

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

December 13, 1999

6:00 PM

In the absence of the Chairman, the Clerk called the meeting to order at the appropriate time.

The Clerk called the roll.

Present: Alderman Wihby (late), Aldermen Sysyn, Pinard, O'Neil, Shea, Pariseau, Cashin, Thibault, Hirschmann

Absent: Aldermen Klock, Reiniger, Clancy, Girard, Rivard

The Clerk noted that in the absence of Mayor Wieczorek, and Chairman Wihby, a motion was in order to elect a Chairman Pro-Tem.

On motion of Alderman O'Neil, duly seconded by Alderman Thibault, it was voted to elect Alderman Cashin as Chairman Pro-Tem.

Chairman Cashin advised that the first purpose of the road hearing is to hear those wishing to speak in favor of or in opposition to proposed street discontinuance petitions; that each petition shall be addressed individually at which time the Public Works Director shall 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; that anyone wishing to speak must first step to the nearest microphone when recognized and recite his/her name and address in a clear, loud voice for the record; that each person will be given only one opportunity to speak and any questions must be directed to the Chair.

**A. Petition for Discontinuance
Portion of Loring Street**

Alderman Wihby arrived and proceeded to Chair the meeting.

Chairman Wihby requested that Frank Thomas, Public Works Director, make a presentation.

Mr. Thomas stated the first discontinuance petition is Loring Street. There was a handout that shows its location. It is an extension of Loring Street west of Faltin Drive by 90.91 feet. Loring Street was accepted by the Board of Mayor and Aldermen on June 22, 1955. This portion of Loring Street has not been opened, improved and has been used quite frankly by Donovan Spring for the last 15 years. It is the recommendation of the Highway Department that this discontinuance be granted.

Chairman Wihby called for those wishing to speak in favor.

William Quinn, 85 Brook Street, Manchester, NH stated:

I practice with Brennan, Caron, Linehan & Iacepino here in Manchester. We are representing the Don & Carol Realty Trust who owns the abutting properties to Loring Street. I just want to reiterate what Mr. Thomas said tonight. Don and Carol purchased the abutting properties about 15 years ago. They were undeveloped parcels at the time. That section of Loring Street, which extends west of Faltin Avenue, was never developed and has never been used. There is no public servitude to this particular part of Loring Street. In fact, there is no use that anyone could foresee where this section of Loring Street would become necessary to public transportation. We submitted this petition at the request of the Planning Board where we had gone with some request for improvement of the property. The approval was conditioned on the fact that we pursue this petition. Tonight, we are here to ask you to consider the discontinuance of that portion of the roadway, which is actually used by Donovan Spring & Equipment and has no public use.

Chairman Wihby called for those wishing to speak in opposition.

There were none.

Alderman Pariseau asked if and when something should ever happen on South Willow Street, do you think the possibility of opening up that section of Loring to Enfield to get onto South Beech would be prudent. I know the last speaker just said there wasn't any possibility, but I think there is.

Mr. Thomas answered quite frankly, I haven't studied that particular issue that you raised, however, I think I would be hesitant in wanting to provide a connection from a heavily traveled commercial area into a strictly residential area. I don't think it would be in the City's best interest.

Alderman Pariseau replied I was just thinking about getting the pressure off of South Willow Street.

Mr. Thomas responded I understand what you are saying. I think it would potentially make more sense to put in some kind of parallel road to South Willow Street instead of again trying to cut into a residential area at that location.

**B. Petition for Discontinuance
Thompson Street**

Chairman Wihby requested that Frank Thomas, Public Works Director, make a presentation.

Mr. Thomas stated again we furnished you with a handout that notes the location of Thompson Street. You can see it is on the West Side off of West Hancock Street. Thompson Street,

previously known as Harvey Street, was dedicated by a subdivision plan entitled Plan of Land of NH Improvements Company in Manchester, NH back in 1890. The Board of Mayor and accepted Thompson Street from West Hancock Street 250 feet in a northerly direction in October of 1937. A portion of Thompson Street, as you can see, has been cut off by the construction of the Everett Turnpike. Again, Thompson Street has not been open or utilized by the public. Quite frankly, it is presently being utilized as part of the parking area for the EconoLodge. Again, we support this discontinuance in an effort to clear up the potential dual use of public road and a private parking area. The City really doesn't have any interest in this street.

Chairman Wihby called for those wishing to speak in favor.

