

**SPECIAL MEETING
BOARD OF MAYOR AND ALDERMEN
(PUBLIC HEARING–TAX RELIEF INCENTIVE APPLICATIONS)**

February 15, 2022 at 5:00 PM

Mayor Craig called the meeting to order.

Mayor Craig called for the Pledge of Allegiance, this function being led by Alderman Fajardo.

A moment of silence was observed.

The Clerk called the roll.

Present: Aldermen Cavanaugh, Stewart, Long, Fajardo, T. Sapienza, Sharonov, Trisciani, Heath, E. Sapienza, Barry, Gamache, George-Kelly

Absent: Alderman Levasseur

PUBLIC COMMENT

Mayor Craig advised that the purpose of the special meeting is to hear those wishing to speak on two Community Revitalization Tax Relief Incentive Applications pursuant to RSA 79-E for property located at 21 West Auburn Street and 24 Depot Street in the city of Manchester; that anyone wishing to speak must first step to the nearest microphone when recognized and give his/her name and address in a clear, loud voice for the record; that each person will be given only one opportunity to speak; and any questions must be directed to the Chair.

Robert Gagne, Chairman Assessor, stated I would assume everyone had an opportunity to look at the applications. There were two applications because it is two parcels. My report basically goes over the criteria as to whether or not the 79-E can be applied or not. There are several tests; one of which is if it would provide a public benefit as defined in the statute. I found, in reviewing the proposals, that they do meet the criteria and provide a public benefit. The next criteria were that it would be a qualifying structure. The response in this section was conditional. It may not be clear in reading it but it is conditional. The structures are located within the geographic district

that we have identified that you could apply 79-E. They qualify based on that criteria. This is a request to get 79-E with a tear down and a replacement. When that is the request, you can see in italics on the middle of the second page of my report, “in instances when qualifying structures determined to possess no significant historical, cultural, or architectural value, under those conditions you can approve a tear down and replacement under 79-E.” However, if there is historical, cultural, or architectural value then there are other steps to determine whether or not you can provide that tax relief. This falls under RSA 79-E:4. Under this additional condition, the governing body may grant the tax relief provided, and this is the important thing, in the case that the governing body specifically finds that the local heritage commission or historical district commission has determined that the replaced qualifying structure does not possess significant historical, cultural or architectural value. At the time I provided my report, we hadn’t yet heard from the Heritage Commission but we have since. I believe there is a letter in the packet where they find that certainly 24 Depot Street has some historical significance. That is something you need to consider in your deliberations. I will answer questions if you have any.

Alderman Long asked where are they talking about this.

Mr. Gagne replied do you have a copy of the 79-E.

Alderman Long stated I do.

Mr. Gagne replied do you have the current copy. Not the one that is in the application because the version of 79-E in the application is an old version that does not include all of the section. I have indicated since August or September that the application needs updating. This group has asked to do that and a few department heads will do that. It has not been updated yet.

Alderman Long asked so the 79-E in our packet is not correct.

Mr. Gagne responded the 79-E in the application is not the current version.

Alderman Stewart asked what ability does the board have to put conditions on any type of relief we may grant.

Mr. Gagne stated under the current scheme, I don't believe you can provide restrictions. That said, you can certainly deny a request if it doesn't meet the criteria to your satisfaction. That is the action you can take - either grant it or deny it with a written reason why you would deny it.

Mayor Craig stated basically what you said is we can approve 21 Auburn Street but can possibly not approve 24 Depot Street. Is that what you are saying?

Mr. Gagne replied that is my reading of the Heritage Commission letter. Again, that should be in the packet.

Mayor Craig stated I would like a clarification because it is news to me. I understood that the Heritage Commission was providing feedback but the decision wasn't necessarily contingent on that. You are saying that is different than the RSA?

Mr. Gagne stated I believe it is yes. Maybe the Solicitor could weigh in on it as well. Just to be clear, this has to do solely with whether you grant property tax relief. I believe the developer already has what he needs to tear it all down and replace it as far as Planning is concerned.

