

South Portland City Council
Position Paper of the City Manager

Subject:

ORDER #102-13/14 – Authorizing notice of and setting February 19, 2014 for a public hearing regarding the proposed condemnation of a portion of the Spring Street and Boylston Street paper streets shown on the 1898 plan entitled “Plan of Grand-View” in Thornton Heights. Passage requires majority vote.

Position:

The City’s Thornton Heights-Pleasantdale Improvements Project has gone through the Planning Board review and approval process. Phase I of the project includes the construction of a stormwater treatment and detention basin on City owned property along the east side of Sunset Avenue (the “project site”). The project site is located in an area of Thornton Heights shown on a plan entitled “Plan of Grand-View” dated August 1898 and recorded in the Cumberland County Registry of Deeds in Plan Book 8, Page 135 (the “Plan”) (excerpt attached).

During the Planning Board review process, it became apparent that there are two small strips of land that comprise part of the project site that the City still needs to acquire: (1) that portion of the Spring Street paper street located between Lot 180 and Spring Park as shown on the Plan; and (2) the 5' x 100' strip on the southwesterly side of Boylston Street (n/k/a Gerry Avenue) located between Lot 179 and Spring Park as shown on the Plan. (In 1941, the City only accepted this section of Boylston Street (n/k/a Gerry Avenue) as 35' wide, but it is laid out as 40' wide on the Plan.) Prior to commencement of construction, the City needs to acquire title to both these small parcels; eminent domain now appears necessary.

The last known record owner of these two strips of land is James Sumner Draper of Milton, Massachusetts, who died on March 14, 1936. He acquired his interest in the two strips of land from the original developer of the Plan of Grand-View, Charles B. Dodge. By deed dated February 28, 1908 and recorded in the Cumberland County Registry of Deeds in Book 731, Page 55, Charles B. Dodge conveyed “all my right, title, and interest, if any, in all of the streets as shown on said Plan [of Grand-View]” to James Sumner Draper. A grantor search in the Cumberland County Registry of Deeds for James Sumner Draper

yielded no further results. Likewise, a variety of other, more traditional efforts to locate his relatives and/or assigns has proven unsuccessful.

In Maine, municipalities' general eminent domain power is authorized under 30-A M.R.S.A. § 3101 and follows by specific reference the procedure for taking roads. The first step in the eminent domain process is for the City Council to give written notice of any proposed taking. This notice must be posted for at least seven (7) days in two (2) public places in the City and in the vicinity of the property, and it must include a description of the property. The City Council must also set the date of the public hearing at which it will determine the location of the property and whether circumstances require a taking. It is proposed that the public hearing be held on February 19, 2014.

At the subsequent public hearing, the City Council must determine the location of the property and whether circumstances require a taking. If at the conclusion of the public hearing the taking of the two parcels is to proceed, the City Council will then file with the City Clerk an order of condemnation, specifying the description of the property to be taken, the names of the landowners of the land to be taken, and the damages to be paid to the landowners. Services of the same is then made on the condemnees and a copy of the proceedings recorded in the Cumberland County Registry of Deeds.

Requested Action:

Council passage of ORDER #102-13/14.


City Manager



CITY OF SOUTH PORTLAND

GERARD A. JALBERT
Mayor

JAMES H. GAILEY
City Manager

SUSAN M. MOONEY
City Clerk

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

IN CITY COUNCIL

ORDER #102-13/14

District One
MICHAEL R. POCK

District Two
PATRICIA A. SMITH

District Three
MELISSA E. LINSKOTT

District Four
LINDA C. COHEN

District Five
GERARD A. JALBERT

At Large
MAXINE R. BEECHER

At Large
THOMAS E. BLAKE

ORDERED, that pursuant to 30-A M.R.S.A. § 3101 and 23 M.R.S.A. § 3022, the City Clerk be and hereby is authorized and directed to post notice, in substantially the same form as shown on the attached, at least seven (7) days in two (2) public places in the City and in the vicinity of Sunset Avenue of the City's intention to take by eminent domain those certain outstanding property interests, if any, held by the heirs, devisees and assigns of James Sumner Draper in (1) that portion of the Spring Street paper street located between Lot 180 and Spring Park as shown on the Plan; and (2) the 5' x 100' strip on the southwesterly side of Boylston Street (n/k/a Gerry Avenue) located between Lot 179 and Spring Park as shown on the Plan; and

BE IT FURTHER ORDERED, that a public hearing before the City Council shall be held at the regularly scheduled City Council meeting of February 19, 2014 on an order of condemnation of the two above-referenced parcels, which proposed order of condemnation shall be on file in the City Clerk's office on or before Friday, February 14, 2014.

[Fiscal Note: Less than \$1,000]

Dated: February 3, 2014

NOTICE OF PUBLIC HEARING

TAKE NOTICE that the South Portland City Council will conduct a public hearing on **Wednesday, February 19, 2014** in the City Hall Council Chambers, 25 Cottage Road, South Portland, Maine at 7:00 p.m. then and there to take public testimony and comment and then consider whether to vote to take by eminent domain certain outstanding property interests, if any, held by the heirs, devisees and assigns of James Sumner Draper on those two certain lots or parcels of real property with any improvements thereon located on the generally southeasterly side of Sunset Avenue in South Portland County of Cumberland, State of Maine and being more particularly described on Exhibit A attached hereto.

Dated: February 3, 2014

Susan Mooney, City Clerk

EXHIBIT A

Property to be Acquired by Eminent Domain

Parcel 1

A certain lot or parcel of land situated in the City of South Portland, County of Cumberland, and State of Maine and being that portion of Spring Street as shown on a plan of Grand-View recorded in the Cumberland County Registry of Deeds in Plan Book 8, Page 135 and being more particularly described as follows:

Beginning at the most westerly corner of Lot 180 as shown on said plan of Grand-View at a point on the southeasterly sideline of Park Avenue as shown on said plan, now known as Sunset Avenue, and thence southeasterly by the southwesterly sideline of Lot 180 one hundred feet (100') to a point at the most westerly corner of Lot 234 as shown on said plan; thence at a right angle southwesterly crossing said Spring Street as shown on said plan a distance of forty feet (40'), more or less, to a point in the northeasterly sideline of Spring Park, as shown on said plan; thence, northwesterly by the northeasterly sideline of said Spring Park one hundred feet (100') to a point at its intersection with the southeasterly sideline of said Park Avenue, now known as Sunset Avenue; thence at a right angle forty feet (40'), more or less, in a northeasterly direction to the point of beginning.

Parcel 2

A certain lot or parcel of land situated in the City of South Portland, County of Cumberland, and State of Maine and being a five foot (5') by one hundred foot (100') strip on the southwesterly sideline of Boylston Street (now known as Gerry Avenue) located between Lot 179 and Spring Park, as shown on a plan of Grand-View recorded in the Cumberland County Registry of Deeds in Plan Book 8, Page 135 and being more particularly described as follows:

Beginning at a point located at the most northeasterly corner of Lot 179 as shown on said plan, thence in a southeasterly direction along the southwesterly sideline of said Boylston Street (now Gerry Avenue) a distance of one hundred feet (100') to a point located at the most southeasterly corner of said Lot 179; thence at a right angle northeasterly five feet (5') to a point; thence northwesterly parallel to the first course given a distance of one hundred feet (100') to a point on the southeasterly side of Park Avenue (now known as Sunset Avenue); thence at a right angle northwesterly following the southeasterly sideline of said Park Avenue (Sunset Avenue) five feet (5') to the point of beginning.