

MINUTES  
PEVERLY HILL ROAD SIDEWALK IMPROVEMENT/COMPLETE STREET PROJECT  
PUBLIC NECESSITY HEARING

EILEEN DONDER FOLEY COUNCIL CHAMBERS  
DATE: THURSDAY, OCTOBER 14, 2021

PORTSMOUTH, NH  
TIME: 5:00 PM

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I. CALL TO ORDER – Mayor Rick Becksted

Mayor Becksted called the meeting to order at 5:00 p.m.

Council Present: Mayor Becksted, Councilors McEachern, Whelan, Lazenby, Huda, Tabor, and Trace.

II. OPENING OF HEARING – Brief overview by City staff of process and purpose

Acting Deputy City Manager/Deputy City Attorney Suzanne Woodland reviewed the agenda for the evening explaining that the Council will begin with a Site Visit of the project area and then continue in the Council Chambers at 7:00 p.m.

III. RECESS UNTIL 7:00 P.M AT CITY HALL COUNCIL CHAMBERS

Mayor Becksted called a recess at 5:08 p.m.

IV. SITE VISIT OF PEVERLY HILL ROAD IMPROVEMENT PROJECT AREA

A site visit was conducted with the seven City Councilors previously stated, City Manager Conard, Deputy City Attorney Woodland, Public Works Director Rice, Deputy City Clerk French, Brian Colburn (and colleague) of McFarland Johnson.

Mr. Colburn pointed out the various project elements in conjunction with the presentation handout. The route began at the Middle Road intersection along Peverly Hill Road to Lafayette Road and from Lafayette Road down Greenleaf Avenue ending at New Hope Baptist Church.

Some concerns raised by the Council included taking of trees on conservation property; relocation of telephone poles; removal of stone walls; wetlands.

V. SITE VISIT STOP AT NEW HOPE BAPTIST CHURCH AT 263 PEVERLY HILL ROAD - Respond to any Councilor questions and make any on-foot site visits

A group of residents were gathered at the New Hope Baptist Church and several different conversations were held with various Councilors and residents.

Some concerns raised were notification of some residents and not others which Acting Deputy City Manager Woodland explained was due to whether or not the property was being impacted. She further explained that some properties were previously going to be impacted, but no longer will be. Discussion ensued regarding the fact that all of the properties will be impacted due to traffic, construction, etc. There was also discussion regarding speeding, trucks and pedestrian safety. The residents requested that traffic control be put in place

immediately.

**Councilor Tabor moved to recess until 7:00 p.m. to reconvene at City Hall. Seconded by Councilor Huda and voted.**

## VI. REOPEN PUBLIC HEARING IN CITY COUNCIL CHAMBERS AT 7:00 PM.

Mayor Becksted reconvened the meeting at 7:00 p.m.

Acting Deputy City Manager Woodland explained that the site visit was held along the route and discussion held with some neighbors at the New Hope Baptist Church. She explained that due to the federal funding that is involved, this process is required. She then reviewed the proposed resolution which the Council will decide if this project is a necessity and accept the burden or not. She continued that there has been some design evolution so some people who had previously been notified that would be impacted are now not being impacted and therefore did not receive certified notification. She stated those changes will not be in the city right-of-way.

Finally, she stated that if the resolution is approved there will be an appraisal process and more talks will occur with the property owners with more specific details. She concluded stating that we will be trying to make this as least painful as possible.

## VII. PRESENTATION OF THE PROJECT BY CITY STAFF AND CONSULTANTS

Project Consultant Brian Colburn of McFarland Johnson gave the Peverly Hill Road Sidewalk Improvement/Complete Street Project presentation reviewing and identifying the project impacts both temporary and permanent.

Public Works Director Rice concluded the presentation reviewing the next steps of the process stating that if the Council approves the Resolution determining public necessity for the project, plans will be submitted and environmental review done by NHDOT. He continued that R.O.W. acquisition process will begin, final design completed with anticipated construction to begin in 2023.

Councilor Huda asked what the square footage of the temporary easements versus the permanent easements as well as the placement of light poles.

Public Works Director Rice stated that one property is impacted by the relocation of a light pole at 515 Peverly Road which may have to go behind the right-of-way. He stated we will try to minimize the impact. He stated he will get the square footage numbers she requested.

Councilor Kennedy stated that we haven't discussed the logistics with the residents because we can't but recalled that back in March Deputy City Attorney Woodland had said that if anyone wanted to object they could and asked if that is still the case after this vote is taken.

Deputy City Attorney Woodland stated that after the approval by the Council it then allows us to go forward with the project with the involvement of the US Government. She stated that if agreements cannot be reached with property owners, then we would have to resort to eminent domain which is a backstop to keep the project going.

Councilor Kennedy asked if they go to the Board of Tax and Land Appeals if they are still not happy, can they then go to court.

