

DEPARTMENT OF CITY CLERK

CITY HALL

JULY 17, 2013

The Committee on Public Works meets this day at 5:30 o'clock P.M., in Committee Room "A", Department of City Clerk, Third Floor, City Hall.

PRESENT: Vice-Chairman Wilbur W. Jennings, Councilman Michael J. Correia and Councilman Davian Sanchez— 3.

ABSENT: Chairman Terrence M. Hassett and Councilman John J. Igliazzi — 2.

Also present are Jillian Barker, Assistant City Solicitor, Law Department; Will Farrell, Deputy Director of Municipal Affairs, Mayor's Office; Peter Marinucci; Sheri A. Petronio, Assistant Clerk and Lori L. Hagen, Second Deputy City Clerk.

**PETITION OF PETER MARINUCCI, LILLIAN MARINUCCI AND ANTHONY MARINUCCI BY THEIR ATTORNEY, JOHN B. ENNIS, ESQUIRE, RELATIVE TO RESOLUTION NO. 282, APPROVED APRIL 21, 1987 INFORMING THE SAME IS HEREBY RESCINDED.**

VICE-CHAIRMAN JENNINGS: Mr. Marinucci, would you explain your position and what you're facing here.

MR. MARINUCCI: Yes. I own various parcels of land on Violet Hill and according to the records sometime in 1987, my land was land locked by a vote of the City Council to land lock my land, and I was never notified and it has been noted right along. We had series of meetings here, and I appreciate you people taking the time to hear me. We have looked at various options to make this go away by going back many years and again it's on record. Members of the City Council have recognized that this legally never took place because proper notification never went out.

VICE-CHAIRMAN JENNINGS: The proper notification never went out to you informing you.

MR. MARINUCCI: Right. So, the two parties involved, they notified one another and that was it. I never had the chance to come here and attest it. So, if it wasn't for someone years ago that expressed an interest in purchasing this parcel of land and developing it, I would have never know that that was land locked by Mr. Tarro, who at the time was the Tax Collector. As a matter of fact, I knew Mr. Tarro very well. I worked on his house doing construction work while this was going on and nobody never notified me. So, I'm here to ask you to rescind what as unjustly done, and I don't think this have any volatility because it was never done according to the law.

COUNCILMAN CORREIA: Mr. Chairman and members of the committee, this piece of property lies in my neighborhood in Ward 6. I know this has been on the docket many times. Over the last week I've had the opportunity to go over some of the documents here that are on file in the Clerk's Office regarding this matter. After reviewing several of the documents, I came across a list of abutting property owners that were notified and on none of those documents does it show that Mr. Marinucci or his wife Lillian were notified regarding the matter. There are also several other documents that have been on file regarding this matter and I find it quite strange that this matter moved forward and got granted. There are letters on file here from the Department of Public Works regarding this matter, where the Department of Public Works recommends denial of this abandonment. Also, there are other documents in here, one from the City Plan Commission regarding the denial of this abandonment, and if I may it says that "since the proposed abandonment of the northern terminus of Perrin Street would jeopardize and deny a legal and physical public access to numerous parcels of undeveloped land and prevent a harmonius future street system in the area". The committee voted to advise the Committee on Public Works that this petition be denied. So, the Department of Public Works knew that Mr. Marinuci's property would be eventually land locked, as well as the City Plan Commission. Also, somewhere in

the packet, I don't have that letter, but there was a petition and it's probably in this packet somewhere from one of the owners. It's from Mr. Dominic Ionata and he states that he doesn't know whether he is for or against the proposed abandonment because his driveway and garage are on the Perrin Street side of this abandonment and he also could be land locked. So, he was asking that the committee also deny this request, but for some reason back then the committee chose to move this matter forward against all the recommendations of denial. So, I am here as a committee member, but also on behalf of the property owner here in my neighborhood and I would like to make a motion to rescind resolution number 282, approved on April 21, 1987, relative to the abandonment of Perrin Street for failure to notify all abutting property owners in accordance with Rhode Island State Law Chapter 24-6, Entitled: "Abandonment by Towns, Section 24-6-2", whereby notice was not given to all abutting property owners. Therefore, violating state law and also against the advise of the Department of Public Works, the City Plan Commission and also the objection of an abutting property owner as well. So, I would like to make a motion to rescind.

