

Planning & Development Committee
April 6, 2016 – 5:30 p.m.
1st Fl. Council Committee Room – City Hall
-Minutes-

Present: Chair, Councilor Lundberg; Councilor Valerie Gilman; Sean Nolan (Alternate)

Absent: Councilor Cox

Also Present: Chip Payson; Bill Sanborn

The meeting was called to order at 5:30 p.m.

1. Advertised Public Hearings:

PP2016-005: Cambridge Avenue #16: 60' UG conduit from Pole #1294

This public hearing is opened at 5:30 p.m.

Those speaking in favor:

Peter Glynn, National Grid (NG) representative, said that National Grid (NG) and Verizon New England are requesting to install about 60 feet of underground conduit from Pole #1291 located diagonally across the street from 16 Cambridge Street and run it to that property. He said initially understood this to be a public way but in fact it is a private way. He indicated that it does shift some of the onus onto the homeowners of the private way to have an agreement between themselves which the NG Real Estate Department would have in hand for jointly shared/owned property.

Councilor Lundberg advised it was the opinion of the Committee that they would open the public hearing, hear the matter, and make a motion as normally done with pole petitions. He said the Committee was not privy to any agreement the private way owners may have.

Timothy French, 11 Cambridge Avenue expressed his support of the NG petition to install underground conduit on Cambridge Avenue.

Those speaking in opposition: None.

Communications: Thomas Babson, 3 Cambridge Avenue, in support of the petition on install UG conduit on Cambridge Avenue (on file).

Councilor Questions:

Councilor Lundberg inquired if the “Planter’s Neck Association” have anything to do with Cambridge Avenue. **Mr. French** said that the “Planter’s Neck Association” watched over the beach but was not a legal entity. **Mr. French** at his request was then shown the NG plan for the installation of 60’ of underground conduit (on file) by **Mr. Glynn**. **Councilor Lundberg** advised Mr. French that there are a set of conditions that the DPW Director puts forward to advise the Committee on how a roadway may be opened for such work and how it may be made whole upon the completion of the work which the Committee will be placing on the permit. He noted that these conditions are proven to protect the street. **Mr. French** confirmed this is only for electrical and telecommunication service with **Mr. Glynn**.

Councilor Lundberg said the recommendation is that there be a holistic review of the ordinance that governs the permitting of Pole Petitions. The Clerk of Committees advised the first step was being undertaken by the City Clerk at this time.

Mr. Glynn confirmed for **Councilor Gilman** and Building Inspector, **Bill Sanborn**, that the telecommunications cables (cable television and telephone) are placed within the same conduit trench as the electrical cables and that the owners will own the conduit and be responsible for the wire. **Mr. French** confirmed with **Mr. Glynn** that the construction cost and the repaving of the roadway after the NG work is completed is the responsibility of the property owner of 16 Cambridge Avenue. **Councilor Lundberg** added that this is why the Committee wanted to move forward with this permit as the conditions apply and are beneficial to the abutters of this private way.

Councilor Gilman clarified with **Councilor Lundberg** the list of abutters submitted with the NG application shows the owner of #16 Cambridge Avenue also listed at #20 Cambridge Avenue. **Councilor Lundberg** and **Mr. French** confirmed that was the case that it is the same owner for two abutting parcels. **Councilor Gilman** confirmed with the Clerk of Committees that all abutters on the list provided by National Grid in their application were duly notice of the public hearing (on file) and that a legal advertisement was placed in the Cape Ann Beacon, a local weekly newspaper announcing the public hearing and its purpose (on file).

This public hearing is closed at 5:39 p.m.

MOTION: On a motion by Councilor Gilman, seconded by Councilor Nolan, the Planning & Development Committee voted 3 in favor, 0 opposed, to permit National Grid and Verizon New England to install 60 feet +/- of underground service conduit from Pole #1294 including the necessary sustaining and protecting fixtures as shown on Plan #21260534, dated 02/29/2016, with the following conditions:

- 1.) **Notification to the Department of Public Works 72 hours in advance of the proposed work. A construction schedule will be prepared by the applicant for review and acceptance by the Department of Public Works;**
 - 2.) **Proposed excavation may only occur during accepted road opening and construction season, 15 March – 15 November. No winter construction shall be permitted.**
 - 3.) **In the absence of a detailed construction plan, the Department of Public Works requests: all proposed conduits and appurtenances shall be placed so as to cause minimum conflict with existing underground utility services.**
 - 4.) **All excavated trenches shall be patched flush with the surrounding asphalt using hot mix asphalt binder at the end of each work day, to minimize pedestrian hazards. Asphalt shall be applied in two lifts of 2-inches, totaling 4- inches.**
 - 5.) **All final paving shall be done in consultation with the Department of Public works and an agreed upon final paving plan executed by the applicant.**
2. ***Memorandum from General Counsel re: changes to GZO Sec. 1.3.1 “Enforcement of Zoning Ordinance; Appeals of Zoning Decisions” (Cont’d from 03/02/16)***

Chip Payson, General Counsel, reviewed the following information with the Committee that this was a request that came from the Building Inspector and they worked together to make the proposed changes to the Zoning Ordinance enforcement section before the Committee particularly allowing the Building Inspector(s) to write tickets for violations of the provisions of the Ordinance and the graduated fines for each offense. He noted GZO Sec. 1.3.1 that was in the Committee’s agenda packet (on file) where showing the proposed changes in italics. He highlighted a change of the word “shall to “may” in the statement, “The Inspector of Buildings *may* institute, in the name of the city, the appropriate civil or criminal action...” **Mr. Payson** said that this allows the Building Inspector to write tickets, and then if people aren’t paying or paying attention the city can still take them to court.

