

ORDINANCE/CLAIMS COMMITTEE  
DECEMBER 8, 2008  
MINUTES

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Councilor Bardsley opened the meeting at 6:00 P.M., in City Council Chambers, Wallace J. Puchalski Municipal Building, 212 Main Street, Northampton, on the following:

Councilors Bardsley, Narkewicz and Reckman were all present.

□ CLAIMS -

- Jason Harder was present to explain his claim. He has been asking the City for 8 years to remove three dead trees. He states that he was told the trees were not yet dead enough. The tree that fell on his fence caused damage presented in photographs with the claim.

**Councilor Reckman made the motion to approve reimbursement up to \$515.00 when bill for replacement/repairs is presented to the Clerk of Council; Councilor Narkewicz seconded. The vote passed unanimously (3-0).**

- Martha Catuogna was present to explain her claim. She bought her house at 20 Avis Circle in 1996 from contractor. The house is continually settling, moving, doors that will not open, windows will not shut, cracks throughout walls. Recently and this past week, discovery of inappropriate dumping of glass, bricks, treated lumber. She has called many city persons, many would not help. Peter Kolcut and Anthony Patillo came to house with UMass expert. DPW came with augers and dug many holes. The UMass expert tested the soil. It is difficult to live there! Her insurance denied her attempts to claim, and then the insurance cancelled her policy! Only this and one other house across affected! Where are the regulations for contractors?

Councilors asked several questions: What would your claim against the City be? Do you feel the City has been helpful?

Ms. Catuogna would like her claim to continue, as there is still information to be found out. She was grateful to Tony Patillo, Louis, and the UMass expert, and Peter Kolcut.

Attorney Janet Sheppard advised that she should go to the Building Commissioner regarding the Home Improvement Contractor Fund, Board of Almoners, and also speak to George Zimmerman, City Treasurer regarding state and city resources that MAY be available to her. Attorney Sheppard also said Ms. Catuogna should consult her lawyer, to which Ms. Catuogna asked for suggestions of lawyers who work with these situations. Attorney Sheppard gave some names to Ms. Catuogna as a starting point.

Chairman Bardsley advised Ms. Catuogna to keep the Clerk of Council advised if she would like to be on the agenda again, even if it is not until Spring 2009.

Ms. Catuogna's real estate agent was also present and stated that "two houses are two, too many" and this could mean "no homeowner is safe".

**Councilor Reckman made the motion to continue this claim; Councilor Narkewicz seconded. The vote passed unanimously (3-0).**

- William Rowan was present to explain his claim. He referred to photos, and questioned the police report. The car was impounded, held for six months and left in a field with no protection. Windows gone, sunroof gone! Water damage, mold, frozen. The police should have protected the possessions and personal property. He disagrees with the police report, that he and his wife each requested to get the personal property. Police denied.

Attorney Sheppard explained that the car was part of a criminal investigation. The Police could not release belongings or car without the approval of the District Attorney, who did not give permission.

Councilors discussed that there is confusion and conflicting information between Mr. Rowan's version and the Police report. Chairman Bardsley stated specifically:

1. Could the belongings have been released?
2. If not, what are typical police procedures to protect?
3. What of the insurance? Mr. Rowan answered insurance was only for the car, not belongings in the car.

The Committee asked the Clerk of Council to contact the Police Department, ask when a representative could attend the next or other meeting of this Committee to explain and help in understanding this situation.

Mr. Rowan stated also that when he went to his car, once allowed, another car was also parked, and that car was covered with a tarp.

**Councilor Reckman made the motion to continue this claim due to request for Police Department information; Councilor Narkewicz seconded. The vote passed unanimously (3-0).**

□ ORDINANCES:

- Amend 285-53 Prohibited Panhandling Activities (Referred to Ordinance Committee, Economic Development Housing and Land Use and Public Safety 6/19/08, no reports received yet, STILL IN PUBLIC SAFETY COMMITTEE)
- Amend 40-5 List of Enforcing Officers and Penalties for Non Criminal Disposition (Referred to Ordinance Committee, Economic Development Housing and Land Use and Public Safety 6/19/08, no reports received yet, STILL IN PUBLIC SAFETY COMMITTEE)

The above two Ordinances will be continued to the next meeting. Councilor Bardsley questioned correct way to withdraw these two versions, with new versions referred from City Council meeting of October 16, 2008 pending now in Economic Development, Housing, and Land Use and Public Safety.

- Amend 312-67 A keep right sign be installed in the locations listed (Route 9/Look Park) (Referred to Ordinance Committee 6/5/08, PENDING)
- Amend 312-112 A One-Way Street sign be installed at the locations listed (Route 9/Look Park) (Referred to Ordinance Committee 6/5/08, PENDING)

- Amend 312-113 A yield sign be installed at the locations listed (Route 9/Look Park) (Referred to Ordinance Committee 6/5/08, PENDING)

The three above Ordinances are to be continued indefinitely pending approval from Mass. Highway to begin the process.

- Amend 285-53 Prohibited Soliciting Activities (Referred November 6, 2008 to Ordinance Committee, Economic Development Housing and Land Use and Public Safety as substitution of original submitted Ordinance of 6/19/08)
- Amend 40-5 List of Enforcing Officers and Penalties for Non Criminal Disposition (Referred November 6, 2008 to Ordinance Committee, Economic Development Housing and Land Use and Public Safety as substitution of original submitted Ordinance of 6/19/08)

The above two Ordinances are continued as they are still in other Committees.

- Amend §350-8.8(G), 8.9(B), Attachment 1 Improve Parking and Driveway Standards(Referred November 6, 2008 to Ordinance Committee, Economic Development Housing and Land Use and Planning and Development)
- Amend §350-10.14 Simplify Zero Lot Line Developments (Referred November 6, 2008 to Ordinance Committee, Economic Development Housing and Land Use and Planning and Development)
- Amend §350-11.6(B)and(E) Add Clear Formulas for Traffic Mitigation and Clarify Site Plan Infrastructure requirements (Referred November 6, 2008 to Ordinance Committee, Economic Development Housing and Land Use and Planning and Development)

The above three Ordinances are continued as they are still in other Committees.

- Revise Section 195 Historic District Commission Standards for project review and reference a Design Standards Handbook, re: 195-2 Elm Street Historic District boundaries (Referred to Ordinance Committee 10/2/08)

Wayne Feiden, FAICP, Director of Planning and Development, Peg Keller, Housing and Community Development Planner, and Marisa Labozzetta, Chair of Elm Street Historic District Commission were present to discuss with the Committee. Attorney Edward Etheredge was present to discuss his memo (attached) to the Committee regarding Smith College, and the College's concerns regarding this Ordinance.

Feiden gave an update, some change in language, see memo of October 1, 2008 (attached). There could be an amendment to #5 due to M.G.L. Chapter 40C, section 7.

Attorney Etheredge stated that Smith College has been left out of the discussions! Peg Keller and Marisa Labozzetta disagreed, and stated that John Robinson and John Chenet have attended on behalf of Smith College. Attorney Etheredge stated he did not know this. He further stated concerns regarding the need to gain approval for every change, every dimensional or setback, from the Historic District Commission.

Peg Keller stated that the Design Standards Manual makes less subjective, more clear guidelines, with all items indicated whether required review or not. The Committee can also have a designated agent, if they wish.

Marisa stated that the Design Standards Manual is more fair to all applicants, the Commission will review and discuss new ideas presented, and is more objective.

Wayne Feiden also stated that the Design Standards are clear.

Peg and Marisa also stated that the CPA funding is in first phase, to move forward is important. Peg stated that the changes are applicable to the entire district, and a review/discussion with Smith would be welcome, as Smith has a big impact on this, no problems with Smith in the past.

**Councilor Narkewicz made the motion to amend Section #5 as follows:**

“In accordance with M.G.L. Chapter 40C, Section 7, the Commission may in appropriate cases impose dimensional and set-back requirements in addition to those required by applicable ordinances. The commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the historic district.”

**Councilor Reckman seconded. The vote to amend passed unanimously (3-0).**

**Councilor Narkewicz made the motion to send the Ordinance Revising Section 195, as amended, recommended by the Ordinance Committee to be brought to January 15, 2009 City Council meeting for first reading. Councilor Reckman seconded. The vote passed 2 Yes, 1 No; Councilor Reckman opposing.**

- CLAIMS COMMITTEE GUIDELINES – Review of guidelines adopted May 12, 1998

To be continued to next meeting.

- APPROVAL OF MINUTES: November 10, 2008

**Councilor Reckman moved approval of minutes of November 10, 2008; Councilor Narkewicz seconded. The vote passed unanimously (3-0).**

- Any other business - none

**Councilor Bardsley moved to adjourn at 7:42 pm; Councilor Narkewicz seconded. The vote passed unanimously (3-0).**

**Next meeting is January 12, 2009 at 6:00 PM.**

## MEMORANDUM

To: Michael Bardsley, Councilor  
David Narkewicz, Councilor  
Robert Reckman, Councilor  
Ordinance Committee, City of Northampton

From: Edward D. Etheredge, Esq.  
Etheredge & Steuer, P.C.

Date: December 8, 2008

Re: Proposed Chapter 195: Historic Districts

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I have been asked by The Trustees of The Smith College to review the proposed changes to Chapter 195 of the Ordinances of The City of Northampton. The college obtained a copy of the proposed ordinance last week and sent it to me for review and comment. The explanatory memorandum that accompanies the proposed changes states that the purposes of the proposed ordinance are to:

1. Inventory properties off Elm Street that are in the Educational Use Zoning District (Smith College property).
2. Place properties in the Educational Use Zoning District under the jurisdiction of the Elm Street Historic District Commission.
3. Provide for public input into any proposals for the demolition, alteration or construction of any structures within the district.

Aside from the specific legal concerns with the proposed ordinance, the effect is to include the entire college campus and adjacent buildings within Elm Street Historic District requiring every window replacement, every alteration or repair every painting or roof project of any structure or "feature" to obtain either a Certificate of Non-Applicability or a Certificate of Appropriateness or face a criminal violation and fines up to \$100.00 a day.

As you know the definition of a historic district under G.L.c. 40C, the enabling statute authorizes the City Council to adopt a map which establishes the district and subject it to historic commission regulation. The district is defined as the area included within the map *visible to the district*. The purpose of the commission being "...to police the construction, alteration and

demolition of visible buildings within the defined district, including changes in color and posting of signs.” Warner v. Lexington Historic District, 64 Mass. App. Ct. 78, 79-80 (2005).

The significant expansion of the Elm Street Historic District to include the Educational Use Zoning District as proposed by the ordinance a new district map will have a significant negative impact on the college’s operation, maintenance, repair, development and growth in addition to vitiating the recent Development Agreement negotiated with the City to establish the Educational Use Zoning District, my personal experience reinforces this concern. At the time the new Art Museum had to go before the Elm Street Historic Commission, the Commission opposed the three exterior banners, a signature of art museums throughout the world, as creating a “circus like appearance” in the historic district. The Commission also opposed the use of metal lettering and the size of the letters on the building. Only after some months of negotiation and dialogue were these features approved. It highlights the problems of policing matters of aesthetics, taste and expression, which I’m sure councilors are acquainted with from the present panhandling debate. It is reasonable to remember that the architecturally and historically significant features we now try to preserve were once innovative and unlike the neighborhood of their time.

The specific issues with the proposed ordinance are as follows:

1. The Map:  
The Historic District Act, G.L.c. 40C, Chapter 372 of the Acts of 1960, requires the map of the proposed district be approved by a two-thirds vote of the city council after a report and investigation reviewed by the planning board and the Massachusetts historical commission and a public hearing on the report after notice to all property owners. The boundaries of the district cannot be delegated to the Commission.
2. The Historic District Design Standards Handbook:  
The proposed ordinance requires the commission to regulate every visible feature in the district against the U.S. Department of the Interior’s Standards for Historic Rehabilitation, and the proposed Historic District Design Handbook Standards.  
Since these regulations may change or be established in the “Handbook” without city council approval, regulations are thereby created which are not within the enabling act or the ordinance. It is a fundamental rule that municipalities and their agencies or boards have only the powers granted to them by the enabling legislation; in this case G.L.c. 40C. In recently rejecting a decision of the Lexington Historic Commission, the Appeals Court reiterated this principal. “To the extent that the commission relied on that failure, it erroneously injected criteria not found in the enabling act...or in the by-law.” Dowd v. Board of Appeals of Dover, 5 Mass. App. Ct. 148, 156 (1977) (discussing zoning by-laws and enabling act).” Warner v. Lexington Historic District Commission, 64 Mass. App. Ct. 78, 83 (2005).

The Historic Districts Act, the enabling act authorizing municipalities to establish historic districts, lists in section 7 the factors a commission may consider in delineating the district and making its determinations of appropriateness. Those factors include "...the historic and architectural value and significance of the site, building and structure, the general design, arrangement, texture, material and color of the features involved, and the relation of such features to similar features of buildings and structures in the surrounding area." These are what would be called "soft" or aesthetic criteria, designed to give commissions latitude for conceptual thinking. The Handbook or "cookbook" and federal regulations are specific recipes and dictate design and taste. Section 8 in the enabling act lists the things an ordinance may exempt from review such as walks, driveways, walls, fences, lighting fixtures, color of paint, repairs from fire or other casualty or any other categories. None of these exemptions is included in the proposed ordinance.<sup>1</sup>

3. The Standards, §195 – 4B:

The proposed standards are written and framed in mandatory language rather than the language in the enabling act. The statute G.L.c. 40C§7 states, "...the commission shall consider...". The proposed ordinance adds the language "...the Commission shall ensure [sic] that projects respect the details and characteristics of the district...". In addition, the proposed ordinance authorizes the commission to impose dimensional and set-back requirements. Dimensional and set-back requirements are not "soft" criteria, but rigid standards which are imposed by zoning regulations. Zoning regulations are published and prescribed by ordinance, these would be unknown by any property owner until a building is designed (according to zoning regulations) and these presented to the Historic District Commission.

Expansion of the Elm Street Historic District may be a legislative goal of the Northampton City Council, but Smith College as the principal property owner to be impacted by the proposed expansion of the district strongly opposes the ordinance presently presented. The college also considers the proposed ordinance as a direct attempt to undermine and void the extensive negotiations with the City of Northampton for the replacement of tax revenues for an agreed regulatory scheme of dimensional and density regulation. The proposed regulations will impact all of the property owners on Elm Street, but the expansion of the district appears targeted at the Educational Use Zoning District which is the Smith College Campus. The proposed regulations will significantly affect Smith's maintenance, repair, improvement and construction of its campus, both buildings and grounds by requiring approval for any project.

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<sup>1</sup> Even under the existing district and regulation there were several months of negotiation on the color of the new student center.