



John L. Salomone
Town Manager

TOWN OF NEWINGTON

131 CEDAR STREET
NEWINGTON, CONNECTICUT 06111

MAYOR STEPHEN WOODS

NEWINGTON TOWN COUNCIL

**Conf. Room L-101 (Lower Level) – Town Hall
131 Cedar Street**

**AGENDA
October 27, 2015
7:00 p.m.**

- I. PLEDGE OF ALLEGIANCE
- II. ROLL CALL
- III. AWARDS/PROCLAMATIONS
 - A. Teacher of the Year – Jonas Roberts
- IV. PUBLIC PARTICIPATION – IN GENERAL (**In Person/Via Telephone: 860-665-8736**)
(3 MINUTE TIME LIMIT PER SPEAKER ON ANY ITEM)
- V. CONSIDERATION OF OLD BUSINESS (**Action May Be Taken**)
 - A. Town Hall/Community Center Project Discussion
 - B. Acceptance of Green Avenue Update
 - C. Town Manager Contract Compensation Issue
- VI. RESIGNATIONS/APPOINTMENTS (**Action May Be Taken**)
 - A. Appointments to Boards and Commissions
 1. Affordable Housing Monitoring Agency
 2. Commission on Aging and Disabled
 3. Balf-Town Committee
 4. Board of Education Roof Replacement Project Building Committee
 5. Board of Ethics
 6. Capitol Region Council of Governments
 7. Central Connecticut Health District Board of Directors
 8. Committee on Community Safety
 9. Conservation Commission
 10. Development Commission
 11. Downtown Revitalization Committee
 12. Employee Insurance & Pension Benefits Committee
 13. Environmental Quality Commission
 14. Board of Ethics
 15. Fair Rent Commission
 16. Newington Housing Authority

Phone: (860) 665-8510 Fax: (860) 665-8507
townmanager@newingtonct.gov
www.newingtonct.gov

17. Human Rights Commission
18. Library Renovations/Addition Project Building Committee
19. Newington School Career Technical Program Renovation Project Building Committee
20. Open Space Committee
21. Board of Parks and Recreation
22. School Improvements Project Building Committee
23. STEM Academy PBC
24. Senior & Disabled Center Roof Replacement Project Building Committee
25. Standing Insurance Committee
26. Town Hall Renovations Project Building Committee
27. Town Plan & Zoning Commission
28. Tri-Town Community Cable Access
29. Vehicle Appeals Board
30. West Meadow Cemetery Expansion Project Building Committee
31. Zoning Board of Appeals

VII. TAX REFUNDS (**Action Requested**)

VIII. MINUTES OF PREVIOUS MEETINGS (**Action Requested**)

- A. Public Hearing, October 13, 2015
- B. Regular Meeting, October 13, 2015

IX. WRITTEN/ORAL COMMUNICATIONS FROM THE TOWN MANAGER, OTHER TOWN AGENCIES AND OFFICIALS, OTHER GOVERNMENTAL AGENCIES AND OFFICIALS AND THE PUBLIC

X. COUNCIL LIAISON/COMMITTEE REPORTS

XI. PUBLIC PARTICIPATION – IN GENERAL (**In Person/Via Telephone: 860-665-8736**)
(3 MINUTE TIME LIMIT PER SPEAKER ON ANY ITEM)

XII. REMARKS BY COUNCILORS

XIII. ADJOURNMENT

AGENDA ITEM: III

DATE: 10-27-15

RESOLUTION NO.: _____

WHEREAS, Mr. Jonas P. Roberts, a Grade 3 Teacher at Anna Reynolds Elementary School, has been designated as Newington's 2015-2016 Teacher of the Year; and

WHEREAS, Mr. Roberts was selected based upon his exceptional skill and dedication to children and the teaching profession; and

WHEREAS, Mr. Roberts is intelligent, a strong communicator, an advocate for all students and a strong believer that public education is the vehicle to prepare all children for participation in our society; and

WHEREAS, Mr. Roberts is poised and articulate with an outgoing nature and possesses the superior ability to inspire learning in all students; and

