

**SPECIAL MEETING
BOARD OF MAYOR AND ALDERMEN
(ROAD HEARING)
*Continued from 6/04/13***

June 11, 2013

5:45 p.m.

Mayor Gatsas called the meeting back to order.

The Clerk called the roll.

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

Absent: Aldermen Greazzo, Arnold

On motion of Alderman Roy, duly seconded by Alderman Long, it was voted to remove the items from the table.

TABLED ITEMS

6. Petition to discontinue a portion of Summer Street.
Petition to discontinue a portion of Green Street.
Petition to discontinue a portion of Elm Street East Back.
(Tabled 6/4/13)

Alderman Long stated prior to our tabling this, I believe we had put conditions on Oak Leaf Homes. I believe we discussed getting conditions prior to the discontinuance and getting all the required permits and variances that he would need. That was in our last discussion.

Mayor Gatsas stated no, I think that item was just tabled. It was to allow the petitioners an opportunity to meet and come up with a common understanding of whether they could get a deal coming forward. My understanding is that Mr. Sheppard is looking to present something to the board.

Mr. Kevin Sheppard, Public Works Director, stated it is my understanding... The petitioner has asked, and the city solicitor can help me if I need help, that the discontinuance of Elm Street East Back be broken into two parts, the first part being from Summer Street to the north right-of-way line of Green Street and then from the north right-of-way line of Green Street down to the north right-of-way line down to Grove Street, so breaking that north Elm Street into two parts. If necessary, the board can take two actions instead of one action on the discontinuance of North Elm

Street. I believe the intent of that is that one southerly section abuts one of the people who spoke at the public hearing, at the last meeting, and the north section does not. They have brought a plan that better depicts what I am talking about, if the board would like to see it.

Alderman Long asked so Elm East Back Street they are looking to split?

Mr. Sheppard replied correct.

Alderman Long stated Summer to Green and the second discontinuance would be from north of Green to south of Grove.

Mr. Sheppard stated to the north side of Grove.

Alderman O'Neil stated Your Honor, the only reason we are meeting tonight is we never got out last week because we ran out of time to view Wellington Hill. This issue wasn't even supposed to come up and if we viewed Wellington Hill we wouldn't be discussing this item this evening. In speaking to many of my colleagues in the back, we are all surprised that there is an action request tonight on it. I am and I think many others are. I'm not in a position to vote for this tonight. I thought we had asked the two sides to get together to see if we could work it out.

Alderman Long stated the only hesitation that I have is taking a look at the property. If we don't look at this property then we need another road hearing scheduled to look at this property. I thought we would be looking at both properties and that way there we could make a decision at this level and not have to go out and take a look at the property.

Alderman Roy stated I agree with Alderman Long. We have the opportunity to go look at this property right now and I would like to see this plan that he said that they have. It certainly doesn't mean that I have to vote on this tonight, but I think we should take this opportunity to gather as much information as we can.

Alderman Levasseur stated I have a procedural question. Can we keep it on the table, but still view the property?

Mayor Gatsas replied I don't believe we can.

Alderman Levasseur asked do we have to take it off the table, go view the site and then put it back on the table?

Mayor Gatsas stated I guess my question is; are all the petitioners in opposition to doing what they are looking for them to do.

Alderman Levasseur stated I don't know if there has been a change in the attorneys' opinions.

Ms. Linda Connell, McLane Law Firm, stated I am representing Phyllis and George Zioze, owner of one of the properties on Elm Street, backing what is known on the tax map as Elm Street East Back. Again, our understanding of the tabled motion was to take this off the table to allow the attorneys' time to see if we could reach agreement with respect to one of the petitions. We were surprised, frankly, that it had been on this agenda. I was out of town for a couple of days. We have made an attempt to try and talk today, but we have not really made progress in trying to reach a resolution. We would appreciate that it be tabled to the next regularly scheduled road hearing, not to try to...