Ms. Woodland stated yes but if they have a dispute they can still work with the City Manager and the Council can decide if they want to pay the money they are asking for which is usually discussed through the non-public session process. She clarified that we cannot talk money with anyone until this vote is taken.

Councilor Lazenby asked if this vote does not pass what will happen to this project and the funding involved.

Mr. Colburn stated that if this fails the city will have to decide if they want to redesign the project trying to keep it within the right-of-way, but that would be a challenge. Otherwise it would be the end of the project. He then gave the square footage figures that Councilor Huda requested; 13,035 square feet of temporary easement and 27,960 square feet of permanent easement.

Public Works Director Rice clarified that there isn't a no-impact alternative.

Councilor Trace asked about trees being taken as well as any impact to the stone wall.

Mr. Colburn stated that there will be no impact to the stone wall. Regarding trees he doesn't know the exact number involved but generally they talk with the property owners to mitigate the impact. He stated that there is a more formal process involved with the Conservation Easements.

Councilor Trace stated a tree has value so would it be monetary or replacement.  
Mr. Colburn stated it is up to the property owner.

Councilor Whelan asked about the Conservation Easements.

Ms. Woodland that the Hett Farm has a conservation easement and involves LCHIP funds. She stated we spoke to the State 2-3 years ago about the proposed project and they liked the pedestrian/bike path portion and are not interested in challenging it but we still have to go through the formal taking process.

### **VIII. PUBLIC HEARING FOR TAKING OF TESTIMONY** *(participation may be in person or via Zoom)*

Mayor Becksted opened the public hearing:

Jake Krupp – stated the drainage easement will be built on his property which he bought 25 years ago and eminent domain will take ½ of the property. He stated that forced taking of property has to meet criteria of public use is necessary to the public benefit and he isn't sure that this is necessary. He stated that net public benefit is a different analysis; open land versus more traffic. He stated that it is him this time and he has an enforceable contract with the city on how this land can be used so if the city is able to not adhere to the contract then it can happen to others as well. He continued that he will have to pay for his own lawyers and advisors but the taxpayers will be paying for the city to take him through this process. He stated the city prohibits certain uses of his property so if this is changed then the value needs to reflect that use. He discussed the various amenities and issues of his property and the

reduction of the value of his home as a result and wants to be compensated for what is being taken from him.

Allison Tanner – stated she lives across the street from Mr. Krupp’s property and has seen it flood many times and if it becomes a gravel wetland it will go into Sagamore Creek. She continued regarding the taking of trees stating that replacing large trees with smaller ones is not the same. She discussed the truck traffic on Peverly Hill Road and Greenleaf Avenue stated it is abominable with the noise and air pollution and there are more and more residents being added to the area. She concluded by presenting a petition with resident signatures requesting that Truck Travel be prohibited on Peverly Hill Road.

Shannon Harrison – stated she agrees that Truck Traffic should be prohibited and also feels that the speed limit needs to be enforced as she has seen and had several close calls. She stated she understands that the new design is supposed to help alleviate the issue but is concerned that trees that were in the first design are no longer a part of it.

Mike Mosca – stated he is moving in 2023 and is concerned that his property be restored to good condition for when he is ready to sell it.

Ann Poubeau – thanked the residents of Peverly Hill Road for speaking out about their issues but she is in favor of the proposed multi-use paths which will connect one end of town to the other. She stated she understands the issue of eminent domain but does feel that this is a safety improvement benefiting all.

Carol Ruesswick - stated she has lived in her home since 1990 and is concerned with the impact traffic has had on her property and air quality and doesn’t know that this project will improve these issues. She discussed various problems caused with delivery trucks and tractor trailer trucks going by and shaking her house. She stated she has taken traffic counts at various times and has counted 950 in a single hour in the morning. She asked when the last time the city has done a traffic count during prime hours and also how will the air quality be improved with this project since there is federal money being used.

Laura Frazer – stated she supports this project as a bicyclist and pedestrian who walks her dogs on this road and is often scared to do so. She feels this project will slow the speed, beautify the road and allow safer walking and bicycling.

Marie Kelleher – stated she understands putting in sidewalks but not the multi-use path and feels that this should not go forward until the speed limit is lowered and truck traffic averted from the area. She stated that if the road is narrowed due to the paths, trucks will have no room to swerve if they have an issue and will hit anyone in the multi-use path.

Donald Jones – stated he feels that everyone in the area wants reduced speeds and truck traffic rerouted but feels this needs to be handled separate from this project. He stated he supports the multi-use path and feels that it is important with the new houses being built in the area with more kids.

Matthew Glenn – thanked those who voted to move this forward and the residents for their continued advocacy for safe pedestrian and bicycling paths. He stated it is important for the city to do this and to connect 2 sections of the city including the Elwyn Park neighborhood who use the ball fields and would be able to ride bikes there. He thanked the engineers for

their work to make less impact on residents and concluded by stating the SABR supports this moving forward.

