

**COMMITTEE ON LIAISON
AUGUST 20, 2018 at 6:00 p.m.
COMMITTEE ROOM
WOBURN CITY HALL**

Voting Members present: President Richard Haggerty, Alderman Michael Anderson, Alderman Michael Concannon, Alderman Richard Gately, Alderman Joanne Campbell, Alderman Darlene Mercer-Bruen, Alderman Edward Tedesco., Alderman Lindsay Higgins, and Alderman Mark Gaffney

Also present: City Solicitor Ellen Callahan Doucette; Attorneys J. Raymond Miyares, Eric Reustle and Bryan Bertram, Miyares and Harrington LLC, 40 Grove Street, Wellesley, MA.

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Notice of appeal to Energy Facilities Siting Board by NStar Electric Company dba Eversource Energy of denial of petition for grant of right in a way in Lake Avenue, Pickering Street, Border Street, Cross Street, Washington Street and Montvale Avenue: Motion made by Alderman Tedesco and seconded by Alderman Higgins to convene in executive session under MGL Ch. 30A, Section 21.3, for the purposes of discussing pending litigation. Roll call vote as follows: Alderman Anderson – aye; Alderman Campbell – aye; Alderman Concannon – aye; Alderman Gaffney – aye; Alderman Gately – aye; Alderman Higgins – aye; Alderman Mercer-Bruen – aye; Alderman Tedesco – aye; President Haggerty – aye. All in favor; 9-0. President Haggerty said Eversource has appealed the council’s decision in May to reject the petition for a right of way, and that the attorneys are present to update the council on the process and the timeline. Attorney Miyares introduced his two colleagues and said his firm is looking for a good fight here. He said the next step for Eversource is an appeal to the Energy Facilities Siting Board (EFSB), which will pick the route of the grant right-of-way that has the least environmental impact at lowest possible cost. He said the EFSB is not a neutral tribunal and their business is energy siting facilities. He said their track record is almost always whatever is proposed is what gets approved. He said he has ever known of only one time when the siting board picked a different route and that was because the original route required an easement from the municipality. He said the EFSB generally has been consistent in its willingness to pick a route that the utility prefers. He said the usual process is for Eversource to pick a grant of location, with all the details worked out between the company and the DPW and Engineering Dept. beforehand. He said that is not what happened in this instance. He said the council was asked to approve something before all the details were worked out. He said he has no idea why Eversource did that in this instance. He said the siting board is not fussy about such things. He said they can still make the project happen. He said the siting board by statute is supposed to look at environmental impacts and the appropriateness of overriding local standards. He said the focus of the appeal will be local standards. He said every one of these appeals has resulted in overriding the community’s decision. He said the council is in for an uphill battle. He said the council’s decision is concerned with conflicts among utilities because they can’t have utility lines running into each other. He said there need to be a certain amount of separation between the lines. He said he expects the siting board will probably say something like the council needs to work out mitigation with Eversource. Attorney Miyares said he understands there were some test borings done and that’s something he will pursue. He said another consideration is potential

exposure to an electromagnetic field. He said the siting board has never established a level of electromagnetic fields it deems to be unsafe. He said the World Health Organization has deemed unsafe levels, but they are much higher than what is proposed. President Haggerty said the depth of the line is something the council talked about. Attorney Miyares said there have been successful efforts to get the lines moved to a deeper level. He said there is some hope the city can get the lines moved deeper. He said Eversource is willing to do the things it is willing to do and is not willing to do the things it is not willing to do. He said they will agree to paving the road from curb-to-curb if the council asks. He said they will agree to conditions regarding work hours and requiring a police detail. Attorney Miyares said Eversource was willing to undertake a monitoring program in Salem, which he said was not very good. He said there was a monitoring program in Needham that was held to a higher standard, which involved a peer review. President Haggerty asked if the council can ask for steps to mitigate the EMF levels. Attorney Miyares said Needham asked for that on a pre-construction basis. President Haggerty asked if mitigating the EMF levels is something the council should be asking for beforehand. Attorney Miyares said the council can ask, but it's a question of whether Eversource will agree to that. He said his firm will provide a robust defense of the council's denial of the grant of right-of-way and he believes they can make a case before the EFSB. He said the siting board is not going to be the city's friend. He said if the EFSB decides in Eversource's behalf, the city can appeal to the Supreme Judicial Court. President Haggerty asked what the time line will be. Attorney Reustle said a decision must be issued within six months of the filing of the application. Attorney Miyares said the deadline for a decision is during the first couple of weeks in January, but he expects the decision will be issued by the end of the calendar year. He said if the EFSB decided in favor of Eversource, the council has 20-30 days to appeal to the SJC, and a case before the SJC generally takes a year to adjudicate. He said Eversource will be allowed to proceed while the matter is under appeal. He said the council would have to try to get a stay to stop the work, and that is not an easy thing to do. He said he guesses the decision will be more nuanced than that. He said he will try to get Eversource to do as many things as possible, but it is highly unusual the result of the case will be shutting down the project. He said the council needs to understand what its odds are. President Haggerty asked if the council will lose anything by appealing to the SJC. Attorney Miyares replied the city's negotiating position is likely to erode over time, and its strongest position is now. Alderman Anderson asked when the council has the most bargaining power. Attorney Miyares said he can use the discovery process to pin Eversource's ears back and make them justify what they've done, and so they have a sense of defensiveness. He said Eversource is good at painting a picture that they've cooperated with the city. Alderman Gately said Eversource has not cooperated. He said it would have been nice if the people from Eversource who showed up to the public hearings knew what the hell they were talking about. He said the city is trying to get Montvale Avenue widened in East Woburn, and Eversource is trying to cross a 48-inch water main and the Aberjona River. Attorney Miyares said he was surprised by Alderman Gately's comment and his experience with Eversource is they know that they're talking about. Alderman Anderson said Eversource did not send people with technical expertise to the hearings. Alderman Mercer-Bruen said Wakefield is the only community that has approved the grant of right-of-way and asked if that will help the council's position. Attorney Miyares said he will have to distinguish between fighting Eversource on the route or the issues raised by the decision. He said some communities have appealed the siting of the route. Alderman Mercer-Bruen said Eversource thought this was a done deal. Attorney Miyares said that is not his experience in other towns. Alderman Anderson said the ship has sailed on the idea

