

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

**June 23, 2008**

**5:30 PM**

**Mayor Guinta** called the meeting to order.

**Mayor Guinta** called for the Pledge of Allegiance, this function being led by Alderman Garrity.

A moment of silence was observed.

The Clerk called the roll.

Present: Alderman M. Roy, Gatsas, Sullivan, J. Roy, Pinard, O'Neil, Lopez  
Shea, Garrity, Smith, Ouellette, Domaingue

Absent: Aldermen Osborne and DeVries.

**Mayor Guinta** 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 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.

- A. *Petition for layout and discontinuance of a portion of Elm East Back Street (aka Manhattan Lane; aka Harry Theo Drive).*

**Mr. Kevin Sheppard**, Public Works Director, stated as you can see in your package Elm East Back and this area were originally dedicated by Planet Amoskeag Company as an area of 220 feet long by 20 feet wide passageway. This street has acquired public status by implied acceptance by the City. The 120.2 feet of the street running from Cedar Street was discontinued by the Board of Mayor and Aldermen in August of 2007. The petition that's before you right now is from Auburn Street; you can see the plan as attached to the request or petition would be discontinuing that section of Elm East Back from Auburn Street northerly to the property line. The Highway Department supports this discontinuance of Elm East Back Street and Harry Theo Lane subject to a reservation of utility easement and provided all abutters are in favor of this discontinuance, or subject to the approval of the Board of Mayor and Alderman.

**Alderman Gatsas** asked Mr. Sheppard, can you refresh my memory of why we didn't do this a year ago?

**Mr. Sheppard** responded I believe there were some issues with abutters about a year ago regarding the discontinuance of the complete line.

**Alderman Gatsas** asked that they didn't want to do it?

**Mr. Sheppard** responded correct. I don't have the minutes but I believe there were some questions regarding the complete discontinuance.

**Alderman Gatsas** asked so does the discontinuance mean 50% goes to one abutter and 50% goes to the other abutter?

**Mr. Sheppard** responded I believe that's the case, and Tom Arnold can explain.

**Mr. Tom Arnold**, Deputy City Solicitor, stated generally that's the case unless there is a fee ownership of the street. I couldn't give you a specific answer without doing research into the background but I dare say probably in 95% to 99% of the cases that's what takes place.

**Alderman Gatsas** asked are there two different abutters here? There are actually three.

**Mr. Sheppard** responded correct; there are three abutting properties.

**Alderman Gatsas** asked how does it get divided into thirds? If it's going to the abutters how does that work?

**Mr. Sheppard** responded typically there would be a line drawn down the middle of it; where is 20 feet wide there would be a line drawn north to south that's ten feet wide on either side and each abutter that abuts that area would...for example that lot 144-3 would have ten feet by whatever length that turns out to be along their frontage.

**Alderman Gatsas** asked so basically what you are saying is that it would discontinue passageway through there? Is that correct?

**Mr. Sheppard** responded we would discontinue the passageway, correct.

**Alderman Gatsas** stated I am really perplexed why we didn't do this a year ago because I think I asked that question then. Somebody needs to answer that question tonight.

**Mr. Sheppard** stated you may have someone in the audience that can.

**Alderman Shea** stated just by way of clarification, I thought that at that time there was some sort of discussion with somebody expanding or putting in some sort of a business at the time and that's really...they were one of the abutters and that was unsettled at the time so I think that there was obviously...we will say that it wasn't discussed at that time and it was going to be tabled until a future meeting. I think that's what it was because I think somebody was thinking of putting an addition on to a building, a second floor or something. I am not sure if one of the people here maybe can clarify that.

**Alderman Smith** stated I think was a result of a difference of opinion between two parties, and I think Alderman Gatsas brings up a good point. We have utilities and so forth like that. This would be closed off completely and Cedar Street is the only way coming into the Verizon Center. Am I correct? Because South Willow travels one way out. So the only access for the handicap people will be through Cedar Street off of Elm. They can't utilize this Elm Street East Back at all.

**Mr. Sheppard** stated correct, which they can't right now. From what I understand that other section has been discontinued so that is a dead end alley at this point. It is subject to easements, the existing easements within underground, but it is a dead end alley presently.

**Alderman Gatsas** asked what does the zoning do here for parking, Mr. Sheppard? If we discontinue it and it's split, how wide is that street?

**Mr. Sheppard** replied 20 feet.

**Alderman Gatsas** so it's ten and ten. Can there be lateral parking going down there?

**Mr. Sheppard** stated I can't answer that question. I don't have that answer.

**Mayor Guinta** called for those wishing to speak in favor of the petition.

**Rolf Goodwin**, 900 Elm Street stated I am with the McLane Law Firm representing the applicant in this matter, the Theodosopoulos family. I can answer Alderman Gatsas's question very simply. You are correct in saying that last year, looking at the plan here, the side of the street towards Cedar Street was discontinued. My client did oppose that discontinuation at the time, but now that is has happened it doesn't make sense to keep the other half of the street open, and that's the reason for application for discontinuation. There is no plan to block the discontinued streets, only to take steps to repair the pavement which is not in great condition at this point and get it in good shape. As you saw, the approval was based on our agreement to this application by the abutters. As you can see, Mr. Phillip who is the owner of the lot 144-4, the lot on the far side of this property, has signed off as approving of the application. That leaves a very shortened distance along 144-3. That property is owned by the Kaposes, who I believe you will hear from. It's occupied by my Meineke Muffler as a tenant and we have a verbal agreement with them that they will be able to keep access under an agreement that can be signed up in a matter of days, depending on what happens here tonight to retain access on that property for the limited use that they need for those few feet. Any questions?

