

CITY OF WOBURN
JANUARY 8, 2019 – 7:00 P.M.
REGULAR MEETING OF THE CITY COUNCIL
WOBURN CITY COUNCIL, COUNCIL CHAMBER

Communication received from City Solicitor Ellen Callahan Doucette requesting to speak with the City Council in Executive Session under G.L. Ch. 30A, Sec. 21(a)(3) Purpose 3 to discuss strategy relative to pending litigation in the matter of NSTAR Electric Company d/b/a Eversource Energy EFSB 18-03. A communication dated January 2, 2019 was received from City Solicitor Ellen Callahan Doucette as follows:

Subject: Eversource

Attorney Miyares, et. al. would like to meet with the City Council in executive session on Tuesday, January 8, to discuss ongoing negotiations with Eversource.

Please let me know if that scheduling is possible.

Thank you, Ellen Callahan Doucette

Motion made and 2nd to go into Executive Session under G.L. Ch. 30A, Sec. 21(a)(3) Purpose 3 to discuss strategy relative to pending litigation in the matter of NSTAR Electric Company d/b/a Eversource Energy EFSB 18-03 and that the Chair declares that if an open meeting was held on the matter this may have a detrimental effect on the bargaining or litigating position of the City Council, ROLL CALL: Campbell - Yes, Concannon - Yes, Gaffney - Yes, Gately - Yes, Higgins - Yes, Mercer-Bruen – Yes, Tedesco - Yes, Anderson – Yes, Motion Passes. President Anderson stated that the City Council would reconvene in open session following discussion of this matter. The City Council removed to the Committee Room at 7:29 p.m. This portion of the meeting was held in Executive Session. In addition to the Aldermen, City Solicitor Ellen Callahan Doucette and Attorney J. Raymond Miyares, Attorney Bryan Bertram and Attorney Eric Reustle of the firm Miyares & Harrington LLP, 40 Grove Street, Suite 190, Wellesley, Massachusetts 02482 were in the room. Attorney Miyares stated that this matter has gone through the adjudicatory proceeding, that witnesses testified for the city, that under the Energy Facilities Siting Board (EFSB) schedule a decision is expected by January 29, 2019, that he is trying to negotiate an agreement, that good progress has been made, that he has not prepared a final negotiated agreement, that he has prepared a draft of the agreement, that the basis structure is that whatever the EFSB decides about superseding local action the city will abide by the decision with many conditions, that this allows the Department of Public Works, City Engineer and a city-hired Field Engineer to oversee the project, that the Field Engineer will be paid by Eversource, that he expects many items in the agreement will be conditions imposed by the EFSB but will not know this as a fact until the decision is rendered, that six items are still being negotiated, that the first concerns the utility clearances, that there has to be a certain distance between what Eversource wants to put in the ground and what is already there, that Eversource wants to be able to have clearance of as little as 18 inches if necessary, that the Superintendent of Public Works wants a five foot clearance that can be brought down to three feet, that this could be resolved by allowing

Eversource to have as little as three feet clearance with the Superintendent of Public Works having discretion to approve a smaller distance, that one issue is the city does not know where all the water and sewer lines are beyond a general knowledge, that the city wants to know where the lines are, that there will be an emergency plan for construction related damage, that the water and sewer mains on Lake Avenue and Main Street are of particular concern, that the Mayor requested that sidewalks be installed on both sides of Washington Street, that he is not certain that condition will be agreed upon, that the Eversource proposal is to replace the sidewalks where damaged during construction, that Eversource wants to put a cap on the total cost of the Field Engineer but the city does not want a cap, that Eversource has not told the city the sequencing of the project yet, that the cost of the Field Engineer depends upon the project sequencing as there could be multiple tasks being performed and the Field Engineer could need an assistant to oversee work at various points along the route, that Eversource continued to hold out on agreeing to EMF monitoring, that the city wants EMF monitoring to be performed along the entire route today to determine the baseline and to monitor EMF upon completion to see how much of an increase there was, that Eversource is concerned about setting a precedent but has already agreed to do this in Needham, that Eversource agreed that when a customer requests monitoring anywhere along the route then Eversource will do so along the customer's property line but they will already do this for any customer anywhere who asks so that this is not something new, that if there is a negotiated agreement he wants the EFSB to see the agreement before they render their decision, that Eversource stated they will have a complete response concerning the agreement no later than Thursday, that this will give a week to work out the differences, that the City Council will be required to endorse the agreement or authorize the Mayor to sign the agreement, that it will be helpful to the negotiations if the City Council indicates all six items are required before there can be an agreement, and that there may not be agreement on all six items but the agreement will be better than the likely alternative of the EFSB decision. Alderman Campbell stated that it does not seem like the six items offer the city much. Attorney Miyares stated that there are more than the six items in the agreement, that it is common for the EFSB to say the city and applicant utility company have reached an agreement which is incorporated into the EFSB decision, that he hopes to have an agreement before the City Council next week or by the City Council meeting on January 29, 2019, and that if the City Council does not endorse an agreement then the EFSB will make its decision and the city will be at their mercy as to local control. Alderman Concannon stated that the biggest concern is if Eversource starts digging and has to move existing infrastructure, that he wants to know who determines if the existing lines have been damaged as well as the scope and extent of the work requested to repair the lines, that he is not looking to have the lines repaired to the condition they were found after being in place for thirty years but repaired to current standards, and that the agreement appears to indicate the parties will work on these issue cooperatively but he wants the city to have veto power on the decisions to repair existing infrastructure which is damaged during construction. Attorney Miyares stated that it would be difficult to negotiate one party having veto authority, that the Superintendent of Public Works can order Eversource to perform certain work, that if Eversource does not believe that the order is reasonable they can object, and that a court would have to decide whether the order was reasonable. Alderman Concannon stated that if a 1922 utility pipe is damaged he wants the pipe replaced with new infrastructure not a 1922 style pipe, and he is concerned if the Superintendent of Public Works wants sixty feet of line replaced but Eversource only wants thirty feet replaced. City Solicitor Callahan Doucette stated that Section 3.4.7 speaks to best industry practices. Attorney Miyares stated that a request of the city has to be reasonable

