

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

NOVEMBER 21, 2006

A meeting of the Planning and Economic Development Committee was held on Tuesday, November 21, 2006 at 7:40 p.m. in the Aldermanic Chamber.

Chairman Brian S. McCarthy presided.

Members of the Committee present: Alderman-at-Large Steven A. Bolton, Vice Chair
Alderman Richard LaRose
Alderman Michael Tabacsko

Members Not in Attendance: Alderman Mark S. Cookson

Also in Attendance: Mike Lowe, Planning Board Liaison
Katherine E. Hersh, Div. Dir., Community Development

Chairman McCarthy

I would ask at this point if there is anyone in the audience who wants to address us on what I believe had been O-06-53 that they come forward and give us their comments now.

Paul Johnson, 44 Browning Avenue

I speak for myself. I am supportive of what you are trying to achieve with 06-53 and many of the other initiatives that are coming forth out of this. I do want to make a request, however, we are very grateful for the opportunity to have this dialogue over the past few months with members of the committee, other Aldermen, Director Hersh, and Roger Houston. It has been a tremendous opportunity, and some good things have come out of it. I was troubled when I spoke with you Mr. Chairman after a meeting recently and asked if there was more coming, and your answer was that you thought that these few pieces of legislation were all that could be handled legislatively.

I just wanted to request of this committee that you offer us the courtesy of reconvening one of those working sessions that we had with Director Hersh and Mr. Houston, and with that long laundry list that Kathy captured on the large sheets of white paper so that we can go through those and not lose all of that and work with the Aldermen and the Planning staff and other experts that we have as to how we might address each of those whether it is through legislation, through policy changes or whatever. I think there are some good ideas there, and would hate to lose those. Thank you.

Chairman McCarthy

I am more than happy to go back and look at other issues. The ones that we have done are the ones where it was clear that there was something that might address the issue. Even at that we only went 2 for 3.

Suzanne Vail, Courtland Street

Thinking about what Paul Johnson just said – I think part of the problem for many of the people that you see here is that when something goes wrong here we are because we are very concerned, and what we would rather see is have things run into place so that we are not coming in here to attack the Board of Aldermen or the Planning or Zoning Boards with these things. I truly believe that an open public session once again to address some of those issues, and have another look at them to see if they are any longer pertinent or some of the things that we worked with have already resolved some of those issues – keep a moving dialogue.

My recommendation strongly would be to do that on a regular basis because I think that with people coming into the Zoning and Planning boards and attacking due to the fact that their property rights are perhaps going to be violated or that they are having difficulty interpreting the Land Use Code and some opportunistic individual is coming along and taking advantage of it so that it is clear to see. I may be speaking out of line in saying that, but I am willing to stand up and take a shot for it. It would be much better to be proactive and have a dialogue and communication going back and forth between people and having people who are here and interested and concerned working together. That way we are working together and not fighting for what we want.

Alderman Bolton

I think an ongoing series of public meetings or charette or master plan and code reconsideration, revisiting ought to happen. I think it ought to happen separately from the regular meetings of this committee however. I think we probably ought to figure out a process by which that can be done.

Chairman McCarthy

I think we need to do that. I think unfortunately some of the issues we won't discover until they come up in real applications. We have just gone through probably the most extensive process of public input to get to the zoning ordinances as they stood at the end of last term when we passed them. We did on the order of somewhere between 5-9 public hearings on the master plan issues when we developed that, we had a series of meetings on the master plan that lasted 2-3 years, a series of meetings on the zoning code that lasted 2-3 years, and were done with that and immediately were back to some issues that we heard nothing about during that period because we are not going to hear them until they come up. I think we do need a process to deal with that, and I will look at what we can do about that.

Alderman Bolton

Of course one of the problems with that is when everything was designed and done by the professional people that we asked to assist us on that taking into account the input of the citizenry. The Mayor and your predecessor as Chairman of this committee put a halt to everything and then basically sold out to the development community and changed everything to meet their wishes.

Chairman McCarthy

I am not sure I would categorize it quite that way.

COMMUNICATIONS - None

UNFINISHED BUSINESS – None

NEW BUSINESS – RESOLUTIONS – None

NEW BUSINESS – ORDINANCES

O-06-45

Endorser: Alderman-at-Large Fred S. Teeboom
Alderman Richard P. Flynn

**OBTAINING AN INFORMATION TECHNOLOGY DIVISION ASSESSMENT
AND RECOMMENDATION FOR MAJOR PURCHASES OF COMPUTERS
OR COMMUNICATIONS EQUIPMENT OR RELATED SOFTWARE**

Alderman Teeboom

Who was the previous Chairman of this committee?