VICE-CHAIRMAN JENNINGS: Okay, with that said Councilman, before you make a motion I would like to hear the legal end of it from our Law Department. Could you state your name for the record.

ASSISTANT CITY SOLICITOR BARKER: I am with the Solicitor's Office.

VICE-CHAIRMAN JENNINGS: Thank you very much. Can you provide this committee with your assessment of this situation and what your position is?

MS. BARKER: So, we looked at the same packet that we have in front of us and what happened in 1987. Unfortunately, according to the law the notice was only provided in hand and it's only necessary that is be provided to property owners that directly abut the portion that's being abandoned, and unfortunately Mr. Marinucci's land is not one of those properties. The portion of the street that was

abandoned only abuts the Tarro's and I'm not quite sure, but it's actually the property owner that was unsure whether or not they wanted to go through with the abandonment. He was unsure if he would be land locked, but as a result of the abandonment, the Tarro's and that property owner became owners of the land that is now abandoned. So, a couple of things; According to the law the Marinucci's were only entitled to constructive notice in the newspaper, which I believe was done because other property owners in the area attending the public hearing and they were not given direct notice of the abandonment or the proposed abandonment. Once the abandonment is approved by the City Council the Supreme Court has said it's a final and conclusive decision and upon that act the abandoned portion of the street automatically reverts to the abutting property owners. So, now the two owners on either side of that abandoned street now technically, legally own that land. So, it's the Solicitor's Office position that the abandonment should not be rescinded. We are looking into other avenues to see what else we can do for the Marinucci's, but we don't believe that's the proper legal avenue to get access to the land.

COUNCILMAN CORREIA: Mr. Chairman, I'm going to have to object to what the Solicitor's Office is stating because I mean you got the property on the right, you got the property on the left and then you have Mr. Marinucci's property. So, he should have been notified. His land is right there.

ASSISTANT CITY SOLICITOR BARKER: Well, according the maps that we've looked at his land does not touch the abandoned portion of the street and that's what needs to happen to get in hand delivered served notice.

COUNCILMAN CORREIA: But there is objection from the Department of Public Works and the City Plan Commission moved forward to abandon this portion of the street and denying him access to his land.

ASSISTANT CITY SOLICITOR BARKER: I agree with you and I understand that other departments did object to it, but the City Council still approved it and when they approved it, it became a final and conclusive decision, and the title to that land reverted to two abutting property owners. There was a remedy for the Marinucci's to go to Superior Court and to appeal the decision at the time, but the statute of limitations on that is one year.

COUNCILMAN CORREIA: Mr. Marinucci didn't know that this was done until years later when he went to sell the property and have a development built there, that's when he found out that they can not gain access to the property because he was not properly notified.

ASSISTANT CITY SOLICITOR BARKER: But he was.

COUNCILMAN CORREIA: Also, there is no record on file that we sold that land. I mean we just gave the land away?

ASSISTANT CITY SOLICITOR BARKER: It's an operation of law. It wasn't sale. As soon as the abandonment is approved by the City Council, that happens automatically.

COUNCILMAN CORREIA: I was under the impression that if we abandoned a piece of land, don't we have to get an assessed value for it.

ASSISTANT CITY SOLICITOR BARKER: It entitles us to do so, but that's not a requirement of the statute. It allows us to and typically from what I have seen that is something that we do, but it wasn't done in this case, but that's not required under the statute.

MS. HAGEN: It's required under the Charter though. They have to sell if for a certain value.

COUNCILMAN CORREIA: Whether it's a dollar or anything, but we need to get some type of compensation for that land and I found nothing.

ASSISTANT CITY SOLICITOR BARKER: I still don't think that that negates what happened and I don't think that has bearing on the legal aspects of rescinding the resolution.

