

**CITY OF WOBURN
MAY 18, 2010 - 7:30 P.M.
REGULAR MEETING OF THE CITY COUNCIL**

Roll Call

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|----------|--------------|
| Anderson | Gately |
| DiTucci | Haggerty |
| Drapeau | Mercer-Bruen |
| Gaffney | Raymond |
| Denaro | |

VOTED to dispense with the reading of the previous meeting's Journal and to APPROVE.

MAYOR'S COMMUNICATIONS:

ORDERED That the sum of \$3,500.00 be and is hereby transferred as so stated from ALS Ambulance Receipts Acct #31359-595000 \$3,500.00 to Fire/Holiday Pay Acct #0122051-514500 \$3,500.00

I hereby recommend the above. s/Paul Tortolano, Chief, Fire Department
I have reviewed the above. s/Gerald W. Surette, City Auditor
I hereby approve the above. s/Scott D. Galvin, Mayor

s/Alderman _____

PUBLIC HEARINGS:

On the petition by Kraft Foods, Inc., 3 Lakes Drive, Northfield, Massachusetts 60093 to amend an Inflammable License for maximum of 635 gallons LP-gas stored above ground in 1 x 200 gallon stationary tank and 13 x 10 gallon forklift tanks, maximum of 50,000 gallons of #6 fuel oil in AST container, maximum of 50,000 gallons of diesel fuel in AST container, maximum of 115,000 gallons of grease oil in AST container, maximum of 3,000 gallons of Class A liquid flavoring in drums, maximum of 8,500 gallons of Class B liquid flavoring in drums, and 4,000 gallons of Class C oil and liquid flavoring in drums, all at 7 Hill Street. PUBLIC HEARING OPENED.

On the Order to accept the provisions of M.G.L. Chapter 64L, Section 2(a) relative to a local meals excise. PUBLIC HEARING OPENED.

CITIZEN'S PARTICIPATION: None.

COMMITTEE REPORTS:

FINANCE:

On the Order to transfer the sum of \$70,000.00 from ALS Ambulance Receipts Account to Fire Department Overtime Account, committee report was received "ought to pass".

MUNICIPAL LANDS:

On the Order to accept a grant of easement for public way purposes between Lexington Street and Russell, Street, committee report was received "back for action."

A communication dated May 12, 2010 was received from City Solicitor John D. McElhiney as follows:

Re: Repair of Private Ways

Dear Members of the Council:

To follow-up on a discussion held at the Municipal Lands Committee Meeting on May 10, 2010, I am enclosing herewith a copy of the G.L. (Chapter 40, Section 6N), which authorizes cities and towns, by adoption of an ordinance, to authorize the making of temporary repairs on private ways. As can be seen from the law, there are numerous details that the cities and towns must consider, such as the type and extent of repairs, under which circumstances abutters must petition for such repairs, if betterment charges are to be assessed, and more. I am also enclosed several examples of various ordinances or by-laws adopted in neighboring communities, including the Town of Winchester, the City of Melrose, the City of Waltham, and the Town of Stoneham. I believe once you have reviewed all of these, you will see the variety of ways in which each city and town has chosen to address the various issues set forth in the statute.

I would be happy to work with the Council in drafting a proposed ordinance, but many of the underlying policy decisions will obviously have to be made by you.

Please let me know if I can be of further assistance.

Sincerely, s/John D. McElhiney

A further communication dated May 17, 2010 with attachment was received from City Solicitor John D. McElhiney as follows:

Re: Temporary Repairs to Private Ways

Dear Members of the Council:

Submitted this evening for a first reading is a draft Ordinance relative to the above subject. As you may recall the statute authorizing cities and towns to adopt ordinances relative to this matter (G.L. Chapter 40, Section 6N) sets forth a number of options and choices that the City must make with respect to issues surrounding, type, extent, and circumstances under which repairs will be made. I also supplied you with examples of such ordinances or by-laws from some neighboring communities.

The Ordinance submitted herewith essentially follows the course of the by-law presently in effect in the Town of Winchester. I stand ready to assist the Committee with your review of this proposed Ordinance.