Chairman McCarthy

Alderman Rootovich.

Alderman Teeboom

This particular ordinance came out of a number of thoughts, primarily the history of buying computer software that doesn't work, buying equipment that doesn't work – examples. There is a \$55,000 server that was bought without I.T. participation the best I can tell, no maintenance, no documentation, no training, inadequate to do the job, but here we are we have a \$55,000 used as a doorstop.

The reason I supported the I.T. Division or an I.T. Department was for precisely this reason. That is get a more expertise and stronger presence in the purchasing of hardware, software, communications, and equipment. A few examples that just recently came to mind – one of them was a closed circuit television surveillance project that is ongoing for providing security cameras in the landfill so that the night watchman/day watchman can go home –don't need them anymore with substantial savings expected. When I was called by the landfill manager and asked to support it I started looking into it. It is a good example. Here was expensive equipment, one of I think 9 options, first option landfill, other options for other locations (streets, swimming pools, etc.), and it turned out there was no reasonable criteria established for how this system was going to work, on what basis it was going to be accepted, criteria or probability of making detection of intrusions, etc. The very key concerns of this particular system were not addressed.

Those who remember when this came up in the Finance Committee, I moved successfully to hold this particular contract to get the I.T. Department, particularly the I.T. Director, John Barker, to take a look at this. It took him a long time to assess this product because he came in fairly new in the City and came in on the tail end of the procurement process. He found a horror show. He found just what I said no criteria. It wasn't clear what the consultant had done. They had identified a bunch of equipment from a reputable firm, but the implementation of that equipment was unspecific. To make that long story short basically criteria were established, the recommendation came back before the Finance Committee, we approved the contract, and it is going forward.

Another example – I just found out tonight – I happened to be in Manchester looking at the closed circuit television system, and we were talking about the security cameras. They are what you call IP Cameras or Internet cameras or digital cameras – basically these are digital cameras. In Manchester and most places I know of, digital cameras can be seen not at the location where you are, but seen with the passwords wherever a manager can look at them. He can look at them from his home. The security is always secure and can be assessed. Turns out that our School Department bought analog cameras at substantial costs not digital. Security guys can only be in the school to see them. Tens of thousands of dollars worth of cameras and they were the wrong cameras. Paul was with me in the audience when we found this out. I happened to see the I.T. Manager and said what happened here. He said explicative deleted – don't even ask me.

What these things show is in an increasingly sophisticated world with increasingly sophisticated software, with increasingly sophisticated communications wireless and wire, there are increasingly sophisticated servers, and all of these things tied together into packages that all work together in a system sense. It is very difficult for let's say a landfill manager to figure this out. He didn't know he was going to buy equipment that probably wasn't going to work because he wouldn't have been able to make the assessment. What this shows is that a sophisticated I.T. Department with people knowledgeable about these things can make judgments.

What this ordinance does is put structure in a system that helps the Purchasing Manager, helps the requesting managers, and the I.T. Department or Director is in the loop. Now they can't stop the purchase, and I talked to John Barker about this obviously and other people about this, and it is his recommendation. Let's say he looks at this request for proposal and the I.T. Manager has another recommendation. That doesn't mean the requesting manager can't go forward. He could still say I am going forward because the recommendation doesn't mean he can stop it. He doesn't have a veto, but he has a review requirement and a recommendation requirement. These are major purchases meaning more than \$15,000. That means these purchases come before Finance Committee.

As we said at the Finance Committee, and I have been on the Finance Committee – this is not the first time – I was in it 12 years ago, but at the Finance Committee you cover a bunch of things in a short time and you haven't got time to get into the details. What this does is it brings before the Finance Committee a recommendation. Now the Finance Committee can choose to ignore the recommendation or the Finance Committee can ask for further backup, but whatever the recommendation is, hopefully yes do it, or maybe recommendation of do it with some changes. It puts structure, control, and technical expertise in these increasingly more complex purchases.

