

Public Service Committee

Chairman Infurna, Wright, Boisselle,
Brodeur
Absent: Heavey
Attending: Buonopane, Conn,
Seaboyer, Tramontozzi, Mortimer
In attendance: Conservation
Commission Chairman Susan
Murphy

Public Service called to order by Chairman Infurna at 7:30 p.m. Alderman Brodeur motions to open Public Participation, 2nd by Alderman Boisselle. All in favor. No one comes forward. Alderman Brodeur motions to close Public Participation, 2nd by Alderman Boisselle. All in favor.

Order No. 07-008, Amending Melrose Revised Ordinances, Chapter 15, Article II by adding Section 15-10. Wetlands Protection Ordinance as set forth herein.

Alderman Brodeur requests that Susan Murphy address the committee. Ms. Murphy says she understands the purpose of returning this evening is to address the proposed amendment to §2, Jurisdiction, by deleting the words "and lands subject to flooding or inundation by groundwater or surface water (collectively the "resource areas protected by this Ordinance"). Said resource areas shall be protected whether or not they border surface waters." She says the proposed amendment deals with two very different properties. The first is land subject to flooding, and the second protects resource areas whether or not they border surface water. The Conservation Commission currently has jurisdiction over lands subject to flooding. This language does not expand jurisdiction to any lands that it does not already have jurisdiction over under the State Act. She says she would object to this deletion.

Alderman Brodeur asks if MGL Chapter 131 §40 is the magic law. Ms. Murphy says it is. Alderman Brodeur says the first extensive sentence reads: "No person shall remove, fill, dredge or alter any bank, riverfront area, fresh water wetland, coastal wetland, beach, dune, flat, marsh, meadow or swamp bordering on the ocean or on any estuary, creek, river, stream, pond, or lake, or any land under said waters or any land subject to tidal action, coastal storm flowage, or flooding, other than in the course of maintaining, repairing or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph and other telecommunication services, without filing written notice of his intention to so remove, fill, dredge or alter, including such plans as may be necessary to describe such proposed activity and its effect on the environment and without receiving and complying with an order of conditions and provided all appeal periods have elapsed." Alderman Brodeur says the Board of Aldermen cannot undercut the state act. Ms. Murphy says that under the proposed ordinance, a resident would have to follow the exact same process that is already in place. Alderman Brodeur asks if flooding is defined by the Department of Environmental Protection. Ms. Murphy says it is defined by the DEP and also by the federal government, by FEMA.

Alderman Boisselle says that there are two different types of areas defined as land subject to flooding under the Code of Massachusetts Regulations.

Alderman Wright says the reason this language is important and why isolated wetlands in particular should be kept under the Conservation Commission's jurisdiction is because heavy rains need some place to go.

Ms. Murphy says the reason for regulating land subject to flooding is to prevent people from raising up their land level so that it re-flows to another area. The real substance to the regulation is to provide a compensatory flood storage area on their own land. They have to provide a place for their water to go on their own property, making sure that flooding doesn't worsen for their neighbors.

Alderman Buonopane says the level of ground water and flooding has to meet the requirement of being six inches deep under the state regulation. He asks if that will change at all with this definition. Ms. Murphy says no; under the current state law, land subject to flooding doesn't have to border surface water.

Chairman Infurna asks about the resource areas. Ms. Murphy says the sentence "Said resource areas shall be protected whether or not they border surface waters" provides an extension over the current state law. Under the state law vegetative wetlands are protected only if they border surface waters. Wetlands absorb a great deal of water. When they are taken away an important function is lost. These wetlands should be protected to prevent even worse flooding problems in those areas. This is not an unusual provision in municipal bylaws. There are a lot of communities that have wrestled with this problem.

Alderman Brodeur says that some isolated wetlands came about due to development activity. Ms. Murphy says yes, that they are pieces of wetlands that were once continuous with other wetlands but have been cut off from a stream. Alderman Brodeur asks if the isolated wetland maintains its function. Ms. Murphy says it maintains part of it. The filtering of water is curtailed but the focus is on flooding. In isolated areas the wetland serves the purpose of flood control. Alderman Brodeur says this ordinance does not address remediation. Ms. Murphy says no, there is no turning back the clock; it is preserving what is there now.

Alderman Boisselle refers to the same sentence "Said resource areas shall be protected whether or not they border surface waters", asking if the new regulations from the DEP regarding isolated wetland subject to flooding does not protect what this references. Ms. Murphy says the state law is limited to areas of a certain size which is quite a large area. Alderman Boisselle asks if there are certain parcels of land in the city that are not currently considered wetlands. Ms. Murphy says the definition of a wetland is not changing; jurisdictional wetland is the distinction. If the ordinance passes as proposed, the resource area would become a jurisdictional wetland.

Alderman Brodeur moves to recommend, 2nd by Alderman Wright.