Emily Rice, City Solicitor, stated that the statute, as Mr. Gagne indicated, has specific language regarding replacement. This body is the governing body under that statute. This body would need to specifically find that the Heritage Commission made three separate findings. I agree with Mr. Gagne, at least with respect to 24 Depot, that the Commission found that it has historical significance so what this Board would need to do is to make a specific finding and I do not believe that the finding could be inconsistent with the Heritage Commission. Having said that, the final sentence of

79-E:4 provides that in connection with these findings the governing body may request that the Division of Historical Resources conduct a technical evaluation in order to satisfy the governing body that historical resources will not be adversely affected. The way that I read that statute is that if the Heritage Commission does not make all of the findings reflected in the statute, or the Board wishes to get additional information about these findings, or to have the findings amended, this Board would have two options or perhaps three. One would be to reject the application. Another would be to go back to the Heritage Commission and ask that they make specific findings in the specific statute. The third would be to consult the Division of Historical Resources, thus following the exact language in the statute. I agree with Mr. Gagne in that what is before the Board tonight is whether or not to grant the tax relief under 79-E; that is the sole issue.

Alderman E. Sapienza asked Mr. Gagne if we were to reject this it would require a written explanation.

Mr. Gagne stated yes; a written explanation to what the grounds were for denying it.

Alderman E. Sapienza replied really. What are the grounds there?

Mr. Gagne stated well I guess in this case if you were to deny it you would say because there is historical significance that outweighs the public benefit of tearing this place down.

Alderman E. Sapienza stated what if we just want to deny it...alright I don't want to beleaguer this. Thank you.

Mr. Gagne asked can I follow up.

Alderman E. Sapienza replied yeah sure.

Mr. Gagne stated you can't make a discriminatory or arbitrary decision which is why you have to a written reason. For example, if you approve a tear down under similar conditions and then you deny this one that would be open for challenge.

Alderman E. Sapienza stated okay I understand. Thank you.

Alderman T. Sapienza asked if 24 Depot Street didn't clear the Heritage Commission.

Mr. Gagne responded that is my reading of their letter.

Alderman T. Sapienza asked is anyone from the Heritage Commission is here to speak to us.

Mayor Craig replied yes and I am assuming they will speak.

Alderman Trisciani replied I served as the chair of the Planning Board when this case came before us. Alderman Long was with us as well. We did have lots of discussion at length about what could be done with this property given that there is a historical nature. It was never anything considered nationally historic register worthy. First off, we all know we are in a housing crisis and we all know we need housing. Successful communities are built on a 1/3, 1/3, 1/3 model with your affordable housing, middle income and high income housing. We know we need that. One of the challenges with this building is for a lack of better terms it has been bastardized over the years. It is not like we can go in and just keep the structure. I'm not sure what we could have done in that case. Adding onto that we did have extensive reviews with the Amoskeag Mill Yard Design Review Committee because of the district it is in. We also included several discussions with the developer as well to ask them to provide some signage explaining what the building did; i.e. on this site was this building. We also asked while they were doing the tear down to try to save elements to incorporate into the new space as another nod to the heritage. We need to consider the whole package and what we are making for a decision.

Alderman Fajardo stated thank you for providing that context; that was helpful. In looking at the plans, it looks like it calls for two reclaimed corbels at the entry way. Do we have a sense of the appetite on the part of the developer to go beyond that?

Mayor Craig stated they are here and will be answering your questions.

Alderman Long stated so we could not approve 24 Depot and move forward as planned correct.

Mr. Gagne stated I can't answer whether or not the project can move forward.

Mayor Craig stated the project has been approved by the Planning Board and the buildings will be torn down if they decide to proceed.

Mayor Craig called for those wishing to speak.