that it's being sited here when the council goes to the SJC. Attorney Miyares said Eversource will challenge that decision. Alderman Andersons aid Eversource asked for a grant of location and the council's decision was for them to find another route. Attorney Miyares said the siting board won't consider that, but it will rather listen to protocol problems like conflicts and structural damage. He said anything that suggested the company should pick a different route won't be considered. Alderman Anderson acknowledged the city has a one in a million shot of preventing the line from going through the city. Attorney Miyares said the odds may not even be that good. Alderman Campbell said Eversource has more or less indicated it can change the route. Alderman Anderson said the council will add conditions. Alderman Concannon asked what level of confidence the council will have that the city's roads will not be damaged, and who decides that. He said he wants to know who will be the arbiter. He asked if the council can say no if an easement is required. Attorney Miyares said the council had included a condition that indicates if the city determines there has been an adverse impact, it could require repair. Alderman Concannon said he asked for Eversource to publicly acknowledge that, and it wouldn't. Attorney Miyares said it is his opinion the council can impose conditions like that and Eversource will have to abide by them. Alderman Campbell said she realizes it is an uphill battle and the council may not win with the EFSB. Attorney Miyares said if the council wins, it will be a first. Alderman Campbell said she is holding out hope. She noted Providence, Rhode Island, won a case. Alderman Campbell said Eversource is claiming this is a new line but to her it's not a new line. She said she feels that is the council's argument, that this is not a new corridor. Attorney Miyares said the siting board has traditionally not done as well as other state agencies with the SJC. He said the EFSB's winning percentage with the SJC is about 75 percent. He said he has a feeling the council has a better chance before the SJC. Alderman Campbell said there are houses that are 10 feet away from the proposed line. She said the council has to fight this. She asked what the members of the council are going to say to their constituents if they don't do everything they possibly can. She said the council can't just let it go, even if there is only a 10 percent chance of winning. Attorney Miyares said there are two litigation paths, and he will be as aggressive as they possibly can. He said he will try to extract some conditions from Eversource. He said he is willing to fight, but if the council thinks he is going to waltz into a court room and overturn all the precedents, it's not going to happen. Alderman Anderson is the EFSB an administrative body and the council is a quasi-judicial board. He said the council needs to hear the truth that its chances are slim and it knows it is pushing a rock up a hill. Attorney Miyares said his plan is to hit Eversource hard. He said Eversource has to provide a written response to any question the council asks. He said they have two weeks to respond. He said counsel will be working with City Engineer Jay Corey, DPW Supt. Jay Duran and City Solicitor Callahan Doucette to convey a message the council is serious. Alderman Anderson asked if there is an evidentiary period. Attorney Miyares replied it is quick. Alderman Concannon said much of what the council read about the Eversource petition revolved around the definition of "in commode," and he asked how broad that definition is. Attorney Miyares said he thinks it is part of an old statute the state legislature forgot to repeal. He said in commode doesn't have much of a track record in the courts. Alderman Concannon said the council based its decision on the city being in commode-d. Attorney Miyares said that means you can't place a utility line that's going to disrupt something else. President Haggerty asked what the odds are of Eversource choosing a different route without the council being part of the discussion. Attorney Miyares said the applicant has to have a proposed route and a preferred alternative. He said the siting board does not have the authority to create a different route. He said in all cases the EFSB has gone with the

