

**CITY OF WOBURN**  
**FEBRUARY 19, 2019 – 7:00 P.M.**  
**REGULAR MEETING OF THE CITY COUNCIL**  
**WOBURN CITY COUNCIL, COUNCIL CHAMBER**

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Motion made and 2<sup>nd</sup> to suspend the rules for the purposes of taking the following matter out of order and to receive the communication from the City Solicitor and make it part of the record, all in favor, 9-0. A communication dated February 12, 2019 was 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 19-03 as follows:

Subject: Eversource v. City Council

Would you please place the Eversource litigation matter on the agenda for the City Council's February 18 meeting? It should start in executive session and, if there is a majority in agreement on the proposed Agreement, then a vote can be taken in open meeting. I have what is likely the "final" form of the Agreement, and can have copies sent down for Tuesday.

Ellen Callahan Doucette, City Solicitor

President Anderson stated 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. Motion made and 2<sup>nd</sup> 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 19-03, ROLL CALL: Campbell - Yes, Concannon - Yes, Ferullo – 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 7:06 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 and Attorney Bryan Bertram of the firm Miyares & Harrington LLP, 40 Grove Street, Suite 190, Wellesley, Massachusetts 02482 were in the room. Attorney Miyares stated that NSTAR Electric Company d/b/a Eversource Energy (Eversource) applied for a certificate to the Energy Facilities Siting Board (EFSB) to overturn the City Council decision to deny the grant of location, that Eversource requests the street opening process be superseded, that there was a hearing before the EFSB, that the principal claim was that even though the grant of location was denied it was due to lack of adequate information being provided to approve, that the Superintendent of Public Works and the City Engineer provided information to show that information requested from Eversource was not received, that the EFSB decision will be made on February 21, 2019, that this will be a tentative decision and a week later the decision will go to the full EFSB for approval, that the best guess is the EFSB will override the grant of location decision and the street opening petition will be subject to conditions, that he has been negotiating an agreement that would be used if the EFSB approves the certificate. Attorney Miyares offered a copy of the proposed Memorandum of Understanding (the MOU) to the City Council for review. Motion

made and 2<sup>nd</sup> that the document be received and made part of the record, all in favor, 9-0. Attorney Miyares stated that Eversource has signed the MOU, that the consented to the agreement, that if the settlement is approved by the City Council then the Mayor will execute the MOU, that the earliest the EFSB would see the MOU would be the day EFSB intends to issue their decision, that the EMF monitoring proposed in the MOU is the same as proposed in Needham and Eversource has agreed to provide pre-construction and post-construction monitoring, that Eversource will monitor the entire length of the line to establish a baseline before construction, that when the line is installed and powered up Eversource will monitor the line again, that if the EMF levels exceed amounts anticipated then Eversource will provide information on what needs to be done, that any property owner can request EMF monitoring at their property line at any time with no charge, that the current monitoring of the EMF is not included in the MOU but is the policy of Eversource as testified to by the Eversource representative at the EFSB hearing, that Eversource will perform a video sweep of the sewer and storm drains after cleaning and before construction, that Eversource will clean the sewer and storm drains as necessary after construction and will then perform another video sweep, that there are provisions in place for Eversource to repair any damage caused but this video sweep will provide further assurance that damage is determined and repaired, that the city will be able to hire a field engineer to oversee the project, that the budget for the field engineer will be \$100,000.00 for 36 weeks, that if the project takes longer than 36 weeks the field engineer will continue work on a prorated basis which will be approximately \$145,000.00 annually, that no construction schedule has been provided yet, that if there are multiple construction shifts during the day and night the field engineer cannot be expected to cover all these times, that if this situation does occur there will have to be a determination as to how to address this with an assistant field engineer or additional payment, that the document presented is called a memorandum of understanding which is enforceable, that Eversource has called these agreements in other communities memorandums of understanding and not host agreements, that the MOU includes language that although it is called a memorandum of understanding it is a contract and enforceable, that there is no certainty as to where the utility lines are in Washington Street and Montvale Avenue, that Eversource will consult with the Department of Public Works to determine this information, that Eversource will create an emergency plan in the event there are disturbances particularly in Lake Avenue and that area, that Eversource believes that the EFSB will allow clearances of eighteen inches, that the city wanted a clearance of five feet, that Eversource has agreed to a clearance of twenty-four inches, that this is more stringent than what the EFSB has required in other communities, that the field engineer will have the ability to address the issue when the construction is in process, that new sidewalks on the easterly side of Washington Street is not part of the agreement, that Eversource would not agree to that sidewalk work, that he believes the city has been able to get everything out of this agreement as is possible, that if the EFSB approves the petition and any conditions in the MOU are more stringent then the MOU conditions will control, that if the EFSB decision has more stringent conditions then the EFSB decision conditions will control, that if the EFSB denies the petition the MOU will be void, that his recommendation is this MOU is the best possible compromise, and that this is a better deal than can be expected from the EFSB decision. Alderman Campbell stated that she does not agree with the settlement, that the MOU does not give the city much, that the city will get EMF monitoring but if the EMF levels are higher than anticipated what do the residents do, that the residents will have to decide to continue to live next to the line or sell their property and do they disclose this to a potential buyer, that this city is being used as a guinea pig,

