**Minutes of Ordinance Committee Meeting: June 26, 2013**

Present: Chip Mason, Chair; Karen Paul; Sharon Bushor

Guests: Jesse Bridges; Doug Hoffer; Gene Richards

Attendees: see sign in sheet

Chair Mason called the meeting to order at 5:35 pm.

3. Agenda was unanimously approved on motion by Bushor, second by Paul.

2. Livable Wage Ordinance: Chair Mason invited Parks & Rec (P&R) Director Jesse Bridges to speak about P&R seasonal hiring and livable wage ordinance (LWO).

Bridges reported $750,000 in seasonal hiring for FY 2013. P&R hires over 200 seasonal employees throughout the year from park cleanup, lifeguards, dock masters, cemetery in the summer to arena staff in the winter to special events at Memorial, Miller Center, and seasonal camp staff (Feb. and Apr. break). Almost all of the staff are college and high school students. Often can’t get them until school gets out. The Zamboni driver is one of the few examples of seasonal people who aren’t college or high school students.

Bushor asked to see the City’s personnel categories, so CA Blackwood passed around the Personnel Policies and read the definition of Temporary—Seasonal Recreational. Bridges explained that their definition is Seasonal/Temporary. These employees only work for those limited months.

Mason confirmed with Bridges that the LWO does not currently apply to these folks. Bridges said if it were to apply, it would have a massive impact on P&R.

Bushor asked if any of these employees ever work year-round, limited service? Bridges: No. We have separate limited service and separate part-time positions. These are seasonal, temporary. Bushor would like to have the 200 broken down into categories of who does what.

Mason asked what does the City pay seasonal employees? Bridges: It varies according to job. Campground managers make $19.50 an hour. The rest of the crews are paid $10-12 an hour. Some make $15 and up if they are a supervisor. None receive benefits. Compensation all depends on the duties and responsibility. The impact of having to pay LW would be at least $500,000.

Bushor: If we decide to include seasonal, temporary employees in LW, we would need confirmation of salaries. Chair Mason plans to contact HR for more information.

Mason invited Doug Hoffer to speak to the Committee and thanked him for attending. Hoffer clarified he is not here in his role as auditor. He has done the LW calculation for the City based on a contract and agreed to do it again this year for the City’s benefit.

Hoffer noted that his report is based on public reports. The goal was to have the basic needs budget publicly available and readily calculable. There have been a couple of study and advisory committees of the legislature over time to ensure this is up to date. Mason asked if he is confident that the basis for the calculation is up to date? Hoffer: It could be tweaked in a few areas. The state made a few choices he didn’t think were optimal, and he changed them (as noted in his report).

Mason asked if this is the first time the City’s calculation bumped the floor of the 2010 LW? Hoffer: No. Bushor noted that the Board of Finance then decided the City wouldn’t reduce anybody’s salary just because the LW calculation when down so the floor was established.

Bushor asked Hoffer about the housing calculation, and Hoffer explained HUD’s calculation and his use of fair market value.

Bushor asked if the State pays LWO? Hoffer explained the State has no such requirement, but most state agencies do meet it. The goal was to have the information available so other employers could use it.

Paul noted that Hoffer did a great job with the LW calculation report.

Bushor asked if Hoffer had any insight into why the airport was treated differently. Hoffer thought it had to do with the airlines. Bushor noted she has asked everyone else who was around at the time to try to recall the reason behind the decision.

Hoffer concluded by saying he was glad the Council was taking this up and that he hoped the City will keep the ordinance, as it’s important.

Mason invited Gene Richards to speak to the LWO on behalf of the airport. He reviewed the categories initially noted by the City Attorney’s Office: airlines, vendors like rental cars, off-site property.

Richards reported the airport has been doing well and had good successes, but has run into hurdles. The airport is like the human body, and the airlines are the heart. He has been speaking with the airlines for 4 weeks, and they’ve heard about the LW. They aren’t excited to be part of it. They don’t need to be in Burlington and have demonstrated their willingness to leave. This is a dangerous area. Cape Air says Plattsburgh and Rutland are feasible because they’re subsidized but won’t come to Burlington, as it’s about profitability. The LW is important, but the City can’t lose an airline, as it would be hard to maintain the airport.

