

COMMITTEE ON INFRASTRUCTURE

SEPTEMBER 26, 2018

A meeting of the Committee on Infrastructure was held Wednesday, September 26, 2018 at 7:00 p.m. in the Aldermanic Chamber.

Alderman-at-Large Michael B. O'Brien, Sr., Chair, presided.

Members of Committee present: Alderman Tom Lopez, Vice Chair
 Alderman Jan Schmidt
 Alderman Ernest A. Jette
 Alderman Ken Gidge

Also in Attendance: Jill Stansfield, Parking Manager, Economic Development Division
 Patricia Piecuch, City Clerk

PUBLIC COMMENT

Patty Toupin My name is Patty Toupin and I live at 123 Conant Road.

Chairman O'Brien

Do you want to speak?

Ms. Toupin Right now? Oh I was going to wait until the discontinuance comes up.

Chairman O'Brien

Alright then, we could allow that.

James Cutter I have a letter to Alderman O'Brien, Jim Cutter, 86 Palm Street, Nashua. Dear Alderman O'Brien, We are victims of a city building inspector mistake of approving a permit in our absence that gave our neighbors the Gilbertsons a near 3 foot wide strip of our driveway. Since then they have been violating RSA 31:102, Obstructing Access to Highways and we have taken years presenting our problem to the city when it needs only a short time to fix. Note – this could have been prevented if the person processing the permit had made sure it matched the deed. The Assessing Department corrected the Gilbertson Tax Map in 2007 after my visits.

I have been told by the police it would be easy to solve by any officer with a paper from City Hall who would order them to remove their fence and tin shed from our property in compliance with the above named law.

Our house was built on a lot that was more or less 30 feet long with a 3 foot long gap that became our property of 33 feet (2 rods) by using the lone door on our porch that made the Desrosiers Family walk out the north side of our house onto the tap for 20 years between 1942 and 1962 per Statute of Limitation.

When the city building inspector approved the permit for Jim Gilbertson it may have caused him to think he had the cap of vacant land he had been dreaming about. But, he would have been wrong because a gap of vacant land would never be found in a driveway. And the Gilbertsons need to know a gap is always found at the end of the last dimension of a deed and never relocated. Thus, the actual dimension was the 51' property line required by Nashua Ordinance Section 36. Plat on the 5/13/1971 Caron/Gilbertson Building Permit.

The Nashua Charter, Section #45 has, “Mayor, general duties, etc.. “He shall enforce the ordinances of the city, this charter and all general laws applicable to the city”. This would be an easy way to correct the Gilbertson mistake (See “the offense officially made by a public servant” in RSA 626:3(I), Effect of Ignorance or Mistake and the mayor has an obligation to enforce ordinances”.

Chairman O'Brien

Thank you Mr. Cutter.

DISCUSSION

Overnight Parking Update

Chairman O'Brien

Would you like to please come forward? You may join us in one of the seats available and, again, when you come up to speak can you just give your name and everything else? I do advise the City Clerk that you have your own part on the agenda, but this is an update from Mr. Cummings and his representative. Thank you.

Jill Stansfield, Parking Manager, Economic Development Division

I wanted to come this evening to give you an update on the overnight parking and some of the progress we are making and still working towards in our Department. Folks may now call in later to be granted an overnight exception, it is noted on the website as well. The website, and if you don't mind, I'll read you what is on the website, “Requests must be received by 11:00 p.m. to be considered for same day exception. We encourage residents to call in by 4:00 p.m. if possible. If you are unable to call in before 11:00 p.m., the 11:00 p.m. cut off, but still need an emergency overnight exception to park on the street, you may still call. If your call is received between 11:00 p.m. and 2:00 a.m. you may receive a ticket, but you are welcome to call the Parking Department the following day to discuss the matter”. So we will take that into consideration but it would be on a case by case basis.

We are also in the process of gathering input from the Board of Aldermen members with regards to thoughts surrounding how we move forward with overnight parking in other neighborhoods. We are looking at exploring the possibility of a temporary permit program for those who may need additional parking during the summer time, when college students return home from school, construction purposes, other special circumstances. We are looking to draft a proposal to have ready for you next month.

Another good piece of information, we have implemented issuing warnings to all first time offenders for overnight parking.

Chairman O'Brien

Very good. It appears to me that we are heading in the right direction. I'm not saying nobody is going to get a ticket here, but the thing is we are doing it in such a way and accommodating the public; even in the future looking into some form of permitted type of situation such as little Johnny comes back from college with a car and everything and there isn't enough room in the driveway. I think that's more thinking along the lines that we need. Again, my personal opinion, it is an asset when you don't have parking on the street, but then again there are needs and there are certain times and certain neighborhoods definitely need to have overnight parking needs. Because just the way the older part of the City was laid out at that particular time, so this seems to be splitting it pretty good. So I compliment you, thank you.

I will stay in contact with Mr. Cummings to see if there is any ... I like to hear from other members of the Board and maybe we can have this come up with as one of our works in progress.

Alderman Lopez

I just want to make some comments because I was involved in the Infrastructure Committee's previous discussion of this. Some of the ideas that I would like to see return is a city-wide approach to parking because there are some areas that don't want it. It doesn't make sense to put it there. And then there are some areas that absolutely want it and they aren't anywhere near a city garage. I think at least coming up with a strategy based on density and use would be helpful to a lot of people.

Again, city-wide, because if we were able to communicate zones for rules, some zones that are more urban and dense, you buy an annual pass and you use it. Some places you may not actually need parking the whole time, you may have X number of cars. So I think taking each zone into account will help alleviate a lot of confusion without creating the need for a lot of stickers and a lot of inflexibility. If somebody in the tree streets for example has a parking pass and we allow permitted parking in another area of the City, that person can park there too if they are visiting or if they want to leave their car there or any number of things.

So having zones so that not only is the rules and conditions specific to that area but you can make sure that your neighbors and people that live nearby aren't parking in front of your house, those are things that a lot of constituents were pretty verbal about last time we spoke. And additionally it was also referenced as zones, but more on each street, instead of painting a specific parking space and associated costs and difficulties of planning that out, designating a part of the street where people could park in general was an idea that was discussed. So you would paint a line in one area, then maybe 200 feet down the road you would paint another one and you put signage saying "within these areas you can park".

