

CITY COUNCIL and PLANNING BOARD JOINT WORK SESSION

DEVELOPMENT MORATORIUM

May 28, 2013 – 6:30 p.m.

Eileen Dondero Foley Council Chambers

City Council Present: Mayor Spear, Councilors Kennedy, Novelline Clayburgh, Lown, Dwyer, and Thorsen

City Council Absent: Assistant Mayor Lister and Councilors Coviello and Smith

Planning Board Members Present: Chairman John Ricci, Members Anthony Blenkinsop, Colby Gamester, William Gladhill, James Leduc, Elizabeth Moreau and Karina Quintans.

Staff Present: City Manager Bohenko, Deputy City Manager Allen, City Attorney Robert Sullivan, Planning Director Taintor and City Planner Nick Cracknell

Mayor Spear called the Work Session to order at 6:30 p.m.

City Manager Bohenko stated that the issue of a Moratorium will be discussed in two parts; the first being the legal aspect and the second being the process if a moratorium were pursued.

City Attorney Sullivan reviewed State RSA 674:23 – Temporary Moratoria and Limitations on Building Permits and approvals of Subdivisions and Site Plans. He explained that the State Law protects private property owners to not be deprived of being able to develop their land based on municipal regulations without meeting specific criteria.

He stated the municipality can implement a moratorium if it meets the criteria as outlined under this law and the process must first be recommendation by the Planning Board before being voted by the governing body. He continued that an ordinance can be adopted in unusual circumstances that affect the ability of the municipality to provide adequate services and require prompt attention and to develop or alter growth management process, a zoning ordinance, a master plan, or capital improvements plan. He continued to review the various items required in a moratorium ordinance including:

- (a) A statement of the circumstances giving rise to the need for the moratorium or limitation;
- (b) The planning board's written findings, which shall be included as an appendix to the ordinance.
- (c) The term of the ordinance, which shall not be more than one year;
- (d) A list of the types or categories of development to which the ordinance applies;
- (e) A description of the area of the municipality, if less than the entire municipality, to which the ordinance applies.

City Attorney Sullivan explained that before the law was implemented there was a building boom in the 1970's and 1980's which resulted in a lot of single family dwellings which ultimately put a strain on city services i.e., schools, water and sewer. As a result the State came up with this law to slow things down and is meant to be a protection to both the property owner and the municipality. He continued by clarifying that the Planning Board must initiate the process, it can be targeted to a specific area of the city, and there can be exemptions to a moratorium through a conditional use permit process. He stated that there would also be some projects that if they were beyond a certain point in the approval process, before the 2nd public notice of the 2nd reading, then those projects would go forward. He concluded by stating that no supreme court activity has occurred regarding this statute, so his recommendation would be to stick as closely to the RSA as possible, if not, it would be less defensible and more likely to fail.

Councilor Thorsen asked for examples of what might be appropriate i.e., parking issues, or other situations where it has been implemented and been successful. City Attorney Sullivan stated he had no examples to cite. He stated the classic municipal services would be school, water/sewer, streets, etc. and parking may be something, but it would be up to the Planning Board first.

Planning Director Taintor reviewed a slide presentation regarding the process of implementing a Temporary Moratoria. He stated that once the legal requirements and criteria were met and the Planning Board has identified unusual circumstances that affect the ability of the municipality to provide adequate services and require prompt attention, the Planning Board must, through written findings, recommend a course of action to correct or alleviate these unusual circumstances i.e., growth management process; zoning ordinance, master plan or capital improvements plan. The ordinance would then go through the required ordinance process and the ordinance shall contain a statement of circumstances requiring action; terms of the ordinance to be no longer than one year; list of types or categories of development subject to the ordinance; description of area of the City subject to the ordinance and the Planning Board's written findings as an appendix to the ordinance.

Councilor Lown stated he is generally opposed to a moratorium as it freezes the expansion of the tax base and is unfair to land owners who have invested in their property with the assumption of being able to develop it as allowed. He asked if the Council decides not to enact a moratorium, what advice can be provided to the citizens who are upset with the scope of downtown development.

Planning Director Taintor stated that the upcoming Form Based zoning effort will address many of these issues in terms of scale, size and appearance. He stated that the Charette process will begin on June 6th and the information will also be available on the City's Planning department website. He stated that the plans of the developments will be on the website so that people have the opportunity to review them without having to visit City Hall.

Councilor Novelline Clayburgh asked if anyone can present a hardship that fits the criteria for a moratoria and would parking fit that requirement.

Mayor Spear stated that the public is invited to participate in the upcoming Charette process and stated that Form based zoning will have more restrictions but the HDC will still have the authority to look at land on a case by case basis.

Planning Director Taintor stated that the distinction of form bases zoning is that it will be specific to the surrounding area.

Councilor Kennedy stated that the reason this subject came forward is that people are concerned with the changing city, mostly in historic areas, and people need to know what they are allowed to do and how to go about doing it. She stated she would like to have the process clarified for all involved with the responsibility of each board defined. She stated the Historic District Commission needs help from the Planning Board to define their duties and it needs to happen now, not 3 years from now.

Planning Director Taintor explained the various boards and committees that can be involved in a project review process and stated that there are varying factors as to why they may start at one board and then go to the next. He stated if the project is in the downtown area, it always goes to the HDC.

Councilor Novelline Clayburgh asked about the report and when it would be completed. Planning Director Taintor stated that are working hard to get a final draft to the Council by early September and the final report for December before the new Council begins.

Councilor Dwyer asked if the report will give dimensions block by block. City Planner Nick Cracknell stated form based zoning will recalibrate the downtown districts and the Charette process will also develop dimensional standards which he hopes will also be part of the report.

Discussion ensued regarding the various boards and committees and review processes.

Councilor Kennedy stated that being on the HDC for the brief time that she has it seems to her that they have a lot to deal with and with the Charette process, there are a lot more projects coming in before any changes are implemented. She stated that the meetings run very late and feels that justice is not being given to the projects and asked if a moratorium cannot be imposed, then what can be done to slow the process down.

City Manager Bohenko stated that he has addressed this issue with staff and they will try to work more closely with Boards and maybe augment staff if necessary. He agrees that there is a human toll taken with many meetings and late hours and there have been adjustments made in the last 24 months but he welcomes any recommendations.

Discussion ensued regarding criteria for a moratorium and its impacts. City Attorney Sullivan stated that there has not been any litigation regarding moratorium criteria but feels that the traditional city services impacts should be used as he feels it would be an uphill battle to have the decision made in the courts without identification of an unusual circumstance.

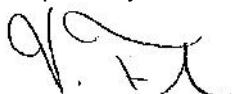
Planning Board member Gamester stated he doesn't see any of these reasons as meeting the level of the statute and doesn't see any real problems. He continued that towns and cities change and downtown areas are meant to be dense as they are the hub. He stated that retarding growth would impact negatively and is not in line with the Master Plan. He stated it would be unfortunate to spend a lot of time of something that isn't necessary.

Planning Board Chair Ricci that his real concern with the moratorium is that it is against everything that the City has been trying to do for the last 30 years. He stated it intimates poor planning and is reactionary. He stated if a change is needed then we should go through the process already established.

Planning Board Member Moreau agrees that there are no unusual circumstances that apply for a moratorium, including parking. She stated that form based zoning may be the answer to these issues and we need to take the time to go through the process.

Mayor Spear closed the Work Session at 7:55 p.m.

Respectfully submitted by:



Valerie A. French, Deputy City Clerk