WHEREAS, Mr. Roberts earned a Bachelor of Science Degree in Education from the Central Connecticut State University, a Masters of Science in Reading at Central Connecticut State University; and

WHEREAS, Mr. Roberts has been teaching in Newington for fourteen years at Anna Reynolds Elementary School and prior to Newington, Mr. Roberts was a teacher with the Meriden Public Schools; and

WHEREAS, Mr. Roberts is dedicated to his students and fosters a strong rapport between students and himself and establishes early communication with students and parents. Mr. Roberts is a dedicated professional, leader and trendsetter amongst his colleagues, and the teacher that every parent wants his or her child to have; and

WHEREAS, Mr. Roberts is a very reflective, motivated professional who is always learning and stays abreast of current research and applies new learning in his classroom; and

WHEREAS, Mr. Roberts leads, inspires, teaches and cares. Mr. Roberts consistently models a love of learning and demonstrates patience and genuine interest in his students; and

NOW, THEREFORE, BE IT RESOLVED: That the Newington Town Council hereby recognizes Jonas P. Roberts as Newington's Teacher of the Year and extends its sincere congratulations and appreciation to his dedication and commitment to Newington's children.

MOTION BY: _____

SECONDED BY: _____

VOTE: _____



John Salomone
Town Manager

TOWN OF NEWINGTON

131 CEDAR STREET
NEWINGTON, CONNECTICUT 06111

OFFICE OF THE TOWN MANAGER

MEMORANDUM

To: Newington Town Council
From: John Salomone, Town Manager
Date: October 22, 2015
Re: Town Hall/Community Center Project Discussion

The Town Council has held several Public Hearings and discussions regarding the future of the Town Hall Renovations Project. There is an item on the October 27, 2015 agenda to further discuss the direction of the project.



John Salomone
Town Manager

TOWN OF NEWINGTON

131 CEDAR STREET
NEWINGTON, CONNECTICUT 06111

OFFICE OF THE TOWN MANAGER

MEMORANDUM

To: Newington Town Council
From: John Salomone, Town Manager
Date: October 22, 2015
Re: Acceptance of Green Avenue Update

The Town Attorney has provided an opinion as to the status of Green Avenue.

Copy of opinion is attached.

Law Office of Peter J. Boorman

365 Willard Avenue, Unit 2E
Newington, Connecticut 06111

October 22, 2015

Tel. (860) 594-4433
Fax (860) 666-5112

John Salomone, Town Manager
Town of Newington
131 Cedar Street
Newington, CT 06111

Re: Southerly portion of Green Avenue
Between Standard Street and Evergreen Road

Dear Mr. Salomone,

I write to you today in my capacity as the Newington Town Attorney and by way of follow up to your request that I provide an opinion as to the status of the above matter (hereinafter subject piece). More specifically, you have requested a legal analysis as to the status of the subject piece as a "public road". The analysis once again raises long standing issues as to the status of certain dedicated roads in Town that were never formally accepted and the historical underpinnings of action and inaction as to each individual piece.¹

Relevant Background.

According to Town records the subject piece was never formally "accepted". However, the analysis does not end there. It is necessary to review the history of the subject piece to determine whether it meets the legal requirements of a public road. This opinion is intended to discuss the law associated with public road dedication and acceptance and apply that law to the facts available to specifically address whether the subject piece is a public road.

The law of road dedication and acceptance.

To determine if a road in Connecticut is a "public road" it is necessary to apply the law of dedication and acceptance to the facts.² The Highway and the Right of Way, 61 Conn. B.J. 299, 301, (1987). Dedication of a road to public use is an initial requirement for a road to be public. That is, there must be the intent by the owner of the land on which the road lies to dedicate that land for use by the public. The intent to dedicate can be illustrated by a private owner expressly requesting a town accept the roadway as part of a subdivision, or, it can be implied by the conduct of the owner. Case

¹ Reference is made to the June 2, 2004 Opinion to the Town Plan and Zoning Commission from Peter J. Boorman, Esq., Town Attorney, as to the Westerly portion of Styles Avenue.