**Alderman Gatsas** asked does the muffler shop have access to that back alley?

**Mr. Goodwin** responded right now because it's a public street they have access. As you can see they have access on Cedar Street. They continue to have access on a discontinued portion which, while discontinued, is not closed and they have those few feet on the part that we are asking for a discontinuation tonight.

**Mr. Bill Theodosopoulos**, 23 Joe English Lane, applicant for discontinuance, stated the issue here is access to the two overhead doors that Meineke Muffler uses that are on the alley. Because the properties don't line up exactly, there is a that 15 or 20 foot stretch there that historically has been where Meineke will do probably 33% of their work. I have talked to Ron Coombs, the owner of Meineke Muffler, and I told him I was applying for this discontinuance and I said to him I have no plans on blocking off access to your facility. He and I have gotten along well in the year or two that he has owned his business, and we spoke on Friday where I reiterated that I have no plans to block off access to his back doors. In fact, historically he uses my lot to facilitate turning vehicles around getting into those back doors. The space that the alley provides is ample to get in and out on occasion; it's just more convenient that he pulls a U-turn or a three-point turn in my lot, which is fine. We get along great; we have an excellent working relationship. I think that's the only issue here and as far as the owner of Meineke and myself, we have no problems with it. As Rolf said, we can execute a document that would state that in a matter of days, depending on what happens here tonight.

**Alderman Lopez** asked Mr. Arnold, the muffler shop...with just a verbal agreement or written agreement, and we closed the street and the individual sells the piece of property...how does that work?

**Mr. Arnold**, responded if the street is discontinued, it ceases to be a public street and presumably whoever owns the property could do with it as he wishes if he owns the building or its adjacent property.

**Alderman Smith** stated I would like to follow up on that. What are we going to do with the sewer that runs down there? If they make it a parking lot, each abutter gets ten feet either side. What are we going to do?

**Mr. Arnold** responded my understanding of the motion is that easements for utilities be retained, so they would be retained.

**Alderman Smith** stated but we have no control over the property, what they do with the property. We might not be able to get in, in case of emergency, a sewer backup.

**Mr. Arnold** stated if you have utility easement I think that is certainly implied access to your easement for the purpose for which is was reserved.

**Alderman Smith** stated I really think looking over this situation and so forth like that, I think that they are trying to get some adequate parking in the whole lane from Auburn Street to Cedar Street. I know he wanted to develop that vacant land and he couldn't. I think it's somewhat of a hornets nest. At first I didn't think there was anything wrong with it, but I can see now that you have two relative that really don't get along with each other. I don't want to bring in any personalities but this is causing a problem for the City.

**Mr. Theodosopoulos** stated we would be willing to stipulate that it would not be developed for parking.

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

**Mr. Calvin Kapos** stated my father is Michael Kapos. He and I represent the building there. We are definitely opposed to it. As we were listening to earlier, the building is ours, not Meineke's. We have three garages that go out that back bay and we need that street left open for that purpose whether Meineke is there or moved out. It's a location that we service and if we are going to make any revenue from the building where it exists that Meineke is there, we cannot close that side of the street. As you heard earlier, our abutter decided against us closing the other side of the street that we tried to develop and we are still trying to develop both lots. It's not just, as someone mentioned, a family war. We are not part of that family but we are trying to develop that corner and by closing that other end of the street, it will just put Meineke out of business. There are three bays that they use. They use it for towing also; in the evening they bring cars in there, and they don't necessarily need that second parking lot to turn their cars around.

**Alderman M. Roy** stated I am slightly perplexed. I know Cliff personally and he was proposing this six months ago and now you are speaking against it. I thought for the first time I would actually see everyone here for the same purpose, but now you are opposing something that you asked for six months ago.

**Mr. Kapos** stated we had asked for the whole road to be closed at one time, not really looking into Meineke. Our lease was going to be up soon and we thought maybe that would tear the whole building down at that point in time or do something different. As we looked at it again, it was an oops on our side in keeping Meineke in place and renewing a lease. It would have been an oops for us if we had closed the whole street.

