

FINANCE COMMITTEE MINUTES

The Standing Committee on Finance will meet on **Monday, September 17, 2018 at 7:00 PM** at the **Brockton High School in the *George M. Romm Little Theater, 470 Forest Ave.***, to consider the following with Councilor Eaniri presiding. Ten members present, Councilor Cruise absent.

Comments by Councilor Eaniri

(Uninvited promoted Police Officers through Executive power due to their work schedule and ability to come while they're on duty.)

Councilor Farwell motioned to waive reading items #1-7 and was properly seconded by Councilor Sullivan. Motion carried by a hand vote.

1. Promotion of Brenda Perez to the rank of Sergeant in the Brockton Police Department.

Invited to attend:

Brenda Perez

2. Promotion of Victor Perez to the rank of Sergeant in the Brockton Police Department.

Invited to attend:

Victor Perez

3. Promotion of Frank Vardaro to the rank of Lieutenant in the Brockton Police Department.

Invited to attend:

Frank Vardaro

4. Promotion of Kevin Jones to the rank of Lieutenant in the Brockton Police Department.

Invited to attend:

Kevin Jones

5. Promotion of Christopher LaFrance to the rank of Captain in the Brockton Police Department.

Invited to attend:

Christopher LaFrance

6. Promotion of William Hallisey to the rank of Captain in the Brockton Police Department.

Invited to attend:

William Hallisey

7. Promotion of William G. Carpenter to the rank of Temporary Sergeant in the Brockton Police Department.

Invited to attend:

William G. Carpenter

Invited guests to discuss appointments:

John A. Condon, Chief Financial Officer
Philip C. Nessralla, City Solicitor
John Crowley, Chief, Police or his designee

Comments by Councilor Farwell

(Mayor has right to promote Police and Fire under his power but the issue here is because of him forwarding those to Council for approval. City Council does not have the authority which may give the public the wrong idea. He doesn't mind attending the ceremony aspect. Legislative branch is ceremonial and can handle certain items in the charter but not those under City Executive power such as the promotions.)

Comments by Councilor Eaniri

(When communicating with the Mayor he will let him know to send promotions as communications instead of an appointment to be approved. Mayor has the appointing power and that is the way it is.)

Having considered the same, Motion by Councilor Sullivan to report FAVORABLE, 2nd by Councilor Monahan. Motion carried by a hand vote.

Comments by Councilor Eaniri

(Thanked those who came, Chief Crowley, and Captain Williamson.)

Comments by Councilor Sullivan

(Officers do deserve appraise and they do a lot for the city of Brockton. Congratulated them on their promotions.)

Comments by Councilor Asack

(Though it may just be ceremonial, it is definitely nice to see new police and fire personnel and would take part when they are sworn in if the ceremonies continue.)

8. ORDERED: Within twenty (20) days of the approval of this Order, the City Solicitor shall transmit to Attorney Shannon Resnick, Legislative Counsel for the City Council,

the following: A copy of all emails, agreements, or other documents in the possession of any city employee or official which constitute a purported legal amendment to the original water service agreement thereby reducing the required amount of capacity to 3.81 million gallons per day on a temporary or permanent basis. A copy of the statute, ordinance, court decision, or other legal basis for the singular authority by the Mayor or other city official to amend the original water service agreement without the approval of the City Council. A copy of all emails, agreements, or documents from any representatives of Aquaria Water, LLC., relating to the alleged amendment to the original water services agreement and received by any city official or employee. Within thirty (30) days of the receipt of the documentation and information requested above, the Legislative Counsel to the City Council shall forward to the City Council a report as to whether any valid, binding amendment to the original water services agreement was properly executed by any person with authority to do so.

Invited to attend:

Shannon Resnick, Legislative Counsel to the City Council

Comments by Councilor Eaniri

(Attorney Resnick was present because of the Public Safety meeting that was held before Finance Committee but wanted to postpone to Finance Committee in October.)

Comments by Councilor Rodrigues

(Asked why to the postponement since the order is basically requesting letters and documentation from city officials. Why not go forward on the asking part of the order.)

Comments by Councilor Farwell

(This order was co-filed with Councilor Sullivan. The postponement is a professional courtesy and gives more time to look at what they have. He doesn't know why they want it but it's a matter of professional courtesy.)

