

CITY OF NEWTON

IN BOARD OF ALDERMEN

PUBLIC FACILITIES COMMITTEE REPORT

WEDNESDAY, OCTOBER 20, 2004

Present: Ald. Salvucci (Acting Chairman), Gerst, Albright, Stewart, Yates, Mansfield and Lappin

Absent: Ald. Schnipper

Also present: Ald. Baker, Harney, Linsky and Sangiolo

City personnel present: Robert Rooney (Commissioner of Public Works), Nicholas Parnell (Commissioner of Public Buildings), Carolyn Sarno (Facilities Manager; Public Buildings Department), Cathy Salchert (Assistant City Solicitor), Ouida Young (Associate City Solicitor), Sandy Pooler (Chief Budget Officer) and Shawna Sullivan (Committee Clerk)

#384-04 ALD. GERST requesting report from NStar's plans, if any, to restore uninterrupted electrical service to Bellevue/Langdon./Summit et al area of Newton Corner.

ACTION: **NO ACTION NECESSARY 7-0**

NOTE: Ald. Gerst spoke on the item. He stated that the description of the problem is too narrow. Since docketing the item, he has received calls from Ald. Johnson and Lennon stating that there are outages in Newtonville and other areas. Service from NStar in the past couple of months has been exorable. He would like NStar to explain how they plan to improve service. Ald. Stewart sent an email to over 100 constituents in Ward Four regarding outages and received a number of responses stating that there has been a jump in the number of outages this summer. Ald. Albright also stated that there has been an increase in the amount of outages in her Newtonville neighborhood.

George Borhegyi, 25 Surrey Road, related his experiences with the outages. There have been several situations and he began logging the outages because it has become unusually frequent. The log begins on April 9, 2004 and ends on September 28, 2004. Mr. Borhegyi does not expect perfection but he expects a much lower outage rate. He would expect an outage once during the summer but during June, July and August of this year outages occurred every couple of weeks. The outages ranged from about 15 minutes to about six hours. He works at home and has a deaf child and it is very difficult when the electricity goes out.

Ald. Mansfield asked if there was anything typical about the outages, such as the time of day, during storms or on weekends. Mr. Borhegyi responded that there is

no pattern to the outages according to his log. He has spoken to NStar regarding the outages. It is his understanding that there are reasons for some of the outages but he cannot speak for NStar.

Mark Lucas, Susan Saiville and Tom Morahan from NStar joined the discussion. Mr. Lucas explained that on April 9, 2004, a cable failed in a vault and it was necessary to reroute customers on that circuit to a new cable and vault. The outages on June 7, 2004 and June 25 were due to equipment failure, which has been replaced. Outage on June 9, 2004 and June 25 were caused by downed lines. The vault and cable have been repaired and the customers switched back to their normal circuit.

Ald. Salvucci inquired if there was enough power in the area. Mr. Lucas responded that there is plenty of power. Ald. Stewart asked if the number of outages has risen in 2004. Mr. Lucas stated that he has reviewed the statistics for 2003 and 2004. The number of outages is similar except when customers were switched to another circuit. Ald. Stewart responded that the problem in Newton Corner does not apply to Newton Lower Falls. Mr. Morahan explained that in the last two or three years reliability has increased but if the system finds a fault it will shutdown momentarily to repair the fault. Ald. Yates asked how many outages because of downed wires. There have only been two downed wires, which were due to a tree limb and a struck pole. NStar has done a lot of tree trimming and circuit replacement in Newton.

Mr. Morahan encouraged Aldermen to call or e-mail Mr. Lucas when there is an outage. NStar keeps track of the outages and will troubleshoot an area if there is a rise in outages. Ald. Yates asked if NStar had the capability to tell if everything was working on a circuit. Mr. Morahan responded that NStar can tell if a section is out but not an individual house. Ald. Linsky has spoken with a number of constituents in the Newtonville area who have called NStar and gotten nowhere. Mr. Lucas stated that the Newtonville residents were switched onto the other circuit and that should have been explained to them.

Ald. Stewart moved the item no action necessary, as NStar has responded to all questions and the circuit and vault have been repaired. The Committee voted unanimously to approve the motion.

#359-04 ALD. BAKER AND SANGIOLO proposing that Sec. 26-50, Private Way Repairs., be amended to facilitate immediate repairs not requiring full scale street reconstruction.

