

South Portland City Council
Position Paper of the City Manager

Subject:

ORDER #149-13/14 – Authorizing the City Manager to execute an agreement between Ron Letourneau and the City relating to a building that encroaches into Marriner Street (Map 9, Lot 81). Passage requires majority vote.

Position:

This item is brought forward to authorize the City Manager to execute an agreement on behalf of the City in order to resolve a slight building encroachment into the Marriner Street right-of-way issue on property owned by Ron Letourneau located at 241 Pine Street (Map 9, Lot 81) (the “Property”).

On April 26, 2013, Mr. Letourneau acquired the Property. The Property is improved with a single family house and garage. Mr. Letourneau caused a boundary survey of the Property to be completed, which boundary survey is entitled “Boundary Survey” and prepared by R.W. Eaton Associates of 58 Pleasant Street, Westbrook, ME dated September 4, 2013 (the “Survey”).

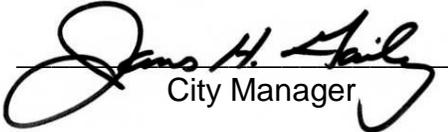
The Survey reveals that the westerly corner of the house encroaches slightly (0.7 feet) into the Marriner Street right-of-way. According to Mr. Letourneau, the house was built in 1905 and has been in the same location for over 40 years. Mr. Letourneau recently approached the CEO about the best way to resolve this issue.

A Maine statute, known as the longtime buildings and fence law, 23 M.R.S.A. § 2952, provides that where road boundaries are known, any building or fence that encroaches within those bounds and is allowed to remain there for 40 years or more will be deemed to exist legally, and thus will narrow the true boundary of the road. Note that this statutory provision applies only to the extent that the building or fence physically exists; it does not have the effect of narrowing the entire width (or length) of a public road, only that portion where the encroachment exists. This statute is an exception to the well-established rule that public property cannot be taken by adverse possession or by prescriptive use.

The statute allows the municipality and the property owner to agree on the location of the encroachment and to record an instrument at the Registry of Deeds memorializing the same. A copy of the proposed Agreement (with Survey) is attached. Staff will be present at the May 19, 2014 City Council meeting to answer any questions.

Requested Action:

Passage of ORDER # 149-13/14.


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

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

IN CITY COUNCIL

ORDER # 149-13/14

ORDERED, that the City hereby approve the attached agreement between Ron Letourneau and the City to address a building that encroaches into the Marriner Street right-of-way on property located at 241 Pine Street (Map 9, Lot 81) and authorize the City Manager to execute the agreement on behalf of the City.

Fiscal Note: Less than \$1,000

Dated: May 19, 2014

**AGREEMENT BETWEEN THE CITY OF SOUTH PORTLAND AND
RON LETOURNEAU PURSUANT TO 23 M.R.S.A. § 2952**

This Agreement is made this ____ day of May, 2014 by and between **RON LETOURNEAU** (“Owner”) and the **CITY OF SOUTH PORTLAND** (the “City”) (hereinafter collectively the “parties”) as follows:

WHEREAS, the parties are in agreement regarding the location of Owner’s building, which extends in some areas beyond the boundaries of Owner’s deeded property into Marriner Street in South Portland, Maine, a public way; and

WHEREAS, the parties have negotiated a resolution to this issue.

NOW, THEREFORE, in recognition of the foregoing recitals, in consideration of the mutual promises contained herein, the adequacy of which is hereby acknowledged, the parties hereby agree as follows:

1. The Owner hereby acknowledges that he is the owner of a certain parcel of land located at 241 Pine Street (Tax Map 9, Lot 81) that is adjacent to Marriner Street, conveyed to him by deed dated April 26, 2013 and recorded in the Cumberland County Registry of Deeds in Book 30598, Page 161, the boundaries of which parcel are depicted on a survey plan entitled “Boundary Survey” and prepared by R.W. Eaton Associates of 58 Pleasant Street, Westbrook, ME dated September 4, 2013 (the “Survey”), a reduced copy of which is attached hereto as *Exhibit A*. The Survey also shows the approximate location of buildings and improvements belonging to Owner. For purposes of this Agreement, the term “building” shall hereinafter be limited to the single family house shown on the Survey that has been in place for more than forty (40) years prior to the date of this Agreement.

2. The Owner further acknowledges that said building intrudes beyond the boundaries of his deeded property and into portions of Marriner Street by 0.7 feet (not including overhang). By this Agreement, the Owner is estopped from asserting any right to continue to locate said building other than pursuant to this Agreement, or otherwise assert ownership rights within the right-of-way of Marriner Street. This Agreement shall be recorded in accordance with 23 M.R.S.A. § 2952. The Owner acknowledges that by recording this Agreement that it shall bind the Owner and any person claiming title under or through the Owner.

3. The City agrees not to remove or to seek the removal of the portion of the building as defined in Section 1 that is located within the right-of-way of Marriner Street, but only to the extent of the existing location of such building. This provision shall not limit the repair, improvement or replacement of such building, provided that such repair, improvement or replacement does not further encroach into the right-of-way of Marriner Street.

4. This Agreement shall be recorded in the Cumberland County Registry of Deeds by Owner at his expense, with a copy of the recorded instrument

contemporaneously provided to the City Manager, and is binding upon the respective successors, heirs and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed this Agreement as of the date first stated above.

RON LETOURNEAU

Ron Letourneau

CITY OF SOUTH PORTLAND

By: James H. Gailey
Its: City Manager, duly authorized

STATE OF MAINE
CUMBERLAND, ss. _____, 2014

Personally appeared before me the above-named Ron Letourneau and swore the above statements to be true based upon his personal knowledge and acknowledged the foregoing instrument to be his free act and deed.