² The Highway and the Right of Way, 61 Conn. B.J. 299, (1987) is generally recognized as the authoritative analysis on Connecticut law as applied to road establishment.

law has determined that conduct such as the filing of a subdivision plan showing the road in its layout meets the dedication requirement. However, dedication is but the first step in the process of a road becoming a public road. Acceptance is also required.

“Dedication becomes effective only when acceptance has occurred.” *Id.* at p. 302. Acceptance occurs when the public or some public authority accepts what has been dedicated. There are two kinds of acceptance, expressed or implied. Expressed acceptance is formal acceptance. It occurs when the Town Council takes formal action to accept a road.

Implied acceptance of a road can occur by actions taken by the general public or by a municipality. *Id.* at 305. Those actions require that there exist actual use of the road. Therefore it becomes a factual issue as to whether “there have been acts significant enough to warrant a finding that the street is public.” *Id.* This analysis is qualitative not quantitative. That is, “the character of the use rather than the number of users” is determinative.

Case law as applied to municipal actions regarding implied acceptance provides some clear guidance. *Id.* The approval of a subdivision map and subsequent filing of that map alone is not enough to meet the requirements of implied acceptance. The designation of the land as a street by the town assessor and therefore the determination that the road is exempt from municipal taxes alone is not enough. However, public improvements or maintenance of the road by a municipality alone is enough to support implied acceptance. The appropriation and expenditure of public funds for the road is a clear indication of implied acceptance.

In sum, affirmative acts by a town as to the road support implied acceptance. The policy behind these findings of implied acceptance by a town is that the town has in some way asserted dominion and control over the road. Such actions as plowing, paving, or maintaining a road is asserting control over the road. There is a presumption that such actions by a town are intended to be done legally. It is presumed that the town would not intend to do an illegal act such as a trespass on private property. Therefore, if the town paves or plows or otherwise takes such affirmative acts on a road then the town must believe it is a public road, and the town would not believe it was a public road unless it was accepted. *Id.* Asserting such dominion and control over a road is implied acceptance.

Similarly, implied acceptance by the general public focuses on the nature of the use by the public. *Id.* at 306. “Is it so occasional and sporadic that it may be a tolerated trespass or is it regular and continuing (even if not continuous) so that it can clearly be said that the public character of the road is recognized not only by the users of the road

but by those persons who would have an interest in preventing their use if the road were private?" Id. The policy once again reflects the recognition that if the general public asserts dominion and control over the road by way of uninterrupted use of the road then in effect the public has a "claimed right" over the road. Therefore, the road is impliedly accepted. A corollary to this dominion and control is if the road is of "common convenience and necessity to the public. Does this road, by its location, "assist the public in getting somewhere it wishes to go and is therefore, of benefit to the public"? Id. at 308. If so, then it has been impliedly accepted.

The final area of legal examination for our purposes is the extent of acceptance of the road where implied acceptance has occurred. That is, how much of the road has been accepted? The former general rule of "where the actual use stops there the acceptance stops" has been expanded to include those portions of the road that are "incidental" to the actual use. Id. at 311.

Application of the law to the subject piece.

It is necessary to apply the law, as discussed above, to the facts associated with the subject piece. The law provides that for a road to be public it must be dedicated and accepted.

The dedication of the entire length of Green Avenue originally occurred in 1923 and subsequently an amended subdivision approval occurred in 1979 by the Newington Town Planning and Zoning Commission. The map reference is "Subdivision Map Green Acres Estates Property of Town of Newington, Newington, Conn. Scale 1" = 40' Nov.1979" Therefore, it is clear that the entire length of Green Avenue was dedicated as a public roadway.

The analysis as to acceptance is not so straight forward. It is clear that a portion of Green Avenue was formally accepted on November 29, 1963 by the Newington Town Selectmen, and, an additional portion was formally accepted on October 25, 1966 by the Newington Town Council. However, the subject piece was not part of either acceptance.

