

**MINUTES OF THE CHESHIRE TOWN COUNCIL ORDINANCE REVIEW COMMITTEE
MEETING HELD ON TUESDAY, OCTOBER 29, 2013 AT 7:30 P.M. IN ROOM 210,
TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410**

Present

Sylvia Nichols, Chairperson, James Sima and Peter Talbot.

Staff: Louis Zullo, Personnel Director; Town Attorney Dwight Johnson, John Purtill, Chairman, PBC; Bert Schiaroli, Building Official.

1. ROLL CALL

The clerk called the roll and a quorum was determined to be present.

2. PLEDGE OF ALLEGIANCE

The group Pledged Allegiance to the Flag.

**3. Amendment to Building Regulations Ordinance re: Late Fees
Possible action.**

At the last committee meeting there was a review and discussion on the proposed late fee issue. Ms. Nichols commented on the changes in the State building code, deletions to fees in the code, and amendments to Cheshire's ordinance.

Mr. Schiaroli informed the committee that the State changes the building code in stages, and the adoption of the new changes has been pushed out to December 31, 2013. Section 108.6, which allows for a \$150 late fee for work started without a permit, has been deleted from the State Supplement of the 2009 International Residential Code (IRC). Therefore, Cheshire cannot charge this fee any longer for residential work, but can charge the fee for commercial/industrial work. The town's ordinance must be adjusted to be in compliance with the State code.

It was clarified by Mr. Sima that, under the changes to Section 108.6, the Town cannot charge a late fee for residential work, but only for commercial/industrial work, started without a permit. He asked if there was anything stopping Cheshire from continuing to apply this late fee, as the State deleted this section, but did not state a town cannot charge this fee.

According to Mr. Schiaroli, the code is clear; the State deleted this section; and it no longer exists.

Attorney Johnson confirmed Mr. Schiaroli's statement as being correct, and said the State building code applies by statute to municipalities. If the State makes a modification to the IRC, the intent is to eliminate charging the late fees.

The question was raised by Mr. Sima on why one group gets charged and another does not get the same charge, and why Cheshire needs to follow suit.

This is adopted through statute, and Mr. Schiaroli stated that, by code, the State is his boss, and his decisions can be over-ridden by the State through an appeal. In his experience, he must inform the Council that if the State deletes a section, the Town can no longer charge the fee.

Mr. Sima cited an example of a commercial entity building a one or two family dwelling/residential units, and whether the fee would apply.

In response, Mr. Schiaroli said that a one or two family dwelling or attached dwelling is exempt from the late fee. He has found many contractors starting work without a permit and this is how the fee came about under the ordinance.

Mr. Talbot noted that the Town can charge people for a building permit, but can not longer charge a late fee for work started without a permit.

Whether the Town Council changes the ordinance or not, Mr. Schiaroli said he can no longer charge the late fee after December 31, 2013.

Ms. Nichols stated that by protesting this change in the building code the Town would be using staff and time without success. She said Mr. Schiaroli and Attorney Johnson would look into the late fee issue a little further. Ms. Nichols will hold a short meeting of the committee prior to the next Council meeting on the late fee issue.

With this change and deletion of the late fee, Mr. Schiaroli advised that some issues will have to be handled by the Zoning office, i.e. no late fee for non-permitted work on accessory buildings, storage units and the like, not exceeding 200 sq. ft. in area, no more than 30 inches above grade, and not attached to a dwelling. He informed the committee that more people are coming into his office looking at building files before purchasing a house in Cheshire.

4. Public Building Commission Ordinance Revision Possible Action.

The PBC ordinance revision has been before the committee for a long time and Ms. Nichols said it is time to make some headway. The committee will be working on the draft revised PBC ordinance, comparison of March 19, 2013 vs. the existing ordinance.

SEC,2-26 – PUBLIC BUILDING COMMISSION

(A) line #4 – the committee discussed the change to “*a reasonable life cycle*” cost.

Mr. Purtill informed the committee that a reasonable life cycle cost refers to the life cycle of the building or remodel, i.e. redesign of the pool done using a 40 year life cycle. In the ordinance it cannot state a specific time, so the word “reasonable” was used with recognition of some movement of the life cycle of a building.

Mr. Sima said he wants to keep the wording “lowest possible cost” and use it with reasonable life cycle costs. He noted it is difficult to predict costs out 20 years; it could be a lower life cycle; and not take into account money spent for utilities and lighting.

Mr. Talbot commented on PBC wanting to get away from the lowest prices, and how long the building will last.

According to Mr. Purtill, the life cycle takes into account costs including financing, but PBC does not include this, and this is why the change was made³.

On page 6, section 4, Attorney Johnson pointed out that the PBC cannot go over costs approved by the Council. This section gives the Council ability to insure costs are satisfactory, taking into account the life cycle.

PBC is trying to coordinate this with the way the Town does the budget, and Mr. Purtill said the Town considers initial construction costs, not life cycle costs. The change in “A” has the PBC and the Town considering life cycle costs.