Peter D. Wenger, 722 Chestnut Street, Manchester, NH stated:

I am from Wenger & Cronin. We are representing Aspi & Jayesh Partnership tonight. This is the partnership that owns the EconoLodge Hotel. As you can see from the plans that have been submitted with the petition, the portion of Thompson Street that was not taken by the State back in 1955 was never formerly discontinued. Since that timeframe, it has been used by the owner of the EconoLodge parcel. Back in 1985, this parcel was turned into a hotel and used from that time since. The area right now that is the former...which is Thompson Street that has not been taken by the State has been used as a parking area, parking lot. It wasn't until recently and this is going through a conduit refinancing this last year that anybody knew there was a title issue with this property in that, in fact, this was a portion of a street that had not been discontinued. In trying to unravel the mystery, City records were not quite as clear. I can see just going through the history of this property where there is a State fence property line and a lot of people in the past just thought it was part of the property. In fact, it is not and that is the reason we are here tonight. Based on our client's understanding, since they have owned the property this portion of the street has never been used for a public way or any kind of public accommodation. In fact, it is bounded by our client's property and by the State's property. The State's property, over half of that, is a huge retaining wall that you may see later on tonight. From what we can discern, there is no reasonable access to the public in the future or now in the discontinuance. We feel that the discontinuance would be to the benefit of the public and the City so they would not have any maintenance responsibilities or considerations in that regard.

Alderman Thibault asked, Mr. Thomas, is there any possibility that with the new Granite Street on-ramp that this may be touched.

Mr. Thomas answered no. It is far enough from the Granite Street off-ramp interchange where it shouldn't be affected.

Chairman Wihby called for those wishing to speak in opposition.

There were none.

Chairman Wihby asked do we want to take the tabled item off.

Mr. Thomas answered it may not be a bad idea to take it off and see if we can dispose of it tonight.

TABLED ITEM

On motion of Alderman O'Neil, duly seconded by Alderman Thibault it was voted to remove this item from the table.

C. Petition for Discontinuance Southerly unused portion of Page Street

Mr. Thomas stated Page Street, if you can think back, this has been a subject that has been brought up at the last couple of road hearings. Page Street was released from public servitude back in 1932 according to RSA 231:51. There is a sanitary sewer that has been constructed in that right-of-way in 1968. However, what puts a little twist on this is that the Board of Mayor and Aldermen did accept the street in April of 1968 even though it was not open or improved or utilized by the public. When the petition came up for a discontinuance, the City Solicitor's Office recommended where the street was accepted, whether by error or not, that it should be formerly discontinued to clear up the issue. In the past couple of road hearings, there has been...the abutters could not reach agreement, quite frankly, on whether the street should be discontinued or not and so it remained on the table since then. It is our opinion, and of course we are not attorneys but we feel that the street doesn't have public status through the fact that it was released according to the RSA back in 1932. The petition could be granted to discontinue the entire length or a portion thereof. It would be up to the Board.

Alderman Hirschmann stated I remember this particular case, even though it was quite some time ago, was it last spring.

Chairman Wihby answered 9/98.

Alderman Hirschmann replied I remember people testifying in front of us that there were going to be landlocked parcels if we granted this discontinuance. I think that is against the law to do.

Mr. Thomas responded that is correct, but again it is our interpretation of the law that the street does not have any public status now through the fact that it was released from public servitude back in 1932. Even if the street was to be discontinued, I believe that the abutters still have the right to utilize the discontinued street for access.

Alderman Hirschmann stated if you drive by there and look at what they are trying to discontinue, there is a vehicle parked in what is supposed to be the street. Someone is already using it for their own pleasure.

Mr. Thomas responded that is correct. At one end, the Candia Road, the area is leveled off and one of the abutters does use that to park his personal vehicles on. Other portions of the right-of-way there is a gully that is pretty much impassable for a vehicle.

Alderman Pinard stated my recommendation and you know we have gone through this the past couple of years and Mr. Thomas says that it cannot be used for anything so my recommendation is to see what Mr. Arnold has to say on this because he has been studying it. I would like to see the people have the chance to buy that piece of land because it is no good to the City or anybody else. One of the abutters of this land would like a piece of land, which you all know and he is willing to pay the surveyor so he can get his piece of that land. Mr. Arnold, what is your version?

Mr. Arnold stated as Mr. Thomas pointed out, the street was accepted so we are of the opinion that it would have to be discontinued. My concern would be with any landlocked parcels that may be denied reasonable access if the street is discontinued.

Alderman Hirschmann stated there was some testimony to that fact.

Asst. Solicitor Arnold replied I vaguely remember that testimony. Certainly not in detail.

Alderman Hirschmann responded I couldn't tell you who they were.

Mr. Thomas stated you are correct, Alderman. Some of the abutters to that street have back separate lots that theoretically could be developed and would require the street for frontage.

Alderman Shea stated I concur with Alderman Hirschmann that there was a woman who testified to the fact that her father owned the property and she wanted to make sure that before anything was done there wouldn't be any kind of adverse action taken. I think Romeo Duval and Mrs. Puchasz also testified to that. I don't really know their concerns about it.

Chairman Wihby asked who is asking for the discontinuance.

Mr. Thomas answered the petition was originally requested by Mr. Gary Gardner.

