

## COMMITTEE OF THE WHOLE

### Minutes of the Meeting

November 19, 2018

1. Vice-President Logan called the meeting to Order at 8:50pm.
2. Vice-President Logan requested that a roll call be taken to record the attendance for the meeting. The Clerk called the roll – Councillors Darcy, Fowler, Harris, LaCava, D. Leblanc, R. LeBlanc, Mackin, McLaughlin, McMenimen, Nabulime, Romard, Stanley, Vidal and Logan were present. Councillor Brasco was absent.
3. President LeBlanc moved to approve the minutes of the COW meeting held on November 5, 2018. The motion was adopted on a voice vote and the minutes of November 5, 2018 were approved.
4. A request was received from the Mayor to appoint David McGann, 78 Rockridge Road, Waltham as a Constable. Councillor Mackin moved to hear from Mr. McGann. The motion was adopted on a voice vote. Mr. McGann gave a brief summary of his background including his service in the military and his long career as a Waltham Police Department Detective. Councillors Mackin, McMenimen, Romard and R. LeBlanc all spoke favorably of Mr. McGann and stated their support. Councillor Mackin moved to confirm the appointment of David McGann as a Constable. The motion was adopted on a voice vote and the appointment was confirmed.
5. The docket matter of the override of the Mayor's veto of Council Order #34227 pertaining to private ways was before the Committee. In short, the proposed ordinance was to change the cost split on improvements to private ways from three-fourths (resident)/one-fourth (City) to one-third (resident)/two-thirds (City). Since he wished to speak on the matter, Vice-President Logan asked President LeBlanc to take the Chair. Councillor Darcy stated he had spoken with the State Ethics Commission to inquire if Councillors who live on private ways could vote on the proposed ordinance change. Councillor Darcy read the information he orally received from the State Ethics Commission. Councillor Darcy stated if less than 10% of the residents live on or abut a private way, those affected Councillors could not vote. Conversely if more than 10% of the residents live on or abut a private way, those affected Councillors could vote. Councillor Darcy moved to request the City Clerk and the City Assessor to compute the number of residents who live on a private way. It was stated that the calculation should also include the number of households on a private way. Councillor Fowler stated it should not be a request but rather up to each individual Councillor to determine if they are compliant with the state ethics. The motion did not pass on a roll call vote of 6 in favor (Darcy, Logan, Mackin, McLaughlin, McMenimen and Nabulime), 8 opposed (Fowler, Harris, LaCava, R. LeBlanc, Romard, Stanley, Vidal and D. LeBlanc) and 1 absent