Comments by Councilor Rodrigues

(Thought it was postponed because Legislative counsel wasn't around but who is asking for it?)

Comments by Councilor Farwell

(From City Solicitor to Legislative Counsel to City Council asking to postpone.)

Having considered the same, Motion by Councilor Eaniri to POSTPONE to the finance committee meeting in October, 2nd by Councilor Sullivan. Motion carried by a hand vote.

9. ORDERED: That the City Council hereby declare, that the vacant land on Thatcher Street in Brockton, MA identified as Assessor's Parcel 132-015 Plot 21 containing 36,175 sq. ft. +/- described in a plan dated March 8, 2018 entitled Plan of Land prepared by J.K. Holmgren Engineering, Inc., Registered Professional Engineers and Land Surveyors, and more fully identified in Exhibit A is surplus property and available for disposition and that the Mayor and/or Treasurer be authorized to execute any and all documents necessary to sell the property for nominal consideration to Donald A. Galante, Jr. as he is the Trustee of the Regal Trust, a Massachusetts

Nominee Trust dated May 11, 2000 and recorded at Book 18512 Page 1 of the Plymouth County Registry of Deeds. (In City Council July 23, 2018 and referred back to finance committee)

Invited to attend:

Larry Rowley, Commissioner, Department of Public Works
Philip C. Nessralla, City Solicitor
Attorney James Burke, representing Mr. Donald Galante, Jr

Comments by Councilor Sullivan

(As a piece of information, he filed this order and it was vetted out by legislative counsel already and as a courtesy both Ward councilors, Beauregard and Nicastro, were informed and able to look at it. It was already in finance committee and both Attorney Burke and Nessralla had appeared before council. Out of respect of Councilor Nicastro and Farwell it came back to finance because they have further questions.)

Comments by Councilor Nicastro

(Asked City Solicitor to give a narrative of what happened)

Comments by Philip C. Nessralla

(In approximately 2006 the City was under an enforcement order by MASS DEP that capped the landfill adjoining Mr. Galante's land. A plan was drawn by JK Holmgren and the city commenced capping the landfill. During that process there was an issue with creating a proper slope which caused them to extend their circumference work area of work into Mr. Galante's area. They did encroach his area and prevented anyone but the city from using that land. Mr. Galante has approximately 8 acres of land. The area that was fenced is approximately 23% of his property. The matter did come before the city a few years ago. The normal process would have been a legal taking of the land but that wasn't the fact. Moving forward the city was notified of the issue and a lawsuit was filed on behalf of the property owner Mr. Galante with his Attorney James Burke. They sought over \$100k+ in damages. Mr. Galante was paying full taxes on the property and didn't know that he could abate it. The lawsuit is a significant amount of money and legal fees; exceeded \$200k. Goal was trying to reduce the price. Quid Pro Quo, interest by Mr. Gallant to take low value land across the street on Thatcher Street. So approximately \$90k cash settlement plus property across the street. There is a right of way by the LaBelle Family which will cost about \$60k to them as well. The city and law dept looked at it and analyzed it and negotiated a number and it was fair and equitable to both parties. Determination as to whether the case should be settled or not and for how much we should settle for takes in factors and circumstances beyond if it is something we will win or lose. We would have to seek outside council which would probably cost at least \$40-50k in legal fees. It is possible for it to be very high numbers. The land across the street is also of low value. Seems exchanging that land and the cash settlement is very fair. We could not restore or move fence because of enforcement order either so that cannot be taken into consideration.)

Comments by Councilor Nicastro

(Really concerned because of the dates. This situation started in 2006, capping was started 2003, plan was submitted 2008 to MASS DEP and lawsuit was last year. Has the lawsuit been filed with Superior Court?)

Comments by Philip C. Nessralla

(It has been a filed lawsuit and is pending but they extended dates for discovery and appearance in court.)

Comments by Councilor Nicastro

(Correspondence from Attorney Burke was from mid-May. Was not aware of this before now. Why did this happen, anyone around to ask? Anyone with personal knowledge of this?)

Comments by Philip C. Nessralla

(I don't know. And it pre-dated Larry Rowley and maybe even Mr. Thoreson.)

Comments by Councilor Nicastro

(Looking at the settlement agreement, is the City admitting all this happened?)

