



CITY OF CONCORD

New Hampshire's Main Street™

**Legal Department
City Solicitor's Office**

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REPORT TO MAYOR AND THE CITY COUNCIL

FROM: Danielle Pacik, Deputy City Solicitor

DATE: June 27, 2023

SUBJECT: Termination of Water Reservoir/Fire Pond Easement dated June 5, 1935, recorded at Merrimack County Registry of Deeds, Book 539, Page 524

Recommendation

Accept this report recommending that the City Manager be authorized to terminate an easement which granted the City the right to construct and maintain a water reservoir/fire pond on Old Loudon Road.

Background

The City was recently contacted by legal counsel for Mark and Christine Bogacz, the owners of 103 Old Loudon Road. Mark and Christine Bogacz are in the process of selling property located at 103 Old Loudon Road to Dakota Partners, Inc. Dakota Partners, Inc. is proposing to construct a multi-family development on the site.

During a title search conducted on behalf of Dakota Partners, Inc., it was discovered that an easement for the construction and maintenance of a water reservoir/fire pond was granted to the City by the prior owner of a lot that subsequently became 103 Old Loudon Road and 111 Old Loudon Road. More specifically, Almah Leavitt granted an easement to the City on June 5, 1935, which was recorded at the Merrimack County Registry of Deeds at Book 539, Page 524 on June 20, 1935. The easement granted to the City "full permission to use such portion of my land and any stream thereon as may be necessary for the construction and maintenance of a water reservoir. This easement shall be effective so long as any reservoir shall be needed and used."

In 1997, General Services notified Mark Bogacz that the fire pond on Old Loudon Road was no longer needed. Mr. Bogacz was also notified that the wooden boards used for a dam would be removed and the pond would be allowed to return to a seasonal flow stream.

James Major, the Highway and Utilities Division Superintendent recently inspected the site and confirmed that the wooden boards were removed and the fire pond no longer exists. He confirmed that General Services has no need to retain the easement.

Fire Chief John Chisolm has also confirmed that the easement for a fire pond is no longer needed because there is now a water line and fire hydrants in the area.

It is recommended that the City formally terminate the easement because it is no longer being used or needed. The City Solicitor's office will work with legal counsel for Mark and Christine Bogacz to prepare and file a notice terminating the easement at the Merrimack County Registry of Deeds.