that this is the first line going through a neighborhood, that Woburn is the first community in Massachusetts with a 345kV transmission line being installed through these narrow residential streets, that Eversource has a utility easement with 300 feet between the homes but this line will be ten feet from some homes, that Eversource chose this route because it may cost more to install the line in the utility easement and this should not be the deciding factor, that there are still issues about the impact of EMF on residents and particularly young children, that the city needs to go all the way with appeal of this matter, that the city needs to defend the residents, that this matter should be appealed to the Supreme Judicial Court (SJC) if the EFSB approves the petition, that the residents are counting on the city, that the Ledges project was appealed all the way to the SJC, that the city did not win that case but the residents know the city went as far as they could, that she believes the decision of the City Council should be upheld, that the line will be installed in narrow streets with forty foot vaults, that the construction of one vault will take up all of Pickering Street, that if the EMF from the transmission line could cause cancer she does not see how the city does not fight this project, that the City Council listed 75 reasons for the denial, and that she does not believe the city loses much if the city rejects this settlement. President Anderson stated that if the EFSB issues a decision the city will have no recourse, and that there will be no EMF monitoring and no construction supervisor in place. Attorney Miyares stated that some parts of the agreement were in anticipation of the EFSB decision, that the city asked for EMF monitoring, that the EFSB has not required EMF monitoring in the past and probably will not require EMF monitoring in the future, that if Eversource damages city utilities then Eversource has to make repairs but the city will not have the information from the video sweep of pre-construction conditions, that this would be a direct appeal to the SJC, that there is no opportunity to provide additional evidence, and that the standard of review would be is the EFSB a proper decision based on the evidence. Attorney Bertram stated that the review would be whether there was an abuse of discretion or the decision is lacking substantial evidence. Attorney Miyares stated that the project will not be stayed during the appeal process, that the record on EMF is not strong in the city's favor, that EFSB approval with respect to EMF levels is they will require modest mitigation measures that are not too costly because they are not especially effective either, that the question before the EFSB is whether Eversource did not conduct itself in good faith by neglecting to provide to the city information necessary to issue a permit, that the EFSB seemed concerned about this issue, that the EFSB admonished Eversource when they took similar action in another city and expects the EFSB will do so again, that he would review the decision and put forth the best argument on appeal, that it would take about one year for the SJC to complete the appeal process, and that the city would have to demonstrate the likelihood of succeeding on the merits to obtain a stay of the decision. Attorney Bertram stated that the route is still in question which may prevent Eversource from moving forward with the project. Alderman Tedesco stated that the biggest fear is to get a bare bones decision such as at the Ledges project with no protection for the city, and that the MOU may not be the best agreement but it is better than what the city may get from the EFSB or SJC. Alderman Gately stated that this is a 345kV transmission line going through residential areas, that five years from now it will be said that city caused health issue but the city will say Eversource caused the health issues, that he will not take a chance on the residents health, that there is too much risk, and because of the way the lines cross under the road they will come into close contact with current utility lines. Attorney Miyares stated that if the city signs the agreement then the city gives up right to appeal the EFSB decision. Alderman Gately stated that the MWRA should be involved because their lines serve many communities. Alderman Mercer-Bruen stated that she reviewed the MOU and believes