Comments by Philip C. Nessralla

(Not admitting or denying but we can't deny that we did do that to his property. There is a penalty for denying blatant facts.)

Comments by Councilor Nicastro

(Land across the street according to Assessors is worth \$88,700. It looks like a buildable lot in an R-1C zone. Has the property been appraised?)

Comments by Philip C. Nessralla

(Not independently appraised. Information based on Assessor's office. Believes portion is wetland.)

Comments by Councilor Nicastro

(Small piece of land is wetlands according to the conservation commission. Also this land abuts Mr. Gallante's personal property which is the same zoning. She has been driving by and it looks like a junkyard. Is this land going to be an extended junkyard when it is an R-1C zone?)

Comments by Philip C. Nessralla

(Can't respond, he does not know.)

Comments by Councilor Nicastro

(Asked Attorney Burke to speak on the matter. Question is that the land that is part of the settlement to be conveyed abuts Mr. Galante's personal land and after inspecting the property it looks like a junkyard and it isn't part of the junkyard overlay district. Is it staying that way?)

Comments by James Burke

(Represents Mr. Galante only in this matter and doesn't handle his licensing or operation of facility. Burke can concur that the zoning is R-1C zone and is not part of that junkyard overlay district and will convey Councilor Nicastro's concerns to his client. Prior to the resolution of the lawsuit the Assessor had an independent appraiser determine the value was \$30k based on condition of property and the \$60k Labelle Family right of way. Thinks law dept did a great job and thinks numbers are low and that it was Mr. Galante's decision to make this resolution. Everyone may want to consider that his portion of used land on his property is approximately

valued at \$99k. How City arrived at \$90k he doesn't know. Numbers are pretty close and the Mayor, Mr. Galante, and the Law dept want to resolve this and how they got to where they are. Value of this case to Burke is \$600-700k plus other continuing interest on trespasses occurring based on the type of case it is.)

Comments by Councilor Eaniri

(If nothing was to be done, what would happen?)

Comments by James Burke

(Currently in litigation, the City is being sued, Ch. 79, then constitutional taking without compensation. Mayor has ability to make settlement determined by a figure and can make it all go away. City Council needs to approve the transfer for the real estate for the matter to end.)

Comments by Councilor Eaniri

(Makes a lot of sense. Doesn't understand the hold up. Wants to move forward and he is familiar with the property. Appreciates the work of attorneys and everyone else.)

Comments by Councilor Sullivan

(This was brought up when Studenski was Ward Councilor. Just wanted to clarify that there is indeed a lawsuit that is being told right now for negotiation purposes and if this settlement happens then it will dissolve. Everything has been prepared and such.

Comments by Councilor Farwell

Stated it is not petty when we worry about land being conveyed and about the constituents. He does not want to rubber stamp things and it's the Councilors' job to make sure to look things over. Stated that it is interesting that 23% of a man's property was taken over and it took years before a civil suit was filed. If Holmgren Association drew up a plan, don't know how the land was encroached because the company is very professional and competent. Can we find the company that did the work, could they contribute monetary settlement as well? Wants deed restriction to not expand the junkyard; worried about the condition of property. Appreciated the work of Solicitor. Asked Solicitor what damages did Mr. Gallante incur? Did we pollute, create environmental hazards, change topsoil, etc? If Mr. Gallante knew this why wait so long for a legal suit.)

Comments by Philip C. Nessralla

(Cannot determine when he knew, etc.)

Comments by Councilor Beauregard

(The confusion was the years. Remembers when the capping the landfill was happening but there are so many dates; 2003, 2006, last year. Thought maybe a change of ownership or death in the family had perhaps occurred. Wanted to properly vet this. Concerned about "junkyard status." Neighbors do not want that and there was a fire at a different junk yard and it is another thing to worry about and it is a matter of monitoring it. Can understand the confusion of DEP coming in and changing the situation.)

Comments by Philip C. Nessralla

(Lots of questions and both sides have merit issues, so at this point is a calculated business decision. There are other cases in litigation where they go all the way

because it isn't about just money. Here it is a business decision, credible questions that could be answered but want to bring it to a close.)

Comments by Councilor Beauregard

(Wanted to maybe set up a deed restriction and not expand on the junkyard.)

