

South Portland City Council
Position Paper of the City Manager

Subject:

ORDER #28-14/15 - Accepting an easement deed granting the City an approximately twelve foot (12') wide sanitary sewer easement on property owned by S. Sam and Norma J. Fratoni located at 2 Bay Road. Passage requires majority vote.

Position:

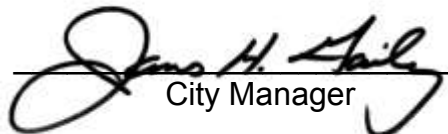
This item is brought forward to grant the City a sewer easement on property owned by Sam and Norma Fratoni at 2 Bay Road. The Fratoni's moved the existing sewer line, at their expense, in order to accommodate the footprint of their home.

This easement deed establishes the easement area, an approximately 12' wide strip of land, and allows the City to enter upon the property to install, construct, erect, lay, relay, repair, inspect, operate, maintain, rebuild, replace and remove pipes and mains if needed.

The deed was created by Corporation Council Sally Daggett in conjunction with the Fratoni's and their attorney. Attached is a memorandum from Pat Cloutier regarding item in greater detail. He will be at Monday's meeting to answer any questions.

Requested Action:

Council passage of ORDER #28-14/15.


City Manager

September 30, 2014

To: James Gailey, City Manager

From: Patrick Cloutier, Director

Re: Sewer Easement – 2 Bay Road

A couple of years ago, I was approached by Sam and Norma Fratoni, the owners of a property at 2 Bay Road, South Portland, about a new home they were building on the subject property site. The site was a waterfront property that they wanted to develop at the very end of Bay



From Bay Rd on sewer looking south

Road. It contained some building constraints that they wanted to address, one of which was the public sewer. The public sewer traversed through the property and drained to the city pump station at the end of Bay Road. Their building plans intruded upon the public sewer to where the house was only a foot or two to the sewer line. The distance between house and sewer they proposed didn't provide for any area in order to conduct operational or maintenance activities that would not directly impact their home if it was required by the city to do so. Six feet of clearance from the pipe centerline to the corner of the house was the minimum that would be needed for the city given the site conditions. Ledge was a large concern west in the easement area as can be seen in the photo. Given their desire to keep the building footprint, the Fratoni's decided to move the existing public sewer line at their expense to the described location in order to move it away from the immediate proximity of their home

and to provide the city with an easement 12 feet wide in the location that Exhibit A in the easement has described. The sewer was built to city specifications under Water Resource Protection department oversight and has been done so to WRP's satisfaction.

Corporation Counsel and I have been working with the Fratoni's and their attorney to define an acceptable easement that works for both parties and I feel this is the best outcome in this situation.



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

District One
MICHAEL R. POCK

ORDER #28-14/15

District Two
PATRICIA A. SMITH

ORDERED, that the City Manager be, and hereby is, authorized and directed to accept delivery on behalf of the City of the attached easement deed granting the City an approximately twelve foot (12') wide sanitary sewer easement on property owned by S. Sam and Norma J. Fratoni located at 2 Bay Road (a portion of Assessor's Map 1, Lot 58), as shown with more particularity on Exhibit A to the easement deed, as well as releasing the City's interest in the prior sanitary sewer easement.

District Three
MELISSA E. LINSKOTT

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

District Four
LINDA C. COHEN

Dated: October 6, 2014

District Five
GERARD A. JALBERT

At Large
MAXINE R. BEECHER

At Large
THOMAS E. BLAKE

EASEMENT DEED

KNOW ALL PERSONS BY THESE PRESENTS that **S. SAM FRATONI** and **NORMA J. FRATONI**, of 2 Bay Road, South Portland, Maine 04106 (hereinafter “Grantors”), in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, hereby grant and convey to the **CITY OF SOUTH PORTLAND**, a municipal corporation organized and existing under the laws of the State of Maine, with a principal place of business located at 25 Cottage Road, South Portland, Maine 04106 (hereinafter “the City”), its successors and assigns, with **Quitclaim Covenants**, the following perpetual rights and easements in the following described lot or parcel of land situated on the southeasterly side of Bay Road in South Portland, Maine:

The perpetual right and easement, for the purposes described below, across land of Grantors, as referenced below, shown on a plan entitled “Fratoni Easement, 2 Bay Road – South Portland” dated September 8, 2014, prepared by Associated Design Partners Inc. and attached hereto and incorporated herein by reference as ***Exhibit A***, said easement being more particularly bounded and described as set forth on ***Exhibit B***, attached hereto and incorporated herein by reference (hereinafter the “Easement Area”).