Those are things I just wanted to bring up because they were discussed previously and I also wanted to express some sympathy for the complexity of this problem, because everyone needs parking who has a car. People have cars because they can't walk to X, Y or Z. People with handicaps in particular, mobility issues, have more challenges than others when it comes to getting to and from their vehicles. But the roads are only so wide, we need to make sure that fire trucks and ambulances and the like can get through. And we also need to make sure that we create a system that can't be abused by people who just pay for a parking pass and then use it for vehicle storage wherever they want.

So there are a lot of different factors that play, even down to making sure we have the right number of stickers, making sure that they can be easily read and identified. So to the public I would just say "have patience" because we are working on it; identify the areas that we need to work on and your preference for it. But it is a very complicated problem.

Chairman O'Brien

Thank you Alderman Lopez, very well.

Alderman Jette

I would like to say that I know we are working on it and nothing has been finalized but it sounds like we may be approaching this in an unnecessarily complicated manner. I'm not sure, I think we should have a discussion to revisit the whole idea of why overnight parking is prohibited in the first place. What great evil are we trying to prevent by allowing people to park on the street overnight. I know I have commented before that there was a time when there were a lot less cars and whoever had a car had a driveway or a garage and the car was safely parked in the driveway or in the garage at night. Whenever there was a car parked on the street overnight, the police would notice that and be alarmed or think it was cause for alarm.

Times have changes, there are a lot more cars, I've commented before that I think prohibiting parking has had an unintended consequence in that now where you had one car maximum per house, you now have several cars and those single family houses have been turned into multi-family houses so there are even more cars. And by prohibiting parking on the street, we have forced people to pave over their lawns, remove hedges and

trees and you know you drive down some areas of the City and you see all these cars parking up against the house. I'm not sure that it makes the City look very attractive. I'm not sure having those same cars parked on the street would be such a bad thing.

I understand in the wintertime when we are dealing with snow removal, that's a special circumstance. Unless the street is so narrow that an emergency vehicle could not proceed down it, I'm not sure that parking overnight would be such a bad thing. But I'm not sure and I think that as we go down this road, sort to speak, I think we ought to start from the beginning and say "why do we want to prohibit parking in the first place". There may be very good reasons and as some have pointed out, maybe it varies for different parts of the City.

I know people have commented that they live on a curvy street and they are concerned about the ability of emergency vehicles to go down that street. Well maybe in those areas where the street becomes too narrow with a curve, parking could be prohibited there. Maybe we ought to approach it from the point of view of allowing parking everywhere, but prohibiting it where necessary. So that is my thinking.

Alderman Lopez

Some of what was just said I object to because I mean you represent a specific ward and I think some of the concerns that might have just been dismissed are very valid in Ward 4 where people are living close together. Sure, some of us have hedges and trees and that is an interesting need. But a lot of people live in a small area and not having emergency vehicle access and not having snow removal is a huge problem in that denser areas.

This is why I was saying it would probably be a good idea to take a regional approach because people living in the other parts of the City may have no idea why we do this. But, I would say we've been doing it for a while and just throwing it out and saying "well let's try this the other way, let's just abandon the entire process" doesn't really account for all the thinking hours, time and planning that have gone into this so far. I am by no means one of the ones who has put the most into it. But there are good reasons.

DPW has studied the width of the roads and the safety so has the Fire Department, so has the Police. I wouldn't casually dismiss those as "great evils", I would say they are doing their job and they are trying to make sure that streets are passable in the middle of the night when people need help and the least people are available to help. So I tend to particularly in the neighborhoods that I represent appreciate that insight and that need.

I have also heard from a lot of neighbors who are not particularly excited about having a bedroom adjacent to a street where anybody can park, because that's their space. Unfortunately they happen to live in a small footprint property where they don't have a lawn or a hedge or anything like that, so having cars parking right outside with whoever getting out and in or whatever, they are not happy with that.

So I would argue that neighborhoods are in very different places and have very different situations going on. We should not look at this whole thing altogether, I think specific areas where it doesn't serve a purpose, those neighbors should be coming together and saying "we don't really want this in Ward 5, or Ward 3 or Ward 7" if they are willing to. But I think for the most part, where there is overnight parking passes, where people have really needed to advocate for that and have come forward to their Aldermen and said "Can you remove my street because my street is one that we don't need that for". Any Alderman can make an amendment to the pilot program, including a different street. If the movement hasn't been there, then the neighborhood needs to consider communicating with their Alderman, what their actual needs are.

But on behalf of the entire City I think some of the neighborhoods appreciate the ability of an ambulance or the Fire Department to intervene because they happen a lot.

Alderman Schmidt

First I'd to thank Parking Manager Stansfield for all the time she has been so gracious. Thank you very much. I have to agree with Alderman Lopez a great deal. In Ward 1 we have lovely wide streets that are flat and easy and people would really be like to be able to park on them. There are some places there, near the high school or in Nashua North, where there is no parking because they were trying to dissuade kids. And I know that there are residents there who would like to park on the street during the day and feel that they can't.

So there are special issues everywhere around the city. And this is so complex it is like shuffling cards at this point. And I really appreciate the gentle way you are doing this. Thank you very much.

Chairman O'Brien

I would just like to say one thing. I particularly grew up in a very congested neighborhood in Boston and I've seen Firemen get out of firetrucks going through the window, you know what I mean? My mother, God Bless her soul, was the original shoveler of the family parking spot. With Maggie Straggs out there on the post marking it as O'Brien territory. But it does get complicated. I like the methodical way that we are doing it and I'd like to continue.

Basically we live in a winter climate and what about trash day and somebody leaves their barrel out and forgets to take their barrel in? Then the plow comes down the street and the windrow is now on the area ten feet off your driveway that you've got to go out to the public street. This has happened to me and everything else. Not everybody is going to move their car on a snowy day. So I like the slow tempo to look at it individually to come to see and to do it. I mean it would be very easy to blanket and to say the whole City. But I like the control and the methodical way of doing it right now.

