

COMMITTEE ON BILLS ON SECOND READING

July 6, 2010

5:00 PM

Chairman DeVries called the meeting to order.

The Clerk called the roll.

Present: Aldermen DeVries, Lopez, Arnold, Corriveau, Shaw

Messrs.: B. Stanley, D. Callaghan, T. Arnold, J. Craven

Chairman DeVries addressed item 3 of the agenda:

3. Ordinance Amendment:

“Amending Section 70.36 Stopping, Standing, or Parking Prohibited of the Code of Ordinances of the City of Manchester by prohibiting parking within five (5) feet of a fire hydrant.”

Alderman Lopez moved that the Ordinance Amendment ought to pass. The motion was duly seconded by Alderman Arnold.

Chairman DeVries stated I’m sure it was discussed in the prior committee. This is changing from 15 feet to five feet and it is my understanding from a letter that is enclosed that there will be demarcation for the constituents so they will have a better visual of what five feet represents. Is that correct?

Ms. Brandy Stanley, Parking Manager, replied unfortunately, this is from the Highway Department so I’m not sure I can answer the question.

Chairman DeVries called for a vote on the motion. There being none opposed, the motion carried.

Chairman DeVries addressed item 4 of the agenda:

4. Ordinance Amendment:

“Amending Section 70.78 Penalty of the Code of Ordinances of the City of Manchester by revising the penalty for parking near a fire hydrant.”

On motion of Alderman Lopez, duly seconded by Alderman Arnold, it was voted that the Ordinance Amendment ought to pass.

Chairman DeVries addressed item 5 of the agenda:

5. Ordinance Amendment:

“Amending Chapter 70: Motor Vehicles and Traffic of the Code of Ordinances of the City of Manchester by amending Section 70.57(B) Parking Rates thereby establishing transient and event parking rates for the new Lake Avenue Lot and deleting reference to the former Seal lot.”

On motion of Alderman Lopez, duly seconded by Alderman Shaw, it was voted that the Ordinance Amendment ought to pass.

Alderman Long asked this isn't the bus parking lot, correct?

Ms. Stanley replied correct.

Chairman DeVries addressed item 6 of the agenda:

6. Ordinance Amendment:

“Amending Chapter 70: Motor Vehicles and Traffic of the Code of Ordinances of the City of Manchester by amending Section 70.54 Permit Parking in Lieu of Coin Deposit thereby creating a new Lake Avenue Lot.”

Chairman DeVries stated on page 6-2 I noticed that there is a typo. If you look at district 21 it says UHN. That probably should be UNH. If you want to come back because there is something pertaining to this district that is tabled.

Ms. Stanley stated it is district 26 that is tabled with the Committee on Accounts. I would defer to the Clerk to see if we can make that change right now or if you would like me to make the change and bring it to the Traffic Committee in August.

Chairman DeVries stated it is a typographical type error. Can we make that correction at this point in time?

City Clerk Matthew Normand replied certainly we can correct that. It is just a typographical error. I think the issue is in district 26. Is that what you are referring to, Brandy?

Ms. Stanley replied yes. If you look on page 6-3, there is a note under district 26. This has already been through most of the process and it is currently in the Committee on Accounts. It is totally unrelated to this change in the Ordinance.

Chairman DeVries asked so with the one typographical error in district 21, we can have a motion to accept.

On motion of Alderman Lopez, duly seconded by Alderman Arnold, it was voted that the Ordinance Amendment ought to pass as amended.

TABLED ITEMS

7. Ordinance Amendment:

“Amending the Zoning Map of the City of Manchester by rezoning an area currently zoned as Research Park District (RP) to Neighborhood Business District (B-1), generally located in the vicinity of Hackett Hill Road, Poore Road, and the F.E. Everett Turnpike – Interstate 293, including a portion of TM 766, Lot 15, a portion of TM 766, Lot 14D and a portion of TM 767, Lot 3A.”
(Tabled 6/23/10; Letters sent on 6/30/10 to Attorney Callaghan and JP Sercel Associates notifying them of meeting)

On motion of Alderman Arnold, duly seconded by Alderman Lopez, it was voted to remove this item from the table.

