

COMMITTEE ON LANDS AND BUILDINGS

August 16, 2016

4:30 p.m.

Chairman Long called the meeting to order.

The Clerk called the roll.

Present: Aldermen Long, Shaw, Cavanaugh, Herbert, Pappas

Messrs.: J. Clifford, D. Pinard, F. McNeill, T. Arnold, B. Nardi,
L. LaFreniere, J. Belanger

3. [Communication from Constantine Scrivanos on behalf of Mantec, LLC regarding interest in purchasing a City-owned parcel on Beech Street, Map 278 Lot 2A abutting Dunkin Donuts.](#)

Alderman Pappas moved to enter into non-public session pursuant to RSA 91-A:3(II)(D) for property acquisition sale or lease. Alderman Herbert duly seconded the motion. A roll call vote was taken. Aldermen Long, Shaw, Cavanaugh, Herbert and Pappas all voted yea. The motion carried.

Chairman Long called the meeting back to order.

On motion of Alderman Pappas, duly seconded by Alderman Shaw, it was voted to seal the minutes.

Alderman Cavanaugh moved to deny the request to sell the property. There was no second.

Alderman Herbert moved to authorize the City Solicitor to negotiate the sale of the property. Alderman Pappas duly seconded the motion.

Alderman Herbert stated the offer is insufficient but I am in favor of selling the property if the number is right.

Alderman Cavanaugh stated I know they are using part of that land that they want to buy. Do we know if the City cut down the trees that were there?

Chairman Long called up the representative from the company.

Alderman Cavanaugh asked there were some pine trees that were behind there where it wraps around to the drive through and they were between the paved area and the tennis courts. There were probably 5-7 of them and they have been chopped down. I didn't know if you knew who did that or if it was something the owner did.

James Clifford, NGP Management, asked was that something that happened recently?

Alderman Cavanaugh answered I would say between the spring and summer. It was this year.

Mr. Clifford replied I have no idea. I can look into that. I am certainly not aware of us cutting them down. Were those trees definitely on the parcel owned by the City and not on our parcel?

Alderman Cavanaugh responded I am pretty sure. I am not exactly sure but I think it was on the City side. Your parcel ends at the pavement correct?

Mr. Clifford answered I think it is sort of in the middle of the pavement. The back half of the back parking lot.

Alderman Cavanaugh stated the trees would have been on the City property.

Mr. Clifford stated I can find out about that.

Chairman Long called for a vote. The motion carried with Alderman Cavanaugh duly recorded in opposition.

Chairman Long asked maybe Parks & Recreation can answer the question with regard to the pine trees.

Don Pinard, Chief of Parks, Recreation & Cemetery, stated I am not aware that we cut down any of those pine trees ourselves. Unless it was something that was done because of the storm and they needed to come down we did not cut those trees down.

Alderman Cavanaugh stated it was previous to the storm. That is definitely on City property right?

Mr. Pinard answered yes that side of the parking lot is definitely ours.

TABLED ITEMS

4. [Communication from Mike Lanoie of the Derryfield Restaurant, requesting changes to the property and approval of the amended management agreement.](#)
(Note: Tabled 6/28/16; revised contract to be submitted.)

This item remained on the table.

5. [Request to purchase City-owned property located at Tax Map 356, Lot 1A, behind 399 Silver Street.](#)
*(Note: **Communication from the NHDOT and the applicant are attached.** Tabled 6/28/16; Applicant to obtain a survey of the property and communication from NHDOT regarding the sale of the property, and the Planning Department to verify the intended purpose.)*

On motion of Alderman Shaw, duly seconded by Alderman Pappas, it was voted to remove this item from the table.

Chairman Long stated this is the property at 399 Silver Street, the railroad track property. I learned today of an issue with the CSO project. Is Mr. McNeill here? If he could come up and give us an update.

Fred McNeill, Chief Engineer, EPD, stated you are correct. That is part of our CSO long-term control program. Can I share some documents? We just distributed two documents. The first document is an overall plan of our CSO long-term control program. This is a program that has been mandated from the EPA. Just to give you a little bit of background, if you may remember we worked on the west side with a 10 year, \$58 million program that we completed in 2010. We actually started work on the east side and for the past four years we have been on Chestnut Street and that is all part of this project. We anticipate a major

relocation of what we call cemetery brook and that is the line that you see outlined going up through the heart of the City. In the majority of that we were planning on using the old rail trail for that. You can see that I highlighted 399 Silver Street and our plan was to utilize that rail trail for a large size box culvert. If you look just above where I have designated 399 Silver Street you see the quote for Contract 4. We are looking at a 10' wide by 10' high box culvert 25 feet deep about $\frac{3}{4}$ of a mile through there. In working with Parks & Recreation, the second handout I gave you is what we envision the rail trail will look like afterwards which will be a paved trail with various amenities, benches and plantings along the way over our box culvert. We submitted this to the EPA in 2010. This plan was updated in 2011 but as you can see for a long time the City through the Department of Public Works Environmental Division identified this rail trail to use as the routing of our relocation of cemetery brook.