there are fatal flaws, that the section on the video sweep talks about reasonable notice to abutters, that the method of notice was a huge point of contention for the original meetings, and that Eversource could not even provide a list of notices sent. Alderman Higgins stated that the original method of notice was not reasonable by the MOU requires reasonable efforts. Alderman Campbell stated that Eversource stated the original notice was reasonable. Alderman Mercer-Bruen stated Eversource indicated the original method of notice was reasonable, that the MOU protects the city but not the residents, that the Mayor asked for granite and concrete sidewalks but not to create sidewalks which do not already exist, that there are asphalt sidewalks and Eversource would not agree to upgrade those sidewalks, that there is no blasting protection for the residents, that Eversource will be able to store construction equipment along the route with no control by the city, and that if anything in the report conflicts with Eversource protocol as to EMF those protocols are already in question. Attorney Miyares stated that the EFSB is unlikely to require EMF monitoring but by contract of the MOU the EMF monitoring will be required, and that in most cases the most stringent condition will be enforced. Alderman Concannon stated that the EMF protocols deal with EMF monitoring, and the Eversource is on record that they will conduct EMF monitoring. Attorney Miyares stated that this agreement incorporates the EMF monitoring plan which will be used in Needham, that they have completed the pre-construction EMF monitoring, that the Needham line is also a 345kV transmission line, and that construction of the line in Needham has not begun. Alderman Mercer-Bruen stated that she does not see anything in the MOU that protects the residents, that the work will not begin right away, and that there is not enough in the MOU for the residents on Washington Street and near Leland Park. President Anderson stated that there is a concern that the residents will get nothing without the MOU. Alderman Mercer-Bruen stated that the residents are getting nothing now, and that the city is protected but not the residents. Alderman Campbell stated that the city is not being protected much either under the MOU, and that the city has not even been given what the Superintendent of Public Works wanted in terms of distance from existing lines. Alderman Mercer-Bruen stated that the MWRA was out mapping their lines because of this project. Alderman Concannon stated that he had two thoughts on this matter originally, that this will be a bad project for the city and the city will have little control over the project, that it is clear with the EFSB the decision will be a decision made by someone else, that the city rendered a good decision but cannot enforce the decision, that he does not see a vote to approve the MOU as a vote for the project, that if there is a vote for the project the vote would be no, that the MOU is the only opportunity the city will have to impact the project, that the EFSB will grant approval with minimal standards as they have done across the state, and that there is not much in the MOU but it is more than minimum and Eversource has agreed to the MOU. Alderman Gaffney stated that the city has been told this project will go through, that if the MOU is not signed the city will not get the conditions agreed to, and that the MOU lets the city control its destiny. Attorney Miyares stated that when the EFSB issues a decision there is little likelihood they will reverse their earlier decision approving the route. Alderman Gaffney stated that one way or another the line will go through even if the matter is appealed to the SJC. Alderman Campbell stated that the city could win at the SJC. Attorney Miyares stated that whether the EFSB decision is arbitrary and capricious or is lacking substantial evidence is the review standard at the SJC, that the standard is not lacking evidence just lacking substantial evidence, that he has taken on utilities as an attorney, that it is an unusual case when a party can convince the SJC not to go along with an administrative decision, and that the SJC gives deference to administrative decisions. Alderman Campbell stated that the appeal may not be easy but the city should fight