Richards reported the airport has been unable to find anyone to run a restaurant at the airport because of the LW. Airport employees have to leave the airport for meals, so extending the LWO to all businesses at the airport is hurting the people the City is trying to help. The airport needs more money to market and keep the airport financially stable. For example, the airport janitorial service just adds the additional LW to the cost. The businesses don’t pay the LWO; they just pass it on to the City. The City could do other things to help people.

Bob McEwing from the airport said the goal was to make sure contractors paid LW, but when the ordinance was done, it went too far by covering all property.

Richards: The airport has about 30,000 square feet of usable space vacant; when he discusses the LW requirement, many businesses just stop talking. Bushor asked about rented space. She does think that space rented through BCDC, the people the City does business with should pay LW, and she doesn’t recall opposition to that concept. Airline, restaurant, leased space are the three problem areas?

Richards noted that Heritage is looking to sell its FBO, and this could cause a huge surplus of real estate. Businesses can be across the street for much less, so the airport isn’t competitive. BTV is just a feeder airport, and we have to be competitive.

Bushor noted that most of those rental contracts have compliant language. Richards reported trying to get One Flight Up to stay by negotiating their rent down to $500 a month. The new potential restaurant provider says he can’t pay more than $11 an hour and stay in business. Richards argued that the City can’t break the back of the airport by requiring LW. Jobs are important too.

Mason asked if limiting the LWO to service contracts would meet the airport’s needs. Blackwood noted that it would be helpful if the Committee defined service contracts, as one could argue that Hudson News and rental cars are service contracts. Richards noted the goal is not to go backwards and have fewer businesses meeting LW, but the airport is struggling hard to get ahead, so it should be treated like other city departments.

The discussion was opened for public comment.

Richards would love to have the problem of LAX or San Jose and be able to do LWO fully, but BTV is a feeder and serves 600,000, while LAX has 28 million passengers. A citizen asked Richards how much money he made from the airport. Richards noted he made $103,000 as airport director.

Marigot Carr: How was it justified that the seasonal employees were excluded from the LW originally? Mason assured her that was an issue that the committee would consider. Bushor commented that when LWO was passed, compromises had to be made for financial and practical reasons.

Emma Mulvaney-Stanak: Seasonal staff—BSD had similar discussion some years ago because support staff are somewhat seasonal. They work 9-10 months a year, most get health benefits. They were making $9-10 an hour and were moved up to LW, about $14 an hour. She does not understand why these seasonal employees are treated differently. The whole argument about saving jobs ignores that people can’t survive on poverty jobs. She wouldn’t want to be an employer that perpetuates jobs that aren’t good. She argued the City should not be scared about the financial impact.

Stanak went on and asked about correctional staff and how they are treated. She also asserted that the airlines are heavily subsidized by public dollars, but then are still allowed to pay less than LW. Comparing us to other large airports is not a fair comparison. There must be other cities with LW BTV’s size who also have airports.

Matt McGrath, Vermont Worker’s Center: The Worker’s Center uses principles about universality, equity, participation, and accountability. He questioned the process because he only received notice of this meeting yesterday. As to accountability, he noted the fact that the City has a law on the books, and we’ve discovered a problem with enforcement and accountability and should focus on that. The 86% of these organizations that are not complying are stealing wages from their employees in violation of the law. His organization can help with educating people about the law.

Mason explained that Committee is gathering information now and hasn’t decided how to proceed, but will try to get notice out sooner of its next meeting.

The Committee moved to discuss what to do next. Mason: Is there any additional information from City or outside third parties before we begin discussion? Bushor: There are unanswered questions, but she isn’t sure how to get the answers. She is thinking about going through the ordinance line by line to see if it should stand or be changed. It might be helpful to have HR Director Leonard here if the Committee gets into seasonal employees, but she’s not sure yet if that should happen.

Paul appreciated Mason’s list which he had circulated that morning. She said the committee should try to define service contracts. She’d also like to discuss the threshold and whether it should be increased. She agrees maybe Leonard and CAO need to be involved to look at budgetary impacts. Bushor said she’d like to understand how many seasonal employees in all departments and what they look like—how many hours and why they are seasonal.

Mason reviewed his list of issues he’s heard:

* Need to define services
* Threshold
* Airport
* Subcontractors not in VT
* Covered employee and seasonals
* Adjust calculation or include other benefits
* Maintain 2010 floor?
* Communication to covered employers
* Vacation days
* Employee who performs only minimal work for City and thus is paid LW for only part of their time, how does vacation apply?
* Require payroll reporting?
* Employee complaint process
* Who decides if LW applies
* Address penalty
* Exemption—what does it mean? Process?
  + Bushor noted that councilors want it redefined and Council involved

Committee discussed date of next meeting: July 17 at 5:30 pm. Bushor asked to set other meetings for rest of summer at that next meeting.