Alderman Shaw asked when is the anticipated start and finish date?

Mr. McNeill answered it will be a 15 year program and we are actually in active negotiations with the EPA now but it is most likely two years away before we start.

Chairman Long asked which way is this culvert going? Is it perpendicular to the rail?

Mr. McNeill responded it would follow the rail trail right down. How that rail trail goes through half of the City, we would be following that route which is a southwesterly route to the Merrimack river.

Chairman Long stated there is a condo abutting this property at 399 Silver Street. Is it going through their parking lot also?

Mr. McNeill replied yes it would if that is part of the rail trail. We have not done detailed design. At this point, we just have a conceptual design. In general we are using the rail trail as a right-of-way for our box culvert.

Chairman Long stated that is what I am trying to determine. I know there is parking on that trail right now. I don't know if that property was sold by the state prior to us getting the rail trail or if there is an agreement with the property owner.

Mr. McNeill responded there are no agreements to my knowledge but I will note that as we prepared this route there was infringement on the rail trail in several areas through there and we felt that we would deal with those on a case by case basis as we get closer to the project.

Chairman Long asked so you haven't identified the infringements as people having an agreement with us or prior to us getting the state's agreement to give us that land? You haven't defined those yet?

Mr. McNeill answered we have not.

Chairman Long asked when is this going to begin?

Mr. McNeill replied contract 2 is at least two years away and we have to build downstream so contract 4 realistically is 10 years away.

Alderman Shaw stated I am just a little confused because if some of this area is already purchased and already in the right-of-way and it is two years out and ten years to completion if it even begins I don't see why the property couldn't be sold with the understanding that there is a chance that he will have to relinquish it at

some time if the trail goes through there. Maybe we could have an agreement in the sale that tells them that this is going to happen just as it was when these other parcels were sold. I have a hard time denying this where the other parcels have already been sold.

Mr. McNeill stated a utility easement could be an option. I am looking at Mr. Arnold but that is commonly used as a utility easement. In the sale we stipulate that the City has the right to use that easement for utilities.

Alderman Shaw stated that is what I was thinking of. I don't know how the buyer would feel about this or his lawyer but it might be something they would want to pursue.

Alderman Cavanaugh stated I see contract 4. If I take that west and we have the rail trail where you can bike or walk, all the way to the left of that that would bring you right to Fisher Cat Stadium by the river walk over the river correct?

Mr. McNeill responded I am not sure of the full scope of the rail trail. I do know it is part of the overall master plan of the City.

Alderman Cavanaugh stated it looks like it is. If we did sell this that would prevent that from going through right? That would just be a paved parking lot?

Mr. McNeill replied again one of the big reasons we wanted to use the rail trail is because that limits some underground utilities we would have to relocate. The more we are in the street, the more disruptive it is for our construction and the more utilities we would have to relocate.

Chairman Long stated Alderman Cavanaugh just so you know the transportation easement for the parcel must remain in effect. If we had the funds and the trail was ready to be put in, we would have the easement right to do that. There would be an easement saying that at any time we can use that parcel for the trail.

Alderman Herbert asked so it is a \$165 million total project estimate for the CSO?

Mr. McNeill answered yes roughly over 20 years. This portion is a little less. There are other contracts in there.

Alderman Herbert asked and the funding comes from the EPA or where?

Mr. McNeill responded there is no federal funding for it at this point.

Chairman Long stated the money is coming from the enterprise.

Alderman Pappas asked besides the funding, because that is a big number, on contract 13 it ends on Revere Avenue. One issue that we have had is the continuation of that trail to the Rockingham Trail at Massabesic. Can we extend this? Obviously we are talking about another issue here but I am looking at the handout and it is the first time I am seeing this map. Why isn't there an extension to connect to the Rockingham Trail when you are talking about maybe ¼ of a mile.

