

**COMMITTEE ON LIAISON
MONDAY, JUNE 27, 2022, at 6:17 p.m.
CITY COUNCIL CHAMBER
WOBURN CITY HALL**

Voting Members present: President Michael Concannon, Councilor Robert Ferullo, Councilor Joanne Campbell, Councilor Joseph Demers, Councilor Darlene Mercer-Bruen, and Councilor Lou DiMambro, Absent: Councilor Richard Gately, Councilor Jeffrey Dillon, and Councilor Charles Viola

Also present: Mayor Scott Galvin and City Solicitor Ellen Callahan Doucette

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Communication regarding Appointing Authority – Human Resources Director: President Concannon said there is a related memorandum from the City Solicitor. City Solicitor Callahan Doucette said Human Resources Director Elaine Pruyne is retiring. She said this is unfortunate because she enjoyed working with Director Pruyne. She said Director Pruyne does a really great job. She said she gave to the committee a copy of a legal opinion written in 1998 by former City Solicitor Edward Robertson. She said the memo addresses the hiring of the Manager of Information Systems position. She said the city charter indicates that the City Council as the legislative body does not reserve the right to appoint, even if the council created the position. She said the MIS is now a mayoral appointment. She said when Director Pruyne’s predecessor, Jan Cox, was hired, the City Council was the appointing authority. She said there are real problems with the ordinance, other than the length. She said Ms. Cox made herself chief negotiator. She said the ordinance needs some work. She said the mayor should be the appointing authority. She suggested she and the council could work on amending the ordinance. She said she thinks it’s pretty straightforward. President Concannon asked if the Liaison Committee agrees with that has been presented, can the appointment process for the HRD continue while the ordinance is being streamlined. City Solicitor Callahan Doucette said she does not know why the appointment process can’t continue. She said Ms. Pruyne is leaving at the end of July and the city needs an HRD. President Concannon asked if the practical solution is the mayor becomes the appointing authority. City Solicitor Callahan Doucette said she and the council can fix it while the appointment is pending. She said the ordinance can be amended fairly quickly so the appointment can be valid and the City Clerk can swear in the new HRD. Councilor Demers said he does not want to delay the process. City Solicitor Callahan Doucette said she can craft an order to convert the appointing authority from the City Council to the mayor and then the council can work on the remainder of the ordinance. President Concannon said he wants to make sure everything is done correctly from a procedural standpoint. Motion made by Councilor Demers and seconded by Councilor Mercer-Bruen to instruct City Solicitor Callahan Doucette to develop an order to amend the ordinance as it pertains to the hiring of the Human Resources Director; approved, 6-0. City Solicitor Callahan Doucette is leaving at the end of July. Mayor Galvin said they will get an order to the council by July 17.

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Request by the City Solicitor to discuss NAI litigation in Executive Session pursuant to

