

DrummondWoodsum

MEMO

TO: Nathan Poore and Pete Clark

FROM: William L. Plouffe

DATE: October 15, 2014

SUBJECT: Sewer Pump Station Parcel; Condemnation procedures; Draft documents

The authority for a town to take land by eminent domain for the construction of a sewer is found in 30-A M.R.S. § 3402(2):

2. Taking of land. Before the land is taken for the construction of any sewer, notice shall be given and damages assessed and paid for the land as is provided for the location of town ways under Title 23, chapter 302.

That statute directs us to the statutes in Title 23 governing the use of eminent domain for town highway purposes and, specifically, to the provisions of those statutes directing what notice of the taking must be given and how damages are to be assessed and paid.

Notice of Intention: Pursuant to 23 M.R.S. § 3022, the municipal officer (Town Council) must give written notice of their intention to take land by posting the notice at least 7 days in advance of the taking in 2 public places in the municipality and in the vicinity of the land to be taken. The notice must contain a description of the land to be taken. On the rare occasions when Falmouth has taken land, the notice has been posted at the Town Hall and the Falmouth Memorial Library as well as at the location of the land. Here, the Route 88 pump station would be the appropriate place to post the notice with respect to posting in the vicinity of the land to be taken.

Interestingly, the statute is silent with respect to giving written notice to the owner(s) of the land to be taken. Despite the silence, I suggest that notice be given to the Falmouth Land Trust and The Nature Conservancy. I also suggest that notice be provided to the Attorney General's Office because of their expressed interest in this taking as it relates to the Conservation Easement Act.

The Taking: Pursuant to 23 M.R.S. § 3023, the municipal officers (Town Council) must pass a condemnation order and file it with the town clerk. The condemnation order must contain the following:

- Detailed description of the property interests to be taken;
- Description of the property location by metes and bounds;
- Names of owners of record so far as they can be reasonably determined; and

- Amount of damages determined by the municipal officers to be just compensation for the property interest taken.

Under the Town Charter, there is no requirement for a public hearing before adopting an order (as opposed to an ordinance). It is up to Council whether to hold a public hearing. In any event, the condemnation order should be an agenda item at a Council meeting. The Council should discuss the reason for the taking; the evidence of fair value, i.e., the appraisal; and the communications that have been had with the Land Trust and The Nature Conservancy. The Council then needs to determine that there is a need for the taking and the damages to be awarded. The Council then votes on the Order of Condemnation.

Service of Notice/Compensation: The Town Council should direct that a copy of the Condemnation Order and a check in the amount of damages awarded (if any) be served on the record owners.

Recording at Registry of Deeds: Pursuant to 23 M.R.S. § 3024, the Town Council should also direct that an attested copy of the Condemnation Order be recorded in the Cumberland County Registry of Deeds.

Title Passes: Title to the condemned parcel passes to the Town upon service or recording, as above, whichever occurs first.

Attached are drafts of a Condemnation Order, a Notice of Intention and an Officer's Return.