(Brasco). Councillor Darcy moved to hear from the Mayor, City Solicitor John Cervone and CPW Director Michael Chiasson. The motion was adopted on a voice vote. Councillor Darcy asked the Mayor to explain and provide the reasons for the Mayor's decision to veto the proposed ordinance. The Mayor cited Sections 17-77, 17-78, 17-80 and 17-81 of the City's General Ordinances. The Mayor also cited Chapter 80 of the Massachusetts General Laws, specifically Section 1. The Mayor also cited and read the opinion of Assistant City Solicitor Azadi. The Mayor explained the proposed ordinance did not include the specific language that Attorney Azadi suggested and without it, it would not be a legal ordinance. The Mayor explained the proposed ordinance does not address the determination of the value of the benefit by the City Council. The Mayor spoke of the betterment cost split on improvements to public sidewalks as 50-50 and stated she could support a similar cost split on improvements to private ways. Councillor Randy LeBlanc spoke of creating certain zones that would be excluded from the proposed split and would stay at the 75/25 split. City Solicitor Cervone stated that issue would need to be researched. Councillor Darcy moved to request the Law Department to research creating exclusion zones that would keep the split at 75/25. On the motion, Councillor Logan stated that Section 17-80 states that the City may make major temporary repairs and the City Council has the authority to deny a petition. Councillor Logan also stated if we create exclusion zones it may hurt businesses. Councillor Fowler asked why we would charge businesses more than residents. Councillor Stanley stated that he agreed with Councillor Fowler and we should be supportive of businesses and not make it difficult for them. Councillor Mackin stated the Council represents people and they should not subsidize business. Councillor Mackin also stated the City should have better public transportation. Councillor Romard stated that he could not support a separate business rate. Councillor Lacava stated that we represent everyone, including businesses. Councillor McMenimen asked CPW Director Chiasson if we have a certified list to determine public/private ways. Mr. Chiasson stated the City Clerk would maintain that list. Councillor Stanley stated tonight's discussion was an effort to delay the change in the cost split in the proposed ordinance. Councillor Nabulime stated that she would like more information on the subject. Councillor Harris stated if businesses would be impacted, she could not support the request. Councillor Darcy moved the question. The original motion of Councillor Darcy did not pass on a roll call vote of 6 in favor (Darcy, LaCava, R. LeBlanc, Mackin, McMenimen and Nabulime), 8 opposed (Fowler, Harris, Logan, McLaughlin, Romard, Stanley, Vidal and D. LeBlanc) and 1 absent (Brasco). Councillor Darcy moved that the proposed ordinance be re-committed to the Ordinances & Rules Committee, add the suggested language of the Law Department and be re-advertised. Vice-President Logan stated the motion was out of order and that the matter before them was to vote on the override of the Mayor's veto. Councillor Darcy stated it would be better to not override the Mayor's veto and then correct the proposed ordinance. Councillor Logan asked the Mayor if the current ordinance is legal. The Mayor stated that it was legal. Vice-President Logan continued to argue his point that the only change to the

existing ordinance was the cost split percentage. The Mayor reiterated that Chapter 80 Section 1 requires that the valuation of the benefit be determined by the City Council first. With respect to determining public versus private streets, the Mayor stated that the City should hire an attorney or title examiner to certify which streets are public and which streets are private. The Mayor stated the Council can make a private way public. Vice-President Logan moved to override the Mayor's veto, stating the existing ordinance is legal and it is only the percentage cost split that is being changed. On the motion, Councillor Randy LeBlanc suggested the prudent course of action would be to change the language as the Law Department suggested. Vice-President Logan stated the change is unnecessary. Councillor Mackin asked if an abatement could be given on prior betterment. Councillor Mackin asked if the condition of a private way affected it to be accepted as a public way. Councillor Mackin also asked if a home rule petition could be done to change the cost split percentage. Councillor McMenimen spoke of the consequences of overriding the Mayor's veto. Councillor Fowler asked several questions of Solicitor Cervone about who owns the private way and who pays the taxes on the street portion of the private way. Solicitor Cervone stated it would depend on the property deed. The Mayor asked and read Attorney Azadi's opinion into the record. Councillor Harris stated the language needs to be added according to the Mayor and the Law Department. Councillor Harris inquired about the impact if the language were not added and if there was any ability to amend the language of the proposed ordinance. President LeBlanc stated it could not be done tonight, but there is the ability to amend the order once it is in effect. President LeBlanc asked Councillor Vidal to take the Chair so that she could speak on the matter. President LeBlanc supported overriding the Mayor's veto and supported those residents who live on private ways. President LeBlanc stated the issue of private ways needed to be fixed, that it was unfair to pit one neighbor against another. President LeBlanc stated the Council is trying to address what happened in the past and the process has not changed, only the cost split percentage. President LeBlanc stated the Mayor is fine with the cost split percentage if the language of the proposed ordinance is changed. The original motion of Vice-President Logan to override the Mayor's veto was passed on a roll vote of 12 in favor (Darcy, Fowler, Harris, LaCava, D. Leblanc, R. LeBlanc, Logan, Mackin, McLaughlin, Romard, Stanley and Vidal), 1 opposed (McMenimen) and 2 absent (Brasco and Nabulime).

6. A motion by President LeBlanc to adjourn was adopted on a voice vote, and the Chair pro-tem declared the Committee adjourned at 11:30pm.

Paul G. Centofanti – Clerk to the Committee of the Whole