Chairman DeVries stated I have been asked by both Attorney Callaghan and the Danais Group to have some brief conversation in front of the committee.

Mr. Daniel Callaghan, attorney with Devine Millimet, stated we represent JP Sercel, the company that is at the former French Hall building on Hackett Hill

Road, the gateway to the Northwest Business Park, and the owner of the property, Valspar Realty LLC. First, I want to thank the committee for tabling the matter last month. We appreciated that. We did, as I represented to the full board on Tuesday, June 22nd, meet with the developer, a representative from the City, Alderman Arnold and my client. Mr. Sercel did just return from Asia and that is why he is not with me this evening. I would characterize our meeting as informative and candid with regard to the issues. To be clear, JP Sercel and Valspar have no objection to item seven. That is the small rezoning shown on the chart. It is a small rezoning that changes a portion of the RP zone to be one. Our concerns are with item eight, specifically with regard to the permitted uses sought, specifically, warehouse uses. We had some discussion with regard to that. We understand that neither the City nor the developer intend that this become a warehouse park and that gives some comfort to us. Our concern, because JP Sercel is a high tech company that is based in research and development in this area, was the opportunity to expand. We had discussions about the opportunities to deal with lot 12, which is the lot immediately adjacent and to the northeast of the Sercel property.

Chairman DeVries stated for the benefit of the group, Mr. LaFreniere is at the map. Could you point out lot 12?

Mr. Callaghan stated the Sercel parcel is the yellow portion and it is immediately up Hackett Hill Road. We had discussions regarding that, but we did not reach a conclusion. I appreciate the developer's willingness to talk about that issue. We would ask that the board give us the opportunity to see if an agreement could be brought to conclusion and we ask that you keep this on the table until the August meeting. I would be glad to answer any questions.

Chairman DeVries asked if this was to be tabled for what would amount to another month in committee, do you hope that you would be able to accomplish a meeting of the minds on that parcel so your client would not be damaged by the transaction?

Mr. Callaghan replied that's correct. The opportunity to expand by having lot 12 protects two interests. One, it obviously allows JP Sercel the opportunity to expand its business. It is building an addition on its building presently. Secondly, it also allows some protection by having a bigger frontage along Hackett Hill Road. As I said, the Sercel property is not part of the Northwest Business Park. However, by agreement with the City back in 2006, we agreed that we would be subject to it. That was a benefit. I want to be clear that the business park set certain standards. We understand that if this transaction goes forward, the Northwest Business Park plan will be terminated. We have asked some questions with regard to that and we don't need to get into that this evening, but that is the

concern that we have in trying to protect that opportunity. Sercel is a company that currently has 100 employees and expects to have 133 by the end of the year. As I said to the full board back in June, Mr. Sercel was not able to attend the meeting because he was in Asia selling his product to China and other countries as opposed to trying to buy products from those other countries.

Chairman DeVries stated you had indicated also that item seven was not problematic and could move along. It is only item eight?

Mr. Callaghan replied correct.

Alderman Lopez stated I'm very disappointed with this whole process, with the Committee on Bills on Second Reading and with the full board. We sold a piece of property to another person. We had a public hearing and now we are going to play a part in 'let's make a deal'. I think that is uncalled for. I don't think we or this board should get involved in any deal between A and B. Hackett Hill has been empty for a long time. A person stepped forward with a proposal. Jay Minkarah will verify this for the record that we went out for an RFP, we had a committee, we had an Alderman sit on that committee, and one person decided to come in and do something under the conditions that were presented at the public hearing and the Board of Mayor and Aldermen decided to send it to this committee as a process. I don't want to play any part in holding this up in this committee, like I said at the last meeting. The chairman vowed that we would have a meeting today before it went to the full board. If the full board wants to do something different, that is a different subject. I don't believe that we should be involved in or have an upper edge for one party to have over another party.