I think we've got some great people on this Committee that can probably go right through this and work on this and come up with a good solution for our citizens. It is a lot to consider and something that needs to be addressed and I agree and thank you for everybody's input.

COMMUNICATIONS

There being no objection to accept the written letter received from James B. and Mary E. Cutter that was read tonight in the opening statement and place on file.

UNFINISHED BUSINESS - None

NEW BUSINESS – RESOLUTIONS**R-18-074**

Endorser: Mayor Jim Donchess

AUTHORIZING THE CITY TO ENTER INTO A SHORT-TERM REAL PROPERTY LEASE AGREEMENT FOR 44 BROAD STREET

Chairman O'Brien

Unfortunately tonight the endorser of this is the Mayor and he is not here tonight, but seeing no objection to open up discussion, I'll have the clerk make the motion.

MOTION BY ALDERMAN SCHMIDT TO RECOMMEND FINAL PASSAGE

ON THE QUESTION

Chairman O'Brien

To get everybody up to speed as you probably very well know, R-18-074 is to enter into a temporary lease agreement authorizing the City to enter into a short-term real estate property lease agreement for 44 Broad Street. It will be to a company that is called North Pole Christmas Trees and they are going to operate their business at 44 Broad Street. So I imagine this is going to be a temporary seasonal thing so people can, if they so choose to purchase their Christmas Trees, they can go there.

Alderman Lopez

Last year they paid in trees and they donated trees that we gave out to people who were in need. But we had the lease to show us that. So do we happen to know if that is the case this time?

Chairman O'Brien

There is a lease and it is on file in the City.

Alderman Lopez

I was just wondering if they are getting trees out?

Chairman O'Brien

Oh I see.

Alderman Lopez

They gave trees in exchange for the lease and then they were given out at Arlington Street Community Center.

Chairman O'Brien

Did you read it?

Alderman Schmidt

I did read it and that is exactly what they mean to do.

Alderman Lopez

I think it would be a good idea.

Chairman O'Brien

Very good point Alderman Lopez.

MOTION CARRIED

NEW BUSINESS – ORDINANCES

O-18-022

Endorsers: Mayor Jim Donchess
Alderman Ken Gidge
Alderman Linda Harriott-Gathright
Alderman Richard A. Dowd
Alderman Tom Lopez
Alderman June M. Caron
Alderwoman-at-Large Shoshanna Kelly
Alderwoman Mary Ann Melizzi-Golja
Alderman-at-Large David C. Tencza
Alderman-at-Large Michael B. O'Brien, Sr.

AUTHORIZING FREE HOLIDAY PARKING AT METERS IN ZONE III WHICH INCLUDES THE ELM STREET AND HIGH STREET PARKING GARAGES FROM DECEMBER 10, 2018 THROUGH JANUARY 4, 2019

MOTION BY ALDERMAN SCHMIDT TO RECOMMEND FINAL PASSAGE

ON THE QUESTION

Chairman O'Brien

Please can Ms. Stansfield can you come up and give us the usual holiday version of this, please and thank you.

Ms. Stansfield

Jill Stansfield, Parking Manager, Economic Development Division. So every year we offer free holiday parking for a period of time around Christmas. It has been very successful, there is in the way of revenue lost, it has been the same for the last few years, that has not changed. It has actually been very successful; I think there has been an increase in patronage in downtown during this period. I think where the free parking is, is very much used during this period.

I would like to potentially see this become a permanent program, because we have been doing it now for four years or so. But that is up to you.

Alderman Lopez

I am interested in making a motion to amend this to go to January 5th because that is a Saturday so it's not like Merry Christmas everybody get free parking and then on Saturday, surprise now you don't. If we at least make it for Saturday then they get Sunday off and they can start again on Monday.

Chairman O'Brien

We will put you on the hot seat with that question.

Ms. Stansfield

So zone 3 parking is free on Saturdays so I think that is why we had gone with January 4th. Is that a Friday?

Alderman Lopez

Yes, is it only Zone 3? Or downtown?

Ms. Stansfield

Zone 2 and Zone 3 there is no charge for parking on the weekends.

Alderman Lopez

That includes Main Street?

Ms. Stansfield

Main Street is part of Zone 1.

Alderman Lopez

So Zone 1 is not part of it, not Main Street, so the off side streets. So nothing would be gained by doing that.

Ms. Stansfield

Correct.

Alderman Lopez

Nothing would be harmed, but I am not going to make the motion.

Chairman O'Brien

Thank you for your answer.

MOTION CARRIED

O-18-024

Endorsers: Alderman Tom Lopez
Alderman Ken Gidge
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman-at-Large Brandon Michael Laws

MOVING THE LOCATION OF A YIELD SIGN AT THE INTERSECTION OF WALNUT STREET AND CENTRAL STREET

MOTION BY ALDERMAN SCHMIDT TO RECOMMEND FINAL PASSAGE

ON THE QUESTION

Chairman O'Brien

Alderman Lopez do you have any comment, I know you've done a lot of work with this.

Alderman Lopez

Yes I mean in a nutshell basically the Walnut Street Oval, the yield sign will work better if it is repositioned so that the traffic that needs to yield is yielding. This is in response to a number of people who come rapidly down Central Street into the oval area and aren't necessarily slowing down or yielding.

So the visual reminder will be more effective moved to that area. That is also a reminder to the public, we are all in a rush, we are all in a hurry, but as soon as you start getting into the trickier, I'm driving around in a circle and I can't see around the end of it, and whatever, you might want to slow down. People are probably crossing at the most awkward spots.

Chairman O'Brien

Thank you; I co-sponsored it with you. It looks like a rotary even though it is an oval but you know the yield, I think that would definitely help out. Thank you.

Alderman Lopez

Just to add, they have added striped parking but also a bike path and like a bike lane and there is a lot going on in that oval, you should stop and look at it and let whatever cars are already in there continue to travel just as a matter of safety just so you can kind of see what is going on with it.

Alderman Jette

I'm familiar with that intersection I travel there just about every day. You are correct, where the yield sign is now, doesn't make a lot of sense, but it is a complicated intersection. You've got people traveling northeast, east, north, on Central Street on to Walnut Street and then you've got people coming north on Walnut Street, they have a stop sign. And then cars coming out of West Pearl Street also have a stop sign and I'm wondering where is the yield sign going to appear?