Stating that not everyone understands life cycle costs, Mr. Sima wants to keep the “lowest possible cost” in the ordinance.

Following the discussion the committee agreed to the wording “*at the lowest possible and reasonable life cycle cost*”.

Section (B) Membership

(1) (a), line #6 – delete “his”.

(b) – okay.

(c) – Town Attorney will review this section .

(d) – okay.

(2) – okay.

(3) Temporary Members

(a) – line #3, change “represent” to “identify”.

Mr. Purtill advised that if someone is appointed for a project, they can vote on the PBC project.

Mr. Sima suggested keeping the words “user interest” rather than stating “user needs”.

It was stated by Mr. Purtill that the change was made to eliminate or reduce the extent to which user members are seen as lobbyist for their particular interest, as they should consider the overall needs of the project to users.

Mr. Sima sees user members focused on one thing; user needs is more focused; and needs is stronger than interest.

In this regard, Mr. Talbot stated the PBC is trying to get away from “interest” as a lobbying attempt or special interest.

Mr. Purtill wants user members to represent a point of view on use of the project, i.e. Board of Ed brings education expertise and needs of education usage. The Council gives the PBC the user members to provide expertise on a project.

Attorney Johnson noted a change in line #3 – “represent” is changed to “identify” user needs.

The committee agreed to this change.

(b) Non-User Members – it was agreed that this section was written correctly, and a non-user can vote only on a particular project.

There was a discussion on an education project and the Council appointing one Board member as user member for every project.

Attorney Johnson said that the Council would honor the BOD appointments to a project, and the user members would be one Republican and one Democrat from the BOE. This section tries to tighten up user members, and he will check the Town Charter on whether a user member must be a town resident.

(C) Powers and Duties –

(1) line #6 should read “Copies of rules and regulations...”

(2) (c) – Mr. Purtill commented on roadblocks in the process, and the PBC deleted the last sentence in this section. He noted that vetting the process for design approval involved many moving parts – RFP goes out, receive proposals, building committee review of proposals, short list of proposals to 3 companies, extensive interview process for selection.

Page 5

1. delete “Lead”; line #2, add “licensed”.

3. line #7, delete “sole” discretion.

Page 3 (c) – Mr. Sima referred to deletion of the last sentence -- this is saying the PBC can enter into a contract without Council approval.

Attorney Johnson will confirm that this section is not contrary to the Town Charter.

An example was cited by Mr. Sima of a \$4 million project with 8% of the value going to the consultant, without going to the Council for approval, and this is a concern for him.

The committee was told by Attorney Johnson that the Council always has the ability to require extra approval on a project.

Page 5 – Mr. Purtill questioned the Council vetting the design consultant and taking part in the interview process.

This would be for a large project, and Mr. Sima said the town could have had prior trouble with a vendor. He is asking for a limit on the dollar amount of a project.

This refers to “institutional memory” and Mr. Purtill suggested something in the ordinance setting a limit on consulting fees, without actually putting a number in the ordinance.

Attorney Johnson said an amount could be in the ordinance subject to Council changing it from time to time. Initially, there was a recommendation to the Council on the number to be set as a limit.

For the last few years, Mr. Sima said \$1 million projects were average for the PBC, and he questions using \$80,000 or \$100,000 as the set number for a consultant for a project.

Attorney Johnson commented that a big problem would be school projects being done without losing time. \$100,000 is a good number, and it can be changed by the Council, and would be for a \$1 million to \$1.5 million project.

Page 3 (c) – discussion on using “lead” design consultants, and it was decided that it should state “licensed”.

(d) – recommended Town Attorney change to delete “at least thirty (30 days prior to”. Mr. Sima stated his issue with removal of “final designs”, and cited Dodd Middle School project as an example.

With the Dodd project, Mr. Purtill said this was a material change and this is noted in the ordinance in (d).

Page 6, #4 – there was a discussion on “material deviation” - i.e. going from a flat roof to a peaked roof project; this is why there are representatives of the Council and Town Manager as ex officio members; “final design” requires one more Council meeting when there is professional expertise.

Mr. Talbot was okay with removal of “final design” because there are several safeguards in the ordinance.

Ms. Nichols stated that this section covers the issue, and the Council liaison should be able to speed up a project. If concerns come back to the Council this is covered in the last paragraph of the ordinance.

Page 7 (f) – Design Development Phase. This section is okay. Mr. Purtill said it is prudent for the Council to appoint user members; PBC should not do a project alone; and PBC would bring in staff people for a project.

Page 4 (5) (b) – “*and user needs*” refers to needs assessment.

Page 5 – 1. – Town Attorney will include language on the dollar value.

Mr. Sima defended his question of why a higher priced consultant would be chosen and use of “sole discretion” of the commission.

Mr. Purtill said the differences are not that great; the committee makes a choice based upon qualifications.

