



MINUTES OF THE IMPROVEMENT AND SERVICES COMMITTEE

**WEDNESDAY, SEPTEMBER 4, 2019, 5:15 PM
CITY HALL, ROOM 207**

SPECIAL MEETING

A. ROLL CALL.

Present: Ald. Brian Johnson, Ald. Jesse Brunette, Ald. Andy Nicholson

Excused: Ald. Chris Wery

B. APPROVAL OF THE AGENDA.

Moved by Ald. Jesse Brunette, seconded by Ald. Brian Johnson to approve the agenda. Motion carried. Vote: Yes- Andy Nicholson, Brian Johnson, Jesse Brunette, No- None, Abstain- None

C. REGULAR BUSINESS.

I. Consideration with possible action on a request by Ald. Nicholson to address surface water drainage issues at 1661-1663 Elkay Lane (held over from the August 14, 2019 Improvement and Services Committee meeting).

Moved by Ald. Jesse Brunette, seconded by Ald. Brian Johnson to direct Directors Grenier and Vonck to consult with the Law Department for an opinion regarding who is the responsible party to install the private storm sewer system on request by Ald. Nicholson to address surface water drainage issues at 1661-1663 Elkay Lane. Motion carried. Vote: Yes- Andy Nicholson, Brian Johnson, Jesse Brunette, No- None, Abstain- None

D. INFORMATIONAL.

I. The next Improvement and Services Committee meeting is scheduled for September 11, 2019.

E. ADJOURNMENT.

Moved by Ald. Brian Johnson, seconded by Ald. Jesse Brunette to approve to adjourn the Improvement and Services Committee meeting. Motion carried. Vote: Yes- Andy Nicholson, Brian Johnson, Jesse Brunette, No- None, Abstain- None

VERBATIM MINUTES

- Roll call Johnson, Nicholson, and Brunette are present, Wery's excused. Approval of the agenda, motion by Brunette to approve, second by Johnson. Under discussion here none on favor. Aye. Nays motion carried. One item tonight, actually two, there's informational. Okay first one. Consideration of possible action on a request by Alderman Nicholson to address service water drainage issues at 1661 1663 Elkie Lane held over from August 14th for improving services. Well the reason why I brought this meeting back to a special meeting, basically I just wanted all the players here, I just wanna, it was hard getting everybody together and talk to 'em. I mean personally I mean over the phone Matt I talked to you, I talked to Scott, we had a meeting and I requested, you must be Ryan. Yep. Okay I requested three gentlemen to be here at our last meeting and you weren't able to which was fine, but I just wanna get it all out on the table, see what we're up against, what the owner's up against, and what you know, basically what paths we can take to rectify this so. Steve could we go over everything what we talked about last time, you know just for the record? Sure, well... You know the problems we have, why we're here, that memo, and then just want some input from staff. Sure. The block of Irene between Deborah and Elkie Lane, the southern half of that block was vacated in the early 2000's, and combined with a couple of other lots to make some buildable lots, a larger number of buildable lots for duplexes which would face out on Elkie. As stated in the memo that we provided in the packet for you there is a memo from July 20th of 2006 from Tom Lesperants who was the chief building official at the time. Because that pavement on Irene drained to the south and by vacating this half block of Irene, that would create in impediment to surface water drainage so a private storm sewer was designed and it would be the responsibility of the property owner would be developing those duplexes to both install and maintain that private storm sewer from that point forward. It's my understanding that the original developer that sold the property to a second party, that second party wound up not developing the property. Either the property went into receivership, the bank took it, and now the current developers have purchased it from the bank. Now whether that requirement was dropped was not properly communicated to subsequent purchasing property owners we don't know, but the conditions still remain that that would be a private property owner issue to rectify. To the best of my knowledge, we had a meeting about two weeks ago where we discussed this internally with Community of Economic Services staff and the chief building official has subsequently reached out to the current property owners to let them know in light of the existence of this memo that that indeed is the case. Okay. So that's where we sit right now. But you know when we had that conversation Steve after your meeting, wasn't it the two property owners prior to the gentlemen that has it now, weren't they supposed to put anything in to take care of the water? It needed to get put in at some time prior to development of the property. If the building was never put up and it wasn't causing a problem then I guess that's why something wasn't put in at that time, it wasn't needed until the building actually went up. Okay. But again, we would've simply put the

requirement out there that it needed to be taken care of, not necessarily when. Right. And then that's where you start getting into property law which is an area we don't practice in. Right. We try to stay away from the Law Department if we can and let them take care of their own stuff, but that falls into disclosure requirements that are supposed to happen with property owners when a property is transferred. Okay, and then like inspection, I mean that department, not your department the Department of Public Works, but wasn't it Inspection Department, weren't they supposed to put the orders in for the new owners prior to to put it in? That I can't answer. I mean that's why I wanted Pete here, can you, I mean what are the procedures on that? When someone buys a piece of property aren't they supposed to be connecting? Pete?