ACTION: **HELD 6-0 (Gerst not voting)**

NOTE: Ald. Baker joined the Committee for discussion of this item. This item addresses private ways that are not appropriate to bring to public standard. There are many

private ways that are in desperate need of repair. Currently, the ordinances only contain three vehicles to repair private ways. The first is a crusher run of gravel that residents can spread themselves. The second allows the Commissioner to fill potholes at the City's expense but many of the private ways are beyond this repair. Third, the ordinances allow for major temporary repairs at a cost to the City and abutters.

The proposed ordinance (attached) creates an intermediate category for repair that allows a street to be repaved by the City, which is paid for entirely by the abutters of a private way. The repair would not be a full-scale reconstruction and would not include drainage but would improve the roadway. The amendment would aid many private way owners and abutters would be confident that the work would be done correctly. The proposed ordinance would not make a distinction between qualifying and non-qualify private ways. Every private way would be eligible for repair under this ordinance.

Ald. Stewart stated that he has no problem with the proposal. However, he feels that the definition of a qualifying private way is unclear, particularly when it is applied to the 265 private ways in the City. There are many circumstances why private ways continue to be private including the fact that many of them have strange land uses, historical or geological features that prevent them from ever being accepted as public ways. He would love to look at the ordinances in regards to private ways and try to apply them to many situations.

Ald. Stewart is also concerned about the administration of the new ordinance and the proposed ordinance. All private way residents should receive a mailing notifying them of their options in regard to repair and acceptance of private ways. He would also like to see a logical program put together, so that priorities can be established. Ald. Salvucci pointed out that the order of repair would be at the discretion of the Commissioner of Public Works.

Ald. Lappin inquired whether the City would be responsible for the maintenance of a private way if the City repairs the street under the proposed ordinance. Commissioner Rooney responded that there is a disclaimer in the proposed ordinance stating that the City will not take responsibility for repairs. Assistant City Solicitor Salchert explained that there is a State statute authorizing the current ordinances and that governs private way temporary repair. The statute states what you can include in the ordinances. The City is not liable except for a limit of \$5,000 for defective repairs. The statute is more limited than the liability for public ways. The statute also states that in no event shall the City be liable for bodily injuries, death or damage to personal property caused by a reasonable defect or lack of repair on any private way. It was suggested that the language should be included in the ordinances. Ald. Lappin asked that the language for liability be included in the draft ordinance.

Ald. Salvucci asked if there was any cost to the City. The Commissioner stated that there would be no additional cost to the City. Ald. Salvucci then inquired why the City would do the work and not a private contractor. The Commissioner responded that it would probably be cheaper for the homeowner. Ald. Salvucci questioned whether or not all the abutters of a private way would need to petition for the temporary repair and if not would they all pay. The Commissioner responded that only the people who petition will pay.

Ald. Lappin then raised her concern that abutters who do not petition are not agreeing to the disclaimer. Ms. Salchert responded that the City probably does not want to be in that situation but she thinks that it probably would not change the law regardless of whether they signed the petition or not. The better thing is to take that issue away and correct the ordinance so that the disclaimer applies whether or not the petition is signed by all abutters.

Ald. Lappin also asked the Commissioner how he felt about the proposed ordinance and whether it would affect the workload of Public Works. The Commissioner stated that if a mailing went to all private way residents the queue would be very long. He feels that Public Works needs to start small and gauge the amount of work they can do. The work would likely be done on overtime or on Saturdays. His biggest concern is doing something less than standard. He would envision a menu of choices for the extent of repair. The Public Works Department could advise petitioners on how long the road will last depending on the repair. Ald. Albright inquired how the new ordinance and the proposed ordinance impact the plans for the street schedule. The Commissioner responded that some repairs are a matter of hours but a full street reconstruction is about a month long. He was adamant about the clause stating resources available because he does not want to be beholden.

Ald. Mansfield questioned whether people have the right to improve the whole private way if all the owners of the street are not in agreement. Commissioner Rooney explained that as an abutter to a private way, you have the right to improve the entire way but you cannot force a contribution to the improvements. Ms. Salchert stated that it is not a change to what is already out there. Ald. Mansfield stated that there is a statute that allows private way owners to force other owners to pay for improvements to a private way.

Ald. Gerst is concerned with two sections of the draft ordinance. Sec. B, Item 1 Major temporary repairs states as determined by the circumstances of the particular street will determine the path of construction. It would seem beneficial to indicate who would be determining that because one person's determination could be quite different from another person's determination. In addition, in Sec D, Item 1 One hundred percent 100% it states, "that no such assessment shall

exceed the amount of the benefit adjudged by the Board of Aldermen in accordance with the law relating to the assessment of betterments. Ald. Gerst does not recall the Board ever having the responsibility of determining values. It seems to say that if the Commissioner says the cost of repair is \$50,000 and the Board determines that the betterment should be \$20,000 the City would be out \$30,000.