Chairman DeVries stated Alderman Lopez, I would correct you because I don't see our engagement as trying to take one side versus the other. We have been approached by one of our existing companies in the high tech industry who says that they will be damaged by the potential changes to the Hackett Hill parcels that we are asking for today that were not there when they purchased their company from the City just two and a half years ago, at the beginning of the Hackett Hill Office Park. They are feeling that their high tech business will be damaged and that is why we have granted them the audience before us today. Whether or not this item is tabled will be the vote of the board. I don't think that determination has been made, but I certainly think that it is inappropriate for you to say that we are picking one side versus the other. We are giving a forum to an individual to speak to us and that is what's happening now.

Alderman Lopez stated to answer you, Madam Chair, I think it was mentioned last time that if a company came in with a letter and wanted to change something and get out of that agreement or contract, the full Board of Mayor and Aldermen

would give the same consideration that was given to both parties at that time. I don't want to be a pawn for anything being held up on Hackett Hill. We have wasted enough time. That is my point of view.

Alderman Arnold stated I'll start by saying that many of my thoughts mirror those of Alderman Lopez's. We have had this issue vetted for months. It was before the Lands and Buildings Committee twice. We had a public hearing, a public forum and the full board took it up. To Attorney Callaghan, I hope that I have done an adequate job conveying to Sercel and the representatives of JPSA...I don't think I am overstepping the bounds in saying that the Board of Mayor and Aldermen are glad that JPSA is in Manchester and we are glad that they are looking to expand in Manchester. I forget who it was who said this at the public hearing, but someone on the board said that it would be great if we had half a dozen high tech companies like that and then we could have realized the vision of the Northwest Business Park, but as Alderman Lopez pointed out, that's not what we have due to market forces and other factors outside of anyone's control here. I can appreciate the concerns of JPSA. I can tell you that I am convinced that some of their concerns can still be dealt with even if this Committee chooses to move forward on the proposal that is in front of us. I also want to point out, Madam Chair, that the Board of Mayor and Aldermen has already taken action on this proposal and decided that it is something that we want to invest in on behalf of the taxpayers and residents of the City. From my perspective, our role on this committee is very narrow. I don't believe that by moving this forward we are inhibiting the opportunity afforded to the parties involved, meaning JPSA and the proposed developers. I don't think we are inhibiting the opportunities there for them to reach some kind of resolution. As Alderman Lopez said, we tabled this as a courtesy last month. I was fine with that to give all the stakeholders an opportunity to meet. They have met and I would like to see it move forward.

Mr. Callaghan stated if I might respond to Aldermen Lopez and Arnold, it was not my intent to place this committee or the full Board of Mayor and Aldermen in a situation where you felt that you were used and I apologize for that. My client became aware of this particular issue recently. I'm not saying that there wasn't public notice with regard to that, but just that his knowledge of this project came up and we reacted as quickly and as prudently as we could. I do share Alderman Arnold's optimism that we will continue to discuss the issues involving lot 12 and we will have opportunities in other forums to deal with whatever development goes on there. It was my thought that in light of the fact that the agreement between the City and the developer had not yet been executed, at least as of 11:00 this morning, and that called for a 60 day due diligence, we are not really delaying anything if it was put on the table to give more opportunity for those discussions to happen. However, I understand the position and I want to be very clear that it

was not the intent of my clients or me to place you in a situation which you felt that you were being used and I apologize for that.

Alderman Corriveau stated Attorney Callaghan, you mentioned that without an executed agreement, 60 days due diligence runs from execution. Have you been informed when the agreement might actually be executed?

Mr. Callaghan replied no, I haven't. My understanding is that the developer has been doing due diligence for several months so it's not like they haven't been doing work and I don't want to create that impression. The only information that I have is from the draft agreement that was provided to me by Mr. Minkarah who has been very helpful in this entire process since I got involved in it about three weeks ago between meeting with me, talking with my client and coming over to talk to me today after just getting back from vacation.

Alderman Corriveau asked with that being the case, if this proposed Ordinance were to stay in this committee until August 3rd at the latest, are you telling us that during that time the due diligence is ongoing? In that respect nothing is changing? Are we looking at any sort of timeline change if we do not take any action on this tonight?

Mr. Callaghan replied I don't represent the developers so I can't speak to what their timelines are.

Alderman Corriveau stated that's fine. I'm just asking what your understanding is.

