

**COASTAL RESOURCES MANAGEMENT COUNCIL
RIGHTS-OF-WAY SUBCOMMITTEE
REPORT AND RECOMMENDATION
TO THE FULL COUNCIL**

I. INTRODUCTION

CRMC’s Rights-of-Way Subcommittee, on January 5, 2022, reviewed five (5) potential rights-of-way in the Town of Portsmouth (“Town”) for designation as public rights-of-way to the tidal waters of the State of Rhode Island. At that meeting, the Rights-of-Way Subcommittee voted to schedule a public hearing on the matter. On April 21, 2022, the Rights-of-Way Subcommittee held a public hearing regarding the proposed rights-of-way in the Town of Portsmouth, at Portsmouth Town Hall, 2200 East Main Road. After due consideration, the Rights-of-Way Subcommittee recommends that the following five Rights-of-Ways in Portsmouth, Rhode Island be designated as public rights-of-way: (1) Beach Street at Cedar Avenue; (2) Cedar Avenue; (3) Fountain Avenue; (4) East Power Street; and (5) Cory’s Lane in Portsmouth.

II. LEGAL REVIEW

A. Beach Street at Cedar Avenue

1. Facts

On January 4, 2021, the Town submitted a letter to CRMC requesting that CRMC designate a portion of Beach Street as a CRMC right-of-way. The letter indicates that CRMC signage is displayed in the Beach Street right-of-way, however, the right-of-way has not been officially designated by CRMC. The letter also indicates that neighbors have assumed the signage is correct and have “enjoyed un-obstructed access to the shore.”

Additionally, the Town submitted to CRMC deeds for the properties abutting the proposed right-of-way. The deed for the property north of the right-of-way (Tax Assessor’s Map 21 Lot 33) indicates that that property abuts a “six (6) foot way.” The deed for the property

south of the right-of-way (Tax Assessor's Map 21 Lot 34) indicates that that property abuts a "six foot way." Furthermore, the Town submitted a portion of Tax Assessor's Map 21, which depicts a strip of land running between the aforementioned lots, and labeled "6' R/W."

2. Conclusion

A review of the evidence produced by the Town indicates that there has been a valid dedication of private land to the public for use as a right-of-way to the shoreline. First, a review of the tax assessor's map and the deeds from the properties abutting the land in question reveal that there has been an incipient dedication of the land to the public. Each deed describes an area of land that has not been designated as a lot, but rather, as a "way." The preservation of this strip of land, and description, as a "way" is strong evidence of an incipient dedication. Second, there has been a public acceptance of this right-of-way through public use; the Town has represented that the neighbors have used this right-of-way for access to the water. Consequently, given the evidence of incipient dedication and public acceptance, the Rights-of-Way Subcommittee concludes that there has been a valid dedication of private land to the public.

B. Cedar Avenue

1. Facts

On January 4, 2021 the Town submitted a letter to CRMC requesting that CRMC designate the Cedar Avenue right-of-way as a CRMC right-of-way. The letter indicates that CRMC signage is displayed in the Cedar Avenue right-of-way, however, the right-of-way has not been officially designated by CRMC. The letter also indicates that neighbors have assumed the signage is correct and have "enjoyed un-obstructed access to the shore."

Additionally, the Town submitted to CRMC deeds for the properties abutting the proposed right-of-way. The deed for the property north of the right-of-way (Tax Assessor's Map 21 Lot 47) indicates that that property is bounded by "a twenty (20) foot way." The deed for the property south of the right-of-way (Tax Assessor's Map 21 Lot 48) indicates that that property is

bounded by “a twenty (20) foot right of way.” Furthermore, the Town submitted a portion of Tax Assessor’s Map 21, which depicts a strip of land running between the aforementioned lots and labeled “20’ R/W.”

