

METHUEN CITY COUNCIL REGULAR MEETING  
MONDAY, OCTOBER 19, 2009 – 7:00 P.M.  
GREAT HALL, SEARLES BUILDING

Chairperson Deborah Quinn called the regular meeting to order at 7:00 p.m. with all members present.

ACCEPTANCE OF THE AGENDA

MOTION BY: Councilor Zanni, seconded by Councilor Giordano to accept the agenda as posted. UPON VOTE: UNANIMOUS.

Councilor Kannan gave the Invocation for the evening. Everyone remained standing for the Pledge of Allegiance.

ACCEPTANCE OF MINUTES

MOTION BY: Councilor Zanni, seconded by Councilor Giordano to waive the reading and accept the minutes of October 5, 2009. UPON VOTE: UNANIMOUS.

PROCLAMATION/CORRESPONDENCE – None

PUBLIC PARTICIPATION

Caroline Mercier, 176 Oakland Avenue, spoke against the application for a cell phone tower on Maplewood Street, noting neighbors have signed a petition against it. Residents received two notices and are against it.

PUBLIC SERVICE:

Grants: None

Licenses: None

Contracts: None

OTHER OFFICERS AND COMMITTEE REPORTS – None

OLD BUSINESS

Resolutions:

TR-09-62 Resolution Authorizing Expenditure from the Edwin J. Castle Fund

MOTION BY: Councilor Cronin, seconded by Councilor Pappalardo to adopt. UPON VOTE: UNANIMOUS.

TR-09-63 Resolution Accepting Miscellaneous Donations to the City of Methuen

MOTION BY: Councilor Cronin, seconded by Councilor Zanni to adopt. UPON VOTE: UNANIMOUS.

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Ordinances:

TO-09-07 Ordinance Amending the Most Recently Adopted City of Methuen Comprehensive Zoning Ordinance (remove from the table)

MOTION BY: Councilor Cronin, seconded by Councilor Leone to remove from the table. UPON VOTE: UNANIMOUS.

Councilor Zanni asked Karen Sawyer to explain “accessory apartments”.

Karen Sawyer referred to page 43 and 44 in the zoning ordinance. She explained they want to make sure the text found on pages 43 and 44 matched the Table of Uses because the Table of Uses is correct. They suggest that accessory apartments be allowed “by right” in any zone so long as an application is filed with the building department, individuals get a permit to build it, to install it, and to renew that permit annually. The language “in certain districts” was from the old book and the request was to remove that language from the text.

Councilor Zanni asked if there was a change in egress, allowing only one.

Karen Sawyer noted that language was not changed and it is a requirement to have a second egress on the side or the rear of the building.

Councilor Zanni said it is his understanding some properties have a second floor and second kitchen. There is one in the west ward that is grandfathered. He asked if that’s changed.

Karen Sawyer said when permits are reviewed for approval; applicants have to meet all requirements in this section. One of the components of an accessory apartment is that it has a kitchen.

Councilor Leone clarified that the situation prior to adopting the new zoning ordinance, is individuals had to go to the Zoning Board to get a permit for an accessory apartment that basically lasted forever. Nobody ever checked to see if the conditions a resident got it under were the same. All the surrounding communities allow it “by right” without going to the zoning board. This made it a little bit easier to get the permit. Now it is harder to keep it because individuals have to file an annual permit application. There is an annual inspection. The building inspector ensures that the place doesn’t have two front doors. The entrance to the accessory apartment has to be through the main dwelling, which a deterrent to renting. They can’t charge rent and it has to be a related person that’s living in it. We went from the system of getting it to being difficult and keeping it being easy and a lot of in-law apartments turned into two family houses because they weren’t annually inspected. Now we have a situation where it is a little easier to get the permit but harder to keep it. Individuals cannot sell the property with the in-law apartment in place. The kitchen has to be removed before the property is sold.

Councilor Pappalardo referred to the site plan and asked if it was two years before and there was an error.

Karen Sawyer said it was typographical and has always been two years. They want to keep it at two years. It just makes the way of doing business easier and is compatible with the way most cities and towns do site plan approval.

