

Catherine D. Cooper
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Concord, NH 03301
cathycooper175@gmail.com

March 11, 2019

Mayor James Bouley and Honorable City Council:

The following is testimony I would like submitted for the public hearing record on March 11, 2019. There are now two (2) issues that will come before this Council tonight which I would like to address. My testimony is lengthy but is necessary for the Council to comprehend the full history of what has led to this hearing. I hope that you will take the time to carefully review and reflect on the documents and issues I have presented before your vote.

1. As to the proposed ordinance to ban parking in front of only 2 homes in Concord's South end, I enter my full-throated opposition to the agenda item to ban on-street parking in the vicinity of 39/40 Nivelles Street, Concord, NH. This action is arbitrary and capricious and will not be a cure to what has infected Concord's South End. Indeed, it seeks to put a band aid on a hemorrhaging artery, surgery best left to the court system, which is exactly the path that the Daniels were taking prior to this city's intervention. It is also ironic that it occurs after the City repeatedly shirked their fiduciary obligations to enforce existing city ordinances in favor of blaming the parties for a "civil dispute." Now it seeks to trigger a nuclear option, rather than support the Daniels right to litigate their claims as a civil matter. After nearly 2 years of disruption, is it really inconceivable that a delay of a few months to allow them to pursue a permanent, court-ordered, solution is the better path for this city? We are better than this.
2. As to this hearing, I had advised Councilor Nyhan on March 3, 2019, by email, that a continuance of this agenda time is required in fairness to the opposition, and, most importantly, because the city, through its agent,

Matthew R. Walsh, commenced an alternative process to a prior vote of the community, councilors, and parties of August 16, 2018, after he was fully aware:

(a) That the Daniels Family was going to retain legal counsel to pursue this matter civilly within the court system;

(b) That a pending Freedom of Information Act was pending, since the City Solicitor, James Kennedy, had referred that request to him, which was filed on January 17, 2019, a full 10 days before his report to the Mayor and this Honorable Council;

(c) That the city has departed from the prior precedent, and the council's documented intent, for fair notification to the affected parties. In this instance, it is only the Daniels Family, and those who visit and service them, are the only parties negatively, and severely, affected by the proposed ban.

Regrettably, believing that the Memorandum of August 29, 2018, following a lengthy and detailed neighborhood meeting on August 16, 2018, and the city's warnings to Mr. Ruiz about the city's right of way, had brought recognition to the city and Mr. Ruiz that this was simply a parking matter, and he, like all other residents, are obligated to follow city ordinances, the matter had been concluded. With the holidays approaching, I packed voluminous research, and my chronological communications with the city, away. Our immediate contacts with our city councilor, by both Mrs. Daniels and myself, also regrettably have gone unanswered since the courtesy notice was received on March 2, 2019, without even a copy the proposed ordinance attached. Further, the attached documents will demonstrate that I did not receive a response to my FOIA request until 1:10 pm on Friday, March 8, 2019, and only then as a result of 2 visits to the City Clerk's Office, an email to S. Stevens at Administrator Walsh's office, and 2 trips to the M. Walsh's office.

Thus, my testimony, while not as artful as more time would allow, does present a clear timeline of processes below that should easily raise more than reasonable doubt to warrant the delay I have requested if this city is truly interested in a fair,

permanent resolution. The current proposed ordinance continues to shift its fiduciary responsibilities of enforcing existing city ordinances, not allow chaos to take hold because it does not, while then scapegoating the Daniels Family to be the target now of not only his hostility, but those of their neighbors once the parking ban forces family, friends and independent vendors, down the street.

After a year of written and oral communication with the city, the primary stakeholders regarding this parking ban were well versed with city departments including the fire, police and city clerk. I had advised Councilor Nyhan on March 3, 2019, that a continuance would be required given the city's lack of transparency and responsiveness to allow those in opposition to the ban against only the 1 resident of Nivelles Street, subjecting them to restrictions faced normally in high traffic areas, where the common good of the community at large is affected. For example, South Street near the school zones.

Notwithstanding the lack of transparency, no further action should have been initiated after notification to the city of a potential civil lawsuit and a request for information under the Freedom of Information Act. Mr. Kennedy was also advised on January 17, 2019, prior to the 4-person parking meeting during which the ordinance was constructed, that matters had deteriorated where the family would be meeting with legal counsel in that it appears other avenues of law enforcement the City was unable to enforce would not resolve the conflict. Mr. Kennedy was advised that I would serving as the point of contact due to the family's fear of retaliation from Mr. Ruiz, most notably, the police incident on December 22, 2018, outlined below, and his posts on Facebook regarding the use of weapons such as land mines. Since when has the City of Concord interposed itself into civil matters, rushing through an ordinance that would affect such a legal process?

I believe my requests are still incomplete, but as they were not delivered in sufficient time to better prepare for my testimony, I am unable to refute them in this current testimony.

TIMELINE SINCE AUGUST 16, 2018 ADOPTED RESOLUTION:

- On August 29, 2018, a Memorandum was issued to all Nivelle Street Property Owners with the Subject: Lawful Uses of Nivelle Street Rights-of-Way and Basic Parking Regulations.
- Mr. Ruiz will no longer honor the private resolution agreement of August 16, 2018.
- We are no longer permitted at the oral direction of Mr. Ruiz on this date to contact him in any manner.
- As a result of his decision, the Daniels Family will now also exclusively rely upon the existing City of Concord ordinances, which are no longer disputable, and clearly substantiated by the Walsh Memorandum dated August 29, 2018.
- The public easement on Nivelle Street commences at both ends and both sides of Nivelle Street and parking is on a first come first serve basis in accordance with the restrictions outlined in the August 29, 2018 Walsh Memorandum.
- Letter to James Kennedy, January 17, 2019.
- Aerial Photo prepared by City, "No Parking Zone show in Yellow, January 24, 2019.
- Letter to Cooper, confirming receipt of her right-to-know, January 28, 2019.
- Parking Committee meeting, January 28, 2019.
- Report to Mayor and The City Council, with constructed ordinance, January 31, 2019.
- Courtesy Notice to Nivelle Street Residents, Councilor Nyhan, February 27, 2019
- Notice received by Patricia and David Daniels, March 2, 2019
- Call to Councilor Nyhan, Patricia Daniels, March 2, 2019
- Cooper email to Councilor Nyhan, Catherine Cooper, March 3, 2019
- Email to S. Stevens, March 6, 2019
- Visit to City Clerk, March 7, 2019
- Visit to City Clerk (am) and M. Walsh, March 8, 2019 seeking FOIA responses
- Visit to City Clerk (pm) and M. Walsh, retrieve documents.

While I take no pleasure in doing so, in sum, you have only to look at the dates above following my hand-delivered letter to the City Attorney on January 17, 2019 to see how the decision-making process on this issue has been manipulated in favor

of Mr. Ruiz. The timeline clearly demonstrates that city staff has failed to provide city policy makers with critical facts prior to the time that they have made a decision on these matters on a preliminary basis. It is wrong. We are better than this.

My second basis for this council to either reject or table this proposed ordinance, is for the city to fully comply with FOIA requests and to allow me to argue through due process those they have declined which clearly are in the public purview. Such is the purpose of the act, to be able to fight government overreach, which is occurring in this ordinance. The city is obligated under the law to provide me with an opportunity to expose the level of misleading statements provided to the Council to rush this proposed ordinance through before that can occur.

As one of my favorite former councilors, Paul Halvorsen, used to say, "It's got to pass the 'snicker' test" for me to vote for something. Let me illustrate a few eye-brow raising representations to this council that do not pass the snicker test to warrant approval of this punitive ordinance.

