

Common Council Actions

MARCH 13, 2007

COMMON COUNCIL MEETING 8:00 P.M. EST COUNCIL CHAMBERS

Mayor Moccia called the meeting to order at 8:14 p.m. and announced that the local Girl Scouts and Brownie Troops would lead the assembly in reciting the Pledge of Allegiance. The Girl Scouts and Brownie Color Guard proceeded into the Chambers and stood at attention while the Pledge was recited. Ms. Lauren Benavides, Ms. Madeline Mamella and Ms. Jennifer Pohl read the Mayor's Proclamation declaring the week of March 11th through the 17th, Girl Scout Week in honor of the 95th anniversary of Julia Lowe establishing the Girl Scout organization in Savannah, Georgia. Following this, the girls recited the Girl Scout Pledge and retired the flag. Members from Brownie Troop 112 and 685 along with Girl Scout Troops 464 and 280 participated in the ceremony.

I. ROLL CALL

Ms. Roman called the Roll. There were fifteen (15) members present.

PRESENT: Michael Coffey Matthew Miklave
Kevin Poruban Joanne T. Romano
Carvin J. Hillard Fred A. Bondi
Nicholas Kydes Douglas E. Hempstead
Kelly L. Straniti Gwen L. Briggs
William Krummel Herbert A. Grant
Rev. Phyllis Bolden Richard McQuaid
Douglas Sutton

ABSENT: None

II. ACCEPTANCE OF MINUTES

**** MS. ROMANO MOVED TO ACCEPT THE MINUTES OF FEBRUARY 27, 2007.**

Mr. Miklave had two questions about the order of events as recorded in the minutes. He was unsure as to when Agenda Item E1 was removed from the consent calendar for discussion and whether the vote on Agenda Item D had come before or after the recess. Following a brief discussion of these issues, it was decided to check the audiotape for accuracy.

**** MR. MIKLAVE MOVED TO TABLE THE MINUTES OF THE FEBRUARY 27, 2007 MEETING IN ORDER TO CLARIFY SOME INFORMATION.**

**** THE MOTION WAS UNANIMOUS.**

III. PUBLIC PARTICIPATION

The Mayor then opened the Public Participation portion of the meeting.

Let it be noted that the following comments and remarks by all speakers have been summarized and are not necessarily verbatim.

Ms. Marilyn Robinson of 21 Linden Street spoke first. She stated that she was the former chair of the Norwalk Historic Commission and wished to speak to the Council about the consideration of the appointment of a Council member to the Historic Commission. Ms. Robinson said that she was confused because the Council did not wish to discuss the proposed appointment of Mr. McQuaid when there were other Council Members who were interested.

Ms. Robinson then said that Mr. Krummel had contributed a great deal to the Historic Commission and had been the chairman of the Rogers Ritch Merritt House project. Ms. Robinson said that she was concerned about how the project would proceed without Mr. Krummel.

In conclusion, Ms. Robinson asked the Council to table the proposed appointment of Mr. McQuaid until further discussion could be held with all the interested Council members.

Following Ms. Robinson's remarks, Mayor Moccia stated for the record that this particular appointment was strictly a Council appointment and that he as Mayor had no input on the Council's decision.

Ms. Gail Wall of 119 Partrick Avenue then addressed the Council as Vice Chair of the Historic Commission. She thanked Mr. Krummel for all his hard work on the Historic Commission. Ms. Wall informed the Council that there was a unequal balance currently on the Commission with six Republicans, two unaffiliated, two Democrats and has six men and four women.

Ms. Wall stated that the Council should appoint a Council Member that had a strong interest in historical matters such as Mr. Hillard, Ms. Briggs, Mr. Krummel or Mr. Poruban. She stated that a unilateral decision was not in the best interest of Norwalk and urged the Council to table the appointment to discuss the matter and restore a sense of balance to the Historic Commission.

Ms. Marney Smith, who resides at 5 Top Soil Road, addressed the Council next. Ms. Smith thanked the Council for their consideration of the Conservation Easement for the Hart property, which she believed they would pass later in the meeting. Ms. Smith particularly thanked Mr. Bondi, Ms. Briggs and Mr. Coffey for their hard work on the issue and concluded by stating that the Land Trust was fortunate to have the Council working for them in this matter.

Attorney Brian Daley, who is with the law firm representing Devon Acura. Atty. Daley said that Mr. Mark Blizer was not able to attend the meeting, and had requested Atty. Daley to read his comments to the Council.

