COMMITTEE ON LANDS & BUILDINGS
February 21, 2023 at 5:30 PM

Chairman Long called the meeting to order.

The Clerk called the roll.

Present: Aldermen Long, Fajardo, Levasseur, T. Sapienza, Levasseur

Messrs.: R. Tisley, P. Chiesa, B. Masewic-Adams, J. Belanger, R. Gagne, J. Nazaka

1. Communication from Atty. Roy Tilsley on behalf of Dockside II Condominium Association, requesting to purchase property located on Riverfront Drive (Tax Map 105, Lot A).
(Note: Recommendations from Planning & Community Development, Tax and Assessor are attached.)

Chairman Long called Atty. Tisley forward to speak on the item.

Roy Tilsley, Attorney, Bernstein-Shur stated I am here on behalf of the Dockside II Condominium Association and I am joined by the Association's President, Heidi Jackson. I wanted to give you folks some brief context. You have a pretty thorough history in the agenda packet and I won't go through the whole thing. We are talking about a small 10,000 or so square foot lot on the river. We have a gazebo there and it has been there for 30 years. The dock does not go in off of this land but the dock is stored there in the off season and they use the embankment to put the dock in the water during the summer season. We have irrigation there and we maintain it and mow it and have been doing that for 30 years. As part of the history going back and forth, we learned that the city granted a license to us to do this in 2006 but we also learned that while the city thought it owned this property for many years, it was actually owned by a defunct corporation, Granite State Broadcasting Inc. In 2017 or 2018, the city began to tax the property to this defunct corporation. There are a lot of title issues here. My clients have possessed the property for 30 years. We think they possessed it adversely to Granite State Broadcasting, the actual owner during that time, and have acquired some legal rights to it. Having said that, as much as Atty. Chiesa and I would like to battle this out in Superior Court and see who has the better hand, we thought it was more appropriate to approach the Board since the property has recently been taken for unpaid taxes because not surprisingly the defunct corporation didn't pay the taxes when it began being taxed. We thought we would approach the Board to see if we could purchase the property. Again it has been used by us for 30 years. Our concern is being able to maintain the gazebo and our use to store the dock and the use of the embankment and to continue to maintain it. We really just want to continue the status quo there and it seemed more sensible to approach the city about purchasing this property which you just reacquired or acquired than to litigate and see where the chips fall. That is pretty much where we are at and I would be happy to take any questions.

***Alderman T. Sapienza** moved to receive and file. **Alderman Long** duly seconded the motion.*

Chairman Long stated the reason we want to receive and file this is I believe Fire needs access to this water. There are city departments that need access to this and it would be best to keep it under our domain. However, the current use that you are doing now, we are not taking any of that away. You can still have your gazebo out there and access it.

Alderman T. Sapienza stated several Boards have also refused this request for the same reasons.

Alderman Levasseur asked does it make sense to continue your license or is your license in place. Now that another party jumped it, do you just need to upgrade it or update it?

Atty. Tilsley responded I think we would be open to an easement, Alderman Levasseur, that would preserve that right. The problem with the license is that it is revocable and again now that we have a title issue, I don’t want to give up the title issue to get a license that the city can revoke when it wants to. If there was an easement that allowed them to maintain it and use it the way they have been while still providing the access that some of the other departments are concerned about, we certainly would be willing to talk about that to see if we could resolve it that way.

Chairman Long asked Mr. Chiesa would that be a possibility.

Peter Chiesa, Deputy Solicitor, answered an easement is a possibility as well as a revocable license. I understand their concern and that they want something more permanent but on the one hand a revocable license gives the city much more leverage and options and on the other hand a written easement gives them a lot more comfort and they are able to use it as they wish.

Alderman T. Sapienza asked does an easement bind the city.

Deputy Solicitor Chiesa answered yes. We can negotiate the terms but…

Alderman Levasseur interjected do they pay taxes on it whether there is an easement or a license.

Atty. Tilsley responded this is a condominium so the answer is I guess no in the sense that we have never gotten a tax bill for this lot. They did attempt to pay the tax bill when Granite State Broadcasting didn’t pay it but they weren’t allowed to because they weren’t the taxpayer of record. Having said that, this is a condominium and as we all know, condominiums are assessed based on their value and what they sell for. You don’t typically assess the land that the condominium is on separately from the units so to the extent that this property with the gazebo and the irrigation and the access to the river adds value to the individual units, I would suggest that the city is receiving some tax benefit because the units are worth more by having this access.