Alderman Drapeau also requested that I further clarify my comments which were made at the Municipal Lands Committee meeting on May 10, 2010 relative to the liability of the City with respect to maintenance of its public ways. In that regard, be advised that cities and towns are responsible for maintaining their public ways so that the ways are reasonably free from defects and safe for travel, and are responsible for damages incurred due to defects in the roadway. However, G.L. Chapter 84, Section 15, establishes a maximum limit of both personal and property damages arising from claims and defects in such public ways, with a cap of \$5,000.00 per claim. I trust this clarifies this issue.

Please let me know if and when I can be of further assistance on this matter.

Sincerely, s/John D. McElhiney

Attached thereto was the following Order:

ORDERED Be It Ordained by the City Council of the City of Woburn that Title 12, Article III, of the 1989 Municipal Code, as amended, be and is hereby further amended, by adding a new section, numbered 12-14B as follows:

12-14B Temporary Repairs to Private Ways

A. GENERAL

In accordance with Massachusetts General Law Chapter 40 Section 6N, and as the same may be amended, the City Council may authorize temporary repairs to be made to private ways, in accordance with this Ordinance.

B. TYPE OF REPAIRS

The repairs may include, but not are limited to: filling, grading, patching and surface coating, and may include repairs to drainage swales, conduits, systems and structures as are necessary to preserve the roadway. All repairs must be determined by the City Engineer and Superintendent of Public Works to be required for public health, safety, or welfare.

C. PETITION

The City Council may make a determination on the need for said repairs, and may authorize the making of said repairs, with or without a petition of abutter(s) to the private way. Such determination, as well as any determination to assess Betterment Charges, as set forth hereafter, shall only be made after a hearing duly called and scheduled, notice of which is published in a newspaper of general circulation in the City at seven days prior thereto, and of which written notice is mailed to record owners abutting said way, as determined from Assessors records. The cost of publication and mailing shall be paid by or assessed to the petitioners, if any, and in the absence of any petition, may be added to the Betterment Charges, if any be assessed by the Council pursuant to Section D, below. The City Council may establish, by Rule or Regulation, filing fees and procedures not inconsistent herewith for the processing and hearing of any such petition for temporary repairs.

D. BETTERMENT CHARGES

Betterment charges may be assessed by the City Council on the abutter(s) of such way up to an amount equal to the cost of such repairs. If betterments are to be assessed, they shall be assessed upon each parcel of land benefiting from such repair in proportion to linear frontage on the portion of the way to be improved or other proportional method as may be approved by the City Council. Betterments shall be apportioned over such a period as the City Council deems appropriate, after considering such matters as the estimated useful life of the proposed repairs and the source of funds to be used for the same.

E. DEPOSIT

The Superintendent of Public Works may require a cash deposit up to the amount of the estimated cost of such repairs, as determined by the City Engineer and said Superintendent of Public Works, to be paid to the City prior to the commencement of such repairs. The Superintendent may use any appropriate collection process deemed necessary in collecting such deposit from the abutter(s). The

Superintendent, with the approval of the Mayor, may enter into contracts on behalf of the City with abutters or associations of abutters providing for other methods of payment for such repairs by abutters, upon such terms as the Superintendent, with the approval of the Mayor deems reasonable.

F. STATUS OF WAY

This Ordinance does not confer any obligation or duty on the City or its agents to either initially place or to thereafter maintain and repair said private ways so that they are reasonably safe and convenient for travel by being free from defects or want of repair. The making of any such temporary or necessary repairs to private ways, no matter how often or to what extent, does not constitute an acceptance by the City of such ways as public ways, nor does it constitute a way being “maintained and used as a public way” under the Massachusetts Subdivision Control Law.

G. LIABILITY

It is intended that the City shall have no liability as a result of any such repairs, and no repairs to a private way shall be undertaken until the City Council has determined that satisfactory arrangements have been made to appropriately reduce or eliminate any liability to the City arising from the same. Such arrangements may include, but are not necessarily limited to, the provision of insurance by repair contractors and/or by abutters or associations of abutters insuring the City’s interests or the provision of suitable indemnity agreements by abutters or by associations of abutters.