**Mr. Clifford Harris**, Prudential Varney commercial listing agent stated I represent Michael in owning of this property. I hopefully can answer some of the questions you guys had earlier on what was transpiring in closing this. One of the issues, the reason we couldn't close the whole thing, was because of the easements, the utility easements, both sewer and I think there was also some public service lines that were going through that area. We were told we could not close that whole road at that point in time. Another large reason why that whole road could not be closed, and we had to retain the opening from one end, from Auburn Street to Cedar Street, was because of the large trucks that were being used by the fruit company to go back and forth on that road. It was used every day, three and four times a day. That is what was said the last time that we were here, that they were using it for their trucks to go back and forth. So we left that open; we haven't put up any guards or stoppage so that no one can pass through that area, so that still remains open, although there are no utilities on other section on 17 Cedar Street; there are no utilities on that side of the road. Opposing it is also for the fact that you have Meineke and the use of the building that Michael has there which has already been stated so I won't reiterate that.

**B.** *Petition for discontinuance of a portion of Union East Back Street.*

**Mr. Sheppard** stated Union East Back Street was originally dedicated by Planet Amoskeag Company as a 270 foot long by 20 foot wide passageway. The Highway Department maintains this section of the street and it is located between Lowell Street and Concord Street. There is a City sewer main running through the southerly area of this petitioned area, but we believe it services only the abutters to this alley. The Highway Department supports this discontinuance of Union East Back Street subject to reservation of utility easement for the full length and width of petitioned area and should it be...Alderman Garrity questioned me today regarding that sewer; if there are future development plans and there is a need to

discontinue that sewer and they are the only users of that sewer, I am sure we would be bringing it back to the Lands and Buildings Committee to discontinue that easement.

**Alderman O'Neil** asked Kevin, what happens to any of the overhead easements?

**Mr. Sheppard** responded the abutters or property owners at the time would need to negotiate with each of the utilities themselves.

**Alderman O'Neil** stated which we may hear I think has happened. In that case we don't have any interest then in this street.

**Mr. Sheppard** stated correct.

**Mayor Guinta** called for those wishing to speak in favor of the petition.

**Gary Frost**, 89 Lovering Street, Executive Director of Boys and Girls Club located at 555 Union Street, stated approximately between 15 and 20 years ago we began acquiring property on that entire block surrounded by Union, Lowell, Walnut and Concord Streets in anticipation of trying to expand the Boys and Girls Club, so this has been a long process. We have in fact been successfully doing that so we do own all of the property on that block. Our plans are to expand our facility with an expansion into what is our current parking lot but also across the alleyway, if the discontinuance is approved, with some structures as well. We met with the overhead utility companies two or three months ago in regards to relocating the power lines, the cable TV lines and also the telephone lines so they would go around and access the alley to the north of Lowell Street which does provide service. As indicated previously, the sewer line does only...it doesn't access or attach to Lowell Street on the north side but it does attach to Concord

Street on the south side but it only provides services to the buildings that sit on the block now. There is a potential that we would use that ourselves as a sewer line as well. The biggest concern we have would be the overhead utility lines and the reservation of keeping that as an easement because it would not allow us to build across the alleyway, which is really what we want to do.

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

**C.** *Petition for discontinuance of a portion Phillippe Cote Street.*

**Mr. Sheppard** stated the last request is to discontinue Phillippe Cote Lane in its entirety from Commercial Street running around back from Commercial Street around to the other end of Phillippe Cote Lane that comes back out to Commercial Street. If the street is discontinued, the City will actually own the interest in the underlying street, so as part of the negotiations of that property I think it's the intent of the City to sell that to the property owners. I believe also Mr. Arnold has a recommended motion, should the Board wish to move forward on this.

**Alderman Lopez** stated in reference to this particular item, maybe Attorney Arnold can guide us now as far as in conjunction with the approval of Seal Tanning. Where does this stand? I don't think anybody from MEDO is here or anybody is going to testify, but are you familiar with the contract that we approved for Seal Tanning?

**Mr. Arnold** responded I am roughly familiar with it, yes.

**Alderman Lopez** stated if I recollect there is something like \$426,000 in reference if we close that street. Where does that stand not at Pandora Buildings not going through?

**Mr. Arnold** responded the agreement itself, Alderman, calls for either 1848 Associates or the Pandora purchaser to make arrangements essentially to rehab that building. I believe you received a letter maybe about a week ago saying that the plan developer had withdrawn, but the agreement says either 1848 Associates or the purchaser, so we still have an agreement with 1848 Associates to rehab that building in return for the land transactions we are talking about. I would presume that 1848 Associates will probably look for someone else to appropriately rehab or develop the Pandora Building.

**Alderman Lopez** stated if I am following you correctly then, if we don't close the street, then we lose the \$426,000.

**Mr. Arnold** stated I couldn't tell you the exact figure but if that is the figure attached to it, yes, you would lose that. I guess I should add that the Granite Street lot and the Seal Tanning lot were all kind of tied together in the agreement with the discontinuance and the land under Phillippe Cote Street.

**Alderman Domaingue** asked is it possible...and I read the original P&S when it came before the Board and I didn't see a time line per say spelled out in that. Is it possible to not release that road until that work is actually underway?

**Mr. Arnold** responded there were some practical problems with that and that's why the agreement was structured the way it was. With the road discontinuance there is a six month appeal period once the Board takes a vote, so that was of some concern in the overall plan to put up a parking garage and redevelop the Pandora Building.