On discussion Alderman Brodeur says the Board of Aldermen just approved \$8 million to be spent on flood mitigation. This is free. He thinks it is better to be proactive and do free flood control.

Alderman Buonopane says one problem he has with this is that 40 years ago houses were built on wetlands. The City has spent money on flood mitigation but the homeowner may not be able to fix up their property damaged by the floods such as building a deck, because it is in a wetland. Ms. Murphy says the impact on people that may find that they are in a wetland will not be that they can't fix their deck, but an additional permit will be necessary. They will not be able to fill in their yards for a lawn; this requires the protection of a wetland. Alderman Buonopane asks when in the permitting process the Conservation Commission is notified that construction is taking place in a wetland. Ms. Murphy says they rely on the cooperative relationship with the Building Department.

Alderman Conn says this is more complex for him. Flooding is bad and everyone wants to prevent it. The Board of Aldermen is ceding more power and authority to volunteer organizations of the City. The issue is whether this is additional jurisdiction that the Board of Aldermen wants to cede to the Conservation Commission.

On the motion to recommend, motion carries.

Alderman Brodeur motions to adjourn, 2nd by Alderman Boisselle. All in favor.

Public Service adjourns at 8:02 p.m.

Finance Committee

Chairman Boisselle, Heavey, Wright,
Infurna, Brodeur

Finance Committee called to order by Chairman Boisselle at 8:10 p.m. Order No. 07-139, RE-APPOINTMENT of: Lee A. Phalen, 102 Clifford St to: Board of Assessors; term to expire the first Monday in March, 2010.

Alderman Brodeur moves to recommend, 2nd by Alderman Wright. All in favor.

Alderman Brodeur motions to adjourn, 2nd by Alderman Wright. All in favor.

Finance Committee adjourns at 8:11 p.m.

Legal and Legislative Matters

Chairman Wright, Heavey, Boisselle,
Brodeur, Infurna
Attending: Buonopane, Conn,
Forbes, Seaboyer, Tramontozzi,
Mortimer

Legal and Legislative Matters called to order by Chairman Wright at 8:11 p.m. Order No. 07-145, Amending Melrose Revised Ordinances Chapter 15 by adding Article XIII – Constables, Section 15-61 Qualification, Appointment, and Regulation of Constables as set forth herein. (AL-I)

As the maker of the order, Alderman Brodeur says that the Boston Globe ran a series on debt collection and focused on the practices and regulation of constables. At the last full board meeting the Board of Aldermen accepted MGL Ch 41 §91 which give the City

authority to have a process of appointing and removing constables. He says he has laid out a two-page order, some of which restates the ordinance already accepted.

Alderman Boisselle asks if there is any accompanying language for the Requirement of Bond in §4. Alderman Brodeur says it is a state requirement and the person assumes that requirement upon being sworn in.

Alderman Conn says the regulation of constables is more serious than generally thought. They can take people into custody. He asks Alderman Brodeur through the Chair if he culled this out of another ordinance. Alderman Brodeur says the training piece comes from the Boston ordinance and he also looked at Somerville's. Alderman Conn asks if he knows if there is a large number of cities and towns that have adopted this type of ordinance. Alderman Brodeur says he thinks there is. Alderman Conn says it is his experience that most constables are licensed in multiple cities and towns. Fees for service are low – \$30 or \$40. He asks if it would be the City's expectation to take one-quarter of that. Alderman Brodeur says that is what the Great and General Court states. The actual fee for service is \$2.00 but then there are copying, mileage and other fees. It is not expected that constables will make a windfall. To the Chair, Alderman Conn says that requiring criminal record checks is a wise idea as is the removal provision.

Alderman Forbes asks if this could be amended to require that before performing any service, that a constable must first notify the Police Department of such action. Alderman Brodeur says he doesn't know the answer to that. Chairman Wright says that constables generally do call in advance, especially in repossession cases. Alderman Conn says he believes they notify the Police especially if performing a capias warrant.

Alderman Buonopane asks how many constables there are in Melrose. Alderman Brodeur says he does not know the number. Alderman Buonopane asks if passing this ordinance would mean that all appointments would expire in three years. Alderman Brodeur says yes. Alderman Buonopane says this ordinance asks that they keep records; they should bring the records with them in the reapplication process to give the Aldermen an oversight of what they have done for the City. Alderman Brodeur says that §6 requires them to keep records for three years and that the Board could make that part of the reappointment process.

Alderman Conn says that historically the City has never had more than 10 constables.

Alderman Brodeur moves to recommend, 2nd by Alderman Boisselle. All in favor.

Alderman Infurna says that she would like to ask the Police Chief if constables do call in advance of service.

Alderman Brodeur motions to adjourn, 2nd by Alderman Boisselle. All in favor.

Legal and Legislative Matters adjourns at 8:35 p.m.

Maribeth Harrington
Clerk of Committees