Councilor Kannan referred to the billboard issue. She asked if these are the billboards on the corner of Merrimack Street and Pleasant Valley Street. Every year they want to renew it so they can have it there. Is that correct?

Karen Sawyer said that is correct, for all billboards.

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Councilor Kannan said she mentioned this when it come in front of Council, there's an application fee. She asked if the fee is paid once or if it is paid annually. The City should be reimbursed if they have to send an inspector.

Karen Sawyer asked the Solicitor if the city could charge a fee to inspect it annually.

Councilor Kannan said they do get a lot of money for the billboards and she would like to see the city receive some funds.

Councilor Leone asked if there is an annual fee.

Karen Sawyer said the fee table states \$250 (billboards). They contemplate it as the application fee.

Attorney McQuillan said he reads that as a one-time fee for the application for the permit. There is no provision for an annual fee. The language is very general. It states \$250 upon application.

Councilor Kannan asked who pays Methuen the one-time fee.

Karen Sawyer responded it would be the applicant, the person who owns the sign that works with the advertising company.

MOTION BY: Councilor Kannan, seconded by Councilor Cronin to change the language to include a \$250 annual fee. UPON VOTE: UNANIMOUS.

Councilor Lahey said his understanding of cell towers is that applicants go to zoning for the variances.

Karen Sawyer said the way they are suggesting is if you want to be on an existing facility or an existing tower, you go to the building department.

Councilor Lahey asked what happens, for example, with the one on Maplewood.

Karen Sawyer said a new tower, a new facility, would go to the Community Development Board for the site review. The one on Maplewood Ave is unique. The application was never filed with the city. They put out the legal ad, which was incorrect and notified abutters but there still remains no application pending with the building department. But if they filed while this is still in process what would happen today, is they would need to go to zoning to get relief on the variances that they need and if they were granted, they would have to go to the C/D board to be sited.

Councilor Lahey let's just say everything was done properly the first step is they have a meeting at zoning?

Karen Sawyer noted that this language suggests limiting the number of boards that an applicant needs to go to. For cell towers, this community development board can look at the need for variances and has flexibility on that. Without providing an opinion, she noted there are a number of variances that this project would need going forward for a new tower, from the Community Development Board.

Councilor Lahey said he doesn't want to get overly involved in the Zoning Board or Community Development, but what concerns him is the fact the boards issue or approve the permits, and it seems that the City Council is cut out of the decision making process, especially where Councilors are the ones getting the phone calls from the people complaining about the cell tower.

Karen Sawyer said, as it currently stands, this would need to go to zoning, a new facility, they need zoning for variances and they need the Community Development Board.

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Councilor Lahey said but they don't need the City Council.

Karen Sawyer noted they didn't under old zoning and it wouldn't under new zoning because its not municipal property or municipal structures.

Councilor Kannan referred to the language that says, "it should be noted that the new proposed language in no way removes the current authority held by the City Council with regards to the wireless facilities. The final language will accompany the Community Development Board's recommendation to the City Council." She asked, "Would that come in front of Council after the Community Development Board?"

Karen Sawyer stated, in this case it would not because it is private property. In the case of municipal property it would start with the Council.

Attorney McQuillan said it would start with the Council when it has to do with municipal property.

Councilor Kannan said a tower could go up on Maplewood Avenue and it would never come before the City Council?

Karen Sawyer that tower, could happen. There are so many variances that this project needs, this is not the appropriate location for a tower.

Councilor Lahey said he understands the chances of this tower going up are slim but, in the best-case scenario, a cell tower could go up without the authority of the City Council

Karen Sawyer noted on private property, yes. That is the way the pre 2008 language read and the way the current zoning reads. It's really a land use site plan review exercise that belongs with planning.

Councilor Willette said the Council has some authority but its only being applied if there is municipal owned property. It would then go through our process and probably exclude 90% of the applications because he doesn't think the City Council would ever approve a cell tower on municipal owned property and then the other percentage would go before the other boards and Council would have no authority, no meetings, no hearings, no input.

