



Committee on Finance and the Northampton City Council

*Councilor Rachel Maiore, Chair
Councilor Marianne LaBarge, Vice Chair
Councilor Stanley W. Moulton, III
Councilor Jim Nash*

Virtual Meeting
Meeting Date: May 5, 2022
Time: 6 p.m.

1. **Meeting Called To Order:** At 6:13 p.m. Chair Rachel Maiore convened the meeting.
2. **Roll Call:** Present were committee members Councilor Rachel Maiore (Chair), Councilor Marianne L. LaBarge (Vice Chair), Councilor Stanley W. Moulton, III and Councilor Jim Nash. Also present were DPW Director Donna LaScaleia, City Engineer David Veleta and Administrative Assistant Laura Krutzler.
3. **Announcement of Audio/Video Recording**
Councilor Maiore announced that the meeting was being audio and video recorded.
4. **Approval of Minutes**
Councilor Moulton moved to approve the minutes of the April 14, 2022 meeting. Councilor LaBarge seconded. The motion passed unanimously 4:0 by roll call vote.
5. **Public Hearing To Alter The Lay Out Of Winter Street**
Councilor Moulton moved to open the public hearing. Councilor Nash seconded. The motion passed unanimously 4:0 by roll call vote. The public hearing was opened at 6:15 p.m.

22.076 An Order to Alter the Layout of Winter Street

22.076 An Order Authorizing the Acquisition of Easements to Alter the Layout of Winter Street

Councilor Maiore read aloud both the order to alter the layout of Winter Street and the order to authorize the acquisition of easements.

As some may know, they have had a couple of really serious water main breaks on Winter Street that have caused quite a bit of damage, Director LaScaleia reported. What they have been working on since the last event in 2018/2019 is a plan to improve the utilities in the roadway. Among other things, they need to improve the water main and actually separate the combined sewer and stormwater system they found when doing their utility survey. Presently, Stormwater flows into the sewer system, which is not desirable and actually a violation of the city's permit. When doing any kind of reconstruction, they always look at the technicality of the roadway. The order before them is a little bit of housekeeping from 1910 to take a very small section of land at the end of the street which was never formalized as part of the public way. It is a

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very small owner unknown parcel but is right where they need to make some drainage improvements. From a legal perspective, the city needs to take this action in order to have the legal right to reconstruct this roadway in the way that will most benefit this neighborhood. The city cannot enter onto a property to make improvements unless it has the legal right to do so, she noted.

Councilor Maire asked if any proponents or opponents wanted to speak.

Christopher Nieboer said he is one of the sons of Fred and Rose Nieboer of 29 Winter Street and stated that, as he understands it, they have adverse possession over this entire owner unknown parcel. His family has maintained the property ever since they've owned it for the past 58 years. It's been their primary source of parking for their residence and has been maintained by adding gravel, grass and plants (azaleas and lilac bushes) and mowing it for 58 years.

The Nieboers would like to suggest adding the parcel to their taxable land area. They are not adverse to having drainage over the parcel as long as it does not interfere with their usage.

His brief understanding of Massachusetts law is that 'notorious and open use' of a vacant parcel over a period of 20 or more continuous years grants them ownership, Mr. Nieboer explained. He said he spoke to Roger Green at the DPW over the summer and he assured him that the city had no intention of taking ownership of the property. He found out about this hearing today because a sign was stuck in the yard this morning and he ran into Ward 1 Councilor Stan Moulton today on site.

As the son of Fred and Rose Nieboer, he objects to the city taking this property as they have adverse possession over it according to Massachusetts state law, he reiterated. He's personally maintained it as long as he's been old enough to mow (and rake and shovel), he added.

Nieboer said the name of the DPW employee he spoke to is Felix Harvey; not Roger Green.

Councilor Maire raised the question of whether the city met the legal notification requirement for tonight's hearing. Mrs. Krutzler said she thought the legal notice was required to be sent to owners of record only and not abutters, in which case, since the parcel's owner is unknown, no notification was necessary.