Alderman Levasseur stated the reason I am bringing it up is if you are going to get an easement or a license, which one would you pay taxes on or both. It gives you a little bit of…obviously the easement gives you leverage. If the license gives you less leverage but you are still paying taxes on it, the city is probably not going to shun that.

Atty. Tilsley replied the concern from my client is to preserve these rights more than it is to save a possible small tax bill. I think the property is valued at like $23,000.

Alderman Levasseur stated okay so the tax bill was less than $500 for the whole thing.

***Chairman Long** called for a vote. The motion carried with Alderman Levasseur being duly recorded in opposition.*

Chairman Long stated Atty. Tilsley you may want to sit down with Mr. Chiesa and see if you can work something out and get back to us.

2. Communication from Captain Murphy, Manchester Police Department, requesting authorization to design and construct a police training facility on a city-owned paved parking lot located on Hackett Hill Road.

*On motion of **Alderman Levasseur**, duly seconded by **Alderman T. Sapienza**, it was voted to approve.*

3. Communication from Brenda Masewic-Adams, Tax Collector, requesting that the tax-deeded properties outlined in her memo be deemed surplus to City needs and disposed of through a public auction, tentatively scheduled for April 8, 2023.

***Alderman Levasseur** moved to deem the properties surplus. **Alderman T. Sapienza** duly seconded the motion.*

Alderman Fajardo stated I was just curious about whether there is an opportunity for the city to deem these surplus and put them out at auction but give some kind of favor toward any kind of affordable housing or any use that would kind of help us in cultivating the low income, affordable and workforce housing side of the equation.

Brenda Masewic-Adams, Tax Collector, answered yes. Part of the list that you have before you can be retained for specific purposes as the Board sees fit. You can approve them all or you can approve one or two or dispose them through auction but if you believe there are other uses for them you can retain them for future use.

Alderman Fajardo asked Mr. Belanger is that something that your department has given thought to.

Jeff Belanger, Planning & Community Development Director, asked can you repeat that.

Alderman Fajardo stated I am curious if these properties could be used for affordable housing or if we can put any kind of parameter around them to direct them at low income and affordable housing.

Mr. Belanger replied these are tax-deeded properties that we control so if we want to do an RFP or otherwise send them out for development which is what we are doing now with a couple of lots in the city that is really something we can do. We can put those sorts of parameters on these like we are doing with other lots.

Robert Gagne, Assessor, stated something to consider is that the city doesn't own the entirety of these properties for the first three years that it owns them. The city is required to dispose of these at fair market value. They can recoup what they are owed and the rest has to be returned to the former owner or any lienholders. I think that puts a little twist on being able to put any kind of restrictions on how you sell these.

Chairman Long asked so if the city deems that these are suitable for affordable housing, we need six years prior to taking action on that. Right now, we have to put it on the…if there is a city benefit we are allowed to take those properties as I understand it. No?

Mr. Gagne answered no.

Chairman Long asked after six years.

Ms. Masewic-Adams answered the prior owner has three years to redeem it but the city has the right to dispose prior to three years. Within that timeframe, if we do dispose of a property then any excess proceeds apart from the taxes and expenses occurred during the time we owned it have to go back to the previous owner.

Chairman Long asked so if the city for public benefit wanted to take the property for $1 could we do that.

Ms. Masewic-Adams responded no. We cannot single out properties for that purpose. It has to go through the process of non-payment of property taxes for at least two years and a day and once that timeframe has passed we can notify them of an impending deed and if there is no payment then we can execute the deed. We then still have to give them the right to repurchase and if no payment is made then we can dispose of it.

Alderman T. Sapienza asked if we put these up for auction, can we bid $1 more than we are owed if there are no other bidders. Then there would be no proceeds to give to the previous owner.

Ms. Masewic-Adams answered it might be a conflict of interest to do so.

Alderman T. Sapienza stated well it's all known. The public can come and vote. We are still the highest bidder.

