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Residents hope hearing is first step of many

Myriad of concerns come to light at private/public alleyways hearing

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Unpaved, dangerous, potholed

Some came with concerns about sewers, others about repaving, many about cost.

But while concerns were complex and far ranging, there was one thing that became clear at the Wednesday, April 27, hearing about private and public alleyways: something needs to change. “I think it was evident we have to do something” said District 2 City Councilor, Bill Linehan of the concerns shared at the City Hall hearing. “We have to figure something out.”

Over 80 members of the community attended the hearing, along with five city councilors and representatives from the Boston Transportation Department (BTD), the Department of Public Works (DPW) and the Boston Water and Sewer Commission (BWSC). The hearing, ordered by Linehan and City Councilor at-large Felix Arroyo was the first ever that focused on the issue of private versus public alleyways, and its intent was to investigate the scope of resident’s issues to answer questions.

Nearly 15 people took to the podium to share their concerns. Chip Huhta, of Pembroke St., spoke of the Pilot Block Neighborhood Association, which, over the past several years has employed the use of tillers for the several private, unpaved, alleyways in their area. The effort has collectively cost residents \$1,000 and 100 hours of labor each year.

Steve Fox, Rutland Square Association (RSA) chairman, shared his neighborhood’s experience in having to raise \$50,000 to repave a private roadway in their area. Union Park Neighborhood Association’s president Jerry Frank added that one of their private ways, Ivanhoe Way, was downright “dangerous.”

Russell Varney spoke of the alleys near the Hurly Block Neighborhood Association. Some of the alleys are hardly wide enough for a car, others cannot fit sidewalks, and most have been inundated with potholes over the years. Pictures of the alleys in the area show evidence of multiple, deep potholes, which in mild rain become filled with water.

Used by general traffic, school buses and the residents who own them, Varney suggested, “Considering its usage by the public and public school vehicles, as well as the fact that it abuts public school property, it seems that it should be designated a public way and maintained by the city.”

But, as some residents have known and all heard at the hearing, it is not that simple.

Choosing private or public

As far back as 1872, explained Para Jayasinghe, city engineer with the DPW, homeowners in Boston were given the choice to give up the private alleyways they owned to the city. In giving up their ownership, they would no longer be able to control the property, but would be able to take advantage of the city’s services. Some acquiesced, but many did not. As the years passed and more people and families moved into row houses, the property lines began to extend beyond residents’ residences into their private alleys, dividing ownership among all the abutters along a particular private street.

Jayasinghe said at the hearing that 1,200 roads in Boston are considered “private.” Private alleyways (alleyways are roads defined as being less than 25 feet in width) make up a subset of these private roads, but no exact number of these alleyways is known, as the DPW does not keep track of them.

While these alleyways have given residents places to park and the ability to do with them what they want, they have also instigated major issues across the South End’s one square mile, as residents have become confused over their responsibility for items one might think as the city’s responsibility. When sewer lines break or back up along these private ways, residents must pay for their repair, when street lights go out, residents must pay for an electrician to fix them; when pot holes appear in the road, residents must pay to fill them.

Illegitimate options, “impossible” fixes

There are two avenues to receive assistance for private ways, one through the DPW and one through the BWSC, both are costly.

Through the BWSC, residents can request to turn a private sewer line (a sewer line that travels underneath a private way after it comes off a larger, public sewer line) into a public one. BWSC will pay all the upfront costs to create a public line, but will then split the final cost (25 percent by the BWSC and 75 percent by neighbors) between all the residents abutting the alley. The catch to this solution is two-fold: it is costly and it can only be done if the private alley in question is a “private alley with public usage.” This status of “public usage” is something that has been defined by the city, and is not defined by the actual traffic that uses it.

Murray Frank, resident of Rutland St., shared that he and his fellow residents were concerned about a sewer line under an abutting public alley. Nearby construction has caused the ground to rumble, and Frank said many of the neighbors are worried harm could come to the line they own. He lamented, “We all pay real estate taxes. We all pay water and sewer

taxes. But because of some arcane definition developed many years ago, we are not eligible for any help from the city. This doesn't make any sense, and it is really unjust."

The other avenue to receiving help from the city is through the Public Improvement Committee (PUC) within the DPW. This solution, also very costly, offers to turn a private alleyway over into a public alleyway as long as certain conditions are met. The most difficult of these conditions is the necessity for a private alleyway to be brought up to fire code and to Americans with Disabilities Act (ADA) requirements.