Several years ago, Devon Acura took the initiative without the assistance of City of Norwalk or the State of Connecticut to improve their property, which had the effect of improving the West Avenue neighborhood. Devon Acura invested millions of dollars and has become a destination location, attracting over 20 thousand people annually to purchase or service their cars. Devon Acura has created a successful business with over 40 million dollars in annual sales.

An automobile dealership requires not only buildings for the showroom and the service department, but also parking facilities for the customers and the inventory of both new and used cars. Like any other business, Devon Acura needs to have ready access to the inventory so that the customers can view the cars and make purchasing decisions. The parking component of the business is as important as the actual showroom. It is a natural and necessary extension of the showroom and is an important part of the business.

There has been a great deal of positive discussion regarding integrating Devon Acura into the West Avenue Redevelopment Plan. Devon Acura is grateful for these discussions. However to date, these discussions have not actually been incorporated into the conceptual plan that is before the Council currently. The proposed plan needs to be changed to integrate Devon Acura into the Plan. Any approval of the conceptual plan by the Common Council needs to recognize this shortcoming and the approval should be conditioned upon such changes being made.

Integration is easily achievable. Devon Acura has provided the Redevelopment Agency with a set of preliminary plans that demonstrates that both the building and parking needs can be integrated. The conceptual plans on display in the lobby and currently before the Council the 16,000 sq. ft Devon Acura building has been reduced to approximately 11,000 sq. ft., the property used to store the inventory has been eliminated and finally the actual use of the property is designated as "small business or restaurants" in the written material accompanying the plan.

Notwithstanding the informal discussions of the properties regarding Devon Acura being taken care of, the Council is being asked to approve plans that if not changed, will put Devon Acura out of business and condemn the property.

The Redevelopment Agency has recognized that the treatment of Devon Acura by Seligson is a deficiency in the conceptual plan that they have proposed. Back in February, the Agency staff expressed their dissatisfaction with Seligson's treatment of the property, but no changes have been made. The same conceptual plan is being presented to the Council tonight for approval. The developer has not offered any amendments or corrections to address these issues. The Council clearly articulated a position that any development plans for the various parcels and its effect would be carefully reviewed before approving condemnation. Any approval that does not formally recognize the

deficiencies in the plan as it applied to Devon Acura sends a message to the developer that they can proceed with the plans and eliminate Devon Acura from the plan.

Redevelopment was never intended to destroy a business, which is highly successful, not blighted and acting as a catalyst for change in the neighborhood. After thanking the Council for their attention, Mr. Blizer concluded his letter by urging the Council not approve the concept plan that would kill a 40 million dollar a year business.

Atty. John Louizos approached the podium next. He stated that he was an attorney with Curtis, Brinkerhoff and Barry in Stamford. He then presented the City Clerk with an original letter and fifteen copies for the record.

Atty. Louizos stated that his firm represents Currie Tire, which has been located at 599 West Avenue since 1929, the year best known as the beginning of the Great Depression. Currie Tire survived the Great Depression. Since May of 2006, Atty. Louizos has been outlining the flaws in the West Avenue Plan and requesting that his client's property be removed from the plan.

Atty. Louizos then stated that he would be recapping the procedural flaws and plan defects that have been pointed out. These items will form the basis of litigation if and when eminent domain steps are taken. He then listed the various statutes that had been previously presented. He concluded that the Council was about to vote on a conceptual plan that was fraught with substantive and procedural defects. Atty. Louizos also pointed out that the developer might not be legally qualified as a developer. Atty. Louizos stated that his client has done everything possible to show the Council the errors in this procedure. It is the belief of both Atty. Louizos and his client that this long series of events which continue to treat the Currie Tire property as the perpetual fiefdom of the Norwalk Redevelopment Agency will result in costly and time consuming litigation and delays of the projects. For the foregoing reasons, Atty. Louizos respectfully asked that the Council vote against the proposed plan this evening.

Atty. Charles Willinger of Willinger, Willinger and Bucci in Bridgeport came to the podium and stated that three owners of property in the West Avenue Corridor Redevelopment Area had recently retained him. He stated that his clients were Ms. Nancy Esposito and her brother, Casey Onedias, owners of 4 Merwin Street, LLC; Mr. Anthony Savas, owner of S&S Management Inc. located at 16 Chapel Street; and Kiel Evans, owner of the European Auto Center, LLC, located at 539 West Avenue. Atty. Willinger stated that his clients have appeared before the Council and the various other agencies to voice their concerns about the plan. They wish to stay in this area and have invested heavily in this area. Atty. Willinger stated that his clients have a right to stay in this area. None of his clients concerns have been addressed by the City or the developer. Two of the clients have received insulting offers from the developer and the third client had not had any communication from the developer at all.