Mr. Sanborn described the practice of when the Building Department receives a complaint staff does an initial drive by. If the complaint is validated by the drive by, the department investigates further and takes appropriate action should it be warranted. The Building Department sends a letter to the property owner informing the owner there is a complaint, and the reason for the department’s further investigation. If the department finds that there is a violation they will notify the owner to correct it giving the owner 10 to 20 days depending on the type of violation to correct it. If after that first letter the violation is not remedied, a second letter is sent, and then a third letter. Upon failure to rectify the violation after the third letter, then his department begins the process of taking the matter to court. He advised that taking such matters to court is a very difficult, time-consuming action which he tries to forestall and rather concentrates his effort to try and remedy the situation with the property owner before having to take a violator to court. He said his department’s experience is that many people just don’t pay any attention to the warning letters. As a result, his department needed a way to deal with these situations, and he pointed out that the law allows for ticketing and the institution of fines with the Council’s approval. He then described the new process, instead of going to court with the possible passage of this Zoning amendment permitting him to write tickets, a written warning will be forwarded to the owner that there is a violation on their property, and that it needs to be corrected within a certain number of days -- failure to do so will mean a ticket will be issued. Currently the Zoning Ordinance says he can fine up to \$300 a day, but he said they are trying to be more reasonable and are asking that there be a graduated system of: first offense: a written warning; second offense: a fine of \$100.00; third offense: a fine of \$200.00; fourth offense and each offense thereafter: a fine of \$300.00. He further advised this proposed Zoning amendment had been before the Planning Board who voted unanimously to support the amendment (recommendation on file).

Mr. Payson added that by the time the city gets to court it becomes difficult and expensive. The idea is to try and get people’s attention early on in the process and remedy violations in an administrative manner, he said.

Councilor Lundberg confirmed that what this amendment does is to give the Building Inspector an administrative

way to getting violators' attention and seeking resolution rather than having to go to court to do the same which Mr. Payson confirmed.

Councilor Lundberg asked what kinds of code violations would be better remedied through the proposed new process. **Mr. Sanborn** said this Zoning amendment would be especially helpful in situations where people are running illegal businesses on their property and briefly described examples of unpermitted junk dealers, unpermitted beach parking lots, commercial vehicles parked on residential properties around the city.

Responding to an inquiry by **Councilor Gilman**, **Mr. Sanborn** said he or his staff go out and will in person advise property owners that they are using their property in violation of a city Ordinance and don't post signs that the property is being used illegally.

Councilor Lundberg asked if the city's police department helps identify illegal situations and assists the Building Inspector in any other way. **Mr. Sanborn** said he and his department work closely with the police and that they back him up willingly.

Councilor Gilman asked what the timeframe after the first written warning is given that the Building Inspector(s) go back and check to see if the violation has been remedied. **Mr. Sanborn** said that according to the Zoning Ordinance, every day is a new violation; but that depending on the violation there would be a 10 day notice. Their goal is always to work to resolve the issue, to correct it, he said, adding that the purpose is not to collect revenue.

Councilor Lundberg endorsed the Zoning amendment and that it is creating a practical, feasible program. **Councilor Nolan** said **Mr. Sanborn** discussed that the inspectors in their travels they do see violations and respond. **Councilor Nolan** added that by way of the new Zoning amendment it may act as a deterrent to those people who may be considering using their property for unpermitted uses. He extended his support for the Zoning amendment saying that the amendment made sense and was in full support of Mr. Sanborn's efforts. **Mr. Sanborn** said they hope that this new amendment will help resolve matters that arise from violations faster.

Councilor Gilman confirmed that **Mr. Sanborn** and his other building inspectors, one full time and one half time will also be empowered to write tickets by this Zoning amendment.

COMMITTEE RECOMMENDATION: On a motion by Councilor Nolan, seconded by Councilor Gilman, the Planning & Development Committee voted 3 in favor, 0 opposed, to recommend that the City Council Amend the Zoning Ordinance, Sec. 1.3.1 "Enforcement of Zoning Ordinance; Appeals of Zoning Decisions" as follows:

by DELETING subsection (c) in its entirety and ADDING a new subsection (c):

“(c) The Inspector of Buildings shall issue the following penalties for violations of the provisions of this ordinance:

- (i) First offense: a written warning;**
- (ii) Second offense: a fine of \$100.00;**
- (iii) Third offense: a fine of \$200.00;**
- (iv) Fourth offense and each offense thereafter: a fine of \$300.00.**

Each day that such violation continues shall constitute a separate offense.

The Inspector of Buildings may institute, in the name of the city, the appropriate civil or criminal action, to prevent, correct, restrain, abate or punish violations of this offense.”

This matter will be advertised for public hearing.

- 3. Memorandum from General Counsel & Assistant General Counsel re: changes to GZO Sec. 5.27 et al entitled, “Medical Marijuana Treatment Centers and Medical Marijuana Cultivation Facilities” (Also referred to the Planning Board) (TBC 04/20/16)**

This matter is continued to April 20, 2016.

4. *CC201-014 (Lundberg/Cox/Gilman/Nolan) Request P&D Committee review the draft proposed ordinance which creates a new wireless communication facilities ordinance Section 5.13 and amend the Zoning Ordinance accordingly (TBC 04/20/16)*

This matter is continued to April 20, 2016.

A motion was made, seconded and voted unanimously to adjourn the meeting at 5:56 p.m.

Respectfully submitted,

Dana C. Jorgenson
Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED AT MEETING: None.