I have seen no opposition to this ordinance from anybody certainly not a Purchasing Manager. It helps them. The I.T. Director says well I am going to try to manage this. I said if there are

some things that you don't have staffing for at this point you can't get into it and you can tell them you can't make a recommendation. The recommendation can be I don't have the ability to make a recommendation. That is possible especially wireless – there is not that much wireless expertise, actually there is no wireless expertise in the city other than there is some wireless expertise in the Police Department. The Fire Department depends heavily on the Police Department to help with that. There may be an area there that Barker says that is the one thing he is worried about is he may not be able to make an assessment on the wireless.

The fact that we have a no recommendation is important information. The fact that we have a good recommendation is absolutely important because we know we have some confidence we are buying the right stuff. If the recommendation is don't buy it that is a red flag. I hope that you will unanimously concur with this. Thank you very much.

**MOTION BY ALDERMAN BOLTON TO RECOMMEND FINAL PASSAGE
MOTION CARRIED**

O-06-51

Endorsers: Alderman-at-Large Brian S. McCarthy
Alderman Richard LaRose
Alderman Michael J. Tabacsko
Alderman Robert A. Dion

**AMENDING THE DEFINITION OF “TWO-FAMILY DWELLING” IN THE
ZONING ORDINANCE TO ESTABLISH STANDARDS FOR COMMON WALLS**

Alderman Bolton

As you made reference to earlier during the Public Hearing Mr. Chairman, I believe it is a good idea to restructure this so that the regulatory requirements do not appear in the definition, but elsewhere. I am wondering frankly if this is the best way to solve what is the perceived problem and that is when is a structure one structure as opposed to two separate buildings that just have a couple of boards strung between them. Frankly it doesn't only come up in the do we have two separate single family homes or do we have one two family home issue. It can come up in the case where you have got a three family structure and they are trying to attach another one family structure to it.

I actually think the way to handle this is to come up with a definition of what is a single structure or what differentiates something from being more than one structure as opposed to a single structure and have that be a general requirement that would feed into the basic principle that unless otherwise provided you can only have one principle structure on a lot. I think more effort dealing with that I think solves the problem because frankly the 90% of the widest part and so forth I think the example you gave pictorially with the pieces of paper is one example of what ought to be unobjectionable, but doesn't meet this, and I can think of others as well.

I do recognize some of the points that were brought up of when the architecture just completely doesn't match, when someone is just tacking on some prefab structure. That may take care of itself if we can adequately define what is accepted structure and what is a real addition to the building. I would suggest that much more work needs to be done on this, and accordingly I would move that we hold it in committee.

MOTION BY ALDERMAN BOLTON TO HOLD IN COMMITTEE

ON THE QUESTIONChairman McCarthy

Before we vote on that I would like to get a list of the things that we think need to be addressed so that we can come up with a plan for trying to address them. I understand trying to move it to the definition – I think putting in somewhere in the regulatory text of the ordinance a section that says if you are required to have a single structure these are the rules you have to follow to meet that, and then make sure that the two family dwelling language requires a single structure. I think that is probably a good idea to pursue. I would like to understand what the cases are because I think the common wall definition type of definition is the most obvious thing available to us in terms of defining what a single structure is. I am looking for some direction on what else we might do to pursue that definition.

Alderman Bolton

While it is being held in committee I will give it some deep thought. One of the things that came up, and I think it was in one of your responses Mr. Chairman, is typically the or in some other zoning ordinances in some other communities there is a requirement that the common wall be between living areas as opposed to garage space or storage space or something. That may well be the case in a lot of situations, but I could see where there is an advantage to having the common wall be in an area where you get some natural buffer that would eliminate the sound and mutual potential for disturbance from unit to unit depending on whether you are dealing with a single structure or not. I just don't think attaching two car ports one to the other makes something a single structure as opposed to – if something is on two different foundations it seems to me it is clearly two separate structures regardless of where you have a car port attached, but that is not the only answer to the question I believe.

Alderman LaRose

Following up on Alderman Bolton's – on West Prescott Street, there is something that we are talking about. It is two capes with two garages in the middle. There is a common wall. The garage is probably well looking at it I would say it is probably 5 or 6 feet in from the front of the house and it goes all the way back to the house. Now on Sergeant Ave. there is a new duplex going up that is similar to what I am talking about. They have the foundation down. They haven't started building the house so I am not exactly sure what it is going to look like, but it appears that they will have one house here, one house here, and two garages in the middle with a common wall. I think that putting in to the ordinance that it has to be a living common wall I think Alderman Bolton is right you may want some kind of a separation.