1. There have been no problems for 26 years, either from the neighbors, vendors, or city agents. There was one dog incident with a federal agent, the post office, and the Daniels promptly worked with them to resolve the matter.
2. Mr. Walsh correctly claims the road, "lacks a formal cul-de-sac or hammerhead turnaround on a dead-end road. This reminds me of one of my favorite trainers at work visiting from the south repeating one of his age-old expressions to drive home his point: "Cathy, you can't argue that you are up to your ass in alligators when it was your job to drain the swamp!" The city had full knowledge of the street conditions when they allowed a house to be built there. The map they provided goes back to 1957. However, the city now seeks to correct its malfeasance in permitting a house on this dead-end street, which was built after the Daniels Home, but seizing the only frontage on their small lot, while enhancing the lot that is more than an acre. Further, Mr. Ruiz erected a nonconforming fence after his purchase, which, again, led

to the plowing problem. It's beginning to sound a bit like the childhood poem, "This is the House that Jack Built."

3. While Mr. Walsh attached a copy of Mr. Ruiz letter, he notably failed to attach the original Daniels' letter.
4. "The road is 21-22 feet". That would be the "paved" road. The right of way, clearly stone and muddy grass, like most on-street parking areas, easily accommodates the 50' established right of way. In fact, Nivelte Steet was not even on the original narrow streets project, and has many more options available for cure than this one.
5. This was never just a parking matter. Mr. Ruiz has 2 unpermitted driveways and the largest lot on the block. Mr. Ruiz orchestrates and edits selfie videos to create havoc and actually cause the problems he is trying to cure as evidenced in the Daniels response that David Florence, Parking Supervisor, submitted at the first Council meeting. It is like a pyromaniac who lights a fire, placing firefighters at risk, and then warms himself in the glow of the burn.

I take no pride in admitting that while being subjected to his insults and criticisms since I started to assist Ms. Daniels, that I finally staged my own chaos to demonstrate how easy it is to lean in to ignorance. Mayor Bouley probably already has the Ruiz, as characterized by Mr. Walsh. Here is my version.

I stopped in to pick up Ms. Daniels and head to the post office. I staged, just as he had done, a photo op for the post office and this Council on how he weaponizes the mail box by parking in front of it. I then parked where he puts his second car to block service, so he could accuse me of doing just that. Mr. Ruiz charged out of his half, videotaping everything while I was shouting for him to not speak to me and leave my car alone. His video production, and video footnote about how he had not received his mail in 3 days will be a

lie. I was there for 10 minutes, long before the mail was due. The Daniels had no cars in on-street parking. And, while he claims on the video he did not get his mail for 3 days, Attorney Colantuono, myself and Ms. Daniels, were there at 4pm for his view of the property when Mr. Ruiz retrieved his mail right in front of us.

6. The street is clearly marked "DEAD END." It was so marked when Mr. Ruiz bought 40 Nivelles Street. He had a realtor, who he sent to obtain information from the Daniels Family. Caveat emptor. Now he seeks to rein chaos to cure things he doesn't like about his property - that he moved in next door to a family of 12, that used on street parking - that one of his unpermitted driveways egresses directly in front of his house - that he does not own the city right of way - that people sometimes make mistakes and turn around in other people's driveways. Are those the issues that Concord is now going to legislate?
7. In his Report to Mayor and The City Council dated January 31, 2019, M. Walsh states: "At issue is a concern that parking associated with 39 Nivelles Street has resulted in narrow street conditions, as well as an ability for the United States Parcel Service to provide mail service to the property owned by Mr. Ruiz at 40 Nivelles Street."

In the limited time that I had on March 8 after receiving the partial response of the City, I went to the US Postal Service (USPS), who has a more important role in mail delivery than UPS, so I decided to try to refute this claim for both agencies. As to USPS, there have been no reports from their carriers for either 39 or 40 Nivelles Street. We have reported this matter to the Postmaster, requesting a letter confirming the mail issue that has been raised. They will have a written response next week, but, in the meantime, there are several options that they can offer that do not require a ban, including: (a) Cluster mailboxes; (b) Moving both mailboxes to an unaffected side of the street; (c) if an ADA issue is involved, a simple waive to allow the rural carrier to exit the vehicle and deliver the mail to Mr. Ruiz' door; (d) Mr. Ruiz could accept his

mail in person through a PO Box as he did for several months after the August 16, 2018 meeting.

8. As to UPS, FEDEX, or any other delivery service, those are private source use. And, the record contains no complaint from them either. Regardless, in either instance, it is not the jurisdiction of the City of Concord, as I was advised by City Engineer Gendron regarding mail deliveries. Importantly, either Mr. Ruiz has submitted false testimony to the Council regarding mail delivery, or Mr. Walsh simply accepted his complaint without due diligence on this issue.
9. And perhaps my favorite one of all, is the "emergency services" claim. We spoke to the South End Fire Station last August prior to the meeting. The city's largest engine, is not even in the South End, but would still have the capacity to respond.

But to address Mr. Walsh's presumption, is this Council expected to adopt an ordinance that would allow parking at the front end of Nivelles Street, while it adopts the ban on the end? How then, by that standard, could a fire truck, or any emergency service make it to the end of the street - especially past the RV that arrives every spring? It's simply insulting and the type of refute that demands to be cross examined.

We are better than this.

As I stated in my letter to James Kennedy, on January 17, 2019, I was hopeful that the Memorandum of August 29, 2019 from the City of Concord regarding appropriate use of the right-of-way on Nivelles Street would improve the situation. Instead, it served as a road map for Mr. Ruiz to deliberately engage in erratic and threatening malicious behavior to force the city to bring forward- and now reconsider - his original request. That is a powerful message to our civil community at large, to engage in similar reprehensible conduct. Under such a precedent, the city may certainly expect moving forward that our citizenry will have the right to invoke the "Ruiz Doctrine" to be contentious, overbearing, and relentless in dealing

with city agents. That is the message the Council will immediately promote if it adopts the proposed ordinance without a deliberative investigation of the facts not yet before the Council due to the city's conduct.

Other civil issues, just to name a few, that will affect these proceedings including other city problems as previously discussed with city staff.

1. Pursuant to City of Concord records, whether 40 Nivelles Street is a non-conforming lot, and how that impacts fencing standards. For example, in speaking previously with the City, it appears that the 40 Nivelles lot is designated as a non-conforming lot, and therefore fencing cannot exceed a height of 4'. The Ruiz fence potentially is located within the city right of way and violates the standard.
2. On December 22, 2018, at approximately 6pm, Mr. and Mrs. Ruiz were outside of their home. Mr. Ruiz was standing outside next to his wife, who was seated in her vehicle. As stated on "Broadcastify.com" (Concord Police dispatch), it was announced something along the following from a female dispatcher: "40 Nivelles St has called several times. Resident was anxious and going to handle it himself." A copy of this report should at least be provided to the City Council. On Friday March 8, 2019 the City declined to produce that information in response to the FOIA request referenced herein.
3. The only map regarding construction of the 40 Nivelles property dates back to 1957 pursuant to the FOIA request. It reflects that the home itself may have been illegally constructed on a portion of the Daniels property.
4. There are no driveway permits. The Ruiz' driveways are improperly placed and may interfere with the frontage of the Daniels homestead.