Aurora Eaton, 118 Hollis St, stated:

I serve on the Heritage Commission and I am not here to officially represent the commission but I am very much involved in reviewing this whole thing. I have sent you a letter. Apparently you are very busy and haven't had a chance to read it. I will go through the points I went through in the letter. There is going to be one correction in what I said which is about the two structures. Both structures were found to have historical value. The 24 Depot Street was found to have cultural value as well as Auburn Street. They both have cultural and historical value. The building on Depot Street definitely has architectural value in terms of value. The building on W. Auburn Street, and according to the letter provided by the Heritage Commission, is debatable. The way the statute reads is that it doesn't have to be all three things; it can be either or and the last thing is the building on Depot Street is perhaps not architecturally distinctive but they are both in the same boat. What is really apparent, and I have spent perhaps two weeks looking at this, is the applications do not meet the requirements outlined in RSA 79-E. If you have a chance to look at it, that piece of particular legislation is really

trying to encourage to develop undeveloped areas in the downtowns. It is not really meant to encourage demolition. In fact, it is really easy to get an application for 79-E tax credit if you actually restore a building or rehab it such as what happened with the Pandora Mill. That is an example of what the bill tries to encourage. From what I can see, it is not in compliance with the key requirement, which the Heritage Commission has mentioned very specifically in the RSA 79-E:4. It really needs to make a declaration that the building or buildings that are being demolished have no historical, cultural or architectural value. We didn't have much time to look at this but it was pretty obvious. In essence, in 2013 the New Hampshire Division of Historical Resources did a very extensive study of the Gas Light area. There is a lot of material in that study that indicates that these are two buildings that do have value in those areas. We had to vote the truth that yes these do have these characteristics. This sets in motion what happens next because it specifies in this section, like Mr. Gagne mentioned, that for a property that will be demolished or replaced a local Heritage Commission must find, "it doesn't possess significant historical, cultural or architectural value and that the historical, cultural or architectural resources in the community will not be adversely affected by the replacement". If you had a chance to read the letter, the statement is made in there about the value of these buildings in terms of that which is dated January 26, 2022. In the RSA 79E, the local Heritage Commission is not merely advisory but it is really determinative. The law does not state that the Heritage Commission will be consulted on this but that it is very much a part of the process that has to be gone through. The New Hampshire Preservation Alliance has a step-by-step procedure on their website. Once it gets to this point, if the Heritage Commission or the Historic District Commission does not make a statement that the building has no value then the process stops. It does mention that, in the applicant's letter, the attorney says that the Preservation Commission hired by applicant mentions a letter not included in your package. The Heritage Commission did review its letter and disagrees with its conclusions. A letter from the Heritage Commission was not received until a couple days after he was able to put the package together so it was not considered. The Heritage Commission was not considered. I'd also like to mention something that seems kind of minor but actually has some effect. There are a couple of statements that are not correct, that I call false statements, in the application package wherein on

the Economic Development Office form that was submitted the applicant stated that the buildings are not eligible or listed on the State or National Register of Historic Places or located in the State or Federal directory of historic districts. The applicant answered no. It is correct that they are not located in a Historic District and that they are not listed on the national list but the determination for eligibility for being listed is a very specific process that must be done by the NH Division of Historic Resources. I did check with them and they have never done that process to make that determination. It is incorrect to say they were not eligible and that they have no value because that has not been determined. To be true in terms of the eligibility, it has to be kind of a high standard. The 2013 study of the Gas Light District indicated that these two structures, even the one on Auburn Street that doesn't look beautiful or architecturally significant, were worthy of further study. In fact, because of what you are doing here today, the EPA has indicated they will be going through this process of review for environment issues and part of it is Section 106. This will involve, and currently is involving, the New Hampshire Division of Historical Resources, which will determine through this process whether or not these structures are eligible for listing on the national register. It will all be determined by the New Hampshire Division of Historical Resources but that doesn't change what is happening right now. This is very clearly written in the law that the local Heritage Commission really has a say in saying whether or not the buildings are of value historically, culturally and architecturally. I'd like to end in not thinking that West Auburn Street doesn't have any value because it does have value. My concern is that a yes vote on this would not be in the public interest as the City of Manchester is expected reasonably to comply with the requirements of the state statute. There is not much leeway unless the BMA, which is the governing body, asks the Division of Historical Resources to take a look at this to see if they come up with a different conclusion than the Heritage Commission did and that would be perfectly fine. Thank you very much and I apologize for my voice. This is the first time I have been out in two years.