Gabe Weinrob – stated he is a Portsmouth High student and is an avid biker and feels that this helps people who don't have their licenses yet and helps sustainability.

Mark Westgate – stated he is concerned that the gravel wetlands will affect his view. He stated he previously dealt with former Transportation Engineer Eby regarding the clearance from his house to the wetlands and is also concerned if they will be built 9' above flood stage. He concluded that otherwise he supports the project.

Dave Allan – stated he is in favor of the project and feels it does meet the public necessity purpose. He stated as a member of SABR and having a family of bicyclists, this will allow safe riding from the Elwyn Park neighborhood.

Seeing no one else wishing to speak, Mayor Becksted closed the public hearing.

## IX. CONSIDERATION OF RESOLUTION

**Councilor Lazenby moved to adopt the resolution as written, seconded by Assistant Mayor Splaine.**

Councilor Lazenby discussed the history of the public process with adjustments made through the back and forth process to get to this point. He stated that perfect projects don't exist and feels this is a good solution to a difficult problem and will bring relief to this part of the city.

Councilor McEachern stated as a City Councilor he has become more aware of issues and more mindful and feels that this project calms the traffic by narrowing the road and feels this should move forward. He discussed this is a multi-layered approach and questions about the placement of or removal of trees etc. will happen after this phase. He stated this will connect one part of town to another which is one of the city's goals.

Councilor Kennedy stated there were questions raised tonight that she wants answered in regards to traffic studies and air quality as well as the issue of wetlands. She stated she is also not in favor of eminent domain.

Mr. Colburn reviewed the findings of several traffic and air quality studies done previously. He addressed air quality stating the analysis finds that adding sidewalks and bike lanes to the area will reduce the amount of cars on Peverly Hill Road and lower the carbon.

Councilor Kennedy asked about the gravel wetland on Greenleaf Avenue and if it will have to be designed 9' above the flood stage.

Mr. Colburn explained that it will be in the flow area and will be dealt with in the design. He stated it does not have to be 9' above flood stage as that would be hard to achieve.

Councilor Kennedy asked how often this will be cleaned.

Mr. Colburn stated it is required to be cleaned annually.

Public Works Director Rice clarified that the City has practices and procedures in place regarding cleaning of drainage structures.

Acting Deputy City Manager Woodland stated that the issue of the gravel wetland had been a tough issue from the beginning and she had previously asked if it could be located elsewhere for many reasons.

Mr. Colburn explained that the low point of Peverly Hill Road is at Greenleaf Avenue so this needed to be located in a lower area due to gravity and is why they looked at Greenleaf Avenue for parcels without buildings.

Councilor Tabor stated it is difficult when a Council has to decide to allow eminent domain and understands the residents' concerns. He stated we have to determine if it is for the public benefit and he feels that yes it is. He stated the current roadway encourages speeding as there are no sidewalks or curbing and gave Woodbury Avenue as an example of how adding these does reduce speed. He stated this will be an amenity to the neighborhood and the city as a whole and feels the project has gotten better through dialogue and is as low impact as possible.

Councilor Trace stated she does not favor eminent domain but sees the benefit to the community of a multi-use bike path. Next, she asked how difficult it is to limit the truck travel to only local deliveries such as has been done on Bartlett Street. She feels this would drop the number of trucks and help the air quality as well. Finally, she stated she does not like the taking of trees and understands there will be replacements but she wants the city to take care of them and challenges the City Manager and City Attorney to ensure this happens.

Councilor Huda stated she supports the bike path but doesn't like the impact of this project on one person and is concerned that this will proceed whether he gets fair market value or not. She asked if this can be separated from the other properties that have minimal impact.

Mayor Becksted stated that he agrees that from the land use perspective there can be stipulations added that the Council can be involved or not and he would like to ensure that the Council is involved sooner than later in the process. He stated that land in proximity to water is valuable and that needs to be taken into consideration as well.

Discussion ensued regarding the appraisal process and further permitting process that will be required.

**Councilor Kennedy moved to include the following stipulations in the resolution, seconded by Councilor Huda.**

**This Resolution includes the following stipulations with respect to property at 375 Greenleaf Avenue:**

1. The City Council shall be kept involved and have input over the negotiation process. Note: Deputy City Attorney Woodland advised the Council that this stipulation would be satisfied by bringing the appraisal to the Council before any offer is made to the land owner.

2. The acquisition by the City will not deprive the land owner of any regulatory position held at the time of taking, such as loss of frontage or any rights associated with water or wetland regulations.
3. The drainage structures are to be kept clean in accordance with the City's normal practices and procedures.

**Motion to amend to include 3 stipulations passed on a 9-0 vote.**

**Main motion as amended passed on a 9-0 roll call vote.**

X. ADJOURNMENT

**Councilor McEachern moved to adjourn at 9:12 p.m. Seconded by Councilor Lazenby and voted.**

Respectfully submitted:

Valerie A. French,

Deputy City Clerk