

JOINT MEETING
COMMITTEE ON INFRASTRUCTURE
AND
PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

MAY 27, 2020

A joint meeting of the Committee on Infrastructure and Planning and Economic Development Committee was held Wednesday, May 27, 2020, at 7:15 p.m. via teleconference.

Chairman O'Brien

As Chairman of the Committee on Infrastructure, as well as the Chairman of the Committee of Planning & Economic Development, Dave Tencza, we find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are:

a) Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means:

To access Webex:

<https://nashuanh.webex.com/nashuanh/j.php?MTID=med37f1c096221143409433a7e905d5d6>

Meeting number/access code: 718 669 011 – Password: iFu4SpvKX57

To join by phone: 1-408-418-9388 - Meeting number/access code: 718 669 011

b) Providing public notice of the necessary information for accessing the meeting:

We previously gave notice to the public of the necessary information for accessing the meeting, through public postings. Instructions have also been provided on the City of Nashua's website at www.nashuanh.gov and publicly noticed at City Hall and Public Health Department.

c) Providing a mechanism for the public to alert the public body during the meeting if there are problems with access:

If anybody has a problem accessing the meeting via phone or Channel 16, please call 603-821-2049 and they will help you connect.

d) Adjourning the meeting if the public is unable to access the meeting:

In the event the public is unable to access the meeting via the methods mentioned above, the meeting will be adjourned and rescheduled. Please note that **all votes** that are taken during this meeting shall be done by **roll call vote**.

Let's start the meeting by taking a roll call attendance. **When each member states their presence, please also state whether there is anyone in the room with you during this meeting, which is required under the Right-To-Know Law.**

Alderman Schmidt called the roll and asked them to state the reason he or she could not attend, confirmed that they could hear the proceedings, and stated who was present with him or her.

The roll call was taken with 5 members of the Committee on Infrastructure and Planning and Economic Development Committee present:

Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Jan Schmidt
Alderman Ernest Jette
Alderman David C. Tencza
Alderman-at-Large Ben Clemons
Alderman-at-Large Brandon Laws

Members not in Attendance: Alderman Thomas Lopez
Alderman-at-Large Brandon Michael Laws

Also in Attendance: Alderman Linda Harriott-Gathright
Alderman Richard A. Dowd
Alderman Skip Cleaver
Alderwoman Elizabeth Lu
Alderman Patricia Klee

Alderman O'Brien

Present, I am alone and I can hear the proceedings and I am practicing safe distancing.

Alderman Schmidt

Alderman Jan Schmidt is here and I am alone and I can hear the proceedings.

Alderman Jette

I am here, I am alone, I can hear you and I am not there because I am obeying the Governor's Order to stay home.

Alderman Tencza

I am here, I am alone, I can hear the proceedings and I am also practicing social distancing.

Alderman Clemons

Yeah, I am here, I am alone and I am obeying the Governor's Order.

Alderman Schmidt

Alderman-at—Large Brandon Laws is not here today. Let's see, who else is here? Linda Harriott Gathright you are here?

Alderman Harriott-Gathright

Yes.

Alderman Schmidt

We have Corporate Counsel Bolton, we Nicholas Frasca. Am I missing anyone?

Alderman Klee

I am here, Alderman Schmidt.

Alderman Schmidt

Alderman Klee, thank you.

Alderman Cleaver

Alderman Cleaver is also present.

Alderwoman Lu

I am here as well.

Alderman Schmidt

Thank you, all present and accounted for, so that's 1, 2, 3, 4, 5 – five members of the Board are present.

Alderman Dowd

Alderman Dowd is here too.

Alderman Schmidt

Thank you, full house. Thank you very much. Five Committee Members are present.

Chairman O'Brien

Thank you to the Clerk. To the Clerk, Communications?

COMMUNICATIONS

From: Linda McGhee, Deputy Planning Manager

Re: Referral from the Board of Aldermen on proposed R-20-033, authorizing the Mayor to execute a confirmatory deed to Pennichuck Water Works

There being no objection, Chairman O'Brien accepted the communication and placed it on file.