M.G.L. c.30A, Section 21(a)3: President Concannon said the committee is going into executive session under exemption 3 of the Open Meeting Law, to discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigating position of the public body. He said the committee will resume public session after executive session. Motion made by Councilor Demers and seconded by Councilor Mercer-Bruen to enter into executive session; Roll call – Councilor Gately, absent; Councilor Ferullo, aye; Councilor Campbell, aye; Councilor Viola, absent; Councilor Demers, aye; Councilor Dillon, absent; Councilor Mercer-Bruen, aye; Councilor DiMambro, aye; President Concannon, aye; approved, 6-0. City Solicitor Callahan Doucette said the case has been assigned to a third judge, Kevin Smith. She said she sent a memo to the council and it is rather lengthy. She said there is a pre-trial conference set for Sept. 12, and the judge will be setting a date for a trial. She said she is not quite sure how NAI will proceed. She said NAI proposed an LBOD and withdrew it. She said the attorney handling the case is Michael Connolly, who is at Murtha Cullina. She said she is not sure if Attorney Connolly is communicating with Attorney Joseph Tarby, who represented NAI but has since left for another firm. She said she is not sure if an overlay district is still in play. Councilor Demers said he believes NAI intends to re-file. He said there have been community meetings to get feedback. He said he owes it to his constituents to urge a settlement so the council retains some control. He said if the council were to lose in court, the council could lose the ability to grant a special permit for that parcel and it would open up Pandora's Box. City Solicitor Callahan Doucette said NAI has made improvements to make the traffic more manageable. She said if the City Council agrees that anything coming in requires a special permit, there should be no issues. She said with an overlay district the council can advise the applicant up front what it wants. Councilor Demers said he would feel a lot more comfortable if whatever appears before the council has to go through the special permit process. He said his concern is the neighbors won't like some of the by-right uses. City Solicitor Callahan Doucette this only pertains to Lot 11. If NAI changes the cinema use, they have to go back to the City Council. Councilor Demers said his information is they have no intent to sell the cinema. He said there has been a lot of discussion at the community meetings. He said retaining special permit authority is the more prudent approach. City Solicitor Callahan Doucette said the underlying Business Interstate zoning district allows by right uses. She said if NAI goes through the overlay process, she can't imagine they will put in a 15,000-square-foot office building, considering the value of the property. Councilor Mercer-Bruen said most of the uses that would be allowed by special permit are bigger projects. She said she does not think the council has to be concerned with by-right uses. City Solicitor Callahan Doucette said the general condition in the original special permit prohibits NAI from doing anything. President Concannon said he initially felt the council and NAI had struck a deal and should stick to it, but he also understands the realities of the day. He said NAI agreed to build sidewalks and add lighting, and there is a part of him that wants NAI to retain that commitment. He said he still believes NAI bears the burden of proof that the City Council acted unreasonably. City Solicitor Callahan Doucette said when the original permit was granted, NAI was maximizing the use of the parcel. She said the theater has been reduced subsequently to 900 seats, which is one-third of the original number of seats, and there is plenty of parking for the theater use. She said clearly NAI will need to undertake a traffic study. She said whatever goes in there probably won't clash with the theater use. President Concannon said it is likely the council will be deemed unreasonable if it continues to not lift the general condition. City Solicitor Callahan Doucette said the two previous judges addressed a settlement. She said both

sides have a risk. She said 28 years later there is less traffic. She said she does not know who still goes to the movies. She said if NAI sells, the general condition goes away. President Concannon said the council's legal counsel is suggesting a settlement. City Solicitor Callahan Doucette said settling is a better move for the City Council. She said there is enough room for parking for a discount super store. She said she knows the council does not want something like that. President Concannon said that as of right now the settlement doesn't involve an overlay district. He said NAI is offering special permit authority over what goes into Lot 11. He asked if the council is interested in any other improvements. City Solicitor Callahan Doucette said Councilor Gately is concerned about drainage, but that is a city issue. President Concannon said there are considerable mitigation efforts for drainage both on and off the property. Councilor Demers said a special permit requirement is what he would prefer. He said the issue with sidewalks is there is another property owner who would have to sign off on easements. He said he has not there has been any movement by the private property owner to give up any land. President Concannon asked if eminent domain is an option. City Solicitor Callahan Doucette said eminent domain has to be for a public purpose. President Concannon said lighting and sidewalks would certainly fall under public purpose. He said the City Council imposed a condition that NAI install lighting and sidewalks and then the council let NAI off the hook. He said this is another chance for the council to do the right thing. He said he wants NAI to install sidewalks and lights. City Solicitor Callahan Doucette said she can ask, but it sounds like that type of thing that may be better accomplished with an overlay district. She said Planning Director Tina Cassidy thinks there is room in the right-of-way, but she is not sure what that does for the city. President Concannon said if the roadway is reduced to three lanes, then there would be room for sidewalks. Councilor Mercer-Bruen asked if the council wants to reduce the road to three lanes. President Concannon said he would be fine with it as long as there are two lanes. Councilor Mercer-Bruen asked if narrowing the roadway might cause traffic issues, with more idling cars creating health problems for anyone in the area. City Solicitor Callahan Doucette said the light cycle at the intersection of Main Street and Middlesex Canal Park Drive is going to be changed anyway once the new fire station opens. She said she does not know if the timing will accommodate the cinemas. Councilor Demers said he has spoken to City Engineer John Corey and he said the opening of the fire station is down the road, the timing of the traffic light is still a consideration. He said if the council may end up in another legal battle with a private property owner. Councilor DiMambro asked what the worst-case scenario is. City Solicitor Callahan Doucette said the worst-case scenario is NAI ends up with a by right use with no oversight from the council. Councilor Demers said the worst case is the theater goes out of business, all the conditions go away and NAI sells the property as one parcel. City Solicitor Callahan Doucette said the entire parcel is 37 acres. Councilor Demers said a parcel that size would be attractive to developers. Councilor DiMambro said he does not think Councilor Demers' constituents understand the impact of what could go on that property. He said he thinks it is very important for the constituents to understand the ramifications. President Concannon said if NAI stops the cinema use, there is nothing the council can do until the special permit process starts. Councilor Demers said the council would find it very hard to deny the special permit on the basis of traffic. President Concannon said what has been represented at the neighborhood meetings is the City Council and the City Solicitor will try to craft an outcome that is the least impactful. Councilor DiMambro said his biggest fear is a large discount store like Costco comes in. He said that type of use will bring in a lot of cars, seven days a week. Councilor Demers said the burden will be on the council to deny a special permit and the council would probably lose the traffic argument.