Mayor Gatsas interjected that could be two years from now.

Ms. Connell stated I thought they were every six months. They have been more infrequent in recent times?

Mayor Gatsas stated I guess what they are talking about are two separate issues. The issue behind the Zioze building they are looking to leave Back Elm Street alone and not have that discussion and leave Green Street alone and close the back alley of Elm Street from Green Street to Grove Street, which is owned by Mr. Dupont, which doesn't affect anything behind either one of the other properties.

Ms. Connell stated we would be willing for the board to go forward on just those, the Summer Street petition and what is being called the Elm Street East Back North and leave the other tabled or just deny it. We had asked the other side to simply withdraw those petitions and re-file them at some other date given the lack of any regular road hearing schedule.

Mayor Gatsas stated I think that is what Mr. Sheppard was trying to bring forward and maybe he wasn't clear about it but I think that is what they are talking about. I

think that is what they are talking about; it would be a portion of the discontinuance that we are talking about.

Alderman O'Neil stated Your Honor, obviously you have been part of a conversation that the aldermen haven't been a part of. In all my years here I have never heard a process go like this on road hearings.

Mayor Gatsas stated with all due respect, Alderman, you are sometimes part of conversations that the rest of the board isn't. I only heard about it tonight before this meeting.

Alderman O'Neil stated we shouldn't be taking any action on anything tonight. The attorney is here representing her client saying that she guesses it would be okay. That is not what they were asked to do. They were asked to sit down and reach an agreement.

Alderman Levasseur asked Attorney Connell, did you receive the letter dated June 11th, today, from Attorney Panciocco?

Ms. Connell replied this afternoon, yes.

Alderman Levasseur stated this is concerning that part that is in dispute between the two abutters.

Ms. Connell stated that's right.

Alderman Levasseur stated I'm sure you have an opinion on this at some point. If we are going to go out on a bus, I don't mind driving the bus to go look at the streets because I'm not really 100% sure exactly which streets are which. I do have some concerns about one street, but I'm not sure if that is the street over by Spider Bite. I'm not sure if that is one of the streets that they want to close. My understanding is that if we vote to discontinue, the discontinuance occurs immediately. I believe Alderman Long said that it happens immediately. I thought that would maybe happen through some process. Again, even though Attorney Connell's people may be okay with that northern part being closed down, I still don't want to do anything unless it is conditional on approvals. I don't know why we are going to... Once we discontinue the streets we can't un-discontinue them. Mayor, maybe you can help me because you have been here a lot longer, but when it comes to projects do you

normally discontinue a street without the approvals in place first as far as the Zoning Board and engineering reports? I don't know if they have to dig holes in the ground like we did with the Bedford Lot to see if there is anything under there like that or can you do it conditionally upon those approvals? Not conditional in a way that if they do get all the approvals the streets are closed and they can go to the bank or go to their engineers and Zoning Board and variance board and say we already have the approval but it is not going to take effect until we actually have all the approvals in place. I'm looking at more of the effect of when it takes place then whether or not they get the approvals.

Mayor Gatsas stated I'll leave that up to Kevin Sheppard to answer because I can't give you that answer.

Alderman Levasseur stated I don't want to discontinue a street and then they find out that they didn't get the approvals from the Planning or Zoning Board. I'm not sure if that is normal procedure because I've never seen this before.

Mr. Thomas Arnold, Deputy City Solicitor, replied relying on my memory, I don't believe it has been past practice to condition the discontinuance of streets on Zoning or Planning Board approvals. There have been occasions in the past where the board has discontinued street conditional on some specific act.

Alderman Levasseur asked Attorney Arnold, if we discontinue the street and it takes effect tonight and the approvals don't go forward, then are the streets not discontinued anymore? The way I understand it and the only reason I bring this up is because Alderman Shea really wants to get Hayward Street open and we were told by Attorney Clark and I don't know if you were here, but we were told that we can't do that without having to go through these legal hurdles to get that street back up. I don't want to do the same thing, cut off three streets off of Elm Street, and then have to go through all the legal mess that we are going to have to do to discontinue if the plan doesn't go through. I don't even know if these guys have financing for this property or project that they want to do. You understand where my caution is coming from.