Ms. Masewic-Adams responded most likely if it is a public auction there would be potential buyers there to bid on it.

Alderman T. Sapienza replied but if you bid $1 over what is owed.

Ms. Masewic-Adams stated well if you compete…

Alderman T. Sapienza interjected then we become the bidder.

Chairman Long stated the reason we would vote to send these to public auction is because we can to recoup our administrative fees and taxes.

Alderman T. Sapienza stated but if you want to get to where Alderman Fajardo is trying to go we could do that.

Chairman Long stated that is what I was trying to get to. Isn't there a statute that says if the municipality has a public benefit to a tax-deeded property that they can assume the property?

Ms. Masewic-Adams replied the city can retain tax-deeded properties for public use.

Chairman Long asked is that at the three years like now or after six years.

Ms. Masewic-Adams answered I am not sure. I would have to go back and read the RSA. I am not sure of the timeline with that but whatever the purpose for the property, the prior owner must have a chance to get it back.

Mr. Gagne stated I am going to suggest that the Solicitor get involved here too because if the city owns it for three years they can sell it and keep the proceeds. I believe there is a Supreme Court decision that views that as taking without compensation and it is suspect as to whether that is legal or not. Really what you are talking about when you offer $1 more than the highest bid is taking the property without proper eminent domain compensation.

Deputy Solicitor Chiesa stated the other point being that we are declaring the property surplus which means there is no government benefit or public use for it.

Mr. Gagne stated right if it goes to auction then you have declared it surplus.

Deputy Solicitor Chiesa stated you can't buy back something you have already declared surplus. It kind of defeats the purpose.

Alderman Levasseur stated I actually won a case once on a foreclosure because the foreclosing party, the auctioneer, did not get the best and highest price. I was able to go to court and convince the court that shenanigans were being played. The city has an obligation to get the highest price for the person they are foreclosing on as does the auctioneer. If somebody comes in with a bid and there are games being played, the last person that should be doing that is the City of Manchester because there is already enough people upset about the fact that we are foreclosing on them and then you are going to have these games where somebody is on the inside and knows what the bid is going to be plus the other thing you have to concern yourself with is the person that owns the property has one year to go back and purchase so if you sell it for $1 the owner of that property can come back and buy it for $2 or $1.50 and then pay whatever the taxes are so you don't want to be involved in that kind of stuff. There are too many shenanigans that go along with that thought process.

Mayor Craig stated we did this recently with a three-family near the Library. When we put it up for auction we said that it had to be workforce or affordable housing and that was one of the stipulations.

Deputy Solicitor Chiesa responded that wasn't a tax-deeded property.

Ms. Masewic-Adams stated it was city-owned.

Chairman Long stated I think it is six years because I think I asked you this years ago. I think we have to wait six years to do that but if you can check on that and get back to me that would be great.

Chairman Long *called for a vote on the motion to deem the property surplus excluding the River Front Drive property. The motion carried with Alderman Fajardo duly recorded in opposition.*

Alderman T. Sapienza *moved to dispose of the tax-deeded properties through public auction tentatively scheduled for April 8, 2023.* ***Alderman Levasseur*** *duly seconded the motion.*

Alderman Levasseur stated there is one person that was on this list and our esteemed Tax Collector worked very hard with this particular homeowner to stave off that foreclosure. It was a lot of work and took many months but in the end thankfully the homeowner was able to avoid the foreclosure and not be put on this list. I can tell you that these were personal meetings, phone calls, emails, etc. and diligent work on the part of our Tax Collector. It is not like the city wants to foreclose on these properties. Unfortunately, some people just can't afford what they owe in taxes even though the city does try very hard to work with the homeowners and you did an amazing job with this particular homeowner so thank you.

Chairman Long *called for a vote. There being none opposed, the motion carried.*

4. Communication from Jodie Nazaka, Economic Development Director, proposing modifications to the Community Revitalization Tax Relief Incentive Application (RSA 79-E) and adding language to ordinance Section 36.40.

Alderman T. Sapienza *moved to approve the revised application and refer the ordinance amendment to the Committee on Bills on Second Reading.* ***Alderman Trisciani*** *duly seconded the motion.*

Chairman Long stated I am not in favor of extending 7 or 9 years. Are you saying that for affordable housing we would extend for 7 or 9 years?

