

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

OCTOBER 21, 2003

A meeting of the Planning and Economic Development Committee was held on Tuesday, October 21, 2003 at 7:02 p.m. in the Aldermanic Chamber

Chairman Brian S. McCarthy presided.

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

Members Not in Attendance:

Also in Attendance: Alderman-at-Large Paula I. Johnson
Mike Lowe, Liaison Nashua City Planning Board
Katherine E. Hersh, Division Director, Community
Development

COMMUNICATIONS

From: Roger L. Houston, Planning Director
Re: Planning Board's Unfavorable Recommendation – O-03-195

MOTION BY ALDERMAN COTE TO ACCEPT AND PLACE ON FILE
MOTION CARRIED

UNFINISHED BUSINESS – RESOLUTIONS - None

UNFINISHED BUSINESS – ORDINANCES

O-03-195

Endorsers: Mayor Bernard A. Streeter
Alderman Timothy B. Nickerson
Alderman-at-Large David Rootovich
Alderman-at-Large Steven A. Bolton
Alderman Marc W. Plamondon
Alderman Brian S. McCarthy
Alderman-at-Large James R. Tollner

AMENDING THE ZONING ORDINANCE BY DELETING A STIPULATION

THAT
RESTRICTS ACCESS FROM TINKER ROAD TO LAND ZONED PI BY O-84-
51

Chair McCarthy

I assume we have people in the audience that would like to address the committee so I would entertain that first if the committee has no objections.

Paul Foote, 3 Monterey Avenue

I would like to see the access road opened for use. Right now it puts everybody from the Deerhaven Development going through the Pennichuck School zone every morning where there are a lot of kids walking, buses trying to get in. I have seen traffic backed up across Henry Burke trying to get in there. It is quite a mess. I know the access road is kind of narrow right now, but it would be nice if it was widened, opened, and made a normal road because there is really only one way out of the area now unless you go to the far west end of town, and I think – well you already know how many people were using it everyday – about 3,000 cars on it. It would be a real positive to have it open. I support it. Thank you.

Chair McCarthy

Is there anyone else who wishes to address the committee? Is there a motion?

MOTION BY ALDERMAN NICKERSON TO RECOMMEND FINAL PASSAGE

ON THE QUESTION

Alderman Nickerson

Thank you. This was before the Planning Board back on the 18th of September. There were a couple of issues the Planning Board had with it, and one of them was that there wasn't funding of the project, that the city did not have possession of the land, nor was there – they stated that there wasn't a plan for this. My thinking is that the – in order for us to go through the process of and firm up the acquisition of this land we need to make sure that we can actually remove this stipulation so that we can then open this road. There was actually a conceptual plan presented to the Planning Board that evening as well as there was one also at a neighborhood meeting that was held back in August or so maybe even July.

The issues have been addressed. There certainly was public notice about this as well, which was another issue that the Planning Board had. There was a public hearing before this committee, which was publicized. I had sent out notices via e-mail of both the Planning Board and the Public Hearing on this issue so I certainly think there was plenty of notice of the residents both in favor and in opposition to certainly come before this and speak about it. I think

it is certainly something that the neighborhood has had to – certainly a major issue in the neighborhood that I think we should address. By removing the stipulation we can only do that. The neighbors have had the luxury of using that roadway whether it be legally or illegally for a good number of years, and to take it away is certainly a burden on them. As was mentioned there was an issue of having all the traffic now go down past the Pennichuck Junior High School during school hours, which is certainly a safety consideration.

I think that we should remove the stipulation and this is only the first step in the process. There have been and continue to be negotiations with the Postal Service to acquire the land, but that can't be finalized until we actually remove this stipulation. Once that is complete we also then need to deal with whether the road itself as is will meet city standards to open it for whether it be one way or what have you. Then eventually the ideal situation is to have it expanded to allow two lanes of traffic. I urge the committee to vote in favor of final passage of this ordinance tonight. Thank you.

Alderman McAfee

Being on the Planning Board I just wanted to give a little perspective. They did ask me – they did not give a favorable recommendation because they really didn't have anything to decide on. As we all know the Planning Board sees final drawings. There seemed to be encouragement to go ahead and acquire the easements necessary to put the road in as long as the traffic issues, the planning – it is a standard plan that the engineers would normally draw up, but that was their only opinion.