Alderman Pariseau stated if memory serves me correctly, the first petition came in and wanted Page Street closed from Candia Road to Holt Avenue and I think that was more or less denied after hearing testimony from some of the abutters.

Mr. Thomas that is correct.

Alderman Pariseau stated then Mr. Gardner came in wanting to discontinue Page Street. I thought it was about 250'.

Mr. Thomas replied that is correct, from Holt Avenue.

Alderman Pariseau asked would it be appropriate to...and no one would be negatively impacted, would it be okay to go ahead and discontinue that portion of Page Street 250' from...I don't know what direction I am going into but from Holt Avenue northerly. There was a lady who had property coming in from Candia Road that her father was paying taxes on. I think if we came the other way and only went the 250' northerly of Holt, that we would be okay.

Chairman Wihby asked do you have a problem with that, Frank.

Mr. Thomas answered I don't have a problem with it.

Asst. Solicitor Arnold stated I would caution the Board that I think the issue of landlocking certain parcels would remain if you take that action.

Chairman Wihby asked is your recommendation, then, that we don't discontinue.

Asst. Solicitor Arnold answered that, of course, is a policy decision of the Board. As I said, I would caution the Board that if you landlock parcels of land that could otherwise be developed, the City may be responsible for damages.

Alderman Pariseau stated if we came in from Candia Road with a cul-de-sac around there after dead ending it, what is wrong with that.

Asst. Solicitor Arnold replied I think you still may be landlocking parcels. I haven't got a map in front of me and I am relying on my recollection, which as I often say is dangerous but...I can't tell from this map.

Alderman Pariseau asked do you agree that it is not a legally accepted street.

Asst. Solicitor Arnold answered no I do not agree.

Alderman Pariseau asked why didn't you tell us that at the beginning.

Asst. Solicitor Arnold answered there was a Board action, notice was given and the street was accepted.

Alderman Pariseau stated the Public Works Director clarified the situation that the acceptance of that street was illegal back in 1968.

Asst. Solicitor Arnold replied I don't believe that is correct. I think the street was laid out at that time.

Alderman Cashin stated so you think it is an accepted street and you are telling us if we do anything here and we landlock anybody we might get sued.

Asst. Solicitor Arnold replied that is precisely what I am saying.

Alderman Pariseau stated I don't think he is right.

Alderman Cashin responded he is the attorney.

Alderman Pariseau stated that is his opinion. I have an opinion.

Alderman Cashin replied but he is the attorney.

Alderman Pariseau responded I don't care.

Alderman Cashin stated but if you go to court and he says you are going to get sued and you go ahead and do it anyway, you are in trouble.

Alderman Pariseau asked who is going to sue us.

Alderman Clancy answered probably one of the people who own the lots.

Alderman Pinard stated the landlock that you are talking about, if you are familiar with the piece of it, you have the parking lot of the church. On Brennan Street there are all houses so automatically the piece from that side is going to be the backyard of those houses. So they have an avenue to get into the parking lot, which probably at one time was owned by the church or part of it was owned by the church. I can see on that side where you are going to landlock anybody.

Alderman O'Neil asked are you saying, Alderman Pinard, that there would be two ways in.

Alderman Pinard answered I am pretty sure. Mr. Gardner, you live there what do you think?

Gary Gardner stated:

I was the one who originally put in the petition. The first time that we went to the Board, there was an issue of landlocking. There was some land that Mr. Farley owned. In the meantime, the people on Brennan Street had bought Mr. Farley's land so now there is no issue. There was a concern at that time that they didn't want it developed; they wanted to leave woods there. I don't have the name of the person who bought that land in the back.

Alderman Cashin asked so the problem no longer exists, is that what you are saying.

Mr. Gardner answered right.

Alderman Shea asked was notice given to the abutters that we would be hearing this tonight.

Chairman Wihby answered we already viewed this and took it up and we tabled it.

Mr. Gardner replied yes. I received one and as far as I know all of the abutters received one also by registered mail. I have a copy of it here.

Chairman Wihby asked who sends those out, Frank, do you know.

Deputy Clerk Johnson answered we notified all abutters that we had a record that it was a tabled item and would appear as a tabled item on the agenda. Whether or not they were clear...I mean that was the second time that it appeared as a tabled item. They all came out last time and it was not taken up. It remained on the table. I can't say whether they understood that the item might be acted on.

Alderman Thibault stated if memory serves me right, if we, in fact, were going to give you the piece of land that you wanted off of Holt Avenue then it would not leave enough for a street there if you only took the piece that you wanted as I understand it. If you took half of the street or half of the proposed street? Am I right?

Mr. Gardner replied yes.

Alderman Thibault asked so what would happen to that other piece of land.

Mr. Gardner answered the other abutter would have to go through the process.

