

SPECIAL CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: WEDNESDAY, NOVEMBER 16, 2022

PORTSMOUTH, NH
TIME: 3:00PM

I. CALL TO ORDER

Mayor McEachern called the meeting to order at 3:00 p.m.

II. ROLL CALL

PRESENT: Mayor McEachern, Councilors Tabor, Denton (5:05 p.m.), Moreau, Bagley, Lombardi, Blalock, and Cook

ABSENT: Assistant Mayor Kelley

III. OPENING OF HEARING IN CITY HALL COUNCIL CHAMBERS – Brief overview by City staff of process and purpose (*Recess for purpose of travel*)

Deputy City Manager/Deputy City Attorney Woodland said the reason of this special meeting is for purposes of beginning an eminent domain process. She stated we will be conducting a site visit of the property located in Durham. She said there will be a full presentation by staff upon our return and the Mayor will reconvene the meeting at 5:00 p.m. with a public hearing to follow.

IV. 3:30 p.m. – RECONVENE AT WAGON HILL FARM, 156 PISCATAQUA ROAD, DURHAM - Transportation of City Council to be arranged for by City of Portsmouth

Deputy City Manager/Deputy City Attorney Woodland advised the City Council that there is a bus awaiting to bring us to the site.

V. SITE VISIT OF 180 PISCATAQUA ROAD, DURHAM PROJECT AREA

Deputy City Manager/Deputy City Attorney Woodland announced that the property is located at 180 Piscataqua Road in Durham, New Hampshire.

VI. RECESS UNTIL 5:00PM, AT CITY HALL COUNCIL CHAMBERS

Mayor McEachern recessed the meeting for purposes of travel and to reconvene at Wagon Hill Farm where the Council will view the site at 180 Piscataqua Road in Durham.

VII. 5:00 p.m. – REOPEN PUBLIC HEARING IN CITY COUNCIL CHAMBERS

City Manager Conard was present for this portion of the meeting. Councilor Denton arrived to the meeting at 5:05 p.m.

Mayor McEachern reconvened the meeting at 5:05 p.m., in the Eileen Dondero Foley Council Chambers.

VIII. PRESENTATION OF PROJECT BY CITY STAFF

Al Pratt, Water Resources Manager, provided a general overview of the project. He reported that 78% of our water is supplied by the Madbury Treatment Facility and Madbury wells, which equates to 2.8 million gallons per day that is a critical infrastructure to the City. He advised the City Council that the project scope will include the installation of a new 24" high density polyethylene (HDPE) pipe, replacement of valves in existing water mains, and the restoration of shore land and a tidal zone.

Assistant City Attorney McCourt spoke to the history of the water line that was installed in the 1950's by Army Corps of Engineers. He said we did not secure the rights to go in to make repairs to the lines and the description did not depict a redundant line that is present. He spoke to the temporary and permanent easements. He said that temporary area will be used for laydown of construction materials with access over Wagon Hill. Assistant City Attorney McCourt outlined the eminent domain public process.

IX. PUBLIC HEARING FOR TAKING OF TESTIMONY

Councilor Denton moved to suspend the rules to allow a non-resident to speak first at the public hearing. Seconded by Councilor Bagley and voted.

Marsha Brown, representing the owners, spoke to the three different plans and stated all have been major changes. She stated now the city is advising that an access road would be coming from Wagon Hill. She spoke to the history of this matter and to the owner's patience with this process. Ms. Brown said the impacts of construction would have be to the owner's home and land. She stated that there has been a lack of attention to details by the city on this project. She said many of the terms of the project have been agreed upon and now the city is seeking eminent domain. Ms. Brown said the owner's feel they have been treated with disrespect and are here because of the way the project has been handled by the city. She said the land we are speaking to has been owned by the McLane's family for over 200 years.

Elizabeth Bratter expressed her opposition to eminent domain and said it should only be sought in extreme circumstances. She asked the city to consider if there is another location that the project could be done and urged the Council to look at the big picture when making their decision this evening.

With no further speakers Mayor McEachern closed the public hearing.

X. CONSIDERATION OF RESOLUTION

Councilor Denton asked Assistant City Attorney McCourt if we are allowed to use eminent domain where this land is not in the city. Assistant City Attorney McCourt advised the Council that RSA 38:30 is an exception, to protect drinking water. Councilor Denton asked if condemnation has a legal implication. Assistant City Attorney McCourt said we need to move our time line quickly and the project has changed many times. He stated that the staff and engineers feel that this is a critical need. He stated we cannot get a permit from DES until we have all legal rights to do the project, and condemnation is the end point.

Councilor Denton asked if we are still seeking a Memorandum of Understanding (MOU), if we proceed with condemnation. Assistant City Attorney McCourt said at that point we would enter the final document with the Board of Tax and Land Appeals and not require a MOU.