Alderman Lopez

This is where that graphic that I only found this evening would have been good. I am going to show this to Alderman Jette so he can see it specifically and then forward it so that we can include it in the minutes, that way the public can see it.

Alderman Jette

So relocate existing yield sign, what does it say underneath that? Ok so the yield sign is going to end up over there.

Chairman O'Brien

We've brought it up on the main board Alderman Lopez. I think where you are talking about is from Walnut Street is that intersection that intersects with West Pearl Street. That is the area in question that you are talking about.

Alderman Lopez

That's where it will be moving. Just for the public's knowledge, this confusion is mostly my fault because I asked DPW to give me a quick little write-up for tonight that I meant to forward and I referred to the wrong ordinance so they actually translated what I said even though I got everything wrong on it and sent me the right information. But there was a delay and so it only came in this evening.

MOTION CARRIED

O-18-028

Endorser: Alderman-at-Large Michael B. O'Brien, Sr.

ALLOWING PERMITTED OVERNIGHT ON-STREET PARKING INDEFINITELY ON THOSE STREETS WHERE IT IS TEMPORARILY PERMITTED

Chairman O'Brien

Can I graciously call before the City Clerk and can you give us a motion?

MOTION BY ALDERMAN SCHMIDT TO RECOMMEND FINAL PASSAGE

ON THE QUESTION

Chairman O'Brien

Our City Clerk is here. Can you give us a brief explanation of this ordinance?

Patricia Piecuch, City Clerk

Sure Mr. Chairman, thank you. For the record my name is Patricia Piecuch and I am the City Clerk. In 2017, Ordinance 17-051 was introduced and added additional streets to the program temporarily for a term to expire December 31st, 2018.

In looking in purchasing the passes for this year and everything like and knowing that it still a work in progress with the committee with looking at the whole overnight program, I didn't want those residents that are on those streets to not be able to purchase passes going into 2019. So with Alderman O'Brien's assistance and approaching him and we had legislation introduced last night at the Board level to add these streets permanently at this point to the program.

We have reached out to the Police Department, the Fire Department and the Department of Public Works and none of them have objections to adding these streets permanently. Last night at the Board of Aldermen meeting we did have additional six sponsors sign on to this legislation. At this time, we have 25 individuals who have purchased passes that are on these temporary streets, out of the 367 people that we currently have issued permits to.

Chairman O'Brien

This will make this permanent, these streets will be just like what was on the original bill. This will give them permanent status, correct

Ms. Piecuch

That is correct, Mr. Chairman.

Alderman Lopez

I just wanted to say that contrary to my previous comments regarding Alderman Jette's comments, while I believe there are areas that should be limited parking, I do not believe we should let this expire. Letting the pilot program expire means all of the people who can currently park and have the passes to park will not be able to do so next year. So it is the exact opposite. Right now there is a city-wide parking ban except in this area, where you can purchase these permits.

There is definitely a need for these areas, they have all been very carefully vetted, and discussed in committee, had the engineer sign off and all that kind of stuff, so letting this expire and not becoming a permanent program would be a huge mistake in my opinion.

MOTION CARRIED

TABLED IN COMMITTEE

**MOTION BY ALDERMAN SCHMIDT TO TAKE FROM THE TABLE THE PETITION FOR STREET DISCONTINUANCE FOR A PORTION OF CONANT ROAD
MOTION CARRIED**

Petition for Street Discontinuance – Portion of Conant Road

- Also assigned to NCPB; Favorable Recommendation on Amended Plan - 9/13/2018
- Tabled in Committee - 7/25/2018

**MOTION BY ALDERMAN SCHMIDT TO AMEND THE PETITION BY REPLACING THE PLAN WITH THE REVISED PLAN SUBMITTED BY THE PETITIONERS
MOTION CARRIED**

Alderman Lopez

I was just going to say if we amend it now we are talking about the amendment so I mean later I guess we could defeat our own amendment, I just wanted to save time to find out what the amendments were, like what is the difference.

Chairman O'Brien

A vote is coming up as part of the decorum so that you can get a grasp at where we are at. By approving this, in my opinion, what we did now took care of what was the original and now brought up what needs to be discussed. What was the original plan and if the clerk could be so kind as to bring this up again.

Alderman Schmidt

I don't know where it is.

Chairman O'Brien

Ok I'll help you find it. Could you please bear with me folks? Now what we have before us is the new plan that has come up. To explain this, how many people here are the petitioners with this? I'll allow you to come up and you can speak to this.

Ed Gilbertson My name is Ed Gilbertson and I live 121 Conant Road and I am representing myself as well as Michael Fournier who lives at 119 Conant Road. This petition is for a partial discontinuance, it is only two of the four properties shown. In 2003 Conant Road was moved back 50 feet in the middle and that exposed land that was formally a combination of city and private right of way. The first 25 feet are still owned by us because you own up to the middle of the road and it is just the part after that, that is city. So the City has decided that they no longer need to continue the right of way for easements in that area, as City-owned easements. They'd be easements on private land.

What the changes were from the original plan until now is last time we came here it was turned down because the Planning Board and the City engineer had tabled it and had decided not to go forward because the utilities were not shown on the plan before. Although we had the sewer and the drain, did not have gas, electricity and water shown. The second thing was that we had to have agreements actually with those utilities, because

when you change from a publicly owned piece of land, the easement on there apparently is subtly different from the easement on private land. So the utilities had to go along and buy into that. So we had to go coordinate with the utilities, get their agreement. In one place we had to sign an actual easement with them. That was done for both 119 and 121 Conant Road. So that was one change.

Another one was we actually found out that the road, you can't draw the boundary, I mean 119 is easy, that is completely self-contained, but where 121 and 123 border each other, that border we had actually ... it must be drawn by State Statute as a perpendicular to the road to the pin of the existing corner of the property. So there is no variation in that. But our surveyor had picked the wrong road. He picked the new road, which was obviously there, the discontinuance of the right of way was the right of way of the old way when the road was moved. That is the right of way that had to be moved. So he had to change the boundary or our surveyor had to change the boundary on the plan from perpendicular to the new road back to perpendicular to where the old road was, to the center line of the old road.