Chairman McCarthy

It depends. What I have heard is that the people that are living in the duplex would like to have it that way and the people who are living to the sides of it would like to have it the other way.

Alderman LaRose

I suppose I could have an empty lot and am building a house and all the houses around me are capes and I want to put in a ranch everybody around me may say I don't like that house because I want a cape there.

Alderman Bolton

No they wouldn't they would say I like the vacant lot there.

Chairman McCarthy

Is there any other discussion?

Alderman Teeboom

I missed a part of it I am sorry. What was the intent of the ordinance?

Chairman McCarthy

The intent is to make duplexes be a single structure and not two structures connected by an awning.

Alderman Teeboom

I looked at some of these where there used to be one home and now they are two homes connected together. I think the example of Lake Street there are a couple of those and they are ugly because you have the old one one-story next to the prefab two story and they are completely different character, and the garage is gone. It is ugly and a lot of people complain about it. We heard a parade of people complaining about it. Does this address the character question as well – if you are going to build a duplex, a second home joined to the first one, that they ought to look alike or be similar and one is not one story with the other one two story?

Alderman Bolton

It does not address that, but you are welcome to try.

Alderman Teeboom

Can it be addressed with this ordinance?

Chairman McCarthy

I think that is one of the things we will look at trying to put some language to. I think requiring that if they are side by side they be the same number of stories may be a reasonable thing to move towards.

Alderman LaRose

About the scenario I put forward about the West Prescott Street – maybe what we want to put into the ordinance that if the garages are in the middle they have to be enclosed garages so that we don't have that problem of really a car port that has a big roof and they say well you know it is together.

Alderman Tabacsko

That style of housing with the carport as the joining feature may actually be something we could define separately. I have seen that in other communities where the entire retirement community that I am familiar with is laid out that way, and in fact your roof mates – it is a common roofline over the carports, but that is how the whole thing is designed. That is one way of taking that out of what we are dealing with here is by giving it its own definition.

Chairman McCarthy

You said you have seen them in other communities and that is just where we would like to see them. Is there any further discussion? The motion is to hold.

MOTION CARRIED

O-06-52

- Endorsers: Alderman-at-Large Brian S. McCarthy
- Alderman Richard LaRose
- Alderman Michael J. Tabacsko
- Alderman-at-Large James R. Tollner
- Alderman David MacLaughlin
- Alderman Robert A. Dion

AMENDING THE PROVISIONS OF THE ZONING ORDINANCE WITH RESPECT TO ELDERLY HOUSING

Alderman Bolton

How do you distinguish between what is a new development and what is a re-development? If you've got land that had been previously used as a parking lot is it re-development when you start putting units on it?

Chairman McCarthy

I guess my first reaction to that is if there was a previous certificate of occupancy.

Alderman Bolton

That probably ought to either in this section or a separate section or something be defined. Why should it matter whether something had a previous site or sub-division plan in the previous five years?

Chairman McCarthy

The thought there was so that someone doesn't come in and say I am going to build a 900 sq. ft. ranch house and then re-develop the site immediately upon getting the C.O. for the house so that the re-development rules will kick in.

Alderman Bolton

Well that is one thing, but suppose you have a situation where you have got 60 acres that is in planting and one of the last remaining farm areas and they sub-divide it 30 and 30 and ...

Chairman McCarthy

This is hypothetical I assume.

Alderman Bolton

Why should the sub-division prevent something that could otherwise happen? You have structures on part of it, vacant land on the other part, you sub-divide it out, that sub-division prevents something that could otherwise happen. I don't know if I want it to happen. I don't know if I want the 10 unit exception at all, but the fact that there was a sub-division within five years doesn't seem to me to be relevant to whether that ten unit exception is a good idea or bad idea so I guess I would like to think about that a little more and figure out what we are trying to do and make it work out what a better scenario ...

Chairman McCarthy

You understand what the intent was with some of the creative leftover paginations that we have seen of ...

Alderman Bolton

Yeah. There may be a better way of dealing with it.

Chairman McCarthy

Now that we are done carving up that 50 acre piece I have this one little piece over here that I would like to put a bank on.

Alderman Bolton

In the sub-section 9, is common area intended to be interior space or can it be exterior space because otherwise your common area is going to end up being the parking lot.

