

Planning and Development Committee Meeting

Date: October 21, 2021

Attendees: Councillor Heather Shand, Councillor Christine Wallace, Councillor Jared Eigerman

Agenda:

Approval of the minutes from June 28, 2021 - October 13, 2021

Public Hearing, APPT283_10_12_2021 Robert Currier - Affordable Housing Trust 10/29/2023

COMM346_08_30_2021 Ltr. Jane Snow Coffin St. safety concerns

- Committee voted 3-0 to approve the minutes from June 28 - October 13th
- Public Hearing APPT283, Robert Currier, AHT

Mr. Currier was not present by Councillor Shand spoke on his behalf.

Public Comment :Jane Snow didn't know the gentleman but said he sounded impressive at the last city council meeting.

Vote:3-0 in favor of recommending approval to the full council

- COMM346 Ltr: Coffin Street safety concerns

Councillor Eigerman reported on what he'd learned through the city solicitor (email attached)

Councillors discussed the letter sent by the neighbors on Coffin Street, Jeff Trail (attached)

At this time, there is no order. Councillor Eigerman is seeking input from Ed Rainen, who did work for the city on Custom House Way.

Councillors agreed there is no action at this time and kept the communication in committee.

Public Comment: Jane Snow thanked the councilors for the effort.

Meeting Adjourned at 6:20

Topic: Planning and Development Committee Meeting

Start Time : Oct 21, 2021 05:59 PM

Meeting Recording:

https://us02web.zoom.us/rec/share/HwG96MCqUyIScPAcux7tC5oyJ6gcJWGv7ISJdRcmAKs_8yV65OCQt6rUGg3ns0A.dY1m_I7Lohgh3xWN

Access Passcode: jx+hD+^0

Councillor Eigerman Email.

"Paper" Street



Jared Eigerman

to Donna, Richard, Jonathan, Mark, me

Wed, Oct 20, 4:48 PM (1 day ago)

So, I finally got Ed Rainen on the phone.

We have two problems with this "paper" street:

1. Is it a _public way_?

"In general, it may be said that an existing way in a city or town in this Commonwealth is not a 'public' way— that is, one which a city, or town has a duty to maintain free from defects (see G.L. c. 84, §§ 1, 15, 22; First National Bank of Woburn v. Woburn, 192 Mass. 220, 222-223, 78 N.E. 307 [1906]) — unless it has become public in character in one of three ways: (1) a laying out by public authority in the manner prescribed by statute (see G.L. c. 82 §§ 1-32); (2) prescription; and (3) prior to 1846, a dedication by the owner to public use, permanent and unequivocal (see Longley v. Worcester, 304 Mass. [580] at 587-589, 24 N.E.2d 533; Uliasz v. Gillette, 357 Mass. at 104, 256 N.E.2d 290), coupled with an express or implied acceptance by the public. Because the 1846 statute put an end to the creation thereafter of public ways by dedication and acceptance (Loriol v. Keene, 343 Mass. 358, 361, 179 N.E.2d 223 [1961]), it has only been possible since that time to create a public way by a laying out in the statutory manner or by prescription."

Ed did not volunteer to do # (1) -- MGL c. 82, ss. 1-32 -- which, as Jonathan was saying, and Richard was offering, means going through all the records of the City (1851 onward) and Town (1764 to 1851).

Ed did not volunteer to do # (2) -- prescription [commonly known as squatter's rights] -- but I suppose we can get _sworn_ testimony about that, if necessary, to establish the public's right to pass _on foot_.

If Ed is not doing # (1), he is not the right person to do # (3) -- pre-1846 unequivocal dedication -- either. I don't know if this way is pre-Civil War, but I guess we can look into it.

As to public vs. private way, Ed lucked out on Lower Custom House Way in 2017 because there just happened to have been a 1920s Land Court decision on topic. Perhaps, we will get so lucky again, but unlikely.

2. If it is not a "public way," then who owns it in fee (servient tenement), and who holds easements over it (dominant tenement)?

Ed will send us a time and cost estimate for this work.

It remains necessary to settle this because while we heard last week that kids today are allowed to walk through, what happens if one, two abutters, even all the abutters decide they don't want that, anymore?

May only kids living on Coffin Street walk across the paper street, or could anyone do so?

Here are some fun treatises, too.