Mr. McNeill answered because this is a CSO project and not strictly a rail to trail project. Everywhere we are constructing, we are looking to incorporate the rail to trail. To extend past that, depending on the funding source, may be outside of EPD's jurisdiction. Wherever we put a shovel in the ground we can restore it as

required by the City and that is part of the rail to trail that we work with Parks & Recreation on.

Chairman Long stated we have a couple of options. I am unsure...I am not feeling confident that we are consistent with this. I think there are some people that are encroaching this trail that we don't have an agreement with. I don't know, for example, the brick condos. I don't know if they were sold that parcel for their parking lot before the state gave it to us. I don't know if we have a revocable agreement with them. I think at the very least we need to get those in order. Like Mr. McNeill said, there are a lot of encroachers on that trail and he has to go one at a time and figure out how they got that property and whether they are just encroaching or whether they have an agreement with us or whether it was sold to them by the state prior to the state giving it to us. I think at the very least we need that information. Mr. Nardi do you have some input on this?

Ben Nardi stated I can clarify that issue for you. Your deed that the property owner received from the Department of Transportation is dated 2001 and subject to all of the restrictions as outlined in my cover letter to you and of which we are agreeable to have this land conveyed subject to all the terms and conditions in the restrictions as set forth in your deed as well. You can have the rails to trails and we are agreeable also to give you any kind of easement to come in and put a pipe or whatever you have to do. However, in 2001 you got the land from the DOT. I had a survey updated on 2005 which clearly shows that gated parking lot is still Portsmouth Branch Boston Railroad land. It has a property line for the Twin Towers condominium if you would like to see that.

Chairman Long stated actually we are not going to make that decision here today. We are going to need the solicitor and Planning verify...

Mr. Nardi interjected you asked about this.

Chairman Long replied right. The Twin Towers are the condos I was talking about. Right now it is a parking lot. I don't know if we have a...does anybody know if we have a revocable agreement with them? Do you know who owns that property?

Mr. Nardi answered it used to be Brady-Sullivan's property then they sold the individual units as condos. Now you have about 30 individual users. I don't know whether or not when they sold the condos they gave them the right to park on the railroad land as well.

Chairman Long responded those are the questions that we need to get answered.

Mr. Nardi stated this isn't just an isolated case to this. This runs up and down this railroad land. The encroachments are tremendous from what I have researched.

Chairman Long stated to Alderman Shaw's question with respect to your agreeing that the easement stays.

Mr. Nardi interjected we are agreeable obviously to do what the DOT said. If you deed us this land we are going to take it subject to all of the restrictions including the rails to trails, the 30' easement and whatever is included in your deed. I have a question and I don't know if you have the answer to this but regarding this plan to put a big pipe in can you do that without getting DOT okay and can you make alterations without doing historic review?

Chairman Long answered it is a requirement to do that piping so yes I would think that we don't need to ask permission from somebody who told us we have to do it.

Mr. Nardi stated we are willing to take the deed subject to any restrictions.

Chairman Long stated at no cost. Let me give you an example. Hypothetically we sell this to you and 10 years from now we have the funding and the mechanism with which to get this rail to trail path in there. You would offer up the easement and not come back saying hey we paid X amount of dollars for it and we suing to get our money back.

Mr. Nardi responded absolutely. It will be in the deed and we want to live by that. If that happens that is fine. We may lose parking but we may end up getting a lot of customers on bikes coming to the restaurant.

Alderman Cavanaugh asked can we get the department's opinion?

Chairman Long stated we heard from Mr. LaFreniere at the last meeting and he is not in favor of this sale.

Alderman Cavanaugh stated personally I love the rail trails. It is great for biking and walking. What do you think about it?

Leon LaFreniere, Planning Director, answered I think it would be our position that we would strongly recommend against selling the property. There are acknowledged encroachments along the corridor. Most of those are illegal and don't have any legal right to exist so they can be dealt with as necessary as we go through this. There were questions about the rail to trail plan. There is a master plan that does provide for linkage to the Rockingham Trail as well as to the rest of the trail within the City. The plan that Mr. McNeill was speaking to is specifically the CSO plan. We have been very successful at leveraging some of the projects

that EPD has been required to undertake as part of the CSO plan to facilitate improvements in our infrastructure within the City inclusive of recreational amenities such as bike lanes, bike paths, walking paths and so on. How these two particular projects and two particular plans would overlay is the CSO project could provide an opportunity for funding of the construction of that trail. It would seem to me that while there are some acknowledged encroachments and some challenges both from the standpoint of funding as well as actual construction along the route, it would not be a wise move to add additional encroachments in by conveying out portions of the very corridor that we have purchased and established for this purpose. Going back to a previous comment that was made, the only transfer and sale of any property along this corridor that I am aware of is the portion that was sold at 287 Wilson Street and that was specifically devised to retain the width as required in the deed for the 30' on the property that is retained by the City and not to encroach over on the portion that was sold. This would be very precedent setting in terms of if we were to sell this property. You would essentially be breaking the chain and we have not done that and would be putting an additional obstacle in the way of these other projects that the City has had long term plans for.