Michael Duffy, 490 Amherst Street, stated:

I am a former Heritage Commissioner and presently am on the board of New Hampshire Preservation Alliance. I just want to make a couple points and reiterate a few points Aurora made in her presentation. To quote the Executive Director of the Preservation Alliance, which is the statewide preservation alliance in New Hampshire, “The New Hampshire Preservation Alliance worked closely with the legislature and other community development organizations and developers to create and update this significant tool in the Granite State’s historic preservation housing and community housing toolbox to be useful in community revitalization in village centers and downtowns.” The 2009 provision was designed to assist with projects but also with the intent to protect, not remove, historic significant historical buildings from these important areas of our community statewide when replacement is contemplated. The Preservation Alliance website contains a very useful 79-E flow chart which clearly indicates that the applications in question do not qualify because the buildings to be replaced do have historical, cultural and architectural value. Furthermore, the consultant did not comment on the properties eligibilities for listing on the State or National Register of Historic Places. In conclusion, I think everyone agrees that downtown residential development is a good thing. It should not be rushed through at the expense of significant historic resources without following proper protocols. The clever architect, as I’ve said several times in this context, and developer ought to be able to do both in a city that values history as this one claims to do ought to demand better. Making the taxpayer bear the financial cost of destroying our heritage simply adds insult to injury. Thank You.

Matthew Normand, City Clerk, stated that concludes our list of speakers Your Honor. Just for the record, we did pass out one communication from a resident who was also in opposition of this request.

Susan Manchester, Attorney at Sheehan Phinney stated:

I am here representing the developer. With all due respect, I disagree with the legal conclusions that are being put before you this evening. Let me give you some language that is in the statute that has not been read to you. 79 E:3 states “any town or city may adopt or modify any provision of this chapter”; 79 E:4 1A states “In order to assist the

governing body with the review and evaluation” ...blah, blah, blah... you get something from the Heritage Commission. That is to insist your review. They do not rule this decision. The fact that the form attached to the application may have been incorrect is irrelevant because you are a city that may modify any provisions. This is an enabling statute; this allows you to adopt tax incentive financing. It gives you the power, it does not mean you have to follow all of it, it gives you the power. With all due respect, and I know Aurora, clearly she feels this building has historical significance but our consultant who has worked in Manchester for 30 years does not think so. The letter from the Heritage Commission stated they give no opinion. You have the authority to grant this. This is in the best interest of the entire city that you govern; the city that you have best interest of, not just one part of it, not one aspect of it but the entire city. That is who you are sworn to uphold. I'll stop there and let Eric tell you the consequences.

Eric Leclair, Jones Street Investment Partners, stated:

I have been working with many of you over the better part of the last year. We thank you again for your time and commitment to new investors that continue to enter your city. As we have with the ZBA, city staff, the Planning Department, and many others including the Arena Overlay District, we've embraced your community/city in revitalizing the 2.3-acre city block in the middle of your Central Business District and we are really excited to be here and be a part of the Manchester growth and be contributing factor to the economic activity that is already taking place in your city. I know we have submitted applications for the 79-E tax relief and I am happy to answer any questions this Board or Mayor may have regarding our application. We continue to be dedicated and committed to developing this project. If I can just add some context to how we got here, Jones Tree is a multi-family investor, owner, operator, and developer of market rate housing throughout New England. Our first asset was acquired in Hooksett in 2014 and we have been looking to develop and continue to invest within New Hampshire, particularly in Manchester. We see a tremendous amount of growth opportunity. We target qualified opportunity zones for our development projects. If you don't already know, most of Manchester CBD is designated a qualified opportunity zone. There are investment benefits to our investors who contribute money to revitalizing and developing