Chairman McCarthy

It was intended to be interior space. That actually gets to a larger issue, which is the service issue. I was trying to address the form issue primarily, but in a way that was consistent with the service issue in that if you are providing common space it makes sense then to have services associated with that. This could be as simple as a meeting room. We may want to go further than that and simply take the services issue on as well.

Alderman Bolton

At a minimum I would say let's not call it common area because they will define common area as interior hallways, the unfinished basement, the attic space – whatever is left over will, the top of the roof, will be – typically in condominium type things all of those things are referred to as common areas. We might want to talk about shared facilities and define what those might be – they might be exercise rooms, bingo halls, clinics, whatever might be. I think common area is probably the wrong term to use because it is used in the condominium act and many of these things will be created under the condominium act and inevitably there will be confusion as to what you have to meet common area, and I just don't think that is what you had in mind.

Chairman McCarthy

Okay. Are there any other comments? I think the other issue that we need to look at – well there are two others. We need some clarification on the age restrictions and what we can and cannot do. I am prone if we can do it to basically refer to this as 62 and older housing. We need to look at whether we can enumerate what services you need to provide and I think we also need to understand whether the square footage limitation that is in there is the right number. It has been suggested to me that 800 sq. ft. is actually small.

Alderman Bolton

There was reference to the NH Human Rights Commission. I will tell you my experience with them is they don't review development plans and say they are okay or not okay. What they do do is if someone brings a case and says I have been discriminated against, they will then look and see if that facility meets their definition of an elderly housing complex and therefore is allowed to discriminate against people under age 55 or whatever particular age – there is some difference. It is not like you can send the plan up there and get their stamp of approval in advance so the idea that we should be doing that I don't think flies very well because they just simply don't do it.

I think it might be wise to look at what their regulations describe and make ours conform to that. We may want to write them in full not just adopt them by reference or anything because apparently the adopting by reference is not getting the same kind of scrutiny that things that we actually fully enumerate ourselves gets. We may not want to do that with all of them but at least find out if they are going in the same direction we are trying to go in.

Alderman Tabacsko

Did you capture on your notes about consideration as to whether or not disabled or whatever the correct terminology is – ADA, that may or may not be something that can be addressed in time?

Chairman McCarthy

Yeah. I captured that we need to look at the issue. I guess I am a little leery of trying to make any blanket statement there.

Alderman Bolton

There are two issues here that I remember coming up in the Public Hearing. One is do ADA requirements apply and the fact is they apply to everyone everywhere. The only question is what is the ADA requirement for a single-family home. I think most of this issue to the extent that the city deals with it is included in the building permitting and building code process. I think we will find if you have a multi-unit structure that yes you have to provide compliance with ADA in terms of a certain number of facilities that meet the requirements and number of spaces and all of that, and if you have a single family or maybe even a duplex type style you may not have to. I don't know whether 10 units or 30 units is a magic number or not. I think if we look at it we will find that probably this has been thought out and is being dealt with, but we can certainly check on that.

The other thing that I heard come up is should we somehow carve out that these types of developments that we are going to allow the bonus densities for and so forth ought to be available both for elderly and people with disabilities. I think you may run into some problems with people wanting to create that kind of situation in a mixed population. You might have people willing to create that as separate categories although the number of disabled that the market might preclude or private developer from entering into that market. I think to some extent, and obviously this gets into a sensitive area but, may of the elderly – it arises a lot in federal housing projects for the elderly because in those projects people with certain disabilities also are able to live there, and some of these disabilities when they are mental and emotional disabling conditions sometimes manifest themselves in episodes of anti-social behavior that becomes a very frightening thing for the elderly.

To some extent certain addictions to substances can qualify as a disabling condition, and that becomes frightening to the elderly as well if they are living in close proximity to someone in that situation who again might have periodic episodes of behavior that does not conform to what the remaining population, many of them elderly, wish to deal with. That can become very difficult to deal with. I am not sure who is going to be dealing with it when it arises. It may be that the police are going to be dealing with it and will have to be well able to. I think that is some unintended consequence that we may want to be somewhat worried about if we get into that.

In that regard, although we are talking about a minimum age of 55 or 62 or something that is the minimum and we can anticipate that we will have people living in some of these facilities depending on the services offered who are much older than that, and it is one of the truths that while it doesn't happen to everyone, more on average as one gets older one becomes more frail so we will certainly have people that will be in the category where they feel less able to protect themselves if they are going to be the risk of anti-social behavior from any of their neighbors.