The rights and easements granted herein are as follows:

1. The perpetual right and easement to enter upon the Easement Area at any and all times to install, construct, erect, lay, relay, repair, inspect, operate, maintain, rebuild, replace and remove pipes and mains, with all necessary fixtures and appurtenances for conveying and transmitting sewage, together with the right at all times to make connection with all of said facilities to service buildings and improvements, such locations for such facilities to be located within the Easement Area. All installations made by the City shall be entirely below the surface of the ground or shall be level with the surface of the ground. Grantors shall not install and/or construct any improvements within the Easement Area that interfere, in the City’s reasonable judgment, with the exercise by the City of the rights and easements herein granted. As of the date of this instrument, the parties acknowledge that the Easement Area contains several improvements (specifically, the paved driveway, pool fence, and a stone wall), and the parties agree that those improvements in their current condition and location do not interfere with the exercise of the City’s rights and easements.

2. The perpetual right and easement in connection with, or in exercising, any of the above-described rights, to enter the Easement Area and to work, fill, excavate, tunnel, trench and/or landfill within the Easement Area, and to trim, clear, cut down and remove trees, timber and bushes to such extent as in the judgment of the City is necessary or appropriate in connection with the exercise of only the rights granted herein, ***provided, however,*** that the City shall, at its sole cost and expense, promptly restore any areas disturbed or altered in the exercise of such rights to the condition they were in immediately prior to such entry, and in any event, shall restore the same within thirty (30)

days of the date of such damage, weather and other field conditions permitting, otherwise within a reasonable time.

Notwithstanding anything to the contrary contained herein, the rights and easements herein granted are subject to the following: Whenever any work is performed by the City on the Easement Area pursuant to the provisions of a right or easement granted hereunder, such work (i) shall be performed in a safe, diligent and workmanlike manner and at the City's sole cost and expense in compliance with all applicable laws; and (ii) shall be performed in a manner that causes the minimum of interference with Grantors' use and enjoyment of the Easement Area and shall not unreasonably interfere with Grantors' use of Grantors' premises.

Meaning and intending to convey, and hereby conveying, an easement over and across a portion of the land of Grantors as described in a deed dated November 20, 2007 and recorded in the Cumberland County Registry of Deeds in Book 25638, Page 188.

Release of Easement

In consideration for the grant of the foregoing easement, the City releases to Grantors all of its right, title and interest in the sewer easement depicted on a Plan recorded in the Cumberland County Registry of Deeds in Plan Book 113, Page 45 that is described in a mortgage release recorded in the said Registry in Book 4326, Page 303, but only to the extent that the sewer easement depicted on said Plan is located on the property described in the deed dated November 20, 2007 and recorded in said Registry in Book 25638, Page 188.

IN WITNESS WHEREOF, the said Grantors have hereunto set their hands and seals this _____ day of September, 2014.

Witness

S. Sam Fratoni

Witness

Norma J. Fratoni

STATE OF MAINE
Cumberland, ss.

September ____, 2014

Then personally appeared before me the above-named S. Sam Fratoni and Norma J. Fratoni and acknowledged the foregoing instrument to be their free act and deed.

Before me,

Notary Public/Attorney-at-Law
Print Name: _____
My commission expires:

IN WITNESS WHEREOF, the said City of South Portland has caused this instrument to be signed and sealed in its corporate name by James H. Gailey, its City Manager, on this _____ day of September, 2014.