3. ZA 13-08: After last meeting, Mason, Scott Gustin, and Joan Shannon sat down to discuss vertical expansion and side yard setbacks and found some substantial differences of opinion.

Joan Shannon: Met with John Bossange and he explained how side yard will be calculated—Scott Gustin clarified intent. Correction addresses that confusion. In zoning re-write, were told have to have hard line on nonconformities. Goal was to save historic pattern of development—but this draft goes too far and allows the expansion of nonconformities and that will have big impact. Allowing a nonconforming building to go from 1 to 3 stories isn’t good. Thinks original goal would be met by most provisions but not the upward expansion. The City has tried to support our nonprofits, but we shouldn’t make a change just for King St. Youth Center that will affect the rest of the City negatively. She mentioned a nonconforming garage on Lakeview. She also apologized for not making the last meeting and raising this now.

Mason noted that allowing nonconforming to go up was first option, then second change was side setbacks. But potential commercial application has made him willing to reconsider.

Bushor noted concern about process that she was told there would be no impact and now is being told there is impact. She thinks this item needs to go back to Planning if this is every building, rather than single family homes. What does this difference really do—to King St., to the City?

Scott Gustin, P&Z: As approved, King St. could go straight up from where it is. Also, this is only residential districts. Garage identified by Shannon is one nonconforming use. Change means this is just single family homes. King St Youth Center would have to pull it in before they go up. Side yard doesn’t address average, but we could. But it still wouldn’t get the most egregious.

Paul asked: What impacts will this have? King St Youth Ctr had an agreement there would only be 2 stories.

Mason said: This rewrite is not a result of the King St. project.

Gustin agreed: Planning and Zoning has had lots of people come in and ask about encroaching into setbacks. It will affect King St. though.

Mason said: Not willing to change ordinance if that will impact King St.

Gustin: Front yard setback is based on average of neighbors. Side yard could have that too.

Bushor and Mason don’t support that.

Mason: Most problems occurred in single family homes. Gustin clarified this would also affect multi-family home. Mason continued that question is whether this is over-inclusive.

Bushor: Nonconforming buildings included more than residential buildings. Gustin: yes, that was intentional. Bushor: So this change should go back to P&Z. Gustin: P&Z was happy with the way it was before. Bushor expressed confusion and concern.

Mason: It’s difficult to understand the impact of this change. Gustin: To give you a comprehensive list of impact would be a huge task—to figure out each set back and each nonconforming use would be 1000’s of properties. Shannon: Only purpose for 5.3.5 is King St. Even on nonconforming uses, upper stories would just have to come in and meet setback. Depends on which neighbors you talk to whether there’s an adverse impact.

Mason: Without change, ordinance would negatively impact King St. Bushor: If narrow focus from building to single family home, must it go back to Planning Commission?

Kim Sturtevant: They’ll see all 3 again on July 9—not public hearings, but able to comment to City Council.

John Bossange commented that other changes seem pretty good. King St’s concern is the rear and how to get this thing to two stories to fulfill their campaign promises to their donors.

Brief recess at 7:32 pm. Reconvened at 7:44 pm.

Motion to reconsider adoption of ZA 13-08: Moved by Paul, seconded by Bushor—unanimous.

Motion to change ordinance consistent with revised version now before committee with a few changes:” buildings” to “single family homes,” add “and community centers” and 5 is revised to state that side yard setback shall be calculated… the right side yard setback shall be… the left.. shall be. (The point is not to average all sides, but average each right side and then each left side). The motion also includes the other changes in draft provided to committee as shown in red. Moved by Mason, seconded by Paul—unanimous

Bushor noted that her vote should show she supported these amendments to get Planning’s input on change of “buildings” to “single family homes”, but should not guarantee her support for the final version.

Motion to pull prior warning and re-warn as expeditiously as possible. Moved by Mason, seconded by Paul—unanimous.

Committee discussed other meeting dates and the no-trespass ordinance and will determine by email next meeting dates.

Paul moved to adjourn, Bushor seconded. Unanimous. Adjourned 7:58 pm.