Chairman McCarthy

That is one of the questions I had on the ADA compliance – the speaker addressed that and talked about for example handicapped access bathrooms, which I think is another level of amenity, and I guess while I sort of understand the desire for that if we are talking about building housing that has fairly small footprints to begin with you basically are putting a requirement in that will increase the required footprint in one part of the dwelling that may not be necessary for many of the people who would live there. I am somewhat concerned about doing that.

Alderman Bolton

I think we ought to look at what the building code currently requires before we start trying to reinvent the wheel.

Chairman McCarthy

Are there any other comments or questions?

Alderman Teeboom

You mentioned 62. Is that a legitimate age that we should regulate or can we make it any age?

Alderman Bolton

The answer is that is one of the things we want to look at.

Alderman Teeboom

Okay.

Chairman McCarthy

I am not entirely sure what the statutory basis is for it. The two things that you commonly see are 55 and over and 62 and over. Those appear to pass muster with the Fair Housing Act.

**MOTION BY ALDERMAN BOLTON TO HOLD IN COMMITTEE
MOTION CARRIED**

O-06-57

Endorsers: Alderman-at-Large James R. Tollner
Alderman-at-Large Brian S. McCarthy
Alderman Michael J. Tabacsko

**AMENDING THE LAND USE CODE TO AUTHORIZE ACCEPTANCE OF LAND OR
INTERESTS IN LAND WHEN DEEMED APPROPRIATE BY THE PLANNING BOARD
OR ZONING BOARD OF ADJUSTMENT AS A CONDITION OF APPROVAL**

Alderman Bolton

Who are we authorizing to accept the land?

Chairman McCarthy

My understanding, this originated with the Legal Department, was that in cases where the Planning Board for example requires a piece of common land to be deeded to the City as part of a sub-division, we then have to go and prepare resolutions and put them before the Board of Aldermen and go through the process to accept that piece of land. The intent was to streamline that so that the Planning Board has the authority to accept those deeds, which are at no cost to the City.

Alderman Bolton

I think we ought to be awfully careful. You don't want to end up with the hazardous waste site somehow coming into the city's possession and we haven't taken a close look at it. I am not sure streamlining the process where we get something the developer doesn't want by accident is the best approach to take.

Chairman McCarthy

I agree, and I don't think that was the intent. The intent was ...

Alderman Bolton

I know that wasn't the intent...

Chairman McCarthy

... in the case where the board has the authority to require it that they have the authority to accept it as well.

Alderman Bolton

You know what happens – the developer shows it on the plan, whatever is shown on the plan is a condition of approval, therefore, it has been required, therefore, we've got it, and no one even focused on it. It is not what is intended that worries me it is what we get by accident that worries me or at least accidental from our point of view. It may ultimately have been intended by someone else, but I think a higher level of scrutiny when we end up acquiring land in these situations is necessary not a lessening of the scrutiny.

Mike Lowe

I think most of the time it is roadways where we require that the road be widened and they use some of their land. Another one was pumping stations if I remember right – for pumping sewerage and pumping water. Those are the main ones. There are some that you have to be careful of. I agree with Mr. Bolton. The ones where they have to have a water collection area you want to be very careful not to accept them for the city because then the city ends up having to have to clean them rather than the developer.

Chairman McCarthy

That is exactly why we want to own them because the developer is never going to clean them and they need to be cleaned. We have required for some years now that the storm water facilities be deeded to us so that we can maintain them. The concern that motivated the ordinance was around right of way expansions.

Alderman Bolton

I fully understand that, but it doesn't say that is the only thing that will happen.

Mike Lowe

As I am reading this it does seem to in some way indicate that – for storm water drainage, widening of existing street right of way, public recreation, conservation, sanitary sewer, etc. I guess that maybe what we would want to do is narrow that somehow. I am all for the idea of making things more efficient, but clearly we don't want to be taking on hazardous dumps.

Alderman Bolton

What gets labeled on the plan as conservation area and you find out that is where all the barrels have been dumped for the last 40 years....

Alderman Teeboom

The Board of Aldermen has committees like this committee and debate things sometimes endlessly. At least they debate things, and look at these things on a case-by-case basis. I am not persuaded that the Planning and Zoning boards have that scrutiny. I worried with Alderman Bolton. It is called the law of unintended consequences.

MOTION BY ALDERMAN BOLTON TO HOLD IN COMMITTEEON THE QUESTIONChairman McCarthy

What action would we like to take to move in some direction with this legislation?