The problem is that there is nothing inherently fair or just about eminent domain. No one wants to be forced to sell their property at a loss, particularly when the City will be

turning over the property to a private developer for private redevelopment. There are two ways to approach this position. Atty. Willinger said that the first way was that the developer could bend over backwards and do what is morally just or take what Atty. Willinger referred to as the "Maritime Motors" way, which is to litigate because that would mean his client would be seriously fighting for his business and livelihood. Atty. Willinger said that there would be litigation in terms of Land Use approvals, in terms of environmental interventions as cited in 22a-19, challenging both the plan and powers of eminent domain every step of the way. The decision as to which way this matter is approached is up to the Council.

Mr. Stanley Seligson addressed the Council next. He greeted the Council and thanked them for the opportunity of speaking to them. Over the past twenty years, Mr. Seligson stated that his organization has been active in trying to keep West Avenue alive. He stated that he had developed Loheman's Plaza, which has been filled and maintained. Mr. Seligson stated that he owns many of the buildings on the West Avenue Corridor and stated that he has done other projects in Norwalk such as Costco, Sports Authority, and Circuit City and the new Lillian August headquarters among others. Mr. Seligson said that it has been a labor of love to work on the West Avenue project.

In late November, Mr. Seligson reminded everyone that the Common Council charged Mr. Seligson with assembling a concept development team and concept development plan that would satisfy the City. He stated that his development company has brought together a group of nationally recognized experts to bring something to Norwalk, which Norwalk has never had before. There have been times when there have been missed opportunities, like the Norwalk Mall, when a few retailers opposed Macy's interest in the mall. This, Mr. Seligson said, hurt Norwalk.

Mr. Seligson said that he had spent a great deal of money over this last twenty-year period and particularly over the last five years, accumulating an excess of 60% of the land. He stated that he has worked with all of the neighbors over the course of 76 meetings, consisting of various neighborhood groups. He stated that the plans have been revised based on the meetings and that some people who actually had opposed the plan changed their opinions. Mr. Seligson considers the project to be his legacy to the community.

The fact of the matter is that in any redevelopment plan, there is never a time when everyone will be satisfied. He said that it was his intention and always has been, to work with every property owner. Mr. Seligson said that it was unfortunate that Atty. Willinger was ready to oppose the project is unfortunate. It has happened in every redevelopment project in the country. Mr. Seligson said that good faith offers have been made and will be continued to be made and Seligson Properties continue to work with the hope that Accura will be incorporated into the plan. Mr. Seligson said that an architect has been hired to work exclusively on the project with Accura.

Mr. Seligson said that he was over the time limit, but wish to thank the Agency and the Planning Committee for recommending the proposed concept plan and hoped that the Council would vote for its approval.

Attorney Frank Zullo addressed the Council next. He stated that he was with the firm of Zullo Tierney, Flaherty and Murphy and was representing Seligson Properties. Atty. Zullo stated that Mr. Seligson had a dream for the renovation of the Wall Street and West Avenue areas in 1986 and has been working on this project ever since. In 1998, things started to move forward and the development of the plan was begun. Atty. Zullo said that Seligson Properties has worked very closely with the redevelopment staff and the City. He also pointed out that Seligson Properties has had well over sixty meetings with neighborhood groups to make certain they were aware of the concerns of the neighborhoods and the citizens. Many changes have been made to the plan. Just this past June, the Redevelopment Agency severely reduced the square footage of retail use that was originally proposed. Atty. Zullo said that after listening to all the various parties, Seligson Properties has a plan that meets the requirements of the Redevelopment Agency and addresses the overwhelming majority of concerns raised at all the public hearings.

Atty. Zullo commented that his client was under the impression that there would be no public discourse on this particular matter at this meeting. Atty. Zullo claimed that he had become aware late this afternoon that there would be discourse. Because of this, there were many individuals and entities that have previously come forward to speak in favor of this were not present at the meeting. A review of the minutes of the past public meetings would reveal that the Norwalk Hospital, the YMCA, the Chamber of Commerce and the Maritime Aquarium of Norwalk among others have spoken in favor of project. Many of the Council members have seen these plans and heard the discussions many times over.

