



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

#481-22
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney Heath
Director

MEMORANDUM

TO: Carol Moore, City Clerk
Cassidy Flynn, Deputy City Clerk

FROM: Barney Heath, Director, Department of Planning and Development
Katie Whewell, Chief Planner

DATE: October 6, 2022

SUBJ: Request for Grant of Easement for Driveway Installation at 181-183 Jackson Road

The Commissioner of Public Works and City Engineer have advised the Mayor that the property owner at 181-183 Jackson Road would like to construct and maintain a new paved driveway via an easement across City property (the existing Laundry Brook culvert).

In accordance with City Ordinance Section 2-7, the Director of Planning & Development is required to "submit a written report to the City Clerk with recommendations as to whether the City property sought should be declared unnecessary for all municipal purposes".

Subject to but not limited to the following considerations (listed below), I would recommend the property be made available for disposition pursuant to the City's reuse ordinance:

- All of the pre-conditions and concerns outlined by the Department of Public Works in their memorandum dated September 15, 2022 be satisfactorily addressed.
- The City Law Department requirements for granting an easement be met.
- The Reuse Committee make a determination of appropriate value for the granting of the easement.



RUTHANNE FULLER
MAYOR

City of Newton, Massachusetts
Office of the Mayor

RECEIVED
2022 SEP 26 PM 4:37

CITY CLERK
NEWTON, MA. 02459

Telephone
(617) 796-1100

Telefax
(617) 796-1113

TDD
(617) 796-1089

E-mail
rfuller@newtonma.gov

September 26, 2022

Honorable City Council
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

Councilors:

I respectfully submit a docket item to your Honorable Council declaring the easement rights on the parcel of City land in front of No. 181-183 Jackson Road as surplus, and to propose that those rights be docketed for discussion before the Real Property Re-Use Committee according to re-use process set in Section 2-7 of the City Ordinances.

The owners at 181-183 Jackson Road wish to construct and maintain a new paved driveway over the existing Laundry Brook culvert, adjacent to Jackson Road. The City of Newton owns the parcel of land in front of No.181-183 Jackson Road running parallel to Jackson Road with a width of approximately 57 feet under which flows the culverted Laundry Brook. Access to 181-183 Jackson Road is currently available via an unnamed way off Wiltshire Road.

Homes along Jackson Road on the west have easement rights with the City of Newton and have constructed driveways. To a layperson, the front yards of these homes appear to be just that, front yards to the homes. In fact, the City of Newton owns this land and underneath is the buried, culverted Laundry Brook. The City of Newton will continue to own the property and the property owner of 181-183 Jackson Road will have an easement for a driveway.

The Engineering Division has previously reviewed a televised portion of the culvert conducted by engineering consultants Woodard and Curran. While the reinforced concrete culvert constructed in 1933 appears to be good condition, any transfer of easement rights from the City should include indemnification and release of the City for any structural failures, damage to the driveway caused by the City's repairs/maintenance of the culvert, and restrictions for use over this water course to preclude any violations of the federal Clean Water Act or any other environmental law or regulation.

The land is under the control of DPW. Commissioner Jim McGonagle's memo (attached) states that granting of this easement does not have a current or future service impact on the city's property. The granting of the easement would be restricted to construction of a paved driveway only, with a no-build provision. All proposed driveway construction would require a permit from the Engineering Division, and it would be subject to current zoning laws.

The proposed easement plan was prepared by VTP Associates, dated July 15, 2021, and is attached for reference. Also, see letter from Attorneys Schlesinger and Buchbinder LLP (Franklin J. Schwarzer, Esq.) dated September 20, 2021.

An appraisal of the proposed easement was prepared on behalf of the owners, by Matthew Montgomery of Compass, dated March 14, 2022, and is also attached.

The property owner will provide the necessary final easement plan and any technical plans and drawings required by DPW. The Law Department will draft an easement instrument, which will be recorded by the property owner along with a Mylar plan after the grant has been approved. The Council must authorize the Mayor to grant the easement.

Thank you for your consideration of this matter.

Sincerely,



Ruthanne Fuller
Mayor

City of Newton

James McGonagle
Commissioner

DEPARTMENT OF PUBLIC WORKS

OFFICE OF THE COMMISSIONER
1000 Commonwealth Avenue
Newton Centre, MA 02459-1449

Ruthanne Fuller
Mayor

Date: September 15, 2022

To: Jonathan Yeo, Chief Operating Officer
Maureen Lemieux, Chief of Staff

From: James McGonagle, Commissioner of Public Works
Louis M. Taverna, P.E., City Engineer

Subject: Request for Grant of Easement for Driveway Installation
181-183 Jackson Road and Adjacent City Property

The owners at 181-183 Jackson Road wish to construct and maintain a new paved driveway over the existing Laundry Brook culvert, adjacent to Jackson Road. The purpose of this docket memorandum is to declare the easement rights on the parcel of City land in front of No. 181-183 Jackson Road as surplus, and to propose that those rights be docketed for discussion before the Real Property Re-Use Committee of the Honorable City Council.