PETITIONS - None

UNFINISHED BUSINESS – None

NEW BUSINESS – RESOLUTIONS

R-20-033

Endorsers: Mayor Jim Donchess
Alderman-at-Large Michael B. O'Brien
Alderman Patricia Klee
Alderman Richard A. Dowd
Alderman Linda Harriott-Gathright
Alderman Skip Cleaver
Alderman-at-Large Lori Wilshire

AUTHORIZING THE MAYOR TO EXECUTE A CONFIRMATORY DEED TO PENNICHUCK WATER WORKS

MOTION BY ALDERMAN SCHMIDT TO RECOMMEND FINAL PASSAGE BY ROLL CALL

ON THE QUESTION

Chairman O'Brien

I would like to give the opportunity to brief us on this to Mr. Nicholas Frasca to give us a briefing on this please?

Attorney Nicholas Frasca

Absolutely, happy to do so, again Attorney Nick Frasca, on behalf of Pennichuck Water Works. This deals with the missing deed for property formerly known as Tax Map 52, Lot 57. That is now part of Tax Map 52, Lot 49. The City took the property for taxes back in 1961. Pennichuck has been paying taxes on the property for as long as anyone can remember. The City Assessor actually acknowledges that the lot in question is owned by Pennichuck. The issue is that there is a missing deed; we can't find the deed, the original deed on record at the Registry of Deeds. Therefore, we are requesting that the Mayor, on behalf of the City, execute a Confirmatory Deed so that we can clear the title out.

Chairman O'Brien

Thank you, Mr. Frasca. I will refer a quick question to our own Corporate Counsel, everything seems to be in order, of course?

Steve Bolton, Corporation Counsel

I concur with everything that Attorney Frasca said. It does appear that they have been paying, Pennichuck that is has been paying taxes on the property for decades, since before Nick was born anyway. I don't think anyone seriously doubts that there was intent to convey this, other properties were conveyed and either it happened and it got lost on the way to the Registry or there was some other oversight and it didn't happen exactly as it was supposed to, when it was supposed. This is simply to rectify a situation we all agree ought to be rectified.

Chairman O'Brien

OK, very good, thank you counselor. Any other member of the Board who would like to comment on R-20-033?

Alderman Jette

Did you say Alderman Jette?

Chairman O'Brien

Yes, Alderman Jette, you are recognized.

Alderman Jette

Ok, thank you. So I just want to make sure that Attorney Frasca promised not to lose this deed on his way to the Registry.

Attorney Frasca

Well Alderman Jette, I will have to E-Record this so I'll have to do it electronically so that'll make it a little more difficult to lose it.

Alderman Jette

Good to hear.

Chairman O'Brien

All set Alderman Jette?

Alderman Jette

Yes, thank you.

Chairman O'Brien

Alderman Harriott-Gathright.

Alderman Harriott-Gathright

I just have a question, where was this location?

Attorney Frasca

This is property 8 Manchester Street adjacent to Pennichuck Junior High School.

Alderman Harriott-Gathright

Adjacent to Pennichuck High School?

Attorney Frasca

Pennichuck Junior High, or Pennichuck Middle School as it is called.

Alderman Harriott-Gathright

I know where that is. So is it like a home or just like land?

Attorney Frasca

No it's just land, it is a forested property.

Alderman Harriott-Gathright

OK, thank you.

Attorney Frasca

You are welcome.

Chairman O'Brien

Any other comments from members of the Committee? Alderman Dowd.

Alderman Dowd

Yeah just for clarification it is part of those series of lots that are all unoccupied, most of them owned by Pennichuck and where you are looking to put a solar farm at some point.

Attorney Frasca

Yes that's correct, Alderman Dowd.

Alderman Dowd

And all the streets are paper streets and at some point, we will have to discontinue all the paper streets.

Attorney Frasca

We are not sure we are going to have to go down that road in terms of discontinuance. But that's probably a conversation for another day.

Alderman Dowd

No we don't need to do it tonight.

Alderman Cleaver

Alderman Cleaver. I have a question please.

Chairman O'Brien

Yes, Alderman Cleaver, you are recognized.