this project, and that if an Alderman goes along with approving the MOU then they are approving the project. Alderman Concannon stated that the reality is than an administrative decision transcends the community for the greater good, and this is why the administrative boards exist. Alderman Campbell stated that the city cannot bow down and let the utility company do what they want. Alderman Concannon stated that the city is irrelevant. Alderman Campbell stated that this is relevant, that she asks is the risk not worth the effort, that the work caused by the Ledges will be extremely inconvenient to the neighbors because of the blasting but with the Eversource project we are talking about health concerns. Alderman Concannon stated that the city would have to prove the EFSB is out of their minds to make the decision they do or otherwise the city loses. Attorney Miyares stated that because of the statutory standards the SJC will not overturn the EFSB because they do not agree with the decision but that the decision is so unreasonable, arbitrary and capricious or lacking substantial evidence. Alderman Campbell asked whether the type of line to be installed is an issue on appeal. President Anderson stated that the city missed the opportunity to appeal the decision as to the type of line. Alderman Higgins does not support the project but the reality is the reality, that the city could win on appeal but it is unlikely, that the standard of review is so high and very difficult to overcome, that it is naïve to say the city is getting nothing, that utilities across the country have this power, that the MOU is the best method to resolve the matter, that there is more in the MOU to get, and that if the city does not agree the city gets nothing. Alderman Tedesco stated that Wakefield approved a grant of location, that Stoneham agreed to an MOU, that the Board of Selectmen did not want the MOU but thought it was better than no agreement, and that without the video sweep how does the city show damage to existing utilities. Alderman Mercer-Bruen stated that the city can conduct a video sweep on its own. Alderman Gately stated that this is not a good project for the city, that there will be issues down the road, that he understands the argument favoring approval of the MOU but he does not agree with it, that once Eversource puts the first bucket in the ground they will do what they want to do, and that he will not support approving the MOU. Attorney Miyares stated that the motion would be to authorize the Mayor to sign the MOU, that there MOU has no significance if the EFSB denies the petition, that if the EFSB approves the petition there will likely be conditions but not as stringent as the city has negotiated, that at most the EFSB will recognize the MOU but will not incorporate the MOU into the decision, that ability to enforce the MOU is through the Superior Court which is better than through the EFSB, and that the Eversource has already signed the agreement which is in escrow and will be rescinded if the city does not authorize approval of the MOU. Alderman Concannon stated that if the EFSB has more stringent conditions than the MOU the more stringent condition applies. Attorney Miyares stated that his is a correct statement. Alderman Mercer-Bruen asked if the EFSB can say a party to the MOU does not have to comply with the MOU. Attorney Miyares stated that the EFSB does not have that authority, and that executing the MOU is not the end of the matter but the beginning. Motion made and 2<sup>nd</sup> that the request to approve the Memorandum of Understanding be denied and that the Mayor not be authorized to execute the Memorandum of Understanding, ROLL CALL: Campbell - Yes, Concannon - No, Ferullo – No, Gaffney - No, Gately - Yes, Higgins - No, Mercer-Bruen – Yes, Tedesco - No, Anderson – No, Motion Fails. Motion made and 2<sup>nd</sup> to authorize the Mayor to execute the Memorandum of Understanding with Eversource that will apply in the event the EFSB decision allows the project to go forward, ROLL CALL: Campbell - No, Concannon - Yes, Ferullo – Yes, Gaffney - Yes, Gately - No, Higgins - Yes, Mercer-Bruen – No, Tedesco - Yes, Anderson – Yes, Motion Passes. Motion made and 2<sup>nd</sup> to return to the regular order of business in open session, ROLL CALL: Campbell -

Yes, Concannon - Yes, Ferullo – Yes, Gaffney - Yes, Gately - Yes, Higgins - Yes, Mercer-Bruen – Yes, Tedesco - Yes, Anderson – Yes, Motion Passes. At 8:20 p.m., the City Council returned to the Council Chamber. President Anderson stated that the City Council voted to authorize the Mayor to execute the Memorandum of Understanding with Eversource that will apply in the event the EFSB decision allows the project to go forward with six Alderman in favor (Concannon, Ferullo, Gaffney, Higgins, Tedesco, Anderson in favor) and three Aldermen opposed (Campbell, Gately, Mercer-Bruen opposed) on a roll call vote.

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

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

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A TRUE RECORD ATTEST:

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