preferred route except once. He said it is unlikely the EFSB will choose a different route. President Haggerty asked if Eversource will negotiate with Winchester. Attorney Miyares said if negotiations with Winchester result in a change of the preferred route to the alternative route, it would have to go through a whole new proceeding. Alderman Gately asked what the benefit is to the city of Woburn. He said for the last 6-8 years Eversource has been bringing in transformers on railroad cars to go on 100-foot trailers that are going down city streets. He said he always worried why they were. He said he thinks Eversource has been planning this for years and years. He said Woburn is going to be feeding other cities with electricity. He said this is the game Eversource has been playing for 10-15 years. City Solicitor Callahan Doucette said there is a line to Everett that goes through Winchester that doesn't involve Woburn at all, and Eversource had permission to do that. Attorney Miyares said he has been hoping to examine what's been going on at the power plant. He said there may be a benefit to the city from the bigger power plant paying more taxes. Alderman Campbell said Eversource said it is cheaper for them to go this route than their own easement. She said she would like to know what the difference in price is between routes. City Solicitor Callahan Doucette said Eversource does evaluate the cost of each route. President Haggerty asked what the next step is and when the committee should meet again. Attorney Miyares suggested before the deadline for the filing of informational reports on Sept. 18. President Haggerty asked if Sept. 10 will be a good date. City Solicitor Callahan Doucette suggested as cost control measure having council members submit questions to her and she would forward them to outside counsel. She asked if there is a specific reason for outside counsel to attend another meeting. She asked if the City Council wants input on questions or if it wants to discuss the imposition of conditions. Alderman Concannon said he is interested in both. He said he knows the council has wide latitude to ask questions, but a short time to prepare them. He suggested meeting on Sept. 10 to review questions. City Solicitor Callahan Doucette said she is looking at efficiency. President Haggerty said the committee will meet again on Sept. 10 and keep the meeting concise. Alderman Concannon asked outside counsel if they will be preparing questions. Attorney Bertram said he has already prepared questions. City Solicitor Callahan Doucette said a motion has already been filed with the ESFB notifying it that Miyares-Harrington intends to participate as a full party in the appeal. Motion made by Alderman Mercer-Bruen and seconded by Alderman Higgins to accept and make part of the permanent record a memorandum dated August 17, 2018 from Attorney Bertram to Robert J. Shea, Presiding Officer, Energy Facilities Siting Board, of Miyares-Harrington's intent on participate as a full party in proceeding; approved, 9-0. Alderman Gaffney said the council attached 62 reasons for its denial and asked if any of those will be asked as questions during the appeal. Attorney Miyares said he will prepared questions based on the findings the council made in its denial. President Haggerty asked if there is a vote the council has to take. City Solicitor Haggerty said there has to be a consensus on how you want to proceed. Attorney Reustle said it might be useful to obtain a transcript of the meetings. City Solicitor Callahan Doucette said she will see if she can get a transcript.

285 Locust Street LLC vs. Michael Anderson, et al: City Solicitor Callahan Doucette said she was in court with Judge Foster. She said 285 Locust Street LLC has specifically appeal condition #11 of the special permit and are asking the court to set it aside. She said they have attacked the validity of the city's mitigation ordinance. She said opposing counsel, Dennis McKenna of Riemer & Braunstein, is arguing the council misapplied Section 18 of the zoning ordinance. She said she is still reviewing the ordinance. She said it is a terrible ordinance. She said the judge has

