



CITY OF CONCORD

REPORT TO THE MAYOR AND CITY COUNCIL

FROM: Matthew R. Walsh, Deputy City Manager – Development

DATE: October 14, 2025

SUBJECT: 31-35 Samuel Drive Pedestrian and Utility Easement

Recommendation:

Accept this report and approve the attached consent resolution authorizing the City Manager to negotiate and accept revised utility and pedestrian easement from NH Housing Revocable Trust and the Kaitz Family Revocable Trust as discussed herein.

Background:

On December 31, 2005, the Planning Board approved a 16-lot subdivision known as Little Pond Estates. On February 24, 2006 the subdivision plat was recorded at the Merrimack County Registry Deeds (MCRD) as Plan #17750. This subdivision is served by Samuel Drive, a City maintained street which was constructed as part of this development. A copy of the subdivision plat is attached.

The Planning Board's approval of this subdivision was conditioned upon the City receiving a 35' wide utility and pedestrian easement over Lots #7 and #8 in the development, as shown on Plan #17750. Said easement, which is held by the City, was recorded at the Merrimack County Registry of Deeds also on February 24, 2006.

The purpose of this easement was to two-fold.

First, the easement facilitated water and sewer service to this development by allowing these utilities to cross Lots #7 and #8 to access City property and thus connect to municipal utilities in Auburn Street.

Secondly, the easement provides pedestrian connectivity from Penacook Street / Samuel Drive over adjacent City property to Auburn Street. Currently, the pedestrian connection is in the form of an unpaved path. However, in the long-term, this trail was envisioned to potentially become a paved public sidewalk.

The size, configuration, and location of the utility and pedestrian easement was intentional due to topographic, wetland and other constraints at the subject properties.

On July 21, 2017, Steven and Deborah Kaitz, via the Kaitz Family Revocable Trust, acquired the single-family residence located at 35 Samuel Drive. (This is Lot #8 on the attached subdivision plan).

On August 30, 2020, Steve Duprey, via NH Housing Revocable Trust, acquired the single-family residence located at 31 Samuel Drive. (This property is Lot #7 on the attached subdivision plan).

On September 4, 2024, the City received a request from Mr. Duprey's attorney seeking to 1) modify the City's 35' utility and pedestrian easement to narrow the pedestrian access rights to a 6' wide path and 2) permission from the City to landscape the cul-de-sac island of Samuel Drive.

In support of his request, Mr. Duprey provided a two-dimension survey plan, which detailed the proposed location of the 6' pedestrian easement. It did not include any utility profiles, topography, or wetlands information. No landscaping plan was provided for the cul-de-sac island.

On November 12, 2024, the City Council referred these requests to the Planning Board, the Transportation Policy Advisory Committee, the Parks and Recreation Advisory Committee, General Services and Community Developments for review.

Discussion:

1) Input from Boards / Committees:

On December 5, 2024, TPAC reviewed this referral. Per their meeting minutes, TPAC's comments were: *"The Committee agreed that 6-feet is likely not enough width and would limit future design of a proper ADA sidewalk/path, keeping in mind the slope of the walkway and cut/fill slopes needed. The Committee also discussed that modifying the easement width would likely not solve the (loitering/demonstration) problem and would be difficult to enforce. The Committee suggested a potential ordinance to restrict loitering within the easement, which would be easier to enforce."*

On January 15, 2025, the Planning Board reviewed this referral and recommended modification of the easement to reduce the width of the pedestrian easement. Unfortunately, at the time of its deliberations, the Planning Board did not have detailed information about utility layouts in relation to the proposed easement location or potential sidewalk design as noted below.

On February 20, 2025, RPAC reviewed this referral request and chose to take no position on this item.

2) Review by City Departments: The Community Development and General Services Departments review these requests.

- a. **Easement Modification:** Both departments agree that if the pedestrian easement area were to be reduced to something less than 35' currently provided, it is important to ensure that a future ADA compliant sidewalk could be viably constructed within the reduced easement area. Additionally, both departments note the existence of the 8" water and sewer mains located within the easement area, and the importance of maintaining minimum soil cover beneath any future sidewalk which may be constructed over these mains to prevent freezing when / if a sidewalk may be constructed in the future.

As such, during the period of April 2025 through August 2025, Mr. Duprey's land use consultants made four iterations of revisions to the proposed revised easement plan. These revisions added critical design information, such as utility profiles for existing water and sewer mains, as well as conceptually design a proposed sidewalk from Samuel Drive to the City's property to demonstrate that the grades of a future sidewalk could be designed in compliance with Americans With Disability Act standards.

On August 19, 2025, the attached design plan was prepared by Mr. Duprey's design team. It demonstrates that the pedestrian easement can be reduced to 10' on the location shown on the attached plan, and that an ADA compliant sidewalk can be developed in said location in the future while simultaneously maintaining required soil coverage over the water and sewer mains. (Area is shown in gray on the Wilcox & Barton Plan)

However, in order for an ADA sidewalk to be viable within the 10' wide easement area, the City will need to secure additional property rights on the Kaitz property located at 35 Samuel Drive for grading and snow storage. On September 25, 2025, the Kaitz confirmed in writing that they would agree to expand the width of the easement area on their property by approximately 10' to accommodate these needs, as shown in the yellow area on the attached graphic.

Therefore, staff recommends approval of the attached resolution authorizing the City Manager to accept a revised easement deed from the property owners for this purpose.

- b. Cul-De-Sac Landscaping: The Community Development and General Services Departments also reviewed the request regarding permission to landscape the Samuel Drive cul-de-sac. Staff notes that no landscaping plan was submitted for the City's review.

Samuel Drive is a public street which is owned and maintained by the City. The island is fully located within the City's highway right-of-way for Samuel Drive.

Presently, the cul-de-sac island is grassed with a few ornamental street trees. It has been in this condition since it was initially constructed in 2006.

A review of as-built construction drawings for Samuel Drive revealed that the cul-de-sac island is encumbered by multiple water lines, as well as an 18' storm drain. Additionally, General Services reports that snow is plowed onto the island during winter operations.

Therefore, staff does not recommend granting permission for private landscaping improvements on the Samuel Drive cul-de-sac island, as such landscaping could reasonably interfere with maintenance / replacement of municipal utilities and snow storage.