Mr. Arnold stated the board can make a discontinuance conditional upon certain acts, certain conditions. You are right that if you discontinue a street that you want to open up again, you have to lay it out, which is a statutory procedure. As I say, if you discontinue a street upon conditions, the street is not discontinued until those

conditions are met.

Alderman Levasseur stated that is all I needed to know, thank you. Kevin, do you have something you want to add?

Mr. Sheppard replied no.

Alderman Roy stated all I'm saying is that we take this off the table, we go down there, we have the bus here instead of coming back some other night and having to get a bus again—I know how much we all enjoy the bus rides—but go down there and look at it and we can put it back on the table. We don't have to take an action tonight because these lawyers can get together and hopefully work something out. That is where I am going with this.

Alderman Long stated that was my sentiment also with respect to taking a ride, taking a look at it and it is clear as far as I'm concerned that the petitioner meet with those in opposition and work something out so we have a smooth transition and we are not fighting an uphill battle. If it is the will of the board, I will move that we take our bus ride and view the site.

Alderman Shea stated I just wanted to clarify. When Hallsville Street was closed, there was no zoning or there was no Planning Board involved; it was simply the Board of Mayor and Aldermen. Again, I think my colleague is correct in the sense that once we discontinue something that is really something that can't be undone very easily and I think we have to make sure that we do it right. I tend to agree with Alderman O'Neil that we can look over the site, but we shouldn't make a decision this evening because we are making a half decision and if we were to discontinue certain streets and not others without necessarily all of the ducks, as the mayor would say, being in order at that time. Thank you, Your Honor.

Mr. Sheppard stated this originally came in and it was under the city clerk's agenda as three separate petitions and I recommended that we consolidate. There are actually three petitions: one for Summer Street, one for Green Street and one for Elm East Back Street. I am not going to recommend that the board do anything, but they always could take action on one of those if they chose to or two of those.

Mayor Gatsas stated Mr. Cronin, you had your hand up. Was there something that you wanted to say?

Mr. John Cronin replied if it pleases the board, I did have the plans. Someone requested to see it.

Mayor Gatsas stated we are going out to look—well, it depends on what the vote is.

Mr. Cronin stated I'm the attorney for the property owner who is seeking to discontinue. When we came here last week the petition was to discontinue all of Elm Back. This street here, which is the former Green Street, and then you see the green one which is to the far north. After there was some debate last week from Mr. Zioze and the gentleman from The Music Mill about the private rights and the impact of the public rights, we met with Mr. Dupont and said rather than hold this project up indefinitely, is there anything alternatively we can do that may eliminate the conflict with these neighbors for the present, yet get the public rights extinguished here so you can do your design work. What we came up with closing this, which no one seems to have an objection to, which is the green section, and closing the public rights here on Elm Back Street, just up to the intersection of this road and leaving everything else at bay. That petition will be before you and you can deny it or do what you see fit with it. We will deal with it at a later date. Alderman Craig, did you have a question?

Alderman Craig replied we will see it when we go on the road trip, but who are the abutters in that area?

Mr. Cronin replied Attorney Dahar is the principal on that particular side.

Alderman Craig asked have you heard anything, one way or the other?

Mr. Cronin replied no objection to it.

Alderman Craig asked has he said it is fine?

Mr. Cronin replied to my knowledge, yes. I will confirm that. In terms of this back piece, that is also owned by Mr. Dupont. He has both sides of that road.

Mayor Gatsas asked both sides of the blue side?

Mr. Cronin replied that's correct. That would be the parcel that fronts up on Willow Street.

Alderman Shaw stated the section that is green, when you go by there, that is always filled with cars. There are parking places along there. That is a used car lot just beyond that, right?

