

Meeting of February 19, 2014

South Portland City Council
Position Paper of the City Manager

Subject:

ORDER #103-13/14 – Public hearing and action 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 was discussed at the October 28, 2013 City Council workshop. The Planning Board approved the project on January 14, 2014. 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). An aerial photograph of the project site is also 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 and to schedule a public hearing to determine the location of the property and whether circumstances require a taking. Pursuant to the City Council's February 3, order, notice of the proposed taking and public hearing was posted at City Hall, the Library (both locations) and the Community Center. Notice was also posted in the field (i) at the intersection of Gerry Avenue and Sunset Avenue, and (ii) on the easterly side of Sunset Avenue at its intersection with Spring Street. Per the City Council's request at the February 3, 2014 meeting, individual notice was also mailed to property owners along Sunset Avenue between Gerry Avenue and Tremont Street.

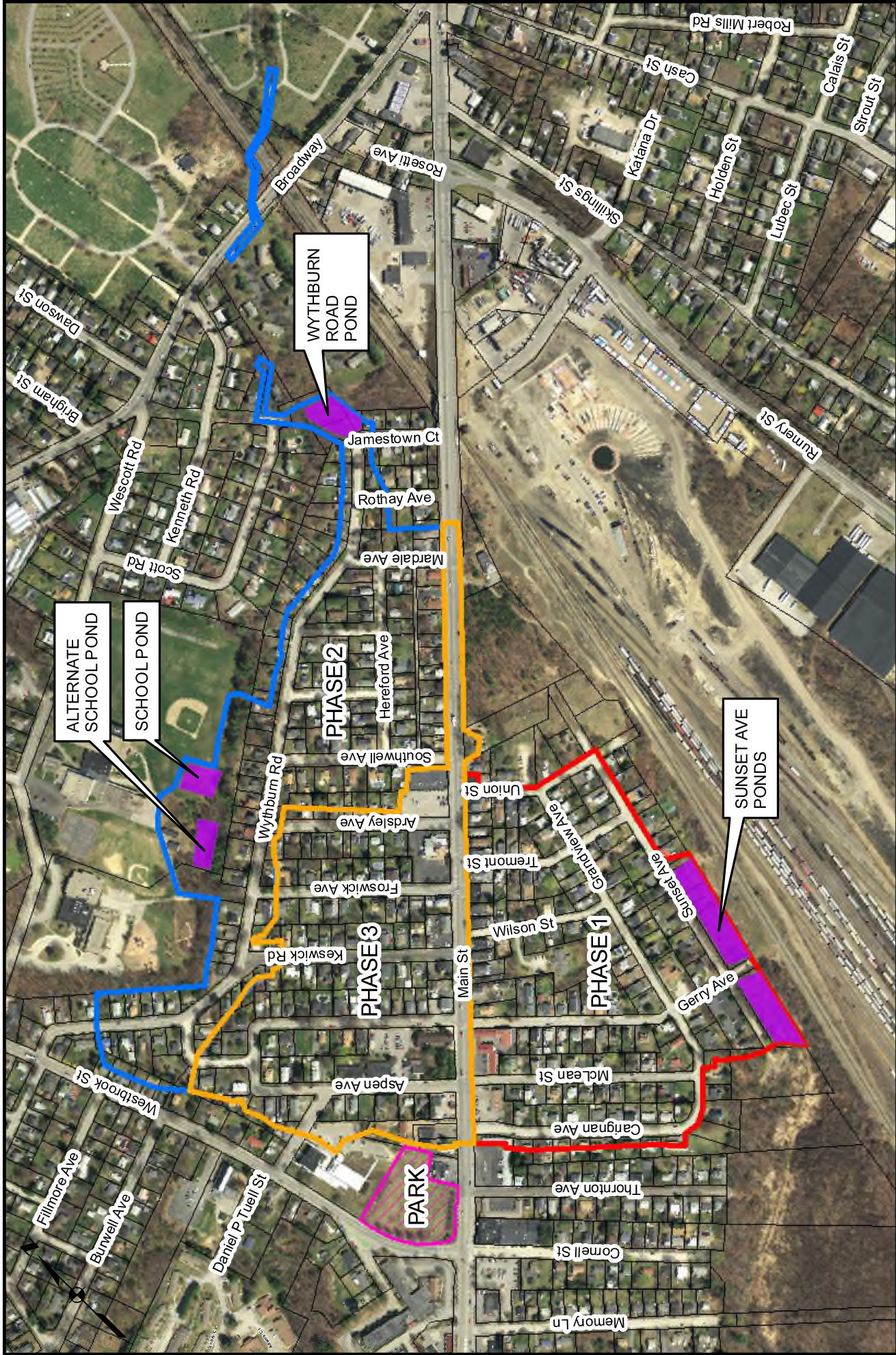
The second step in the eminent domain process is the conduct of a public hearing and action on the proposed condemnation order. At the public hearing on February 19, 2014, the City Council must determine the location of the property and whether circumstances require a taking. If at the conclusion of the public hearing the taking of the two parcels is to proceed, the City Council will then file with the City Clerk the order of condemnation (copy attached), 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. Service 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 #103-13/14.