Given the lack of documents at Code Enforcement and City Planning, the Council should allow the Daniels' attorney time to determine the impact of a civil action on these property issues before formally revising existing city ordinances. If the City moves forward with enacting the proposed change in ordinance at this time, it will likely foreclose any opportunity for the parties to negotiate a long-term solution to these issues in an appropriate court setting once there has been a full and transparent disclosure of relevant information. That would truly be a shame given the amount of time all parties, policy makers, and staff have spent on this matter - and will likely be required to spend in the future-- if a long-term workable solution isn't implemented through court order.

I have attached multiple documents, which I incorporate into my testimony, and reserve the right to challenge the new ordinance if it is adopted when new information is uncovered that will refute testimony presented to the City Council. There are various threads on social media and documents of record with James Kennedy and Matthew Walsh, which are also incorporated in support of my testimony, and are currently on file with your city agents.

Lastly, before I conclude my testimony, and as stated in my attached email to Councilor Nyhan, while I have tried to evaluate this matter in a light most favorable to the city/community I have loved, and where I raised my family, it chokes and disgusts me to say so, but it is apparent that the City's proposed solution to these complaints is likely to be perceived as complicit in the award of the taxpayers' public right-of-way personally to Mr. Ruiz' for him his racist self-declared "Puerto Rican ONLY Parking Zone", barrier already posted through vile "free speech" signage, a copy of which is attached.

The threats and bullying conduct that he has instigated since his occupancy have apparently not only succeeded but may actually be rewarded if the proposed ordinance were adopted. Were I or the Daniels' Family to engage Mr. Ruiz' ethnicity through such similar "free speech," I am hopeful that you all would be morally outraged, as should we all, that such flagrant racism has taken hold in this City that prides itself on democratic principles and tolerance. I for one intend to ensure that such racism in Concord, in plain view, is exposed, and to ask why our elected officials are not condemning rather than rewarding it.

In concluding, since I began working with Mrs. Daniels in the spring of last year, I have perhaps become more passionate about this matter as a contributing member of this community, as a South-End neighbor and, yes, my pride in calling her a friend and adoring her family. Objectivity is critical, and in the end, the answers are before you if you chose to see them:

1. You cannot be reasonable with someone who chooses to just be unreasonable. Police records indicate that there has been only 1 incident since the August meeting, Christmas week, by Ruiz. We have pled our case through legitimate, and often frustrating, FOIA channels. He through a constant barrage of selfies to the city.

2. The design and enforcement of ordinances should never be arbitrary and capricious. This ordinance punishes one citizen while awarding Mr. Ruiz the totality of the request he filed on January 24, 2018. What the city should rely more heavily is what is best for the common good of all citizens, not in recognizing its own efforts as has been emphasized in Mr. Walsh's report. That's the job.

3. There are other fair options other than this discriminatory one. The Simplest one – enforce your ordinances. To reward non-compliance is to reward bad behavior.

OR: Permit only 1 curb cut – not the one that forces egress into the Daniels' Frontage.

OR: I have only to look out my porch window on 175 South Street to know that. On one of the busiest cross streets in Concord, a stone's throw from the elementary school, the ban is only from 7:00 am to 2:30, and only during the school year.

OR: After citizen protests near the law school, owners were provided permitted parking. We even do that in our already limited public parking garages.

OR: Ban parking on only 1 side of the street where the loss of on-street parking is equally shared by all residents. Unfortunately, Mr. Walsh saw first hand, and the street voted uniformly – except for Mr. Ruiz – no changes.

OR: As requested by Mr. Ruiz' letter of January 24, 2018, if the city feels its arguments can withstand such scrutiny from the other neighbors, and for all the other reasons he cites in his Report to Mayor and The City Council of January 31, 2019, if it's really that threatening, then let him explain a full parking ban to those who stood in opposition to such a ban. This resolution is not the least intrusive. It's just what's swift and easy for Mr. Walsh to get the bully off his back.

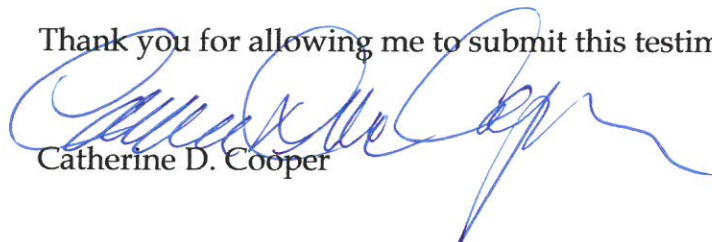
4. Do not interfere with due process. The Daniels have the right, and I if I choose to initiate court actions based on these circumstances. and to seek legal remedy through the courts without findings that align the city with Mr. Ruiz as this action would do. I properly noticed the city on January 17, 2019, before this ordinance was constructed, and it is just bad faith that the city even proposed this

ordinance during the pendency of a FOIA and notice to its City Attorney of those facts.

We are better than this.

I apologize that I am unable to provide my testimony in person, which I would have preferred, except for a prior conflict in Durham, New Hampshire.

Thank you for allowing me to submit this testimony.



Catherine D. Cooper

**PARKING
FOR
PUERTO RICAN**



← ONLY →

3 A

24Jan18

TO: Officer Florence
Parking Division
Concord, NH 03301

FROM: Derek Ruiz
40 Nivelles St
Concord, NH 03301
(603)793-9385

I am writing this letter in relation to the problems that are being caused by cars parking in the road on Nivelles St Concord, NH 03301. If you are not familiar with Nivelles road it is a narrow dead end street on the southside of Concord.

Usually after 3pm there are cars parked at the end of the street that on numerous occasions has caused the obstruction of entering and exiting my driveway. It has also made it very difficult for cars turning around at the end of the street, and I have had people pull up on to my lawn just to turn around while my son was outside playing.

I am particularly concerned about the impact of restricted access for emergency vehicles should, for example, a fire engine or ambulance be required.

With Nivelles St being so narrow as well as a dead end I think it would be in the best interest of the residents safety on this street that there be Parking restrictions on both sides of the Street. I would hate to see a young child get hit by a car trying to turn around, or a child get hit because some people back all the way out of the street.

Thank you in Advance

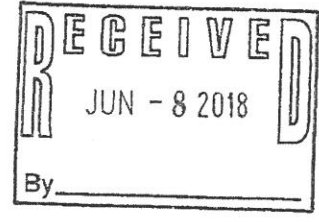
Derek Ruiz

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3A

June 8, 2018

Officer David Florence
Parking Enforcement Division
Concord Police Department
Green Street
Concord, NH 03301



HAND DELIVERED

Dear Officer Florence:

I have been provided with police log notes following my visit to the police department on Tuesday, June 5. I was also advised during my visit that you are the appropriate contact regarding a future "neighborhood meeting" text message I received in response to parking issues on Nivelles Street in the South End of Concord. As the city's liaison on parking issues, I would appreciate the following information from you.

