

MINUTES

RTM PUBLIC WORKS COMMITTEE

SPECIAL MEETING

Room 119, Darien Town Hall

APRIL 24, 2019

Present: Monica McNally (Chair), Patrick Keane, Elisabeth Bacon, Rolf Obin, David Bayne, Terrence Duffy, Jr., Frank Adelman, Richard Poli, James Cameron, Lindsay Kelly

Absent: Thomas Moore, Arpita Muchhal

Guest Officials Present: Wayne Fox, Town Council; Seth Morton, RTM Moderator; Frank Kemp, Chair of TGS&A Committee; Mac Patrick, Chair of Public Health & Safety Committee; Ed Gentile, Director of Public Works Department; Joseph Miceli, RTM Member

Meeting was called to order by Chair Monica McNally at 7:40 PM.

1. Town Counsel Wayne Fox was invited to present his perspective and concerns relating to the *Ordinance for the Management of Plastic and Paper Checkout Bags in Darien* (Bag Ordinance) draft under consideration by the RTM. Mr. Fox remarked that his responsibility as Town Counsel is to make his client (the Town) aware of potential issues that could arise from adoption of the Bag Ordinance as currently drafted. He broke his concerns into three primary areas of concern/questions:
 - a. Potential liability relating to the appointment of an Environmental Enforcement Officer by the Town (volunteer or Town employee) to enforce elements of this new ordinance. Mr. Fox suggested that the actions of such an officer and the Town would be protected under existing law as long as the officer acted in a legal manner. Mr. Fox also conferred with the Town's insurance carrier and confirmed that an environmental officer would be protected under the Town's existing insurance policy.
 - b. Potential for litigation from outside interests such as bag manufacturers, lobbying groups, affected retail businesses, citizens. There appears to be little or no case law to cite to gain perspective on this potential.
 - c. Whether or not the bag fee collected by retailers would be subject to sales tax. This remains an open question at the State level.

Mr. Fox then described the current state of legislation in neighboring towns and municipalities based on discussions with other Towns' legal counsel. The concerns of other towns was generally distilled to three main categories:

- I. Municipalities are a body of the State of CT. As such, they can only act as allowed by state statute. There is currently no state statute which specifically allows towns & municipalities to impose a bag fee on its citizenry.
- II. The bag fee could be interpreted as a defacto tax whereby a widespread allegation that the bag fee is a tax, defacto, makes it a tax. Given that such a "tax" is not yet codified by state statute, it could result in expensive litigation.
- III. Selective application of the ordinance on some businesses and not others (by virtue of the physical size of their buildings) could be perceived as discriminatory and might attract expensive litigation.

Mr. Bayne suggested multiple potential legal arguments employing other state statutes which might support the imposition of a bag or environmental fee to protect the environment, public health and public safety. Mr. Fox agreed that there are many potential legal theories to present as a defense of the bag fee but none have yet been tested in CT and the cost of defending such legal theories, however good and valid, could be costly to the town.

Mr. Fox was then asked about and then clarified his comments in a March 15, 2019 article in the Darien Times. Mr. Fox was also asked by Mr. Kemp to clarify Section 9c of the draft legislation. Mr. Fox complemented the RTM for its thoroughness in approach on the drafting of this ordinance and offered to meet again with the Committee if and as we needed in the future.

2. Chair McNally provided a summary of emails received by the general public related to the Bag Ordinance. Overall, 74 emails were received, of which 57 leaned in favor of the ordinance and 17 were opposed.
3. A question was then raised as to whether or not the draft Bag Ordinance should be amended to exempt senior citizens. There was general agreement among the members present that such provision was not necessary. There was also a question as to whether or not the enforcement wording was clear enough as currently drafted. There was general agreement among the members present that the wording was clear enough.
4. Mr. Cameron made a motion, seconded by Mr. Adelman, to send the Bag Ordinance to the RTM Rules Committee for consideration by the full RTM. The motion passed by unanimous consent.
5. Mr. Cameron made a motion, seconded by Ms. Bacon, to approve the *Ordinance for the Management of Plastic and Paper Checkout Bags in Darien*. The vote on this motion was 6 Approve, 4 Opposed, 0 Abstentions.