So that moved the property back and that actually gave ... we lost in front of 121 Conant Road we lost about 200 square feet of property that then went to the area in front of 119, I'm sorry in front of 123 Conant Road. So they actually gained about 200 square feet in front of their property, but that is City land, but that is not theirs. So those are the main changes that went through and that was reviewed by legal and it was reviewed by the City Engineer who reviewed it with the entire engineering staff, the DPW and legal reviewed it, to make sure that this is done properly and correctly.

So those are the main changes. And then a pedestrian easement was also added. So if you look, there are six amendments on there on the right, that is what each of those was, because you also had to mark where the pedestrian easement is where the sidewalks go, where that is allowed. So all of that is now shown on there, the City engineer said yep you're done; and he signed off. The Planning Board said yup we concur, so that is where it is. Are there any other questions. Those are the main differences between the last plan that you saw last time and this one.

Chairman O'Brien

I will allow questions by any member of the Board if they so wish. This is a particular delicate matter.

Alderman Lopez

That answered my question and the other one, where are the utilities and are we giving away some of these water lines, so that was actually very helpful. Thanks.

Ed Gilbertson And may I just say, you can be really proud of your City staff, the engineering staff, we knew nothing going into it, but Engineer Dookran and Mark Jennings and all the engineering staff and the legal that they reviewed, Alderman Jette got us in contact with them, gave us the ordinances. You can be really proud of their capabilities. Thank you.

Chairman Lopez

Very good we will pass that on, thank you. Does anybody else have any testimony they would like to give to this matter? Please come up.

Patty Toupin So that picture is actually a picture is actually a picture of 123 and 124, I took it across the street and it just shows you a little bit, I know we have the map but it shows you kind of what it looks like in person. So good evening, my name is Patty Toupin. I'm with my husband Dan, we reside at 123 Conant Road. We have lived there for 27 years. We love Nashua, love our home. Last time I spoke, I shared the reasons why my husband and I did not join the petition for discontinuance and why we opposed it.

A little background, prior to the developments, 27 years ago the house that was there before was run down and unoccupied during which time we maintained the area around the telephone pole, you'll see the telephone pole which then was the road, by pruning the bushes and plowing the street to allow safe delivery of the mail and for us to back out of our driveway. Then the road was moved 15 years ago as we talked about as part of the Maplewood Development. We have taken care of that added frontage as well as the property adjacent to our driveway as if it was our own for the entire time. You can see that with the different colors of the lawn.

We maintained that area for 15 years. We understand the Planning Board has given their approval for the discontinuance and this is the final stop in the decision making. So we know how important my testimony and today's meeting is.

The reason why we strongly oppose the discontinuance is where the proposed property line separating our property and 121 Conant Road has been drawn. Now, I know we have the dash line just because of the changes it is going to be a little bit different, it's not exact. It gives you an idea, separating the property, 121 Conant Road has been drawn using standard guidelines. These are guidelines, ordinances as Mr. Gilbertson has spoke about, but they are not law. It is an important distinction, allowing this committee flexibility as you consider all the facts and concerns when you make your final decision and recommendation.

Based on the proposed plan, 121 Conant Road's footprint as they use it, would expand and the footprint that we cared for all this time as if it was our own would shrink. The City property disputed is the land to the right of ours, next to the driveway; it is approximately 24 feet by 65 feet. Both 123 and 121 Conant Road observe the telephone pole and sign as boundaries, we always have. We have been maintaining the City's land as outlined in the pictures for over 15 uninterrupted years by mowing, seeding, fertilizing, watering, plowing and for the last 3 years maintaining a garden on it.

There has never been a time when we didn't treat this land as our own. During the same period, approximately 15 years, our neighbors observed the same property separation, stopping the care of their land referencing both the telephone pole and sign as boundaries. There was an overlap very early on, however, though I don't recall the exact conversation, I do unequivocally remember the outcome where we agreed that the telephone pole and the sign as boundaries. The idea that it was just picked up is untrue as they once said.

We feel very strongly that the proposed property line, moving it only arm's length from our driveway and primary use to our home, does not keep us whole. That is really important. It is not about you know, we have lived there for 27 years and the fact now it is going to shrink and we don't have that private space and Alderman Lopez, you talked about earlier about the space and having someone parking, you have somebody's window, your bedroom window, you talked about that space. That's what I am talking about. We are talking about our personal livable space that is being encroached upon now.

The personal living space that we've always had would be diminished and I know that is not the City's intent. We believe that the picture shows the City land and our land, how it fits together, given the configuration and the maintenance use history. We also believe that the picture shows the agreed upon boundary lines. The tree is 121 Conant Road planted and the grass maintenance all stop at the telephone pole. Also the prior owners of 121 Conant Road recognize these boundaries as well when they installed the sprinkler system or the sprinkler placement would be very different and more sprinkler heads would have been added to cover the 24 by 65 foot area.

This is an amazing thing that happened to all of us and there is no reason why anyone should be left negatively impacted and we believe having the boundary moved so close to our living space would do so unnecessarily. Even without the piece of land in question, 121 Conant Road are the recipients of the lion's share of the City's land. All we are respectfully asking is that the proposed property line be adjusted to include this land as part of 123 Conant Road. This adjusted configuration, though not a standard convention would not be unique to Nashua and it would reflect our stewardship of the City's land for over 15 years; and to some extent for as long as we've been there for 27 years.

This land belongs to the City and this Committee can recommend an adjustment to the boundary line reflecting our stewardship for the entire time. We are willing to compromise, we are willing to split the difference halfway. I mean we are willing to compromise. If you believe as we do that this is a gray thing and no one should be left negatively impacted, we hope you will support and recommend some minor adjustment. We appreciate your time.

Chairman O'Brien

Mr. Gilbertson, would you be willing to compromise with your neighbor if we continue to table it and to see if there is some amicability that can come up between your two good neighbors here?