1. I would appreciate confirmation from you of what time frame you may have in mind for such a meeting to ensure our availability, and how the abutters of Nivelles Street will also be advised of this meeting.
2. It is my understanding that any definitive changes beyond what was documented in the log notes, e.g. No Parking signs, etc. would first have to go before your traffic/parking advisory committee, and ultimately the City Council. Should that occur, I would like to know whether I need to continue to regularly check the status of these procedures with you, or whether we, as abutters, would be notified by mail.
3. My husband and I are in the process of compiling a packet of information, which I obtained from various city and state agencies with whom I spoke, including: (1) Code Enforcement; (2) General Service Administration; (3) Registry of Deeds; (4) Concord Engineering; and, (5) Concord Police Department. We are still in the process of tracking down a municipal ordinance allowing for the unrestricted use of city right of ways for personal gain (e.g. solar lights, hardscape, trees and other landscaping). We hope to hear from the General Services Administration in the near future on the ordinance, or will follow up with James Kennedy, City Solicitor, to whom I have copied this letter, to determine the existence and/or restrictions of such an ordinance.
4. I would like to clarify a misunderstanding conveyed to me while I was obtaining a GIS map from the Engineering Department. While there is nothing in the police record to indicate this, a city employee within that department indicated that he was aware of the "dispute" on Nivelles Street, and that you would be meeting with the two parties involved to discuss this matter. As we hope to demonstrate to our neighbors through our information packet, neither my husband nor I consider this a property or parking dispute as has been alleged. From our perspective, this is not an issue between two parties as has been suggested.
5. Rather, this appears to be broader issue of permissible use on designated city right of ways, the precedent of which has implications not only for the abutters on Nivelles Street, but for residents city wide. As the old expression goes, my family appears to be just in the wrong place at the wrong time given our proximity to the complainant, but being the current concerned target of such acrimony does not alter the underlying issue which must be addressed to avoid future police involvement anywhere

along our street. Frankly, the trickle-down impact on our Greater Concord Community will be significant if individuals can essentially claim personal eminent domain over valuable public common areas to restrict such space for individual enhancement and convenience rather than allow it to be available for city maintenance while also being enjoyed by all residents of the City of Concord, especially during familial and community celebrations. I am fondly reminded of our Conant picnic days where cars lined South Street as far as the eye could see in both directions.


I want to assure you that our goal is a reasonable and fact-based review of this issue so we are able to engage in complete transparency and consistency for all abutters. We are simply educating ourselves so that we may fully understand and be in compliance with permissible uses for city right-of-ways in Concord, as the city should justifiably expect to be adhered to all by all residents with equal application under those permissible uses.

Finally, I regret the inconvenience to your very competent officers who capably and sensitively handled the complaint that led to this letter. My husband and I have raised our 12 children for over 25 years on Nivelles Street without any problems like this, including the transitions of neighbors, until this complaint. And what you may perceive as an urgent tone in this letter is true only to the extent that our lives have been upheaved due to the complainant's agitated state of mind and constant filming of our daily activities. Hopefully his state of mind will not rise to the level of harassment if his conduct escalates.

We are relying on the log notes regarding the current parking allowances on Nivelles Street unless we hear otherwise from you in writing. As the parents of 12 children, 9 currently residing at 39 Nivelles Street, it is our understanding that anywhere in the city, including on our street, provided we are parking legally (eg not blocking a curb cut, etc.) parking is on a first-come standard for use of permissible parking areas. Three of my children have happily made me a grandmother, and return home often for visits. My daughter who is currently living in Tennessee, is evaluating a return home in residence following her husband's deployment with the Army later this fall. They will all be advised that they may safely park in this manner without fear of further engagement by the complainant.

Motor homes and landscaping equipment are out on our street and throughout the South End; and, summer outdoor gatherings, long awaited, will be beginning once again. We, as I'm sure all of our neighbors who have always regularly and cooperatively used the existing right of way for these and many other community events, should nonetheless uniformly understand our mutual responsibilities and restrictions moving ahead, and we look forward to working with you to accomplish our mutual goals.

Regards,



Patricia Daniels

cc: James Kennedy, City Solicitor
General Services Administration
Code Enforcement Department



CITY OF CONCORD

New Hampshire's Main Street™

City Manager's Office

City Hall • 41 Green Street • Concord, NH 03301 • (603) 225-8570
citymanager@concordnh.gov

Thomas J. Aspell, Jr.
City Manager

MEMORANDUM

TO: Nivelle Street Property Owners

FROM: Matthew R. Walsh, Director of Redevelopment, Downtown Services,
& Special Projects

DATE: August 29, 2018

SUBJECT: Lawful Uses of Nivelle Street Rights-of-Way and Basic Parking Regulations

As you may know, the City Parking Committee met on August 16, 2018 to discuss a request filed by Derek and Kristy Ruiz, owners of 40 Nivelle Street, to eliminate on-street parking between #10 and #40 Nivelle Street (both sides of the roadway). After receiving public testimony, the Committee decided to not recommend that the City Council change parking regulations on Nivelle Street at this time.

However, in response to several questions raised by the public, the Parking Committee directed City staff to provide a letter to all property owners on Nivelle Street concerning permitted uses of the Nivelle Street right-of-way, as well as basic parking regulations governing the street. Thus, you have been sent this memorandum.

Nivelle Street Right-of-Way: Nivelle Street is a public highway. It has a fifty foot wide right-of-way, which may be used for vehicular and pedestrian travel, and other uses reasonably incidental to travel, such as parking. The right-of-way also accommodates public utilities (water, sewer, drainage, gas, electric, telephone, and cable television), as well as maintenance activities, such as snow plowing.

1. **Prohibited:** Unless a license has been granted by the City Council, the following uses or activities are prohibited within the right-of-way:
 - a. Construction of homes, garages, additions, decks, porches, patios, sheds, fences, septic systems, wells, irrigation systems, private drainage systems (such as sump-pump discharge pipes), tree houses, basketball hoops, or any other private building or structure.
 - b. Storage of vehicles (including boats and recreational vehicles) and materials (such as firewood).

- c. Any other private structure or encumbrance, which interferes, or may interfere, with vehicular or pedestrian travel, parking, utilities, or maintenance of roadway or utility infrastructure located within the right-of-way.
2. **Permitted Uses:** The following uses are permitted within the right-of-way:
 - a. Placement of mailboxes which do not interfere with travel, parking, utilities, or maintenance of infrastructure located within the right-of-way.
 - b. Public utilities, including but not limited to, water, sewer, gas, electric, telephone, and cable television.
 - c. Planting of grass, street trees, or other vegetation, provided said vegetation does not interfere with vehicular or pedestrian travel, parking, utilities, or maintenance of roadway or utility infrastructure located within the right-of-way.

Parking Regulations: The following is a summary of some of the basic parking regulations governing Nivelles Street:

1. Vehicles must be parked at least five feet (5') from all driveways (including your own vehicle adjacent to your driveway) and fire hydrants. You must also park at least twenty feet (20') from a street intersection.
2. Vehicles must be parked in the same direction as traffic.
3. In the case of Nivelles Street, on-street parking is permitted on both sides of the roadway. However, a twelve foot (12') wide travel way must be maintained on the street at all times (including the winter months).
4. Vehicles cannot be parked for more than forty eight (48) hours continuously in the same spot.
5. It is illegal to park a commercial vehicle, recreational vehicle, trailer (including boat, recreational vehicle, or utility trailers), or recreational equipment on the street or within the right-of-way without specifically obtaining authorization by the Chief of Police or his designee.
6. Washing of vehicles in the public right-of-way is prohibited.
7. Advertising vehicles for sale in the right-of-way is prohibited.
8. No vehicle may be parked in the right-of-way whenever a parking ban is declared. You can sign up for parking ban notifications by visiting the "Notify Me" page on the City's website (www.concordnh.gov).

In closing, the Parking Committee hopes this information is useful. Please contact me should you have any questions.