Alderman Bolton

Further consultation with Legal Counsel.

Chairman McCarthy

Would you like me to ask Legal if they can be here to discuss it at a future meeting?

Alderman Bolton

Maybe we ought to say the Engineering Department has to make an assessment as to the potential of property being undesirable due to hazardous waste or other substances. Maybe we ought to ask the Engineering Department if they are in a position to make that kind of certification before we get it accepted.

Alderman Teeboom

That is exactly my thoughts. Earlier I spoke much in favor of the recommendation of the I.T. Department on technical things. There is actually no reason, in fact there is no guarantee the committee doesn't make bad decisions either, so to maybe amend this and ask for a

recommendation of the Legal Department before you act on any such thing. I would also talk to the Aldermen for the amendment. That would give us a level of scrutiny we need. The Legal Department does a good job from what I can tell. They may get over stressed. I think that would get us there.

Chairman McCarthy

I guess I think we need to divide it up into two categories one that requires fairly extensive review and define that review and one that is – where someone comes in with a site plan amendment and they are required to widen an entranceway by 4' or whatever and have to deed a right of way to do that – that is the one where we ought to make that just painless. That shouldn't require 6 months of investigation. If 2' next to the road is a hazardous waste site probably so is what is under the road already.

I think we need to figure out how to do the simple ones automatically and how to do the more complex ones automatically, but with a better review.

Alderman Bolton

I think that is probably right. I think if you make it clear the Engineering Department has got some responsibility to make an initial scrutiny, and if it is just a couple of feet on the side of the road then they sign off and that is that. If the Engineering Department thinks it requires some kind of hazardous waste assessment then at some point maybe you have to ask the developer to pay the cost of that as part of going forward with the Planning Board approval or Zoning approval. Someone with a certain level of expertise ought to have to sign off on that aspect of it before the end of the Planning Board process – not at the point in time where the Planning Board has already granted the approval, but prior to that.

Certainly the Legal Department has an involvement here, but I actually think either somewhere in Community Development, in the Planning Department and/or the Engineering Department, the professional expertise on this subject matter gets brought to bear rather than just the Legal Department.

Katherine Hersh

When proposals come before the City there is a significant amount of review by the Planning Department, by the Engineering Department, by the Traffic Department, and various other departments depending on what the project is. If there is any cause to believe there is any kind of hazardous materials on site then there are all kinds of requirements whether they are state requirements or otherwise in order to even bring that site to the point where it is ready to go to the Planning Board. There are all kinds of studies. We also have a Brownfields Coordinator that is available for any time that we ever have any questions about any of these sites, and we make sure she is in the loop on all of those things. She gets the tech review agenda when it – usually tech review meetings are every couple of weeks, and those agendas, which I think you all get as well, they list all of the preliminary applications that have been submitted to the city and that are in the review process with whether it is Engineering, Traffic, Planning, whoever, and they all get together and have meetings together so that they can all together review different projects, and she is in that loop.

I can't recall any properties that the city, through any Planning Board decisions, has ended up with for drainage or whatever purposes that it had any kind of environmental issues that we

found out about afterwards because we really are quite diligent about our review of these things.

Alderman LaRose

I can remember one. The Senior Center place. When the city bought the house that was abutting, and it was in front of the Planning Board and I asked the question is there any asbestos there and I was told no, no, no so I said well don't be surprised if there is. They tore the building down, started to put the sewer line in – asbestos.

Alderman Bolton

The answer is if the ground is flat there is asbestos under it.

Katherine Hersh

They should have known that one.

Alderman LaRose

They said they took borings and didn't find any, and then they dug and there it was.

Katherine Hersh

I can think of a couple of parcels that the city has taken, gone through the Board of Aldermen process that turned out to not have had that due diligence on it. One of them being the boiler house, which we are now dealing with. I can't think of any, except of course Alderman LaRose's example, that have gone through the Planning Board process in recent years.

Alderman LaRose

The law of averages, you are bound to hit one that you are wrong.

Katherine Hersh

We really are very diligent about knowing where the problems are. If it is a re-development site we will go back and look at the history of that site and determine whether or not there was a use on that site that might have left some hazardous materials. We have done, in the past four or five years, thanks to EPA Brownfields money we have done significant amount of research on properties with regard to asbestos. We know where those properties are located and we know what is needed to be done in order to maintain the safety of the public with regard to those sites. It is up to the Board what you want to do, but I am just saying I think our staff is quite diligent.