Before me,

Notary Public/Attorney at Law

Print Name

STATE OF MAINE
CUMBERLAND, ss. _____, 2014

Personally appeared before me the above-named James H. Gailey and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said City of South Portland.

Before me,

Notary Public/Attorney at Law

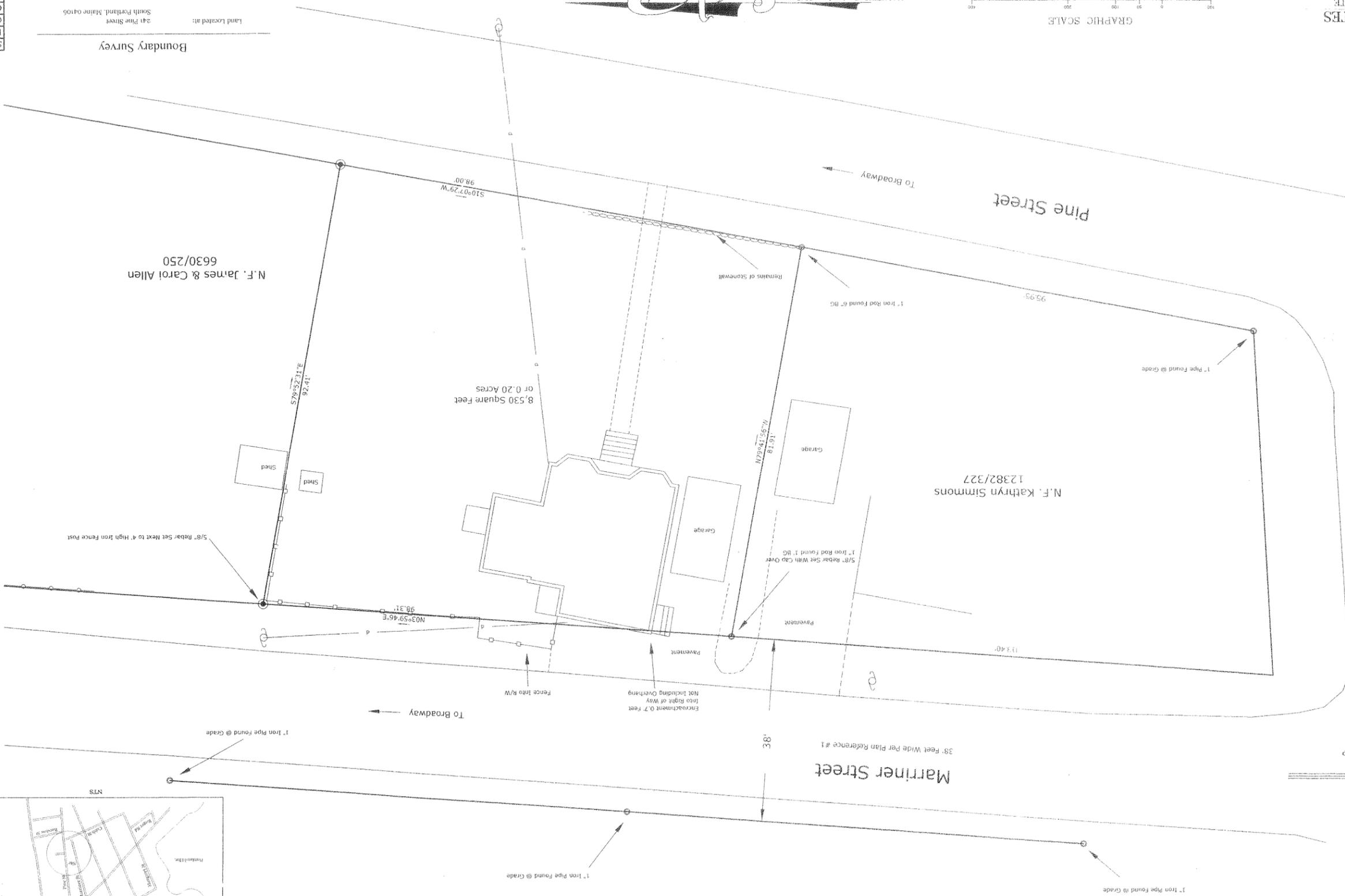
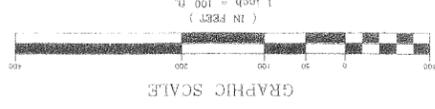
Print Name

EXHIBIT A

3 REV DATE: 00-00-00
2 REV DATE: 00-00-00
1 REV DATE: 00-00-00
0 REV DATE: 00-00-00
ORIG DATE: 09-04-13
PROJ #: 462
CAD FILE: 462.DWG
CHECKED BY: R.W.E.
DRAWN BY: R.W.E.
SCALE: 1:10

Land Located at: 241 Pine Street South Portland, Maine 04106
 Land Owned By: Ron LeCourneau 241 Pine Street South Portland, Maine 04106
 Deed Reference: Book 0398 Page 161

September 4th, 2013
 R. W. EATON ASSOCIATES
 LAND SURVEYING & REAL ESTATE
 58 PLEASANT STREET, WESTBROOK, MAINE 04092
 PHONE: 603-844-2402 FAX: 603-856-7107 E-MAIL: RW.EATON@MAINER.E.COM



- 5/8" Rebar Set With Cap
- Rebar/Iron Pipe Found
- Utility Pole
- N.F. Now or Formerly
- 1324/98 Book & Page
- Stockade Fence

LEGEND



Location

1) Plan of The Martiner Estate, South Portland, Maine Lots Owned By F.H. Hartford Esq
 By Hisley & Cummings and Recorded in Plan Book 8 Page 25

PLAN REFERENCE

RICHARD W. EATON P.L.S. # 2075



CERTIFICATION