

## **Executive Session, March 8, 2022.**

The City Council went into executive session on Paper# 89-22, Cellco v City of Malden which was docketed on the March 8, 2022, Committee of the Whole Agenda.

Under Council Rule 10.02 Councillor Murphy became acting Council President because Council President Spadafora was unable to attend the meeting. Councillor Murphy presided over the meeting.

Acting President Murphy called the executive session to order at 7:21P.M., Clerk Lucey took roll call: Colon-Hayes (y), Condon (y), Crowe (y), Linehan (y), McDonald (y), Murphy (y), O'Malley (y), Simonelli (y), Winslow (y). Absent were Councillors Spadafora and Sica.

Also in attendance was Assistant City Solicitor Zaheer Samee and Clerk of Committees Lisa Cagno.

Acting Council President Murphy opened the meeting up by giving the reasons why the Council can go into executive session, and they were not allowed to discuss the process on how the Council does things and can only discuss strategy with the litigation. Acting President Murphy turned it over to Assistant City Solicitor Samee to give background on the case.

Assistant City Solicitor Samee said there was not a lot to add from what was discussed in the open session of the March 1<sup>st</sup> City Council meeting, Atty Samee continued that Verizon has named all the councillors in the suit excluding the newly elected councillors who were not part of the vote in December. Attorney Samee walked through the events that took place that led to the suit. In June of 2021 the Council took a vote approving the antennae to be installed on pole 2452 located in front of 37-39 Willard Street. In December of 2021 the Council voted to have Verizon remove the equipment that was installed on pole 2452 because of having no electrical permit issued. Verizon filed suit and asked before the court for four things (1) City not do anything to the antennae that is stays on the pole (2) City permanently allow the antennae to stay on the pole (3) the Building Department issue the electrical permit (4) ask that the judge grant further relief as the Court deems just and necessary. The Judge only ordered that the antennae stay up and reserved judgement on the other three requests. When Verizon filed the lawsuit, Asst. City Solicitor Samee only had a week to respond, Verizon worked on the suit a lot longer. The Argument was held on January 31<sup>st</sup> by zoom. Assistant City Solicitor Samee continued that it was his job to defend the Council and the judge balanced the city's interest and Verizon's interest and the best argument we could put forward is there was a process. Atty Samee continued that Verizon does not want a public hearing to take place although the judge ordered it. It is in Attorney Samee's opinion that by the judge letting the City Council go through the process again, he is respecting the City Council.

Councillor Linehan asked if we were obligated to hear the petition again which Attorney Samee said if you go through the process again, at least you have done it through the council procedure. Councillor Linehan continued that she has talked to the resident at 37-39 Willard Street and felt she was bullied from him as much as Verizon.

Acting President Murphy stated that we have a Court Order, the court has ordered us to have the hearing.

Councillor Winslow stated he was not certain the council went through their procedures and Verizon should have due process themselves. Councillor Winslow continued that he supported them to take down the antennae in December because of not pulling and electrical permit., his dilemma as Public

Property Chair, the Order was referred to Public Properties and he needed a clear answer if the petition was going to be revoked.

Councillor O'Malley stated he did not want to be sued and Public Properties won't have a meeting.

Councillor Winslow stated the City Council is the client and Assistant City Solicitor Samee is there to give advice, but the Council make the decision on what they will do. Councillor Winslow went on further that if a building owner didn't pull and electrical permit, we wouldn't make them tear down the building. There is gamesmanship going on with this petition., not sure why Verizon is digging their heels on this one.

Councillor O'Malley asked if Verizon had pulled an electrical permit yet. Attorney Zaheer answered that they had but the approval was delayed and not granted.

Acting President Murphy said read the highlighted area in the Court Order, 3<sup>rd</sup> paragraph, we are ordered to have the hearing.

Councillor O'Malley said we should issue the license.

Councillor Winslow said that Verizon needs the approval for the antennae and the electrical permit. Councillor Winslow continued that in December we were saying take down the antennae and apply for the electrical permit and telling Verizon you should have got the electrical permit before putting the equipment on the pole.

Councillor O'Malley stated we need to tell the building Department to issue the electrical permit. Councillor O'Malley continued that Public Properties is not having a meeting and that we were lied too.

Councillor Winslow said he could hold a Public Properties Meeting next week and will recommend something to the full council.

Councillor McDonald said we can approve what Verizon is asking for or we can redo the process Councillor McDonald asked if the route we choose to take will it affect what we can do in the future ? Assistant City Solicitor Samee answered that it would be more strategic to do what the Court has ordered the Council to do. Councillor McDonald asked if we have a public hearing does it matter with the choices. Assistant City Zaheer answered that he not thinking that far down the road and the council should take it step by step, if the council approves the petition, the lawsuit could be moot, if the council finds a reason to deny, Verizon will continue litigation.

Councillor Winslow said that back in December we voted 11-0 that we didn't want the antennae, why are we starting the process again? We must have a legal strategy that we don't want the antennae on that pole, what is the legal strategy to back that up?

Assistant City Solicitor Samee said that when he read the lawsuit, something went wrong somewhere but there is no point now trying to figure that out, there is no point justifying the decision in December, it is done and the only thing now to do is follow the Court Order.

Councillor Winslow said he will go forward with the process, but he is going to need a legal opinion that he asked at the December 21<sup>st</sup> meeting. Does Verizon's application conform to our ordinances and is it valid, if legal says yes, the hearing will stay open.

Councillor O'Malley made a motion to adjourn, seconded by Councillor Simonelli, it was so voted by roll call vote: Colon-Hayes (y), Condon (y), Crowe (y), Linehan (y), McDonald (y), O'Malley (y), Simonelli (y), Sica (absent), Spadafora (absent). The executive session adjourned at 8:05 P.M.

Minutes submitted by City Clerk Greg Lucey.

Pursuant to M.G.L. c. 30A, s. 22(g)(1), and with the approval of Council President Winslow and City Solicitor McNeil, on August 26, 2024 eleven members of the Malden City Council were offered a one month period of time to review fourteen sets of executive session minutes dating back to April 2021 in the privacy of the City Clerk's Office. It was explained that any questions or amendments may be submitted to the City Clerk and a date would be set to meet in Executive Session for further discussion. Otherwise, if there were no objections, on behalf of the Body, Council President Winslow would be tasked with the approval of said minutes.

After the one-month review period had expired, on September 29, 2024, Council President Winslow authorized the approval of all draft executive session minutes. Among those fourteen drafts, this set was included.

Approval process organized and overseen by City Clerk Carol Ann Desiderio.

Pursuant to M.G.L. c. 30A, s. 22(g)(1), and with the approval of Council President Linehan and City Solicitor McNeil, a periodic review of fifteen sets of Executive Session minutes was completed to determine if a number of minutes warranted continued non-disclosure. As of April 9, 2026 Council President Linehan, under the advice of counsel from Solicitor McNeil, has now ordered the City Clerk to release the executive session minutes from the meetings of 4/20/2021, **3/8/2022**, 2/28/2023, 4/30/2024, 6/25/2024, 7/24/2024, and 3/11/2025.

Approval process organized and overseen by City Clerk Carol Ann Desiderio.