

CHARLES RYAN  
President

LELAND DINGEE  
At Large

SEAN POWERS  
At Large

JOHN MULLANEY  
District 2

THOMAS BOWES  
District 3



CHARLES KOKOROS  
Vice President  
District 1

HENRY JOYCE  
District 4

RONALD DENAPOLI  
District 5

PAUL "DAN" CLIFFORD  
District 6

## OFFICE OF THE TOWN COUNCIL

**April 26, 2011**

### MINUTES

A meeting of the Town Council was held in the Horace T. Cahill Auditorium, Braintree Town Hall, on Tuesday, April 26, 2011 beginning at 7:30p.m.

Council President Ryan was in the chair.

Clerk of the Council, James Casey, conducted the roll call.

Present: Charles B. Ryan, President  
Charles Kokoros, Vice President  
Leland Dingee  
Sean Powers  
John C. Mullaney  
Thomas Bowes  
Henry N. Joyce  
Ronald DeNapoli  
Paul Dan Clifford

Others: Carolyn Murray, Town Solicitor  
Carl Johnson, Attorney  
Ronald Marshall, Messina Commercial Properties  
Rob St. John, Messina Commercial Properties  
Emily Clark, TD Bank  
Michael McGourty, Neighborhood Representative

The meeting was opened with the pledge of allegiance and there was a moment of silence for all those serving in our armed services, past and present.

#### **CORRESPONDENCE**

None

## **ANNOUNCEMENTS**

- **014 11 Councilor Joyce:** Recreation Department - Upcoming Events
- **015 11 Councilor Dingee:** Thayer Public Library - Upcoming Events
- **003 11 Councilor Kokoros:** Run for Charlotte
- **024 11 Councilor Kokoros:** Kyleigh's Cure
- **Councilor Kokoros:** Liberty School
- **Councilor Bowes:** Rabies Clinic
- **Councilor Powers:** Town Clerk Facebook
- **Councilor Clifford:** Ryan Thompson Golf Tournament

## **APPROVAL OF MINUTES**

- April 5, 2011
  - Motion:** by Councilor Kokoros
  - Second:** by Councilor DeNapoli
  - Vote:** For (8), Against (0), Abstain (1-Joyce)

## **CITIZEN CONCERNS/COUNCIL RESPONSE**

None

## **OLD BUSINESS**

### **Public Hearings (Continuation from March 15, 2011)**

- **10 081 Messina Commercial Properties:** Petition to Rezone Land – Franklin Street

Motion by Councilor Kokoros to continue the March 15, 2011 public hearing on Order 10 081: Messina Commercial Properties – Petition to Rezone Land on Franklin Street.

- Motion:** by Councilor Kokoros
- Second:** by Councilor Bowes
- Vote:** Unanimous

Councilor Dingee, Chairman of the Committee on Ordinance and Rules, reported the committee has recommended favorable action on the rezone petition. Councilor Dingee also reported that residents raised objections concerning the petition to rezone and the petitioner and land owner agreed to two restrictive covenants as discussed at the committee meeting. The Committee was to recommend favorable action subject to the restrictive covenants becoming part of an order of condition on the rezone. The Town Solicitor, Carolyn Murray, informed the Council Office in an email dated April 26, 2011, that, in her opinion, it would not be appropriate to include this condition of rezoning, as this could be considered "contract zoning", which is not legal.

Carl Johnson, Attorney for Messina Commercial Properties, LLC, reported that the petitioner and the land owner will commit to the recording of land restrictions at the Registry of Deeds upon favorable action of the petition (Refer to letter from Ronald G. Marshall, General Counsel for Messina Commercial Properties, LLC dated April 26, 2011).

Attorney Johnson provided a PowerPoint presentation of the petition highlighting the key elements for the rezone of 405 Franklin Street (Refer to 27 page PowerPoint document titled "405 Franklin Street Revitalization").

Attorney Johnson addressed several questions that had been presented by several residents at the Committee meeting on April 25, 2011.