City Manager

3207	3249	3291	3333	3375	3417	3459	3501	3543	3585	3627	3669	3711	3753	3795	3837	3879	3921	3963	4005	4047	4089	4131	4173	4215	4257	4299	4341	4383	4425	4467	4509	4551	4593	4635	4677	4719	4761	4803	4845	4887	4929	4971	5013	5055	5097	5139	5181	5223	5265	5307	5349	5391	5433	5475	5517	5559	5601	5643	5685	5727	5769	5811	5853	5895	5937	5979	6021	6063	6105	6147	6189	6231	6273	6315	6357	6399	6441	6483	6525	6567	6609	6651	6693	6735	6777	6819	6861	6903	6945	6987	7029	7071	7113	7155	7197	7239	7281	7323	7365	7407	7449	7491	7533	7575	7617	7659	7701	7743	7785	7827	7869	7911	7953	7995	8037	8079	8121	8163	8205	8247	8289	8331	8373	8415	8457	8499	8541	8583	8625	8667	8709	8751	8793	8835	8877	8919	8961	9003	9045	9087	9129	9171	9213	9255	9297	9339	9381	9423	9465	9507	9549	9591	9633	9675	9717	9759	9801	9843	9885	9927	9969	10011	10053	10095	10137	10179	10221	10263	10305	10347	10389	10431	10473	10515	10557	10599	10641	10683	10725	10767	10809	10851	10893	10935	10977	11019	11061	11103	11145	11187	11229	11271	11313	11355	11397	11439	11481	11523	11565	11607	11649	11691	11733	11775	11817	11859	11901	11943	11985	12027	12069	12111	12153	12195	12237	12279	12321	12363	12405	12447	12489	12531	12573	12615	12657	12699	12741	12783	12825	12867	12909	12951	12993	13035	13077	13119	13161	13203	13245	13287	13329	13371	13413	13455	13497	13539	13581	13623	13665	13707	13749	13791	13833	13875	13917	13959	14001	14043	14085	14127	14169	14211	14253	14295	14337	14379	14421	14463	14505	14547	14589	14631	14673	14715	14757	14799	14841	14883	14925	14967	15009	15051	15093	15135	15177	15219	15261	15303	15345	15387	15429	15471	15513	15555	15597	15639	15681	15723	15765	15807	15849	15891	15933	15975	16017	16059	16101	16143	16185	16227	16269	16311	16353	16395	16437	16479	16521	16563	16605	16647	16689	16731	16773	16815	16857	16899	16941	16983	17025	17067	17109	17151	17193	17235	17277	17319	17361	17403	17445	17487	17529	17571	17613	17655	17697	17739	17781	17823	17865	17907	17949	17991	18033	18075	18117	18159	18201	18243	18285	18327	18369	18411	18453	18495	18537	18579	18621	18663	18705	18747	18789	18831	18873	18915	18957	19000	19042	19084	19126	19168	19210	19252	19294	19336	19378	19420	19462	19504	19546	19588	19630	19672	19714	19756	19798	19840	19882	19924	19966	20008	20050	20092	20134	20176	20218	20260	20302	20344	20386	20428	20470	20512	20554	20596	20638	20680	20722	20764	20806	20848	20890	20932	20974	21016	21058	21100	21142	21184	21226	21268	21310	21352	21394	21436	21478	21520	21562	21604	21646	21688	21730	21772	21814	21856	21898	21940	21982	22024	22066	22108	22150	22192	22234	22276	22318	22360	22402	22444	22486	22528	22570	22612	22654	22696	22738	22780	22822	22864	22906	22948	22990	23032	23074	23116	23158	23200	23242	23284	23326	23368	23410	23452	23494	23536	23578	23620	23662	23704	23746	23788	23830	23872	23914	23956	24000	24042	24084	24126	24168	24210	24252	24294	24336	24378	24420	24462	24504	24546	24588	24630	24672	24714	24756	24798	24840	24882	24924	24966	25008	25050	25092	25134	25176	25218	25260	25302	25344	25386	25428	25470	25512	25554	25596	25638	25680	25722	25764	25806	25848	25890	25932	25974	26016	26058	26100	26142	26184	26226	26268	26310	26352	26394	26436	26478	26520	26562	26604	26646	26688	26730	26772	26814	26856	26898	26940	26982	27024	27066	27108	27150	27192	27234	27276	27318	27360	27402	27444	27486	27528	27570	27612	27654	27696	27738	27780	27822	27864	27906	27948	27990	28032	28074	28116	28158	28200	28242	28284	28326	28368	28410	28452	28494	28536	28578	28620	28662	28704	28746	28788	28830	28872	28914	28956	29000	29042	29084	29126	29168	29210	29252	29294	29336	29378	29420	29462	29504	29546	29588	29630	29672	29714	29756	29798	29840	29882	29924	29966	30008	30050	30092	30134	30176	30218	30260	30302	30344	30386	30428	30470	30512	30554	30596	30638	30680	30722	30764	30806	30848	30890	30932	30974	31016	31058	31100	31142	31184	31226	31268	31310	31352	31394	31436	31478	31520	31562	31604	31646	31688	31730	31772	31814	31856	31898	31940	31982	32024	32066	32108	32150	32192	32234	32276	32318	32360	32402	32444	32486	32528	32570	32612	32654	32696	32738	32780	32822	32864	32906	32948	32990	33032	33074	33116	33158	33200	33242	33284	33326	33368	33410	33452	33494	33536	33578	33620	33662	33704	33746	33788	33830	33872	33914	33956	34000	34042	34084	34126	34168	34210	34252	34294	34336	34378	34420	34462	34504	34546	34588	34630	34672	34714	34756	34798	34840	34882	34924	34966	35008	35050	35092	35134	35176	35218	35260	35302	35344	35386	35428	35470	35512	35554	35596	35638	35680	35722	35764	35806	35848	35890	35932	35974	36016	36058	36100	36142	36184	36226	36268	36310	36352	36394	36436	36478	36520	36562	36604	36646	36688	36730	36772	36814	36856	36898	36940	36982	37024	37066	37108	37150	37192	37234	37276	37318	37360	37402	37444	37486	37528	37570	37612	37654	37696	37738	37780	37822	37864	37906	37948	37990	38032	38074	38116	38158	38200	38242	38284	38326	38368	38410	38452	38494	38536	38578	38620	38662	38704	38746	38788	38830	38872	38914	38956	39000	39042	39084	39126	39168	39210	39252	39294	39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SCALE: 1" = 500'