Attorney Johnson suggested a modification that could read “*if commission determines there is a good cause to do so*”.

Page 5 – 2. Construction process changes were explained by Mr. Purtill, who said it was determined there was a need to broaden them so the commission could determine how it would manage the process. There is a State requirement for design/build which includes certain safeguards. In the last line, delete “/or”.

If the design consultant fee is more than \$100,000 Attorney Johnson said this issue would go back to the Town Council.

Mr. Purtill stated that the purpose of this section is to provide for the fact that the PBC can do a design build or construction management without a design professional. This was in the 2010 Open Air project, and was done on bubble #2. Design/bid/build has a designer who works for the Town; with design/build the Town must have a designer to safeguard its interests.

With #1, Mr. Sima said the PBC can decide on which way to do a project without going back to the Council.

Mr. Purtill stated the PBC is obliged to inform the Council on how it will do the job (Page 6, (d)).

Page 6, first paragraph, deletion of “The commission...for the particular project”.

Page 8 has requirements for construction reports.

Page 6, first paragraph - Attorney Johnson suggested the following language: “*The commission shall advise the Council, in writing, of the construction process that it intends to use and the reasons therefore.*”

Page 5 – 3. delete word “*sole*” discretion.

Page 6 – Schematic design phase: (e) 1. delete last sentence (15% fee)

For page 6, #1 - Mr. Sima did not understand why the 15% was stricken, and wants a limit set on the schematic design costs.

Mr. Purtill stated that sets a quota for the allocation of the design fee upon the sections of the job. PBC negotiates this with the design professional at the time the fee is negotiated, with proposal from the consultant based upon how they will manage the project and allocate their work. This sentence is taken out because the percentage may not be enough; and no limit is set for schematic design. It was explained by Mr. Purtill that for the last few years the PBC makes the fee part of the competitive aspect. In some cases the fee is earned at the end, and he decided to take this out of the ordinance, and does not see the fee as a downside to this.

Mr. Sima believes there should be a limit on the fee because the schematic design is not a very in-depth amount of work. His concern is the architect coming back with a higher fee.

Following a discussion on deletion of the last sentence in (e) 1. the committee decided to further review the issue for the next meeting.

(e) 2. line #2, addition of “*construction schedule*”, and deletion of sentence “No schematic design...” If PBC can achieve more than required, Mr. Purtill said it should be done appropriately, and this is one of the reasons for so many add/alternates in projects.

Mr. Sima stated he wants the sentence in (e) 2 – “*No schematic design shall exceed the criteria for the project authorized by the Council*” to be kept in the ordinance. With a schematic design, he said the Council has the obligation to approve it.

An example was cited by Mr. Purtill as it relates to this sentence. For asbestos removal with a remodeling project, this is not in the specs and would “exceed criteria” for the project authorized by the Council.

Mr. Sima sees this as a checks and balances situation.

Stating she agrees with checks and balances, Ms. Nichols said the problem is that the PBC, structured with a professional, has inside knowledge of how things work. It is expected the professional would do the job.

With Council approval of the schematic design from the PBC, Mr. Talbot said there is the ability to see whether it is beyond the scope or not.

According to Mr. Sima, by leaving this sentence in the ordinance, there is checks and balances, a two way street, and the project can continue. He stated his opposition to removal of this sentence in the ordinance.

When the Council approves a schematic design, Mr. Talbot said this is when the project meets the specs, and if there are any changes, the Council can stop the project.

Mr. Purtill said this sentence is not workable because it places on the Council the determination on the project, in detail, which makes the PBC responsible for nothing.

Page 6 (e) 4. Ms. Nichols read the changes, and noted this was discussed in #2.

Page 7 – 5. This is a simplification of this paragraph.

Page 7 (f) 1. This is another elimination of the fee.

It was noted by Mr. Purtill that these changes were approved by the committee at a past meeting.

Page 7 (f) 2. The committee was okay with deletion of this paragraph.

Page 7 (g) 1. Attorney Johnson said this is an important change, switching from Town Council to PBC; deletion of word “*contract*”.

Page 8 – deletion of “*thirty (30) days*”; this will turn things around more quickly.

Mr. Purtill said this incorporated language elsewhere in the Charter to award contract to the lowest qualified bidder.

Attorney Johnson stated that the Town is protected because everything must meet Charter requirements, and the Town Attorney must approve the contract.

These are the steps before starting construction, and Mr. Purtill said the purpose was to step up the process, and not require additional meetings and approval cycle.

Ms. Nichols commented on the changes being okay, but requiring additional review.

Page 8 (h) – This section permits everything to be over-ridden, if necessary, and is one more protection of the changes made.

Ms. Nichols stated that this document will have more work, come back to committee for review and formalization, and will be brought to the full Town Council. There will be a short committee meeting prior to the next Council meeting on this ordinance.

5. ADJOURNMENT

MOTION by Mr. Talbot; seconded by Mr. Sima.

MOVED to adjourn the meeting at 9:40 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk