

CITY OF GARDNER, MASSACHUSETTS
CITY COUNCIL FINANCE COMMITTEE
MINUTES OF MEETING OF FEBRUARY 4, 2019

The Finance Committee meeting was called to order by President Scott Joseph Graves at 7:00 p.m. in the City Council Chamber, Room 219, City Hall.

Finance Committee Members present were Council President Scott Joseph Graves and Councillors Ronald Cormier and James Walsh.

Others participating included City Clerk Alan Agnelli.

President Graves asked if anyone present planned to record the meeting, in accordance with the requirements of the Open Meeting Law, as follows:

Any person may make a video or audio recording of the open session of this meeting so long as it does not interfere with the conduct of the meeting. All documents and exhibits used or referenced at this meeting shall be submitted in duplicate to the City Clerk, as they become part of the minutes of the meeting. Is there anyone present who will be recording this meeting?

No one responded.

1-1 Reading and Approval of Minutes of Prior Meeting.

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, it was voted to approve the Minutes of the January 16, 2019 Meeting, as printed.

3-1 A Measure Confirming the Mayor's Appointment of Michael Gerry to the Position of Member, Zoning Board of Appeals, for term expiring January 17, 2022 (Reappointment).

Councillor Walsh cited Mr. Gerry's experience and extensive service on the ZBA as justification for confirming the Appointment.

Acknowledging that the Appointment "is the Mayor's to make," President Graves said, "This particular one is very difficult for me to support and, while I give great deference to the Mayor when it comes to appointments, in this instance, I disagree."

Continuing, President Graves said that Mr. Gerry's vote to grant a 'use variance' to the developers of a proposed solar array off Lovewell Street "disqualifies him [for confirmation], since State law imposes strictures for granting 'use variances' and that these strictures were disregarded by two members of the ZBA, in my opinion." He said that the ZBA's vote to grant a 'use variance' was not legitimate, and that only ZBA Chairman Ray LaFond "got it right," adding that the strictures include lot shape, topography, and other hurdles "which are difficult to overcome." He noted that the reasons that were given by the other two ZBA members for granting the 'use variance', as reported in *The Gardner News*, "cannot be waived by the ZBA as they are not discretionary." He added that the particular statute 'spoon feeds' the factors to the ZBA."

He concluded by reminding the Committee that the Overlay District was not approved by the City Council following many months of meetings, hearings, and discussions.

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Councillor Walsh stated that the statute that delineates restrictions on granting ‘use variances’ also dictates that a unanimous vote of the ZBA is required for approval, and that the ZBA’s standards for considering ‘use variances’ are different than those applied by the City Council when it considered whether to adopt a solar overlay district through an Ordinance amendment.

Continuing, Councillor Walsh said that, in his opinion, it is nearly impossible for the Court to overturn a local Appeals Board’s denial of a ‘use variance’ and that “disagreement with a single decision is not a good reason to deny confirming an Appointee.”

Councillor Ronald Cormier stated that there has to be room for discretion on the part of ZBA members.

President Graves agreed that the City Council does not have the same vote requirements as the ZBA, but that the guidelines for ‘use variances’ are “are cookie-cutter,” and that the ZBA “went way outside the guidelines.”

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, it was voted two (2) in favor, Councillors Cormier and Walsh; one (1) opposed, President Graves, to recommend that the City Council confirm the Mayor’s Appointment of Michael Gerry to the position of Member, Zoning Board of Appeals, for term expiring January 17, 2022.

4-1 #10007, An Ordinance to Amend the Code of the City of Gardner, Chapter 156 Thereof, Entitled “Municipal Grounds Commission, to Add Provisions Relating to a Community Bandstand Committee (In City Council and Referred to Public Service, 11/5/2018; Discharged from Service and Referred to Finance, 1/22/2019).

Councillor Walsh informed the Committee that he asked the Mayor for the names of the current members of the Municipal Grounds Commission and noted that the last few members were appointed in 2008 and that their terms of office expired in 2011. He said that the Mayor informed him that the three persons that were appointed in 2008 are still on the Commission.

Continuing, Councillor Walsh said that the proposed Ordinance appears to incorporate the structure needed to lawfully operate the Bandstand concerts and suggested that the Finance Committee ask the Mayor to consider reappointing the current members or new members prior to proceeding with passing the Ordinance.

President Graves reminded the Committee that adopting an Ordinance is time-sensitive, since the concerts are being scheduled for the summer. He said that since the Mayor confirmed that the Municipal Grounds Commission still exists, then now is a good time to ask him to make new or reappointments. He expressed concern for potential liability on the part of the volunteers, as another reason to act quickly.

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Councillor Walsh suggested that the Finance Committee recommend to the City Council that the Ordinance be ordered to First Printing, with an agreement and understanding that the Mayor file Appointment Certificates for Municipal Grounds Commissioners before the next meeting. If they Mayor fails to do, he added, then he would not support passage of the Ordinance.

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, it was voted to ask the Mayor to file new Appointment Certificates for Municipal Grounds Commissioners and to recommend to the City Council that the following Ordinance be ordered to First Printing:

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF GARDNER, CHAPTER 156 THEREOF, ENTITLED "MUNICIPAL GROUNDS COMMISSION," TO ADD PROVISIONS RELATING TO A COMMUNITY BANDSTAND COMMITTEE.

Be it ordained by the City Council of the City of Gardner as follows:

Section 1. Chapter 156-3 of the Code of the City of Gardner is hereby amended by adding the following:

B. There is hereby established under this Section the "Community Bandstand Committee" which shall exist and be operated hereunder for the purpose of implementing seasonal programs to be conducted in the City's parks including but not limited to summer musical concerts and other community entertainment events at the Bandstand located in Monument Park, as well as at the City's other parks, at the City's other municipal grounds and at other appropriate locations in the City. The Community Bandstand Committee shall consist of no less than three (3) members, one of whom shall be a member of the Municipal Grounds Commission, to carry out the purposes of this Section 156-3B. All members shall be appointed in accordance with Section 156-1A.

C. The Community Bandstand Committee may receive donations and gifts of property, both real and personal, in the name of the City to further the purposes as set forth in Section 156-3B. Upon receipt of any such donation or gift the Community Bandstand Committee shall provide each such gift or donation to the Treasurer, who shall deposit same into an account to be created and named the "Community Bandstand Committee Program Fund." All funds in such Community Bandstand Committee Program Fund shall be used for the purposes set forth in Section 156-3B.

D. Revise the former (present) 156-3B to 156-30.

Section 2. Effective date.

This ordinance shall become effective on passage and publication as required by law.

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- 4-2 **#10008, A Measure Authorizing Acceptance of Donations and Gifts for Use by the Community Bandstand Committee for Musical Concerts and Other Entertainment Events (Ref: #10007) (In City Council and Referred Jointly to Public Service and Finance Committees, 11/5/2018; Discharged from Public Service, 1/22/2019).**

The Committee postponed action until the next meeting, since the Measure parallels the Municipal Grounds (Bandstand) Ordinance and that amendments would be necessary to reflect specific elements of the proposed Ordinance.

- 6-1 **A Measure Declaring Surplus for Purpose of Disposal Land and Buildings at 174 Ryan Street.**

On a motion by Councillor Ronald Cormier and seconded by Councillor James Walsh, it was voted to recommend that the City Council declare surplus for the purpose of disposal, in accordance with prevailing General Laws, all land and buildings at 174 Ryan Street, further identified on the City of Gardner Assessor's Map as M32-00011-00012, to establish as a minimum amount of \$1.00 to be paid for any conveyance of said property, and to authorize the Mayor to convey said land, or part thereof, for such amount or a larger amount, and upon such other terms as the mayor shall consider proper in accordance with this Vote.

ADJOURNMENT

On a motion by Councillor James Walsh and seconded by Councillor Ronald Cormier, it was voted to adjourn at 7:21 p.m.