2. Conclusion

There has been a valid dedication of private land to the public in the case of the aforementioned land on Cedar Avenue. First, the Town’s tax assessor’s map, as well as the deeds of the abutting properties, demonstrate that there has been an incipient dedication of the subject land to the public. One deed describes the subject land as “a twenty (20) foot way” and the other describes the subject land as a “a twenty (20) foot right of way.” The preservation of this strip of land, and description, as a “way” is strong evidence of an incipient dedication. Second, there has been a public acceptance of this right-of-way through public use; the Town has represented that the neighbors have used this right-of-way for access to the water. Consequently, given the evidence of incipient dedication and public acceptance, the Rights-of-Way Subcommittee concludes that there has been a valid dedication of private land to the public.

C. Fountain Avenue

1. Facts

On January 4, 2021 the Town submitted a letter to CRMC requesting that CRMC designate Fountain Avenue as a CRMC right-of-way. The letter indicates that CRMC signage is displayed in the Fountain Avenue right-of-way, however, the right-of-way has not been officially designated by CRMC. The letter also indicates that neighbors have assumed the signage is correct and have “enjoyed un-obstructed access to the shore.”

Additionally, the Town submitted to CRMC deeds for the properties abutting the proposed right-of-way. The deed for the property east of the right-of-way (Tax Assessor’s Map 21 Lot 168) indicates that that property is bounded by “a right of way.” The deed for the property west of the right-of-way (Tax Assessor’s Map 21 Lot 169) indicates that that property is bounded

by “a proposed thirty (30) foot way.” Furthermore, the Town submitted a portion of Tax Assessor's Map 21, which depicts a strip of land running between the aforementioned lots and labeled “RIGHT OF WAY.”

2. Conclusion

There has been a valid dedication of private land to the public in the case of the aforementioned land on Fountain Avenue. First, the Town’s tax assessor’s map, as well as the deeds of the abutting properties, demonstrate that there has been an incipient dedication of the subject land to the public. One deed describes the subject land as “a right of way” and the other describes the subject land as “a proposed thirty (30) foot way.” The preservation of this strip of land, and description, as a “way” is strong evidence of an incipient dedication. Second, there has been a public acceptance of this right-of-way through public use; the Town has represented that the neighbors have used this right-of-way for access to the water. Consequently, given the evidence of incipient dedication and public acceptance, the Rights-of-Way Subcommittee concludes that there has been a valid dedication of private land to the public.

D. East Power Street

1. Facts

East Power Street is shown on Tax Assessor's Map 31 in the bottom right-hand corner. This street runs from Power Street to the Sakonnet River, with Power Street to the west and the Sakonnet River to the east. East Power Street is bounded to north by Tax Assessor’s lot 53 and bounded to the south by lots 54 and 56. Lot 53 is owned by the Town, while lots 54 and 56 are owned by private parties. The deed to lot 54 indicates that the property is “bounded on the north by East Power Street, so-called.” The deed to lot 56 indicates that the property is bounded northerly by East Power Street.

2. Conclusion

Given that the Tax Assessor’s Map 31 shows East Power Street running to Narragansett Bay and that the deeds to the properties south of East Power Street indicate that East Power

Street runs on each properties' northern boundary, the inescapable conclusion is that East Power Street is a public right-of-way to the tidal waters of the state.

E. Cory's Lane

1. Facts

Cory's Lane is shown on Tax Assessor's Map 32 in the bottom left-hand corner. The map shows Cory's Lane crossing train tracks and continuing to run until it meets the Narragansett Bay. The land to the north is owned by Portsmouth Abbey and the land to the south is owned by Preservation Society of Newport. Additionally, Cory's Lane appears on the Town's list of public streets. Cory's Lane functions as the boundary between Portsmouth Abbey's property and the Preservation Society of Newport's property.

2. Conclusion

Given that Cory's Lane appears on the list of public streets for the Town of Portsmouth, and no records can be found to the contrary, Cory's Lane is a public right-of-way and should be designated as a public right-of-way to the tidal waters of the state.