**Mayor Guinta** stated however, there have been steps taken to secure the building which I think was a requirement of the contract. My understanding is that they have taken those steps.

**Alderman Domaingue** stated well, there were preliminary steps taken to secure the building but I also believe that there is a clause in there that gets them out of rehabbing that building if they pay a certain amount of money, if I am not mistaken.

**Mr. Arnold** stated no, there was a provision for a letter of credit that would be drawn down if they did not rehabilitate the building in time, yes.

**Alderman Domaingue** asked so there is still the option for them not to rehabilitate that building? That's my biggest concern here and I don't want to really give anymore ground until I have some sort of assurance that that's going to happen. Alderman Gatsas is laughing.

**Mayor Guinta** stated we do have a signed agreement so the City needs to honor its side of the agreement. If we don't honor our side of the agreement that would probably give their side cause for concern, so at this point I wouldn't see a reason to hold it up. I think we need to move forward with our end of the bargain.

**Alderman Domaingue** stated it's my understanding they are already in breach of that agreement by making the individual they contracted with do the rehab work.

**Mayor Guinta** stated no, actually the contract says... well our contract, correct me if I am wrong, the City's contract is not with College Street; it's with 1848 Associates.

**Mr. Arnold** stated yes, with 1848 Associates, and it makes provisions for 1848 or the Pandora purchaser, who is not named, to rehab. It was obviously designed so that 1848 Associates could have another entity presumably purchase and rehab Pandora.

**Alderman Smith** stated this has been going on since probably 2004 and I follow it and I have reservations. I can't understand why the Economic Development Director isn't here since he proposed this at the end of May. My concern is I agree with you that we have certain parts that we have to do with the lease. I was down there today and that building is in terrible shape. I don't think its going to be restored. The only reason I voted for it was for restoration of Pandora Building, and I hate to say we gave up Phillippe Cote Street and they don't deliver. That's the problem I have with the whole situation. I can't understand, since the Economic Developer sent this letter, why he isn't there.

**Mayor Guinta** stated he is actually on a pre-established vacation with his family prior to this date being set; otherwise he would have been here.

**Alderman M. Roy** asked all of the places where College Street was required to act, by not selling the Pandora Building to them, 1848 Associates is now responsible for all of their proposed actions, is that correct?

**Mr. Arnold** stated for finding someone to replace College Street, yes.

**Alderman M. Roy** asked but if they find no one then the letters of credit rehabbing or preservation of the building...

**Mr. Arnold** interjected would be posted by 1848.

**Mayor Guinta** stated per the contract. The contract requires them to do it or the purchaser.

**Alderman M. Roy** stated I just want the public to know that. So it's the purchaser or 1848, so if their deal didn't work out with College Street then they are on the hook to either find someone else to take their place or they will be responsible for the letters of credit and rehabbing the building, which they have started.

**Mayor Guinta** stated in addition to that, they have been in the rehab business. They have rehabbed other business, other buildings, in that location. They have expressed to my office as well as to the Economic Development Office, two things: that they are actively engaged in discussions with other developers and that they are also considering redevelopment themselves.

**Alderman J. Roy** stated I agree with Alderman Smith that I wish Jay were here because one of the things that I know I stated when this whole thing was going down is I wanted to see a reverter clause if they didn't rehab the Pandora Building, that we would get the lots back and I was told at that time that that was a deal breaker. But, he assured us that on the day of the signing of this contract that they would be selling the Pandora and that would guarantee us that it would be developed. That didn't happen. Now we are hearing that they have a signed agreement, that they are taking possession of those lots and they haven't sold the building. I would have to agree with Alderman Domaingue that there is a loophole here. If they come up with that letter of credit, the Pandora Building may never get rehabbed which was the corner stone of that whole deal. Once again I am afraid we have been duped.

**Mayor Guinta** stated the contract requires 1848....

**Alderman J. Roy** interjected to put up a letter of credit, not to rehab it.

**Mayor Guinta** stated I guess there are two ways you could go. I mean you could vote for it or you can vote against it. If you vote against it, you are stopping this deal in its tracks. If you vote in favor of it, you are honoring the City side of the agreement.

**Alderman O'Neil** asked Tom, is there a legal possibility that if we discontinue these streets and it becomes their possession under the agreement that Pandora Building still could never get developed?

**Mr. Arnold** responded I don't think that's either...can I guarantee you that Pandora is going to rehabbed, no I can't.

**Alderman O'Neil** stated I don't want to sound like Alderman Gatsas.  
Tom, it's a yes or a no.

**Mr. Arnold** stated the agreement calls for them to rehab Pandora.

**Alderman O'Neil** asked again is there a legal possibility that if we close these streets, that Pandora....

**Mayor Guinta** interjected Alderman, the answer is yes...

**Alderman O'Neil** interjected Your Honor, I am asking a legal question.

**Mayor Guinta** stated I know, but the answer is yes. The answer is yes for any development.

**Alderman O'Neil** asked procedurally if there is not a comfort level with the Board moving forward tonight, because traditionally we would act on this tonight, correct?

