

**COMMITTEE ON LIAISON  
MONDAY, MARCH 7, 2022, at 6:35 p.m.  
CITY COUNCIL CHAMBER  
WOBURN CITY HALL**

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

Also present: City Solicitor Ellen Callahan Doucette

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**Reading of previous meeting minutes:** Motion made by Councilor Gately and seconded by Councilor Mercer-Bruen to waive the reading of and to approve the minutes of the meeting of January 24, 2022; all in favor, 9-0.

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**Request by the City Solicitor to meet in Executive Session regarding Jackson Lumber v. Woburn City Council, et al:** President Concannon said the committee will enter into executive session under exemption #3 of the Open Meeting Law to discuss pending litigation. Motion made by Councilor Demers and seconded by Councilor Campbell to convene in executive session under MGL Ch. 30A, Section 21.3, for the purposes of discussing pending litigation. Roll call vote as follows: Councilor Gately – aye; Councilor Ferullo – aye; Councilor Campbell – aye; Councilor Viola – aye; Councilor DiMambro – aye; Councilor Mercer-Bruen – aye; Councilor Dillon – aye; Councilor Demers – aye; President Concannon – aye. All in favor; 9-0. President Concannon said the committee expects to return to public session. City Solicitor Callahan Doucette said she has submitted a 4-page document to the council regarding the litigation. She said she participated in a case management conference and Judge Howard Speicher of the land court indicated the council did not make any findings in its denial of the special permit application from Jackson Lumber. She said the council is supposed to make findings to go with a denial. She said she has talked with the City Clerk about incorporating findings into decisions that are made by the council. She said one of the issues in this case is the special permit application was for property located in a groundwater protection district. She said the case is predicated on whether there is a substantial impact on groundwater. She said it has nothing to do with the drainage system. She said DPW Supt. Jay Duran should not be recommending the denial of special permits. She said a peer reviewer was doing work for the City Council. She said a peer review is paid for by the applicant, and the peer reviewer is the council’s expert. She said the peer reviewer looked at the drainage system and determined it is either too small or clogged. She said it is a city issue. She said if the council does not attach findings to a decision the judge is not going to impose conditions on a special permit. She said she talked to Jackson Lumber’s attorney, Mark Salvati, and he offered some conditions. She said if this case goes to court, the city is not going to get a sewer line. She said the judge will not render a decision that involves the replacement of the sewer line. She asked the committee if it

wants her to try to settle and get something for the city. She said if the city goes to court, the city will lose. Councilor Gately said the council has been dealing with the Jackson Lumber petition for a number of months. He said all he asked for at the beginning and all he wanted was a thicker pipe. City Solicitor Callahan Doucette said the pipe isn't in the easement. Councilor Gately said he wanted a pipe that was big enough to withstand the weight of trucks that would be coming to the site. He said after that, everything went downhill. He said the special permit should have been passed six months ago. He said the drainage issues are not Jackson Lumber's problem. He said the city has made improvements in the area. He thinks Jackson Lumber's project is a good one. City Solicitor Callahan Doucette said Jackson Lumber is offering to fix the existing manhole. Councilor Gately said that is not a big job. He said it could be done in a day. Councilor Mercer-Bruen said she will defer to Councilor Gately because the locus is in his ward, but she does not agree this is a good project. She said she thinks Supt. Duran's prediction will come true. She said she understands the concept about findings of fact. She said if Councilor Gately thinks the council should settle, she will respect that. City Solicitor Callahan Doucette said it would make a difference if Supt. Duran said he disagreed with the peer review report. President Concannon said Supt. Duran said he is concerned about maintenance conditions. City Solicitor Callahan Doucette said Jackson Lumber does have to perform maintenance. She said she talked to Jackson Lumber's attorney who said the red part of the building may be replaced. She said the attorney said they will work with the drainage then, but they can't commit to anything because of the litigation. She said if the drainage is that bad, she would suggest having the DPW fix it and not wait for Jackson Lumber. President Concannon said there was no mention of this type of language during the hearings. He said the attorney only told the council Jackson Lumber is going to take down that building and they are willing to work with the city. He said if the attorney had told the council what he told the City Solicitor, he would have been in favor of that. He asked if the city agrees to a settlement, there ought to be a condition the Jackson Lumber will work cooperatively with the city. He said the language ought to be kept vague to make it a little more palatable. City Solicitor Callahan Doucette said the issue was Jackson Lumber wouldn't agree to do anything off-site. She said Jackson Lumber's position is this is the city's problem. She said the council is not supposed to add conditions that require a property owner to fix city problems. President Concannon said when the digging starts, Jackson Lumber is going to be right near the problem. Councilor Campbell said Jackson Lumber was taking down trees that are close to their property line. City Solicitor Callahan Doucette said Jackson Lumber required a special permit because they were making a substantial alteration in a groundwater protection district. Councilor Campbell said Jackson Lumber was pruning trees right up to an abutter's backyard. City Solicitor Callahan Doucette said she does not think there is a prohibition on pruning trees to your property line. Councilor Campbell said the council also discussed the increase in noise due to the removal of trees. City Solicitor Callahan Doucette said there is nothing that references noise. She said noise is not one of the standards. She said there may be an issue if the trees coming down had something to do with the flooding. Councilor Campbell said the City Council talked about that. City Solicitor Callahan Doucette said there are no findings or factual determination. She asked if the applicant offered to put up trees. Councilor Campbell said the applicant offered to plant arborvitaes. She asked if the council should make findings for every special permit. Councilor Demers said every vote has to have findings. City Solicitor Callahan Doucette said the council has to make findings, especially if it denies a special permit. Councilor Campbell asked what happens if a member of the council just doesn't agree with the project. President Concannon said the council has to offer reasoning. He said he can count on one or two hands the