The City of Newton owns the parcel of land in front of No. 181-183 Jackson Road running parallel to Jackson Road with a width of approximately 57 feet under which flows the culverted Laundry Brook. Access to 181-183 Jackson Road is currently available via an unnamed way off Wiltshire Road.

In making my determination, Engineering Division has previously reviewed a televised portion of the culvert conducted by engineering consultants Woodard and Curran. While the reinforced concrete culvert constructed in 1933 appears to be good condition, any transfer of easement rights from the City should include indemnification and release of the City for any structural failures, damage to the driveway caused by the City's repairs/maintenance of the culvert, and restrictions for use over this water course to preclude any violations of the federal Clean Water Act or any other environmental law or regulation.

It is my opinion that such granting of this easement does not have a current or future service impact on the city's property. The granting of the easement would be restricted to construction of a paved driveway only, with a no-build provision. All proposed driveway construction would require a permit from the Engineering Division, and it would be subject to current zoning laws.

The proposed easement plan was prepared by VTP Associates, dated July 15, 2021, and is attached for reference. Also, see letter from Attorneys Schlesinger and Buchbinder LLP (Franklin J. Schwarzer, Esq.) dated September 20, 2021.

An appraisal of the proposed easement was prepared on behalf of the owners, by Matthew Montgomery of Compass, dated March 14, 2022, and is also attached.

The land is under the control of the department of public works. For the city to grant an easement, the easement area must be declared available for disposition and go through the re-use process under Section 2-7 of the Ordinances.

The declaration that the land is available for the disposition as an easement must technically come from the Mayor. However, since the Mayor's involvement is only by virtue of the land's status and the purpose of the disposition is for an easement for a driveway, the DPW will work with the Mayor's office to initiate and work through the Section 2-7 process.

The property owner will provide the necessary final easement plan and any technical plans and drawings required by DPW. The Law Department will draft an easement instrument, which will be recorded by the property owner along with a Mylar plan after the grant has been approved. The Council must authorize the Mayor to grant the easement.

If you are in concurrence about releasing the easement rights in front of 181-183 Jackson Road, I would support docketing of this item before the Honorable City Council's Real Property Re-Use Committee.

cc: A. Guliani, Law Department
A. Lee, Law Department
C. Moore, City Clerk
S. Sullivan, Deputy Commissioner DPW
J. Daghlian, Associate City Engineer
B. Heath, Director of Planning

COMPASS

March 14, 2022
Franklin J. Schwarzer, Esquire
Schlesinger and Buchbinder, LLP
1200 Walnut Street
Newton, MA 02461

**Re: 181-183 Jackson Road – Opinion as to Value of Proposed Driveway
Easement**

Dear Mr. Schwarzer:

In connection with your client seeking a driveway easement over land owned by the City of Newton at 195 Jackson Road, you have requested an opinion with respect to the monetary value of such easement. In rendering the opinions herein contained, I have relied on my experience as a licensed real estate salesperson in Newton for the past 20 years and have examined such documents and materials as I have deemed relevant to the opinions set forth below including:

1. Plan entitled "Easement Plan, Newton, Massachusetts as 181-183 Jackson Road" dated July 15, 2021 by VTP Associates Inc. (the "Easement Plan")
2. City of Newton Board of Assessors' Property Record Card for 195 Jackson Road (the "Property Record Card").

Based upon the Easement Plan, I understand that the proposed driveway easement would be 20' wide and would contain 917.07 square feet of land. According to the Property Record Card, 195 Jackson Road, which the proposed driveway easement would cross, contains 15,789 square feet of land. The City of Newton Assessors currently values 195 Jackson Road at \$74,200 according to the Property Record Card.

In determining a value for the proposed driveway easement, I have taken the total area of the proposed driveway easement and divided it by the total area of 195 Jackson Road. This is reflected in the following equation: $917.07 / 15,789 = .058$.

I then took the resulting ratio, and multiplied it by the assessed value of 195 Jackson Road. This is reflected in the following equation: $.58 \times 74,200 = \$4,309.75$.

Thus, if the City were to sell the land area of the proposed driveway easement in fee simple, its value would equate to \$4,309.75.

However, as noted previously, the area of the proposed easement is not being sold, is not separately developable, and is being used only for a driveway easement. There is no active market for these types of easements that makes a precise valuation possible. As 195 Jackson Road itself is undevelopable, is already burdened with a driveway easement for a neighboring property, and is not otherwise available for any other marketable use, my opinion, based on my knowledge of the real estate market, is that the actual monetary value of your client's proposed driveway easement to the City is nominal.

COMPASS

Very truly yours,

DocuSigned by:
By: 
8BA6BFF158E6415...
Matthew Montgomery
Partner