Comments by Councilor Rodrigues

(Quick question for Attorney Nessralla, is this the best deal for the city?)

Comments by Philip C. Nessralla

(Is this the best deal we can get... "A good deal today is the better deal than the best deal two years from now.")

Comments by Councilor Rodrigues

(So this is basically the best option?)

Comments by Philip C. Nessralla

(It is the result of a negotiation that's been going on for a year and he doesn't see a dramatic difference if they should go back to the table. It is a good, fair, equitable situation. Can state that Attorney Burke may have a problem with the deed restriction though.)

Comments by James Burke

(Zoning is the zoning and should and can be enforced. But if a property wanted to modify the zoning at least they can modify it following proper procedures. You cannot do that with a deed restriction.)

Comments by Councilor Asack

(Asked the City Solicitor if engineering company presented plans with the correct information then who put up the fence? So map was okay, just the fence was incorrect?)

Comments by Philip C. Nessralla

(That's only one of the issues, it's under debate. City did put up the fence. Engineering company did not do anything.)

Comments by Councilor Derenoncourt

(Based on everything and in regards to the statements it sounds complex and deep. According to experience and evidence, do you believe the city has a shot in winning it, if so why or why not?)

Comments by Philip C. Nessralla

(It is complex and you will need an executive session to converse about that. Trying to not go all the way because there will be a significant expense to the City. What does it take to end the issue? Would need outside attorneys involved and it would be costly. If it went to court they would be seeking \$600-700k and additional fees.)

Comments by Councilor Sullivan

(Since this happened, have we investigated the fence to see if it touches any other properties?)

Comments by Philip C. Nessralla

(Will have to follow up on that, from what he knows nothing else has been done.)

Comments by Councilor Derenoncourt

(How long would the settlement take?)

Comments by Philip C. Nessralla

(Quickly since parameters were already discussed, maybe in approximately 30 days.)

Comments by Councilor Derenoncourt

(Is it possible Attorney Burke and you (to City Solicitor) will come to an agreement and settlement, no more detrimental effects to the city?)

Comments by Philip C. Nessralla

(Yes.)

Comments by Councilor Asack

(Asked Commissioner Rowley who installed the fence. DPW?)

Comments by Larry Rowley

(DPW would have but he doesn't know who since it pre dates him.)

Comments by Councilor Asack

(Can we have someone check the fence and parameters?)

Comments by Larry Rowley

(Someone would need to survey the whole area, but it costs a decent amount of money. Thinks we are ok and we can do it, but doesn't know where money will come from. It is a very big area.)

Comments by Councilor Asack

(Doesn't want to see city in the same situation. How can someone not notice their property is being encroached? Wants to make sure everything is all set so the problem does not reoccur.)

Comments by Councilor Eaniri

(He will talk to the Mayor about surveying the land.)

Comments by Philip C. Nessralla

(Just as a point of information, Holmgren did not do original plan, it was a company called Cytech.)

Councilor Sullivan motioned to take a roll call vote and was properly seconded by Councilor Asack.

FAVORABLE by a roll call vote taken by "yeas" and "nays"; ten members present and all voting in the affirmative. Councilor Cruise absent.

Comments by Councilor Sullivan

(Points out that Ramon Diaz and Alfredo Andres from Aquaria are present and here today and wanted to inquire why.)

Comments by Ramon Diaz

(Stands before the City Council and just stated that he is present because based on the last discussion when they appeared before the City Council in Finance Committee they mentioned being around this meeting. So they stopped by to be present and answer any questions.)

Comments by Councilor Farwell

(Order has been postponed in regards to Aquaria. And the item is on hold until Attorney Resnick does her part.)

Comments by Ramon Diaz

(Always around the 3rd Monday of the month.)

Comments by Councilor Eaniri

(We will work on scheduling that, maybe look into November.)

Comments by Councilor Sullivan

(Wanted to inform Ramon Diaz of Aquaria that as a result of the visit at the War Memorial, it was mentioned an amendment of the Aquaria contract was made with the mayor. As a result of that he filed an order (postponed earlier tonight) directing Legislative Counsel Shannon Resnick to work with City Solicitor to convey to City Council what has taken place; that part needs to be done first prior to having him back.)

Meeting adjourned 8:03 PM