Fire Code, it was explained at the hearing, requires alleys be 20 feet wide. ADA requirements further call for sidewalks that, along with curbs and street lamps, would need to be seven feet wide each. Altogether a road would need to be 34 feet wide to meet both sets of standards.

As all the alleyways are, by definition, less than 25 feet wide, the PIC process restrictions actually block any alleyway from becoming public, not just because of the great cost of expanding, repaving and reconstituting an entire roadway, but because the physical space is too limited.

More frustrating to residents is the fact public alleyways or roads, many that do not meet fire or ADA requirements, are "grandfathered" into the system, meaning they do not have to be changed.

Jerry Frank of UNPA summed up the situation, "The PIC process is impossible and it should be abandoned....It is not an option or alternative for neighbors." Councilor Arroyo agreed with the assertion after the meeting, saying the PIC process "isn't legitimate. If this is going to be a process it has to be a process you can inherently meet."

A growing entrenchment

While residents brought up their concerns throughout Wednesday night, DPW and BWSC took turns asking whether alleyways were public or private, open to public access or not, trying to determine whether their agencies were allowed to help.

For many at the hearing, these questions betrayed the inflexibility of city agencies in recent years, and recalled a time when the lines in the sand were not drawn so rigidly.

Michael Lloyd, of the Concord Square Association, recalled a flood that hit the South End in 1999, causing pump failures and backups along both public and private alleyways and sewer lines. Reimbursement, Lloyd said, was given to residents along both.

"So at that point there must have been some commonality, there was some concern that 'I do have responsibility for what flows backwards into this private sewer,'" he said.....
"Considering that if (the city) did pay for those along a private sewer, is it really private?"

Cicely Stetson agreed. “The flood of 199 was a wonderful example of how suddenly barricades and regulations had a way of disappearing.....that’s because a lot of people got together, including the mayor, and it wasn’t about this department or that department or that one.”

RSA’s Fox compared the city’s response in 1999 to the DPW’S recent response to fixing a broken street light along a private alley. As part of the process, DPW told Fox he had to have signatures of approval to fix the light from all abutting residents.

“That was the first time I’ve had to do that,” he said. “.....There is an increasing entrenchment on part of the DPW in distinguishing between public and private, and I think that’s not a very helpful trend.”

Neighbor against Neighbor

Until something changes, it seems public and private alleyways not only bring up questions of city services, maintenance, and cost, but also have the ability to pit neighbor against neighbor.

In a letter that was not read at the hearing, but submitted to the City Councilors, USES president and South End resident Kevin Hepner recounted a situation in which his private alley co-owners have had him ticketed for briefly parking within the alley, and where builders have sold parking to new residents that jut into private alleyways.

Also at the hearing, Appleton St. and Gray St. residents spoke of a situation brewing on their private alleyway. Some residents received letters from the Appleton/Gray Trust, which has been trying to organize the reconstruction of a sewer line in the area for years; the letter threatened to unplug alleyway owners from the sewer line if they did not pay their share of the cost.

When Councilor Linehan agreed to help mediate the situation, the scenario was, some residents said, an example of what can happen when land is owned by such a large, varied group of private abutters.

Where to now?

UPNA’s Frank had several ideas to share with the city: the city could pay residents for use of a private alley; it could provide minimal pot hole services; the city could create a collection of funds from private alleyway abutters’ taxes that could be dipped into for repairs. Even better, Frank said, was working with the ADA to relax requirements where they just cannot be met.

“I would much rather see Ivanhoe Way fixed so it was passable with wheelchair or a mother pushing a baby carriage as opposed to doing nothing because we can’t make it perfect for the ADA,” he said.

Fox offered another suggestion public/private partnership. Residents, over the years, have trimmed trees in city parks, maintained those parks, shoveled sidewalks, and have given money for many things that the city “owns.” Fox said he and his neighbors have, in a relatively short period of time, raised \$50,000 to repave the private alleyway, and given the chance to partner with the city, the RSA would be a strong team. “We stand ready to enter a public-private partnership,” he said.

Though one resident requested eminent domain be declared in the alleys, giving the city full ownership, both councilors said after the hearing they would not be open to such a thing.

For Councilor Arroyo, residents at a hearing further convinced him that something needed to change, and that a lot more research needed to be done on the issue before a solution is found. He said he and Linehan would be working together, possibly with the help of a working group of neighbors, to decide the best way to move forward.

“We’re literally in a place where we’re doing things because that’s how they were done,” Arroyo reflected a few days after the hearing. “...We should probably keep up with the times and think about what we can do today.”