**Mayor Guinta** responded yes.

**Alderman O'Neil** asked do we table it now? Do we table it when we are out at the site? If we table it out at the site, I am guessing we don't have to go out and look at it again if we want to move forward at some point. If we table it here I am guessing we would still have to go out and look at it at a future date to meet the requirements of the statute, correct?

**Mr. Arnold** asked the requirements of which statute?

**Alderman O'Neil** responded the statute that requires us to discontinue the streets, we have to go out and physically look at.

**Mr. Arnold** stated yes.

**Alderman O'Neil** state so we could table it right now, but it would require us to go back out at a future date to look at it. We could table it while we are out viewing it, and then it would just sit on the table for some future action.

**Mr. Arnold** stated yes.

**Alderman O'Neil** asked we wouldn't have to go back out, correct?

**Mr. Arnold** responded yes.

**Alderman O'Neil** stated so those two options could happen.

**Alderman Shea** asked what will the tabling do? In other words, is it beneficial to table it? Does it do a certain amount of injustice to the contractual agreement that we have?

**Mayor Guinta** responded I am not sure the reason to table, other than to ask Mr. Minkarah specific questions. I don't know if there is another reason that an Alderman is considering, but in my opinion, because there is a six month appeal process, we would then delay, first of all, that period and secondly we would delay our side of the contract. I don't know...there is no time requirement by which we need to take this action, but I assume that there is something within the document that requires us to at least take the action.

**Mr. Arnold** stated there are certainly provisions in the document if the Board votes not to discontinue Phillippe Cote Street, yes.

**Alderman Lopez** stated maybe this gentleman sitting there could answer some of these questions, too.

**Alderman Shea** stated the other question I had was concerning what you commented on about the developers and the fact that there are certain people that have expressed interest in developing. I am just wondering whether it's a month from now or six months from now.

**Mayor Guinta** stated all that has been shared with me by 1848 is that they are engaged with multiple developers, in discussions regarding development of the parcel. They have conveyed to me should they not identify a developer, that they

are themselves still willing to honor the contract and develop the parcel themselves.

**Alderman Shea** stated one local developer was named in the paper today and I am not sure if that developer is the developer that is interested in it.

**Mayor Guinta** asked who was it in the paper? I missed it.

**Alderman Shea** stated Mr. Anagnost.

**Mayor Guinta** stated that's true.

**Alderman Domaingue** stated I am thinking out loud here but to me it would see appropriate to table it until...my comfort level is to table it until I get some assurance in writing and not just as a representation to you, Your Honor, that if they are unable to secure a developer they will develop it themselves.

**Mayor Guinta** asked assurance beyond the signed agreement?

**Alderman Domaingue** responded assurance beyond the signed agreement.

**Mayor Guinta** stated it's in the signed agreement they would do that, so I am not sure why we would need a second assurance.

**Alderman Domaingue** stated I would prefer it.

**Alderman Gatsas** asked who did it say was stated in the agreement?

**Mayor Guinta** responded that either 1848 is responsible for renovation or the purchaser of the building.

**Alderman Gatsas** stated well there is certainly some question about the agreement because it says in section 4, the closing may be held simultaneously with the closing of the sale of the Pandora property to the Pandora purchaser; refer to section 6D, subsection 6 below. Now I guess if there is no purchaser of Pandora, does that leave this contract null and void?

**Mr. Arnold** responded no. If you read section 6D, subsection 6 as you just cited, it says that the owner or the Pandora purchaser shall obtain all necessary permits and approvals.

**Alderman Gatsas** stated that's what it says there, but I'm going to section 4; what does it say in section 4? It's pretty clear what it says in section 4. It doesn't say 'or'; it says 'the purchaser'. So maybe you should have read this agreement a lot clearer to protect the City's interest.

**Mr. Arnold** stated I am not sure which section of paragraph 4 you are referring to, Alderman.

**Alderman Gatsas** stated it says in the second sentence I believe, it says "the closing may be held simultaneously with the closing of the sale of the Pandora property to the Pandora purchaser."

**Mr. Arnold** stated that's right, "may be held" and that is certainly correct. I think that alters their requirements of paragraph six.

**Alderman Gatsas** asked has there been any transfer of title?

**Mr. Arnold** responded I presume with respect to the Pandora Building that there has not been. I have not been informed or a transfer of title.

**Alderman Gatsas** stated the Pandora building is not my question. My question is has there been a transfer of title on the two lots?

**Mr. Arnold** responded no.

**Alderman Gatsas** stated so we have received no money. Have we received a deposit of \$152,000? Have we received a deposit?

**Mr. Arnold** stated I believe we have, yes.

**Alderman Gatsas** stated you believe we have or have we?

**Mr. Arnold** stated I believe...I have seen....

**Alderman Gatsas** interjected I don't want to believe; this is a \$1.5 million deal. Either we have received a deposit of we haven't.