property that are in qualified opportunity zones. We strategically focused on this location because of the sites that are within the qualified opportunity zone. That creates an economic incentive for our investors and Jones Street to commit and spend time, money and taking risks in developing complicated projects. The second reason for us targeting this 2.3-acre block is because of the 79-E tax abatement that the State has provided and that Manchester has adopted. It provides even more economic incentive to facilitate a complicated redevelopment project that we've pursued. The third reason is we know that Manchester needs housing. As one of your alderman stated earlier, Manchester needs housing across the board. Market rate housing, workforce housing, and affordable housing is needed. Our expertise and what we focus on is market rate housing. We have identified this site and property as an opportunity to create and develop best in class, class A housing in a very underutilized blighted part of your city. We see opportunity but it comes with taking on a lot of risk. I think the fourth reason is that we believe in Manchester. We believe in this city and want to continue to be a part of this city. Our investment philosophy is that we are here long term; we are not a merchant builder. We have a minimum commitment in this investment for ten years. We will be here for a very long time or we hope to. We need the economic incentives and tools that are available to us and the city in order to get a complicated project like this off the ground. It is obviously challenging to build anything these days. Anyone doing a housing project of their own knows that construction costs have already skyrocketed from when you first thought you could put the project together to getting it off the ground. It is magnified tenfold in a project of this size. We pursued this project over a year ago and fostered up over 15% of labor and materials. This is real and the incentives that are available to us and your city are required to get a project like this off the ground. We came here over a year ago embracing the community and city staff. We want a partner in this and this is truly a public-private partnership but we simply can't do it without the 79-E application being approved. With that said, thank you again for everyone's time.

Atty. Manchester interjected I know that I am only supposed to speak once but I want to make sure the Board understands the law. There was language missing when people were quoting from 79 E:4. You heard that the governing board specifically finds that the

local Heritage Commission...has determined that the qualifying structure does not possess significant historical, cultural or architectural value. You heard that. What you didn't hear was the rest of the sentence, "to a greater degree than the renovation of the underutilized structure and the historical, cultural or architectural resources will not be adversely affected by the replacement." That is a balancing test; it is a test of the value of the structure to the public benefit.

Mr. Leclair stated to piggyback on the public benefit comment, Mr. Gagne did highlight that in his presentation. We want to reiterate the public benefits to this project per 79-E Section 7 public benefit. The proposed project must provide at least one of the following public benefits in order to qualify for tax relief under this chapter. I just want to remind everybody that we are actually meet three of the four and we only need to provide one to be considered a public benefit. Those three are - it enhances the economic validity of the downtown, it promotes development of municipal centers providing for efficiency, safety, and a greater sense of community. Lastly it increases residential housing in an urban or town setting. Thank you.

Alderman Stewart stated you mentioned Mr. Leclair that you are "required" to meet standards to get this project started. Do I take that if this is not granted that this project will not be moving forward?

Mr. Leclair stated we would have to go back to the drawing board. We put together a team and business plan to execute in an expedited fashion based upon the commitments we have gotten from our construction and design team. The costs would be substantially saved through the 79-E applications. There is one other project we are working on outside the state. The only way we are getting it off the ground is through similar tax incentives. This is with a ten-year tax abatement and it's in Southern Maine; it is critical.

Alderman Barry stated you mentioned a commitment from the developer and that they are committed to the City of Manchester for that development. If that 79-E was granted

and within that time period the developer sold that property would you agree, or would you agree that it would end there? That the buyer wouldn't inherit the 79-E.

Mr. Leclair stated that is something we would be amenable to discussing. Our intent is to move forward assuming that the 79-E applications are approved.

Alderman E. Sapienza stated I am hearing a lot tonight about 79-E and you went into it yourself. 79-E is a guideline and as you pointed out the decision resides with this Board correct?

Atty. Manchester replied yes.

Alderman E. Sapienza stated we are all on Board here and it is ultimately the decision of this Board. 79-E is enabling correct?

Atty. Manchester replied yes.

Alderman E. Sapienza stated you mentioned that you are excited to be here. Well I am excited to have you with or without the tax break. I have the same question as Alderman Stewart. Without the tax break, are you still going to move forward?