Catherine D. Cooper
75 South Main St, PMB 180
Concord, NH 03301
cathycooper175@gmail.com

January 17, 2019
James Kennedy, Esquire
City Solicitor, City of Concord
Green Street
Concord, NH 03301

HAND DELIVERED

Dear Attorney Kennedy:

I was hopeful that the letter from the City of Concord regarding right-of-way issues on Nivelles Street would improve following its issuance, especially during the holiday time frame. Regrettably, that was wishful thinking. The Daniels Family have remained silent on the police calls and ongoing erratic behavior focusing instead on moving their daughter, Christine, her newborn daughter, and young son, into their home on Nivelles Street following the deployment of her husband to Kosovo. Things have, in fact, deteriorated where the family will be meeting with legal counsel in that it appears other avenues of law enforcement remain unsuccessful. I am serving as the point of contact due to the family's fear of retaliation from Mr. Ruiz, most notably, the police incident on December 22, 2018, outlined below, and recent posts on Facebook regarding the use of weapons such as land mines.

So that we may properly prepare for our appointment, I am submitting requests for the following information, which I am assuming, as before, will be assessed as a FOIA request, with a 30-day response period. To the extent that any documents may be immediately released, or obtained through any other public mediums, I would appreciate your cooperation. I would note that these requests should be available under FOIA as they have been published in the public domain.

Since it has been a few months, I want to recap our last communications to the City.

- On August 29, 2018, a Memorandum was issued to all Nivelle Street Property Owners with the Subject: Lawful Uses of Nivelle Street Rights-of-Way and Basic Parking Regulations.
- Mr. Ruiz will no longer honor the private resolution agreement of August 16, 2018.
- We are no longer permitted at the oral direction of Mr. Ruiz on this date to contact him in any manner.
- As a result of his decision, the Daniels Family will now also exclusively rely upon the existing City of Concord ordinances, which are no longer disputable, and clearly substantiated by Memorandum dated August 29, 2018.
- The public easement on Nivelle Street commences at both ends and both sides of Nivelle Street and parking is on a first come first serve basis in accordance with the restrictions outlined in your August 29, 2018 Memorandum.

As we also stated at that time, in actuality, as the Gentleman's Agreement, though reasonable and beneficial, would likely be unenforceable in court, the unencumbered use of easement public parking is clearly the ultimate solution -- not just for neighbors on Nivelle Street (who made it abundantly and emphatically clear they do not want any changes to the parking structure of their street) but for the Concord Community at large.

REQUESTS:

1. Based on the Minutes of the June 25, 2018 Parking Committee meeting Regarding Agenda Item #3:
 - (a) A copy of documents/photographs/survey submitted by Mr. and Mrs. Ruiz re: item #3 of the agenda.
 - (b) A copy of the inspection and or maps that corroborate the 50' (not 22') easement/right of way.
 - (c) A copy of the results of the fence inspection by the City Surveyor re: the installation of a fence on a city right of way in accordance with existing city ordinances.
 - (d) The Minutes refer to "staff" as opposed to identifying other participants by name. Could you please advise the names of the "staff" who presented pubic testimony.
2. A copy of any and all building permits issued to 40 Nivelle Street.
3. A copy of any and all surveys filed with the City of Concord.
4. Pursuant to City of Concord records, whether 40 Nivelle Street is a non-conforming lot, and how that impacts fencing standards. For example, in speaking previously with the City, it appears that the 40 Nivelle lot is designated as a non-conforming lot, and therefore fencing cannot exceed a height of 4'. Please confirm this designation.

5. On December 22, 2018, at approximately 6pm, Mr. and Mrs. Ruiz were outside of their home. Mr. Ruiz was standing outside next to his wife, who was seated in her vehicle. As stated on "Broadcastify.com" (Concord Police dispatch), it was announced something along the following from a female dispatcher: "40 Nivelle St has called several times. Resident was anxious and going to handle it himself." Please provide a copy of the (a) audio recording of this incident, and (b) a copy of the Incident Report, including the name of the dispatcher.

6. On January 8, 2019, after repeated violations for overnight parking of a truck in the right of way, David Daniels reported the unmoved and uninspected truck for which Mr. Ruiz had already receiving a warning about from Matthew Walsh at the neighborhood meeting in August 2018. As a result of that ongoing and persistent violation, on January 11, 2019, a member of (I assume) the parking division arrived and placed a sticker on the truck. Mr. Ruiz came out of his house yelling and alleging that David Florence had authorized him to park there. The Daniels' daughter went out to see if there was a problem with her car, as Mr. Ruiz was loud, obnoxious, and pointing to it. The City's authorized agent was so affected by Mr. Ruiz, that the agent withdrew the sticker and left stating along the lines of "*he didn't have to put up with this stuff.*" Please provide (a) the Incident Report; (b) the name of the police officer or parking agent who placed the sticker on the truck; (c) a copy of the sticker that was used and then withdrawn; and (d) the basis for that removal.

7. On January 12, 2019, at approximately 8:30 am. Mr. Ruiz video tapes wife moving truck back and forth several inches. The truck was still parked in the same area where he had received a sticker. Please provide whether any city official advised Mr. Ruiz that simply rolling a vehicle back in forth in the same spot satisfies the 48-hour city ordinance; (b) the name of that agent/officer; and, (c) whether an uninspected vehicle can be left in a public roadway.

Given Mr. Ruiz' conduct, my family will be assisting the Daniels' Family in the installation of a multi-camera security system as soon as this weekend, a step I have suggested they take, in the hopes that it may provide them with some measure of protection, especially when Mrs. Daniels is alone with several grandchildren, all under the age of 5. I would appreciate your alerting the appropriate city agents to take any 911 from either location seriously and expeditiously should Mr. Ruiz threaten once again to: "take matters into his own hands."

Mr. Kennedy, I urge an expedient response wherever possible. Once again, if the city's agents are unwilling or unable to control Mr. Ruiz in the most transparent of police and parking incidents, having been previously cautioned by city officials, he will continue to feel more empowered and escalate. He comports himself as if the abutting city property is his private prison, demonstrating the same erratic and aggressive behaviour perhaps required in his prior occupation as a correctional officer within the New Hampshire State Prison. His other recent references are disturbing at best and should rise beyond that of treating him as a nuisance as seems to be the City's strategy. The prison reference is not without merit from

both sides - as that is exactly how the Daniels' Family has been forced to comport themselves – as prisoners in their own home of over 25 years.

I will be happy to pick up items in person to avoid scanning, etc. especially of oversized items, and of course happy to pay any associated costs. I look forward to your prompt response.

Sincerely,

Catherine D. Cooper

cc: Keith Nyhan, City Councilor (email copy 1.17.19)
Bradley C. Osgood, Chief of Police (hand delivered 1.17.19)



CITY OF CONCORD

New Hampshire's Main Street™
City Manager's Office

Thomas J. Aspell, Jr.
City Manager

January 28, 2019

VIA EMAIL ONLY (cathycooper175@gmail.com)

Catherine Cooper
175 South Street
Concord, NH 03301

Re: Right-to-Know Request – Nivelle Street

Dear Ms. Cooper:

I am in receipt of your correspondence dated January 17, 2019. Please be advised that the City construes this as a request coming under New Hampshire's Right-to-Know law, RSA Ch. 91-A.

The City will conduct a review of its files for the requested documents. The City expects that it will require approximately 30 days to respond to your request. Upon completion of our review for the requested documents, we will contact you to advise you of what documents we possess and which documents are subject to public review under the Right-to-Know law.

Please feel free to contact me with any further questions.