III. PUBLIC HEARING

The Rights-of-Way Subcommittee held a meeting on April 21, 2022, pursuant to the Administrative Procedures Act, at which time the public was invited to comment on the five (5) proposed rights-of-way. The Portsmouth Harbor Commissioner, Abigail Brown, stated that the Harbor Commission agrees that all of the rights-of-ways listed should be designated as such. Portsmouth's Town Planner, Gary Crosby, explained that three of the rights-of-way [Beach Street at Cedar Avenue, Cedar Avenue, and Fountain Avenue] are not CRMC rights-of-way, yet have CRMC signs. Mr. Crosby indicated that CRMC signs have been there for at least two decades. Mr. Crosby concluded that neighborhoods have been using these rights-of-way with the confidence that they are CRMC rights-of-way.

The Subcommittee solicited comments from the public in regard to the proposed CRMC designation of the Beach Street at Cedar Avenue right-of-way, the Cedar Avenue right-of-way, and the Fountain Avenue right-of-way.

- Sharon Macfarlane identified herself for public comment. Ms. Macfarlane stated that she was pleased that the right-of-way [Beach Street at Cedar Avenue] was there but was concerned that it is very dangerous at the bottom because of rocks and drainage from the road.
- Jack Plourde identified himself for public comment. Mr. Plourde commented on a different right-of-way on Fountain Avenue (on the corner of Thorpe Street and Fountain Avenue) that no longer exists to his knowledge.

The Subcommittee asked if there were any additional comments in relation to the first three proposed rights-of-way; no member of the public came forward at that time.

The Subcommittee solicited comments from the public in regard to the proposed CRMC designation of the East Power Street as a CRMC right-of-way.

- Philip Young identified himself for public comment. He indicated that he was concerned about involving the State with rights-of-ways that have been controlled by the Town. CRMC Legal Counsel addressed Mr. Young's concern by stating that the process was a designation process and that title does not transfer from the Town to the State.
- Mr. Young continued his comments by reading a letter that he had prepared. He indicated that he had concerns about the parking on East Power Street. Mr. Young stated that there is enough parking for ten (10) cars on East Power Street. He stated that the use of the street can be very heavy and it may become heavier if

CRMC puts the East Power Street right-of-way on the CRMC website. Mr. Young stated that the Town's limitation on when cars are allowed to be parked on East Power Street has helped with noise. Mr. Young indicated that the Town only permits parking on one side of the street so that emergency vehicles have access to the end of the street. Mr. Young further stated that the Town prohibits parking at the end of the East Power Street to deter bottlenecks. Mr. Young summarized his comments by stating that East Power Street is already a busy spot and that it may get worse if it is put on CRMC's rights-of-way map.

The Subcommittee asked if there were any additional comments in regard to East Power Street; no member of the public came forward at that time.

The Subcommittee solicited comments from the public regarding the proposed designation of Cory's Lane as a CRMC right-of-way.

- Mike Jarbeau identified himself for public comment. Mr. Jarbeau stated that he was a representative from Save the Bay. He indicated that Save the Bay supported the adoption of all five rights-of-way.
- Tom Grieb identified himself for public comment. Mr. Grieb indicated that he had concerns about the railroad tracks near Cory's Lane. He stated that "rail explorers" [a rail explorer is essentially a four (4) wheeled bike that rides on railroad tracks] ride on the railroad tracks near this spot, and that it is important that people are protected from the rail explorers that go up and down the tracks. Mr. Grieb asserted that there can be as many as 200 rail explorers on a Saturday afternoon. Mr. Grieb stated that there ought to be some way of making sure that people don't walk out in front of the rail explorers.

IV. CONCLUSION

After consideration of the evidence, and after hearing from the public, the recommendation from the Rights-of-Way Subcommittee to the full Council is to designate the five rights-of-ways described above and located in the Town of Portsmouth as CRMC rights-of-way to the tidal waters of the State of Rhode Island.

Raymond Coia, Chair

Patricia Reynolds

Ronald Gagnon