Councilor Giordano asked the city solicitor if the City Council could legally file some legislation to have some authority on private property.

Attorney McQuillan said Council has the right to do that. The position Community Development is taking is that when it comes to land use for private property, we have two boards that are creatures of statute, specifically authorized to determine appropriate uses, appropriate dimensions, size, etc. Zoning Board for the purposes of dimension use, setbacks, etc and the Community Development Board specifically for the use itself. Both these boards are created, by statute, specifically for land use on private property. Council has the right to vest in themselves, some semblance of control if they deem it appropriate but what they are really doing is supplanting the authority already given to two board established by statute.

Councilor Willette asked the Solicitor about the involvement of the state in this matter. He noted that the Department of Public Utilities has gone to court many times. They talked about the jurisdiction of siting these towers, very limited local jurisdiction of where they could be sited and they've taken communities to court. He asked if this is something that could involve the City Council.

Attorney McQuillan explained that the Telecommunications Act, a federal statute, controls all this. The case law does state that primarily these cell towers are going to go

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where they usually are selected for one specific reason, the utility that is locating or installing establishing these wireless facilities can only be put on a location of last resort. They have to satisfy us on the local level that every other location within our city will not provide the service that this particular location will. It's their burden to prove it is the only location and if they can do that, legally they are entitled to the permit.

Councilor Willette asked if they could compel the representatives for the cell phone tower, either now or in the future, to appear before the City Council at a public meeting to answer questions of the City Council and the residents of Methuen.

Attorney McQuillan expressed concern about compelling for the purposes of simply providing information, but he would look into it.

Councilor Leone suggested that the City Council be notified when one of these applications is received and get a copy of the application. If Council has a problem with the location, they could vote as a body to send a recommendation to the Zoning Board or the Planning Board.

Councilor Willette said the problem he has is businesses will be expedient if it benefits their bottom line. Often times they don't care about neighborhood concerns, concerns of elected officials and citizens. He'd like to have them come before the City Council and explain why a cell tower in a residential neighborhood is necessary as compared to other locations. He likes the idea of notification of the City Council because often times we have people approach Councilors on an individual basis, there's a certain Zoning Board of Appeals meeting, there's a certain Community Development Board meeting. Council is not purposely kept out of the Loop but at the last second Council is invited into the process. He said, as a safeguard, Council should be involved in that process, not necessarily licensing board matters or community development board or zoning board of appeals, but cell towers is something worthwhile to pursue having some input.

Councilor Zanni said Councilors are raising important points. Councilors become a sounding board as residents look for ways to remedy their particular situation. He understands the fact that we do have statutes and local regulations. Under private domain, the individual has a right to go through that process without City Council confirmation. Under municipality, they would have to come before Council as they have in the past. He has no problem with the way C/D has this ordinance set up but suggested Council remove that one section and try to come up with something that might be beneficial to all. He received calls and emails from the residents that their concern was that the meeting is scheduled for the day before Thanksgiving. Council has a meeting in two weeks and maybe could take that section out for now.

Karen Sawyer noted if this portion is omitted temporarily from the suggested other changes, then the language is what is reflected in the 08 ordinances, which doesn't address what Council is trying to address. From an administrative standpoint, taking these corrections tonight makes it administratively easier for them to deal with internally. If Council doesn't approve the amendment tonight, this book still stands and things are the way they are.

Councilor Zanni asked what the process would be if Council left that section alone for now.

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Karen Sawyer said it is more confusing for staff to administer. Things still have to go to zoning and potentially the Community Development Board. We don't address the issues that concern Council this evening by not approving the suggested language.