**Mr. Arnold** stated I have not physically held a check, Alderman. Unfortunately, Mr. Minkarah who I believe got that check is not here, nor is our Finance Director to tell me if it was deposited, but my recollection is that we did receive the \$152,000.

**Alderman Gatsas** stated maybe Mr. Tuttle can tell me. Did he send a check to the City?

**Mr. Steve Hermans** stated I am Steve Hermans.

**Alderman Gatsas** stated I am sorry Mr. Hermans. Was there a check been sent?

**Mayor Guinta** interjected it was sent. I am almost certain it was received by Jay.

**Mr. Hermans** stated there was a check delivered to Jay's office.

**Mr. Arnold** stated I believe that I discussed with Sharon Wickens what type of account should be opened up to put that check into.

**Alderman Gatsas** stated simple question.

**Alderman Lopez** stated let's move on.

**Mayor Guinta** called for those wishing to speak in favor of the petition.

**Mr. Stephen Hermans**, lawyer for 1848 Associates and 1850 Associates, Limited Partnership, stated under the terms of the agreement that 1848 Associates has with the City, providing for the sale of the Seal Tanning lot, the Granite Street lot and Phillippe Cote Street, the City's obligation to sell those three parcels is contingent upon the Pandora developer having obtained all necessary permits to redevelop the Pandora building, title to the Pandora property passing to the party that holds those permits, and that Pandora developer posting a letter of credit. All of those three things, in addition to many other things, are conditions that must be satisfied before the City passes title to these three properties to 1848 Associates. They are listed in section 6D, subsection 6 of the agreement. I think you all have a copy of that and if this meeting has to be tabled for everybody to read it that's fine. The agreement also says that the City will commence the process to close Cote Street in order to start the six month time period during which an aggrieved party has a

right to appeal the closing of Cote Street. The agreement also contemplated that that appeal might be taken after the closing. In other words, after the Pandora purchaser has obtained the permits, posted the letter of credit and obtained title to that property because that's when the City transfers the lots. Those closings would take place; then the appeal is taken and it's always possible, because anything is possible, that some court a year from now could invalidate the closing of Cote Street. What do we do then? We already closed with the City. Our Pandora purchaser already put up the letter of credit and started the redevelopment. What are we going to do? We recognize that as a possibility even though I think it's very unlikely. So the agreement addresses allocating a portion of the purchase price to Cote Street, just in case Cote Street has to go back to the City after the closing. That's the only place in this agreement where Cote Street is dealt with as a separate parcel from the other two. It's the only place where a portion of the purchase price is allocated to Cote Street, just to deal with that possibility, that the closing is invalidated and the land has to go back to the City.

**Alderman Lopez** asked in reference to if this was tabled or we didn't close Cote Street, what's the ramification here?

**Mr. Hermans** responded closing Cote Street is one of the conditions to the closing of the title to the sale of the three parcels.

**Alderman Lopez** asked is there money involved as far as if we don't?

**Mr. Hermans** stated if the sale never happens, the deposit goes back to the buyer and the deal never closes.

**Alderman Lopez** stated okay, thank you.

**Mr. Hermans** added we did pay the deposit. I wrote the letter that enclosed the check and had the check hand-delivered. I assume the City negotiated the check. It was delivered.

**Alderman Gatsas** stated there needs to be some clarity on this thing. The question that Alderman Lopez put to you was this: if we don't discontinue the street then we don't have a deal.

**Mr. Hermans** stated then one of the conditions is not... you have a deal right now. It's signed up, and one of the sections of the agreement deals with the closing of Cote Street.

**Mayor Guinta** stated it's one of the responsibilities that the City has in order to...

**Alderman Gatsas** interjected correct. So if we don't close Cote Street, I assume we will then be in a lawsuit.

**Mr. Hermans** stated I will just read what the agreement says. In section 6D, subsection 1 "On the date hereof Phillippe Cote Street is a public highway. The seller, (that means the City), shall commence the discontinuance process for Phillippe Cote Street as a public highway so that seller may convey the simple title to Cote Street to purchaser."

**Mayor Guinta** stated so we would be in breach if we...

**Mr. Hermans** interjected but you don't convey the title until all of those other conditions are satisfied, including a Pandora buyer with all the permits in hand and title being transferred to that buyer and that buyer putting up the letter of credit.

**Alderman M. Roy** stated the attorney just said it and I am going to put it in absolute laymen's terms and correct me if I am wrong, either you sir or our City Solicitor, by discontinuing the roadway we are just taking it out of public servitude. We are not relaying title. We are not giving it away. We are not selling it. We are not doing anything with it but removing it from the Highway Department's purview as a public right of way. It is still owned by the City. It would have the same status as Derryfield Park or Stark Park. It would be City-owned land that will not be conveyed until the other closings take place or the other stipulations, as the attorney has just mentioned, happen. So we are not doing anything except taking away its roadway status and that's it. We are not giving it away. We are not selling it and anyone can appeal that process anytime in the next six months, and as the attorney stated, they can go to court years from now and do this, but in order to build a garage and give that neighborhood the potential of having any redevelopment which parking is a key factor to, we have to go ahead and let them start the planning process which is part of the agreement that the City signed. We are not giving it away; we are not letting anyone have it; we need to move forward. If the closing doesn't happen we have Phillippe Cote as public lands as we would have the parking lots.