Councilor Tabor said he would like responses from the Public Works Department on issues raised by Ms. Brown regarding the project and asked if we need the permanent easement for the new pipe. Deputy Public Works Director Goetz said the permanent easement is due to the existing pipe. Councilor Tabor asked if the valves for the pipes are working. Deputy Public Works Director Goetz said it was determined not to touch the valves because if they broke it would be a major issue. He further stated we are working with the City of Dover on an interconnection to provide redundancies.

Mayor McEachern asked what would happen if we found out the third line is not repairable and the other two lines can't be rehabilitated. He asked would we still require an easement on the property. Deputy Public Works Director Goetz said we would not know until we get to that point in the project. Assistant City Attorney McCourt said the easement could not be transferred, and the easement would revert back to the owners, with removal of the line having a great impact. Mayor McEachern said if it was not used for water would we require an easement to keep it in place. Assistant City Attorney McCourt said we would still need the easement.

Councilor Bagley asked what is the life span of the new pipe. Deputy Public Works Director Goetz said the pipe is state of the art and has a 50 year life span, but they claim it is a 100 year life span. Councilor Bagley asked Assistant City Attorney McCourt because of the urgency, we are taking action to approve eminent domain, in case we need it. Assistant City Attorney McCourt said we will still negotiate an agreement with the property owners and hope we don't need the eminent domain process.

Councilor Lombardi said in balancing competing interests has the city identified the burdens and costs to the owners of the property. Assistant City Attorney McCourt said the burdens on the property owners will be over the course of one winter and we will try to mitigate the area we will need by putting some items on Wagon Hill. He further stated that we are working with the City of Dover on an easement to access the property, which would not require us to go over the owner's property. He said we are seeking temporary construction easements rather than permanent easements. Councilor Lombardi said he does not want this to go to eminent domain, and that we find a way to have more information from the city be provided to the owners. He said communication needs to be improved to the owners and to the City Council.

Councilor Blalock said an access road would be ideal and asked if we are building one. Water Resources Manager Pratt said the plan is to not make it a road. Councilor Blalock said he is sensitive to an old property and how important the property is to the owners. He said construction and the impacts, are not lost on him.

Councilor Cook asked Mr. Pratt what is the life span of cast iron pipes. Mr. Pratt said we don't know that at this time. Councilor Cook asked about the ability by the property owner to retain the property for sub-dividable rights. Assistant City Attorney McCourt said the portion of the property is extremely close to shoreline and doesn't believe it will be sub-dividable.

Councilor Cook said there is some grant based funding for the project and asked if there is a deadline for the funding. Deputy Public Works Director Goetz said we have \$600,000.00 earmarked and no deadline exists.

Councilor Moreau said in order for us to be able to get a DES permit we need rights to the property. She asked could a MOU be enough for a permit. Assistant City Attorney McCourt said based on our consultants we need an easement in place. Councilor Moreau asked if the Resolution is passed this evening would this then allow us to go forward with the DES. Assistant City Attorney McCourt said he does not believe it is an option. Councilor Moreau said that this is a time issue and we are caught between a rock and a hard place.

Mayor McEachern said we do not have an agreement with Wagon Hill and where does that issue stand. Assistant City Attorney McCourt said we don't have finalized licenses but if we needed to, we have an existing easement to operate over the other easement. Mayor McEachern said we have not finalized plans because we are working on any number of things with property owners, to align with them. Assistant City Attorney McCourt said options were presented to the Town of Durham on the path they preserve and they are saying we should be able to negotiate a final agreement.

Mayor McEachern said we need eminent domain to have temporary construction easements. Assistant City Attorney McCourt said that is correct. Mayor McEachern thanked the owners, and Sandy's grandparents for doing a really good thing for the city. He stated they allowed this to happen and the reservoir is where we get our water from. He said private citizens allow for that to happen. He thanked them for their part in Portsmouth and said without access to clean water, we don't have much. He said we find ourselves in a place where it would not make sense to remove that pipe. Mayor McEachern said he is displeased that communication was not up to what was expected. He does not want this to go through eminent domain, and would like to reach a conclusion with a MOU on how we are going to do this process. He said he would support this because he wants the City to find a resolution outside eminent domain. Mayor McEachern said we are empathic to your family's situation and we need to come to a term that understands your private property interest. He stated we need to be collaborative and reasonable in working urgently to solve this matter.

Councilor Tabor moved to approve the Resolution regarding public necessity to acquire property for the Little Bay water line replacement project as drafted. Seconded by Councilor Bagley.

On a unanimous roll call vote 8-0, motion passed.

At 6:50 p.m., Councilor Moreau moved adjourn. Seconded by Councilor Blalock and voted.



KELLI L. BARNABY, MMC/CNHMC
CITY CLERK