

November 5, 2021

Via Email: kbryant@kingston-ny.gov

Kevin Bryant, Esq.
City of Kingston Corporation Counsel
420 Broadway
Kingston, New York 12534

Re: Common Council Meeting - November 9, 2021
9-17 & 21 N. Front Street and Fair Street Extension

Dear Corporation Counsel Bryant:

As you are aware, this firm represents a number of landowners in Uptown Kingston that have serious concerns about the project proposed at 9-17 & 21 N. Front Street and Fair Street Extension, commonly referred to as the Kingstonian (the "Project"). We understand from discussions during the October 13, 2021 Finance and Audit Committee meeting that, as part of the development of the Project, the City intends to discontinue the Fair Street Extension on or about November 9, 2021 and convey an easement or lease over the land to the developer of the Project.

Based on the discussion during the Finance and Audit Committee meeting and the lack of a public hearing notice for November 9, 2021, my clients are concerned that the City will not be following the requisite procedure for the closing of a public street and subsequent conveyance of an interest in the former street bed, as outlined below. As it was with the Heritage Area Commission Meeting and Historic Landmarks Preservation Meeting held yesterday, our clients are prepared to seek a temporary restraining order from the Ulster County Supreme Court preventing the City from discontinuing and conveying an interest in the Fair Street Extension until all statutory requirements have been followed.

The rights of the public in city streets are inalienable, and may only be sold or conveyed in limited circumstances. See NYS General City Law § § 20(2), (7). The procedures for discontinuing a public highway or street are specified in a city's charter or code and must be followed. See *St. Luke's German Evangelical Lutheran Church v. City of Rochester*, 115 Misc. 2d 199 (Monroe Cty. Sup. 1982) (finding city's decision to discontinue a road was proper where city complied with the statutory requirements and additionally its own applicable city code). The City of Kingston may therefore only discontinue and convey a public street after following the requirements set forth in Chapter 355 of the City of Kingston Code ("the Code") and then, only after a finding that the street is not used as a public thoroughfare.

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We note that “conveyance” is not limited to the outright sale of fee title in a piece of land. The limitations established by the General City Law have been held to apply in situations where the land is leased as well. See 1980 N.Y. Op. Atty. Gen. (Inf.) 142. A city cannot avoid the regulations governing conveyance of public property by merely leasing or conveying an easement in the property, especially when doing so is tantamount to a sale and results in the destruction of a public thoroughfare. Furthermore, just as an assessment is required for the fee sale of the bed of a street (as discussed below), a fair rate must be determined for any lease of land or easement on a former street. Failure to receive adequate compensation for an interest in property runs afoul of the New York State Constitution’s prohibition on the giving of gifts by municipalities. See 1980 N.Y. Op. Atty. Gen. (Inf.) 142; NYS Const. Art VIII, § 1.

To discontinue a City of Kingston Street, the Code first requires the City Planner to establish a list of streets or portions of streets which are no longer used as “public thoroughfares” and are now vacant. Code §355-56. The Code then directs the circumstances under which these streets are to be offered for sale, with sale as the only provided for manner of conveying or otherwise disposing of a street: “The [Common] Council shall determine whether the street is of public use or whether it is in the interest of the City of Kingston to sell such street.” Code §355-58. Property descriptions, assessments, public hearings, and ultimate approval of any deal to sell the public street by the Common Council and Mayor are required before a public thoroughfare can be conveyed. Code §355-61-63, -65. The City must hold a public hearing on ten days’ notice regarding the proposed sale before it can be approved. Code § 355-62.

The City of Kingston has, by its own Code, limited itself to closing public streets that “are no longer used as public thoroughfares.” Code § 355-56. These streets are those that “were **formerly** utilized by the public as a means of passage or these lands that were laid out on subdivision plots as public ways but which **were never utilized** for such purposes and are now vacant.” *Id.* (emphasis added). Based on these limitations, it appears Fair Street Extension cannot be discontinued and thereafter conveyed by the City. It is still used as a public street, whereas the Code only allows the conveyance of streets that are not currently used or have never been used.¹

Even if the City determines that it is able to convey an interest in the Fair Street Extension, it still must follow its own procedures and hold a public hearing before doing so. Otherwise, the City will be divesting its citizens of publicly owned and utilized property without providing them their statutorily guaranteed opportunity to be heard.

In addition, state law also requires Cities to provide the Planning Board with 30 days to consider changes to roads shown on the City’s Official Map. General City Law §29.

Even if the City can make a reasonable finding that the Fair Street Extension can be discontinued, it must still negotiate a sale of any interest within the former street bed.

¹ We also question why the City would choose to discontinue the Fair Street Extension now, before the Project is even approved, and what happens to vehicles seeking to use the Street in the interim? Will the City barricade it to prevent vehicles from using it? What happens to cars entering and leaving the municipal parking lot?

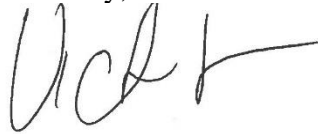
Following approval by the Common Council and the Mayor, the Assessor shall determine a value of that portion of the street opposite their parcel to the center line thereof. In the event that such adjacent owner should decline to purchase such portion of the street opposite his or her premises or fail to respond to the offer within 30 days or receipt, then the same shall be offered to the owner(s) of adjacent properties, and if said owners shall also decline or fail to respond to the offer within 30 days or receipt, then the same shall be offered to the general public, to be sold to the highest bidder, by advertising the same at least twice in the official newspaper and, upon the receipt of such bids, shall be sold to the highest bidder, provided that the sale and purchase price shall be at least equal to the value placed upon the same by the Assessor.

Code § 355-64. Thus, the City may not convey an interest in a former street without determining what other purchasers, if any, may be interested in the former street.

I trust that you will agree that the Common Council cannot discontinue the Fair Street Extension and convey an interest in same without following the procedures outlined in the City Code and General City Law. We ask that you respond confirming that a public hearing will be scheduled before the City takes any action regarding Fair Street Extension.

I am available to discuss any questions or concerns regarding the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Victoria Polidoro', with a long horizontal flourish extending to the right.

Victoria Polidoro

Cc: Daniel Gartenstein, Esq.
Janet Higgins, Esq.
Barbara Graves-Poller, Esq.
Suzanne Cahill
Michael Moriello, Esq.