Those opposed to the measure voiced the following concerns:

- a. this Bag Ordinance with the bag fee is too messy and onerous;
- b. the imposition of the 10 cent bag fee was unnecessary and/or acceptable;
- c. the potential for litigation from the 10 cent fee as described by Town Counsel is of concern;
- d. the 10 cent fee is unnecessary as peer pressure and cultural changes in our community seem to be moving quickly enough to address this environmental issue.

The Chair thanked the Committee for its in-depth research and thoughtful approach to putting forth this ordinance for consideration by the full RTM. The Committee then resoundingly thanked the Chair for all of her hard work and dedication throughout this ordinance's research & drafting process.

6. The Chair invited Ed Gentile, Director of Public Works, to present his comments on the 2019-2020 Proposed Budget. Overall, the proposed Public Works Department budget requests a 1.5% increase over the 2018-19 budget to approximately \$4.3mn.

Mr. Gentile described the major line item changes in this year's proposed budget and his primary concerns for the coming years. Chief among his concerns are:

- Darien's sewage system is the most critical part of Darien's infrastructure. This system can be temperamental and needs constant care and attention. Darien pays the City of Stamford almost \$2.5mn per annum to process its raw sewage.
- Anticipating the impact from the new developments in Town on our infrastructure over the coming years is another major issue. These new developments will impact our electrical grid, pedestrian network, water and sewage systems and will require study and attention.
- Keeping a lid on waste and recycling costs for the town. DPW plans to conduct a cost/benefit analysis of purchasing its own large debris chipper to process environmental debris. This machinery could potentially pay for itself well within its useful life, thereby reducing the Town's debris removal costs.
- The many unknowns related to the Town's relationship with CTDOT as it relates to various developments in town, the train stations, parking, etc.

Mr. Gentile then described various projects under development for which funding is needed from the Town to move forward. Specifically:

- Reengineering of the intersection of Noroton Avenue & Ledge Road (east of Noroton Avenue) to add a right-turn lane. This work requires \$175k for engineering & design work.

- New sidewalk installations on Edgerton Avenue, Locust Hill Road and Mansfield Avenue. This work requires \$200k for engineering and construction.
- There was general agreement among Committee members present that funding for these projects should be approved though no binding/official vote was taken.

There was a question as to whether or not the proposed \$600k budget line item for Highland Farms would fall within the DPW budget and purview. Mr. Gentile indicated that the Highland Farm facility is managed by the Parks & Recreation Department. A number of Committee members expressed concern about the magnitude of the budget request for the proposed installations at this facility given that the property was meant for passive recreation.

The Committee sincerely thanked Mr. Gentile for extending his day to provide his perspective on various DPW issues. There was overwhelming agreement that Darien is very lucky to have Mr. Gentile running Darien's Department of Public Works.

7. Mr. Cameron made a motion, seconded by Ms. Bacon, to approve both the \$200,000 sidewalk construction appropriation and the \$175,000 design/engineering (Noroton Ave/Ledge Road) appropriation. The Committee approved the measure unanimously.
8. Mr. Cameron made a motion, seconded by Mr. Adelman, to approve recommend approval of the DPW budget as presented and described by Mr. Gentile to the full RTM. The Committee approved the measure unanimously.
9. Mr. Cameron made a motion, seconded by Mr. Bayne, to approve the Public Works Committee Meeting minutes of January 22, 2019. Mr. Obin requested that his name be corrected for the record to Rolf Obin from Obin Rolf. The Committee unanimously approved the minutes as amended.
10. Mr. Bayne made a motion, seconded by Mr. Duffy, to approve the Public Works Committee Meeting Minutes of March 11, 2019. The Committee unanimously approved the minutes.
11. Mr. Cameron made a motion, seconded by Mr. Duffy, to approve the Public Works Committee Meeting Minutes of March 21, 2019. The Committee unanimously approved the minutes.
12. Mr. Cameron made a motion, seconded by Ms. Bacon, to adjourn the meeting. The Committee unanimously approved the motion.

Submitted by Patrick Keane, Rotating Secretary