Mr. Callaghan stated my understanding of the agreement is that there is a closing date of August or whatever extra date if they need a condition approved, so that was my point in saying that I don't think that we were looking to delay that beyond what the terms of the agreement provide. If that is a mistake, I'm sure that Mr. Craven will correct me.

Alderman Corriveau asked would the City solicitor have that information at hand? Do we have that agreement or a draft in front of us?

Chairman DeVries stated he is wondering about exercising a purchase and sale agreement after due diligence and if you have that timeline.

Mr. Thomas Arnold, Deputy City Solicitor, replied I don't have it here with me, no.

Chairman DeVries stated we can certainly ask the question of the developers. They are here. Attorney Callaghan, what I haven't heard from you today that we

did hear from you at the last meeting, and maybe you said it and I missed it, but there have been some concerns about the vibrations that could be caused by the tractor trailer movement through the industrial park. I believe it was your opinion or your client's opinion that with the change to use and the additional warehousing there it would be an added burden of additional tractor trailers and more concern for the vibration because of the lasers that are used in the manufacturing process for your client. Am I correct?

Mr. Callaghan replied you are correct and Mr. Sercel was the one to address that at the board meeting. My assumption is that through the planning process, those types of issues can be addressed with regard to the development. Our concerns were primarily the expectations of Sercel being the gateway to the Business Park and that is now changing with regard to the allowance of the warehouse permitted use as opposed to the conditional use permit status.

Chairman DeVries stated also in reference to Alderman Lopez's comments that your client could certainly petition to have the restrictions that were in place at the time when they purchased into the Industrial Park removed. Is that something that your client has indicated that they have any interest in or would that make them feel less damaged by the changes that are before us with this Ordinance?

Mr. Callaghan replied one of the issues with regard to several of the conditions that were imposed with regard to the construction and improvement so those conditions have been satisfied...

Alderman Lopez interjected excuse me, Madam Chair, but I need a clarification from the City solicitor. Are we going beyond what we are here for, Mr. Solicitor, because there is a process of zoning and planning and a lot of these questions are going to be posed. We have an alderman who sits on the Planning Board and I think a lot of these things will be addressed at the Planning Board. Our job is to take Hackett Hill and change the zoning and send it to the full Board. I'm wondering why this line of questioning is even becoming an issue.

Chairman DeVries stated thank you, Alderman Lopez, and we will hear the answer from Mr. Callaghan.

Alderman Lopez stated I would like the ruling from the City solicitor first.

Chairman DeVries stated first I would like to hear from Attorney Callaghan and as chairman, I will ask for that answer.

Alderman Lopez stated I think we are getting too far ahead and I'm going to appeal to the City solicitor to guide us. I appeal to the committee. If you want to take a vote, take a vote.

Chairman DeVries asked why don't we get a brief answer from Attorney Callaghan and then get the answer on whether we have overstepped the bounds?

Alderman Lopez replied because I want to appeal to the City solicitor.

Chairman DeVries stated I'm not sure what you are appealing here, Alderman Lopez.

Alderman Lopez stated before he answers the question, I want guidance from the City solicitor as to whether we are overstepping our bounds.

Chairman DeVries asked by asking questions as to whether the ordinance changes pertain to this committee?

Alderman Lopez replied no. We do technical review of the ordinance changes. We have a process where the Planning Board will take up a lot of these questions by both clients. The owner of the property is going to have to produce the documentation as to what he wants to build and the other client will have the opportunity to convince the Planning Board that it is not in the best interest if they go left or they go right. We are getting too deep into this and I would like have a ruling from the City solicitor.

Chairman DeVries stated if I understood your concerns maybe I could form the question, so why don't you form a question for the solicitor because I still don't quite understand.

Alderman Lopez stated I would like the City solicitor to rule one way or another if we are beyond our means and getting into other areas like planning and zoning that should be taken up if the Board of Mayor and Aldermen approve the zoning as it was presented to us tonight.

Mr. Arnold stated ordinances of this type are referred to this committee for technical review. I don't believe that includes a substantive review of the purpose of the ordinance or its terms. As I said, it is a technical review and that is why items come to this committee.

Mr. Callaghan stated we have not looked at the issue of the impact of the termination of the Northwest Business Park plan, but we would reserve our rights to seek whatever remedies we need to at a later date.