VICE-CHAIRMAN JENNINIGS: Can I interject. I think I heard you say that he was notified. How was he notified?

ASSISTANT CITY SOLICITOR BARKER: He is only entitled to constructive notice. So, according to the statute there are two types of notice. People who abut the portion of land that is actually being abandoned, they're entitled to notice via somebody coming out and serving you with notice. Anybody else who abuts any other portion of that street, so if your land is on that street, but it does not touch that portion is abandoned and any other city resident is only entitled to notice via advertisement in the newspaper, and that's where Mr. Marinucci falls into. His property does not directly touch the abandoned portion of the property. So, he was not entitled to be served with notice. He was only entitled to get constructive notice through an advertisement in the paper.

COUNCILMAN SANCHEZ: Is there a visual of where we say it's not touching. I know we have the maps, but is there an actual picture.

ASSISTANT CITY SOLICITOR BARKER: This is the map that we looked at when we were looking into this issue. The two blue plots are the people who are abutting and this is the portion that has been abandoned. All of the yellow plots belong to the Marinucci's. The only other piece of land that is touching the abandonment even arguably is this one and it's not owned by the Marinucci's. Mr. Marinucci has a similar map and even on his map the yellow portions are his plots and none of his plots touch the abandoned portion of the property.

COUNCILMAN CORREIA: The blue part is what we abandoned, correct?

ASSISTANT CITY SOLICITOR BARKER: No.

MR. MARINUCCI: You abandoned this part here that stopped me from going into this land. Now, I find it strange that if this person that initiated this, Mr. Tarro, who knew me personally, and at the time I can prove I did work on his roof and his gutters and other work on his house, would not let me know that he was doing this. They call this sinister, that the city would allow for all of this land to be land locked. This other paper street does not go anywhere near it because there are boulders there probably fifteen to twenty feet high on the other side. Why would they allow this even if my land touches the street barely and it might be arguable, but why land lock this. What was the reason? I've studied eminent domain very well and you have to have a good reason to take somebody's land and why land lock this parcel of land. What was the reason that the city could use to justify it?

ASSISTANT CITY SOLICITOR BARKER: The portion of land that was abandoned was not taken by eminent domain. That's a totally separate thing.

MR. MARINUCCI: I understand that, but the fact remains I am denied access to my land that I've been paying taxes like if this never happened and another thing I would like to say that the city cannot rescind when something is done, and the City Council not too long ago rescinded an abandonment of a parcel near Harris Avenue. I'm not sure exactly what, but I can research it and provide you with that. So if it was done there why can't it be done here?

ASSISTANT CITY SOLICITOR BARKER: I wasn't a party to that rescission of the abandonment, but from what I understand from other solicitors in the office is that all of the parties to that abandonment agreed that something was done wrong, so all the interested parties agreed to rescind it and redo it. So, that is a different situation. We don't have all of the parties to the original abandonment in agreement. We don't have the people who petitioned to abandon it say, okay, let's rescind it and redo it. That's not the case.

COUNCILMAN CORREIA: Mr. Chairman, if I may. The previous solicitor that sat in on this matter acknowledges that there have been mistakes on this matter and it should have never gone forward, but they want Mr. Marinucci to take us to court and sue of for something that we did wrong and your office states that. Why should Mr. Marinucci have to waste his money to take us to court? Let him take us to court, sue us to undo what was done wrong and also let him sue us for his attorney fees. Why do we want to put Mr. Marinucci in a position like that?

ASSISTANT CITY SOLICITOR BARKER: So, two things. One, from the research that I've done, I don't think Mr. Marinucci has a right at this point to go to the Superior Court. He has two ways of doing that. One was a year after the abandonment took place, which that time has obviously come and gone.

COUNCILMAN CORREIA: Which he never knew about the abandonment taking place.

ASSISTANT CITY SOLICITOR BARKER: He should of because he had constructive notice of the abandonment.

COUNCILMAN CORREIA: What is that constructive notice?

