

CITY OF NEWTON

IN BOARD OF ALDERMEN

PUBLIC FACILITIES COMMITTEE REPORT

WEDNESDAY, JANUARY 8, 2003

Present: Ald. Schnipper (Chair), Gerst, Linsky, Stewart, Yates, Mansfield and Lappin

Absent: Ald. Salvucci

Also present: Ald. Baker, Basham, Bryson, Ciccone, and Sangiolo

City personnel present: Gayle Smalley (Associate City Solicitor) and Robert Rooney (Commissioner of Public Works)

#341-98 ALD. CICCONE requesting establishment of an ordinance to require that all street design/redesign projects be submitted to the Board of Aldermen for approval.

ACTION: **HELD 7-0**

NOTE: Commissioner Rooney and Gayle Smalley were present for discussion of this item. The item had been discussed on December 4, 2003 and was held for further discussion and a draft board order. Ald. Schnipper has spoken with Gayle Smalley regarding this item and Ms. Smalley explained that this was not something that could be responded to quickly. Ms. Smalley would like the Committee to set some parameters as to what they are thinking about and get an update from the Commissioner in regards to this item.

Commissioner Rooney submitted a memo dated Monday, January 6, 2003 to the Board of Aldermen. The Commissioner has some concerns regarding the proposed ordinance. There are several issues that would seriously impact the Public Works Department if approval by the Board were needed on all street redesign and design projects. The Public Works annual work plan includes sidewalk maintenance, sidewalk construction, roadway repaving, roadway reconstruction and redesign of intersections and along thoroughfares. During the winter, Public Works creates a list of the projects that are needed within the City and reviews the list against what the budget projections are. In February there is a fairly solid plan as to which roads are going to be able to be funded and which sidewalks are going to be worked on. Last year the City Engineer presented an overview of what went on the previous year and what work was projected for the upcoming construction season. He touched on projects that would be of interest to Aldermen outside of the Ward where the project was to take place. Aldermen within the Ward are contacted for their input in regards to these projects. When a

major street reconstruction is to take place, a public hearing is held. It is the Commissioner's belief that major projects should have public input, aldermanic input, mayoral input and budget input.

There are many projects that may be termed maintenance, such as sidewalk adjustments, roads that are paved in house. There will be minor modifications to those roads as the projects go forward. These things do not necessarily generate written plans and drawings. The standard specifications are fixed entities and the City has the right to set that through the City Engineer. The work crews know the standards and follow them so the proper specifications are adhered to. Field changes occur all of the time without fanfare and are done as a matter of course. The Commissioner asked how his department would make field changes if it were going to require a meeting with the Board for approval. The requirement will hold-up these projects that must be completed before the winter. He feels that the Ordinances clearly spell out what the specifications are for roadway layout. The City implements the standards that are adopted by state and federal traffic guidelines. He is aware that there is some concern regarding intersections and punchouts. However, the standards used for intersections are approved by the City Engineer and conform to state standards.

The Commissioner is concerned about the process and is a full advocate of keeping the Board informed as to what projects are on the horizon. From his standpoint he would be happy to expand the annual work plan briefing to give the Board more detail.

Many Committee members voiced their objection to severak of the reconstructed intersections within the City and felt that it would be helpful to review the plans. Ald. Ciccone stated that the purpose of this docket item is to have information on what is going on and voice any objections not to handcuff the Public Works Department. The Committee does not want to review anything that does not change a traffic pattern. It is primarily changes in the geometrics of intersections that have caused a lot of concern. Ald. Mansfield believes that intersection redesigns are the concern of all the Aldermen not just the Aldermen from the Ward were the redesign is taking place. Ald. Mansfield also raised the question of what happens when there is not agreement on a plan by the Board. Ald. Stewart was far from convinced that this should be a Committee review or Board review but at the same time he sees the need for some kind of formal review process. Ald. Linsky felt that some form of review should take place in Public Facilities or a special subcommittee but not sure Full Board approval is appropriate. He also feels that it could be problematic to go through the kind of process that is typically given to most of the matters before the Board. Ald. Lappin suggested quarterly or as needed updates by the Commissioner of Public Works on projects.