Chair McCarthy

I guess either of the two members of the Planning Board can shed some light on this. It is quite normal for the Planning Board to look at plans that are submitted by someone other than the landowner and whether we have an agreement on the land or not seems to me to be irrelevant. Normally you get the approvals before transferring the land, and whether we have the agreement or not just doesn't matter. With regard to the plan I guess the issue I have there is that this is a road and we don't normally submit roads to the Planning Board. What they have before them is the legislative matter which is the stipulation of whether a connection should be made between those two neighborhoods and they are being asked to refer on that as a matter of policy rather than on – this is not a site plan review this is a legislative referral. I guess my question would be what transpired at the Planning Board that dealt with the policy issue of whether there should be a connection between Tinker Road and North Southwood Drive.

Mike Lowe

The reason that we have a problem with no plan is there is a sighting problem in that you have to have 450 feet for sighting in both directions. The way that is right now just getting that piece of land won't do it you will have to straighten out the road. We really do need a plan to see how you are going to go about doing it if we take the stipulation on and you go and do it because it is

city – it is not somebody else. They can go and do it and there could be a problem with it. We are the only people that are in a position to say no until we see a plan because everybody else can just go ahead and do it. That was one of the problems. The other problem is again we don't own the land, and if it was a private owner that owned the land yeah we could take it by eminent domain if we had to, but it is the United States Government that owns the land and we can't take it by eminent domain.

Chair McCarthy

How does that affect the policy issue of whether there should be a connection between Tinker Road and North Southwood Drive?

Mike Lowe

In addition that night there were people there that had asked if we were going to have a hearing on it and we said we weren't, and they left. Then we ended up in effect having the hearing on nit, and voting it down, and I think that you really – this is something you really have to get all the people on because I know there are people that are opposing this that live on Tinker Road because the person that was there said that he opposed it.

Alderman Cardin

I just wanted to say that I was going to support that motion because I often transport kids over to Pennichuck and the traffic over there is just horrendous. If we can alleviate any of that and make a safer school zone over there I would be fully in support of that.

Alderman Cote

I wanted to speak briefly to your issue about the policy issue because I wasn't able to attend the meeting of September 18th of the Nashua City Planning Board, but I did attend the meeting of October 2nd, and at that meeting I raised the question under discussion because the minutes of that meeting hadn't been available yet, and I asked if they could explain to me why there was a negative recommendation issued on this piece of legislation. The explanation that was given to me was that and I will repeat it -- Mr. Lowe said basically that it comes down to the fact that the city doesn't own the land, until they do own the land there shouldn't be a ruling on it and then further Mr. Farkas stated that they don't own the land, they don't have a plan, they don't have the money and, therefore, it was premature. I stated the same thing. I stated that those were all policy issues that are normally handled by boards outside of this agency meaning the Planning Board, and that I found it rather odd that the board is making policy decisions when it was really whether or not moving forward with the application was appropriate. I stand by that, and I stand by your interpretation as well that this is really a policy issue. It is not the Nashua City Planning Board that makes the determination as to roadway construction issues and how access is determined. Granted I will certainly give you the credit or give the Planning Board the credit that

they are involved in the process of site plan reviews, but this is clearly an access and easement issue that is policy and legislation was sent there purely for that review.

In my review of this issue and discussions with some members of the Planning Board that agreed with me, it wasn't appropriate so that certainly the Planning Board's recommendation can stand, but I don't agree with it.

Chair McCarthy

Is there any further discussion?

MOTION CARRIED

NEW BUSINESS - None

Chair McCarthy

I did want to discuss O-03-193 a little bit because it also received an unfavorable recommendation from the Planning Board, and I think that is due to a misinterpretation of the intent of the Ordinance that is not unlike the reading I gave it when I first saw it as well. I don't know how the rest of the committee feels – I would actually like to re-refer it to the Planning Board and have some discussion with them and perhaps draft an amendment that will purely state what Alderman Bolton's intent was because certainly when he discussed it with us here his intent with the legislation was not what I read when I read the draft that was submitted.

Alderman Cote

I have no problem with that, and in fact I actually think that there was an amendment already drafted for this that I think will provide the clarification. I believe that Alderman Bolton has done that.

Chair McCarthy

I don't think we have seen it have we?

Alderman Cote

I know I have or at least I have had the discussion with him in regards to that, but I believe it was the next day after that meeting when he was here that I did see some communication in that regard. I think moving it forward – unless you want to hold it and make an amendment here and then re-refer it.

Chair McCarthy

I think I would actually rather have the discussion with them and get their feeling on how the amendment ought to be drafted. I read it again today and looked at it carefully and I think what the other issue there may be is apparently- and I hadn't gotten this out of the discussion with Alderman Bolton – this is basically a multi-level approval that when the conditions are applied by the Planning Board it would come back to the Board of Aldermen would then transmit something back to them that said we don't like those conditions either vote it up or down. I suspect the Board may have an issue with that that we will need to discuss with them. We can take the proposed amendment with us to discuss it with them or we will transmit it to them by letter, but I think there needs to be some discussion with them of that. They may just want to take action and send it back to the Board and can then decide whether or not to give final approval to the project going forward with those conditions.