Mr. Cronin replied I believe that is Spider Bite to the north of that.

Alderman Shaw asked it is not the one that is between the used car lot and Spider Bite on the north end?

Mr. Cronin replied no. In all the times that I have been there...

Mayor Gatsas interjected it is. It is the street between Spider Bite and the used car lot.

Alderman Levasseur stated Ron's toy shop.

Mayor Gatsas stated no.

Alderman Levasseur asked there is another place there?

Alderman Shaw stated no, it is the used car lot on the corner of Auburn Street.

Mr. Cronin stated this is the Goulet supply building and this would be Spider Bite. I think what you are talking about would be north of Spider Bite. That is not this.

Alderman Shaw stated that is not included in this proposal. It is the one in between Spider Bite and the next company over.

Mr. Cronin stated the former Goulet building. That is what it has been referred to as.

Alderman Shaw stated it had political storefronts in there.

Alderman Levasseur stated behind the Zioze property and The Music Mill property, why is it relevant that that would have to be discontinued to the long term

plan of that project? I think that is the issue between the two parties. What is the relevance of closing down that middle section and the back section?

Mr. Cronin replied this would ultimately be some access for the development here and our research indicates that the City has no rights whatsoever and I think Mr. Sheppard agrees with that. As a safeguard for title purposes we want to make sure that is the case. At the end of the day, does it have any significance or not? Perhaps not and whatever private rights these folks have they don't get extinguished by whatever action you take.

Alderman Levasseur asked is that actually a road you can drive down? Does that go out to the street at the end?

Mr. Cronin replied it does, but it wouldn't be well defined like you would see on most of your public streets. It is my understanding that this didn't even have a name until a couple of years ago when we did the remapping and whoever did that chose to put Elm Back Street. If you go back in history, it has not been a named street. It has really been an alley for most of its history. It is a travel way. You can see that there is pavement and cars have been going back and forth on it for a long time, but it is certainly not a defined street with curbing and so forth.

Alderman Roy stated again, I will make the motion to take those items off the table so we can go view them.

Mayor Gatsas stated I believe the motion was already taken to remove the tabled items.

Alderman Roy stated he only seconded it to discuss.

Mayor Gatsas stated right, but they are off the table and your motion, Alderman Long, is to go and view them.

On motion of Alderman Long, duly seconded by Alderman Roy, it was voted to recess the meeting and proceed to the site of the three petitions for viewing; Petition to discontinue a portion of Summer, Green and Elm East Back Streets.

Mayor Gatsas called the meeting back to order at the site of the three petitions.

The mayor and aldermen, with the City Solicitor and Public Works Director viewed the first petitioned areas. The attorneys involved were present and provided information regarding ownership of the areas outlined in the petitions. It was suggested that a vote be taken on discontinuing the Elm Street portion in two sections, North and South. Attorney Cornell was opposed to the discontinuance of the north portion but okay with the other two petitions. It was decided by the Board of Mayor and Aldermen to retable the three petitions to give the attorneys involved a chance to reach out to abutters and come to an agreement. Once an agreement is reached they are to come back to the board.

On motion of Alderman O'Neil, duly seconded by Alderman Craig, it was voted to retable item six of the agenda.

On motion of Alderman Roy, duly seconded by Alderman Long, it was voted to recess the meeting to view the next petitioned area.

Mayor Gatsas called the meeting back to order at the site of the next petition.

4. Petition to discontinue portions of streets on Wellington Hill.

Attorney Manchester and developer Keith Martel were present and outlined the area to be discontinued.

On motion of Alderman Roy, duly seconded by Alderman Levasseur, it was voted to approve the petition. The motion carried with Aldermen Ludwig, Osborne, Corriveau and O'Neil voting in opposition.

There being no further business, on motion of Alderman Ludwig, duly seconded by Alderman O'Neil, it was voted to adjourn.

A True Record. Attest.



City Clerk