Gayle Smalley explained that the Law Department has a number of files going back examining situations that have arisen that are tensions between what is the policy making role of the Board and what is the engineering role of the Department of Public Works and Engineering. There are a couple of conceptual things that she wanted the Committee to be aware of. The first one is something that was looked at a number of years ago. There is an old state law distinction between specific repairs and ordinary repairs for streets. It is an old concept that is not looked at very often but it is still good law and still on the books. Generally speaking the Board of Aldermen is charged with determining that specific repairs shall be made and it is up to the Department of Public Works to make the ordinary repairs. There are some old examples about changing materials; changing streets from cobblestone to brick, widening streets can sometimes be specific repairs. She is not sure where what the Committee is discussing falls in that continuum but the Committee may need to be mindful of that framework. The second conceptual issue is the difference between legislative and executive authority. The City's Charter draws a strict line between the two branches of government. The definition of legislative function is setting policy while executive is carrying it out. She is not sure where we are going if the Board were to get involved with every street design issue on a case by case basis that is certainly at some point going to cross the line into Executive. Third, if an ordinance is drafted which establishes a new authority for the Board to weigh in on certain specific cases we are going to need to look at not only adding an ordinance but looking at the existing ordinances, which do give the authority to the City Engineer to fix the grade, to determine the cross section, to draw the specifications, to draw the designs for streets and to approve the corner roundings and we will need to look at whether we need to amend those.

Ald. Gerst feels that the Committee would like to have approval of projects that derive specifically from a design concept and not have any role in general onsite decisions. He would like to know what is happening with projects in order to answer to his constituents' questions. Ald. Ciccone feels that a discussion before Public Facilities with a vote of no action necessary would suffice. It is very important that the Aldermen have input certain on projects that alter the flow of traffic.

Ald. Stewart would like a procedure to be set up where the Commissioner provides a list of what projects Engineering is working on over the next four months and the Aldermen would request a review of projects they are interested, if any. Ald. Ciccone strongly felt that the projects for review should have a docket number to call attention to it. Ald. Mansfield stated that if there were a place for review it would be helpful instead of having individual aldermen or residents making suggestions out in the field. Ald. Mansfield suggested that it would be helpful to have a vote on projects because this is how disagreements are settled within Committee.

It was decided that there would be a docket item for Commissioner Rooney to give an update on the plans for projects in the upcoming construction season. The Committee will review the plans and request further information on the projects there is an interest in. Ald. Yates moved hold on the item and the Committee voted unanimously to hold the item in order to ensure that the update addressed all concerns.

#500-02

ALD. BAKER, BASHAM, JOHNSON, LAPPIN, LINSKY, LIPSITT, MANSFIELD, MERRILL, SANGIOLO AND YATES requesting discussion of city policy regarding grants of location by the Commissioner of Public Works for temporary signs and banners on city owned light poles on public ways.

ACTION: **HELD 7-0**

NOTE:

Ald. Baker and Basham joined the Committee for discussion of this item. Ouida Young provided the Committee with a memo (attached) summarizing the various ordinances regarding street banners and sandwich signboards. Ald. Baker explained the genesis of this item. In the discussion about the Jackson Homestead appropriation several months ago, there was a portion of it that related to banners on Washington Street and that was specifically carved out of the appropriation because there was concern that there were more banners on City property than there should be. After the discussion on that item, Ald. Baker approached several of his colleagues, Ouida Young, Commissioner Rooney and Mike Kruse and tried to understand what the rules are concerning banners. There are two kinds of rules governing banners. The first rule is the basic zoning provisions that govern in general and second, if it is legitimate as a matter of zoning law, the authorization of the Commissioner of Public Works over what is placed on or over the streets and sidewalks.

The question is what are the ground rules on where banners are placed, how long do they stay in place and what can they represent. In discussion with the Commissioner of Public Works, it was decided that input from the Board in the shape of a policy or ordinance would be helpful in regards to banners. Ald. Baker provided the Committee with some principles (attached) that might guide the Commissioner in determining whether to allow a banner or not.

There were some discussions about traditional banners like banners over Village Day in Newton Highlands or the flags that are placed at City Hall. There seemed to be a sense that there are areas of the City that are not appropriate for banners like around City Hall except for patriotic reasons or events that are scheduled at City Hall or residential areas. Second, if there are areas where they are appropriate, they should not be used instead of a freestanding sign. There may be places where banners are an asset if they are properly done and for a limited amount of time. He would like to get the views of the Committee and if there are

areas of widespread agreement than those policies can inform the Commissioner. If there are areas where there is disagreement or if the Committee would like to bring other people in for further discussion than the Committee can hold elements of the guidelines.

