

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

MAY 6, 2003

A meeting of the Planning and Economic Development Committee was held on Tuesday, May 6, 2003 at 7:35 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 Lori Cardin
Alderman Timothy B. Nickerson

Members Not in Attendance:

Also in Attendance: Alderman-at-Large David Rootovich
Alderman-at-Large Steven A. Bolton
Alderman-at-Large Paula I. Johnson
Mike Lowe, Planning Board Liaison

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COMMUNICATIONS – None

UNFINISHED BUSINESS - RESOLUTIONS – None

UNFINISHED BUSINESS – ORDINANCES

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O-03-155

Endorser: Alderman Brian S. McCarthy
REPEALING CERTAIN PROVISIONS OF THE WATER SUPPLY
PROTECTION DISTRICT

Chair McCarthy

I don't know where we want to go with this. I want to respond to a couple of things first of all. The reasoning behind this is that I don't believe that we are giving our water supply adequate protection, possibly that some of the surrounding communities where we purport to want to buy water supply protection lands and take them off of their tax rolls have pointed this out to us in no uncertain terms since we started the effort to acquire Pennichuck Water Works. You heard some testimony about some of the sites on there notably Wendy's. About a month and a half/two months ago Wendy's was once again cited for plowing untreated snow and waste from the parking lot over the fence and into the wetlands that your drinking water is brought from. If you

go out there today you will find that they have again replaced the fence this spring in recognition of that citation.

Mr. Kerouac's site has had numerous problems. The compost material that is stored in the buffer is not allowed by the terms of the ordinance right now without the amendment. That is a non-conforming grand fathered use, which I understand is anticipated to be continued with amendments to the site plan, which frankly there is no jurisdiction to do that. We have had no end of problems with the way that is done. Susaki recommended that nothing be done within 150 feet of those wetlands – that the effects of groundwater transit at 150 feet provided reasonable protection, and yet not a single site that has been developed on that since that ordinance passed has honored the 150 foot buffer that is there for good and scientific purpose. The exclusion was put in there so that when sites had a problematic development there was an escape to deal with what needed to be done and provided for a mechanism to do that. They have been used that way in a couple of cases, notably the medical center site on Northwest Boulevard. In other places, it has just been interpreted as by right I can put parking lots up to 75 feet away from the water, which is exactly what they were able to do essentially under the previous – prior to the protection ordinance being passed. There is a prime wetland with a 75-foot buffer around it to begin with so the net effect was no effect. This is certainly not what I had signed up for when I offered that amendment as a compromise on the original water supply protection district. I had intended that it be used as a special exception.

One possibility for an amendment is to change it to a special exception and to numerated criteria so that it has to go to the Zoning Board first. One of the things we had done was to put it in as essentially a conditional exception that can be granted by the Planning Board so that the application process is easier -- in the process of approving site plan that can be done. I have to repeat something I said to the Planning Board the other night – that is one of the things we have done all over the place in the new zoning ordinances was to streamline the process by taking things that used to require action by the Zoning Board and make them issueable as a conditional use permit by the Planning Board in conjunction with approving the site plan. I am not sure that I believe that is a good thing to do at this point because the result is it is then believed that is what is available to you by right and then you go to the Zoning Board for more than that. That is the way development has been done in the watershed. It is whatever we can get from the Planning Board plus whatever we can get over and above that. The intent of the ordinance has not been observed and that is why I offered the amendment in the first place. I have no belief that the amendment as it is proposed is likely to pass the Board of Aldermen. I do want to find something that gives us the protection that we need for our water supply. With that I will take any comments from members of the committee who would like to offer some.

Alderman Cote

I have a number of different concerns with this, but first I wanted to respond to perhaps concerns that may have been issued to us by surrounding communities. I happen to know that I think the City of Nashua has about the best watershed protection ordinances on the books right now in the State of New Hampshire versus any other community within the State particularly those that

surround our watershed protection district. I think that in and of itself speaks significant volumes. I happen to have had the opportunity to meet with Alderman McCarthy in advance to discuss this ordinance and my concerns with it with the hopes that we could find some sort of way to achieve what I think is not only noble, but what I believe Alderman McCarthy wants to achieve.

