

Order 313-04/05

Given first reading on 6/27/05

Passage 7-1 7/6/05 (Leeman opposed, O'Donnell absent)

JILL C. DUSON (MAYOR)(A/L)
PETER O'DONNELL (A/L)
JAMES F. CLOUTIER(A/L)
NICHOLAS M. MAVODONES (A/L)

CITY OF PORTLAND
IN THE CITY COUNCIL

WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)
JAMES I. COHEN (5)

**ORDER CONDEMNING PROPERTY RIGHTS OF
THE PORTLAND COMPANY ON CITY-OWNED PROPERTY
IN THE VICINITY OF INDIA STREET, COMMERCIAL STREET & FORE STREET
PURSUANT TO 23 M.R.S.A. § 3023, 30-A M.R.S.A. § 3101 AND § 5253**

To the Within-Named Owner(s) of Record:

- The Portland Company

To Mortgagees of Record:

- People's Heritage Savings Bank, its Successors and Assigns
- The Phineas Sprague Trust – 1965

To Tenants of Record:

- Portland Yacht Services, Inc.
- The Trust for Preservation of Maine Industrial History and Technology

DECLARATION OF PURPOSE

WHEREAS, the City desires to acquire certain property rights, namely a right of The Portland Company to maintain a rail connection from the works of The Portland Company or its successors and assigns by one or two railroad tracks with tracks of the Grand Trunk Railroad or its predecessors, successors and assigns, leading to its station and building in such manner as shall be suited to the convenience of both The Portland Company, its successors and assigns and the railway, its predecessors, successors and assigns, which right may cross over certain city-owned land described by metes and bounds in Attachment 1 hereto, which land is located in the vicinity of India Street, Commercial Street and Fore Street as shown on the plan depicted on Attachment A hereto, said right to be acquired so that the city-owned land can be used for the construction of a municipal road, to create public parking on a nearby lot and for economic development; and

WHEREAS, said property rights are currently owned by The Portland Company all as hereinafter set forth; and

WHEREAS, the City Council has decided to acquire said property rights through the exercise of the power of eminent domain; and

WHEREAS, pursuant to 23 M.R.S.A. § 3022, 30-A M.R.S.A § 3101 and § 5253 the Municipal Officers of the Municipality of Portland, Maine, having given notices of their intention to lay out a town way/city street and to condemn the property described above by posting the two notices at least seven days in advance in two public places in the Municipality, at the Maine District Court at 142 Federal Street in Portland and at the Clerk’s Office at Portland City Hall at 389 Congress Street, and in the vicinity of the property, and by serving these notices by in-hand delivery to the owner of record and having met for this purpose in accordance with the notices and determined that public exigency requires the immediate taking of the property, do hereby take the rights described herein of The Portland Company over the city-owned property in accordance with the following findings and order.

FINDINGS

The City Council hereby finds and determines that:

- (a) The City owns the land shown on Attachment A hereto and described by metes and bounds in Attachment 1 hereto.
- (b) The Portland Company owns the following right which may cross over the city-owned land described in (a) above in an undescribed location on that land.

A right to maintain a rail connection from the works of The Portland Company or its successors and assigns by one or two railroad tracks with tracks of the Grand Trunk Railroad or its predecessors, successors, and assigns leading to its station and building in such manner as shall be suited to the convenience of both The Portland Company, its successors and assigns and the Grand Trunk Railroad, its predecessors, successors, and assigns.

Which right is referenced in a deed from the Atlantic and St. Lawrence Railroad Company and the Grand Trunk Railway Company of Canada to The Portland Company dated October 25, 1865 and recorded in the Cumberland County Registry of Deeds in Book 336, Page 338, and a deed from The Portland Company to Atlantic and St. Lawrence Railroad dated December 2, 1865 and recorded in the Cumberland County Registry of Deeds in Book 336, Page 341 all as shown on Attachment 2. This right is further referenced in a decision of Bruce Leddy, Esquire, a specially assigned hearing officer in the case of Canadian National Railway v. Phineas Sprague, Sr. and Portland Yacht Services, Inc., and is therein described as an “appurtenant easement or right to maintain a connection from the works of the latter (The Portland Company) by one or two tracks with tracks of the Railroad Company leading to its station building in such manner as shall be suited to the convenience of both companies.”