Chairman DeVries stated before we take a vote, we have the legal counsel for Danais.

Mr. Jason Craven, Craven Law Firm, stated I am representing Danais Realty, the developer. Very briefly, the committee has really gone through this issue from our perspective. We have walked through this process since the RFP was submitted in February and we have been through months of meetings with staff and department heads and members of the Board of Mayor and Aldermen. The purchase and sale agreement which is specifically predicated upon these changes which are outlined in the Ordinance Amendment are critical terms of that agreement that have already been approved by the Board of Mayor and Aldermen. I would suggest it is close to being ready for signing between the City Solicitor's Office and me, as well as Attorney Deachman representing NHRC. We have been working through some minor terms primarily dealing with the construction piece of the agreement of the fire house and making sure that that all works. We feel that this committee is being asked to review the ordinance and send it to the full board. We are prepared to go to the full board and feel it is proper to continue this process. The developer, in looking at the project and looking at Hackett Hill with the legal aspects of it and the construction aspects, is essentially on hold at this point. He is not going to go out of pocket and expose himself to extensive costs beyond what he is putting out in effort without a signed agreement and without an understanding of what the zoning is going to be. I think that to table this for another 30 days runs the risk that we are pushing this further and further out and a critical component of this transaction is the construction of a fire house at Hackett Hill. As we stand now, based on the terms of the agreement, it is our hope that if we could get this resolved quickly and signed we will be able to get in the ground this fall. The longer it takes to get past these points, the longer it will take for us to get in the ground and get this moving forward. We would ask the committee to take this off the table and refer it to the full board to vote. We have been through a public hearing on this. The abutter, JP Sercel, had the full opportunity at the public hearing to vent its issues. This is a zoning issue. It does not include Sercel's expansion plan nor does it not involve their interest or rights to lot 12. This is a question of amending the zoning and their interest perhaps in gaining greater property to expand is really not an issue that is associated with the zoning. We would ask the committee to take it off the table and refer it to the full board.

Chairman DeVries stated I would certainly agree with you that it is not within the purview of this committee to decide whether or not they were assisting in any way the negotiations for the purchase of that parcel. That is a private matter and I would certainly agree. Within the purview of this committee though, is the view of the ordinance in front of us. You did hear that item seven which is the Northwest Business Park is not in any way problematic.

Mr. Craven stated yes, they expressed all the way back to the public hearing that they were fine once they understood the extend of the B1 zone. The B1 zone effectively only deals with the existing fire house lot. It is the existing one and what will be the new fire house lot so the B1 change only affects that lot. That balance of the RP lots affects the balance of the business lot.

On motion of Alderman Arnold, duly seconded by Alderman Lopez, it was voted to approve this item.

8. Ordinance Amendment:

“Amending the Zoning Ordinance of the City of Manchester (RP Zone) by revising Section 4.01 A. Base Districts and Section 5.10 Table of Principal Uses.”

(Tabled 6/23/10; Letters sent on 6/30/10 to Attorney Callaghan and JP Sercel Associates notifying them of meeting)

On motion of Alderman Arnold, duly seconded by Alderman Lopez, it was voted to remove this item from the table.

On motion of Alderman Arnold, duly seconded by Alderman Lopez, it was voted to approve this item.

9. Ordinance Amendment:

“Amending Chapter 70: Motor Vehicles and Traffic of the Code of Ordinances of the City of Manchester by amending Section 70.36 Stopping, Standing and Parking by adding Section (E) Overtime Parking and Section (F) Penalty.”

(Note: Retabled 6/23/10: Parking Manager to return to the Committee with revised recommendations. Originally tabled 5/24/10)

This item remained on the table.

10. Ordinance Amendment:

“Amending Chapter 70: Motor Vehicles and Traffic of the Code of Ordinances of the City of Manchester by amending Section 70.06 Definitions to add the definition of Overtime Parking.”

(Note: Retabled 6/23/10: Parking Manager to return to the Committee with revised recommendations. Originally tabled 5/24/10)

This item remained on the table.

There being no further business on motion of Alderman Lopez, duly seconded by Alderman Arnold, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee