

**SPECIAL MEETING
BOARD OF MAYOR AND ALDERMEN
(ROAD HEARING)**

June 04, 2013

5:30 p.m.

Mayor Gatsas called the meeting to order.

Mayor Gatsas called for the Pledge of Allegiance, this function being led by Alderman Shea.

Mayor Gatsas called for a moment of silence.

The Clerk called the roll.

Present: Aldermen Craig, Ludwig, Long, Roy, Corriveau, O'Neil, Levasseur, Shea, Katsiantonis, Greazzo, Gamache

Aldermen Osborne and Shaw arrived late

Absent: Alderman Arnold

Mayor Gatsas advised that the purpose of the road hearing is to hear those wishing to speak in favor of or in opposition to the proposed street discontinuance petitions, followed by viewing the area petitioned and a determination of the action to be taken on such petitions. The Public Works Director will be requested to make a presentation, following which, those wishing to speak in favor will be heard, followed by those wishing to speak in opposition. Anyone wishing to speak must first step to the nearest microphone when recognized and state his/her name and address in a clear, loud voice for the record. Each person will be given only one opportunity to speak and any questions must be directed to the Chair.

On motion of Alderman O'Neil, duly seconded by Alderman Craig, it was voted to take items 5, 6 and 7 together.

5. *Petition to discontinue a portion of Summer Street.*

6. *Petition to discontinue a portion of Green Street.*

7. *Petition to discontinue a portion of Elm Street East Back.*

Mayor Gatsas stated I would like to have Kevin Sheppard, Public Works Director, to make a presentation.

Mr. Kevin Sheppard, Public Works Director, stated this is an area of the city off of South Elm Street. Items 5, 6 and 7, I believe, were submitted by the same petitioner. Summer Street and Elm East Back Street, from what I know, were never dedicated except to be laid out and Elm East Back Street deed indicates that this is a private right-of-way. The department does not maintain these streets and our records do not indicate any utilities in this area. We could not find any dedication or layout of Green Street. It is possible that this street was maintained at one time by the City and obtained public status by prescription. The department has not maintained that street in the past 30 years, but we do show, on one of our plans, a sewer pipe installed in this area. We would support this formal discontinuance of any rights the City may have of these three petitioned streets and request an easement for any existing public utilities to be reserved by the City.

Mayor Gatsas asked is there anyone wishing to speak in favor of the petitions?

Ms. Patricia Panciocco, 10 Commerce Park North, Bedford, stated I am here on behalf of the petitioner, Oak Leaf Homes, LLC. Prior to going into my support for the individual petitions, I would like to at least explain why they have been submitted and provide the board a little overview of this particular city block. These petitions were submitted as a measure of caution. My client owns the majority of the parcels within this city block. They were originally part of what is referred to as lots 308-1 shown on the old Amoskeag plan dating back to 1892. In the future, my client hopes to be able to redevelop and improve the lots that he owns within this city block. However, because these parcels are old and these streets or ways, however you want to refer to them, appear on a number of documents in the City archives and here and there in certain registry documents there are some references to these ways. We are taking a very cautious approach to the real estate title and looking to not create a problem for the City by trying to develop a block when we are not completely certain that there aren't some miscellaneous public rights out there. To be assured that we are on that solid footing and knowing full well that any development will probably be financed, we are asking the City to confirm that there are no public rights within these ways in this particular lot, 308-1. As the board knows, there are three ways to create a public way: layout by the selectmen, dedication on a plan and lots being conveyed by reference to that plan or prescriptive use for 20 years. None of these roads

were ever laid out or at least nothing has ever been found anywhere and I have searched just about every department in the City Hall looking, and I have found nothing to confirm that there was ever a layout of any of these ways. Summer Street is shown on one page of the old Amoskeag plan recorded in the registry of deeds. It is very small scale and you can hardly read it and that was included in your package so you could see what I am referring to. There are drawings in the Highway Department that do show Summer Street, as Mr. Sheppard may have mentioned. Green Street appears as a peripheral reference on certain plans of that general area. No changes have ever been proposed by those plans. In showing a vicinity plan for other projects, it appears, it is just shown on the map. The first reference to Green Street in any recorded instrument was in 1933. In one deed to the property, if you are looking at it from Elm Street, it is the property directly to the left of the portion of Green Street that intersects with Elm Street and my client owns that property now. Elm Street East Back, more commonly referred to as the passageway, appears on the City's GIS maps. Within the passageway there are two old railroad tracks that were formally a private siding operated by McLane and Taylor back in the day when there was a lot more commerce and product movement done by the railroad. The Highway Department, as Mr. Sheppard has said, does not have any records of ever maintaining, repairing or ever doing work on any of these rights-of-ways. We don't know for sure if there is some member of the public out there who may use this as a cut-through or a shortcut who perhaps would like to claim some rights. Due to this potpourri of facts, that is why we are here before you this evening. In 1982 the Amoskeag Manufacturing Company created a number of plans and as I mentioned, this block, the complete block, was known as lot 308-1. In 1892 it was conveyed to Head and Dowit. In 1909 Head and Dowit conveyed it to William Corey. At about this time, Summer Street was laid out by the City and then the superior court quashed the layout rights after that due to defective notice. There were no further attempts to lay this road out. In 1910 Corey conveyed all but a small corner of the lot 308-1 with a 20 foot wide easement behind the building and that is the northwesterly corner of the block next to what is now Spider Bite. It is a very small parcel. The remainder of the piece was conveyed to a gentleman by the name of Hale. Hale conveyed the remained of the parcel to McLane and Taylor with an easement to cross Elm Street to reach the railroad proper. The railroad siding was constructed. That is a little lesson in history. When products were developed or needed by the people who occupied the buildings that fronted on Elm Street, they were taken to and from the railroad by the private siding in the passageway behind the building, across Elm Street, down to where the railroad was located. In 1922, McLane and Taylor

conveyed the southwest corner, now known as the Van Otis building to Mayor Trudell. He was granted express rights in the rear of that building to load and unload, turn around trucks and teams within the 20 foot passage way, now known as Elm Street East Back. During the next several years there were a number of transfers within the McLane and Taylor family and those are not relevant to the matter before the board this evening. McLane and Taylor continued their ownership and conveyed the Robinson paper parcel with the first reference to Green Street in 1933. McLane and Taylor kept the underlying fee of Green Street and then continued to convey the various parcels that face Elm Street. Eventually all but the parcels that front on Elm Street and located to the north were transfers to Glace Supply in 1971 and those have since been acquired by my client. My client hopes to develop this parcel as I had mentioned and to that point, that is why we are here this evening, just to make sure we have all our t's crossed, our i's dotted and we don't put the City in a difficult position. Would you like me to go through each of the petitions now?

Mayor Gatsas asked are there questions of the board?

Alderman Levasseur stated I understand your desire to have that taken care of prior to your due diligence, but from my perspective, I would rather have your due diligence done before we made a determination to discontinue the street. Do you have all the zoning board requirements approved, planning board authority, do you have the money from the bank, do you have all your architectural designs already done? If you have all that stuff done then it would make sense for us to make a change like this, but if we go and make the change and then you don't go forward, my understanding is that it is very difficult to undo a discontinue street. We just went through this two weeks ago. Once we make it a normal street then to try to bring it back again is a real bureaucratic nightmare. Do you have all that other stuff done? What percentage are you sure that you would go forward with this? I have seen the drawing of it, a nice conceptual drawing, but I don't know if anything has gone further than that.

Ms. Panciocco responded none of the approvals have been applied for yet. If I could explain a little bit further, financing cannot be obtained until we can confirm clear title. This is one step that we feel is absolutely necessary. Second of all, there are a number of setbacks and other zoning requirements that apply or don't apply depending on how the area within these ways is characterized, whether it is a public way, you have different setback than if it is a private way or an easement.

Alderman Levasseur stated if we made it contingent upon, if we didn't do the actual deed of discontinuing the street or making it a discontinued street, but we did it contingent upon you getting all of these things done, the bank would say that the vote was made contingent upon your plans going through, I think that would satisfy the legality at the bank if we did it on that basis.

Ms. Panciocco stated I'm not sure that gives my client a solid ground to stand upon, though, to create a proposed plan with the applicable setbacks and other requirements to comply with the City's regulations to develop a site plan to bring to the planning board. There would be too many ifs, ands or buts given the various stretches of these rights of way. One thing I would like to make clear to the board, to the extent that there are access rights of other parcel owners who are implied here, those are not being extinguished. Those are a whole separate set of encumbrances to be dealt with. What is before the board this evening is only the public right, the public at large, meaning anyone in the world who can cut through this property to get to wherever they may want to go and it is only meant to address the public rights in and in no way to reflect on any private rights held by others. To answer your question, I'm not sure that my client's people, the architect and the engineers and surveyors, would have a sound footing to stand on to be able to develop a site plan.

Alderman Levasseur stated if you are asking us to discontinue and we make a motion that we will make a motion that we will agree to discontinue based upon final approvals and everything being done then you have gotten what you wanted. If you don't get everything that you want then the street is not going to be discontinued.

Ms. Panciocco stated I can talk to my client about it.

Alderman Levasseur stated I don't know if you ever watched that show Who Wants to be a Millionaire, but this is called a lifeline. I'm throwing you a lifeline. The lifeline is that we don't want to put the cart before the horse; we want to make sure that we have something solid before we make this big vote. You can see the abutters are not too happy about it.

Ms. Panciocco stated we can hear from them for sure.

Alderman Levasseur stated that is what I think you should do.

Ms. Panciocco stated as to Summer Street...

Mayor Gatsas stated I don't think you need to go through every one. Does the board have the gist on all of them?

Ms. Panciocco stated I think you do and if you have any other questions in particular, especially after you go out there, I will be there and will be happy to answer them.

Mr. John Cronin stated I am an attorney and a resident and taxpayer of the City. I also represent Mr. Dupont and the applicant here tonight. I think the first thing to remember is that there is a real question if these streets ever had public access to begin with. Secondly, I don't know what benefit it provides to the City to maintain the public rights to those streets. If you look at their condition they are certainly not of the type and kind that you would expect and it could present some liability issues. I think the abutters who are here may have some concerns. Alderman Levasseur may have some concerns, but what happens here in the discontinuance, like I have been told many times when I have been here before, is that it doesn't impact the private rights of others. To the extent that the abutters or the neighbors or anyone else has a claim to use or passage over those streets, nothing is going to change because of your vote tonight. Some people may be willing to take a discontinuance on some contingency. There is a big investment in this property; there is some growth along the corridor. We would like to see that growth continue. I don't think my client is going to be prepared to do the engineering work, the architectural work and all the other things that cost a lot of money unless he is confident that these streets are discontinued. We are asking you tonight to make a decision after you have had an opportunity to do your inspection to vote to discontinue.

Alderman Long asked Attorney Cronin, what recourse would they have if this was shut down for public access?

Mr. Cronin replied well I think it is pretty well settled in New Hampshire law that if someone has rights to those streets, whether by easement or implication or some history they could assert those rights and have them established either by agreement, some type of easement, through the superior court, by a petition to

quiet title. My understanding, and I have been doing this for a while of the public servitude on streets, is to give access to the public at large, not just the abutters or others who may need a particular course to get over a specific area. All of you know that area well. You can get around there fine without the benefit of these streets. I expect that if you spend any time in the area you wouldn't see any vehicles going in or about those streets unless they are related to the properties in the immediate area. These are not roads that are necessary. I'm sure that Mr. Sheppard doesn't want to repair and maintain them and I know one taxpayer who doesn't want the liability for them. My suggestion is that it wouldn't impair the rights any way whatsoever.

Alderman Shaw asked has anyone done any type of study at all as to how many vehicles actually use that corridor and where they go? Is it used for parking? I'm trying to visualize it and I'm thinking that there might be parking on one side.

Mr. Cronin replied I haven't done any formal studies. I have been there a number of times and have made general observations. On the street to the south there appears to be, on the shoulder, some parking in the back lane that connects throughout. There may be some vehicles that have parked on either or both sides of the road for the length of time I don't know or the duration.

Ms. Panciocco stated if I could add to that, recently the Zoning Board of Adjustment granted a variance to one of the abutters to allow approximately half of the westerly side of Green Street, closer to Elm Street, as parking. Green Street, if we were to take this petition as looking to discontinue a public way, that half of the public way is being used for private parking now and they were granted the variance for that. We did not oppose that because we knew we were going to pursue this matter with you in the near future. That is the other parking that I know of.

Alderman Craig asked can I ask what specifically your client is planning on doing here if these roads are discontinued?

Mr. Cronin replied I will defer to Pat for that. I know generally that Mr. Dupont is in the apartment business. He is also starting to expand some commercial development. I think this would be a very tasteful mixed use development that is maximizing on the DeMoulas and all of the other great benefits in the area. A lot of it will depend on what you do with the roads. If the roads don't get

discontinued it may be nothing. If the roads do get discontinued Mr. Dupont will sit down with Dennis Meyers, his architect, and they have a number of different conceptals that they are trying to lay out, which would be a combination of both commercial and residential.

Alderman Shea asked if it becomes a discontinued street and someone is injured on that street, who assumes that responsibility?

Mr. Cronin replied it depends. If the injury is resulting from a negligent driver, that driver would be responsible. If it is to the condition of the street and it is not properly marked or noticed, generally people who are passing over private rights of way will assume the risk with the condition of that road. If there was some foreseeability issues that the property owner or the fee owner had an obligation to fix in New Hampshire, a property owner has a non-delegable duty of care so that is a mixed question that really depends on the facts of the circumstance.

Alderman Shea stated but there is a certain amount of culpability once a street becomes discontinued on the part of the people who assume the ownership of that street.

Mr. Cronin stated yes, that is correct.

Alderman Levasseur asked did you look at the abutters' deeds to see if there was a right of way granted to them?

Ms. Panciocco replied yes. I have researched the title and their titles all the way back to the root deed in 1892 and the only conveyance that included express rights was the parcel where Van Otis Chocolates sign is.

Alderman Levasseur asked so if there was to be an agreement, would you be amenable to including language that said that there would still be a private right-of-way for whoever the abutters are? Or do you want to stick strictly with what is already in the other abutters' deeds?

Ms. Panciocco replied my client has recognized the need of certain buildings along Elm Street to be able to access their rear doors for delivery purposes all along. We have told people that. It is clear; it is in writing.

Alderman Levasseur stated it is clear; it is in writing.

Ms. Panciocco stated to the abutters.

Alderman Levasseur stated you feel that they are protected by their own deed?

Mr. Cronin replied I don't think this is the forum in which we want to negotiate private rights to the extent that the abutters want to discuss with the owner something of that nature where we are all ears and willing to do that.

Mayor Gatsas called for those wishing to speak in opposition of the petition.

Ms. Linda Connell, McLane Law Firm, I'm here this evening to represent George and Phyllis Zioze and their LLC, 359 Elm Street LLC. It is the LLC that is the actual owner of the property that is known now as 377 Elm Street. That is the building facing Elm Street right next door to Van Otis. Until the break in the buildings in that block where I think there is still a street sign that says Green Street. They did get a variance application last year that did allow them to take down an existing garage on their property which is where they put in new parking spaces. That was not a part of the travelled way of what had been Green Street. I want to correct that for the record. Again, I'm not surprised by Mr. Sheppard's finding that he could not find evidence of an acceptance of either Green Street or the portion of the back street behind the Van Otis and the Zioze buildings because we are talking about going back to the 1800s. Again, I have not been able to find good references in the deeds other than to passageways and back streets and why we are here objecting is that we have asked for recognition fully of our private rights of Mr. Dupont's entity, Oak Leaf Homes, LLC, and where they are willing to admit that we have a right to make deliveries, they are not willing to recognize our parking rights along the old back street and those have been exercised for decades. The Ziozes first purchased a building in 1967 when 377 Elm Street was at one point three separate buildings sharing common walls and those have been consolidated into a single lot which is now 166-6 with an address of 377 Elm Street. That is why you see different references to numbers. We would like to see Mr. Dupont develop the property. We want to be very supportive of that, but at the same time, we need to make sure that our properties have appropriate access and we do suffer from deeds going back in time to the 1800s when these things were not spelled out in as much detail as they might have been, but the reality is that this whole block in question of us objectors, our building is basically built to

the rear property line. There are ramp ways in the back of the building. The only handicapped access to the Zioze building is from the back street and we say that is a public interest to be able to continue to maintain that handicapped access. You just don't deliver people and drop them off; you need to be able to park and stay there when a handicapped person wants to enter the building. Again, these buildings were basically built to the property line in reliance on that back street. If there were an emergency, that public access would be needed on back street. We do strongly believe that this petition to discontinue the public rights is premature, that if there were a more detailed development plan that protected our parking rights as well as our access rights, we would be more than happy to join in a petition to discontinue public rights if those access rights were persevered. Again, what has been offered is only the right for making temporary access deliveries, but not the ability to not have an argument every time someone wants to park longer than a short term delivery. We are asking the City at this time to vote to deny the discontinuance petitions with respect to Green Street, which basically burdens our client's property. We don't know if there is a sewer line there or not, but if there is, according to the old 1911 plan, we are not objecting to that, we are not objecting to the limited City and public access. We are not asking the City to make any improvements to the property. It has served the area's needs and we will take responsibility for that access. But again, it is important that the public right of way not be discontinued because it would just invite potentially more pressure to diminish our private rights that are preserved, but are less clear than we would like in writing because they do rely on very old deeds and the physical use of this property, which fortunately our clients can testify to because of their ownership since 1967. Again, part of that overlay of confusion comes from the old railroad spurs that Mr. Zioze can remember in use, maybe as late as the late 1960s or early 1970s, but not since then. There is evidence of the tracks there you will see as you go out, but right now they are paved over and they are really part of the access way that is used for parking and access to the rear of the buildings. Until there is a development plan that really protects our access needs, we would ask the Board of Mayor and Aldermen not to discontinue the public rights.

Alderman Shea asked prior to this meeting, did you have any negotiations with the other party?

Ms. Connell replied yes, we did. Like I say, we are largely in agreement; we have no concern with Summer Street. It is really our access to East Elm Back Street as it is shown on the City's tax maps.

Alderman Shea asked was that part of your negotiations?

Ms. Connell replied yes, and again, where it really broke down was them recognizing our right to make deliveries to the back of our property, but we would like to see parking along that access way and that is a long established right that we have exercised and feel like it would be a major diminishment of our property's use.

Alderman Shea stated I am getting repetitious, but when you discussed this with the other party, there was a negative response to that condition?

Ms. Connell replied yes, as early as this morning.

Alderman Levasseur asked are you familiar with your own deeds of your own clients and what protections are put in there?

Ms. Connell replied yes.

Alderman Levasseur asked is there right of access in your deeds or is it not in there?

Ms. Connell replied there is a reference to back street. They are old legal descriptions that go back in time so there is a reference to back street, but there is not a clear definition that we would prefer to see as lawyers. That is really what we have been seeking in order to support their petition for discontinuance. We would like to have the rights that we think we have by prescription and adverse possession and implied easements. We would like to get that in writing. As you know, we much prefer it in writing than having to fight about it.

Alderman Levasseur asked let me ask you if I can, mayor, the impasse is basically... Have they agreed to put anything in writing as far as access? It is not only going to be you, but whoever buys those buildings in the future. Is that what is holding up the issue right now?

Ms. Connell replied yes. Let me say that there was confirmation that they would recognize delivery right access, but no parking rights.

Alderman Levasseur asked you are pretty confident that your deed doesn't allow that at this point?

Ms. Connell replied no, expressly. Again, I would say that it is implied and we have implied rights, prescriptive rights and adverse possession rights, but it is not as clear in our deed as I would hope to see. Again, I have not taken the title back as far as Attorney Panciocco alleges to have taken it back. I have only looked at the deed since our client acquired property. Like I say, it is not as clear as I would hope.

Alderman O'Neil stated just for clarification, you are okay with the petition for Summer Street, but against Elm Street East Back and Green Street petitions?

Ms. Connell replied Green Street yes. With respect to Elm Street East Back, again what we are focused on is Green Street to Grove Street. That is the part we use and want to have access on.

Alderman O'Neil stated there are three different petitions here.

Ms. Connell stated that's right. We filed no objection to the Summer Street petition.

Alderman O'Neil asked but the other two?

Ms. Connell replied the other two we have filed objections to.

Mr. James Lombardi stated I am the attorney representing Joseph Lacerta, who is currently operating his business, the Manchester Music Mill, in the Zioze building. He is also in the process of buying the Van Otis building and has already sunk tens of thousands of dollars into that process. That closing has not come to fruition at this point in time, but he is very concerned about the outcome of these petitions and that is why we are here tonight. I would, first of all, like to echo the comments that Attorney Connell has just mentioned. In addition to those, just a few comments about the things that Attorney Panciocco had said. As far as the representation of these streets on the documents of the City, she did indicate that there were several plans and documents, among which these streets have appeared. There clearly has been use of these streets over the years. As a matter of fact, I have three documents that I would like to submit to the board in

connection with this, just in support of this. One is a plan that was prepared back in 1897 that does show the side railroad tracks, which have been referenced earlier tonight. They go in back of the building on the Elm Street East Back passageway coming from Grove Street. Again, that plan was prepared back in 1897. It also shows the buildings that we are talking about that include the Van Otis building right up through the Zioze building at that time and others a little bit north of that. This area has been used for commercial purposes for over 100 years now. To suggest that there have not been any public rights that have occurred over that period of time I think is to take a narrow view of what has happened here. My client is very concerned that any rights that he does have and I do have a copy of a deed that I would like to share with you as well that indicates what specific rights have been outlined with respect to the Van Otis property. The description, however, is taken from deeds that initially originated back in the 1920s. It does talk about deliveries by trucks and teams to be able to use the backs of those buildings to be able to deliver product to it. It also talks about the use of those sidetracks. Clearly as you will see and many of you probably already know this, but those side tracks either appear or they are not used and they are covered over by asphalt. What my client doesn't want to have happen is to see his efforts that he has already made in terms of his investment and his energy and he has been there at Manchester Music Mill for a few years now and he is dedicated to continuing his business there. He does not want to see any limitation on the rights that exist in the public that could affect his business there. We contend that there may very well be rights in the public that would affect the business that he runs and that he intends to run and his investment is significant and he intends to stay there for several years if not decades. We understand and recognize Mr. Dupont's intentions here and as Attorney Connell has said, we would support those issues, as well, if we knew more specifically what those plans were. I also had a discussion with Attorney Panciocco, had a few of them a few months back to see if some kind of an arrangement could be worked out. Her primary objection was that we reserve any rights to parking back there on Elm Street East Back. Again, my client is concerned is because it is currently used and it has been so used for parking and that those rights remain. There is another factor that you might consider: In the back of the Van Otis building is a handicapped ramp that has existed for, anecdotally, between ten and fifteen years. It is a little bit rickety, but it does exist for the purpose of handicapped access and the only way that people can access that ramp is to park out back. As you may know, Grove Street, at this time, is pretty much still cobblestones and there is no way for someone to park out from and to wheel around back to use that ramp. To cut off any rights to parking

would certainly negate any efforts that anyone with that type of a disability that might need to access that building. I would also reiterate Attorney Connell's comments that we would not oppose the petition to discontinue Summer Street. We are concerned about the access primarily to Elm Street East Back, but also to Green Street as it affects that access. Attorney Panciocco also mentioned that there are concerns about people cutting through. Although she did not present any evidence that that has in fact occurred. As you will see there may be cars back there now, there are always cars that are parked back there, but I am unaware of any evidence that indicates that people use this just for a drive-through. If that is a concern then we could certainly examine that, but to my knowledge and to my client's knowledge, that doesn't exist.

Alderman Levasseur stated I would like to say that I am honored to have been privileged to get an understanding of what the project is that is slated for that area. I think it is a great opportunity for the city. I applaud Red Oak for coming forward with the project and I hope it goes through. I understand very much the abutters' concerns concerning the parking in the back. I would ask this board that we table this to give them more time to negotiate language that can be put into deeds or documents or amendments to deeds and documents that would satisfy the abutters and the Red Oak people. Knowing the attorneys that are involved in all of this right now, they are all extremely well qualified, very good attorneys and I don't see that these attorneys are going to be very far apart on a project of this magnitude. It is my understanding that they don't even know what the project is and I'm surprised by that.

On motion of Alderman Levasseur, duly seconded by Alderman Long, it was voted to table this item.

8. *Petition to discontinue portions of streets on Wellington Hill.*

Mayor Gatsas stated I would like to have Kevin Sheppard, Public Works Director, to make a presentation.

Mr. Sheppard stated the petitioned streets were dedicated on a plan and titled Mammoth Park by George H. Alan, dated September 1902 and recorded in the Hillsborough County Registry of Deeds. The petitioner is requesting certain streets be released and discharged. They include First, Second, Third, Fourth,

Fifth, Sixth, Seventh Streets; Dewy Schley, Hampshire and Oak Avenues. One area of this we do have a question and I'm sure the city solicitor may be able to clarify that the State of New Hampshire created Mammoth Park Road over most of First Street, southerly from Smyth Lane in conjunction with the interstate 93 project and the State classified that as a class six road and fee title to the Mammoth Park service road was conveyed to the City and is recorded in the Hillsborough Country Registry of Deeds. That one could be formally discontinued and then the title turned over to the petitioner. The city solicitor would have to answer that question.

Alderman Ludwig asked Kevin, that is my only question: if this board elects to discontinue Mammoth Park Service Road and First Street, what does that mean going forward? Does that mean that the developer would have to create a new street to get out from this development to Smyth Road?

Mr. Sheppard replied I don't believe that is the case. I believe the City is relinquishing our rights and as far as First Street and Mammoth Park Road, I believe the City would be conveying that road to the petitioner so the petitioner would take over ownership of that and they would have the right to do what they want with that property.

Alderman Ludwig asked are you saying that Mammoth Park Service Road and First Street is owned by the City and the State right now?

Mr. Sheppard replied it was conveyed to the City by the State as part of the interstate 93 project. I believe the intent of that road originally was access to a water tower before Wellington Hill Road was constructed.

Alderman Ludwig stated by voting to discontinue Mammoth Park Service Road and First Street, we are not limiting or prohibited future egress to Smyth Road by doing that.

Mr. Sheppard asked egress to Smyth Road by...?

Alderman Ludwig replied to get out of this development. Someone is not going to come forward and say that we don't have any right to create an egress to Smyth Road because that was discontinued.

Mr. Sheppard stated the City is giving up its right.

Alderman Ludwig stated they still have a way out. They can go out there?

Mr. Sheppard replied the petitioner, I believe, would gain ownership of that and they would have the right to utilize that.

Alderman Ludwig stated right now they don't have ownership of it.

Mr. Sheppard stated right.

Alderman Ludwig asked is this a discontinuance and a transfer of ownership or just a discontinuance?

Mr. Sheppard replied I would ask Tom Arnold that question.

Mr. Thomas Arnold, Deputy City Solicitor, stated the action tonight is just a discontinuance. In the future, if and when the Wellington Hill properties close, the City would convey the fee that it owns under the street. With the other parcels that the City owns up on Wellington Hill, we would convey it by deed.

Alderman Ludwig stated so to reestablish the street it is going to take another action of the Board of Mayor and Aldermen to convey it to the developer?

Mr. Arnold replied no, Alderman. The City owns property up on Wellington Hill, which pursuant to a purchase and sale, it will convey to the buyer. That would include the fee underneath the street, just like any of the other lots that the City owns up on the Wellington Hill area. The developer can then, through the ordinary course of development, lay out his development with the necessary access roads and streets and the necessary entrances and exits to the public streets.

Alderman Ludwig stated Kevin, I'm looking at this map here, the plans of reference, board of aldermen proposed discontinuance of streets. Is that prepared by Highway?

Mr. Sheppard replied that was not prepared by Highway.

Alderman Ludwig stated it shows what the church owns, what the City owns,

what third parties own. It is the big block that we are all looking at. It is the last page.

Mr. Sheppard stated that was not prepared by the Highway Department.

Alderman Ludwig stated it is making it look like Radburn Street was put into to connect to this parcel as a whole and I'm wondering why it is being shown that way.

Mr. Sheppard stated I believe that if we go up there you will see that Radburn Street is a cul-de-sac and other developments are off of it. That is the area that if we go up there the aldermen will see it.

Alderman Ludwig stated I have been there many, many times. Maybe I am being picky, but why does it look like Radburn Street, on this plan, is continuous to the property. It is a cul-de-sac. It exists. This is making it look like Radburn Street went in to be an entrance or an egress. It may well be an entrance or an egress down the road. That would need planning and parking studies to determine in the future. I just don't want anyone coming back and saying that Radburn Street was put in there specifically to service this parcel. It may be. I'm okay with that if that is what the Planning Board and the people who come to speak on behalf of their properties feel. I don't want to sound picky, but I'm looking at it. It is not your plan; it is someone else's plan and I just want to be on the record as saying that I don't believe that that is why Radburn Street was put in. We certainly have to give the gentleman a way in and out of this property. I get that. Right now it is kind of showing me that that is already there. I'm not buying that.

Alderman Shaw stated this discontinuance of Mammoth Park Service Road and First Street, is that in any way going to inconvenience the City in any way for any type of access? I can understand why these others are being discontinued. I assume it is so the developer can layout their own plan. Is that why? So it doesn't have to follow the streets? What is the purpose of doing it?

Mr. Sheppard replied I guess you would have to ask the developer or his attorney, but I believe the intent is to develop the site and develop the new rights of ways and streets within that development to best fit the property.

Alderman Shaw asked what about the Mammoth Park Service Road and First Street? Is that in any way going to inconvenience the City or is that something that needs to stay there for the City or what?

Mr. Sheppard replied we don't believe so. That road is a class six road and is subjected to gates and bars and it has been gated off for many years. There is a water main through there so if these streets are discontinued, as I believe state law requires, they be discontinued subject to any public utilities within these streets or within this area. We don't see any public use of this property.

Mayor Gatsas asked is there anyone wishing to speak in favor of the petition?

Ms. Susan Manchester stated I am an attorney at Sheehan Finney and represent Sterling Homes, as you know, and with me is Keith Martel from Sterling Homes. I'm not going to speak long because I know you have a tight schedule. This is just one more condition in that purchase and sale agreement. One of the conditions in the P&S is that the roads, the paper streets, be discontinued so that they can be incorporated into the whole. Keith can and will tell you that he actually plans on having access via First Street. The water line will be preserved. Unlike the prior applicant we are happy to have all our street discontinuance be conditioned upon our acquisition of this project and this project going forward so that if this project does not go forward because of Planning Board or other reasons then everything stays status quo.

Mayor Gatsas stated I think we are going to have a very tight schedule to get up to Wellington Hill and be back. I know we are coming back on June 11th and if we can do this road hearing, I will only recess this meeting so we can go out on the bus after we come back on the 11th to do the viewing.

City Clerk Matthew Normand asked what time did you want to have that meeting, Your Honor, for the public's sake?

Mayor Gatsas asked what time are we coming in on the 11th?

City Clerk Normand replied the hope was for five o'clock.

Mayor Gatsas stated let's schedule it for 5:45 p.m. Does the board think we are going to take longer than that with CIP?

Alderman Roy stated Your Honor, I'm just concerned about these people who have been waiting.

Mayor Gatsas stated I'll come back to them. We are not in recess. I'm looking first for an acknowledgement of the 11th. I don't think CIP is going to take longer than 45 minutes. We will schedule it for 5:45 p.m.

Mayor Gatsas asked is there anyone wishing to speak in opposition of the petition?

Ms. Margaret Rice, 94 Westchester Street, I'm an abutter to the proposed changes. As I listened to what is being said tonight on the parcel of land related to Wellington Hill Road as well as the parcels related to Elm Street, the questions that were raised previously, I would like to raise again. You all are being asked to change, in part, the history of Manchester that goes back into the 1800s and to change roads and to delete roads without the knowledge and plan of why we are doing this. Related to the Wellington Hill property being asked to transfer those rights over without, again, without the knowledge of what is the plan, where are we going, what is the impact of the City in terms of the infrastructure, in terms of emergency services, police services, and fire services. I would want to say that I am opposed to it until, as a taxpayer in the city of Manchester, I have the ability to see a plan and then be able to address my concerns from that point.

Mr. Don Hartley, 97 Westchester Way, stated Westchester Way is the first entrance way from Radburn Street, where they proposed to change the road. Our opposition is that, of course. I speak because I am 81 years old and I am also a veteran and I mention that because this house that we have right there at the entryway, is probably the last property that my wife and I will have and it is the biggest asset that we have left. What we are concerned with, with this expansion of building in the wetlands directly across from us, is that it is going to change the entire cul-de-sac that we bought our house originally on and that is why the 17 houses are located on this cul-de-sac. When you change Radburn Street, which is the only entrance to our area, to an open road, now it is going to be opened, as had been petitioned for this 80-somehting houses to be build, directly across the street so from my house, which is the first house on Westchester Way when you come

off of Radburn Street, instead of looking at the wetlands, I will be looking at a traffic area consisting of 80 to 160 extra cars a day for these 80 extra houses. The difference is also coming up Wellington Hill Road, which already comes past Dartmouth Hitchcock Hospital and it is already a heavily travelled area. In fact, when you come off of the hill coming into Edward J. Roy Drive, it is already double car parking on either side from all the apartments that are there now. You are going to have an increase of 80 to 160 cars a day plus all of the contingency traffic that goes to supporting a 80 house community. That is one part of it, plus the schools that you are going to be concerned with. I know, Mr. Mayor, you are concerned with the overcrowding of schools. With 80 something houses they are going to have to allow for 200 to 300 children being added to that area. I'm worried about the traffic up that hill coming directly by our house and by the cul-de-sac area that we now have. I am in opposition to changing that right of way that we bought the house for into an open highway for the rest of the cars. I'm opposed to the area overall and naturally I am concerned, as a homeowner who has been there for ten years and have paid our taxes to add 84 directly across the street from us. It is going to have an effect on the valuation of that cul-de-sac which is no longer going to be a cul-de-sac development. That is about all I have to say on that today. It is the last investment that my wife and I have so, I want to protect it if I can.

*Due to timing limitations, on motion of **Alderman Long**, duly seconded by **Alderman Roy**, it was voted to recess the meeting until June 11, 2013, at 5:45 p.m.*

A True Record. Attest.



City Clerk