Commissioner Rooney explained that banners are a fairly new thing for City officials as the City did not own the street lights where banners hang from until two years ago. Therefore, anything that was put on the street lights fell under zoning or permission from Boston Edison was required because they owned the grant of location. When the street lights were purchased, the City inherited what was occupying space on them. With that comes liability and other decisions that need to be taken into consideration. Ald. Baker is right in the sense that to a large degree banners fall in the area of personal opinion and my personal opinion may vary from my predecessor or my successor. Therefore, if a vote of the Board would reflect the way the City wants to characterize itself, it would be very helpful. Commissioner Rooney feels that his primary duty is the health and safety of the residents and secondarily the efficiency and aesthetics that fall under the Public Works Departments jurisdiction. It is of a lesser priority for him but he does not like a lot of signage or public display of enterprise as it tends to lower the expectations of visitors to see a lot of unplanned or haphazard signage. In understanding his responsibilities in regards to signage, the First Amendment rights of people come into play. Once you agree that signage can take place you cannot really restrict what is says on those signs to a large degree. With that, he thinks we need to be aware that the City does not have the right of censorship. There seems to be three criteria; time, space and design that need to be regulated and if the Board agrees he can do it through department policy or through ordinance.

Ald. Basham felt that the discussion was narrowing down very quickly to focus on a particular type of signage and a particular assumption about how that signage is placed and she would like to make sure that the Committee does not lose sight of a couple of other things. Her view of the banners is that the first banners as we see them mounted on the street poles really date from the tricentennial and another event that were back to back. A few banners celebrating a public citywide event was pleasant and it dovetailed with what was seen in other cities. It was a sort of style of how cities advertise their major public events, but something happened after that in regards to the type of banners seen in the city. She is not sure how much it has to do with buying the street lights or the impetus of Newton Pride but the city ended up with signs that say something about the city but also have sponsors names on them. It is the sponsorship issue that has brought this to the floor because it seems to her that the City is selling advertising and she thinks one of the policy issues is whether the City wants to be selling advertising on the light poles throughout the City or anywhere in the City.

Ald. Basham's second point is in regards to sandwich boards. When Ald. Bryson and Basham were new Aldermen they had a discussion with the former Commissioner of Public Works about sandwich boards because the City had started putting sandwich board in the intersections for public elections and public events. Then one day there was one for a play at the high school and then came the day there were sandwich boards not remotely related to a City entity. The discussion brought about a policy, which allowed sandwich boards for publicly sponsored events. Events that are being held for the benefit of the public, not a small segment of the public but a public call to action. She is now seeing sandwich boards with far broader information on them than what is the policy. This does not mean that the policy is not open to revisiting if the Board thinks that the policy is too narrow.

Ald. Sangiolo asked if it was due to Newton Pride that the banners and sandwich boards changed to sponsored signage. She would like to know how the City decided to allow sponsored signs and if the sponsors are paying some funds to the City. Commissioner Rooney questioned who the banners belonged to when the City purchased the street lights and was told that they belong to Newton Pride and there is a representative in Parks and Recreation who interfaces with Newton Pride. The Commissioner asked who maintained the banners and was told by Linda Plaut that the Fire Department maintained the banners. It is an informal process regarding maintenance and placement of banners. Newton Pride is a quasi-official city organization though it is an outside organization but it does contribute to City functions. Ald. Basham thought that there must be some sort of contractual relationship between Newton Pride and the sponsors, where a right has been sold to use City property for private purpose in exchange for money.

Ald. Baker reviewed his possible policies regarding grants of location for banners in public ways, and discussed the draft principles. A number of members discussed the list and a decision was made to hold the item, with the understanding members could review the list again to see if this was the appropriate set of principles. Ald. Baker summarized the discussions so far that if there was a public informational purpose use of the public space for a banner it might be appropriate, but if there was no city informational purpose it would not. The Committee voted to hold the item unanimously.

REFERRED TO PROG.& SERV., PUB.FACILITIES AND FINANCE COMMITTEES
#503-02 MAYOR COHEN AND PRESIDENT LIPSITT requesting RESOLUTION of support for expenditure of up to \$50,000 to complete work of the Newton North Citizens Task Force. Source to be funds previously authorized for the high school renovation project.

ACTION: **HELD 5-2 (Linsky and Lappin Opposed)**

NOTE: See the Programs and Services Committee Report for the notes of the discussion of this item, as it was discussed jointly.

Respectfully submitted,

Sydra Schnipper, Chairman