Alderman Cleaver

Thank you very much. What is the size of this lot?

Attorney Frasca

This lot is sitting at 16 feet by 100 feet.

Alderman Cleaver

So it's one of many you say?

Attorney Frasca

Yes, it is one of 105 lots that came off of an 1897 subdivision plan.

Alderman Cleaver

Between Pennichuck Junior High and the bridge?

Attorney Frasca

This property is between Pennichuck Junior High and other property owned by Pennichuck on Manchester Street. To the east of this property is the Hayden Graden Fun Maze. ?spelling

Alderman Cleaver

Thank you.

Chairman O'Brien

Further questions by any Aldermen? Seeing none, will the Clerk please call the roll call vote?

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Schmidt, Alderman Jette, Alderman Tencza,
Alderman Clemons, 5

Nay: 0

MOTION CARRIED

NEW BUSINESS – ORDINANCES

O-20-008

Endorsers: Alderman-at-Large Ben Clemons
Alderman Patricia Klee
Alderman-at-Large Michael B. O'Brien
Alderman Thomas Lopez

CHANGING THE STARTING TIME OF THE OVERNIGHT PARKING TIME LIMIT RESTRICTION IN CERTAIN LOCATIONS

Chairman O'Brien

Can I ask the Clerk to pause? This Bill O-20-008, the prime sponsor is Ben Clemons. The Chair recognizes Alderman Clemons for a Motion.

MOTION BY ALDERMAN CLEMONS TO RECOMMEND INDEFINITE POSTPONEMENT OF O-20-008 BY ROLL CALL

ON THE QUESTION

Alderman Clemons

And I'd like to speak to that.

Chairman O'Brien

Granted, please.

Alderman Clemons

Thank you. So this originally was a companion piece to the last call Ordinance which we disposed of by indefinite postponement in, I believe it was in March. And it was held at the Personnel Committee because at the time the Personnel Committee had recommended passage of the 2:00, I call it the 2:00 AM Bill. And the idea was we would come back to this because there were some questions. But I had made a promise to some of the co-sponsors on this that if the overnight, I mean if the 2:00 AM Bill did not pass, then I would make a Motion to recommend Indefinite Postponement to this piece of Legislation because it would be unnecessary because the only reason really to take this up would have been if you were serving alcohol until 2:00 a.m. restaurants would be open until 2:00 a.m. and thus you would want to start the overnight parking time limit later. Since we are not doing that, the idea is that our starting time for the overnight parking should remain the way that it is. At least that is my thinking and so therefore I am recommending that the Committee vote for Indefinite Postponement.

Chairman O'Brien

Thank you, Alderman Clemons. Any other questions from the Alderman? Alderman Klee?

Alderman Klee

Thank you very much. I appreciate Alderman Clemons being a true man of his word. This in my opinion is unnecessary as it really was, as he pointed out, a companion bill. I think it would hurt our overnight parking ordinance if we were to change this and I think at this point, things should stay as they are, the overnight parking for now. So I encourage you all to vote Indefinite Postponement. Thank you for hearing me.

Chairman O'Brien

Additional comments on O-20-008? Alderman Harriott-Gathright?

Alderman Harriott-Gathright

I just have a question. So if you guys vote Indefinite Postponement, it can come back up correct?

Alderman Clemons

I would think so because this was really specific to metered spaces and it was very specific to the time frame that was proposed, so if there was a desire or whatever for another Alderman to bring forward Legislation to completely eliminate overnight parking or to change it to some different times or something like that, in all spaces or whatever, I would think that, it would be my opinion that yes, Legislation could come forward because it would be different than what this is.

Alderman Harriott-Gathright

So I guess my question would be kind of like that's holding on to the Legislation. Is there a way to just get rid of it, so it is no longer there, is there something like a withdrawal of something to that nature, I am just curious?

Alderman Clemons

Mr. Chairman if I could continue.

Chairman O'Brien

Yes absolutely Alderman Clemons.

Alderman Clemons

Thank you. Yeah, the only thing that we could really do is just table it and leave it on the table. I don't really have an opinion one way or the other. I know that I have no desire for this to go forward. And it is not to say that I don't have any desire to talk about overnight parking in the future or some other, or under some other premise. But whereas this was so very specific, I don't see a reason why we shouldn't just dispose of it.