What I believe that this legislation does is it penalizes people that are following the rules. Although there may be vehicles parked or parking lots constructed within the 75 foot buffer zone there are very specific recharge requirements, as was alluded to earlier in testimony, that require that water to be shed back to the parking lot and into structures themselves that recharge it into the ground directly providing the filtration that is necessary. I agree that there are issues with Wendy's snow removal efforts. I don't see how this legislation necessarily addresses that. I see that as being a very specific code enforcement issue that needs to be resolved and enforced. I am not comfortable just simply moving forward with this. Again I will turn back to our communities that are surrounding us that have the benefit of undeveloped land to suggest that they have more protection than us – well that is because the City of Nashua has certainly been around a lot longer, and has certainly developed a lot further.

It is my sense that as a community if we are committed to trying to do further or make further efforts to protect our water supply district that we should continue down the path that we had started, which is to purchase lands to protect the watershed if that is something that is important to us. I have said that all along that we should do whatever we can if we honestly believe that is a priority for this community to do that –we should do that. By trying to I think impose something that is as restrictive as this particularly in a specific area I just don't at the moment believe that it is the right thing for us to do. Thank you.

Mike Lowe

I have been looking at this thing for I think forever. I did read the Susaki report – everybody knows it, but it was written in 1984, which is almost 20 years ago. The PUC at that time said it was enforced. It was only enforced in Pennichuck, but it did set the 150-foot buffer and here we are 20 years later still arguing whether it should be 75 feet or 150 feet. The city in 1984 was probably what 50,000 people? We are now 90,000 people and the small cities and towns around us are even more. If we don't protect the water now we will never protect it. We have recharge ordinances and they come before the Planning Board all the time, but there is no clear plan or penalties for the – if they don't fulfill them. If you are not going to do one at least do the other. You really need to put some penalties in there. You have to specifically state how often then recharge should be cleaned depending on which type of recharge whether it is an automobile dealership or parking lot or landscaping business – each one is different. You haven't done those things and they really need to be done. Thank you.

Alderman Cote

In fact those requirements that you are speaking about in terms of maintaining recharge systems

are in place. You have to actually file that information through the Planning Board in an Affidavit form that provides an access easement to the City of Nashua to come out and inspect to ensure that those things are occurring. It is part of the existing ordinance that is there and it is in place. Whether or not the city does that on a regular basis is completely different, but it is in play that you have to provide that and you have to provide an agreement to do the maintenance.

Mike Lowe

Is there any penalty?

Alderman Cote

There is the civil penalty that can be imposed by the Code Enforcement office yes.

Chair McCarthy

It is a violation that is subject to normal fines, and they are required yearly to file a report on the condition of the storm water system – a certificate that it has been maintained.

I also want to point out that I do agree with Alderman Cote that in the end acquisition of the properties that constitutes the buffers is probably our best defense. I am not sure at this point how we are going to afford doing all of that.

Alderman Cote

I don't want to prolong this any further than we need to, but I guess in response to that to change it like this in my view constitutes somewhat of a taking. If you sit here and suggest that we don't have the money necessarily to buy it and it will be a taking we will end up in court anyway and somehow will have to pay for it. Again, I think it is something that we had ought to sit down as a Board and agree that it is a priority for us to do, and if it is a priority for us to do fund it and do it. Take a ride up and down 101A – I am sure you all have, and recognize that significant development has occurred over the years that in hindsight probably shouldn't have occurred or should have occurred with some significant protection. To try to do this now I think is unfair.

Chair McCarthy

What is the pleasure of the committee?

Alderman Cote

It was my hope that – in the discussions that I had with Alderman McCarthy in regards to this ordinance, it was my hope that some amendments could have been generated to deal with the specific concerns that we may have because as opportunities for redevelopment occur that is the opportunity to try to make things better for everybody. I don't see that. The problem with

this right now is that this is somewhat restrictive until something is done with it. I am a little concerned about that. I am not exactly sure what those amendments would look like, but we did pull up a few different sites and tried to look at what the proposed impact would be on those particular sites. Again, the problem is that the individuals that are following the rules it may work out okay, it is the few individuals that aren't necessarily following the rules where there are problems with it. I see that as being more of a code enforcement issue.

Chair McCarthy

It is my intention to offer amendments. I have been working on water district issues for the past week and have not had the chance to draft them. I don't at the moment know of any applications that are in the pike that are actually impacted by this. There is an application pending on Mr. Kerouac's site, which I believe the Community Development Division has concluded can proceed regardless of the effectiveness of the amendment at this point.