Alderman Cote

You are looking for a motion to re-refer it?

Chair McCarthy

I was looking for a motion to take from the table first.

MOTION BY ALDERMAN NICKERSON TO TAKE O-03-193 FROM THE TABLE
MOTION CARRIED

O-03-193

Endorser: Alderman-at-Large Steven A. Bolton

ESTABLISHING A PROCESS FOR REVIEWING CITY DEVELOPMENT
PROJECT
APPROVALS SUBJECT TO CONDITIONS

MOTION BY ALDERMAN NICKERSON TO RE-REFER O-03-193 TO THE NASHUA
CITY PLANNING BOARD

ON THE QUESTION

Mike Lowe

As amended if there is an amendment?

Chair McCarthy

I think we would transmit the amendment along with it. I intend to write a letter to the board to express what I think is going on with the piece of legislation because I have to say I had the same initial reaction to it that I think the Planning Board did, and I know other people that have

read it who had the same interpretation.

Mike Lowe

The way I read it was basically there was no purpose for the Planning Board to review any of the city projects.

Alderman Cote

They completely misunderstood it. The intent of the legislation as I understand it is to send it to the Nashua City Planning Board for approval, after the outcome of that decision is made then the governing agency if you will having authority over that project can then decide if they want to move forward with it or not based on those stipulations that were accepted.

Chair McCarthy

Yes, and I think having read it again -- notwithstanding the provisions of subsection (a), all decisions by the Planning Board and the Zoning Board of Adjustment approving with conditions projects prosecuted by the municipality and its constituent and affiliated agencies, departments and officials, shall not be final until the public hearing and vote of the governing body have taken place. Following its vote, the governing body shall notify, in writing, the Planning Board or Zoning Board of Adjustment of its decision to accept or reject the conditions attached to the approval. The Board shall then issue its final decision – I think there is some ambiguity over what the Board means. It actually means the Planning Board and not the Board of Aldermen.

MOTION CARRIED

Mike Lowe

I just thought maybe it should also go to the Zoning Board since the Zoning Board is mentioned there too. If you want to change the zoning for something and the board says no and ...

Chair McCarthy

But we don't normally ask the Zoning Board for referrals on policy decisions because of its judicial nature.

Mike Lowe

The way that is written the Zoning Board could say no and then it goes before the committee, which is could be any committee – the School Department, Public Works Department, any department and overrule them.

Alderman Cote

You are clearly misunderstanding the legislation Mike. It is not intended to be that way at all.

Mike Lowe

When it says the board if you are overruling ...

Alderman Cote

There is no overrule.

Chair McCarthy

There is no provision to overrule

Alderman Cote

There is no overruling whatsoever. It is intended for that governing agency – let's use Stellos' Stadium for an example because that is really the impetus of this – if the Joint Special School Building Committee or the Stadium Committee as it was represented before the Planning Board did not like the stipulations that were placed on the project by the Planning Board then the Joint Special School Building Committee then would have the obligation of going back and deciding whether it wanted to proceed with the project or not. If it proceeded with the project it would proceed with it based upon the stipulations that were placed upon it by the Planning or Zoning Board or it would simply just not proceed with the project.

Mike Lowe

That was what I was trying to say – it just can't say the Planning Board it has to say the Planning Board or Zoning Board depending on who is putting the stipulation on and who ...

Alderman Cote

It does say that.

Mike Lowe

The original legislation just said the board – in fact it didn't specify ...

Alderman Cote

No it does specify that.

Mike Lowe

I don't have the legislation in front of me, but if I remember right ...

Alderman Cote

It does clearly say that.

HELD IN COMMITTEE

R-03-212

Endorsers: Alderman-at-Large Steven A. Bolton
Alderman Kevin McAfee

DIRECTING THE MAYOR AND CITY DEPARTMENTS TO TAKE IMMEDIATE
APPROPRIATE
ENFORCEMENT ACTION CONCERNING PROPERTY LOCATED AT 449
AMHERST STREET

O-03-155 (Amended)

Endorser: Alderman Brian S. McCarthy

REVISING THE CRITERIA FOR ENCROACHMENT INTO THE
CONSERVATION ZONE OF
THE WATER SUPPLY PROTECTION DISTRICT

DISCUSSION

ADJOURNMENT

MOTION BY ALDERMAN NICKERSON TO ADJOURN
MOTION CARRIED

The meeting was declared adjourned at 7:22 p.m.

Alderman Scott A. Cote
Committee Clerk