**Alderman Smith** asked Mr. Hermans, were you at the meeting that we had with David Nyburg?

**Mr. Hermans** stated yes.

**Alderman Smith** asked he sold us the bill of goods. I think we are getting thrown a curve ball at us right now. He sold us a bill of goods. He came up there because we had another developer there. He came in. He said he was in Gilford, New Hampshire. He said this was his expertise and everything. What happened?

**Mr. Hermans** stated I assume earlier you were talking about the public meeting of the Board of Mayor and Aldermen.

**Alderman Smith** stated that's correct.

**Mr. Hermans** stated I have no reason to believe that he was selling you a bill of goods or us a bill of goods. There are real estate transactions such as the one we had with Mr. Nyburg's company where a purchase and sale agreement is signed, the buyer has certain due diligence rights to check out the property however they see fit and make a decision at the end of the due diligence period about whether they want to proceed. That's what happens. I can't go into any more detail than that but I wouldn't want to be considered to having agreed with any statement that he sold a bill of goods.

**Alderman Lopez** stated this is just a legal agreement that we have to go down there and close the street and we have all this other stuff afterwards, other stuff meaning the title and all that, six months to appeal and all that.

**Mr. Arnold** stated I think Alderman M. Roy put it correctly that by closing the street you are merely closing the public right of way, that the City would retain title to the land underneath the street which would be conveyed upon satisfying the conditions that are in the agreement that Mr. Hermans has referred to.

**Alderman Lopez** stated right, but our role in this is that we are fulfilling our agreement. That's what I want to understand. Do you agree that with that legal document that we are fulfilling our agreement?

**Mr. Arnold** stated I think that under this document we certainly contemplated that the Board of Mayor and Aldermen would discontinue that road yes.

**Alderman Ouellette** stated sir, I am sure you can understand the apprehension of the some of the Board members here because the night that Alderman Smith is alluding to that we had a gentleman sit here and pretty much guarantee us that he was going to be the one rehabbing that building and we sort of took him at his word that night because he was so forceful about it. I think that not having a plan in place for the building, I think that's why some of the Aldermen who voted for it that night, and certainly voted for the agreement to close the street, are a little bit skeptical. If that's not the right word, why we are a little bit nervous about moving forward because as Alderman Domaingue said and Alderman J. Roy said rehabbing this Pandora building was paramount for I know myself to approve the project. So I think with uncertainty as to exactly how that's going to happen I think that's where we are. I understand we just received the letter a couple of weeks ago in terms of building and the person backing out on rehabbing the building, and that the people at 1848 are being diligent in trying to come up with a solution as soon as possible. I think for me that's the apprehension right now and I think that's why Alderman O'Neil suggested tabling this.

**Mr. Hermans** stated I appreciate that. If tonight were the closing and we were putting in front of the Mayor the deed to sign to transfer ownership of these properties to 1848, I would expect everybody to say, don't do it because we don't have answers to all of our questions about this, but that's not what's happening and that doesn't happen. The deed is not put in front of the Mayor until there is a Pandora developer identified, been through the approval process, obtained every permit they need to rehab the building and posted a letter of credit. If those things don't happen, you don't close. You retain ownership of the properties.

**Alderman Gatsas** stated I guess I'll ask this question of Mr. Sheppard. Is the discontinuance of this street any different than the two we just did, not actually the Union Street one but the one prior to that, if it goes through and the Board votes on it?

**Mr. Sheppard** responded sure and that's a great question because that's what has been going through my mind. I think it's very important that the Aldermen understand.

**Alderman Gatsas** stated just answer the question.

**Mr. Sheppard** stated yes.

**Alderman Gatsas** asked so when we discontinue this street, 50% of the street is going to go with the Pandora building because that's really what fronts around it.

**Mr. Arnold** interjected Alderman, no. That's not correct.

**Alderman Gatsas** asked how is that not correct?

**Mr. Arnold** stated because in this case the City owns the fee underneath the street.

**Mr. Sheppard** so it can not be petitioned to acquire title by the abutters. The City retains ownership of that street even once it's discontinued.

**Alderman Gatsas** asked well how is that different from the one we are doing?

**Mr. Sheppard** responded in the previous ones, and it's more typical, the City only has a right of way through the property.

**Alderman Gatsas** asked so that's not going to happen here.

**Mr. Sheppard** stated correct.

**Alderman Gatsas** asked what happens to the meters? Are there any parking meters on this street?

**Mr. Sheppard** responded I'm not too sure. I am sure we will find out when we field visit. Again, the City retains ownership until I believe the closing is what Mr. Arnold said.

**Alderman O'Neil** stated the attorney mentioned a number of steps that had to happen. Could those steps happen before the street is closed? Meaning could this street closure be approved in July or August or September if the Board had a comfort level to see some other activity?

