

City Council Workshop
June 9, 2014
6:30 P.M.
South Portland City Hall Council Chambers

Councilors Present

Gerard Jalbert, Mayor
Linda Cohen
Thomas Blake
Patricia Smith
Michael Pock
Maxine Beecher
Melissa Linscott

Staff Present

Jim Gailey, City Manager

MINUTES

Mayor Jalbert opened the meeting and welcomed all in attendance. He reminded folks that members of the public are invited to comment on each item as it comes before the Council for a period of no more than two (2) minutes. All questions or concerns would be made through the Chair and if they wished to address the City Council they would be asked to please raise their hand and upon being recognized would state their name and address for the records.

- 1. THC Zoning District**
- 2. Food Trucks – Ordinance Guidance**
- 3. Review of Upcoming Workshops**

1.Chapter 27, “Zoning”, THC Zoning District: Jim Gailey, City Manager explained that On the June 2, 2014 City Council meeting, Councilor Pock made a motion to reconsider his vote on the THC zoning district. The THC zone was denied by a 4-3 (Blake, Pock and Smith) vote on May 19, 2014. In order to take action on a reconsideration request, a City Councilor who voted on the “prevailing side” must make the motion to reconsider “at the same meeting as the original vote as or not later than the next succeeding regular meeting, but not afterwards (Council Standing Rule No. 18). Councilor Pock had “standing” to make a motion to reconsider, as one who voted on the prevailing side of the issue (prevailing side being those who voted against the item, resulting in denial of the item). Last Monday’s motion was to move to reconsider the May 19, 2014 vote on ORDINANCE #13-13/14. The reconsideration motion carried 4-1 (Blake and Jalbert absent). Councilor Pock subsequently made a second motion moving to refer ORDINANCE #13-13/14 to a Council workshop on June 9, 2014 and to schedule a City Council vote on it at the June 16, 2014 regular meeting. This motion passed 5-0 (Blake & Jalbert absent). During a phone call from Councilor Pock last Monday morning, Councilor Pock expressed a desire to reconsider his vote from the May 19th meeting in order to slow the process down and learn more about deed restrictions and whether the proposed development slated for the City owned parcel could be done within the current limited business zoning district (much smaller area within the city parcel). After the reconsideration vote, staff met with Councilor Pock to learn more about his ideas for the city parcel and to determine whether an acceptable balance in the development of the city parcel could be

achieved. Working from ideas heard from Councilors during past meetings and Council Pock, staff developed the attached plan, ultimately reducing the development scope and preserving a greater amount of green space than originally designed. Specifics around the proposed plan include:

- o THC zone would occupy the entire parcel;
- o Reduce development area/lease area on the city parcel;
- o Lease area would need to be extended up Westbrook Street in order to push the entrance/exit further from the intersection for safety reasons (MDOT traffic permit will require);
- o Large green space would be retained having pedestrian access off from Westbrook Street, providing greater buffer to Bet Ha'am;
- o Green space could be designed with small playscape, picnic shelter, trees and other buffering material;
- o Lease restriction and deed restriction on height could be accomplished per City Council direction; and
- o Provision within THC zoning "space and bulk" would need to be modified to allow parking and travel aisles along the frontage of the THC zone.

Reviewing the THC zone, staff has come to an agreement that under 27-793 Space and Bulk, a modification to the minimum front yard setback should be done. The THC zoning district is an auto-oriented zoning district and uses found within this zoning district are uses you typically find in the area of highway spurs. Motels, hotels, convenience stores, food establishments and gas stations all exist and would find a hardship with the language proposed for minimum front yard setback. *Minimum front yard setback:* Five (5) feet, provided that for construction of new structures after April 1, 2014, and further limited to front yards defined by Main Street, the area between a front wall of the structure and the front property line may not be used for parking or vehicular access, except for driveways.