Ms. Salchert responded that the recent private way ordinance that was passed by the Board has identical language in it. It was put in as an alternative to language that is part of Sec. 26-49 of the ordinances. This language states that the cost is \$42 per linear foot or 50% of the total cost, whichever is greater. It also says that it will not exceed the benefit adjudged. This is language that comes from the statute. It does not say how you come up with the betterment but everything that was looked at says that the cost of repairs is a good way to determine what the betterment is. She does not feel that the Board will ever determine that a project estimated to cost \$50,000 should be assessed for \$20,000, which is not what is intended by that language. The idea is that the City should not have an assessment that exceeds the value of the property. She is not sure that the language needs to be included.

Ald. Baker explained that the major innovation of this draft ordinance is that you can have privately funded repair, which the City can undertake without going through the betterment process. It is important to note that this allows a private way to remain private, yet still be repaired substantially without the City having to repair that street in perpetuity. There is a benefit in the management and allocation of resources to having this option available to the Public Works Commissioner. He suggested including Ald. Gerst's suggestion in the ordinance.

Larry Uchell, Malia Terrace spoke on the need for the ordinance to be approved. Malia Terrace is in very bad shape. The abutters have tried to maintain the way. However, it is not wise to reconstruct at this time, as there is a vacant lot that will be developed requiring heavy equipment to use the way. All of the problems on Malia Terrace can be addressed with this proposed ordinance.

Ald. Lappin made a motion to hold the item for an amended draft board order. The motion carried unanimously.

#338-04 ALD. SANGIOLO & HARNEY proposing an amendment to Chapter 11 of the City of Newton Revised Ordinances 2001 to include certain sized townhouse developments in the City of Newton's trash and recycling program.

ACTION: **NO ACTION NECESSARY 5-1 (Stewart opposed, Gerst not voting)**

NOTE: Ald. Sangiolo docketed this item in response to a call from a resident of the townhouses on Lothrop Street, which is a dead end street. The townhouses were

built through the special permit process with the condition that requires private trash pick-up. The City trash truck picks up the garbage from all other residents of Lothrop Street and uses the townhouses' driveway to turn around to get out of the street. Ald. Sangiolo has spoken with the Commissioner and he felt that perhaps the Board should only look at this individual case because he does not want to uncover a set of problems with all condominiums looking for trash pick-up. She thought the Committee should refer to the Law Department and Commissioner Rooney.

Ouida Young explained that there are a number of special permits that have this condition in it. There is an ordinance that prohibits the Commissioner of Public Works from picking-up trash from properties with a special permit condition requiring private trash collection. In addition, the Board must consider what it would like to do with that particular ordinance if the Board wants to allow relief for particular developments. Finally, the Board must consider whether to amend all those special permits, which technically would need to be done. Although zoning is a complaint driven situations, so if nobody complains about it there is not going to be any technical violations but there could be an enforcement action. It is first and foremost a policy decision that the Board is going to have to address with the Public Works Commissioner. She has spoken with Nunzio Piselli, who is aware of at least 2,000 residential units that currently have private trash pick-up because of special permits. One of the largest is Chestnut Hill Towers and they would like to have the City collect their garbage.

Ald. Yates suggested offering the condominium complexes the option of paying the City for garbage collection. Ald. Salvucci felt that condominium owners would not pay for City trash collection.

Ald. Mansfield stated that there are two primary reasons why special permits have required private trash pick-up. The first is that previous Commissioners of Public Works have testified that the City's contract exclude the condominium developments. Secondly, from a Land Use perspective when you have multi units it works better to have a dumpster than individual barrels. If the City wanted to offer City trash collection, the Board would have to figure out how to overcome those hurdles.

Ald. Stewart suggested dealing with this issue when the new City trash collection contract is being negotiated. The Commissioner stated that the City would begin discussion on the new contract this fall.

Ald. Lappin moved no action necessary until the City contract is discussed. The motion carried by a vote of five in favor and one opposed.

#320-04(5) ALD. SANGIOLO & HARNEY proposing an ordinance to require the Designer Selection Committee in conjunction with the Board of Aldermen holds a design competition for construction projects where the total cost exceeds \$90 million.

ACTION: **DENIED 4-1-1 (Yates opposed; Mansfield abstaining; Gerst not voting)**

NOTE: Please see below for the notes on the discussion of this item.