Kathleen Colwell explained that at this point there was no official City Council involvement at any time in the cell tower siting. There's not any change in that. It is a land use question before the Community Development Board. The current ordinance is a more complicated way of defining everything, cumbersome, and not easy to work with. The setback distances aren't easy to measure. Its just been difficult to work with so they tried to just take the highlights of everything they wanted, that they felt was working well, from the pre 2008 one, and then this proposed ordinance and make a more streamline process. And the intent is to have everything go to the C/D Board, not the Zoning Board of Appeals so that its just one board so that neighbors don't have to go two different boards and figure out meeting notices. As the City Solicitor pointed out, the federal government mandates a lot of where a cell tower can go and they have to show that they need a tower in order to provide service and that's the number one test under the newly proposed ordinance. They cannot build a new tower unless they can show the need for it. In our ordinance that we are proposing, the changes, we've really made it clear that we do not want any new towers. It is very difficult to build a new tower unless it is absolutely necessary and in that case it would be very difficult for the city to prohibit it even the City Council, given that it's a federally authorized program. The intent of the proposed change is to streamline the process and have the applicant go to one board.

Karen Sawyer asked the City Solicitor - point of clarification –“If there are modifications made to the language tonight, does that start the new public hearing process?”

Attorney McQuillan said, no, if you're extracting one portion of the proposed amendment to the ordinance and more or less putting the proposed language on hold, because you are maintaining the language that is subject to their consideration. It's not an amendment to an amendment.

Councilor Leone said the question he had for Mr. McQuillan was if Council could delete this one section and any future changes would then require a new public hearing on that section.

Attorney McQuillan said the language is subject to the public hearing that was held with Council and the Community Development board. It's the same language that's being recommended for adoption by the Community Development Board to Council. If Council wants to put that aspect of the proposal to the side or on the table for further consideration, Council has the right to do so. It doesn't make it an amendment to an amendment.

Councilor Leone said nothing Council does tonight is going to affect the Maplewood Avenue project since it is already in the application process.

Karen Sawyer noted that the City does not have an application on file with them. These individuals notified abutters and placed a legal ad but there is still no application filed with the building department.

Councilor Leone said that doesn't constitute an application for grandfathered purposes. Attorney McQuillan indicated he didn't think so.

Councilor Kannan asked if they are referring to T-Mobile or the landowner.

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Karen Sawyer said she believed the applicant to be T-Mobile. They notified residents at their own expense and did not follow the proper procedure.

Councilor Kannan noted if there are federal guidelines T-Mobile is suppose to follow them. T-Mobile should be very well aware. She doesn't have a problem with the proposed changes and knows this does not include the Maplewood Avenue site, but asked if it could be amended as far as notifying the Council so Council could attend their meeting or address concerns

Attorney McQuillan said there might be concern about the time frame involved. The next meeting of the Council is two weeks from now and he wants to make sure it is within the 90 days.

Karen Sawyer said they are around the 90-day period now.

Councilor Lahey said he doesn't want to streamline this part of the process. He likes the idea that this particular issue has to go through two boards vs. one board. If for some reason it gets by one there we still have a chance to go after it on the other. He really doesn't want to streamline this process. He doesn't matter how difficult it is.

MOTION BY: Councilor Zanni, seconded by Councilor Giordano to table Section XI D for Personal Wireless Facilities. UPON VOTE: UNANIMOUS

Councilor Giordano asked the Chair if she would set a committee of those interested in working on this for the next meeting.

Chair Quinn said anyone interested could let her know after the meeting and they would work with Karen Sawyer. She noted that the next meeting is November 5<sup>th</sup>.

Councilor Leone asked if the language change included changing language for the signs from 3 feet square to 3 square feet and 15 feet square to 15 square feet.

Karen Sawyer confirmed that has been done.

MOTION BY: Councilor Leone, seconded by Councilor Giordano to adopt as amended. UPON VOTE: UNANIMOUS.

Consideration Appointments: None

NEW BUSINESS

Resolutions

TR-09-64 Resolution Authorizing Acceptance of Donation to Methuen Fire Department

MOTION BY: Councilor Giordano, seconded by Councilor Cronin to adopt for first read. UPON VOTE: UNANIMOUS.