- [Pete] Connecting to what? Well the issue we have right here. The what do you call it Steve? I mean I'm not an engineer. The private storm sewer? Right, is that what we're discussing the?

- [Pete] Right, I'm not sure, truth about you I don't put the building permits together when they come in, so I'm not sure how far they dig to get that information out. Who's in charge of that Pete? Through inspection, I thought you had something to do with that. Well I guess the person what's gonna be either Peter O'Connor or Chad Ruffmeyer. Okay. And then do they give you the orders or do they give someone like me the orders to follow through?

- [Pete] This is never, truth I've found as far as I know, this has never come up before something like this. So I'm not sure what the right procedures are, I don't remember any of this. Kevin do you know?

- [Kevin] Yeah I mean one of the things I mean we try internally we have a property management system called Eclipse and basically it keeps track of all the parcels in our community and building permits, inspections, complaints, everything gets listed in there. This might've been during the turnover, we had an old system called Paradox and it might have been in the older system. Excuse me.

- [Kevin] Generally it may go through and Pete is correct, we'll go through and we'll get the Eclipse notes and then make sure if there's anything outstanding that needs to be done, we'll inform the current applicant, whoever is pulling that permit that something needs to get completed right before we'll issue the permit or before we'll issue a Certificate of Occupancy. But if there was nothing in the file then there would be nothing that we would require of the person taking that permit out. Okay. Alderman Johnson or Brunette do you have any quick, Alderman Johnson? So when we put forward an order like this does, does this get recorded anywhere? I mean so that when there is a transfer of property, I mean this is something that a title company would uncover.

- [Kevin] So generally the city doesn't record items unless it's something of our doing, if we need eaves and a door, retain a piece of right of way or something like that we'll record something with the Registrar of Deeds. But if it's a private property owner I mean it's really up to that individual to record something. If they don't record it there's no real way of tracking it. I think like I said through our system, the Eclipse system, we keep notes of things that have to go on, but unless it's a specific requirement involving really just kind of property actual land or an easement, we won't record that. We don't record I guess notes or actions like that with the register via a section of property action. So unless the prior owner did that and actually recorded something, then no there would not be a record of it. Okay so in which case then the presumption would be that the title company did not, would never have uncovered this.

- [Kevin] Correct. And I could assume that, I mean sometimes we get a call from title companies, sometimes I get a request for a zoning letter or sometimes a bank will check in in terms do we have anything in the system outstanding, but really in terms of official records those would be registered deeds at the county or from a financial perspective any outstanding assessments would be with the Clerks Office. Those are really the two only legal official legal records I would consider our Eclipse systems that a legal record per se in terms of checking with that, I mean it's more just internal notes of okay here's things that are going out, but in order to make it binding, it would have to then be recorded in one of those spots. Okay so the current developer of this site acquired the property from the bank, is that correct? Our understanding, that's our understanding. So the bank took it back from the prior developer who defaulted on it. Again that's what we understand, we don't know that for sure. The reason I bring that up is because if somebody defaulted I can see where they wouldn't have provided a disclosure right it's just, usually that's the last thing on their mind which means the bank isn't gonna know about it so the bank isn't gonna provide a disclosure to the current owner. So here we sit. Okay so bottom line Kevin, when someone buys a piece of property and there need to be what matter? A private storm sewer system or something like that. Okay thank you. I mean who, does inspection have the responsibility to tell the owner that he has to do it or not? I guess that's bottom line what we got to find out. I mean I don't know what that memo kind of puts a boomerang in everything doesn't it? So I guess, I mean how do we answer that question?

- [Kevin] Yeah I think one of the things that we... Are we responsible to tell the property owner they gotta hook up? Or isn't it? Well in this particular case it is causing property damage for the resident on the existing Irene Street off of Deborah. Because this duplex is blocking the natural drainage way, they are now impeding the water drainage which is against Wisconsin drainage law and that's why the requirement was put on the development back in 2004. Okay. And reiterated in 2006. Okay. That a private storm sewer must be installed. Okay. So then I'm asking you Kevin, I mean you're director of the Inspection Department correct?