H. INDEMNITY AGREEMENT

The indemnity agreement contemplated by Section G, above, shall indemnify and hold the City harmless from additional damage and claims arising from repairs undertaken hereunder, shall provide that the making of such repairs does not constitute a commitment by the City, express or implied, to provide any maintenance or repair to the way in the future, and shall provide that the making of such repairs shall not constitute “maintenance” of such ways so as to give the way the status of a way “maintained and used as a public way” under the Massachusetts Subdivision Control Law.

s/Alderman Drapeau

NEW PETITIONS:

A communication dated May 14, 2010 was received from Amy Vogt, Tenant Coordinator, Cushman & Wakefield, 55 Cambridge Parkway, Cambridge, Massachusetts 02142 requesting the change of name of owner of the Inflammable License at 225 Presidential Way from 150 MetroNorth Corporate Center, LLC to VV2 Presidential Way, LLC.

Petition by Clear Wireless, LLC, c/o Anne Grant, Prince, Lobel, Glovsky & Tye, LLP, 100 Cambridge Street, Suite 2200, Boston, Massachusetts 02114 for a special permit pursuant to Sections 5.6 and 11.5 of the 1985 Woburn Zoning Ordinances, as amended, to install a wireless communications facility by constructing a 125 foot flagpole design monopole, to install three (3) wimax antennas and two (2) wireless backhaul dish antennas, all to be mounted and completely concealed within the proposed monopole together with supporting equipment to be located at the base of the monopole and surrounded by a proposed eight (8) foot chain link fence, all at 92 Merrimac Street.

Petition by Clear Wireless, LLC, 200 5th Avenue, Waltham, Massachusetts 02451 for a special permit pursuant to Sections 5.6 and 11.5 of the 1985 Woburn Zoning Ordinances, as amended, to install a wireless communications facility consisting of a 100 foot monopole tower and three (3) wimax antennas and two (2) wireless backhaul dish antennas to be mounted on the top of the proposed monopole, together with supporting equipment to be located at the base of the monopole and surrounded by an eight (8) foot chain link fence, all at 205 Wildwood Avenue.

COMMUNICATIONS AND REPORTS:

On the report by Veterans Agent Larry Guiseppa relative to a proposed 60th Anniversary Korean War parade to be held in Woburn in July 2010.

A communication dated May 10, 2010 was received from Richard Mahoney, Chair, Library Building Committee, Woburn Library Board of Trustees as follows:

Dear President Denaro:

On April 30th the library building committee asked to appear before the City Council for the May 18th meeting. After discussions last week with our architect and our project manager we determined that we need more time to value engineer the construction cost and plans for the project.

We are requesting that we be allowed to postpone that appearance until the meeting on June 1, 2010. They have assured the building committee that this will be complete by the end of the month.

Thank you, s/Richard J. Mahoney, Chair, Library Building Committee

A communication dated May 6, 2010 with attachment was received as follows:

Re: Acceptance of Easements – Battle Road

Dear Members of the Council:

At the last regular meeting of 2009, the City Council voted to accept a Grant of a certain lot of land adjacent to battle Road, as well as two Easements on nearby parcels of land which also abut the road. The actual wording of the Resolve adopted that evening, however, referenced only the lot of land but did not reference the easements. In order to properly record the Grant of Easements at the Registry of Deeds, it is necessary for the Council to take a vote explicitly referencing the same. I am enclosing herewith an attached Resolve to accomplish the same. I believe only one reading is necessary, but I would be happy to further explain this should the Council have any questions.

Thank you for your anticipated cooperation.