Atty. Zullo said that one of the jewels in Norwalk's crown was the rebirth of South Norwalk. That would not have occurred without the wisdom, vision and careful implementation by prior administrations. With careful implementation and your wisdom, West Avenue can become another jewel in Norwalk's crown.

In closing, Atty. Zullo stated that he and Seligson Properties were aware of possible condemnation of private property. He then stated on behalf of his client that all reasonable efforts to avoid condemnation would be attempted. He assured that Seligson Properties would be as fair and as reasonable as possible regarding any potential purchases. He reminded the Council that Seligson Properties already owns between 50 to 60% of the properties indicated and that the earlier resolution passed by the Council states that no condemnation can take place without the approval of both the Redevelopment Agency and the Council on each individual parcel. This means that the Council and the Redevelopment Agency will be making the final decisions.

In a project this large, there may be a few instances, regardless of the fairness involved, when condemnation will be necessary. Hopefully those incidences will be few in number. The concept plan is a good one, not only for the developer, but also for the City and the

neighborhood. The City and the neighborhood will gain the lion's share of the project. Atty. Zullo stated that he hoped the Council would concur and that the Council would vote unanimously for the plan.

Atty. Ed Schmidt addressed the Council next. He stated that he was with the law firm of Curtis, Brinkerhoff and Barrett and was present to speak on behalf of clients who own property at 1420 Wall Street and 12 Main Street, which is the northern half of the Head of the Harbor project. He stated that his clients object to the extension of the date for the exercise of eminent domain, pursuant to Connecticut General Statutes 8-128. The relevant language of that statute is clear and says that the legislative body in its approval of a project under Section 8-127 can specify the time within which real property is to be acquired. The time for acquisition may be extended by the legislative body in accordance with Section 48-6, upon the request of the Redevelopment Agency, which is what has occurred, provided – the key language – provided the owner of the real property consents to such a request.

Atty. Schmidt stated that his clients within the plan area are not consenting to that extension; therefore this Council does not have the authority to grant such an extension in accordance with the statute. Atty. Schmidt stated that while the Counsel for the Redevelopment Agency was present, the Council would be voting on this issue. Atty. Schmidt then recommended that the Council get a written opinion from the Counsel for the Redevelopment Agency that the language which provides that the owner of the real property consents to such request is in fact the common interpretation.

Atty. Schmidt said that a similar letter has been submitted to the Redevelopment Agency on February 14, 2007 and to the Planning Committee of the Common Council on March 1, 2007. Even after the clients have objected to this extension of time, the Redevelopment Agency has failed to inform Atty. Schmidt's clients about the proposed exemption or to provide them with a copy of the proposed modified plan. He then asked that this letter be included in the record of the proceedings, so that at some future date, if litigation is necessary, it is clear that at every step of the way, proper procedures for the use of eminent domain were not followed. In fact, at every step of the way, there was non-compliance with the statute.

Atty. Schmidt then recommended that the matter be tabled in order for the Council to get a written opinion which they agree with, or that they ask Counsel for the Agency to address this point this evening before the vote.

Mayor Moccia then asked if there was any one else present who would like to speak. He thanked everyone for staying within the time limit and being responsible with their presentations. Mayor Moccia then closed the Public Participation section of the meeting at 8:50 p.m.

IV. MAYOR

A. RESIGNATIONS AND APPOINTMENTS

Resignations:

There were no resignations at this time.

Appointments:

Patrick Geraghty- Harbor Management Commission

Council President Coffey recused himself and left the Chambers at this time.

**** MR. BONDI MOVED TO APPROVE MR. PATRICK GERAGHTY FOR THE HARBOR MANAGEMENT COMMISSION.**

**** THE MOTION PASSED UNANIMOUSLY.**

Mayor Moccia thanked Mr. Geraghty for his willingness to serve on the Harbor Management Commission, which involves extensive negotiations with the State and the Federal Government regarding the dredging project.

RECESS

Ms. Straniti requested a recess. Mayor Moccia then declared a short recess that began at 8:55 p.m. The Council reconvened into session at 9:05 p.m.

Mayor Moccia then announced that the next appointment, regarding the appointment of Council Member McQuaid, as a representative to the Historic Commission would be moved down on the agenda because it was the Council's business and a Council appointment.

Carvin Hilliard – Housing Partnership Commission (Council representative)

**** MR. KYDES NOMIN**