-- Jared Eigerman, Newburyport City Council (Ward 2)
President
Chair, Committee on General Government
Member, Committee on Planning & Development
Member, Committee on Rules

From: Jared Eigerman
Sent: Monday, October 18, 2021 2:46 PM
To: erainen@rainenlaw.com
Cc: Donna Holaday; Richard Jones; Jonathan D. Eichman; Mark R. Reich; Heather Shand
Subject: Fw: "Lower Custom House Way"

... Sorry, Ed, I am behind on everything today, and mistyped your email address.

-- Jared Eigerman, Newburyport City Council (Ward 2)
President
Chair, Committee on General Government
Member, Committee on Planning & Development
Member, Committee on Rules

From: Jared Eigerman
Sent: Monday, October 18, 2021 2:44 PM
To: erainen@rainenlaw.com
Cc: Richard Jones; Jonathan D. Eichman; Mark R. Reich; Heather Shand; Donna Holaday
Subject: Fw: "Lower Custom House Way"

Ed,

Do you remember this title examination you did in 2017 (attached)? We have another one, this time the unbuilt dogleg of "Coffin Street."

Attached is a submittal by one abutter, who believes it is a public way. Many others believe it is not a public way. All of them have lived on, near, around the way for decades.

I'm copying the Mayor, City Clerk Richard Jones (the City Council's custodian of records), the City Solicitor (messrs. Eichman and Reich), and Councillor Heather Shand, who chairs the City Council's Cmte. on Planning & Development, where this issue blew up, again into a full-blown rash, after going dormant for a few years.

Could we please have a time (we're realistic) and fee estimate for the work?

Thank you.

-- Jared Eigerman, Newburyport City Council (Ward 2)
President

Chair, Committee on General Government
Member, Committee on Planning & Development
Member, Committee on Rules

[Preview attachment ANR-AncientWay.pdf](#)



[ANR-AncientWay.pdf](#)

[3.1 MB](#)

[Preview attachment PAPER STREETS ARTICLEx.pdf](#)



[PAPER STREETS ARTICLEx.pdf](#)

[3.6 MB](#)

[Preview attachment Streets-Ways-May-2011.pdf](#)



[Streets-Ways-May-2011.pdf](#)

[235 KB](#)

Councillor Heather Shand, Chair
The Committee on Planning and Development
Newburyport City Council
City Hall
Newburyport, MA 01950

October 16, 2021

Dear Councillor Shand,

We request your committee rescind its motion to instruct KP Law to research Coffin St. because:

1. The published agenda for the Oct. 13, 2021 joint meeting of the Committees on Planning and Development and Public Safety did not indicate that you would discuss whether or not the way abutting our properties was public or private. The agenda indicated that the committees would discuss "Safety Concerns on Coffin St." Thus, abutters and interested parties were blindsided by the discussion on whether or not our way was public or private. We expected a discussion of public safety.
2. It appeared to us that committee members were discussing documents that had been provided to the committees in addition to COMM346_8_30_2021. Not knowing the content of these documents, it was impossible for us to adequately rebut the evidence referred to by some of the members of the two committees. This seems to us to be inherently unfair.
3. The attorney we had lined up to represent us some time ago if this matter arose retired right before the meeting was called.

Again, for the reasons stated above, we the undersigned abutters and interested parties request that the Committee on Planning and Development rescind its motion to bring before the full Council a vote to instruct KP Law to rule on Coffin Street (1) until such time as we have access to the undistributed documents submitted to the Committees; (2) until we have time to hire a new lawyer who is an expert in the area under review; and (3) we have time to gather evidence to counter what we imputed to be contained in the packet based upon comments from Councillors.

We ask for 6 weeks or at best two months to prepare for further action on this issue. Allowing this will provide the committee with a full set of information in which to make an informed, unbiased recommendation.

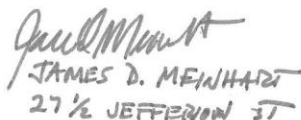
Thank you,



Gary Tamilio
13 Coffin St.



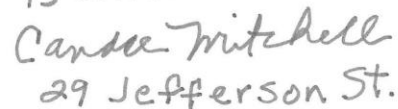
Carol Meinhardt
27 1/2 Jefferson St.



JAMES D. MEINHART
27 1/2 JEFFERSON ST



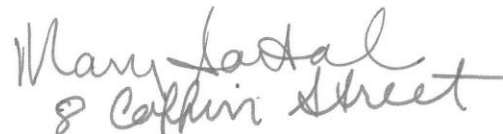
Donna Williams
13 Coffin St.



Candee Mitchell
29 Jefferson St.



Jeffrey Trail & Tamsin Trail
27 Jefferson St.



Mary Sadal
8 Coffin Street