Alderman Cavanaugh asked so the encroachments that are there now that we haven't approved, this would open the door for everyone who is encroaching right now to come before us and ask for the same thing right?

Mr. LaFreniere answered I absolutely believe that it would.

Alderman Shaw stated I look at it differently. If you have all of these encroachments that are there illegally and now you have somebody who legally would purchase the land, improve it and still sign an agreement saying that at some point if this land was needed for this project that it would be relinquished, I don't see why this couldn't be approved. That is my opinion.

Alderman Pappas moved to receive and file. Alderman Cavanaugh duly seconded the motion.

Chairman Long stated the only thing I have to say is I think it would be a good thing for the City if we sold all of them. We would still be getting taxes. First of all the encroachment issue would go away. Right now we are not getting taxes on the encroachment issues and we need to know that. There are people like this person who is paying taxes because he has an agreement with us and he is looking to buy it. I want to know how many of these we have and how many are being encroached. The bottom line is when you sell the property you still have your rail to trail because you are required by the state to have that easement. When we get the money in say one year, two years or ten years from now it is the same status as it is right now. The only difference is we would continue to get the tax dollars and the sale of the property dollars. I am going to be opposed to this.

Alderman Ludwig asked can this property be sold? I asked the Planning Department if the railroad property can be sold. Can anybody answer that?

Chairman Long answered we got a letter from the state giving us permission to sell it.

Alderman Ludwig asked can I ask City staff?

Jeff Belanger, Senior Planning, stated before addressing that to quickly address Alderman Long's question, at the last meeting on the 28th this committee requested that the Planning Department look through the corridor and try to figure out where the encroachments are. I put together a map if you would like to look at it.

Chairman Long stated we would have loved that map last week but I will take it today. Thank you.

Mr. Belanger stated the request by the committee was just to go up and down the corridor and look for where those encroachments were physically on the ground so that is what we did. We found 19. Those are anything from very small infringements on what the City GIS shows as the corridor to something bigger like part of a building. Some of those have been authorized by a revocable license from the City but most have not. Most are illegal encroachments. I think it is important to note that this is all based on the City's GIS data. This is data maintained by the Assessing Department for taxation purposes. It is not survey quality. It is difficult to know for sure how many of those are actually encroaching over a legal lot line versus a bleak photograph taken by a plane that looks like it might be over. We tried to be more inclusive rather than less so that seems to be at least where the majority of the encroachments might be.

Chairman Long asked so these are just encroachments and not agreements that we have?

Mr. Belanger answered a few of them do include revocable licenses. It is every place in which there is some physical encroachment into the corridor.

Mr. LaFreniere stated as evidenced by the GIS system. We really have to qualify the fact that only a ground survey would be able to make the determination of the extent of any encroachment if they exist.

Chairman Long stated I don't see 399 Silver Street on there?

Mr. Belanger replied I believe it is on there.

Chairman Long asked are these just agreements?

Mr. Belanger answered this is looking at the aerial photography and anywhere there is a physical encroachment within the plot lines as shown by GIS.

Chairman Long asked so some of them may have an agreement?

Mr. Belanger replied some do although since 2005 when the BMA adopted the policy on this railroad corridor there have only been something like 5-7 agreements. Again, as Leon previously stated since that policy was adopted there was only one feasible conveyance and that was for Hoitt's Furniture at Wilson Street where there was a 15' section out of a 65' right-of-way.

Alderman Shaw moved to table. Alderman Pappas duly seconded the motion. Chairman Long called for a vote. There being none opposed, the motion carried.

6. [Communication from Marc Pinard, Brady Sullivan General Counsel, submitting a request to purchase land comprising of Plaza Drive.](#)
(Note: Tabled 12/14/15; additional information to come from City staff and Brady Sullivan Properties.)

This item remained on the table.

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

A True Record. Attest.



Clerk of Committee