Jodie Nazaka, Economic Development Director, answered I think what is important to note about the changes that are being proposed is the biggest part is tightening up what our existing application is and putting more requirements on the applicant and put the burden of proof on them to demonstrate how the 79-E is critical to the feasibility of the project. I think for too long there has been a misunderstanding that an application, just because it has been submitted, must be approved and it must be approved at the five years. State tax statute says that a municipality may grant up to five years. The RSA has since been amended to add additional years on to that but it is very clear that it is may. There are no requirements. If an application has been submitted, the Board is not required, even if the structure and the property is qualifying, to approve it. So the changes being proposed are asking for things that will help in the review and most importantly is the Pro Forma. So the Pro Forma basically is a budget breakdown of what the project is going to cost, how the developer is financing the project, what their proposed income is going to be over let's say a five-year period.

Chairman Long responded yes and in your presentation you articulated all of that well. We know all of that. I just had a couple of questions. One is if we advise the full Board to adopt this, are we looking to expand for affordable housing for 7 or 9 years?

Ms. Nazaka replied it would be providing other options for the Board. So if there was a project, for example, that the Board feels very strongly about and it is 100% affordable and one thing goes wrong and if one thing goes wrong that project is not happening, it does provide the Board a little bit more flexibility to get behind a project. Just because there is an additional four years for affordable housing does not mean that the Board has to grant up to that full amount. If the applicant is proposing fully affordable and they are asking for the full maximum nine years, the Board could still look at the Pro Forma and say we support two. It is providing you more options, but it is absolutely not a requirement and I think moving forward with these changes to the application and requiring the Economic Development Office to do a full review and provide the Board with the information, data and a recommendation is something that should have always been happening. These changes now put that in place. Just for the record, I do want it to be known that these changes were in consultation with the Assessor's Office and the City Solicitor.

Chairman Long stated another question I had was with respect to the total soft cost, general contractor, construction manager, design-build…wouldn't we want to know that information also rather than just the structural and electrical.

Ms. Nazaka answered I would be happy to expand on that too. It was kind of that fine line of where do you draw the limit on what you are asking for and that is why I kind of put everything under "Other". If you look at the requirements on Page 5 of the proposed application, Estimates & Bids is something we are also requiring so if there is a Pro Forma that is not necessarily adding up and it seems like there is something missing it provides the opportunity to ask for estimates and bids there. I understand what you are saying and I did consider that too. I was working very closely with Concord and what they require and the list could have kept growing so I had to cut the line somewhere. I would be happy to add more if that is the direction of the Board.

Chairman Long stated one other consideration is the transfer of property. If I have five years and I sell the building in two years, the buyer gets another three years?

Ms. Nazaka responded I would defer to the Assessor. That is how we are currently doing it.

Chairman Long asked is that required. I didn't see in the statute that it is required.

Mr. Gagne stated the statute doesn't make any provision for a change of ownership terminating that relief period.

Chairman Long asked but it doesn't prohibit it.

Mr. Gagne stated there is a covenant recorded…

Chairman Long interjected that is a no. When you shake your head like that, that's a no.

Mr. Gagne stated I would ask the Solicitor to weigh in.

Deputy Solicitor Chiesa stated there is a covenant that is recorded that covers all of that and the covenant runs with the land. Even if they do sell it, the prerequisites are forced on the land.

Chairman Long asked so we are forced to have it carry over to the next owner.

Deputy Solicitor Chiesa answered yes.

Alderman T. Sapienza stated Jodie thank you for your hard work on this. This is something the Board has been waiting for and I appreciate it.