Group Petition filed with City Clerk on 08/02/04

#320-04(6) DIANA J. KAZMAIER et al. filing on 8/2/04 a petition, pursuant to Section 10-2 of the City Charter, for a public hearing that for the purposes of selecting a specific architectural design for the building of a new Newton North High School the city will establish a state-wide open architectural competition in accordance with the American Institute of Architects guidelines

ACTION: **NO ACTION NECESSARY 6-0 (Gerst not voting)**

NOTE: Docket items 320-04(5) and 320-04(6) were discussed in conjunction. These two items have been discussed at two previous meetings. At the last meeting, the Committee requested that the Law Department respond to two questions regarding what the Designer Selection Committee can require of architects. The questions surround whether the Designer Selection Committee can require architects to provide conceptual designs for ranking for the finalists. In addition, whether the Designer Selection Committee could select five of the candidates and hold a design competition. The candidates would receive compensation for schematics.

Ouida Young joined the Committee for discussion of the item. Ms. Young reviewed the memo that was sent to the Board. It is the case that the Designer Selection Committee is not limited to three choices in terms of coming up with finalists. The Designer Selection Committee must base their decision on the finalists by using the qualification criteria that is set out by statute. After the finalists are selected, the Designer Selection could hold some type of competition. She would use the term design solution instead of competition because there is wide range of ways to conduct a competition, which creates confusion. The Designer Selection Committee does not have a budget to fund designs or models.

Ald. Yates suggested making a schematic or a model a requirement of application. Therefore, there would be no cost to the City. Ald. Sangiolo pointed out that she had suggested using part of the \$3.8 million that has already been appropriated. Ald. Salvucci stated that the Board cannot tell the Mayor how to spend already appropriated money.

Ald. Albright spoke on the items. She is not in favor of this proposal because we have a Designer Selection Committee that is comprised of experts in their field. In addition, the high school project is not just about design and she does not understand why the Board is only focusing on design. This project involves site

planning, neighborhood involvement, community participation and the educational specifications, as well as design. The Designer Selection Committee or a jury for a competition is not expert in these matters. You cannot expect the neighborhood, the School Department and the city officials to meet with some number of architects to spend the amount of time to bring them up to speed on the project. She feels that the design competition is an ill thought out proposal. The Designer Selection Committee is not the appropriate Committee to be deciding on the site planning, the neighborhood participation, the traffic issues and the education issues.

Ald. Harney pointed out that the State law allows a competition. He feels that there is nothing wrong with considering design as part of the selection process. He supports Ald. Sangiolo's suggestion that the reimbursement fees for design by the architects can be taken from the money that has been appropriate.

Ald. Stewart feels that the Committee has explored the item and it seems that the Committee needs to make a distinction between what can be done legally and what the Committee wants to do in a policy sense. According to the memorandum from the Law Department there a lot of options but that does not have any impact on the policy decision. He would suggest that a vote be taken, as the Committee members are informed and prepared to vote.

Ald. Linsky feels that the Board has gained something through this discussion. The discussion has been advanced through the Law Department's input. He agrees that even though the Law Department states that there are a range of possibilities that does not mean for public policy purposes the City should do it. He agrees with Ald. Albright that we are not a design review state. There is a range within the RFQ that would talk about retrospective and prospective ways in which to select design. He reads the Law Department's memo as advancing the idea that the City can include a prospective design in the RFQ, allowing people to get a feel of what a designer is capable of designing. The memo allows the City to expand out the RFQ and that should satisfy everyone.

Ald. Baker reminded the Committee that the Board passed a resolution asking the Mayor to ask architects who are part of the selection respond to the design challenge of the project. It is in the process of choosing the designers where you are asking the architects to look forward as a way of understanding what they might design. It is a way to choose among the architects and allowing the Designer Selection Committee to have additional information for ranking. He thinks it is appropriate to recommend to the Designer Selection Committee that they look at design concepts. Ald. Yates asked if all finalists would be required to submit a design concept. Ald. Baker responded that all finalists would need to submit a design concept.

Ald. Mansfield pointed out that all Aldermen want a world-class design. The Aldermen do not have the authority or the power to say what goes into the RFP. The City's ordinance is the most constraining in regards to selecting an architect. He feels that Ald. Sangiolo and Harney's request that the Board consider the ordinance as a mechanism to look at some amendments is valid. He cannot support a motion to deny because it would have some connotations that the Board does not want to see any design capabilities for the site. He thinks that the Board needs to consider modifying the ordinance to give more breadth to design concepts.

