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In Memoriam
C. Wesley Crowell

July 19, 2017

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VIA FIRST CLASS MAIL AND E-MAIL

Matthew Sturgis, Town Manager
Town of Cape Elizabeth
320 Ocean House Road
Cape Elizabeth, ME 04107

Re: Surf Side Avenue, Atlantic Place, and Lighthouse Point Road

Dear Matt:

In September of 2016, the Town Council considered and approved three separate orders regarding the Town's existing paper streets (the "Orders"). These Orders dealt with and finalized the issue of which paper streets the Town intended to formally dispose of, which paper streets the Town intended to accept, and which paper streets the Town decided to extend consideration of. Recently, however, the Town Council has shown interest in reengaging in this discussion, and potentially amending these Orders to allow further vacation of three particular paper streets. In this regard, the Town has requested an analysis of *how* this process would work, and the potential implications for interested private parties.

I. Brief Overview of Maine Paper Street Law

The term "paper street" refers to a road shown on a recorded subdivision plan that has not been constructed. When a developer records such a plan, the included streets are "incipiently dedicated," meaning that the Town reserves the right to "accept" these streets—through a formal council action—and maintain them as municipal roads.

Unfortunately, many such paper streets have never been accepted by municipalities, leaving many unanswered legal questions. To help resolve this issue, the Maine Legislature passed the "Paper Streets Act" (the "Act") in 1987. The Act gave towns and cities until 1997 to either accept dedicated paper streets, or to decide to delay this decision for a period of twenty (20) years. Failing to follow this would lead to a paper street being "deemed vacated," meaning that any and all public rights to the street would be extinguished forever.

In response to the Act, the Town of Cape Elizabeth reserved its right of consideration for the applicable twenty (20) year period, which lapses on September 29, 2017. Then, last year, the Town conducted a thorough review of its paper street inventory, and adopted the Orders, as described above.

II. Process for Vacating the Above-Described Paper Streets

As noted above, the period in which the Town must either decide, or delay consideration of its paper streets does not expire until September 29, 2017. Because of this, the Town still has the ability to *amend* the Orders so as to shift paper streets from one order to another, *i.e.*, moving one or all of the above-mentioned paper streets from its “extension” order to its “deemed vacated” order. This contrasts with the alternative “formal” process for street vacation, which could be utilized to accomplish desired vacations *after* the September 29, 2017 deadline has passed. 23 M.R.S.A. § 3027.

Thus, if the Town wishes to deem the above-mentioned paper streets *vacated*, the Town Council should consider, at a properly noticed public hearing, amending the previously enacted Orders. Once completed, these orders should be filed by the Town Clerk in the Cumberland County Registry of Deeds. 23 M.R.S.A. § 3032. Then, once the statutory deadline of September 29, 2017 has passed, all public rights to the paper streets on this “deemed vacated” list will be extinguished.

III. Private Rights Following Vacation

Finally, the Town requested a summary of how deemed vacation would affect existing private rights in these paper streets.

Under Maine law “a grantee who acquires property by reference to a [subdivision] plan acquires a private right-of-way in proposed streets delineated on that plan.” *Murch v. Nash*, 2004 ME 139, ¶ 12, 861 A.2d 645 (citing *Callahan v. Ganneston Park Development Corp.*, 245 A.2d 274, 278 (Me. 1968)). However, these rights-of-way clash with assertions of the abutting landowners, who often wish to assert fee title to the centerline of the vacated paper street. *See* 33 M.R.S.A. § 469-A; 23 M.R.S.A. § 3031(2). Additionally, while we have not researched the issue in depth, we are aware that other adjacent property owners may have expressly deeded rights of way over the above-referenced paper streets, or may have claims to rights of way by prescription.

Because of this conflict, Maine law is clear that following the *deemed vacation* of a paper street, *any party* who wishes to assert a legal interest in the paper street must record a proper notice in the registry of deeds and mail a copy of this notice to all the current owners within the subdivision, as well as their mortgagees of record, within twenty (20) days of filing. 23 M.R.S.A. § 3033(1). These interest holders then have 180 days from the date on which they receive the mailed notice to file a lawsuit that outlines that party’s objection. 23 M.R.S.A. § 3033(2).

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Matthew Sturgis, Town Manager
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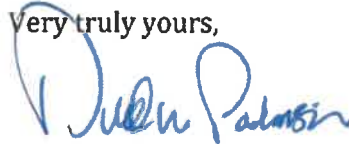
Understandably, this process is both long and complicated. More to the point, however, this issue of private rights *does not* involve the Town, but only landowners within the subdivision in which the paper street runs. As such, we are not offering an opinion as to the existence or viability of any private claims or rights, but only that such claims may exist. We would, however, encourage parties who may have such claims or rights to seek legal counsel to determine how the Town's deemed vacation may affect them.

IV. Conclusion

In sum, should the Town decide to vacate its interests in any or all of Surf Side Avenue, Atlantic Place, or Light House Road, an amendment to the existing paper street orders should be adopted. This would allow the Town to effectively extinguish its interests, and begin the process for abutting landowners and other interested parties to resolve any outstanding private rights.

We appreciate this opportunity to review this matter. Please let us know if we can be of more assistance in this matter.

Very truly yours,



Durward W. Parkinson