Sincerely,

Matthew Walsh
Director of Redevelopment
Downtown Services/Special Projects



Thomas J. Aspell, Jr.
City Manager

CITY OF CONCORD

New Hampshire's Main Street™

City Manager's Office

City Hall • 11 Green Street • Concord, NH 03301 • (603) 225-8570
citymanager@concordnh.gov

REPORT TO MAYOR AND THE CITY COUNCIL

FROM: Matthew R. Walsh, Director of Redevelopment, Downtown Services,
& Special Projects

DATE: January 31, 2019

SUBJECT: Nivelle Street No Parking Ordinance

Recommendation:

- Accept the following report; and,
- Set the attached ordinance amending the Code of Ordinances; Title II, Traffic Code; Chapter 18, Parking, Article 18-1, Stopping, Standing and Parking, Section 18-1-6, Parking Prohibited at All Times in Designated Places, Schedule I (Parking Prohibited at All Times) for public hearing on March 11, 2019.

Background:

Nivelle Street is a small, dead-end residential street located in the South End off Donovan Street. The road is 21-22' feet width, does not have curbing, and serves nine single family homes. Although a dead-end, the road lacks a formal cul-de-sac or hammerhead turnaround.

On January 24, 2018, Derek Ruiz, resident of 40 Nivelle Street submitted a letter to the Parking Committee requesting that a no parking zone be enacted to encompass the westerly end of the roadway at the dead-end adjacent to 39 and 40 Nivelle Street, respectively. Mr. Ruiz's letter is attached to this report.

At issue is a concern that parking associated with 39 Nivelle Street has resulted in narrow street conditions, as well as an inability for the United States Parcel Service to provide mail service to the property owned by Mr. Ruiz at 40 Nivelle Street. There have also been concerns raised regarding the ability of General Services to plow the section of the road near 39 and 40 Neville Street, as well as sufficient space to allow for the public to turn around in order to reverse direction.

The Parking Committee met to review this request on multiple occasions, including: March 26, 2018, June 25, 2018, August 16, 2018, August 27, 2018, and January 28, 2019.

On August 16, 2018 the Parking Committee held a neighborhood forum to attempt to resolve the parking issues. Minutes of the neighborhood forum are attached to this report. The forum determined that this parking issue resulted from a dispute between the property owners at 39 and 40 Nivelle Street regarding parking in the vicinity of their homes. Recognizing this

circumstance, the Parking Committee directed staff to attempt to mediate a resolution. Towards that end, an informal verbal agreement was brokered by City staff. Please see the attached memorandum to file attached to this report.

In addition, also at the request of the Parking Committee, a letter was sent to all residents of Nivelle Street explaining lawful use of the Nivelle Street rights-of-way, as well as basic parking regulations governing Nivelle Street.

Discussion:

In early January 2019, the parking disputes between the property owners of 39 and 40 Nivelle Street began to resurface.

On January 28, 2019, the Parking Committee met to discuss the situation. Recognizing the effort that had been invested in this issue by the Parking Committee and City staff, that the informal verbal agreement had failed, and that this issue has been ongoing for approximately 1 year, the Parking Committee voted unanimously to implement a no parking zone at the westerly end of Nivelle Street (in the vicinity of the dead-end) per the attached map.

The Parking Committee believes this is the least intrusive option available to address this issue. However, in the event poor parking behavior persists on those portions of Nivelle where public parking is recommended to remain, the Parking Committee may find it necessary to recommend additional parking changes in the future.

Lastly, the proposed ordinance will help to ensure safe and uninhibited delivery of governmental services, including the US Mail, snow plowing, as well as emergency services, given the lack of formal turn around at the end of the street.

CITY OF CONCORD

In the year of our Lord two thousand and nineteen

AN ORDINANCE amending the CODE OF ORDINANCES; Title II, Traffic Code; Chapter 18, Parking, Article 18-1, Stopping, Standing and Parking, Section 18-1-6, Parking Prohibited at All Times in Designated Places, Schedule I.

The City of Concord ordains as follows:

SECTION I: Amend the CODE OF ORDINANCES; Title II, Traffic Code; Chapter 18, Parking, Article 18-1, Stopping, Standing and Parking, Section 18-1-6, Parking Prohibited at All Times in Designated Places, Schedule I (Parking Prohibited at All Times), by amending Schedule I by adding the parking prohibitions on Nivelles Street:

<u>Street</u>	<u>Side</u> <u>Restricted</u>	<u>From</u>	<u>To</u>
<i>Nivelles</i>	<i>North, South, West</i>	<i>500' west of Donovan Street</i>	<i>End</i>

SECTION II: This ordinance shall take effect upon installation of signage or pavement markings.

Explanation: Matter added to the current ordinance appears in ***bold italics***.
Matter removed from the current ordinance appears in [brackets and ~~struck through~~].

Nivelle Street 2010 Aerial Photo (Not to Scale)

Proposed No Parking Zone shown in Yellow

Map prepared by City of Concord January 24, 2019





City of Concord, New Hampshire

City Council

41 GREEN STREET

Concord, NH 03301

(603) 225-8500

Notice of Public Hearing Nivelle Street No Parking Ordinance

TO: Nivelle Street Property Owners

FROM: Keith Nyhan, Ward 7 City Councilor

DATE: February 27, 2019

SUBJECT: Nivelle Street No Parking Ordinance Public Hearing on March 11, 2019, 7:00PM, City Council Chambers, 37 Green Street (Second Floor), Concord, NH 03301

Please be advised that the City Council will hold a public hearing on **March 11, 2019**, at 7:00 PM, in the City Council Chambers located at 37 Green Street (Second Floor), Concord, New Hampshire 03301, concerning a proposed City Ordinance to eliminate on-street parking in the vicinity of 39 and 40 Nivelle Street (shown as the yellow area on the map below). You are welcome to attend the meeting to offer testimony regarding this proposal. You may also submit written testimony to the City Council via email to cityclerk@concordnh.gov. Please contact Matt Walsh, Director of Redevelopment, Downtown Services, and Special Projects at mwalsh@concordnh.gov or 603-225-8570 should you have any questions about this proposal.



MARCH 3, 2019

Dear Councilor Nyhan -

Upon my return from a recent vacation, I received several urgent emails from Patty Daniels regarding a notice of public hearing scheduled for March 11, 2019. I met with her last evening.

Let me say at the outset that I am shocked by the City's backpedaling last-minute conduct. I am also gravely concerned that the notice is over your signature, from which I am left to assume you will be sponsoring such a revision to existing city ordinances. Given that we had taken months at great expense to comply with all of the city's procedures, including a unanimous, clear and convincing neighborhood meeting last year, followed by the confirmation by the Council of existing parking ordinances, it is more than alarming that the city now seeks to sua sponte reopen the entire matter and again seek to penalize the Daniels' Family, their family, and friends, while deferring to a citizen who has done nothing but fully disregard city and federal ordinances, and harass and intimidate city agents, myself and the Daniels' Family.

It is even more alarming that this action directly follows my FOIA request issued to James Kennedy on January 17, 2019, outlining these very issues. The City has not responded under the statutes, a matter I will address directly with Mr. Kennedy tomorrow. However, noted in that request is that the Daniels' Family intends to file a lawsuit, and the FOIA responses were required to provide to their attorney to determine a legal path forward. The City's failure to respond, while instead scheduling a Public Hearing, can only be deemed as transparent bad faith to change ordinances in the City's favor prior to the civil lawsuit, before it is likely challenged in a lawsuit. Further, such targeted action against only 1 resident of a city street that has had **NO** complaints prior to Mr. Ruiz' purchase of the property, is not only arbitrary and capricious, it is punitive given my FOIA requests and allegations against the City.

