

ADOPTED

City of Keene
New Hampshire

PLANNING, LICENSES AND DEVELOPMENT COMMITTEE
MEETING MINUTES

Wednesday, November 08, 2017

7:00 PM

Council Chambers A

Members Present:

Philip M. Jones, Vice-Chair
George S. Hansel
Bart K. Sapeta
Robert B. Sutherland

Staff Present:

Tara Kessler, Planner
Elizabeth A. Dragon, City Manager
Rhett Lamb, Planning Director
Medard Kopczynski,
John Rogers, Acting Health Director
Tom Mullins, City Attorney

Members Not Present:

David C. Richards, Chair

Other Councilors Present

Terry Clark
Mitch Greenwald

Vice-Chair Jones called the meeting to order at 7:00 PM.

Vice-Chair Jones announced the Joint Committee meeting scheduled for Monday, November 13, 2017 has been cancelled.

1) NH RSA 79-E Community Revitalization Tax Relief Incentive - Planning Department

Vice-Chair Jones recognized the City Manager for comments. Ms. Dragon noted she was happy to be here to talk about RSA 79-E. Ms. Dragon said in New Hampshire there are not a lot of tools for economic development; however RSA 79-E is one of the few tools we have. It allows for some temporary tax relief for buildings in our downtown core area that are especially underutilized. She outlined what the Planning Department staff would be presenting. Ms. Dragon explained why we are trying to overlap with the TIF District noting applying for RSA 79-E funds in that district would be taking away from the TIF funds.

Reminding everyone they were before this Committee in July Mr. Lamb said tonight he and Ms. Kessler will speak about some of the finer details. Ms. Kessler distributed copies of the prepared

handout which included the 79-E Application Process, questions to be addressed, a map of the areas in Keene eligible for 79-E, a map of the proposed 79-E boundary, and staff recommendations.

Mr. Lamb outlined the efforts that have taken place since the July meeting and noted the recommendation to have staff move forward with preparing a resolution. He suggested the Committee use tonight to refine what they think should be in the resolution. The July focus was “where should we focus”. Staff’s recommendation is to focus on Marlboro Street which includes two of the new zoning districts; Business Growth and Reuse District and Neighborhood Business. Staff is not recommending residential be included in this proposal. Staff is also proposing a limited area to focus on where you see the need to provide incentives for redevelopment; typically distressed areas.

Mr. Lamb noted development is happening in the City without incentives; he suggested these would not be good areas for the application of RSA 79-E. He added we also wanted to pick areas that had an overlap with infrastructure investment; this also follows for the Marlboro Corridor and the East side. Mr. Lamb reiterated Ms. Dragon’s comments noting we do not want to overlap with the existing TIF districts as they would only be competing with each other. We just learned last week that an ERZ does not compete with 79-E. Mr. Lamb said that covers the “where” question; the maps also cover this along with other districts that would be eligible for 79-E.

Referring to the proposed motion Vice-Chair Jones asked if amendments should be made now. Mr. Lamb replied we are assuming the Committee will have something to say about the draft; adding we are not too concerned about having amendments once we get this going along. Vice-Chair Jones said he wanted the Committee to be aware of the process and recommended providing input this evening.

Continuing Mr. Lamb noted another focus area was around what is a qualifying structure. Tonight’s discussion will continue and we will add to it based on the handout distributed by Ms. Kessler. These are policy decisions that are up to City Council; areas for further discussion.

Ms. Kessler said her role tonight is to walk through areas the RSA has left open for the local community to narrow down and make a 79-E program that fits our needs. The handout recaps a lot of the information that was discussed at the July PLD meeting presentation. She noted it is important for everyone to know what the goal of the program is, what it is setup to do locally, and how the application process works. RSA 79-E is a temporary tax relief program- there is a period of time in which the assessed value would not be increased. It can be applied in designated areas such as downtown. The maps provided will demonstrate where those areas are. Eligible work would be substantial rehabilitation of an existing building; Keene can determine what a qualifying structure is. Keene can also determine the period of tax relief.