- [Kevin] Correct. Does the city have to instruct a property owner on that ordeal? Pete do you know?

- [Pete] I'm sorry I'm not sure. I guess I would have to have that answered.

- [Kevin] Right and I think we're, as Director Grenier had stated we're at a line here of we have a street brick where there's a natural sheet flow down Irene that has been occurring for quite some time and there was development on a site in order I guess I've heard to that to have a full blown study in terms of how that diverted or changed the overland sheet flow that was coming off that street. In terms of what was required of that property owner, it's not answering your question but it is a little bit cloudy because the, the responsibility of what is coming off our city right away versus what is coming from the private property owner, as Director Grenier mentioned, we don't get involved in private property battles between two adjacent owners, and so in that case no it would not be our responsibility to direct a developer to do something. But if it's being caused in terms of something by us then we would and I don't think it's quite clear in terms of where that responsibility lies. Okay, I guess my understanding from the through that memo that the Inspection Department was supposed to notify the property owners that they have to hook up. The memo basically did notify or it was clarifying that inspection was ordering the current developer to install that storm sewer system at the time of improvements. So as they build they would install that storm sewer system. This was the second landowner as my understanding that developer again ceased to exist and

then after the third one and then the bank or however. So obviously like you have stated, from the time the memo was written to when the bank reacquired the property, that information got lost. Who then is responsible to notify the next owner yes. Yes what. That's the question and that is like you said, primarily what we're doing here is. I just wanna know, I just wanna know if the city's responsible or not, your Inspection Department. If they were supposed to notify them. If you can elaborate yeah.

- [Kevin] In terms of clarifying, I mean just based on the timing of when this was done I mean obviously this was before my time when some of this happened, I think that's one of the reasons for the Eclipse system that we built is in order to catch these things and when we're going through them okay is there anything outstanding that we're catching these now. I can't speak to the system at the time in terms of whether that was a miss on us but I think the whole fact of the foreclosure process, have these properties then were right as Alderman Johnson said I mean stuff doesn't get disclosed or get recorded and if they didn't record it with us or we didn't have a system in place at that time then yes there's potential that it could've gotten missed. Okay. Anybody else have any questions? Johnson? It just seems to me there are two things going on right not, one is a discussion about process improvement, taking a look at obviously what is a unique scenario here, and somewhere it got missed and so that would be just maybe my challenge back to staff is to have that discussion to come up with a solution of how we ensure that when property transfers like this happen in the future, that we can ensure that either the new property owner's notified, it's recorded. If Eclipse is already that solution that's fine, but I think that's one piece of this. And the other piece then is looking at what the current situation is and I think at least, now I don't wanna put words in your mouth Alderman Nicholson, but what's the solution here? I mean it sounds to me like the property owner is being required to hook up now an expense that they weren't expecting, and so I think what we're trying to figure out is how to resolve that or reconcile that, is that correct? That is correct. From a staff perspective, this is very analogous to situations where a sidewalk was ordered installed as part of a plat but was never installed. And then at some point down the line, it's been discovered that the sidewalk was indeed necessary was never installed so it was ordered installed after the fact. By that time we oftentimes have a change in ownership from a builder or developer to a private property owner, as a matter of fact we had several of these just a few years ago that were discovered. And what you're looking at is simply a matter of title. The argument could definitely be made that with this particular property owner, the price of the parcel would've been more expensive if the improvements had been made prior, if that drainage system had been installed back in 2006. So the property owner arguably picked that piece of property up at a lower cost because those improvements weren't installed, but are still necessary and they're needing to be installed now. Alternatively they could've been installed previously and you would have paid a higher price for the property but that would've been it. Doesn't change the fact that they're still necessary and they're still an expense that would've been borne in some fashion by this new property owner. Well that's true Steve but if this would've been taken care of 15 years ago roughly, and I'm just ballpark, the improvements would be less than what it is today. Absolutely. And yeah I mean I think there's a price difference, but yet I mean basically it's true, when you buy it when it's there it's gonna be more, but what was the price if he would've bought it if it was hooked up? I understand. So I mean how do you determine that? I just wanna know if the city's on the hook for this, that's all. I guess that's the question, are they or aren't they? How do we determine that? That's why I'm asking the question. And again I can't practice in law's area, but I can offer a layman's interpretation. But from a legal perspective I don't think the city had a legal obligation to do this, this really is a private property matter. So is there a obligation or a responsibility on behalf of the city I would have to say that I don't think so. Okay, well Kevin couldn't answer that.