Alderman Harriott-Gathright

Then the question (inaudible) to Alderman O'Brien to Corporate Counsel. So how do you just get rid of something like that like he said, it was specific to something that (inaudible).

Chairman O'Brien

Corporate Counsel please?

Attorney Bolton

Indefinite postponement has been the issue that has been used for 40 years to get something off your Agenda, not have it keep coming back and being shown as you are keeping it on the table. There's nothing magic about the term "Indefinite Postponement", you could say "reject" and it would have the same effect and it would be gone. For a good 40 years the terminology that has been used when a measure is rejected by the Board of Aldermen has been Indefinite Postponement.

Alderman Harriott-Gathright

So that would be the highest. So thank you for that, so at least I know going forward what is the highest.

Attorney Bolton

Well "Reject" is technically higher, but for all practical purposes is the same thing.

Alderman Harriott-Gathright

Thank you.

Chairman O'Brien

Further questions from members of the Committee? Seeing none, the pending motion before us on O-20-008 is Indefinite Postponement. Would the Clerk please call the roll?

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Schmidt, Alderman Jette, Alderman Tencza,
Alderman Clemons 5

Nay: 0

MOTION CARRIED

Chairman O'Brien

Would the Clerk please read the next Bill by title only and I'll look for a Motion by the Chair of the Planning & Economic Development Committee

O-20-014

Endorsers: Mayor Jim Donchess
Alderman-at-Large Benjamin Clemons
Alderman-at-Large Lori Wilshire
Alderman-at-Large Shoshanna Kelly
Alderman Jan Schmidt
Alderman Patricia Klee
Alderman Thomas Lopez
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Richard A. Dowd

RELATIVE TO TEMPORARY AJUSTMENT TO SITE PLANS

MOTION BY ALDERMAN TENCZA TO RECOMMEND FINAL PASSAGE BY ROLL CALL

ON THE QUESTION

Chairman O'Brien

The Motion before us on O-20-014 of final passage. Any Aldermen that would make further comment or further questions, we do still have the Community Development Director, Sarah Marchant present.

Chairman Tencza

Mr. Chairman if I could also, just make a motion at this time to amend O-24-014 as written to reflect in the last sentence of the first paragraph that "No fee shall be charged " pursuant to the Director's comments during the public hearing.

MOTION BY ALDERMAN TENCZA TO AMEND BY ADDING THE WORD "NO" IN THE FIRST PARAGRAPH TO READ "NO FEES SHALL BE CHARGED" AS NOTED BY DIRECTOR MARCHANT BY ROLL CALL

ON THE QUESTION

Chairman O'Brien

Yes, thank you Mr. Chairman, I do agree. Parliamentary inquiry to the Corporate Counsel. Should we recommend the final passage first and then the Bill is (inaudible) or can we do it at the same time?

Attorney Bolton

Probably you want to recommend an amendment and then recommend passage.

Chairman O'Brien

Alright before us is Chairman of the Planning & Economic Committee who has an amendment. Can you bring forward your amendment again and can the Clerk please record?

MOTION BY ALDERMAN TENCZA TO AMEND BY ADDING THE WORD "NO" BEFORE THE WORD "FEE" IN LAST SENTENCE OF THE FIRST PARAGRAPH TO READ "NO FEES SHALL BE CHARGED" AS NOTED BY DIRECTOR MARCHANT BY ROLL CALL

ON THE QUESTION

Alderman Harriott-Gathright

I just have a question?

Chairman O'Brien

Yes.

Alderman Harriott-Gathright

I don't know why but I have two Ordinances here and one of them have a second paragraph that says, "This authorization and any approval issued thereunder shall not waive compliance with any building code, fire code, health code, or any otherwise applicable provision of law". Is that the new or is that the old one?

Chairman O'Brien

Director Marchant, so yes please.

Director Marchant

Sure. That wording is in the overall Ordinance before you tonight in O-20-014. That is the second paragraph and that is included in that.