- (c) The above described rights of The Portland Company, which are the subject of this condemnation, are in abeyance at this time because the train station to which the rights refer was demolished many years ago and the site on which it was located is permanently occupied by a sewage pumping station owned and operated by the Portland Water District.

(d) It is not now in the best interest of the public or the City, nor will it be in the interest of the public or the City in the future to construct a railroad station on any of the city-owned property described in Attachment 1 hereto, and it is the intention of the City Council to place a condition on the sale of any portion of that property so that a railroad station cannot be constructed on it.

(e) It is also the intention of the Portland City Council to prohibit any rail crossings of the street currently known as the Hancock Street Extension, which street is more particularly described in Attachment 3 hereto and as shown on Attachment A hereto and the creation of which is one of the purposes of this condemnation. Some of the reasons for prohibiting rail crossings of the Hancock Street Extension are described in a letter from the City's Traffic Engineer, Thomas Errico, shown as Attachment 4 hereto.

(f) The public exigency requires the immediate taking of the property interest of The Portland Company in order to enable the City to use its city-owned property for the public uses recited below in relation to the referenced parcels that will be created out of the city-owned land described in Attachment 1 and shown on Attachment A.

(g) Parcel A-1

(1) The creation of a town way/city street currently known as the Hancock Street Extension shown as Parcel A-1 and Parcel B on Attachment A hereto is necessary and serves a public purpose.

(2) The acquisition of The Portland Company's rights as they may exist on Parcel A-1 is necessary before the Hancock Street Extension can be built.

(3) The amount of damages determined by the City Council to result to The Portland Company, the Mortgagees of Record and the Tenants of Record for the taking of such of The Portland Company's rights as may exist over Parcel A-1 is \$1 as shown and determined in the appraisal done for the City by Patricia Amidon of Amidon Appraisal Company dated June 8, 2005, which appraisal is hereby incorporated into this order and the record of these proceedings.

(h) Parcel B

(1) The City has a proposed Purchase and Sale Agreement with Riverwalk, LLC pursuant to which it will acquire the property necessary to construct that portion of the Hancock Street Extension which will be on Parcel B as shown on Attachment A hereto and therefore no condemnation of that property is necessary at this time.

(2) The conveyance by Riverwalk, LLC to the City of Parcel B is contingent on conveyance of city property on Parcel A-2 to Riverwalk, LLC.

(i) Parcel A-2

(1) The acquisition of The Portland Company's rights on Parcel A-2 as shown on Attachment 5 are necessary before the Hancock Street Extension can be built. Those

rights as they may exist on Parcel A-2 will be severed by the construction of the Hancock Street Extension from the rights that may exist in The Portland Company on Parcel A-3. Therefore, the rights on Parcel A-2 will be rendered without value. As a result, the City must condemn The Portland Company's rights on Parcel A-2 and pay for them as a matter of law.

(2) The acquisition of The Portland Company's property rights on Parcel A-2 are necessary and essential to the construction of the Hancock Street Extension on Parcel B as described above because Parcel B will not be transferred to the City by Riverwalk, LLC unless Parcel A-2 is transferred to Riverwalk, LLC free of The Portland Company's rail connection rights.

(3) The acquisition of The Portland Company's property rights on Parcel A-2 are necessary and essential to the construction of a parking garage on nearby property owned by Riverwalk, LLC, which garage will include public parking. The parking garage will not be built if the City cannot transfer Parcel A-2 free and clear of the rights of The Portland Company to Riverwalk, LLC. As evidence of this reference is hereby made to the proposed Purchase and Sale Agreements between the City and Riverwalk, LLC attached hereto as Attachments 6 and 7, and a Master Parking Lease attached as Attachment 8.

(4) The proposed expansion and development of an ocean terminal, docks, and related structures and facilities known as the Ocean Gateway facility and other economic development projects in the immediate area of the condemnation have resulted in the need to create additional parking, including public parking and the City has entered into an agreement with Riverwalk, LLC, a private property owner and developer, to create that parking which agreement is contingent on the ability of the City to transfer Parcel A-2 to Riverwalk, LLC free and clear of The Portland Company's rail connection rights. The need for a public parking garage by the City is substantiated in RFP #4504 entitled Eastern Waterfront Garage Proposal attached hereto as Attachment 9.