scheduled a status review for Sept. 7. She said the city can enter into negotiations with 285 Locust Street LLC and the alternative is a motion for summary judgment. She said she has read the minutes of the meetings involving 285 Locust Street LLC's petition and there are serious problems. She said one of the issues is the city can only ask for mitigation at an intersection if the impact of the project is if 50 or more vehicles go through the intersection and the petitioner is claiming the increase in vehicles at the Cambridge Road/Bedford Road intersection is only going to be 29 vehicles. Alderman Gately said the petitioner's traffic report is exactly the same as the traffic report submitted by Herb Chambers when the car dealer applied for a special permit for the site several years ago. City Solicitor Callahan Doucette said the traffic generated by the Herb Chambers would have been different than the traffic generated by the 285 Locust Street LLC project. She said the Herb Chambers traffic would have involved car carriers. Alderman Concannon said the process would have been for the City Engineer to refute the petitioner's traffic numbers. City Solicitor Callahan Doucette said the ordinance requires the City Engineer to agree or disagree with the numbers. She said she does not want to throw the City Engineer under the bus but he did not agree or disagree with the numbers but rather he issued a couple of memoranda about the Bedford Road/Cambridge Road intersection. She said there has to be a finding that there will be an impact to the intersection and if there is not an impact of 50 additional vehicles, then the mitigation ordinance does not apply. She said the appellant's traffic report indicates there will be an increase at the intersection of 29 vehicles in the morning and 25 vehicles in the evening. She said the purpose of the of the mitigation ordinance is to address a substantial impact on traffic. She said the council doesn't have that, there is no peer review and the City Engineer does not refute it. Alderman Higgins asked if the impact on pedestrian traffic could be taken into consideration. City Solicitor Callahan Doucette said there is no pedestrian traffic. President Haggerty said the appeal says at no point did any member of the City Council nor any city employee identify whether there was an impact on traffic. City Solicitor Callahan Doucette said the City Engineer is supposed to respond with statistics. Alderman Anderson said condition #11 is a significant condition and asked if the council can revisit its decision on the special permit if it is thrown out. City Solicitor Callahan Doucette said if the appeal is upheld, the condition goes away. She said she thinks 285 Locust Street LLC is going to prevail. Alderman Anderson said this is all very predictable. Alderman Gately said if the petitioner's attorney had said he was going to appeal, the council would have pulled back the other conditions. He said he asked the petitioner's attorney if he was going to appeal, and the petitioner's attorney lied to him. President Haggerty said the council made concessions to the petitioner on the basis the council would be receiving the mitigation fee. He said there were people who would not have supported the petition if they thought there was going to be an appeal. Alderman Concannon said the council is going to get whacked with its own ordinance. Alderman Higgins acknowledged Alderman Concannon saw that right away. City Solicitor Callahan Doucette asked if the committee wants to discuss trying to get additional concessions from the petitioner. Alderman Concannon suggested asking the petitioner for \$50,000 to improve the intersection, which was discussed during the deliberations for the special permit. City Solicitor Callahan Doucette said that money would go toward a traffic safety fund and what she is going to report to the petitioner is that the city is willing to enter into discussions. Alderman Campbell said the council has to be careful because Riemer & Braunstein also represents the Woburn Mall. She said the council has to fix the ordinance. Alderman Higgins noted the Woburn Mall is a 40R project. President Haggerty acknowledged the likelihood the council is going to lose and asked how the council wants to proceed. City Solicitor Doucette said she will tell the

appellant the city is open to a settlement. Alderman Gately said the council should get the mitigation ordinance re-written correctly. Alderman Concannon agreed the ordinance needs to be improved. City Solicitor Callahan Doucette said the issue in this instance is the ordinance was not followed as it is written. She said the council has been getting away with not following the ordinance because no one has appealed. She said there is case law that there has to be a nexus between mitigation and the project. Alderman Gately asked what would have happened if the council has required the mitigation fee to be applied to the sidewalks on Locust Street. Alderman Concannon mitigation has to be applied to traffic or utilities. City Solicitor Callahan Doucette she will tell the appellant the council is open to negotiation. Alderman Concannon said he does not want this to become a precedent. City Solicitor Callahan Doucette said the petitioner can proceed with the project at his own risk during the appeal. She said all the petitioner has to lose is the \$300,000 mitigation fee. She said the petitioner has been talking to the Building Commissioner about obtaining a building permit. President Haggerty suggested asking for more than the council expects to get in a settlement. City Solicitor asked if the council would rather have money or better curbing. Alderman Campbell said City Engineer Corey felt the city needs \$150,000 to put toward the Cambridge Road/Bedford Road intersection, and the council could ask for that. Alderman Anderson said the Cambridge Road/Bedford Road intersection is a state problem and the city should let the state fix it. He said the council should focus on getting money to fix city roads. Alderman Higgins said the Cambridge Road/Bedford Road intersection was discussed during private meetings, and she told the petitioner from the get-go that was her concern. Motion made by Alderman Anderson and seconded by Alderman Tedesco to support the City Solicitor in settlement negotiations; approved, 9-0. Motion made by Alderman Tedesco and seconded by Alderman Higgins to exit executive session: Roll call vote as follows: Alderman Anderson – aye; Alderman Campbell – aye; Alderman Concannon – aye; Alderman Gaffney – aye; Alderman Gately – aye; Alderman Higgins – aye; Alderman Mercer-Bruen – aye; Alderman Tedesco – aye; President Haggerty – aye. All in favor; 9-0.

Motion made by Alderman Tedesco and seconded by Alderman Concannon to adjourn; approved, 9-0. President Haggerty adjourned the meeting at 7:53 p.m.

Attest: _____
Gordon Vincent
Clerk of Committees

Minutes released by the City Council on March 5, 2019