Ms. Kessler discussed the seven steps of the application process. She explained the general process will involve staff support and City Council holding a public hearing on the application. Mr. Kessler further noted a series of questions that need to be addressed to help structure the program. Staff recommendations for some of the questions that should be considered included:

- A. What types of structures should qualify?
- B. What should the threshold be for substantial rehabilitation?
- C. What public benefits should 79-E promote?
- D. What is the period of tax relief?

Additional questions to consider include:

1. Where should 79-E apply in Keene? This is explained on Page 2 of the handout which depicts two maps; areas of Keene eligible for 79-E and Proposed 79-E Boundary.

Vice-Chair Jones asked if a petitioner could apply for a waiver to any of the criteria. The City Attorney noted the statute provides some flexibility in the process; both he and the City Manager suggested this not be built into the process; at least not in the beginning.

Along those same lines Councilor Hansel clarified any appeals process would go straight to Superior Court. The City Attorney replied there is a Superior Court process that is quite burdensome. The applicant would have to show the action taken by City Council was discriminatory or in bad faith. Ms. Kessler also noted if an application was denied City Council would have to write a letter to the applicant explaining why it was denied. She added when City Council approves an application it also determines the time of the relief.

Ms. Kessler referred to the handout provided discussing the above questions A through D. She noted the RSA requirements and explained staff's recommendations also provided there.

Councilor Hansel stated he agrees with staff recommendations for A, B, and C. Regarding the staff recommendation for D, he feels up to five years of tax relief leaves too much opportunity for political sides to come in. He recommends a Major (5 years) and a Minor (2 years) with no extensions beyond the 5-year period. Councilor Hansel clarified for Vice-Chair Jones the applicant would apply and City Council would determine which level they receive. The City Attorney noted this was discussed. He suggested it go back to what Ms. Kessler was talking about. The City Attorney recommended tying this type of tiered structure to a specific type of public benefit that is going to be offered. He provided examples and suggested this be tied back into some objective criteria to avoid what Councilor Hansel was talking about.

Councilor Hansel continued noting he would like to find ways to reward or raise up to the maximum amount of tax relief items such as job creation, providing space for public art, and an increased investment in a sustainable building (i.e. solar). Vice-Chair Jones asked if we would have to add incentives for the things Councilor Hansel is talking about. Mr. Lamb said you would first have to define what you mean by these terms, and secondly think about what the threshold would be when somebody complies with for example a sustainability standard. He noted an incentive was built into the Business Growth and Reuse District with a green business basis. Mr. Lamb also clarified we do have the ability to make the incentives list different than what the statute allows; we can refine and add to it. Ms. Kessler added the City can setup guidelines for how it determines what the period of relief is; these are things still to be determined. Councilor Hansel commented he wants this to be as clean and simple as possible.

Councilor Sapeta asked if the burden of proof (public benefit) could be put on the applicant for a Major and Minor category of tax relief. Referring to question B, he also suggested staggering the threshold; minimum threshold greater than \$75,000 might get the applicant more years of tax relief. Mr. Lamb noted during internal discussions we were trying to develop a way to use that style of logic. We know after the relief period is over we will be collecting a higher tax rate. We were trying to look at ways to relate the future value to the years of relief. We will consider this as part of what we want to look at. He added the step Councilor Sapeta is suggesting does require a projection of values.

Councilor Sutherland noted he had a list of questions.

1. Councilor Sutherland clarified this only applies to existing buildings and some of this area has open space. This would only apply to an existing building that has been removed/replaced or rehabilitated. Mr. Lamb agreed adding the building does not have to be rebuilt on the same footprint. (Page 3 question A.)

2. Councilor Sutherland said the minimum threshold of \$75,000 may not impact the value of the building dramatically. His concern is with the tax relief period. Mr. Lamb agreed with the Councilor's comments noting the \$75,000 standard is just an entry into Council's further evaluation whether or not there is public benefit; it is just a threshold. (Page 3 question B.)