Sincerely, s/John D. McElhiney

Attached thereto was the following Order:

ORDERED That the City Council of the City of Woburn hereby authorizes the Mayor and Historical Commission to accept on behalf of the City, by gift or nominal consideration of One Dollar (\$1.00), from Robert W. Murray, Individually and/or as Trustee of Apple Tree Trust, a Grant of Easement over a portion of Lot 263 on Land Court Plan No. 5711-30, dated December 14, 2009; a Grant of Easement over Lot 158 on Land Court Plan No. 5711-V, and over a portion of Lot 154 on Land Court Plan No. 5711-U, all as set forth in certain Grants of Easements dated December 14, 2009; does hereby confirm and ratify acceptance of the same by instrument executed by the Mayor and the Chairperson of the Historical Commission on April 26, 2010; and does authorize the Mayor to take all actions necessary or convenient in order to accomplish the foregoing acquisition and record the Grants of Easements at the Registry of Deeds, Registered Land Department.

s/Alderman Drapeau

A communication dated May 13, 2010 was received from Clerk of Committees Patricia Bergeron George was received as follows:

Re: Petition of Perennial Landscape Corp. – 22 Torrice Drive

Dear President Denaro and Aldermen:

At a hearing of the Board of Appeals held Wednesday, May 12, 2010, the Board heard the Petition of Perennial Landscape Corp. seeking a Variance per Section 5.2(2) relative to the placement of a fence greater than 3 feet in height within the front setback. At the May 12th hearing, two of the Board's members expressed their view that the applicant did not satisfy the statutory requirements that would support the issuance of a variance allowing the applicant to construct a six foot fence along the front property line. As a result of said hearing, the Board has voted to copy you with the attached Legal Opinion from City Solicitor John McElhiney, dated May 4, 2010. Based on this Legal Opinion, the Board suggest that the City Council consider waiving, amending or rescinding Condition #8 of the Special Permit issued to Perennial Landscape Corp., or amending the Zoning Ordinance that prohibits fences in excess of three feet in height within the front setback in all zoning districts in the city.

Note, this matter was continued to the Board's next meeting, which is scheduled for June 16, 2010.

Thank you for your consideration, and should you have any questions, please feel free to contact me.

Sincerely, s/Patricia Bergeron George, Clerk of Committees

UNFINISHED BUSINESS OF PRECEDING MEETING: None.

APPOINTMENTS AND ELECTIONS: None.

MOTIONS, ORDERS AND RESOLUTIONS:

From the Traffic Commission:

ORDERED CENTRAL STREET – The restriction prohibiting parking on the westerly side from the intersection with Hawthorne Street to a point twenty feet north of Montvale Avenue from 6:00 a.m. to 10:00 a.m. shall be suspended up to and including September 1, 2011.

From the Traffic Commission:

ORDERED CENTRAL STREET – The restriction establishing two handicapped parking spaces on the westerly side at a point 230 feet north of the

intersection with Montvale Avenue to a point 293 feet north of the intersection with Montvale Avenue shall be suspended up to and including September 1, 2011.

RESOLVED That His Honor the Mayor add Winter Road to the Pearl Street and Winter Street Drainage Improvement Plan. The drainage correction would redirect what is now flowing into the yards and basements of the residents on the even side of Winter Road. Further, that the Acting Superintendent of Public Works and the City Engineer prepare a proposal regarding the matter

s/Alderman Raymond

RESOLVED Whereas, in July, 2006, after a distinguished 40 year career with the Commonwealth of Massachusetts, Joseph T. Garbino accepted the part-time position of Grant Writer for the City of Woburn; and

Whereas, Joseph T. Garbino over his term of service has prepared numerous successful applications for grant funding on behalf of the City, including within the last year a \$174,600 Recovery Act Energy Efficiency Grant to replace the Police Station roof, a Health Services Grant for \$141,570 to fund improvements to the Plympton School, and a \$30,000 from the Massachusetts Technology Collaborative to improve energy efficiency at the new Woburn High School; and

Whereas, Joseph T. Garbino has designed and implemented an efficient process to provide timely information to City of Woburn department heads regarding new grant funding for specific projects and programs; and

Whereas, Joseph T. Garbino, at the request of the Mayor, established the Woburn Clean Energy Committee, to promote and coordinate energy conservation measures throughout the City of Woburn's municipal facilities;

Now, Therefore, Be It Resolved that the City Council of the City of Woburn extends its deepest gratitude and appreciation to Joseph T. Garbino, for his four years of service as the Grant Writer for the City of Woburn, and wish him every success in his future endeavors.

s/Alderman Gately

Motion made and 2nd to ADJOURN.