Alderman Cote

If a motion was made to indefinitely postpone would that prohibit you from coming back with something that was different than the offer?

Chair McCarthy

It would not. I would prefer that we hold it given that there is no negative impact at this particular moment to doing so.

Alderman Nickerson

If there were amendments that significantly altered this proposal would we need to actually have another public hearing?

Chair McCarthy

We would probably schedule another public hearing, but we could adopt the amendments and with regard to the effectiveness of the amendments they would take place when we adopt them.

Alderman McAfee

Does anyone disagree that the setbacks should be 150 feet?

Alderman Cote

I think that there are particular cases where a site can be constructed responsibly ..

Alderman McAfee

As you have done.

Alderman Cote

As I believe – we have not done it yet, but as I believe can be done in such a way that doesn't negatively impact the watershed and can provide significant improvement in fact to existing conditions. I think that is probably more the case in what would occur in the future for redevelopment. What you can't legally do in this State is take an existing site and impose restrictions on that site that would prohibit your ability to responsibly develop it. I think that is where you kind of walk a fine line in terms of some of these things. The expenses associated with complying with the current ordinances not even what is proposed right here are significant. I will use a site on Northwest Boulevard as an example – where there is a significant wetland surrounding that area, and as a result of that it requires catch basins be installed throughout the parking lot and a drainage system to those catch basins brought towards the front of the site providing recharge at the front of the site, which is significantly outside of that not only 75 foot conservation zone, but also out of 150 foot conservation zone. It is providing direct recharge into the soil and again with all of those instruments in place to ensure that system is maintained properly throughout the years and protected. Just that effort alone on this site that I am referring to, which is under 3 acres in size adds about \$150,000 worth of additional development expenses for that site where in the past, and in fact there are a number of sites that exist currently with this, they sheet grain off the parking lot towards the nearest water source where it can be disposed of. There are significant controls in place now so it can be done and it can be done responsibly.

For example, if you develop a lot that is within the watershed protection district, but is outside of the 150 foot conservation zone and you have no impact on that 150 conservation zone you are pretty much free to be able to manage the storm water runoff on that site any way you want as long as you are not impeding on that zone. In some cases even though you do intrude into that 75-foot zone with pavement or some other development effort you actually can have the ability to make it better than if it were not inside that zone in some cases. One thing that is not permitted whatsoever is the construction of any structure at all within that 150-foot zone. That just does not happen. It is primarily limited to areas associated with the site. A lot of it depends on the condition of the site itself. I would be more concerned about this as redevelopment efforts occur and what you can do.

I think Alderman McCarthy's suggestion about making any efforts of changes be dealt with under a special exception is probably the right approach to make this work because there are specific cases that need to be dealt with that I think you need to sit down with the owner of those properties and encourage them to responsibly develop them.

Chair McCarthy

Are there any other comments?

MOTION BY ALDERMAN CARDIN TO HOLD O-03-155 IN COMMITTEE

ON THE QUESTION

Alderman Cote

I will support that motion, but I guess I will support that with some sort of an understanding that we will be committed to coming forward with some amendment by our next meeting whenever that is scheduled to be and that we work to try to pass something relatively quickly that I think accomplishes what everybody wants to do but doesn't cause any undue harm. If that is not the case then I guess I am not willing to support holding it in committee.

Chair McCarthy

I would be happy to offer amendments or take some other action at our next meeting.

MOTION CARRIED

NEW BUSINESS – RESOLUTIONS - None

NEW BUSINESS – ORDINANCES - None

DISCUSSION

Chair McCarthy

I submitted this week legislation, which would make any change, which contemplated the wholesale replacement of the zoning ordinance not effective until its final passage so the 120-day period would not take affect. It is in Corporation Counsel's office if anyone would like to co-sponsor it.

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Alderman Cote

I have one public service announcement – The Public Works Department is holding a neighborhood meeting to discuss proposed sidewalk plans on Lamb Road – specifically between East Dunstable Road, New Searles, and Lamb Road. The meeting will be on Wednesday, May 14th at 6:30 p.m. at the Bicentennial Elementary School. Anybody interested can attend.

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ADJOURNMENT

MOTION BY ALDERMAN CARDIN TO ADJOURN

MOTION CARRIED

The meeting was declared adjourned at 7:55 p.m.

Alderman Scott A. Cote
Committee Clerk