ASSISTANT CITY SOLICITOR BARKER: I don't have them. I know Anna was looking for it.

COUNCILMAN CORREIA: Nobody can find that.

ASSISTANT CITY SOLICITOR BARKER: I mean it had to have been in a newspaper article from 1987.

COUNCILMAN SANCHEZ: Is there anything that states his name, a letter that went out that states his name?

ASSISTANT CITY SOLICITOR BARKER: No, because we didn't need to do that. So, on the Superior Court issue, if we do rescind this abandonment there is two property owners that now legally own that piece of land. I mean we're opening ourselves up to lawsuits from other property owners.

COUNCILMAN SANCHEZ: Are they paying taxes?

ASSISTANT CITY SOLICITOR BARKER: Yes, they are.

COUNCILMAN SANCHEZ: Are you paying taxes too?

MR. MARINUCCI: Absolutely. I have been paying taxes on all this land.

ASSISTANT CITY SOLICITOR BARKER: As soon as the abandonment happened the two abutting property owners became title owners to that abandonment portion of property. The property lines are drawn right down the middle and they each pay taxes on them. They legally own that.

COUNCILMAN CORREIA: But it's still a road.

ASSISTANT CITY SOLICITOR BARKER: No, it's not a road. I have a photograph of what it looks like.

COUNCILMAN CORREIA: The curbing is still there.

ASSISTANT CITY SOLICITOR BARKER: The two property owners actually built on it. There is a driveway and a garage and they put an extension on their house. That's the portion of property that's been abandoned.

COUNCILMAN CORREIA: If I may, see this right here, the road comes right down the middle here. This is the road.

ASSISTANT CITY SOLICITOR BARKER: That's not a road, that's somebody's yard.

COUNCILMAN CORREIA: All they did was put a piece of grass right here. This is it. If this guy was to come straight down this way, he would go into his garage. This person here has an illegal second driveway. You're only allowed one driveway per home. This car belongs to this house. He made another driveway. He has an illegal driveway. His yard is right here. If you come straight down Harmony Drive and you will go right into Mr. Marinucci's property.

ASSISTANT CITY SOLICITOR BARKER: The fact remains though that these two property owners own that piece of property.

VICE-CHAIRMAN JENNINGS: Do you have a question?

MR. FARRELL: Just a quick comment, Mr. Chairman. I think what the solicitor is trying to get at, and I consider Peter a friend, I think his argument has a lot of warrant, but the question is can the city just take back the land that they no longer own in 1987 and in the form of a resolution. I think that's what the Solicitor's Office is saying that you can't. I've worked with Jeff Padwa for about a week and a half. The roads that are on this map, they call them paper roads, which are roads that will appear on a map that go into Mr. Marinucci's lot of land. We're trying to see if we can open those back up. We're trying a couple of different routes. It's the opinion of the Solicitor's Office, and again I'm not a lawyer, that the council simply passing a resolution that takes land that the city no longer owns, we're going to be on some very rocky legal ground should the current owners file suit. I think that's the only point the solicitor was getting at. Believe me, having seen the layout of the land I get where you're coming from. I'm happy to personally work with you and the Solicitor's Office on trying to get something done. I just mean from a sheer legal standpoint we're taking property that we don't own anymore.

ASSISTANT CITY SOLICITOR BARKER: To speak to what Will is saying, the solicitor and I and other attorneys in my office have sat down and looked at the maps and tried to figure out other ways to get you access to the land. I have a call into DPW asking them how we treat paper roads, how we can try to get access through the roads that are there but not accessible. So, we are empathic to your situation, just right now what's on the table is to rescind a resolution abandoning the property, and it's the opinion of the Solicitor's Office that that is not the avenue that the committee should take.

MR. MARINUCCI: I only want access to my land. I'm not looking for anything else at this point. That's the only thing I want. I bought this land and I've paid taxes for thirty years and I only want my right. I know why it happened because the person involved would ask me every now and then what are you going

to do with this land until he did that. So, that's neither here nor there. The fact remains that this street was abandoned, the garage was always there, the slab of cement was always there. Nothing happened other than the person on this side has derived benefits from it and he has created a big driveway for his house.