3. Councilor Sutherland noted his concern with dormant projects in the City and asked if the tax relief comes with completion of the project. Ms. Kessler noted the Covenant is recorded, the City would need to be clear in the Covenant what the obligations are, if the Covenant is not followed relief would end. The City Attorney clarified the statute defines that the relief does not begin until the project is completed. If the conditions of the Covenant are not satisfied it is as if the relief was never granted.

4. Councilor Sutherland asked why we do not want to include properties in the ERZ that overlap the TIF District. Mr. Lamb explained both the TIF District and 79-E are based on incremental value being added to a district. TIF money goes into a fund which the City uses to improve public infrastructure which is necessary to support development. In the case of 79-E we are giving that incentive back to the developer for a period of time. The incentives are reversed. This is the basic reason we are suggesting an overlap is not a good idea.

5. Councilor Sutherland shared a scenario and provided his understanding of ERZ as being an application to the state for money set aside to help them pay their taxes. Councilor Hansel explained the ERZ is a tax credit on the state business enterprise tax directly related to the number of employees being added.

Following up on Councilor Sutherland's overlap question, Councilor Sapeta asked if we did have the overlap would that allow the developer to choose which incentive to follow. Mr. Lamb said 79-E is driven by the City's investment. The best example is the downtown TIF District, which was established because of a proposal to build a hotel in the late 1990's. The hotel needed parking; the parking structure would be funded by the incremental value created by the investment in the hotel. The developer does not really get to choose; it is based on a TIF plan established when the district is created.

Ms. Kessler continued there are other questions to be considered that are largely related to the process.

1. What is the City Council process for reviewing/approving applications?

2. What City Staff or Department will oversee the application process?

Noting these are things we need more time to figure out so we have provided a recommendation for City Council to direct staff to draft a resolution. We are also recommending the resolution not take effect until 60 days after the Council vote to allow staff to develop the necessary forms.

Councilor Hansel pointed out how important this is; it is a tool in our toolbox allowing us to take control of our economic development destiny. He also noted another important component of this is marketing. He suggested the City is already in a good position to market this.

Regarding the relief period Councilor Sutherland commented he feels there should be no level of discrimination here. He shared his reasons for having a problem with the two or five year periods. Noting his passion for this Councilor Hansel reiterated his reasons for suggesting the Minor and Major relief periods.

Vice-Chair Jones suggested Ms. Kessler be allowed to finish her presentation and then the Committee can discuss the questions Ms. Kessler spoke about.

In looking at the benefits Ms. Kessler said there are two important questions to ask:

1. Would these projects happen without 79-E?
2. Are the projects going to increase the increment and provide a longer term benefit to the community, in addition to addressing the identified public benefit?

Mr. Lamb commented this is an outstanding tool that we should consider. Staff is happy to continue the discussion and write a resolution if that is the Committee's wish.

Vice-Chair Jones asked why the CBD was not included. Mr. Lamb discussed the overlaps again and explained that is why we did not use it in our downtown.

Councilor Sapeta said some level of competitive thresholds is healthy. He likes the idea of having the historic structures and adding time to the relief. Regarding the revitalization of Marlboro Street he asked if it would be beneficial to extend 79-E down south from Marlboro Street and queried if properties with a change of use (residential to business) would also qualify. Mr. Lamb replied the concept behind this proposal has been a business oriented incentive area (revitalization of a former commerce area) so we did not extend it into the residential districts. If successful perhaps there is an opportunity to extend it in the future. The only non-residential uses in the residential preservation area are the B&B concept. Councilor Sapeta indicated this would only apply to three or four houses and this neighborhood really needs it.

Referring to Page 3 question A, Councilor Sutherland commented he likes that this can be changed over time.

Vice-Chair Jones asked for public comments.

Mitchell Greenwald urged the Committee to keep the process simple and generous if you want it to be useful. He pointed out only one project used the SEED District. Councilor Greenwald suggested the actual acceptance process will eliminate a lot of the concerns because the

petitioner is going to have to prove the project and why they want the five or seven years. Again he recommended keeping it simple.

Vice-Chair Jones asked for Committee discussion on questions A through D to provide staff direction.

Question A. What types of structures should qualify?