TR-09-65 Resolution Authorizing Acceptance of a Federal Library Services and Technology Act (LSTA) Grant, "Readers Advisory", Nevins Memorial Library

MOTION BY: Councilor Cronin, seconded by Councilor Zanni to adopt for first read. Chair Quinn said she spoke with Krista McLeod who could not attend this evening. Ms. McLeod stated the \$10,000 grant is used for staff education.

Councilor Pappalardo noted the grant is \$10,000 but everything adds up to be \$11,800. She asked Mr. Kelly if the \$1800 would be coming out of the Library budget.

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Mr. Kelly said “locally appropriated funds” means the rest will be coming out of their budget. UPON VOTE: UNANIMOUS.

TR-09-66 Resolution Authorizing Acceptance of Community Development Block Grant Funds MOTION BY: Councilor Cronin, seconded by Councilor Zanni to adopt for first read.

Councilor Pappalardo thanked Mr. Kelly for the breakdown he provided. She reiterated that the \$72,672 is not a new person we are hiring. Mr. Kelly said that is correct. Councilor Pappalardo said that is going along with this grant that is zeroed out in the budget.

Mr. Kelly said this position’s been in the Community Development Block Grant for over ten years. There was some concern as to whether or not we were going to get the block grants this year in the FY 2010 budget. There was a line item in the operating budget in case that happened but that has been zeroed out. This is the funding for that person

Councilor Pappalardo asked who filled the position of program coordinator (\$69,916) under project delivery and general admin.

Karen Sawyer said the \$68,870 covers staff of more than one full-time equivalent. There is a program co-ordinator, Alison Gulubicki, who works on the front lines with housing rehab and down payment assistance. It also accounts for some of the housing rehab specialist’s time, some of Pat Antoon’s time and some of her time as the management staff. It also pays of the overhead and fringe of Allison.

Councilor Pappalardo asked if there are outside companies that are being used to do any of this rehabbing and whatever is included in this grant and if individual names are available.

Karen Sawyer said they do have several names of contractors that they provide to the homeowner but it is ultimately the homeowner that chooses. They make the loan to the homeowner, not the contractor, and the homeowner contracts separately with the contractor. There is no direct relationship between the city and any given contractor.

Councilor Pappalardo said the transportation for seniors and disabled, she read through a little bit of it here where it said they could get a booklet of ten. Does that include the Methuen Housing, Mystic Street, and Manzi Park Gardens, does that includes those elderly, the seniors there?

Karen Sawyer responded that it does. This is something that is co-ordinated with the senior center but is available to anybody who wants to buy the subsidized books at the senior center.

UPON VOTE: UNANIMOUS.

TR-09-67 Resolution Authorizing Acceptance of Community Development Block Grant – Recovery Funds (Appleyards)

MOTION BY: Councilor Zanni, seconded by Councilor Pappalardo to adopt for first read.

Councilor Pappalardo asked for a dollar amount and if this will take care of the site.

Karen Sawyer said the amount of the grant is \$283,063 specifically for the Appleyards project. We are well into the assessment phase. What’s going on now is the

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environmental firm is figuring out the best way to integrate the remediation of the site with the redevelopment of the park and parking.

UPON VOTE: UNANIMOUS.

Ordinances: None

ANY OTHER BUSINESS FOR THE GOOD AND WELARE OF THE COMMUNITY  
– None

REQUEST OF COUNCILORS

Chairperson Quinn acknowledged that October is Breast Cancer awareness month and urged everyone to help, if they could, fund research because it could affect someone in their family or their friends.

Councilor Lahey referred to the memo Council received pertaining to the lady who came to public participation with the problem being legally blind. No offense but it seems to him that they are making it more dangerous to cross the streets to get to the place to push the button that it was when she was just crossing the street without the button. He is not happy with the solution. It's more dangerous now than it was before.

ADJOURN

MOTION BY: Councilor Giordano, seconded by Councilor Leone to adjourn.

UPON VOTE: UNANIMOUS.

The meeting adjourned at 7:45 p.m.

I do hereby certify that at a meeting of which a quorum was present, the foregoing minutes were adopted by the Methuen City Council by a unanimous vote on November 5, 2009.

COUNCIL CLERK