ASSISTANT CITY SOLICITOR BARKER: To the committee's question about whether or not we have proof of the newspaper. I was unaware, but the newspaper ads are actually in the packet.

VICE-CHAIRMAN JENNINGS: Any other questions.

MR. FARRELL: I want Mr. Marinucci to be able to have access to his land. My fear is that should the council act on this and pass the resolution to rescind, these property owners are just going to take the city and Mr. Marinucci to court.

COUNCILMAN CORREIA: If I may Mr. Chairman, Mr. Marinucci also needs to take us to court. So, what's the difference.

VICE-CHAIRMAN JENNINGS: We have some legal issues here. I think common sense needs to come into play here. I'm not a lawyer in any sense of the word, but I see the pros and cons on both sides here and my opinion is we need to go into this a little bit more. I going to deny any motion at this point to pass or rescind and I would like to reschedule and bring all the parties in, Mr. Marinucci and the other owners and see if we can come up with an agreement between all the parties before we make a decision as to what we're going to do. I do agree with the Law Department and I'm going to go with their recommendation. I see the legal end of it in trying to protect the city. We don't want all these people suing us, but I think if we can continue this and bring all these parties in and sit down and see if we can hammer it out.

ASSISTANT CITY SOLICITOR BARKER: Hopefully by that time the Solicitor's Office will have been able to talk to DPW and have more insight as to if there are other options that we've been throwing around.

VICE-CHAIRMAN JENNINGS: I agree with that.

COUNCILMAN CORREIA: Mr. Chairman, with all due respect, I mean we can go back and forth here. I went there with Bill Bombard, the city engineer, as well as Mr. Marinucci. We've already gone through this. There is no other possible way that Mr. Marinucci can get into that property other than through Perrin Street. Is that correct Mr. Marinucci?

MR. MARINUCCI: That is correct.

COUNCILMAN CORREIA: I went out there with Bill Bombard. There is no other way for him to get into that property other than through Perrin Street. Down at the bottom of Hillcrest there is about 100 feet of rock and then if you come in another way there is more ledge that if we were to grant him access to come in that way it would cost him thousands out of his pocket to blast ledge to get into his property. There is no other possible way.

ASSISTANT CITY SOLICITOR BARKER: From looking at the map we have several ideas that we're trying to talk to DPW about.

COUNCILMAN CORREIA: I am aware of that, that you're stating that, but I am also aware that we have already gone down that avenue.

VICE-CHAIRMAN JENNINGS: With all do fairness to the other property owners, we need to bring them in. So, why don't we continue this matter and reschedule and bring all the parties in and hash this out. That's what I'm going to recommend.

COUNCILMAN CORREIA: I believe I have a motion on the floor and I would like to keep my motion as I stated to rescind this resolution.

COUNCILMAN SANCHEZ: I second the motion.

On motion of Councilman Correia, Seconded by Councilman Sanchez, it is voted to approve the foregoing petition.

VICE-CHAIRMAN JENNINGS: Solicitor, can you give me an opinion on that, the fact that I disagree with it. Do we have to approve it?

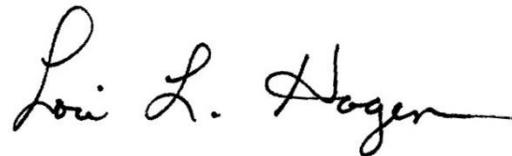
MS. HAGEN: You have a motion and a second and there are three people here.

VICE-CHAIRMAN JENNINGS: All those in favor.

COMMITTEE: Aye.

VICE-CHAIRMAN JENNINGS: All those opposed. The "Ayes" have it.  
Motion Carries.

**ADJOURNMENT:** On motion of Councilman Correia, Seconded by Councilman Sanchez, it is voted to adjourn the meeting at 6:15 o'clock P.M.



**Second Deputy City Clerk**



**Assistant Clerk**