number of times the council has included findings with a decision. He said the council can refer to meeting notes from which to draw findings. He said according to case law, the findings have to be in the decision. City Solicitor Doucette said meeting minutes are not admissible as evidence. She said the only appeals are generally by neighbors. She said most of the time when the council approves a special permit, the applicant does not appeal. She said if the council denies a special permit and the applicant appeals, they will rip the council to shreds if findings are not included. She said there is another issue with special permits in that if the council doesn't like a certain use, it should be amending the zoning ordinance. President Concannon said the council has the right to deny special permits but it needs to be a little more precise. Councilor Gately said Jackson Lumber withdrew its application. City Solicitor Callahan Doucette said Jackson Lumber withdrew last year because there were personnel changes to the City Council. Councilor Gately asked the City Solicitor if she wants a vote from the City Council. City Solicitor Callahan Doucette said she would like some direction about whether the council wants to settle. Councilor Campbell said City Solicitor Callahan Doucette said the council should not be taking testimony from Supt. Duran as an expert. She said she disagrees. She said Supt. Duran is in charge of public works and she would consider his opinion valuable information. City Solicitor Callahan Doucette said Supt. Duran can say he's happy with something but she would never be able to take him into court as an expert. President Concannon said Supt. Duran has a background in engineering. City Solicitor Callahan Doucette said to her knowledge he has never testified in court as an expert. Councilor Campbell said she is surprised by City Solicitor Callahan Doucette's comment. City Solicitor Callahan Doucette said Supt. Duran's testimony is not expert if he has a feeling something will happen. Councilor Campbell said Supt. Duran has video. City Solicitor Callahan Doucette said the flooding is a city problem. Councilor Campbell said she wants to make sure she understands who the council ought to be relying on for information when it makes findings. City Solicitor Callahan Doucette said municipal department heads meet with applicants of larger petitions to go over the process. She said that is Supt. Duran's opportunity to express his opinions. She said this goes on day-to-day and in many cases occurs before the applicant files a petition with the City Council. Councilor Dillon asked if the judge would have looked at the council's denial of the special permit differently if there were findings attached. City Solicitor Callahan Doucette said it depends upon which information the council cited in its findings,. She said the peer reviewer provides the council with information it can use to determine findings. She said the engineer from Jackson Lumber made changes, then the peer reviewer looked at it and determined the storm water standards had been met. She said the council should rely more on peer review. She said the Conservation Commission relies on peer review all the time. President Concannon said this petition was not easy on the council. He said his standard is he does not expect an applicant to fix the city's problems, but he does not want to make an existing problem worse. He said Supt. Duran knows what he's talking about. He said he would have preferred more certainty, but Supt. Duran said he did not have a good feeling about this. He said that did not give him a strong comfort level and he could not vote in favor. He said he knew there would be a problem. He said he thinks the council would lose in court. He said he suggests the council settle this. Councilor Mercer-Bruen said the council requires a special permit for many uses. She said there is a distinction between uses that are allowed by special permit and by-right uses for a reason. She said when a special permit application is filed it is up to the council to determine if it will work. Councilor Campbell said the City Solicitor is representing that the council should make findings. City Solicitor Callahan Doucette said she is working with the City Clerk to develop a strategy for including findings in decisions. Councilor