(5) The City does not have the financial capacity at this time to construct the parking garage necessary to serve the additional parking demand that currently exists and will exist in the near future in the area of the condemnation. For this reason the City has entered into its agreement for the construction of that garage with Riverwalk, LLC, with a Master Lease of 310 parking spaces by the City.

(6) The acquisition of The Portland Company's rights on Parcel A-2 is necessary and essential for the economic development project to be constructed by Riverwalk, LLC on Parcel A-2 pursuant to its Purchase and Sale Agreement with the City and other documents, including but not limited to, a Credit Enhancement Agreement and the creation of a municipal development district on that property, which development will include a hotel, condominiums, retail space, and public space in the form of an open patio as well as the previously noted parking garage, as shown on Attachment 10.

(7) The amount of damages determined by the City Council to result to The Portland Company, the Mortgagees of Record and the Tenants of Record for the taking of such of The Portland Company's rights as may exist over Parcel A-1 is \$1 as shown and

determined in the appraisal done for the City by Patricia Amidon of Amidon Appraisal Company dated June 8, 2005, which appraisal is hereby incorporated into this order and the record of these proceedings.

(j) Parcel A-3

(1) The acquisition of The Portland Company's rights such as they may exist on Parcel A-3 as described in Attachment 11 is necessary so that economic development can occur on that parcel.

(2) The existence of The Portland Company's rights on Parcel A-3 make it impossible to market the City's property for economic development as those rights effectively prevent the construction of any buildings or improvements on Parcel A-3 and further impede the ability of developers to borrow money from lending institutions for the creation of structures and improvements by clouding the title to the City's property.

(3) The amount of damages determined by the City Council to result to The Portland Company, the Mortgagees of Record and Tenants of Record for the taking of such of The Portland Company's rights as may exist over Parcel A-3 is \$5,000 as shown and determined in the appraisal done for the City by Patricia Amidon of Amidon Appraisal Company dated June 8, 2005, which appraisal is hereby incorporated into this order and the record of these proceedings.

(k) The total damages in the amount of \$5,002 determined by the City Council to result to The Portland Company, the Mortgagees of Record and the Tenants of Record for the rights over the city-owned property is the reasonable value of those rights and represents the current fair market value of those rights for The Portland Company, the Mortgagees of Record and the Tenants of Record.

(l) The record owner of the property right described in Attachment 1 and shown on Attachment A is The Portland Company. Other persons having an interest in such real estate and the nature of those interests are as follows:

- People's Heritage Bank - Mortgagee, its Successors and Assigns
- The Phineas Sprague Trust – 1965, Mortgagee
- Portland Yacht Services, Inc. – Tenant
- The Trust for the Preservation of Maine Industrial History and Technology – Tenant

(m) The City Council of the City of Portland hereby finds and determines that it is in the best interest of its citizens to acquire the previously described rail connection rights of The Portland Company by exercise of the power of eminent domain, which authority is granted to the City Council of the City of Portland pursuant to the laws of the State of Maine, including without limitation, 23 M.R.S.A. § 3023, 30-A M.R.S.A. § 3101 and § 5253.

ORDERED, Based upon the above declarations and findings, the City Council hereby orders that the previously described interest of The Portland Company in the previously described real estate of the City and the interests of the other identified parties is hereby taken by power of eminent domain as conferred upon the City by 23 M.R.S.A. §3023, 30-A M.R.S.A. §3101 and §5253;

BE IT FURTHER ORDERED, The City Council hereby orders and directs that this Condemnation Order be filed with the City Clerk and that upon its effective date, a copy thereof be served upon the record owner and the Mortgagees of Record; and that a check in the amount of \$5,000 made payable to The Portland Company, and the Mortgagees of Record be delivered to Mr. Phineas Sprague in his capacity as President of The Portland Company.

AND BE IT FURTHER ORDERED, The City Clerk is hereby directed to cause an attested copy of this Order and Attachment 1 and Attachment A hereto to be filed and recorded in the Cumberland County Registry of Deeds.

Dated this ____ day of _____, 2005

Mayor Jill Duson

Karen Geraghty, City Councilor

Cheryl Leeman, City Councilor

Peter O'Donnell, City Councilor

James Cohen, City Councilor

Donna Carr, City Councilor

William Gorham, City Councilor

James Cloutier, City Councilor

Nick Mavodones, Jr., City Councilor