Ald. Albright supports the idea of asking the designers to submit and talk about their concepts for the design of the school as part of the RFQ. She does not support a design competition. Ald. Albright proposed the resolution listed below, which the Committee approved.

Ald. Lappin moved denial of #320-04(5) and no action necessary on item #320-04(6), which both carried.

#320-04(7) PUBLIC FACILITIES COMMITTEE requesting His Honor the Mayor to ask the Designer Selection Committee to require all finalists to present concepts for site design, neighborhood participation, educational program and building design for ranking.

ACTION: **APPROVED 6-0 (Gerst not voting)**

REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES

#421-04 HIS HONOR THE MAYOR requesting an appropriation in the amount of \$25,000 from the Capital Stabilization Fund for the purpose of repairing the heating system in the Carr School building.

ACTION: **APPROVED 6-0 (Gerst not voting)**

NOTE: Commissioner Parnell, Carolyn Sarno and Sanford Pooler were present for the discussion of this item. Mr. Pooler's understanding is that there is an item before Real Property Reuse for the use of the Carr School by different cultural and educational groups who want to use the school. The groups would be at the school under a license from the City instead of a lease. There is no Real Property Reuse interest, as the City can grant a license to someone for the use of facilities for short-term. Several Committee members felt that the items should not be discussed until Real Property had an opportunity to discuss the licenses. Mr. Pooler explained that the items are relative now because in order to have the appropriation available to run the building with more people in it the City needs to have the appropriations voted and the source voted before the tax rate is set.

This is a request for the repair of the heating system. Commissioner Parnell stated that the boiler is the original boiler from 1952. There is a long-term plan to

replace boilers at the schools but it is required that constant heat within the building now that it is going to be occupied. Ms. Sarno pointed out that there is only one boiler working in the school, as the other one is beyond repair. The Chairman asked if it was possible to heat the school with one boiler. Commissioner Parnell explained that the boiler will need to run constantly but will heat the building.

Ald. Yates moved approval of the item, which carried.

REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES

#421-04(2) HIS HONOR THE MAYOR requesting an appropriation in the amount of \$15,000 from the Capital Stabilization Fund for the purpose of making repairs to the roof of the Carr School building.

ACTION: **APPROVED 6-0 (Gerst not voting)**

NOTE: Commissioner Parnell stated that this is a request for funds to repair the slate roof and flat roofs over the additions at the Carr School. The flat roofs require more extensive renovations as they are not slate or pitched. Ald. Lappin moved approval of the item, which carried unanimously.

REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES

#421-04(3) HIS HONOR THE MAYOR requesting that the sum of \$80,000 be appropriated from FY05 estimated revenue for the purpose of supplementing the Public Buildings Department budget to cover increases to the accounts for utilities, maintenance, cleaning, building supervision and other costs related to occupying the Carr School building. Estimated revenue will come from rents paid by the non-profit educational entities devoted to the arts, culture, theater, music, community enrichment and other like uses that will utilize this space.

ACTION: **APPROVED 3-0-2 (Mansfield, Yates abstaining; Gerst, Lappin not voting)**

NOTE: This is a request to supplement the Public Building's Department's budget to cover increase for utilities, maintenance, cleaning, building supervision and other related costs to occupying the Carr School. Ald. Salvucci asked if the Parks and Recreation Department or the Horace Mann School would be moved to Carr School. Commissioner Parnell responded that the Cultural Affairs Department would most likely be moved from the Parks and Recreation Department. The rent from the various groups will cover the expenses. Ald. Salvucci asked why the Mayor was asking for an appropriation if the rent would cover the expenses. Mr. Pooler explained that the Board needs to appropriate the money into the Public Buildings Department's budget.

Ald. Lappin stated that the City cannot know if it is going to receive the rent. She questioned why this money had to be appropriated before the building is occupied. Commissioner Parnell stated that there are several potential renters and he does

not have enough space to house them all. Ald. Lappin asked where the money is coming from. Mr. Pooler responded that the City has enough money in the budget to maintain a vacant building but once it is occupied the maintenance costs rise.

Ald. Mansfield felt that the licensing out of the Carr School circumvents the process for changing uses of city owned properties. Mr. Pooler stated that this is a short-term license and that in order to occupy the building this year this was the only option. Mr. Pooler suggested approving the item, as Real Property will be meeting on the Carr School and if there were any questions raised and unanswered at that meeting the item could be sent back to Committee.

Ald. Stewart moved approval of the item, which carried.

All other items were held without discussion and the Committee adjourned at 9:50 p.m.

Respectfully submitted,

Anthony J. Salvucci, Acting Chairman