Campbell said she does not want the City Council to have its hands tied. Councilor Gately asked how many special permits the council has denied. Councilor Mercer-Bruen said every time the council denies a special permit, it ends up where it is now. Councilor Gately said he recently walked the Jackson Lumber site and the surrounding neighborhood. He said the red building on Jackson Lumber's property is going to be demolished. He said there will be some improvements. He said the council should take what the applicant is offering. Councilor Ferullo asked if the council should include standard findings with its decision. City Solicitor Callahan Doucette said the findings may change depending upon what is presented. She said the council has the option to work with an applicant. She said the council does not have to accept the first plan that is submitted. She said the council can negotiate. Councilor Campbell thanked City Solicitor Callahan Doucette for explaining this. Motion made by Councilor Demers and seconded by Councilor Mercer-Bruen to authorize the City Solicitor to enter into settlement negotiations with Jackson Lumber; approved, 9-0.

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**Request by the City Solicitor to meet in Executive Session regarding Lawless, Inc. v.**

**Woburn City Council, et al:** City Solicitor Callahan Doucette said this particular case is a little more complicated because Lawless has a permit for auto repair. Councilor Campbell said repair was added later. She said repair was not their intent when they came in a few years ago. Councilor Mercer-Bruen said Lawless obtained a special permit about three years ago and said they would be preparing new cars. Councilor Campbell said Lawless indicated they would not be doing auto body work nor auto repair. Councilor Mercer-Bruen said at the same time, Lawless was looking to expand operations at Four Corners. She said Lawless' neighbors had a lot to say about how much they expanded. She said Lawless is much too big for the area, but the council granted the special permit. She said her concern with the Draper Street situation is Lawless is chipping away at the restrictions. She said when the council granted the special permit for Draper Street, Lawless told the council there would be no repairs. She said she honestly thinks their end game was to perform repairs there. She said she thinks this was their original intent. She said she is not going to support negotiating with Lawless. She said she knows it will become a full-blown auto body shop. City Solicitor Callahan Doucette said the original special permit allows Lawless to store 207 vehicles on Draper Street. President Concannon said that special permit was granted three years ago. City Solicitor Callahan Doucette said she thinks the special permit also allowed storage. She said Lawless will argue that due to supply chain issues, they have changed their business model. Councilor Mercer-Bruen said Lawless said there would be no auto repair. She said the supply chain issues involved a shortage of microchips, and that didn't happen until last year. City Solicitor Callahan Doucette said Lawless will use as an excuse the lack of new cars for wanting to perform auto repair. She said it seems like a permanent solution to a temporary problem and now Lawless wants to do as much as it can. She said Lawless talked about a settlement at the case management conference. She said the City Council talked about noise and customer traffic. She said the locus is in an Industrial General district. Councilor Mercer-Bruen said the locus is in a tough spot. Councilor Gately asked if Lawless will offer to limit repairs to changing fluids and other work that creates minimal noise. Councilor Mercer-Bruen said one of the problems with auto repair is the shop doors do not remain closed. She said there was much deliberation to allow them to store and prep cars. She said she thinks the City Council needs to hold firm. She said she thinks if the council goes to court, they can make findings of fact. City