Staff proposes to change the above language to include only the "Five (5) feet", deleting the remaining language. The change would be to revert back to the existing Limited Business District front yard setback standard. Over past City Council and Planning Board meetings there has been no concern or debate over this provision of the proposed THC zone, one way or the other. The front yard setback without the prohibition on parking or access between the front of the building and Main Street frankly is more in line with the Comprehensive Plan's designation of this zone as a highway-oriented zoning district and is more realistic for the various uses along Main Street in this area.

The City Council will need to discuss whether this is a substantive change and whether it requires re-doing the Planning Board and First Reading hearings for this change as it is in the direction of returning to the existing provision for minimum front yard setbacks found in the current Limited Business zoning designation.

Attached is Corporation Counsel Sally Daggett's documentation outlining how deed restrictions are used and Sally has provided examples from other communities. I have also included language that could be inserted into a deed that would provide for a height restriction on the City parcel.

Staff met with representatives of Cafua on Friday morning to work out how the smaller leased area would change Cafua's development design. Cafua will be providing an engineered drawing prior to Monday's meeting and will be in attendance on Monday evening. To supplement Cafua's drawing, I have provided in the Council packet a quick "rough" sketch on how the city owned land would be broken out between development area and green space.

Jim further discussed items that have been questioned for further discussion including the flow of traffic, Westbrook Street, travel lanes, parking being allowed, entrance and exit to the left only,

signage, low rain gardens for stormwater and remaining parcel remaining green space. He also showed a slide of the lot in question, discussed this as well as the flow of traffic.

Public Comment Opened:

Attorney James Broder Member of Bet Ham would like to see this issue solved to all satisfaction, not limited to Dunkin Donuts but anything that may go there. He further discussed the green space in the residential zone that would be impacted, and how land is important to the City. He discussed finding a way to develop in ways to create low density building. He added that he is interested in preserving space for green space and protecting beauty/quietness for this parcel the best that they can.

Kay Loring Bluff Road has not seen this plan before and felt that there is not a lot of land left here. She urged the Council to take the parcel out of the picture and leave as land. She did not feel that this was according to the Comprehensive Plan for “Public Open Space 2012” and was not an economic piece of land to be developed.

Attorney Brian William representing the Ginn Family who owns the current location of Dunkin Donuts. He felt that this is a matter of “Fundamental Fairness” here and the need to consider other possibilities for this space is needed. He further discussed deed restrictions not being fair and the DEP enforcement of such restrictions.

Les Melovich felt that a definition of green space is needed and also discussed noise pollution.

Russ Lunt Brigham felt that they are trying to work something out, he had concern that folks may move if something changes and understands that they are all trying to work together.

Rob Selend Deake Street felt that the City Councilors are elected and promise to protect the citizens and to help the City. He added that this proposal was not what the original promise was and felt that the door was open to not great things happening here. He added that the City does not owe anything to Cafua.

Rosemarie De Angelis Pleasantdale felt that this proposal was orchestrated by Councilors as it was not on the agenda to be discussed. She felt that you do not sell parks without a citizen’s vote on it. She added that this does not go along with the Comprehensive Plan and urged them not to go with Cafua on this, need to preserve.

Nicholas Bogs Gerry Ave. urged the Council to take their time and think about this issue and felt that there is not rush on building this right now.

Anton Heocker 40 Hillside Ave. had concern about putting a Dunkin Donuts in this space and urged them not to replace a park with a building and a drive through as well, he is very discouraged by this process.

Peter Stanton 20 Deake Street did not feel that this past the test, that it was a legal guiding document for the City and asked what changed this all here. He had concern for the neighbors in the areas and was happy that the City Council had intervened with the St. Johns site, but felt the need to see what other areas there are available rather than green space.

Joyce Mendoza 13 Thirlmere Ave. discussed the crime in this area and how hotels do not want to loose sight of this zone change that will help with other issues in this area.

Lisa Munderback Bet Ham Board President urged the City Council to keep the parcel out of the THC Zone change and look at other alternatives.