Councilor Campbell asked what would happen if there were an overlay district. City Solicitor Callahan Doucette said the council can tailor an overlay district. She said the property owner is going to try to maximize the use of the lot. President Concannon said the council can have all sorts of control with an overlay district. City Solicitor Callahan Doucette said there is still the underlying zoning district available. Councilor Demers said there is a difference of opinion among residents who live near the NAI parcel. He said residents on one side of the street don't want something that brings in a high volume of traffic and residents on the other side of the street do not want a life sciences use. Councilor Mercer-Bruen said she thinks the overlay district is a separate matter. She said the council has had a lot of conversation. She said she would like to move to question whether to allow the general condition to be removed. President Concannon said the Liaison Committee could vote to authorize the City Solicitor to negotiate a settlement with NAI that the general condition be lifted in exchange for a special permit requirement. Motion made by Councilor Mercer-Bruen and seconded by Councilor Demers that the City Council's Liaison Committee authorizes City Solicitor Ellen Callahan Doucette to negotiate a settlement with NAI that involves all other conditions of the original special permit being lifted in exchange for a special permit requirement for any and all future development. Councilor Demers said the important point is that any and all proposed uses would have to come before the City Council for a special permit. He said he understands the concerns about the sidewalks, but the situation is too convoluted. President Concannon said the City Solicitor could pursue sidewalks and lighting. Councilor Campbell asked City Solicitor Callahan Doucette what her feeling is if the council tried to get sidewalks. City Solicitor Callahan Doucette said the City Council removed those conditions. She said Director Cassidy thinks sidewalks and lighting can be put in the street. She said if a developer like the Davis Companies is building the project, they might be in a better position to give the council what it wants in terms of mitigation. President Concannon said he is looking at a second bite of the apple, but he does not want it to be a deal-breaker. City Solicitor Callahan Doucette said one of her arguments is that any improvements on Main Street require state approval. She said they got permission to widen Main Street, but she does not know why the sidewalks weren't put in at that time. The optimal time to do that was when the street was widened. Councilor Campbell said she would be fine with foregoing sidewalks in favor of a special permit requirement. City Solicitor Callahan Doucette asked if there is anything else the council wants. She said if the judge removes the general condition, then the council will have no control over even piddling things. She said her concern is another subdivision and the developer trying to do other stuff. Councilor Ferullo said it seems NAI is very confident it will win the appeal. City Solicitor Callahan Doucette said Judge Lombardi said not in so many words the city is not going to win. President Concannon said there is a recommendation on the floor to authorize the City Solicitor to enter into settlement negotiations; approved, 6-0. Motion made by Councilor Demers and seconded by Councilor Ferullo to exit executive session; Roll call – Councilor Gately, absent; Councilor Ferullo, aye; Councilor Campbell, aye; Councilor Viola, absent; Councilor Demers, aye; Councilor Dillon, absent; Councilor Mercer-Bruen, aye; Councilor DiMambro, aye; President Concannon, aye; approved, 6-0. President Concannon said the Liaison Committee approved a motion to authorize City Solicitor Callahan Doucette to enter into negotiations with NAI. He said the City Council is willing to entertain lifting the original conditions in exchange for NAI submitting to special permit authorization for any and all uses to be developed.

Motion made by Councilor Ferullo and seconded by Councilor Mercer-Bruen to adjourn;
approved, 6-0. President Concannon adjourned the meeting at 7:17 p.m.

Attest: _____

Gordon Vincent
Clerk of Committees