Alderman Harriott-Gathright

OK, I was just checking because I don't know why I had two different ones. Thank you.

Director Marchant

Yes that is included, we are not trying to leave any of those things, simply the site plan land use code 190.

Alderman Harriott-Gathright

Thank you.

Chairman O'Brien

Further discussion on the pending amendment. Seeing none, will the Clerk please call the roll?

Alderman Wilshire

On the amendment to 20-014 to add the word "no"?

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Schmidt, Alderman Jette, Alderman Tencza,
Alderman Clemons 5

Nay: 0

MOTION CARRIED

Chairman O'Brien

I am now going to call the pending question of O-20-014 as amended with the pending motion of final passage by Alderman Tencza. Any discussion on that motion.

Alderman Clemons

Yes, Mr. Chairman?

Chairman O'Brien

Yes?

Alderman Clemons

May I speak?

Chairman O'Brien

Yes Alderman Clemons, please.

Alderman Clemons

Thank you so I am in full support of this. I think it's a great school that we can use to expedite from what I consider to be common sense that shouldn't have to go through the rigamarole of the Planning Board. So you know especially where as we are trying to get our business community back up on their feet, I think that this is a good measure and it does have a time limit on it, to expire at the end of the year. But I think it's also worthwhile to see how it goes, because I think if it is successful it might be something that we might want to look at even for the future. I was happy to support it the way that is here and I support the amendment obviously and I hope that it proves to be successful. Thank you.

Chairman O'Brien

Further questions on O-20-014? Alderman Lu?

Alderwoman Lu

Thank you very much. My questions are and you know I may have an earlier version of this as well. Ok, I just wondered why January 1st was chosen for the expiration when we – so let me ask you that question first of all. What I am thinking is, I think my understanding of this is that it is pretty tightly designed for changes that are strictly related to restaurants that want to serve outdoors, is that right?

Chairman O'Brien

Yes. Director Marchant or Attorney Bolton? Did you get your answer Alderman Lu?

Alderwoman Lu

I didn't hear Director Marchant's answer.

Chairman O'Brien

They confirmed what they said, yes.

Alderwoman Lu

And why January 1st was chosen instead of the November 15th date that where, oh I see, just so that we don't have to go back and do this again. OK. Chapter 190 is like 250 pages. And is there any, why is that this wasn't more specifically geared to a relevant part of Chapter 190?

Chairman O'Brien

Attorney Bolton.

Attorney Bolton

190 is the Zoning Ordinance and Subdivision & Site Plan Regulation. It covers such things as what Director Marchant spoke of before. It covers open space requirements and required side yard and backyard setbacks, open space, a number of required parking spaces, required loading zones. Many of the things that we might want to expedite a restaurant being able to temporarily avoid if they wanted to set up a patio outside in what would have been required parking space, so they won't be serving anyone inside, presumably they won't need all of those parking spaces. A normal Planning Board approval can take months by which time the outdoor dining season would be largely over. So the idea was to be able to get a quick approval or something that would help in the immediate future and basically is intended to last this season. January 1st, one thing you should know, is this measure was written before any of the Main Street related parking and narrowing and so forth. Because this is a Zoning & Land Use Ordinance, you have to go through this public hearing procedure, which delayed this measure beyond those other measures. Sometimes we have nice weather in November, December and January 1st seemed like a good date to have this expire. You can amend it, if you want it to match the other provisions where November 15th was the date, that's certainly within the authority of the Board of Aldermen, who after 190 is the Land Use Provisions which is what we are looking to be able to adjust. In many respects we didn't want to overlook anything and find out that yes, we had accounted for open space and we had accounted for required parking but we want to waive a required a setback and we are two feet over the line and that's going to delay it for the restaurant for months. So that's why we limited it to these zoning requirements, and site plans and subdivision requirements, to set these dimensional restrictions. We don't want and we specifically say that we don't want it to have any impact and be construed to a long waiver of fire codes, building codes, or any safety or health measures. Those will still apply, the restaurants applying for this temporary grace, will still have to meet all those safety and health measures.