- [Kevin] Yeah I'm just digging into the... Okay.

- [Kevin] I wanted to get into the Eclipse files just to get a little better aspect on timing and I think in terms of where this comes in timing of disclosures, I mean there's a responsibility on a property owner to do their due diligence before they acquire their piece of property. Absolutely.

- [Kevin] And as I mentioned I mean there's legal sources for finding that. Through title company, register of deeds, or through generally our assessors or our clerks office, right they don't have any special assessments on there. But in terms of additional things there's no responsibility for the city to provide any of that documentation about those issues. And so I mean it's incumbent upon whoever's acquiring the property to be doing that, that due diligence of that and that's, Alderman Grenier mentioned in terms of the timing I think the sidewalks is a very good example of things are supposed to happen, they don't happen, but they still are there and it just sometimes is a matter of timing in terms of when it comes. But let me interrupt. They were ordered, sidewalks were ordered by the city right here, it wasn't until third person bought it or fourth person. Wasn't it two then the bank or was the bank part of it? Whatever, there was prior people or prior parties that were never ordered. I don't know if that, does that make a difference? If the sidewalks they were ordered, it skipped the prior property owners and then they found out but if the city did their job to order 'em in. This wasn't ordered in until, I don't even know if it's ordered in right now. So I mean in the past last 15 years it was not ordered in. So, but maybe we should have another discussion on this at our next meeting which is in what, two weeks Steve? Well actually we... Next week? The scheduled meeting is next week. Okay. That I will tell you... And I know you had it on the agenda, I didn't know that and I thought we could clear it up so we wouldn't have to... I won't be part of that discussion next week, I'm actually gonna be in Seattle so. Okay. Will Matt be there then or? Well Jim will be here. Jim, okay okay. All right unless someone else has another Alderman Brunette or Johnson do you got any? I would just maybe... You got any questions or? I mean I don't think it would be a reasonable expectation for the current property owner to know that this memo existed. And I think that's again where the discrepancy comes into play. So I get what you're saying Alderman Nicholson that it puts a boomerang into it but I'm not, I mean I, I'm not so sure that it does in the sense that I don't think the property owner ever would have known that this order existed because it's not recorded, it's not communicated meaning it doesn't follow from owner to owner. So there's no reason that they would know that they have to put this in, so the question goes back to process again and at what point are they told that this has to be done in order for that lot to be built upon? I'm not sure that I'm still clear on the answer to that other than we don't have to tell them. I mean is that correct? That's what I heard.

- [Kevin] Well I don't wanna put it, we do, but I guess I should say our department really isn't ever contacted in terms of a land transaction unless a specific individual comes to us. We're not when a title company does a search for what's going on, they don't, I mean some may, but we're not part of a standard part of title diligence. They don't call and then ask to look at our Eclipse system. An individual who's really digging in may go in and say I'm buying this foreclosed property I know that much an inspection orders on it but tell me what they are and tell me what the cost is, not tell me the cost, tell me all the outstanding orders so right I can negotiate my price because this thing needs a lot of work and I get a full sense of what that is. But unless somebody individually comes to us, we don't otherwise provide that information. So you can understand where I'm coming at from this look Kevin which is how would this property owner ever know that this existed if this wasn't recorded? In which case I would kick back the question is do these types of orders need to be recorded? Because otherwise this problem could potentially arise again in the future.

- [Kevin] Correct, the way and I guess I could say if it came to sidewalks or other things, if something doesn't get done and we ordered it done and actually do the work then it gets put on the assessment right as a special charge to say look we did it. Right but this wasn't ordered in.

- [Kevin] Correct. I see a little difference but go ahead, Brunette. I see through Alderman Johnson if I could... Oh I'm sorry. I think to kind of wrap this up before I can make a motion to ask Director Falk and Director Grenier to consult with the city attorney for an opinion and then refer to the next week's meeting, the one thing I would recommend is perhaps the direction of the city attorney see if this should be a closed session item. I don't know from the city's liability perspective I don't know if we should carry this in open forum. Just a thought. Well we gotta have it on the agenda, we can use it or not. Yeah just, and again with the prerogative of the city attorney it would be nice to have that option. Motion by Brunette, second by Johnson under discussion, here and none all in favor. Aye. Nays motion carried. To adjourn? Motion to adjourn. Second. By Johnson, seconded by Brunette. All in favor, nays motion carried, we're adjourned.