Mr. Gilbertson My name is Ed Gilbertson, 121 Conant Road and no, we were told that we couldn't even vary that line by the City Engineer and by the Legal Staff. There is no variance authorized.

Chairman O'Brien

That is true.

Mr. Gilbertson And the first 25 feet are owned by us, according to Attorney Bolton. So that's not City land, so that would be taking land from us and giving it to them which I think is beyond the charter of the City. So that is part of it and then the other part is just beyond the center line of the old road. That's where the question comes in. We went through this whole discussion with Engineer Dookran and he said the only way we could really do anything would be to sell them the land after it was transferred to us, because it is City land right now. That is the only way we could actually come to any agreement. Because it is our land, legally.

Chairman O'Brien

Mr. Gilbertson, I'm going to allow you to have a seat and Madam please come forward, I will allow you to have a seat too. No, please come into the horseshoe.

Alderman Lopez

For the record, since the original comment was the same as last meeting that this is a different Mr. Gilbertson than Mr. Cutter was referencing.

Mr. Gilbertson Yes that's true.

Alderman Schmidt

Can you tell me where the telephone pole actually is on the map, is it on a line currently.

Mr. Gilbertson There's a line coming down from ..

Alderman Schmidt

I'll tell you what, if you could do it on here.

Mr. Gilbertson

There is a line coming down, here is the boundary between the two properties, 123 and 121 as deeded land and here is where the City Engineer and the Legal Office said the boundary has to go, over in this new area. The telephone pole is over here a little bit. It is in about 20 feet in from this boundary.

Alderman Schmidt

That would really change that line wouldn't it. Thank you. So you are saying the pole is somewhere like here?

Alderman Jette

It is marked on the plan.

Chairman O'Brien

My Clerk is going to show you where she has been indicated where the pole is.

Alderman Schmidt

I believe you are telling me that the pole is just at this spot here is right about here.

Mr. Gilbertson Yes right about there, it is about 20 feet.

Alderman Jette

If I could? So I am looking at the plan on my little iPad here and it marked if you blow up the plan, I don't know if you can or not. There you are it is on the bottom, in that area, if you come down you see there is a line that is labeled "12 inch water" ok? So just above the "e" in water you will see a circle that says UP that means utility pole.

Alderman Schmidt

Oh there it is, got it, just about the a in water. So it's here.

Chairman O'Brien

But you are under the impression Miss that you think that utility pole was a boundary line but that's not necessarily the case, because according to the City surveying it is actually a couple feet.

Ms. Toupin We always used it.

Melissa Gilbertson May I talk for a minute, this concerns me too.

Chairman O'Brien

You may come up and sit down too, please. And I am allowing this, this is a little tenuous but I would like to get this right.

Ms. Gilbertson My name is Melissa Gilbertson and I live at 121 Conant Road. When we first moved into our property, we had rented my husband was still in the military. And at that time Mr. Toupin and I had a discussion. I originally went to that boundary marker and Mr. Toupin said no go to the telephone pole.

At that time we were renting, I didn't want any disagreement with our neighbors so I agreed to that. But now seeing where the property marker is, it is always been there. And the thing is that is why when we went through the engineering, that's why they have the boundary, it has to go through there by State Statute, it has to go from the boundary line of the property.

Chairman O'Brien

Perpendicular to the street. What I am saying to you Ma'am, no matter what, by local law or how you felt or good things with neighbors, I have heard of this situation before, we have to refer to what is really part of what the surveyor has done and what is going by the official city mapping here. So it shows that the telephone pole wasn't really the legitimate, it may have been a landmark but it wasn't really the legitimate boundary line.

Ms. Gilbertson And our sprinklers, the sprinklers on that end we have a smaller, because we wanted to save water, our sprinklers will reach that new area.

Chairman O'Brien

I think you would like to say something, yes?

Ms. Toupin If we are talking about the sprinklers, the fact that they will reach it, is different than that is what would have been placed if it was looked at as part of that land. So yes, they could turn it on high and have it reach that area, but if someone was laying out that sprinkler system, it would not have been laid out the way it was. I'm just talking about that. And so I am just responding to that piece of it.

I think the spirit of this, so there wasn't any land before, so now because the road was moved there was land and just the way of the configuration, as you can see, it was natural for us to take care of that land. So yes when they moved the land, no I didn't look at, we just looked at what was natural and we always used the telephone pole and sign as boundaries as where we would stop. And we cared for the land for so long, to have it now and we lived there for 27 years. To have it now not feel like our space has been encroached upon that doesn't feel right. And we maintained it for 15 years that's a long time. And I believe that it is being brought as an issue now because of the 20 year .. and so it just doesn't feel right. We are going to fight the good fight we are bringing it up and we don't feel like it is good neighborly. We have been good neighbors for all this time and for them to do this, it is sad. It is sad.

But is there anything I mean I am just asking as a resident, is there anything that we could do, is there anything, any compromise?

Chairman O'Brien

I would like to pause for a second, when anybody speaks because they know our voices, but we don't necessarily know yours. So reintroduce yourself please, when you do speak. When it comes down to something like this, Ma'am I think what we have got to do is looking at the letter of the law and it seems that the people at 121 do have the right to come up to petition. And what will happen is basically I guess the City will enact at Quit Deed with them, this will go from ceasing to be nontaxable city property to basically coming out to be taxable city property. They will be paying extra on that because their land acreage or their land lot has changed. So the moving of Conant Road, this land will now go back to private use and be part of the tax structure. So that is a positive thing for the City.

As far as your other questions saying what amicable type of things, we'd really like to have you two neighbors kind of work it out and that is the reason why I called you up here. It is my hope, because you know we have to rule on letter of law, but it is my hope that these good people on your request, would probably come up and talk to you as good neighbors would do. And I know that this is a contentious issue for now but I am hoping that as we go along in the future that they could come up and say I want to do this, any real major objections as when things kind of do in any good neighborhood. If I have a little fire in my campfire in the backyard, I'll get the permit from the fire department. If the neighbor complains about it, I put it out. That is being a good neighbor. And I am just saying that I hope that they would give the promise to perhaps do that and establish communication with you.