and that a judge reviewing the matter would determine whether the order was reasonable, that there is always a possibility that Eversource will challenge as decision of the Superintendent of Public Works but it would not be cost effective to do so as Eversource would have to stop the project for weeks and wait for a judge to hear and decide the issue, that the community will always ask public officials to justify decisions and the decisions should be reasonable, and that any concerns about the agreement should be conveyed through the City Solicitor. Alderman Mercer-Bruen stated that she is concerned about Section 1.7 relative to community outreach because previous outreach by Eversource was poor. Attorney Miyares stated that if there are concerns about community outreach there are additional specific provisions in the agreement. City Solicitor Callahan Doucette stated that the city could put a constituent update on the city's website. Attorney Miyares stated that people may be more comfortable hearing from the city than from Eversource regarding the project. Alderman Mercer-Bruen asked if the city does not endorse the agreement what is the next step in the judicial process. Attorney Miyares stated that the EFSB will make a decision which is appealable directly to the Massachusetts Supreme Judicial Court (SJC), that if the city is going to appeal the decision the conditions could be challenged but the focus may be on whether Eversource acted in good faith, that the EFSB hearing officer seemed troubled that Eversource may have cherry picked permits and they did not go for any state permits, that it will not be inexpensive to appeal to the SJC, that the city can protect its interests in negotiating this agreement and the project can go forward, and that the city will be protected by the authority to be given to the Superintendent of Public Works. Alderman Mercer-Bruen stated that she is concerned about impact of the project on the residents. Attorney Miyares stated that he meant the residents when he said the city would be protected. Alderman Tedesco stated that Wakefield issued permits, that Stoneham executed a memorandum of understanding that is not as enforceable as a host community agreement, and that Winchester is continuing to fight the project. Attorney Miyares stated that he would be surprised if Winchester settles with Eversource. Alderman Higgins stated that the utility clearances were mentioned and that if there was a special need this could be adjusted, and that she wants to know how the special need would be determined. Attorney Miyares stated that it is a very large vault that has to go in the right of way, that there may be circumstances where installation may be a problem, that only so much equipment can be stuffed into so much space, that if the Superintendent of Public Works approves a particular installation then they would defer to his judgment, that Eversource wants a three foot clearance default but the city wants a five foot clearance default, that Eversource believes that in some places they may have to go to as low as eighteen inches, and that Eversource wants some mechanism to be able to do so. Alderman Gately stated that decisions relative to utility clearance will have to be done onsite, that the levels of the underground utilities will not be known until the contractors get into the ground, that the Montvale Avenue widening project will be starting soon, that the work cannot interfere with the people using Montvale Avenue, that a chamber in the middle of Montvale Avenue will not happen, and that there has to be a timetable now. Attorney Miyares stated that Eversource hopes that the Montvale Avenue widening project and this project can be done at the same time. Alderman Gately stated that traffic on Montvale Avenue will be reduced to one lane during construction. Attorney Miyares stated that lane closures will be subject to oversight. City Solicitor Callahan Doucette asked how Eversource could begin the project if Winchester continues to fight. Attorney Miyares stated that once Eversource receives a favorable EFSB decision then local control will be gone because a majority of communities would have given permission for the work, and that there will be serious challenges during construction. Alderman

Campbell asked the city's chances to defeat the project at the SJC. Attorney Miyares stated that defeating the project at the SJC is not a realistic objective, that the best that can possibly hoped for is for a remand to the EFSB for rehearing and a modification of the decision, and that it is unlikely the SJC would return the matter to the city for a new grant of location hearing.

Alderman Campbell stated that monitoring of the EMF levels is an important piece of this issue, that if there is a 20% chance of prevailing or losing all these protections have to be considered, that winning does not mean holding a new hearing, and it sounds as if the best the city would get is a new hearing at the EFSB. Alderman Concannon stated that monitoring the EMF levels is important to the residents, that Eversource indicates that the EMF levels is not a concern so Eversource should just conduct the EMF monitoring, and that if Eversource wants the city to sign the agreement then they need to provide EMF monitoring. Attorney Miyares stated that being able to convey that sentiment to Eversource helps with the negotiations, and that no vote is needed at this meeting but if there are enough Aldermen who are willing to approve some form of agreement he needs to know that. Alderman Anderson stated that the consensus of the City Council is that the six conditions discussed are important particularly the issue of EMF monitoring, and that the city wants a five foot utility clearance default. Alderman Campbell stated that a five foot utility clearance is important also because of the vibrations which may reach the residences along the street. Motion made and 2nd to return to the regular order of business, ROLL CALL: Campbell - Yes, Concannon - Yes, Gaffney - Yes, Gately - Yes, Higgins - Yes, Mercer-Bruen - Yes, Tedesco - Yes, Anderson - Yes, Motion Passes. At 8:17 p.m., the City Council returned to the Council Chamber. President Anderson stated that no action was taken in Executive Session.

Motion made and 2nd to return to the regular order of business, all in favor, 8-0.

Minutes released by vote of City Council on March 5, 2019.

A TRUE RECORD ATTEST:

William C. Campbell
City Clerk and Clerk of the City Council