Councilor Sapeta suggested including language that a change in use from residential to mixed use would also qualify for this.

Question B. What should the threshold be for substantial rehabilitation?

No objections were posed by the Committee as this can be amended in the future.

Councilor Sapeta asked if it would be beneficial to have some sort of analysis that lumps all the residential properties and having commercial properties separate. We could then look at that valuation and the 15% here or there. Ms. Kessler noted she did not do this analysis but could easily do one. Chair Jones commented it is staff's recommendation to not use the percentage. Councilor Hansel reiterated this is the minimum threshold and if we get applications we have to reject we can raise it.

Question C. What public benefits should 79-E promote?

Ms. Kessler reiterated the suggestions made during the discussion; job creation, public art, sustainable buildings or renewable energy or heat certified buildings.

Question D. What is the period of tax relief?

Councilor Hansel again recommended a high and low division.

Mr. Lamb clarified for Vice-Chair Jones the period of relief starts with completion of the project and recording of the Covenant.

Councilor Sutherland said if we are going to have a two stage process we need to be clear, so people understand what the criteria is, on what qualifies for two years and what qualifies for five years. He agrees we should keep this simple and easy to understand. Councilor Hansel disagreed with Councilor Sutherland suggesting this makes it more specific rather than the up to five years recommended by staff.

Councilor Sapeta agreed with the divisions suggesting one public benefit provides for two or three years of relief; multiple public benefits could trigger the five years of relief. He also suggested this could be applied to question B threshold criteria; \$75,000 would get two or three years of relief and if the threshold is increased five years of relief could be allowed. Councilor Sapeta also liked the four years for historic structures.

Councilor Hansel's recommendation was to tie it to jobs. Mr. Lamb suggested this might be hard to measure to ensure they are living up to the Covenant. Councilor Hansel noted it is important to build in some flexibility for the future.

Councilor Sapeta asked if it would be beneficial to include mixed use development.

Councilor Sutherland suggested building in a reporting mechanism/feedback so Council can understand the benefit of this, and be reactive to necessary changes. Mr. Lamb said there is no reason why we could not do a report out annually on the 79-E activities. All approvals will come through the City Council. Projects and expiration dates will be part of the administrative process so there should be no problem building a report.

Councilor Sapeta asked if the administrative procedures would be approved by the Council. Mr. Lamb explained the procedures would be part of the resolution. This is the reason for the 60 days Ms. Kessler mentioned earlier in the discussion.

There being no comments from the Committee or public Vice-Chair Jones asked for a motion.

Councilor Hansel made the following motion which was seconded by Councilor Sapeta.

On a vote of 4-0, the Planning, Licenses and Development Committee recommends that City Council authorize City staff to draft a Resolution for the local adoption of NH RSA 79-E.

2) **Relating to Building Permits Ordinance O-2017-19**

John Rogers, Acting Health Director addressed the ordinance. This ordinance change is to clarify the procedure on how to handle building permit applications that are received after there is a legally noticed change in either the Building Code or Zoning Code that if so adopted would be justification for refusal of the permit. He clarified the bolded text is inserted into Section 18-27 Permits in Chapter 18- Building Regulations.

“Building permits shall not be issued for applications made after the first legal notice of proposed changes in the building code or zoning ordinance has been posted pursuant to the provisions of RSA 675:7.; and the proposed changes in the building code or the zoning ordinance would, if adopted, justify refusal of such permit.”

Vice-Chair Jones asked for Committee questions.

Councilor Sapeta commented this is a great thing to add as it clarifies for the design community what could/should happen, and how it may affect them.

There being no further comments from the Committee or public Vice-Chair Jones asked for a motion.

Councilor Sapeta made the following motion which was seconded by Councilor Hansel.

On a vote of 4-0, the Planning, Licenses and Development Committee recommends the adoption of Ordinance O-2017-19 Relating to Building Regulations.

3) **Adjournment** - There being no further business before the Committee Vice-Chair Jones

adjourned the meeting at 8:27 PM.

Respectfully submitted by,
Mary Lou Sheats Hall
November 10, 2017