

CITY OF NEWTON

IN BOARD OF ALDERMEN

PUBLIC FACILITIES COMMITTEE REPORT

WEDNESDAY, NOVEMBER 3, 2004

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

Absent: Ald. Stewart

Also present: Ald. Baker

City personnel: Cathy Salchert (Assistant City Solicitor), Robert Rooney (Commissioner of Public Works) and Shawna Sullivan (Committee Clerk)

#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: **APPROVED 7-0**

NOTE: Commissioner Rooney, Cathy Salchert and Ald. Baker joined the Committee for discussion of this item. The item was discussed on October 20, 2004 (10-20-04 report attached) and held for amendments to the draft ordinance language. In addition to the amended language that was attached to the agenda, an emergency preamble was provided. Ms. Salchert provided the committee with new language for the emergency preamble. The previous language specifically referred to Malia Terrace and the new language includes any private way.

Commissioner Rooney stated that over the past couple of years almost every Alderman has been approached for assistance in making a private way safe. In the current ordinances, there are limited repairs that the Public Works Department can undertake. He believes that there is an interest in the City to have at least passable streets, both in the areas of public safety and for the public works services. Streets in terrible shape are a threat to city vehicles and city employees. However, the cost to properly repair a private way is typically over \$100,000. Most residents cannot or would prefer not to foot such a large bill. In the most part, residents just want to make a private way passable. This proposed ordinance will allow residents of private ways to make the road passable without a full-blown reconstruction. The cost of the repair will be entirely borne by the petitioner.

Ald. Salvucci asked if the repairs could be done through a betterment process. The Commissioner explained that the repairs could not be done through the betterment process, as it would create a cash flow issue for Public Works. The

new ordinance would allow petitioners to choose the extent of the repairs. Ald. Salvucci questioned what would happen if a homeowner does not want the private way repaired and will not contribute to the cost of the repair. Ald. Salvucci feels that the ordinance should be fair and equitable to every resident. The Commissioner responded that owners have a right to safe passage on the road. If the petitioners are willing to foot the bill to repair or pave the road, the Public Works Department can make the repairs without full agreement. However, the petitioners cannot force someone who does not wish to contribute to contribute.

Ald. Yates had two questions on the draft ordinance. He asked if Sec. 26-50 (d) (1) Major temporary repairs assessments, was relevant to the privately funded repairs. Ald. Baker responded that it did not apply to the proposed ordinance but was a matter of housekeeping. Ald. Yates then asked how the 20% of the original estimated amount was arrived at in Sec. 26-50 (E) privately funded repairs. Ald. Baker explained that the basic process is to give the petitioners an estimate of the cost before the work is performed, then to perform the work. Sometimes the cost will exceed the estimate and this language allows the Commissioner to exceed the estimate up to an increase of 20%. The Commissioner explained that the 20% is a contingency fee. Ald. Mansfield asked what happens if the repair costs more than 20% of the estimate. The Commissioner responded that if he runs into that situation, work will stop and the petitioners will be contacted to see if they wish to proceed. Ald. Mansfield felt that the language did not allow the Commissioner this option. Ms. Salchert suggested adding unless otherwise mutually agreed by the parties. Ald. Mansfield felt that adding the language would be beneficial.

At the last meeting, Ald. Mansfield recalled that there was some type of state statute that allowed owners who abut a private way to form an association to essentially force anyone abutting to a private way to contribute to the repair and maintenance. Unfortunately, Ald. Mansfield and Ms. Salchert did not have the time to fully research the Mass. General Laws.

Ald. Yates questioned whether the City was no longer going to do subsidized major temporary repairs. The Commissioner stated that with the adoption of the proposed ordinance there would no longer be funding major temporary repairs. Ald. Albright asked the Commissioner if he was comfortable notifying the owners of private ways in the most need of repair. The Commissioner responded that he would do that but was concerned that they would all petition at once and there would not be enough resources to repair the roads immediately. Ald. Lappin suggested adding language to the ordinance stating if time allowed and resources are available. Ms. Salchert pointed out that it clarifies at the Commissioner's discretion but she will include clarifying language. The Commissioner will start a waiting list and give the petitioners a time frame. He is comfortable with the current language and does not feel anything needs to be added.

Ald. Lappin questioned whether there should be language stating that the City is not responsible for maintaining or warranting the work. The Commissioner explained that there is an indemnity agreement within the petition and it states that the repair is temporary. Ald. Mansfield felt that the definition of private way is circular and perhaps it should be clarified. Ald. Baker responded that the intent of the ordinance is to cover all private ways within the City. A way is open to the public and there is no concern that anyone will petition for a driveway.

Ald. Schnipper asked what is the rationale for doing the repairs as overtime. The Commissioner explained that it is to ensure that the first priority is to the public ways. The repair of a private way can be done in a weekend; therefore, most of the work will occur on the weekend.

Larry and Beth Uchell, Malia Terrace, thanked the Committee for their work on the item. Malia Terrace is in terrible shape. There is a vacant lot on Malia Terrace that will be built upon, so the residents cannot consider a substantial reconstruction. The Uchells also explained that because the road is not navigational, it really separates them from the neighborhood.

Ald. Yates moved approval of the ordinance including the emergency preamble and language suggested by Ald. Mansfield. The Committee approved the motion unanimously. The amended draft ordinance, a redline version of the draft and an explanation of Section E are attached.

REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES

#359-04(2) **HIS HONOR THE MAYOR**, in accordance with MGL Ch.44, Sec.53E1/2, establishment of a revolving fund, with an annual expenditure limit of \$100,000 for FY05 to receive payments to the Department of Public Works for repairs to private ways under the provisions of docket item #359-04.

ACTION: **APPROVED 6-0-1 (Salvucci not voting)**

NOTE: Commissioner Rooney was present for the discussion of this item. The Public Works Department needs to set up a revolving account in order to deposit funds gathered from petitioners for private way repairs and expend the funds without appropriations for the repairs. The Commissioner explained that he would like to establish the account as soon as possible because he expects petitioners when the above ordinance passes. The revolving fund will be used specifically for repair of private ways under the proposed ordinance. Ald. Yates moved approval of the item, which carried unanimously

Respectfully submitted,

Sydra Schnipper, Chairman