Alderwoman Lu

Thank you, Attorney Bolton, you have answered all my questions. Thank you.

Alderman Klee

Thank you, Chairman. I am not on either of these Committees, but I did want to comment that I agree with this Ordinance. It is temporary, it very specifically, as Attorney Bolton identified, very specifically says that it does not waive any compliance of building code fire code and so on. And at this time where we have to make quick decisions, I think it is important that we give certain people the authorization to do something. It doesn't mean that they are going to have carte blanche, that if they had done something that is truly out of what we would hope for, that wouldn't stop us from pulling this back or doing anything. I think it's important to give immediate authority to different individuals and I hope that make a recommendation of that.

Alderman Jette

Yes, Chairman if I could ask Director Marchant through you a question. I like the idea of changing the expiration date to November 15th to make it consistent with the other Legislation, but what is your reaction, what would be your reaction to that?

Director Marchant

Sure, thank you so much Alderman Jette. I don't have any concern with it being November 15th if they all line up together. As Attorney Bolton said, this written first. I will say that I think we are all adapting quickly and all of these restaurants are and I think culturally we are as well. If this is very successful and if for some reason restaurants don't open inside, I think that we have the opportunity to adapt to accommodate outdoor dining longer. And so I think November 15th is still a reasonable deadline, but I know when we have visited other parts of the country or other parts of the world, you know, there is outdoor dining year-round with those heating things and they provide blankets, not that that would be great with COVID. But there are people who eat outside all year round because that's a better solution. So I just want to leave us open to the ability to adapt as our wealth is changing at the moment. But I do think after November 15th, there is going to start to be snow, we have to be ready and all these businesses and restaurants have to have a plan to deal with that. So I don't think there's a need to extend beyond that if you want to change it.

Alderman Dowd

Yes, I think we ought to make it January 1st because I can see if people aren't eating outside, they still may be doing the 15-minute pick up. I can see the downtown changing over and over again and having worked with Director Marchant extensively I have full confidence in her decision and knowledge base to be able to make these decisions on our behalf.

Chairman O'Brien

Thank you, Alderman Dowd. The Chair does have a question to Director Marchant. By keeping January 1st, would that kind of enhance the fun for the Holiday Stroll? It wouldn't take much more to change it.

Director Marchant

This area doesn't actually generally include Main Street so the Main Street includes the D1 District. The D1 District is generally exempt from site plan purview. So this is mainly for all the restaurants that are not on our Main Street or in our Core D1 District.

Chairman O'Brien

OK, very good. Alright, further questions by members of the Committee or the Board? Seeing none, we are going to move the question, the pending motion is for final passage by Alderman Tencza on O-20-014. Would the Clerk please call the roll?

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Schmidt, Alderman Jette, Alderman Tencza,
Alderman Clemons 5

Nay: 0

MOTION CARRIED

TABLED IN COMMITTEE

O-20-004

Endorsers: Alderman Thomas Lopez
Alderman Patricia Klee
Alderman-at-Large Shoshanna Kelly
Alderman Linda Harriott-Gathright

ALLOWING PERMITTED OVERNIGHT ON-STREET PARKING ON EIGHTH STREET

- Tabled at 2/26/20 meeting

O-20-006

Endorsers: Alderman Thomas Lopez
Alderman Patricia Klee
Alderman-at-Large Shoshanna Kelly
Alderman Linda Harriott-Gathright

ALLOWING PERMITTED OVERNIGHT ON-STREET PARKING ON A PORTION OF PRESCOTT STREET

- Tabled at 2/26/20 meeting

GENERAL DISCUSSION - None

REMARKS BY THE ALDERMEN - None

POSSIBLE NON-PUBLIC SESSION - None

ADJOURNMENT

MOTION BY ALDERMAN TENCZA TO ADJOURN BY ROLL CALL

A viva voce roll call was taken which resulted as follows:

Yea: Alderman O'Brien, Alderman Schmidt, Alderman Jette,
Alderman Tencza, Alderman Clemons, 5

Nay: 0

MOTION CARRIED

The meeting was declared closed at 7:49 p.m.

Alderman Jan Schmidt
Committee Clerk