Eric Hamlin 13 Thirlmere Ave. was in support of the THC Zone and asked to consider buffering uses, and what to do regarding this.

Joan Caldwell 32 Osborne Ave. / Bet Ham was confused with this process and would like to define “open space”, she discussed good faith efforts, visual and open space issues, auditory needs, park space and parks within the City being valuable.

Natalie West Deake Street discussed a fast food restaurant in the space driving down the property values in this area and that they need space to be open as others have stated.

Jeremy Moser 40 Bowdoin Street thanked all who had spoke and had concerns with the layout of the building plan as well. He added that they do not have to do it this way and further discussed green space here as well.

Greg Nolan Cafua (Dunkin Donuts) discussed the addition of local jobs to be offered here as well as other work that they do within the community. He encouraged the City Council to accept this change, flush out any issues, fix the building front, green space and look at the opportunities here.

Toby Rosenberg 23 Reed Street Portland had concern regarding the exit at Westbrook Street, the traffic as well as a loss of green space is tragic.

Public Comment Closed:

Jim Gailey discussed the THC Zone, the minimum set-back and looking at this for any changes would be impractical.

Mayor Jalbert discussed the exit and turning from Westbrook Street, the traffic count from MDOT and calling for a study. He also discussed the questions from people on deed restrictions.

Sally Daggett Corporation Counsel explained that the Council has not decided anything on deeds and restrictions yet, putting restrictions and giving third party rights as well. (Self-imposed)

Mayor Jalbert discussed this area having concerns and the need of help on the Main Street corridor and not just this one parcel.

Councilor Cohen discussed the Comprehensive Plan and compliance with this which she had concern with. She discussed the set-back change, moving building closer, and wondered if the other drawing she felt was better for a compromise between the two. She further discussed complying with the new zone (new building).

Tex Haeuser Planning Director discussed this parcel being re-zoned for use and not set for continued green space as it was considered an “edge” property. He further discussed the intention of the proposed zones; auto oriented and discussed buildings moving closer to road.

Greg Nolan discussed site circulation and height of lot, added tweaks can be made, and changes as to how far back.

Sally Daggett discussed a challenge in re-zoning, added that the comprehensive plan is a guide and that zoning is legal.

Councilor Blake was uncomfortable regarding the changes here without the public not being present to speak on this. He was not ok with discussing this and bringing it for a vote at the next meeting. He added that it is not a good idea to sell open space in the city and discussed several reasons why they should not sell this parcel, as it has always been slated for open space. He further discussed rights of refusal for this property and added that this is such a busy area that it is need of more open space and would like to ask people what they would like to do with this. He added that they need to use caution, and ask why we are doing this, what are the motivators.

Councilor Pock explained that he had done some further reading that he had on this issue and decided to ask for a reconsideration of his vote on this item. He added that it seemed to be more confusing now then when they started this process.

Mayor Jalbert discussed the many issues surrounding this parcel, such as traffic counts, protecting surrounding areas, deed restrictions being worked out as well as a conservation easement.

Discussion ensued on the issue of “reconsideration of vote” not being on the agenda and whether it needed to be on there to bring forward.

Sally Daggett felt that the deed restrictions can be worked out and added that the item does not need to be on there to bring forward. She further discussed a conservation easement and being self-imposed.

Attorney Broder discussed the timing of the deeded restrictions and the language with them as well as this being a lot to work on for one week. He questioned if this would go back to Planning Board for the whole change. He added that he can meet with folks to work on how this will work and further discussed the next Planning Board meeting to work on this.

Sally Daggett discussed process and if June 16 would be the meeting or would it be delayed to a future date for work.

Councilor Linscott asked about the original set-back and if it was different from this one, also asked about minimum and maximum?

Tex Haeuser discussed removal of all, minimum front set backs and not being used for anything but driveway and parking.

Councilor Smith thanked all who came out to speak and work on this issue. She would like to see green space preserved and this is validating what she had voted on prior to this. She urged the Council to listen to what people want; she felt that open space is great. She discussed mixed use developments such as Knightville and Willard Square and asked why not use this model on Main Street.