Kathryn Basham said when she first moved in it was unclear who owned the property but very clear that the Nieboers took care of it. She was the owner on the block who took the hardest hit with the water breaks in 2007 and 2019, suffering \$40,000 worth of damage with the most recent break. She has a very strong interest in trying to support the efforts of the DPW to repair the street, she shared.

She asked if the DPW is planning to widen the street or stay within the parameters of what they have now. The schematic design was somewhat confusing, she said.

There are no plans to widen the street, Director LaScaleia advised. The 70' by 33' section will be laid out as part of the street as intended in 1910 and then just used to improve the drainage so it can be disconnected from the sewer system.

Councilor LaBarge said she is a little concerned hearing from the resident in regard to taking care of that property for so many years and the legal aspect involved.

Occasionally it happens that folks are using or maintaining something as in this case, Director LaScaleia acknowledged. The DPW is making an attempt to improve a poor utility situation on Winter Street that's actually caused severe damage to several households, she stressed. Part of the effort is water main improvement and part is sewer and drainage improvements, she elaborated. This is how they need to engineer the street in order to improve it.

Nieboer noted that he is a mechanical engineer himself and knows that there are always multiple solutions to any problem. At the time plans were being developed, he was told by Felix that they would be involved and told what was going on. As far as drainage, there are a myriad of other solutions engineering firms could come up with, he asserted. They have maintained the property and, according to Massachusetts state law, adverse possession is granted when one person makes open and notorious use of another person's property over a period of 20 or more continuous years, he reiterated. They've done it for 58 years.

Councilor Nash asked if the claim for adverse possession is for the entire property or just a section of it. If the claim is for the entire property, it would include part of the street.

Ms. Krutzler brought to councilor's attention paragraph #5 from a memo from City Solicitor Alan Seewald, Esq. dated January 31, 2018 re: Procedures for Laying Out Ways which reads as follows:

"If at the hearing "no person interested objects" the council may proceed to lay out the way within twelve months of the hearing. If there is an objection from an interested party, the council must hold another hearing with statutory notice set forth in the preceding paragraph."

Regarding drainage alternatives, Director LaScaleia said they have actually examined several drainage alternatives and what they are proposing is the least costly to the city. The city has very tight windows for construction, she added. It is their hope to get through this process, put the project out to bid and construct it. Delays in this process are actually going to delay the project. They may lose the ability to do this in a timely manner.

Councilor Moulton asked Director LaScaleia her reaction to the Nieboer's offer to take ownership of the land but give an easement to the city to be used for drainage.

Director LaScaleia said she thinks this is more of a question for the city solicitor. Councilor Maiore agreed they need to consult the city solicitor.

Councilor LaBarge moved to continue the public hearing to May 11, 2022 at 6 p.m. with the city solicitor attending. Councilor Moulton seconded. The motion passed unanimously 4:0 by roll call vote.

Councilor Maiore said she would invite the solicitor to the meeting on May 11th.

6. Financial Orders

A. 22.071 An Order To Approve \$50,000 From Short Term Rental Impact Fees To Affordable Housing

Councilor Nash moved to send the order forward with a positive recommendation. Councilor LaBarge seconded.

They just wanted to allow an opportunity for more feedback, Councilor Moulton reminded. The overwhelming response in the last four months has been very positive, so they certainly should give it a positive recommendation, he agreed. **The motion passed unanimously 4:0 by roll call vote.**

7. Review of Future Meeting Schedule and Dates

Councilor Maiore said they would put this item on the next agenda.

8. New Business

-Reserved for topics that the Chair did not reasonably anticipate would be discussed.

None.

9. Adjourn: There being no further business, Councilor Moulton moved to adjourn. Councilor LaBarge seconded. The motion carried on a roll call vote of 4 Yes, 0 No. The meeting adjourned at 6:58 p.m.

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