1. Number of jobs that would be created by TD Bank?  
Response: 7-10 full-time positions at the bank along with construction jobs.
2. TD Bank committed to the 35,000 square foot plan?  
Response: No other concept has been approved or to be considered.

Additionally, Attorney Johnson commented that TD Bank would be a good neighbor, is here for the long term and is committed to 35% open space on the site. TD Bank is already in Braintree and this new location would better serve their needs.

Councilor Mullaney asked for specifics on the land/lease agreement. Ron Marshall, General Counsel for Messina Commercial Properties, LLC, commented that the base agreement is for 25 years with a tenant option of 5-5-5 additional years.

Councilor Mullaney asked if the land was limited to 29,000 square feet would the bank back out of the plan. Ms. Emily Clark, Project Manager for TD Bank explained that the plan was approved for 35,000 square feet and that 29,000 square feet does not work for traffic circulation.

Councilor Clifford asked how much is currently being paid in taxes. Mr. Marshall responded that taxes were approximately \$28,000 for both the commercial and residential parcels.

Councilor Clifford asked if any jobs created could be promised to Braintree residents. Mr. Johnson responded that he did not know what TD Bank policy was but that discussion would come at the Planning Board.

Councilor Powers asked for details of landscape improvements. Mr. Johnson explained that there are Town requirements and he doesn't see it as an issue as TD Bank is committed to leaving 35% of the lot as open space for landscaping. He further explained that a Council member during the Committee stated he had visited several TD Bank sites and commented how well the properties were landscaped.

Councilor DeNapoli asked how large the building would be. Mr. Johnson commented that it was one story of approximately 25 feet in height with the upper portion being glass to allow natural light to enter the building. This allows the building to be certified as a green building.

Michael McGourty, property owner abutting proposed rezone site, explained that the resident group based their proposed site of 29,000 square feet on the following factors; maximum footage needed to operate business and to protect the neighborhood by prohibiting another building to be added on the site. He would like the petitioner add another covenant that would restrict any structure on the site to a maximum of 6,000 square feet.

Patricia Evers of Herbert Road commented that the resident group has almost 400 signatures across town supporting the resident's position on the rezone application. She wanted to know where the buffer zone would be if they planned on taking down all of the trees. Ms. Evers was concerned about public safety and traffic issues.

Catherine Mosesso of Colby Road commented that it was an issue of trust; questioning if the residence abutting the Jimbo's property was for future expansion. Why did they propose to knock down a house to add a jewelry store? Ms Mosesso wanted to know what the buffer would look like. Mr. Johnson responded that the town zoning by-law requires tree plantings. Any trees on the residential property will not be cut down. There would be a fence along the property along with the landscaping.

Kathryn Hannon of West Street read into the records a letter her father, Barry Hannon, had faxed to the Town Council Office opposing the petition for rezone. It was noted by the Council President that Council Members were provided a copy of the letter.

Nita Ricca of Sterling Street commented she was there to support the residents. Ms. Ricca wanted to know if TD Bank was willing to reduce the size of the property. Mr. Johnson commented they were not willing to reduce the size of the property because it would not work.

Robert Leonard of Colby Road noted that the neighborhood was willing to comprise. How do they know TD Bank would not be looking for additional benefits in the future? He was not willing to sell-out future generations.

Michael McGourty commented that the neighbors put forward a responsible proposal and was not surprised by [Messina Commercial Properties LLC] response to the proposal.

Ronald Marshall, General Counsel for Messina Commercial Properties LLC, commented that the residents didn't want the residence torn down; it was removed from the plan. The residents didn't want a second building on the site; it was eliminated from the plan. The residents wanted future protection; Messina Properties have put forth two covenants' to provide that protection. Now, they are adding another condition.

Motion by Councilor Kokoros to close public hearing on Order 10 081: Messina Commercial Properties – Petition to Rezone Land on Franklin Street.

**Motion:** by Councilor Kokoros

**Second:** by Councilor DeNapoli

**Vote:** Unanimous

Councilor Kokoros offered the following motion:

“That the Town Council vote to amend its Zoning Map, dated May 1940, as most recently amended, by re-zoning from a Residence B Zoning District to a General Business District 16,194 square feet of land consisting of a portion of 326 West Street and 330 West Street, as shown on Assessors Map number 2047, plot 11 and as shown on a plan entitled “Petition for Zoning Change, 405 Franklin Street, 326 & 330 West Street, Braintree, Massachusetts”, dated March 24, 2011, prepared by Alpha Surveying and Engineering, Inc., a copy of which is on file with the Office of the Town Clerk, and described as follows:

Beginning at a point on the northerly side of Franklin Street, at the southwest corner of land now or formerly of Ronald F. & Gail R. Gates, Thence running northerly by said Franklin Street by a curve to the right with a radius of **6050.00** feet and a central angle of **0 degrees 46 minutes 36 seconds**, an arc distance of **82.00** to a point;

Thence turning and running northeasterly by land now or formerly of Messina Commercial Properties LLC, and along the southerly boundary Assessors Lot 11-B Map 2047, **North 34 degrees 08 minutes 56 seconds East**, a distance of **98.66** feet more or less to a point;

Thence turning and running northwesterly by land now or formerly of Messina Commercial Properties LLC, and along the southerly boundary of said Assessor’s Lot 11 on Map 2047, **North 55 degrees 31 minutes 00 seconds West**, a distance of **195.56** feet more or less to the southerly sideline of West Street;

Thence turning and running northeasterly in said southerly sideline of West Street, **North 63 degrees 35 minutes 26 seconds East**, a distance of **11** feet more or less to a point;

Thence continuing northeasterly by said West Street, **North 59 degrees 02 minutes 26 seconds East**, a distance of **53.70** feet to a point;

Thence turning and running southeasterly by land now or formerly of Messina Commercial Properties LLC, **South 31 degrees 11 minutes 00 seconds East**, a distance of **89.33** feet more or less to a point;

Thence turning and running southeasterly by land now or formerly of Messina Commercial Properties LLC, **South 55 degrees 31 minutes 00 seconds East**, a distance of **172.05** feet more or less to a point;

Thence turning and running southwesterly by land now or formerly of Ronald F. & Gail R. Gates, **South 35 degrees 59 minutes 00 seconds West**, a distance of **121.58** more or less to the point of beginning;

Said Parcel contains 16,194 SF (0.37± Acres)”

**Motion:** by Councilor Kokoros  
**Second:** by Councilor DeNapoli  
**Vote:** For (8), Against (1-Clifford)

## **COMMUNICATIONS AND REPORTS FROM THE MAYOR AND TOWN BOARDS**

None

## **NEW BUSINESS**

### **Refer to Committee on Ways & Means**

- 11 010 – **Mayor:** FY2011 Line Item Transfers – Various Departments
- 11 011 – **Mayor:** FY2012 Operating Budget
- 11 012 – **Mayor:** FY2012 Revolving Accounts
- 11 013 – **Mayor:** FY2011 Capital Budget
- 11 014 – **Mayor:** Appointment Assistant Harbormaster – Edward Carnell
- 11 015 – **Mayor:** Acceptance of Land from the Estate of Thomas J. Flatley
- 11 016 – **Mayor:** Authorization for Preservation Restriction for Old Thayer Library

**Motion:** by Councilor Kokoros to refer all seven Orders to Committee  
**Second:** by Councilor DeNapoli  
**Vote:** Unanimous

## **ADJOURNMENT**

It was unanimously voted to adjourn the meeting at 10:30p.m.

Respectfully submitted,  
James M. Casey  
Clerk of the Council

## Documents provided for Meeting

- **April 5, 2011 Minutes**
- **10 081 Messina Commercial Properties:** Petition to Rezone Land – Franklin Street
- 11 010 – **Mayor:** FY2011 Line Item Transfers – Various Departments
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