**Mr. Arnold** responded I would leave how the other party would view that transaction to Mr. Hermans. As I have mentioned before though, the practical problem we face here is the six month period of appeal. That starts to run upon the Board taking the vote to discontinue the street, which is the reason that we set up the Road Hearing for tonight. Technically could you wait? Yes, but as I said, I would leave to Mr. Hermans how that might effect 1848's view of this transaction.

**Alderman M. Roy** stated one comment was made earlier that we took Mr. Nyburg on his word, and I have been involved in enough commercial transactions or development projects to know that commercial real estate is a very tricky subject. So, we didn't take him at his word; we added a provision that either the purchaser or 1848 would put up a \$750,000 penalty should they not go forward,

which if this was a private transaction, the City would have no bearing on if 1848 was dealing directly with Mr. Nyburg. Because he did come forward ahead of this discussion regarding the parking structures, we were able to require him to put that, or require the purchaser or owner, to put up a \$750,000 letter of credit that we will be drawing on. So we didn't take him at his word we took him at a three quarters of a million dollar letter of credit, which was required as part of this.

**Mayor Guinta** calls for those wishing to speak in opposition of the petition.

**Mr. Callum McNeil** stated hello everyone. I don't get a chance to talk to you much. I just wanted to recommend that we don't go through with the relinquishing of the road. I think we should move forward on a program of redevelopment of the building. We all go down there and look at the building; we all know how bad the building is, the shape it's in; the horrible place it's in. I just want to come out and say that we need to redevelop this area. That's a huge gateway we have coming in there. Pandora is a huge let down when you get off... Granite Street is a huge amazing thing and when Pandora was built in...I don't even know the date off the top of my head, but I think it was the 1800's, it was a great building. Today with our engineering that we have, I think we can do a lot better. I don't like to see the roundabout way this development is happening. We do have two development crews that are doing two different things here. One wants to make the whole building totally destroyed and redeveloped. The other actually wants to get some parking developed out of that. I see a lot bigger project than that. Let's take down Pandora and make a whole new structure. I think there are a lot of development crews in the area, not just Mr. Anagnost, who can really do this. I would like to see you think outside the box and I know its hard to step up against the average voter out there with Glen Ouellette and everybody else coming out there, but I think there is some thinking into really tearing down Pandora and starting with something new.

**Alderman Domaingue** moved to recess the hearing and proceed to view the areas identified in the petitions as presented. Alderman Pinard duly seconded the motion. There being none opposed, the motion carried.

*UPON VIEWING*

*Petition for discontinuance of a portion of Union East Back Street.*

**Mayor Guinta** called the meeting back to order at the site of the first petition.

**Mr. Sheppard** advised the Board of the area petitioned. The Board viewed the area.

***Alderman J. Roy** moved to approve the petition for discontinuance as presented subject to reserving any utility easements as may be required. **Alderman Garrity** duly seconded the motion. There being none opposed, the motion carried.*

*There being no further business at this site, on motion of **Alderman J. Roy**, duly seconded by **Alderman Pinard**, it was voted to recess the meeting to proceed to the next area petitioned.*

*Petition for layout and discontinuance of a portion of Elm East Back Street (aka Manhattan Lane; aka Harry Theo Drive).*

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

**Mr. Sheppard** advised the Board of the area petitioned. The Board viewed the area.

***Alderman Pinard** moved to approve the petition for layout and discontinuance as presented subject to reserving any utility easements as may be required.*

***Alderman Garrity** duly seconded the motion.*

A Roll Call vote was requested by **Alderman Sullivan**.

Aldermen Pinard, O'Neil, Lopez, Garrity, Ouellette, M. Roy voted in favor of the motion. Aldermen Sullivan, Smith, Shea, Gatsas, and J. Roy were opposed.

Aldermen Osborne, DeVries, and Domaingue were absent. *The motion carried.*

*There being no further business at this site, on motion of **Alderman Lopez**, duly seconded by **Alderman J. Roy**, it was voted to recess the meeting to proceed to the next area petitioned.*

*Petition for discontinuance of a portion Phillippe Cote Street.*

**Mayor Guinta** called the meeting back to order at the site of the final petition.

**Mr. Sheppard** advised the Board of the area petitioned. The Board viewed the area.

***Alderman Garrity** moved to approve the petition for discontinuance as presented excepting and reserving an easement for all existing utilities over the width of the petitioned area, upon the certification of the City Solicitor that:*

The Manchester Planning Board and/or the Manchester Zoning Board of Adjustment has granted such approvals as they may require as a result of the discontinuance of Phillippe Cote Street; and

Any restriction or covenant requiring that the land under Phillippe Cote Street be used as a public street has been formally released of record by the Manchester Housing Authority and/or the United States or any of its agencies or departments as may be required.

*Alderman Shea* duly seconded the motion. The motion carried, with Aldermen *O'Neil* and *Gatsas* voting in opposition.

There being no further business, on motion of **Alderman Garrity**, duly seconded by **Alderman Shea**, it was voted to adjourn.

A True Record. Attest.

City Clerk