As the City has not complied with my FOIA request, it is not possible for me to prepare for the public hearing as scheduled. As the resident of Concord who filed the FOIA request, I am seeking a continuance of the hearing until such time as the City does fully comply, and the materials clearly governed by public domain standards can be reviewed. As the public meeting's sponsor, I am alerting you first as our City Councilor, but intend to file this matter directly with the Clerk and all members of City Government. I am confident the Daniels' lawyer will formally do so this week as well. I will not only be requesting a continuance of the public hearing on the City's non-responsiveness to my FOIA request, but because I will be filing a complaint with the Concord Police Department, to investigate who was instructed to remove a property pin from the Daniels'/abutter line that I highlighted during the neighborhood meeting in response to my questions to the City's Engineer, Mr. Gendron, during his explanation of city rights of way. It is my understanding from my own property dispute, that adjustment, repositioning or removal of such pins by any unauthorized agent is a criminal offense.

I have tried to evaluate this matter in a light most favorable to the city/community I have loved, and where I have raised my family. Therefore, it chokes and disgusts me to say so, but it is apparent that the City's proposed solution to these complaints is to be complicit in the award of the taxpayers' public right-of-way personally to Mr. Ruiz' for his racist self-declared "Puerto Rican ONLY Parking Zone", already posted through vile "free speech" signage and flags. The threats and bullying conduct that he has instigated since his occupancy have apparently not only succeeded, but will actually be rewarded. Were I or the Daniels' Family to engage Mr. Ruiz' ethnicity through such similar "free speech" I am hopeful that you would be morally outraged, as should we all, and it would be front-page news as was the vile racist conduct of black graffiti in our fair city that prides itself on democratic principles and tolerance. I intend to ensure that such racism in Concord, in plain view, is exposed, and to ask why our elected officials are not condemning rather than ignoring it.

Lastly, It is equally appalling that while accommodating Mr. Ruiz, the City intends to devalue both the property and civil rights of the Daniels' family, and those visiting them, by engaging in these procedures--including covering up its malfeasance in having no paperwork or oversight regarding the house that was built after the Daniels home, on a non-conforming lot without recorded permitting; and, a total lack of enforcement of any and all existing city ordinances thereby protecting Mr. Ruiz exclusively. While I have disagreed with some of the City's policies and practices during my life-long residency in Concord, I never imagined that I or my fellow residents would be subjected to the same autocratic flavor and mugwumping governmental processes that infect our nation.

While I am embarrassed to call myself a resident at this time, I intend to start immediately rectifying that by speaking truth to my City's power base through every legal, legislative and media resource campaign that I can muster to bring this discrimination and ugliness into the light of day. Not to do so would leave me with only one troubling question: "Am I or my family next?"

Catherine D. Cooper
75 South Main Street, PMB 180
Concord, NH 03301
603-724-4418

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City's 1st Response.pdf
22K

Cathy Cooper <cathycooper175@gmail.com>
To: coopone3@gmail.com

Wed, Mar 6, 2019 at 1:33 PM

March 6, 2019

Dear Ms. Stevens:

I had received the City's first response, which I understand triggered the 30-day response period. The City has now exceeded this time frame with no response by your usual method, which has been email. If you believe an error has occurred on my part, please advise so that I may pick up these materials in person tomorrow to be provided to legal counsel.

As a public hearing regarding 39/40 Nivelle Street is set for Monday, March 11, 2019, the City's failure to respond is making it impossible for me to fairly prepare for the hearing if it moves forward. As I stated, I will be attending a meeting with private counsel at 2PM tomorrow, who has requested any and all materials that I have relevant to 39/40 Nivelle Street. If it is the City's position to withhold access to the public documents from my counsel who has requested these for our meeting, please confirm that.

I have advised Councilor Nyhan of this situation who issued the hearing notice, and from whom I requested a continuance on this issue before the Council for the cited reasons.

Sincerely,
Catherine D. Cooper

[Quoted text hidden]

From: **Tony Giannone** <tonygiannone57@gmail.com>
Date: Sat, Mar 9, 2019, 7:56 PM
Subject: Please help
To: <jpbouley@comcast.net>

Mayor Bouley,

I hope you are having a great day and are blessed with open ears to hear my situation. My name is Tony Giannone and I am married into the Daniel's family which resides on 39 Nivelles street in Concord. I am an active Army Staff sergeant that has served over 7 years and have gone through 2 deployments, one in a combat zone. I am an equal opportunity leader as well as a sexual harassment and assault victim advocate. I tell you this so you do not question my integrity nor my morale direction. Although I have seen many unfortunate mistreatment of soldiers, I never imagined my family would go through some of the worst I've seen in the beloved city of Concord.

My family has been a direct victim of bullying and harassment by their neighbor of two years. The Daniel's family has resided in Concord their whole lives. They've put 12 children through Concord high, multiple which are in the hall of fame. They've given back to the community by working at Ballards ice cream shop through many generations of children. They've taught at local schools and even have aspirations of being Concord police. They have lived at 39 Nivelles street for over 20 years.

Due to the Daniel's tight knit family and large number of kids they've always utilized the side of the street to park, always ensuring to never impede the flow of traffic (at a dead end street). Since their driveway can only support 4 cars, they have parked on the side in front of their house or property, never on anyone else's property. Their neighbor moved in a little over 2 years ago and has taken it as his personal mission to harass the Daniel's family and their children by simply inconveniencing them at every opportunity. At first he said their cars were a safety hazard for emergency vehicles then took it upon himself to park a trailer and his own vehicle in the same spots that our family has utilized for over 20 years. Then he puts Puerto Rican parking only signs, directly attacking our racial identity. He also finds the energy to move his mailbox and trash cans conveniently into those parking spots to impede our ability to park there. All of this is on video.

It was brought to my attention that the councilmen unanimously passed a no parking sign agreement for that area specifically, rewarding this guy's ludicrous and ridiculous claims and severely inconveniencing the Daniel's family. He has also claimed USPS has been unable to give him his mail, which USPS confirmed is not true and there is no problem on their end. The no parking area will make it so cars will have to park upwards of a half mile away to walk to their mother's house, many of which have multiple little children. In extreme cold this could prove to be dangerous, and to whose expense and inconvenience is it? The neighbor has two vehicles, all two can easily fit into his driveway.

I find it severely alarming and hard to believe that if you knew the whole story and took the time to review the FACTS, because no good leader makes decisions without the hard facts, then this situation would be viewed differently. The city of Concord is unintentionally rewarding a citizen that has given very little to the community itself. Where do you draw the line from what is morally and ethically correct to what is law? Please do not reward laziness and do not let laziness be a part of this final decision.

Thank you for listening and I hope that you can take a deeper look into this. General Stanley McChrystal said that the two best attributes a leader can have are empathy and self discipline. I hope you can agree.

Very respectfully,
Tony Giannone
Staff Sergeant
US Army

PRESS NOTICE

March 10, 2019

City Council Hearing: March 11, 2019

Racism Resurfaces in the Capital City

City Council To Consider Adopting A New Ordinance to Reward Conduct

Former U.S. Attorney Thomas Colantuono, now with the Bianco Law Firm, will appear at City Hall tomorrow night at a public hearing to be conducted by the Concord City Council regarding a proposed ordinance to ban on-street parking for only 2 residents on an obscure South End street in Concord. Colantuono will represent Patricia and David Daniels opposing approval of this ordinance, which would be tantamount to granting a ban request by Mr. Derek Ruiz, filed on January 24, 2018, shortly after his family's purchase of 40 Nivelles Street.

Ruiz is prematurely celebrating his victory by posting the proposed banned area as a "Parking for Puerto Rican Only" zone." The proposed action by the Council would not only make the city complicit in this intolerable racist declaration, but would essentially seize the only frontage of 26-year long residents, Patricia and David Daniels, who are Caucasian, and their family of 12. No other neighbors on Nivelles Street are included in the proposal.