Ms. Toupin This is Patty Toupin, 123 Conant Road. Before any of this, they did come to our home, they spoke to my husband and my husband did ask them, because he just planted his garden, his tomato plants, he said is there any negotiations and they said no. Flat out said no, so unless they are going to change today.

Ms. Gilbertson Mrs. Gilbertson, 121 Conant Road.

Chairman O'Brien

Can I caution here. Everything is basically a done deal as far as I am considering. What happened kind of in the past, I don't want this to be the Hatfield's and McCoy's. I'd like to stay strictly based upon the facts.

Dan Toupin What she said, she came over to my house, said move your garden.

Chairman O'Brien

Sir, can you come to the microphone and identify yourself.

Chairman Lopez

May I suggest that we are making this a more difficult situation including everybody in the City of Nashua in the conversation?

Chairman O'Brien

Right. But who are you sir in relation?

Dan Toupin, I live at 123 Conant Road, this is my wife Patti. When they came over to my house to show me the plans they said basically what they talked about from the property marker along the line and they asked me to move the garden, they asked me to move my plants and I think some of it came about because I asked them to leave my house after that. So I don't think there is going to be any ...

Chairman O'Brien

But do you have any legal, the laws says that the property line in the purchase, has to go perpendicular to the street, we can't variant from that. It is impossible, we'd be breaking our law.

Mr. Toupin But the point is, she was telling me to move things before the Committee had voted on this.

Chairman O'Brien

Excuse me. That's a little bit more information. The thing is I am just looking as just a matter of law on this.

Mr. Toupin No it's closed, we're closed, we're done.

Chairman O'Brien

Ok I understand and thank you for your comment. But do you have anything as a matter of law on this that you can bring up?

Ms. Toupin Everything that I read is that 20 year whether it is, now I drew a blank, adverse possession, but we would not have done adverse possession because it wasn't adverse. If we did anything, it would be acquiescence, meaning there was an agreed upon boundary which is why we say the telephone pole and the sign that was the boundary that we always did. That would go into effect if it was 20 years. That's the only thing that I read. You know, it is sad. And again we would compromise if it was not so close, because literally

the driveway is our main, it's not the side drive, that is our main way we go to our house. That's our main entry point to our home and as you can see in the picture, right now there is a nice buffer, we can play basketball, the ball could go behind, there is just a nice buffer. Now it is so close and they are right there and we feel like that private space, that space is not there anymore. Legally, I don't know what else we could say. I just want to share what we have done for 15 years and it is too bad we can't compromise, even if it's a little bit so we have that buffer. I would have liked to have seen that. It didn't seem like there was any wiggle room with that. And this is Patti Toupin from 123 Conant Road.

Chairman O'Brien

Does any member of the Board have any particular question.

Alderman Gidge

Who owns the land right now. Does the City own the land.

Chairman O'Brien

The city now owns the land.

Alderman Gidge

Then don't sell it.

Chairman O'Brien

That would be reflected in your vote.

Mr. Gilbertson The first 25 feet up to the center line of the old road, Attorney Bolton has said that is our property. Edward Gilbertson at 121 Conant Road.

Chairman O'Brien

Could you clarify what Attorney Bolton stated?

Mr. Gilbertson Attorney Bolton said that the land up until the center line of the old road is actually owned by the people in front of there, would have been the person we bought the land from which would have been our landlord at the time, Amos White's property. So that land is owned by us already.

Ms. Gilbertson Melissa Gilbertson, 121 Conant Road. The only land that would be in question would be where it varies out there, there's not that much more land there, that's where the sidewalk and things are. And when we did go and look at this, when we talked with Engineer Dookran, we also surveyed 123 and 68 McKenna so that they would have the chance to see what type of land that they could receive. They also, if they went along with this which we went partial because they said no, they would receive 4,200 square feet that would be in front of their house.

The question being, this whole thing where this property line is, to the right of it, as I'm looking at it, they have placed the 3 gardens. That's what they want to keep and it is basically within our boundary line. And we asked, when we checked with Engineer Dookran we asked like can this be moved and Engineer Dookran said no because once the boundary is set, with State Law and things like that, you have to go through the boundaries. We weren't ogres and trying to kick people off property. We weren't.

Chairman O'Brien

I'd like to as wrap this up please.

Ms. Toupin 123 Conant Road. What I don't understand is the thought that we could buy the land off them but it can't happen before that, I don't get that. Because you said something about, first it goes to them and then it goes to us if we chose to buy the land. Why is ok then? I'm not getting that.

Chairman O'Brien

From what I understand they are going to purchase the land off the city and then it will become their land and at that particular point if they so choose to enter into negotiations with you and you can make an offer to come together. This is what I mean, that is part of the amicable solution in my opinion.

Ms. Toupin But my point is, I don't understand why it would be ok at that point and we can't do that beforehand.

Mr. Gilbertson I can answer that. Part of it is because the land that they are interested in is actually owned by us, it is up to the center line of the old road.

Ms. Toupin Is that like official, they officially own it or is it?

Alderman Gidge

Have you been paying the taxes on it?

Mr. Gilbertson Not yet, but we will start as soon as the Quit Claim Deed goes through.

Alderman Gidge

No but have you been paying taxes on it?

Mr. Gilbertson On the deeded land.

Alderman Gidge

Ok have you taken care of it? Who has cared for it.

Mr. Gilbertson We have a sprinkler system that covers the entire area of area B, we water, we fertilize, we mow, we do all of the watering and we pay the bill for the watering.

Ms. Toupin 123 Conant Road. On the picture that I gave you, we take care of that. So I don't know if that is the land that they are talking about but that picture and that spot where it is outlined, we take care of that currently.

Alderman Gidge

I think something is wrong. I'd like to see what the attorney came up with number 1 and number 2 is if the land is not sold to anyone then maybe something can be worked out beforehand. I don't understand this. If this is correct, looking at this, this is kind of sad in a sense, I could be wrong.

Alderman Jette

Maybe it would assist Alderman Gidge for him to understand that originally all of this property belonged to a land owner. And when the City established Conant Road, I'm talking a long, long time ago, they acquired this land from that land owner to in order to put the road in. So the land originally belonged to their predecessor in title and the City established Conant Road. At some point in time, the City moved Conant Road, so it used to be closer to their land, to their houses and when the Maplewood area was developed, they straightened the road out and moved it farther away from these houses.

