only have them in one place. I think that we actually should adopt the size breakdowns that are in the zoning ordinance because those are actually tied to some limits that are in the zoning ordinance that are significant on signage at 150 sq. ft.

Roger Houston

One of the concerns we had about keeping them in the BOCA code was that if you wanted to get a sign permit you go to the zoning ordinance to the sign section you want to know what the fee is there. You aren't going to go to the building code and look for it there. What has happened in the past is the building clerks have been applying the fee, the fee is then in the building code so they have been applying that fee and not the fee in the sign ordinance. The fee has been in two different places. The planning fees and the sign fees were proposed to be amended in 1994 as well. The Aldermen had decided at that point in time not to increase those fees. They increased the Building Department fees at that point in time but not the planning fees. The last time the planning fees and the sign fees technically ... tape flipped ...

Chair McCarthy

Have it in the planning section and not in the building code section then?

Bill Walsh

In the planning sections – this is ease for use by anyone wanting to get a sign permit – they want to know what it costs especially the smaller businesses.

Chair McCarthy

I guess I'm concerned that having it in two places invites those two places to become disparate and in fact that is what has happened.

Alderman McAfee

I don't think that the ordinances have been rewritten since I was on zoning, but why would you have a fee for a sign that is not permitted – 150 sq. ft. sign is the maximum permitted. Is that not correct?

Bill Walsh

That is correct, but the Zoning Board of Adjustment does approve variances over a certain size.

Alderman McAfee

Right, and the cost of obtaining that permit shouldn't it be listed in here to apply in front of the Zoning Board – how much does that cost?

Bill Walsh

What to apply before the Zoning Board for a variance?

Alderman McAfee

Right.

Bill Walsh

That is included in the fee schedule. That is a different action. That is a request before the Zoning Board for a variance, but a sign permit is actually the permit for the sign itself – to review it for conformance to the sign code. Obviously if the sign is not in conformance then it has to go for a variance.

Alderman McAfee

If I were just a resident or a businessman that walked in and wanted to look at the schedule and I wanted a 200 sq. ft. sign and I looked at the sign ordinance or the sign fee structure I would be let to believe that to calculate the cost of that because it is in the schedule not knowing I have to go in front of the Zoning Board.

Bill Walsh

The sign ordinance itself limits the size of the sign that you have. Usually in those situations it is a sign company applying for the permit. If it is not and it is an individual then they usually call directly the Deputy Manager for Zoning or the Zoning Clerk may have the information and can tell them what those limits are so that – I don't think that has ever occurred.

Chair McCarthy

Why would it then not look at the permit fees for buildings and conclude since the price is given for square foot that I can cover a lot with a structure if I wanted to if I pay the right fee? The fees are separate from the regulations on what we can and cannot do.

Alderman McAfee

Okay.

Alderman Bolton

I am not sure if it is made entirely clear why it matters which section these fees are in. The Zoning and Planning ordinances are routinely separately published in a small booklet. The building code fee ordinance is usually reproduced and given out when people purchase copies of the BOCA code the international building code or whatever we are selling now so that someone who is trying to figure out what is applicable to them may have one and not the other and if there are references from one to the other not everyone has the big black book that we all have that would enable you to do that. Wherever it is put in when there are these reproductions of separate sections where there are these references there ought to be an effort to provide those tables that are referenced from one section to the other. I think that is somewhat the reason why it was put in both at one time so it would capture in bulk.

Kathy Hersh

I was going to reiterate what he said, and that is why it ended up probably in both although clearly Alderman McCarthy's concern about it becoming different.

Alderman Bolton

When it changes and it is only changed in one you have made the problem worse not better.

Chair McCarthy

You have to figure out by what size your sign is which schedule you are better off using. We are also awaiting an opinion from the Planning Board so I would look for a motion to hold pending the Planning Board recommendation.

MOTION BY ALDERMAN NICKERSON TO HOLD R-02-74 IN COMMITTEE
PENDING THE ACTION OF THE NASHUA CITY PLANNING BOARD
MOTION CARRIED

-
Alderman Deane

I had a question for Mr. Lowe. Didn't the Planning Board review some of these last week?

Mike Lowe

Yes.

Alderman Deane

This wasn't one of them?

Mike Lowe

We tabled O-02-74, we passed O-02-85, and we passed O-02-61 as amended.

DISCUSSION

Chair McCarthy

Can we get an update on the land use regulation re-write?

Roger Houston

As you know Mark White is here. This is his second trip. He is meeting with the advisory committee tomorrow morning. He has had some one-on-one discussions with some local land use attorneys and consultants today that has taken up most of his time. He has visited some sites and is still in his information gathering stage, and hopefully will have a very productive meeting tomorrow morning. We have the group showing at 8:30 a.m., and if anyone cares to join us you are welcome.

ADJOURNMENT

MOTION BY ALDERMAN NICKERSON TO ADJOURN
MOTION CARRIED

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

Scott A. Cote, Committee
Clerk