What makes the proposed ordinance by the City Council on March 11, 2018, even more alarming, is that the city fully adjudicated this matter last year. On August 16, 2018, the City Council conducted an ad hoc neighborhood meeting on Nivelles Avenue with more than 20 people in attendance including Nivelles Street neighbors, City Councilors, including Ward 7 Councilor Keith Nyhan, and all relevant city staff, including parking, police and engineering as listed in the City's Minutes regarding this meeting. The parking issue was fully adjudicated at that time, with neighbors voting to reject Mr. Ruiz' proposal, followed by a confirming memorandum issued by City Administrator Matthew Walsh on August 29, 2018, in which the existing city ordinances were reaffirmed. Mr. Ruiz apparently did not like the City's conclusion as contained in the August 29, 2018, Memorandum so much that he posted the racist signage.

On January 28, 2019, the City's parking committee of only 3 attendees, and based only on the one-sided information provided by Matthew Walsh essentially supporting all of Mr. Ruiz' request, determined to override the overwhelming vote of August 16, 2018, preparing instead a parking ban ordinance for consideration by the Council Monday night for just the properties at 39 and 40 Nivelles Street. It was also initiated with full knowledge of a pending Freedom of Information Act request hand delivered to City Solicitor, James Kennedy, on January 17, 2019, by Catherine Cooper, a neighbor and fellow south ender. Cooper sent a request for continuance of the agenda item to Councilor Nyhan on March 6, 2018, citing that Walsh had not complied with the deadlines mandated under a pending Freedom of Information Act filed with James Kennedy, City Solicitor, on January 17, 2019, a full 10 days prior to Walsh also calling for a Parking Committee meeting during which this ordinance was constructed.

"Ruiz deliberately violates the ordinances to get his ban request renewed, and in the dark of the night, Walsh and his star chamber of 3, say, sure. I don't think residents should have to go to City Hall every day anticipating the City is unilaterally going to reverse the vote of an extensive public hearing on August 16, 2018, confirmed by the Walsh Memorandum of August 29, 2019. What

makes the City's conduct wholly questionable is they did it during the pendency of my request and knowing full well the Daniels were going to hire an attorney. Since only the Daniels' are really affected negatively, I guess they thought they could just slip this through without anyone noticing - and until Councilor Nyhan's notice, they almost did."

For Cooper and the Daniels Family, they are rushing to beat the clock. The meeting comes without any further direct notice to residents of Nivelles Street, as had previously been done by the Council, until a courtesy memorandum from Ward 7 Councilor Keith Nyhan, dated February 27, 2019, was sent out, without (emphasis added) a copy of the proposed ordinance. It was ultimately received by the Daniels Family on March 2, 2019. And, the Minutes from the January 28, 2019 meeting, which led to the proposed ordinance, as of Friday at 1:10 p.m., are still marked as DRAFT, not posted on the City's website at that late date, and therefore not available to the public at large despite what the City Clerk's Office had previously advised.

Councilor Nyhan was not one of the 4 members of the Parking Committee who drafted the proposal, but he could not be reached for comment by Patricia Daniels to obtain more information on the hearing. The City was also advised in that request of the Daniels intent to hire private legal counsel, who would need those materials. Cooper did not receive the FOIA responses until March 8, 2019 at 1:10 p.m., still incomplete, and making it impossible for her or the Daniels' attorney to best prepare for the public hearing. "The only transparency which the City is demonstrating is dilatory and deceptive practices. It took several weeks, considerable time and money, to prepare for the August meeting, but we did it. We came out. Everyone was heard. We voted. The City sent a Memorandum saying here is the rule of law. Everyone followed the existing ordinances. And except for Mr. Ruiz, everyone has."

Cooper, who is now unable to appear at the hearing because of prior commitments in Durham, remains outraged. "I am tired of being assailed every time I visit our friends. Ruiz comes out of his house and video tapes everything, staging just the portions for his use. I picked Patty up on Friday, and I finally stood my ground, a pretty poor decision given that he was a Corrections Officer for 16 years. A parking ban isn't going to solve the hate and prejudice that has gotten a foothold in our community. As I said in my email to Councilor Nyhan, it disgusts me that this is going on where our children grew up together. There have been no problems at all until the Ruiz family moved in a year ago. It doesn't take an engineer to figure this one out."

The Daniels Family retained the legal services of Attorney Thomas Colantuono, on Thursday, March 7. "He hasn't had as much time to prepare as he normally would, but we are hopeful that our attorney will convince the City Council that it should not take such drastic action without more time. We just got the documents from Walsh on Friday afternoon. The City has had 2 months, and we get less than a day and a half," said a clearly distraught Patti Daniels. "We have had no problems in 26 years on any issues raised in the underlying complaint."

David Daniels, her husband, was blunt. "This is just all kinds of crazy. It was a simple parking issue. I mean, there are just 2 of them, and they have 6 cars which all fit in their driveways, and they have violated at least 5 other city ordinances since they moved in. They have the largest lot on the street, and he has weaponized on-street parking from day 1. And the City's solution is to reward this guy and discriminate against my family. I'm tired of seeing my wife afraid and crying all the time. I get why Ruiz is doing it, but not the city. It's just crazy."

The Daniels name is no secret to Concord residents. Their children have been Concord Monitor and Union Leader headliners and All-Star college scholarship athletes during their 26-year residency. They took turns while in school, in birth order, to work at Concord's former South End ice cream icon, Ballards. Daughter Allie, a med/surgical nurse at Concord Hospital, stated simply, "This is not going to stop any of us from visiting, or bringing their grandchildren to visit. It's just going to push the problem down the street and make things even harder for my parents."

Daughter Christine reacted the angriest of all. "My husband was just deployed to Kosovo in October. He took a lot of comfort in knowing the matter had been resolved back in August. I thought I'd be returning to my home for the help and support I need with my newborn daughter and son with him overseas. Now he's so distracted about my safety, he's writing a letter to Mayor Bouley from Kosovo, not worrying about his safety. How is that moral on any level?"

Son Keegan, the youngest of the 12, says, "There has been a b-ball hoop outside our door ever since I can remember. I love basketball. I only made the freshman squad this year, but I practice really hard so I can make varsity and grab some of those awards like my sisters. I probably won't be able to practice outside as much as I'd like 'cus he's warned me not to mess up his new car."

Daniels and Cooper spent all day Friday rushing to connect with officials associated with the problems Walsh cites in support of the ordinance and to challenge those issues cited, especially since they have not existed for 26 years. Those visits included: the US Postal Service, Fire Department, and parking unit. None of those agencies were currently aware of anyone who had initiated a complaint from their agency, but, as could be expected, it would take time to research, certainly as much as time as Walsh has had to initiate the proposed ordinance. As of this writing, this item remains on the council agenda.

ATTACHMENTS:

Parking for Puerto Rican Only Sign

Ruiz request for ban, January 24, 2018

Daniels response, June 8, 2018

Memorandum, Mathew R. Walsh, August 29, 2018

Cooper Letter to City Solicitor, James Kennedy, January 17, 2019

Walsh response to Kennedy letter, January 28, 2019

Report to Mayor and The City Council, Matthew R. Walsh, January 31, 2019 w/Proposed Ordinance

Notice of Public Hearing, Ward 7 City Councilor, Keith Nyhan (no attachments), February 27, 2019

Cooper email to S. Stevens regarding status of January 17, 2019 Freedom of Information Request, Dated March 6, 2019

Letter from Staff Sergeant, US Army, Tony Giannone

The parties may be contacted at:

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