Alderman Levasseur stated I am glad that you said we don't have to give five years. I thought we always had to give five years when these people came into our Chambers and now you are saying we can add another four. There is a property on Elm Street right now that is not moving along at all so somebody could literally just bank that property for five years, not do any refurbishment, not put any apartments in, and not fix the building up. Sitting on the Planning Board for four years, I know we closed off the alley where the Farm building is. I didn't want to close off that alley because I was worried that if that property never ended up getting developed we closed off an alley when the Fire Department needed it and used. I like the idea that we can say we can give you one year and you can come back a year later and hopefully you have done your work or performed your obligations to the city because I see properties that are not moving along and if the economy goes south, they are going to sit on these properties for five years, leave them the way they are and pay no taxes on it. The incentive is for them to get the building up and running so they can afford to pay taxes and then flip the property or sell the property or whatever. I like the fact that we are allowed to go one year. I don't want to say that should be a policy of the Board but it should be a thought in the aldermen's brains when we do these things. It should be for one year with no problem with them coming back as long as we see they are doing some work. There is one particular property on Elm Street that has been sitting there for way too long with nothing going on. That person has already had one property foreclosed on and this one is not moving at all. I think we got snookered when we gave her the five years. There has been no movement at all and then we closed off an alley. I just think we need to be a little more careful and I am glad you came and told us that.

Ms. Nazaka stated if you look at the proposed ordinance changes, that is something that the Assessor was recommending and that is adding the language "replacement shall commence within 12 months of the date of the Board of Mayor and Aldermen's decision." That is also adding a little bit of motivation.

Alderman Levasseur asked can you repeat that.

Ms. Nazaka answered I will let Bob explain it because I know it was part of his recommendation.

Chairman Long stated it is in the proposed ordinance amendment that you have to start the project within 12 months.

Alderman Levasseur asked starting the project means what. Buying the permit or putting a hammer to wood?

Mr. Gagne responded shovel to earth or hammer to nail. This doesn't say when it has to be completed and maybe that has to be in there too but some of these projects, like West Auburn, that is not going to be a 12 or even an 18-month project. If you put a limit on when it is completed, it has to be flexible enough because a big project like that would take 24-36 months.

Ms. Nazaka stated I can say that in all of my research Dover had a great example of how they control the timelines. They do development agreements with everyone who is receiving these tax relief incentives. There is a separate development agreement that makes sure they have control and that the timeline is being met and the public benefit is consistent.

Alderman Trisciani stated just to clarify, the property you are talking about on Elm Street is actually under construction and nearing completion. They actually received state money and I believe that is opening them up to 15 affordable units with some 2-bedroom down to studios. So they are well on their way.

Alderman Levasseur asked that is the one where the Raxx building is.

Alderman Trisciani answered yes.

Alderman Levasseur stated well that is good to hear.

Mayor Craig stated I just want to confirm because one of the things that has been missing that I think I heard you say was that you as a team will review this information upfront and bring a recommendation to the Board in terms of a time limit based on the information you have which is fantastic so we don't always have to be tied to the five years. The development agreement that you mentioned in Dover sounds reallly interesting. Is that something we can implement here?

Ms. Nazaka replied I don't see why we couldn't. I would defer to the Solicitor to confirm that it would have to even be included in this or if it is something that can be a requirement.

Deputy Solicitor Chiesa stated we can certainly explore it.

Mayor Craig stated I think again to keep these projects going the way that we want to if you have talked to Dover and it is working I would say let's do it.

Ms. Nazaka responded Dover actually doesn't have an application. I asked if they could share their application process with me and talk to me about it but they don't have a 79-E Application. They only do development agreements so they have full control over the projects when they are going forward. In total over the eight years, they have only granted three.

Chairman Long asked should we table this.

Alderman T. Sapienza stated we have been waiting a long time for this.

Chairman Long stated well then they can come back to this committee if they add something else to it.

Alderman Levasseur stated one more clarification on the issue of the affordable apartments or housing. If somebody comes and wants to build 500 units and they give us 25 affordable apartments or condos or whatever, I don't consider that affordable housing.

Chairman Long answered that would be up to us. There is nothing in here that we are stuck to. It is under the discretion of the Board.

Alderman Levasseur stated right. Don't come in with 5% affordable housing and ask us for nine years.

Mr. Gagne stated the statute requires 2/3 affordable to get the nine years. There is a requirement in the statute.

***Chairman Long** called for a vote on the motion to approve the revised application and refer the ordinance amendment to the Committee on Bills on Second Reading. There being none opposed, the motion carried.*

*There being no further business, on motion of **Alderman Fajardo**, duly seconded by **Alderman Trisciani**, it was voted to adjourn.*

A True Record. Attest.

Matthew Normand

Clerk of Committee