Deputy Clerk Johnson stated the other item that I should probably note to the Board is that we did receive a call from one of the abutters regarding this item and he indicated that the church had indicated to him that they no longer supported the petition. There is a new priest there, I guess.

Alderman Pariseau asked who was that person who called.

Deputy Clerk Johnson answered I don't recall the name. There is a new priest at the church and he was going to approach the new priest because the old priest had withdrawn his support.

Alderman Pariseau stated there hasn't been a new priest in town for St. Pius. There is a fill-in.

Alderman Pinard replied you have to go back to Father Boisvert who just left and Father Connors who was there and just passed away. I think you are referring to Father Boisvert. I think his name is on there somewhere.

Alderman Pariseau responded whoever is running the church now called...

Chairman Wihby replied she didn't say the person running the church, she said that somebody said that the church was against it.

Deputy Clerk Johnson responded no. They are not against it. They had withdrawn their support of it but the priest had either died or moved on to another parish.

Mr. Thomas stated I would suggest that this be tabled again to allow me time to meet with Tom Arnold to review the plans for the area.

Alderman Hirschmann moved to table the item.

Alderman O'Neil stated this all has to do, I think, with Mr. Gardner wanted to put an addition on his house or a garage. That is all this has to do with.

Chairman Wihby asked do you still want to put that up, Mr. Gardner.

Alderman O'Neil answered to table this again...that is all he wants to do.

Alderman Pinard stated let him have the footage that he needs. Let him have it surveyed and let the other people there take whatever course of action they want.

Alderman O'Neil stated I think Alderman Pinard is right. There is another way in with Sorto Street around the back.

Alderman Shea stated in respect to Alderman O'Neil, there are people not present this evening who have objected to this particular action. They don't have a chance to come tonight so basically until we have a definitive ruling, I don't think we should try to take a vote tonight when people have objected in the past for whatever reason. We should hear them out. I don't think it is fair. If I were in their position, I would want to be here and I am sure that if Mr. Gardner had a different viewpoint, he would be here. I think it is only fair that we hear them out. After hearing them out and discussing this with council then if it gets the approval of the Board that is fine, but I think that we should see this through. We shouldn't just take a tabled item off the agenda and stick it through and have people that object not be represented. I don't think that is right. I don't care if it is a year and a half or two years.

Alderman Cashin stated let's assume that we table it tonight, again until the next Board meeting giving Frank an opportunity to sit down with the City Solicitor's Office and at the next Board meeting they will come in with a recommendation one way or the other. Is that fair, Frank?

Mr. Thomas replied that is fine with me.

Alderman Pinard stated okay, another 30 days.

Alderman O'Neil replied you are talking next week, right.

Alderman Cashin responded yes.

Alderman Pariseau stated I just want to clarify Carol's statement that she did notify abutters about tonight's meeting.

Chairman Wihby replied she did notify them as she did the last meeting. They came to the last meeting, but then they couldn't speak so we don't know how many of those people today figuring that we weren't going to take it up again. That is the concern.

Alderman Shea asked did you actually, Carol, send them letters that we would take it off tonight.

Deputy Clerk Johnson answered the Clerk's Office sent out certified mail to the abutters advising them that this item was going to appear as a tabled item. That is the same process we took last time. It came up as a tabled item the last time and the neighbors had shown up and stated opposition, but the Board retabled it.

Alderman Pariseau replied that isn't how it happened at all. What is she talking about?

Alderman Shea duly seconded the motion to table the item and come back at the next BMA meeting.

Alderman O'Neil asked, Mr. Chairman, is that tabled until the meeting next Tuesday night.

Alderman Cashin answered my intention was to have it come before the Board on Tuesday night.

Chairman Wihby asked can you do that, Frank, in that short time frame.

Mr. Thomas answered I will be glad to meet with the Solicitor's Office to review it.

Chairman Wihby called for a vote on the motion. There being none opposed, the motion carried.

On motion of Alderman Hirschmann, duly seconded by Alderman Cashin, it was voted to recess the hearing and proceed to view the areas of petitions presented.

Chairman Wihby called the meeting back to order at the site of the first petition:

A. Petition for Discontinuance
Portion of Loring Street

Members of the Board viewed the area of the petition. On motion of Alderman Pariseau, duly seconded by Alderman O'Neil, it was voted to discontinue a portion of Loring Street, reserving any and all utility easements.

Chairman Wihby called a brief recess.

Chairman Wihby called the meeting back to order at the site of the second petition:

B. Petition for Discontinuance
Thompson Street

Members of the Board viewed the area of the petition. On motion of Alderman Cashin, duly seconded by Alderman Thibault, it was voted to discontinue a portion of Thompson Street.

There being no further business to come before the road hearing, on motion of Alderman Sysyn, duly seconded by Alderman Thibault, it was voted to adjourn.

A True Record. Attest.

City Clerk