Solicitor Callahan Doucette said the council would not be allowed to do that. She said the council's ability to make findings is over. President Concannon asked City Solicitor Callahan Doucette to evaluate the city's chances of winning in court. City Solicitor said this is a different judge. She said the absence of findings allows the judge to issue a special permit, but she added this case is not as clear cut as Jackson Lumber. President Concannon asked if the Kenny's Auto Service business two doors down will be a factor. City Solicitor Callahan Doucette said that special permit was issued in 2008. She said Lawless may try to claim the council's denial was arbitrary. Councilor Mercer-Bruen said Kenny's is on a much different lot. City Solicitor Callahan Doucette said she feels more optimistic about this case than the Jackson Lumber appeal. She said Lawless wants to do a lot of different stuff on that lot. She said the city may be able to negotiate with Lawless. Councilor Gately said the council granted a special permit to Lawless for storage of vehicles and to perform detail work. He said the last couple of times he went there he could hear repair noises. He said he could smell fumes from cutting tools. He asked if the council could require Lawless to seal its doors and reduce noises. He asked if the council could require Lawless to install scrubbers on the ceiling. City Solicitor Callahan Doucette said the Building Commissioner will make them comply with the building code. Councilor Gately said Lawless did not seek approval from the Building Commissioner or the Fire Dept. City Solicitor Callahan Doucette asked Council Gately if he is suggesting there are zoning violations. Councilor Gately answered affirmatively. City Solicitor Callahan Doucette said he can request Building Commissioner Quinn to make a site visit. President Concannon asked if Lawless is committing zoning violations, will it impact the court case. City Solicitor Callahan Doucette there is nothing that prevents the city from enforcing the zoning ordinance. Councilor Campbells said the council's meeting minutes should reflect any discussion about limiting the special permit to vehicle storage and preparation work. City Solicitor Callahan Doucette said that even though the meeting minutes are detailed, the council is supposed to put findings in the decision. Councilor Campbell said she thinks Lawless has an end game. She said the council went out of its way to put in a condition there would be no auto repair. She said it does not seem right when Lawless agreed upon it three years ago. President Concannon said if the circumstances have changed that much, maybe the special permit can be altered to reduce the cars allowed on Draper Street. Councilor Campbell said Councilor Mercer-Bruen has worked very hard over the years to reduce noise and traffic on Draper Street. Councilor Campbell said she thinks the council should stick with the prohibition on auto repair at Lawless' facility. She asked if the City Solicitor can glean facts from the council's meeting minutes to influence the judge. She said it seems foolish to attach conditions like no auto repair if they are just going to be nullified later on. Councilor Demers asked if City Solicitor Callahan Doucette can provide new evidence if there is a zoning violation. City Solicitor Callahan Doucette said she can provide other information. Councilor Demers asked if meeting minutes can be provided as evidence. City Solicitor Callahan Doucette said language has to be in the decision. Councilor Demers asked Councilor Mercer-Bruen if she feels the city should negotiate a settlement. Councilor Mercer-Bruen said the council was explicit about what Lawless was and was not allowed to do. Councilor Demers asked if the judge would be responsive to a settlement. City Solicitor Callahan Doucette said the judge never sees a settlement agreement. She said if the case goes to trial Lawless personnel may do things to mitigate noise. Councilor DiMambro asked if there is a body shop at Lawless' facility at Four Corners or if it is just mechanical repairs. President Concannon said he thought Lawless represented it as just auto repair. Councilor DiMambro said it would be really easy to hide a paint booth at the Draper Street facility. He said he agrees with the

suggestion of sending Building Commissioner Quinn to inspect the premises. He said it will not be hard for Commissioner Quinn to determine if there is auto body work taking place. He said he ran for a seat on the City Council on the premise of having foresight. He said he is trying to see if people who come before the council are being truthful. He said he is not sure how the city would present untruthfulness to a judge. City Solicitor Callahan Doucette said the best option is to report zoning violations to Commissioner Quinn. She asked Councilor Gately if he is sure there is auto body work being done by Lawless on Draper Street. Councilor Gately said he smelled odors that indicate there is auto body work taking place. He said he also saw a flame that looked like a welder. Councilor Mercer-Bruen said she has not received any constituent complaints about Lawless on Draper Street, but she will ask Commissioner Quinn to drive by the premises. Councilor Ferullo said information on-line indicates Lawless operates a full-service body shop in Somerville. Councilor Campbell asked if the council had made a finding in the previous decision that there was to be no auto repair, would that hold up in court. City Solicitor Callahan Doucette said Lawless can argue their circumstances have changed. She said Lawless can argue the site has become underutilized because of the pandemic, which no one anticipated. President Concannon asked City Solicitor Callahan Doucette what she recommends. City Solicitor Callahan Doucette said it seems like the City Council is inclined to not settle this case. President Concannon asked if the council needs to take any action. City Solicitor Callahan Doucette said the city can take a vote that a settlement is not acceptable. Motion made by Councilor Viola and seconded by Councilor Mercer-Bruen that the offer by Lawless to settle the matter is not acceptable; approved, 9-0. Motion made by Councilor Demers and seconded by Councilor Dillon to leave executive session; Roll call vote as follows: Councilor Gately – aye; Councilor Ferullo – aye; Councilor Campbell – aye; Councilor Viola – aye; Councilor DiMambro – aye; Councilor Mercer-Bruen – aye; Councilor Dillon – aye; Councilor Demers – aye; President Concannon – aye; approved, 9-0. President Concannon reconvened the meeting in public session. He said two votes were taken in executive session. He said the council voted to authorize a settlement in the Jackson Lumber case, and the council voted to reject a settlement offer from Lawless Inc.

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**Motion made by Councilor Ferullo and seconded by Councilor Mercer-Bruen to adjourn;** approved, 9-0. President Concannon adjourned the meeting at 8:02 p.m.

Attest: \_\_\_\_\_  
Gordon Vincent  
Clerk of Committees