Mr. Leclair stated it is in our business plan that it is critical to put together a financially feasible plan with these incentives in this market.

Alderman E. Sapienza stated you are saying it wouldn't be financially feasible even though you are going for market rate and are looking at what...\$2,000 per month per unit or something like that.

Mr. Leclair stated it is a complicated demolition project and it has environmental issues we need to clean up. It is a steel structure and wood frame, best in class project so we would have to go back to the drawing board and reevaluate.

Alderman T. Sapienza asked who owns this property.

Mr. Leclair stated we do, an affiliate of Jones Tree owns both properties.

Alderman Fajardo stated I will restate the question I put out earlier. What is the appetite of being more conscientious in your design nodding to heritage of the building and specific architectural details that we all agree, I think, are important? Looking at the plan, I think I saw two reclaimed corbels at the entry way and that was it. I know there are other plans to include some imagery and signage but I am thinking more about the physical building itself. Is there any way you can do more essentially?

Mr. Leclair stated let me give you some additional background regarding the ZBA and Planning Board approvals that we worked on last year. Prior to committing any applications to either commission, working with stakeholders within the community we arranged several meetings with Planning staff and the Arena Overlay Commission members, which is a sub district that oversees the parcels, to go over our desires and proposed plans. The Arena Overlay Commission has a set of guidelines that our architects, Market Square Architects, read through thoroughly and discussed with them and ultimately we came back with three pages of design commitments that would essentially pay homage to some of these so-called historical components of the building which was built in 1910. That would be the 24 Depot project and in 1990 the Manchester Mills building. Throughout these dialogues we came up with numerous designs including incorporating brick. In our application, there were renderings that were unanimously approved by the Planning Board on October 7th. We incorporated brick coming out of the ground on the first level to incorporate Manchester's historic mill building roots. Brick is expensive. Brick is not a cost effective material today. We tried to incorporate more modern, more typical wood frame construction on the upper floors so that it would ultimately be cost effective. We included several additional levels of brick at the primary entrances at two locations of the property in order to meet the requirements of not only the Planning Board but the Arena Overlay Commission. There are numerous column elements within the façade that mimic or replicate the design of the 24 Depot building that we carried throughout the façade design of the property

which is an added cost that we incorporated nonetheless. We incorporated the reclaimed wood on the exterior at the entrances. We incorporated selective demo to maintain the 1910 Varick tombstone and add it to our façade on 24 Depot as well as commit to a plaque that will be next to the sign to acknowledge that the John B. Varick building once stood there. He was an important figure to Manchester's previous economic activity. I can go on but I know we aren't here to discuss all of the design criteria but it was very thoughtful and we made tough decisions that were more expensive in order to satisfy both the Arena Overlay Commission and the Planning Board. I will add that we are going through interior design right now. This is much costlier in the final component and we are incorporating a lot of industrial elements into our interior. We are really excited about where we are and it really is best of class. It will be something we will all be proud of assuming we can actually get it up and going. We have committed to the Planning Board and other city officials that we are ready to go and move forward as soon as we can get the remaining approvals we are seeking.

Alderman George-Kelly stated you said you would have to go back to the drawing board and reconsider if this is not approved. If we decided to approve it for not the full period of five years but a lesser amount of time would your answer be the same?

Mr. Leclair replied yes.

Alderman Long moved to approve the two Community Revitalization Tax Relief Incentive applications. **Alderman Trisciani** duly seconded the motion. Mayor Craig called for a vote. Alderman E. Sapienza requested a roll call vote. Aldermen Barry, Gamache, George-Kelly, Cavanaugh, Stewart, Long, Fajardo, Trisciani, and Heath voted yea. Aldermen E. Sapienza, Sharonov, and T. Sapienza voted nay. The motion carried.

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

A True Record. Attest.

A handwritten signature in black ink, appearing to read "Matthew Normand". The signature is fluid and cursive, with a long horizontal stroke at the end.

City Clerk