Therefore, it must be determined if implied acceptance has occurred by actions of the Town or by the general public. Research has determined that the Town has asserted dominion and control over the subject piece. The Town has engaged in paving, plowing and general maintenance (such as litter pick up and clearing brush overgrowth) of the subject piece for many years. Such action by the Town alone results in implied acceptance. However, there are additional indicia of implied acceptance. The Town of Newington Police Department and Fire Department advise historic use of subject piece in the performance of their duties. When taken together, these findings support the

John Salomone, Town Manager
October 22, 2015
Page 4

conclusion of implied acceptance by actions of the Town.

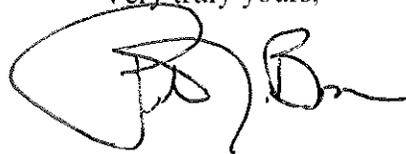
Finally, implied acceptance by the general public also appears to be significant. The subject piece is used by the public (residents, guests, business and social invitees) as a means of ingress and egress for Standard Street and Evergreen Road. Additionally, the United States Postal Service, sanitation services, MDC service, private express mail companies, various vendors and service providers historically routinely use the road. These uses have not been interrupted by the abutters. Therefore the use by the general public is regular and continuing.

Conclusion.

The subject piece is a public road. It was dedicated. The Town and the public have impliedly accepted the road. The Town has asserted dominion and control over it as illustrated by the Town paving portions of the road, plowing and otherwise maintaining the road.

Please do not hesitate to contact me directly with further questions or concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read 'P. J. Boorman', written in a cursive style.

Peter J. Boorman



John Salomone
Town Manager

TOWN OF NEWINGTON

131 CEDAR STREET
NEWINGTON, CONNECTICUT 06111

OFFICE OF THE TOWN MANAGER

MEMORANDUM

To: Newington Town Council
From: John Salomone, Town Manager
Date: October 22, 2015
Re: Town Manager Compensation

The Town Manager Evaluation Subcommittee has completed the Town Manager's evaluation for FY 2014-15. Town Manager's compensation to be considered.

Attached is a resolution for Council consideration of a 2% increase to the Town Manager's compensation.

AGENDA ITEM: V.C. _____

DATE: 10-27-15

RESOLUTION NO: _____

RESOLVED:

That reflective of the Town Manager's performance from July 1, 2014 to June 30, 2015, the Town Council; hereby authorizes a salary increase of ____% (\$_____) on the current salary of the Town Manager, John L. Salomone for the fiscal year beginning July 1, 2015.

MOTION BY: _____

SECONDED BY: _____

VOTE: _____

AGENDA ITEM: VII

DATE: 10-27-15

RESOLUTION NO. _____

RESOLVED:

That property tax refunds in the amount of \$3,802.70 are hereby approved in the individual amounts and for those named on the "Requests for Refund of an Overpayment of Taxes," certified by the Revenue Collector, a list of which is attached to this resolution.

MOTION BY: _____

SECONDED BY: _____

VOTE: _____

TAX REFUNDS – OCTOBER 27, 2015

Troy Grenier 105 Edward Street Newington, CT 06111	\$6.95
Michael Ouimette 55 Woodbridge Rd. Newington, CT 06111	\$15.08
Toyota Motor Credit Corp. 19001 S. Western Ave. Attn: Product Operations WF 21 Torrance, CA 90509	\$443.53
Wheels LT 666 Garland Place Des Plaines, IL 60016	\$205.60
EAN Holdings LLC Entertainment Rent A Car 8 Ella Grasso Tpke. Windsor Locks, CT 06096	\$1,130.10
EAN Holdings LLC Entertainment Rent A Car 8 Ella Grasso Tpke. Windsor Locks, CT 06096	\$1,040.01
Honda Lease Trust 600 Kelly Way Holyoke, MA 01040	\$148.11
Marjorie W. Guest 1459 Greenville Rd. Ashby, MA 01431	\$29.11
Katherine Sala 32 Baldwin CT Newington, CT 06111	\$23.31
Toyota Motor Credit Corp. 19001 S. Western Ave. Attn: Product Operations WF 21 Torrance, CA 90509	\$420.35
MTP Auto Leasing Svc. Inc. 247-25 Jericho Tpke. Bellerose, NY 11426	\$265.96
Kimberly or Michael Nadeau 102 Clarendon Terrace Newington, CT 06111	\$74.59
Total	\$3,802.70