Tex Haeuser discussed the core of the neighborhood being different and two different types of land use as well.

Councilor Smith asked about rain gardens, (low points) drainage and re-claiming water, green space and changes at some point.

Councilor Linscott asked about zone changes in reference to new building or re-building, etc. would this fall under the current zone.

Councilor Blake added that he was uncomfortable with the proposed plans being discussed at the workshop. He felt that a lot of this would be discussed at the Planning Board as that is where it starts before it comes to the City Council for proposal.

Councilor Pock discussed taking the park out of the zone and asked if they need to pass the THC zone to make changes to it.

Mayor Jalbert discussed all staff that has been working on this and added that there is not private business dispute involvement here.

Councilor Linscott asked what can happen if you remove the zones and leave it alone as she was unsure about that.

Tex Haeuser explained that this came forward due to Dunkin Donuts (Cafua) buying St. John's Church and the neighbors not wanting a Dunkin Donuts to go in there as this would bring about a big change. He further discussed the principals here with this issue and look at the plans in more depth to tweak things, zoning, conservation easement, deed restrictions, etc. He added that they do not favor splitting zones but would discuss that as well.

Jim Gailey explained that staff had worked with the neighbors and business owners during this process, they had discussion which came about further work on specific items, hashing out, tweaking and coming up with solutions.

Councilor Cohen thanked Tex and staff for all of the work done on this, she had concern and further discussed a zone change and added that neighbors are concerned about a drive-through restaurant going near them. She discussion other options here and supporting local business both large and small alike, she felt that sometimes it falls hard on them for the wrong reasons.

Councilor Blake agreed with many of Councilor Cohen's statements and thanked the staff as well for their hard work. He felt the need to take the parcel out of the equation here for the THC Zone and rework this minus the lot, as he too had concern regarding this.

Councilor Linscott discussed the change in the set-back and the THC Zone language and if this would be a Council decision or would it be amended and go back to the Planning Board. She also asked if this would be a set-back issue for Planning Board or would they need to re-draw the line? **Mayor Jalbert** discussed the process being to vote on the “reconsideration” of item to vote and or to send back to the Planning Board for change on set-back amounts, etc.

Discussion ensued on lot, zone change, and how it re-configures.

Councilor Blake agreed on referring back to the Planning Board.

Sally Daggett discussed sending specific language to Planning Board on what the Council wants.

Councilor Linscott felt that they were not ready for this time wise and that they need more time for the language to be looked at and approved.

Councilor Cohen asked about spot zoning and further discussed this as well as the THC zone and how it may not pass if this property stays in the mix. She discussed taking it out, passing it and then deciding what to do with this.

Councilor Beecher asked if the Planning Board works on the Deed Restriction and or the Conservation Easement.

Sally Daggett explained that they can make a comment or recommendation on it but it is not the usual process.

Tex Haeuser added that they need to let the Planning Board know what the Council is looking for by providing more direction.

Jim Gailey discussed having more information on what the proposed lot would be asked of for the Planning Board.

Mayor Jalbert added that they had discussed the item as far as they can and it would be brought up again next week.

2. Food Trucks – Ordinance Guidance: Jim Gailey, City Manager explained that City Councilor Cohen has requested a workshop item to discuss the allowance of “Food Trucks” in South Portland. He added that Corporation Counsel posed questions to staff around amending Chapter 14 for the allowance of Food Trucks. City staff has met to address those questions, but have found the need to seek guidance from the City Council on some items before drafting ordinance language.

Public Comment Opened:

Russell Lunt Brigham Street felt that this was a great idea, and did not feel that it would hurt restaurants.