DATE: 10/22/13

INFORMATION:
 IMAGERY ACQUIRED SPRING 2012
 GIS DATA FROM THE CITY OF SOUTH PORTLAND

FOR: CITY OF SOUTH PORTLAND

LOCATION:
 THORNTON HEIGHTS VICINITY
 SOUTH PORTLAND, MAINE

SEBAGO
 T E C H N I C A L S

WWW.SEAGOTECHNICS.COM

75 John Roberts Rd., Suite 1A
 South Portland, ME 04240
 Tel: 207-200-2100

250 Goddard Rd., Suite B
 Lewiston, ME 04240
 Tel: 207-783-8686

**FIGURE 1-1 PROJECT AREA
 OF THORNTON HEIGHTS SEWER SEPARATION**



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 #103-13/14

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

WHEREAS, pursuant to the Combined Sewer Overflow (CSO) Facilities Plan Update adopted by the City of South Portland, Maine in 2012, the City is undertaking a number of sewer separation projects as outlined in the implementation section of the said report; and

WHEREAS, there are three CSOs located in the Thornton Heights/Pleasantdale section of the City that are scheduled for mitigation as part of a four phase Thornton Heights/Pleasantdale sewer separation project; and

WHEREAS, Phase I of the Thornton Heights/Pleasantdale sewer separation project involves the construction of a stormwater treatment and detention basin on property along the east side of Sunset Avenue; and

WHEREAS, after notice posted at least seven (7) days in advance in two (2) public places in the City and in the vicinity of Sunset Avenue pursuant to 30-A M.R.S.A. § 3101 and 23 M.R.S.A. § 3022, the City Council conducted 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., and then and there, after hearing such persons as chose to speak thereon, the City Council determined that the public exigency required the immediate taking by eminent domain of 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 of Grand-View recorded in the Cumberland County Registry of Deeds in Plan Book 8, Page 135 (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, with said property interests being more particularly described in the attached **Appendix A**; and

WHEREAS, the City Council has determined that such taking and award of money damages as shown on Appendix A are necessary for public purposes to permit the construction of a stormwater treatment and detention basin on property along the east side of Sunset Avenue;

NOW, THEREFORE, BE IT ORDERED, pursuant to 23 M.R.S.A. § 3023, that the City takes by eminent domain all outstanding property interest(s), if any, in 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 the attached Appendix A; and that damages in the total amount of \$1.00 and other valuable consideration be awarded as shown on Appendix A; and

BE IT FURTHER ORDERED, that a true copy of this Condemnation Order, with the attached Appendix A, be filed with the City Clerk and an attested copy of this Condemnation Order be recorded in the Cumberland County Registry of Deeds; that an attested copy of this Condemnation Order, Appendix A and a check in the amount of \$1.00 for said parcels, and made payable to the property owner(s), as shown on Appendix A, shall be served on one of them as payment in full for the real property interests taken hereby; and that notice of the same be published in a newspaper of general circulation in Milton, Massachusetts for three (3) successive weeks with regard to the person(s) listed on Appendix A.

[Fiscal Note: \$1.00]

Dated: February 19, 2014

APPENDIX A

Property Owner(s):

Heirs, devisees and assigns of James Sumner Draper, late of Milton, Massachusetts.
Date of death: March 14, 1936

Amount of Damages: \$1.00 and other valuable consideration

Description of Property Acquired by Eminent Domain (fee simple absolute title):

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.