So the City no longer had need for that right of way for the old Conant Road. So when the City has no need for the land it reverts back to the original land owner. The Gilbertsons who own lot 121, their property line, that black line that is between lot 121 and 123, that is their property line. And at the bottom there is an iron pin, that's their property line. Now for the Toupins who own the adjacent property, 123 – the land that they put their flower beds on is between that property line and the telephone pole, it is an area of about 10 feet. So the area that they have raised beds on is about 10 feet in from the property line.

So what the law says, according to Attorney Bolton, is that when the City no longer needs this right of way it can discontinue the right of way and the property reverts back to the original land owners. Now the original landowner owned both of these properties and more property than that. So there is a rule that says you draw the line from that iron pin indicating the property line between 123 and 121 perpendiculars to the old road and that rightfully reverts back to the owner of 121 and that is what they are asking for.

Alderman Gidge

Mr. Chair? Was that property paid for when it was sold, when the City took it, did they pay for it do you know? If they paid for it then it was no longer anyone's property other than the city so the city itself changed the boundary so I don't think, I'm sure Attorney Bolton is correct and I'm sure you are correct but I'd like to see it because if something is sold to the City the City owns it and by the nature of the ownership it changes the boundary itself. So to turn and say it goes back to the same people, they got paid for it so then if it gets to the point where neighbors are going over a small piece of property why should the city sell it then? What is the sense? Would it be \$100.00 a year more in taxes? I mean neighbors, can't they agree to something before we make a point of selling it. Because the city owns it, you don't own the property. And whoever owned the property before was paid for it. So all of a sudden the city changed the boundaries.

What you are saying is this is where the line was so you own it. Well I don't see it necessarily that way completely, I'd like to see what Attorney Bolton had come up with.

Chairman O'Brien

Was that a question to anybody in particular.

Alderman Gidge

That's a statement.

Chairman O'Brien

Very good, where it wasn't a question, we shouldn't have a reply.

Alderman Lopez

I think we should just vote on this. I think the State created this rule and these guidelines specifically to avoid having the City having to weigh in on a civil matter between neighbors. We are not equipped to do it, we are not judges, so I think we should be following the law and doing our role as Aldermen, and if anything, we

should be conscious of the contribution we are making to the rift between neighbors who generally seem to get along pretty well. The longer we drag this out, the more frustration there is going to be on both sides, the more lawyering up there is going to be. The clearest resolution that Attorney Bolton identified and he is the City Attorney, I trust his judgement was to process this and let the neighbors work out if they want to sell pieces of land otherwise or not. But I think when the City starts making up its own rules, we get the last Gilbertson/Cutter incident and it'll go on for the next 30 years. I think we need to follow the rules that were set, the way we are supposed to. And not get super creative.

Ms. Toupin 123 Conant Road. The only thing I would add is that when I asked about is it the law, they said it is a guideline, and I have an e-mail that says that, it is a guideline. That is why I was hoping that somehow we can come to some agreement where it is just not 5 feet right by our driveway, that is all.

Chairman O'Brien

I think under the advice of Alderman Lopez in so many words he says to move this vote, which I am in favor of, but however, being the Chair, I totally appreciate the delicateness of this discussion.

Alderman Gidge

Before you take a vote, can I table this?

Chairman O'Brien

After I am done I will recognize you for a motion. But I understand that this is very delicate in nature with neighbors, that's why I took liberty that all people, all people, all citizens have a right to be heard and we have heard your case and depending upon we are going to have a motion pending on this to go and we will see. I hope you appreciate that we did hear you, we listened to you, and thank you for your testimony and I am going to ask you please to go back to the seats. Thank you so much.

Just as general discussion, I think I have a hint as to what you want to do, that motion is always in order. But this is not the only board that this appeared to. Just to give you the history. If you wish to do that, fine. This also went before the Planning Board, it was discussed with the City Attorney, meets with his approval, it was discussed with the City Engineer and meets with his approval, it is to the point now that a decision needs to be made, ok?

Alderman Lopez

Can I have a point of order?

Chairman O'Brien

Point of order.

Alderman Lopez

This isn't where we make the decision, this is where we recommend final passage. So if there are questions about what Attorney Bolton did or did not know, we could absolutely bring that up in the Board of Aldermen, because we did go back and forth with the lawn ordinance several times. So this is not the final argument, this is just our recommendation for the full board.

Chairman O'Brien

Right, thank you Alderman Lopez.

Alderman Gidge

But to table supersedes before the vote.

Chairman O'Brien

As I said, I will recognize you, a tabling motion is always in order.

Alderman Gidge

I wish not to table this. I just think it is so unfair that somebody takes care of property for so long, the City buys it and then by law reverts right back to the other people. Law or not, to me it is not fair, I will vote against it. But I will not ask to table it.

Chairman O'Brien

That is the Alderman's prerogative. Any final comment before I call for the vote.

Alderman Lopez

Whatever happens, don't build a fence.

**MOTION BY ALDERMAN SCHMIDT TO RECOMMEND GRANTING THE PETITION WITH THE PROPOSED AMENDED PLAN
MOTION CARRIED**

GENERAL DISCUSSION

Alderman Gidge

Just one thing before everybody leaves. Neighbors and land is probably the worst, I've gone through it, I think everybody has gone through it, don't build a fence. Have cookouts, enjoy each other, because it is just hell to go through this and my voting against it is more protest than sensibility by law. It is just giving me this moment to say please, please this will be really helpful, no fence. I hope you understand it is frustrating for everybody.

Chairman O'Brien

And I would to thank my Vice Chair Alderman Lopez for recognizing decorum procedures. Thank you.

PUBLIC COMMENT - None

REMARKS BY THE ALDERMEN- None

POSSIBLE NON-PUBLIC SESSION - None

ADJOURNMENT

**MOTION BY ALDERMAN LOPEZ TO ADJOURN
MOTION CARRIED**

The meeting was declared closed at 8:22 p.m.

Alderman Jan Schmidt
Committee Clerk