Public Comment Closed:

Councilor Cohen explained that she had brought this item forward as she saw how much people enjoyed the food trucks last summer when they were set-up temporarily for a few events. She thought that they could check with Portland to see how they process their food truck licenses and that they could designate an area for festivals and not something regular as well as asking what types of trucks the festival organizers may want. She discussed the certain areas in South Portland such as Bug Light where these festivals are held and where these would fit in as well as how near

they can be to each other as well as other businesses. She discussed how this would be enforced with the Clerk's Office and Code Enforcement.

Jim Gailey discussed the fee scale and how this came to be using current listing and neighboring communities as well.

Mayor Jalbert added that he did not care for Food Trucks had concern for nearby restaurants and asked how far that they needed to be from the trucks. He felt that it can be a betrayal of our local business and was not in support of this item.

Councilor Pock asked if they would be at Bug Light Park and added that he liked the idea of Food Trucks.

Councilor Smith felt that food trucks are a great way to be introduced to the community as a potential business and a way to get started. She was in favor of having them anywhere they want in the City and felt that if the market dives it then it will work. She did not feel that it would pose a safety hazard and discussed a fee structure and making it work for all.

Councilor Beecher discussed the issue of taxes and how the food trucks generally come from all over so they are not a tax-paying business. She questioned impacts of other community groups/nonprofits and the potential to take business away from them which concerned her.

Councilor Smith added that some do have their own non-profit trucks such as booster groups and high school bake sales, etc. and asked about regulation of these.

Jim Gailey explained that they would limit the trucks at special events held at Wainwright Fields so that non-profits could be there. He added that there is not one designated area but would be looked at case by case (as need basis). Further discussed proper state licensing as well as special events.

Councilor Cohen discussed attracting them to places, larger businesses getting them to go to larger places, owning the business and learning the ropes.

Councilor Blake discussed a new name and maybe not using "food trucks", he added that these are the new, up and coming thing and sees both good and bad with them. He felt that having good control here is key with limitations, buying local and using non-profit trucks when they can. He added that some of them can be tacky looking, he discussed smaller and more selective ones knowing where, when, who and how before moving ahead. He suggested talking to the local businesses to see how they feel about this, being and staying on top of this for the City and being cautious while looking for quality.

Councilor Linscott loved this idea of food trucks, using them for special events and was ok with this. She asked how these would be licensed and had more questions on this and if they are located near other businesses how this would be handled.

Councilor Beecher asked if they had them at the Color Run (no) or Wainwright (yes 7 at special events).

Jessica Hanscombe Licensing Administrator explained that she had 7 applications and they were all licensed for Wainwright as well as being all local to South Portland. She added that they will be at the Movie Nights at Bug Light and that the Wainwright events to get first refusal on the food item then they can invite outside trucks to come in.

Councilor Cohen discussed starting the process with special events first to see how it goes and using protection with stores/restaurant and being conscious of the process as well as trying certain locations.

Councilor Smith discussed having a "list" of trucks that events may use or that are already on the list and that have a yearly license as well. She felt that with five or six yearly licensees this may take the burden off the staff rather than having them go out frequently to inspect the trucks.

Miles Haskell Deputy Fire Chief explained that he would handle these just as they do the carnival rides which works pretty well. He added that they will look for safety features inside and check all around the truck then place a sticker on it that identifies that it has been inspected.

Councilor Blake asked about prices, state licensing certification and peddler licenses.

Councilor Smith asked about having them at the Millcreek concert in the park nights.

Jessica Hanscombe explained the process of licensing regarding City Streets and the need to come before the Council if it is closer than 500 ft.

Councilor Cohen wondered about Art In The Park and how they do this day without hurting other nearby businesses.

4. Review of Upcoming Workshops: Jim Gailey, City Manager explained that this item is brought forward to discuss upcoming City Council Workshops and that this discussion is done on a monthly basis.

The Council discussed the following items for workshops:

- June 25th Special Workshop Draft Waterfront Ordinance at Mahoney Middle School
- Air Monitoring/Quality
- Solid Waste Ordinance
- Public Works/Transfer Station

The City Council Workshop was adjourned at 10:10 p.m.