Witness

By: James H. Gailey
Its: City Manager

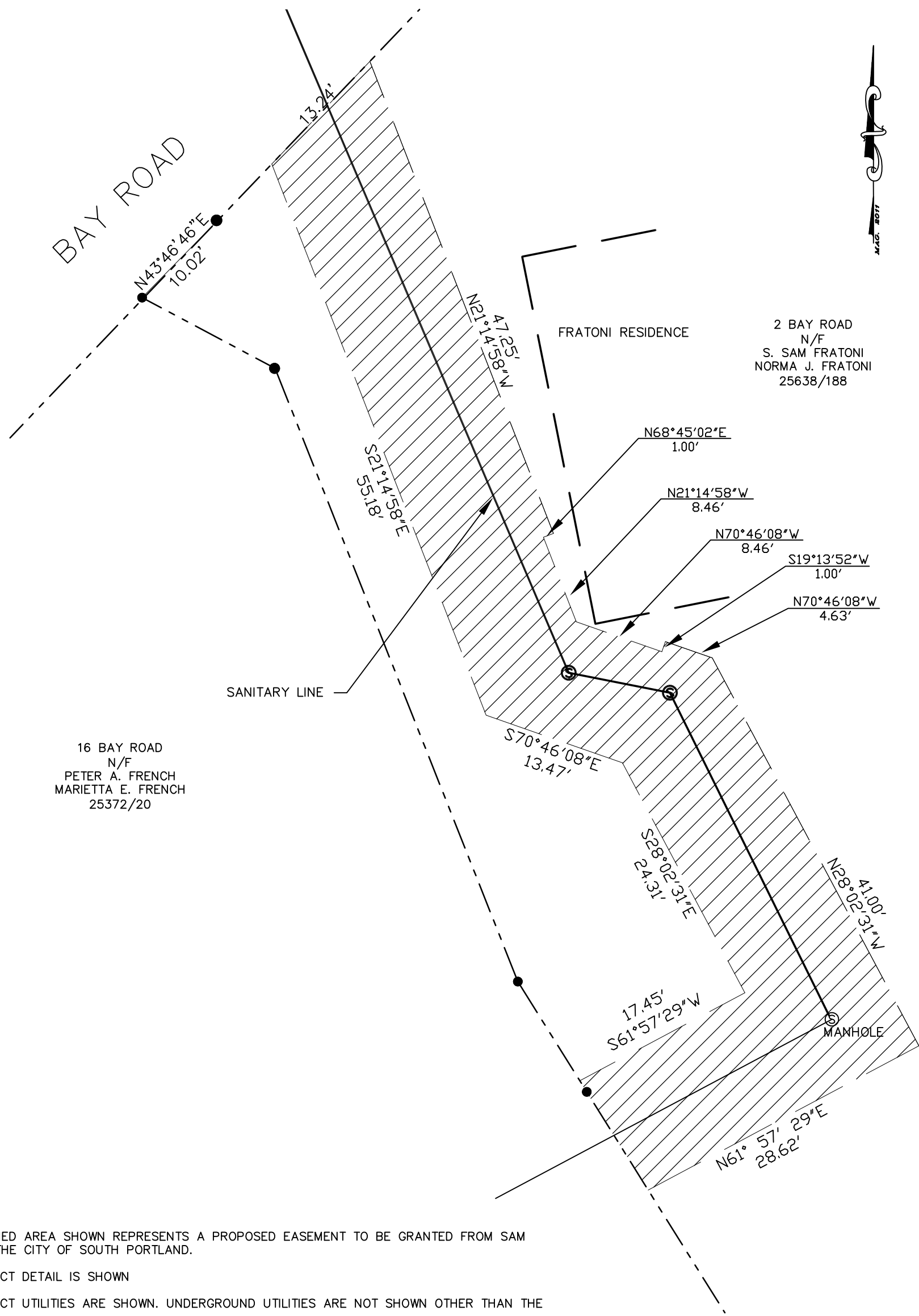
STATE OF MAINE
Cumberland, ss.

September ____, 2014

Then personally appeared before me the above-named James H. Gailey, duly authorized City Manager of the City of South Portland and acknowledged the foregoing instrument to be his/her free act and deed and the free act and deed of the City of South Portland.

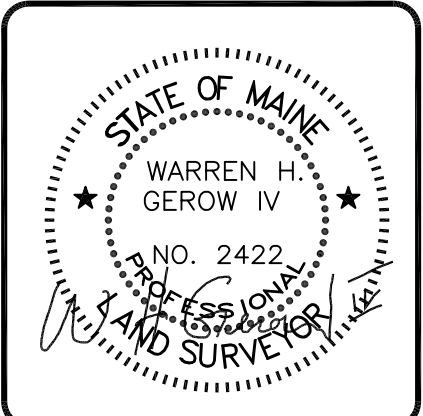
Before me,

Notary Public/Attorney-at-Law
Print Name: _____
My commission expires:



- NOTES:**
1. THE HATCHED AREA SHOWN REPRESENTS A PROPOSED EASEMENT TO BE GRANTED FROM SAM FRATONI TO THE CITY OF SOUTH PORTLAND.
 2. ONLY SELECT DETAIL IS SHOWN
 3. ONLY SELECT UTILITIES ARE SHOWN. UNDERGROUND UTILITIES ARE NOT SHOWN OTHER THAN THE SEWER LINE
 4. A BOUNDARY SURVEY WAS NOT COMPLETED AS PART OF THIS WORK
 5. A SURVEY REPORT WAS NOT DRAFTED

THIS DRAWING, DESIGN AND
 CALCULATIONS ARE THE PROPERTY
 OF ASSOCIATED DESIGN PARTNERS, INC.
 NO PART OF THIS DOCUMENT IS TO BE
 REPRODUCED OR TRANSMITTED IN ANY
 FORM OR BY ANY MEANS, ELECTRONIC
 OR MECHANICAL, INCLUDING PHOTOCOPYING,
 RECORDING, OR BY ANY INFORMATION
 STORAGE AND RETRIEVAL SYSTEM, WITHOUT
 WRITTEN CONSENT IS PROHIBITED.



DATE : 9-8-14
 SCALE : AS NOTED
 DESIGN BY: WHG
 DRAWN BY: WHG
 FILE #: 14258-S1
 PROJECT NUMBER:
14258
 SHEET NO:
S1

REVISIONS			
No.	BY	DESCRIPTION	DATE

PROJECT: **FRATONI EASEMENT**
2 BAY ROAD - SOUTH PORTLAND
 FOR: SAM FRATONI

SHEET TITLE:
PROPOSED EASEMENT

ASSOCIATED DESIGN PARTNERS INC.

80 Leighton Road Falmouth, Maine 04105
 Office: (207) 878-1751
 Fax: (207) 878-1788
 E-Mail: adp@adpengineering.com

EXHIBIT B

That tract of land being located on the easterly side of Bay Road, in the City of South Portland, County of Cumberland, State of Maine, more particularly described as follows:

BEGINNING at a point on or near the easterly right-of-way line of said Bay Road, on the westerly sideline of land now or formerly of S. Sam & Norma J. Fratoni (Book 25638-Page 188), said point being located N 43°46'46" E a distance of 17.37 feet from a 5/8" rebar found marking the northerly land now or formerly of Peter A. French & Marietta E. French (Book 25372-Page 20):

THENCE S 21°14'58" E, through the land of Fratoni a distance of 55.18 feet to a point;

THENCE S 70°46'08" E, through the land of Fratoni, a distance of 13.47 feet to a point;

THENCE S 28°02'31" E, through the land of Fratoni, a distance of 24.31 feet to a point;

THENCE S 61°57'29" W, through the land of Fratoni, a distance of 17.45 feet to a point on the southerly property line of said Fratoni;

THENCE along the southerly property line of Fratoni, a distance of 12.03 feet to a point;

THENCE N 61°57'29" E, through the land of Fratoni, a distance of 28.62 feet to a point;

THENCE N 28°02'31" W, through the land of Fratoni, a distance of 41.00 feet to a point;

THENCE N 70°46'08" W, through the land of Fratoni, a distance of 4.63 feet to a point;

THENCE S 19°13'52" W, through the land of Fratoni, a distance of 1.00 feet to a point;

THENCE N 70°46'08" W, through the land of Fratoni, a distance of 8.46 feet to a point;

THENCE N 21°14'58" W, through the land of Fratoni, a distance of 8.46 feet to a point;

THENCE N 68°45'02" E, through the land of Fratoni, a distance of 1.00 feet to a point;

THENCE N 21°14'58" W, through the land of Fratoni, a distance of 47.25 feet to a point on or near the easterly right-of-way line of said Bay Road;

THENCE S 43°46'46" W, along said Bay Road, a distance of 13.24 feet to the point of beginning

Meaning and intending to describe an easement as shown on a plan entitled Fratoni Easement, dated September 8, 2014, by Associated Design Partners. All bearings are oriented to Magnetic North 2011.

This deed description prepared by Warren Gerow IV, PLS 2422, an agent for Associated Design Partners.