Alderman Bolton

I think that is fine. That being the case, 99 times out of 100 maybe 999 times out of 1,000 the process by which someone signs off that this is not an issue, we have already looked into it – that doesn't take any time at all. It takes just as long as someone to sign their name to it. It is that one time in 1,000 or one time in 10,000 that it will cause someone to say this one we ought to look at. If that never comes up it hasn't done us any harm.

Chairman McCarthy

Okay. Are there any further comments?

MOTION CARRIEDDISCUSSION

Katherine Hersh updated the committee on commuter rail. She stated in recent months (since June) meetings have taken place (led by the Governor's Office) with Congressman Bass' Office, representatives from Gilford (now called PanAm Railways) and representatives from Manchester and Nashua to have discussions concerning moving forward on bringing commuter rail from Lowell into Nashua and into the State of New Hampshire. She noted there are entities involved in this with respect to the State of New Hampshire and part of the past problem has been that it has been so focused on Nashua that it has seemed like a Nashua project when it is really bringing commuter rail back to the State of New Hampshire that is the important part of all of this.

... tape flipped ...

She stated a number of meetings have occurred, and a plan has been put together that is almost ready for submission to Federal Transit. They are discussing having someone introduce legislation to former Regional Transit Authority, which would get before the State Legislature the issue of commuter rail and also the liability cap, which Gilford will require in order to make this work. She stated a downside she is dealing with as the timing with the train station site that has been identified (Dow Chemical site). The developer of the site has been very amenable to working with the city and would be happy to design the site to incorporate the parking garage as part of the design of the site, but we are not at the point where we are ready to be able to participate in that because she cannot assure that commuter rail is going to happen, and, therefore, cannot commit to funding or building a parking garage for commuter rail. It looks as though that opportunity has been lost as the developer is moving forward.

Now that the talks are centered around going from Lowell to Manchester instead of Lowell to Nashua for this stretch it provides more options that can be looked at.

Alderman McCarthy asked if the design was moving forward that would preclude adding a rail station to it (Dow Chemical site). Mrs. Hersh responded yes. She mentioned discussions about dedicating an area where there might be surface parking where a parking garage could be placed at a future date.

Alderman Bolton asked why this has always been referred to as commuter rail rather than passenger rail. Mrs. Hersh stated her understanding of the difference being the commuter rail will offer 11 round trips a day. It provides the ability to commute. She stated the original discussions were double tracking from Lowell to Nashua, which would allow for a dedicated track for the non-freight, commuter/passenger rail, and then would provide the ability to do 11 round trips a day. What is now being discussed, which does not preclude double tracking in the future, is improving the single track from Lowell all the way to Manchester. That would be shared with the freight and would limit the round trips per day. It does allow Nashuans to be able to go to the Manchester Airport for example by train.

Alderman Teeboom asked if the plan is to utilize existing track or to lay new track, and if existing track is used is there a location in mind for the station. Mrs. Hersh responded if we upgrade the existing track that runs along the Merrimack River from Lowell up to Manchester any place along that track can have a train station placed on it as long as road access and parking are available. She does not have a specific location at this time. There are a number of other locations that she believes would work.

Alderman LaRose mentioned a statement that this is a priority for the Governor, and asked if the monetary priority has been established. Mrs. Hersh responded it remains to be seen. Alderman LaRose stated his opinion that we should be looking for commuter rail from Manchester Airport to Boston, and that Nashua should probably have two stations (north and south) to alleviate any parking problems and gain ridership from Merrimack area.

Mrs. Hersh stated the city has always hoped to have two train stations, and the second one has been identified in the East Hollis Street area, and is part of the East Hollis Street Masterplan. However, it has not been envisioned as a train station that would have a lot of parking. Instead it was envisioned as a train station that would be available on a more neighborhood basis (would look to make connections to Main Street, etc.).

Alderman Teeboom mentioned three ordinances he has coming in that would affect the land use boards. He expected them to come to this committee, but has been told them will go to the Personnel/Administrative Affairs Committee. He is seeking endorsement.

ADJOURNMENT

MOTION BY ALDERMAN BOLTON TO ADJOURN MOTION CARRIED

The meeting was declared adjourned at 8:52 p.m.

Alderman Michael J. Tabacsko
Committee Clerk