

Order 225-12/13

Passage: 5/6/13 8-0 (Leeman absent)

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

JOHN R. COYNE (5)  
JOHN M. ANTON (A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES (A/L)

**ORDER OF CONDEMNATION**  
**PURSUANT TO 23 M.R.S.A. § 3022 AND 30-A M.R.S.A. § 3402**  
**RE: Peaks Island Sewer Extension – Diamond Pass**

To the Owner(s) of Record: Bruce T. Astarita and Susan G. Astarita  
402 Eight St.  
Del Mar, CA 92014

To the Mortgagee of Record: Lou Atha Incorporated Trust  
3465 Torrance Blvd, Suite K  
Torrance, CA 90503

**DECLARATION OF PURPOSE**

**WHEREAS**, the City desires to acquire certain property rights, namely the right to install, maintain, replace and remove conduits or pipelines for conveying water, wastewater and storm water, with all necessary fixtures and appurtenances, including electric or other energized control lines, said right and related rights as described herein to be acquired so that properties on the private way known as Diamond Pass on Peaks Island in Portland, Maine can be served by a sewer system operated for the City of Portland by the Portland Water District and fresh water service can be improved in the future if necessary; and

**WHEREAS**, pursuant to 23 M.R.S.A. § 3022 and 30-A M.R.S.A § 3402, the Municipal Officers of the Municipality of Portland, Maine, has given notice of their intention to lay out a public easement and to condemn easement rights in the property described below by posting the notice at least seven days in advance in two public places in the Municipality, at the Maine District Court at 205 Newbury 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 this notice to the owner of record, has met for this purpose in accordance with the notice and determined that public exigency requires the immediate taking of the property and do hereby lay out the way and take certain property in the Municipality for this purpose as follows; and

**WHEREAS**, said property rights are currently owned by Bruce T. Astarita and Susan G. Astarita, all as hereinafter set forth;

**FINDINGS**

A. Bruce T. Astarita and Susan G. Astarita own the property rights described herein.

B. The public exigency required the immediate taking of the property interest of Bruce T. Astarita and Susan G. Astarita described herein, for the public uses described herein.

**NOW, THEREFORE,**

Pursuant to 23 M.R.S.A. § 2022 and 30-A M.R.S.A. § 3402, the Municipal Officers of the Municipality of Portland, Maine **do hereby lay out the easement and take certain property rights in the Municipality, located as follows and for the following purposes:**

A parcel of land on Peaks Island in the City of Portland, Cumberland County, Maine, for the purposes herein stated; the area or location of said easement area being bounded and described as follows:

The road or way known as Diamond Pass and shown on Plan No. 2 of a set of plans entitled “Plan of Land Peak’s Island Maine” and recorded in the Cumberland County Registry of Deeds in Plan Book 8, Page 51. The source of title to the Owners of Record interest in the above road is a deed to the Owners of Record, which is recorded in the Cumberland County Registry of Deeds in Book 10122, Page 292.

The rights of use in, under and over said easement area, hereby condemned and taken are:

1. the right to install, maintain, replace and remove conduits or pipelines for conveying water, wastewater and storm water, with all necessary fixtures and appurtenances, including electric or other energized control lines; and
2. the right to make connections with the conduits or pipelines on land adjacent to the easement area; and
3. the right to trim, cut down, and/or remove bushes, grass, crops, trees or any other vegetation, to such extent as is necessary for any of these purposes in the sole judgment of the City or its assigns; and
4. the right to change the existing surface grade of the easement area as is reasonably necessary for any of these purposes; and
5. the right to enter on the easement area at any and all times for any of these purposes; and
6. the right to enforce the following restrictions, with respect to the easement area:
  - a. No buildings or any other permanent structures shall be allowed, except pavement and utilities.
  - b. No earth shall be removed, no fill may be added, and no other change shall be made to the surface grade of the easement area.

c. No conduits, pipelines or facilities shall be installed within 5 feet of or above any conduit or pipeline installed in the easement area, except that pipelines and conduits may be installed if they cross perpendicular to other conduits and pipelines with a minimum vertical clearance of one foot.

Meaning and intending to describe a portion of said land or rights in land now or formerly of Bruce T. Astarita and Susan G. Astarita (Deed Book 10122, Page 292).

**MOREOVER, REGARDING DAMAGES,**

The Municipal Officers of the Municipality of Portland, Maine determine the amount of damages to be paid to the owner(s) of record as just compensation therefor, as follows:

\$ 233.00 to the Bruce T. Astarita and Susan G. Astarita.

**BE IT ORDERED** that, based upon the above, the previously described interest of Bruce T. Astarita and Susan G. Astarita in the previously described real estate of the City is hereby taken by power of eminent domain as conferred upon the City by 23 M.R.S.A. §3022 and 30-A M.R.S.A. §3402; and

**BE IT FURTHER ORDERED** that the City Clerk cause an attested copy of this Order to be filed and recorded in the Cumberland County Registry of Deeds.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

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Mayor Michael F. Brennan

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John R. Coyne, City Councilor

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Cheryl A. Leeman, City Councilor

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Kevin J. Donoghue, City Councilor

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David A. Marshall, City Councilor

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Nicholas M. Mavodones, City Councilor

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John M. Anton, City Councilor

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Jill C. Duson, City Councilor

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Edward J. Suslovic, City Councilor