

JEWELL & BULGER, P.A.

Attorneys at Law

477 Congress Street, Suite 1104
Portland, ME 04101-3453

T: (207) 774-6665

F: (207) 774-1626

Thomas F. Jewell, Esq.
tjewell@jewellandbulger.com

Paul S. Bulger, Esq.
pbulger@jewellandbulger.com

September 24, 2013

City of Portland
Planning Department
389 Congress Street
Portland, Maine

Re: Application of Redfern Munjoy, LLC regarding Munjoy Heights

Dear Sirs:

I am submitting this letter concerning the application of Redfern Munjoy, LLC, concerning the Munjoy Heights project centered around the abandoned paper street, known as Sheridan Street, being the portion of Sheridan Street north of Walnut Street.

The title interests affecting paper streets include the fee interest, public rights, and the rights of lot owners in the subdivision.

THE FEE INTEREST

The Applicant has under contract all of the land abutting this abandoned paper street. Pursuant to Title 33, MRS Sec. 469-A, there is a presumption that the developer conveyed all of its interest in the "proposed, unaccepted way" to the abutters unless expressly reserved or subsequently filed a notice to preserve the claim to title to the street.

Our title examination has found no reservation of rights or subsequent claim of the developer, therefore, the Applicant, upon acquisition of the parcels, shall acquire the fee title interest to Sheridan Street, north of Walnut Street.

PUBLIC RIGHTS

It appears that the City intended to preserve public rights to this portion of Sheridan Street, but inadvertently released them.

In order to preserve public rights, the City would have had to comply with the provisions of Title 23, MRS Sec. 3032(1-A) by filing an appropriate notice at the Registry of Deed by September 29, 1997. The City did file a notice of the applicable Council Order at the Registry at Book 13326, Page 19. The Notice specify the continuation of Poplar Street (the original name of

Sheridan Street) at Page 26 and referenced a plan recorded at Book 51, Page 297. That particular plan only includes the area of Sheridan Street south of Walnut Street. Sheridan Street, north of Walnut, is shown in an 1802 subdivision plan recorded at deed 36, Page 247. (Please note that both of the registry references are not to Plan references, but to regular Books.) Since the Council order referenced the wrong plan, public rights to Sheridan Street, north of Walnut Street have been abandoned by the City.

This analysis and conclusion regarding the abandonment of public rights have been reviewed and accepted by William Clark at Public Services and Lawrence Walden at Corporation Counsel.

PRIVATE RIGHTS

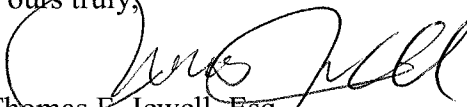
Even though the Applicant holds the fee, and public rights in the way have been abandoned, there are currently extant private rights to utilize this portion of Sheridan Street in all lot owners included in the original subdivision plan recorded at Book 36, Page 247. The Applicant is currently undertaking an action to eliminate these rights pursuant to Title 33 MRS Sec. 3033.

Once Notice is filed, which we expect will happen in the next couple of weeks, owners of lots in the subdivision will have up to one year to file notice of claim. The applicant will own all lots with frontage on this portion of Sheridan Street. All other lots in the subdivision set forth in Book 36, Page 247 have frontage on other streets. In the unlikely event a claim is asserted, we anticipate that the Court would deny it as clearly no contestant would be able to establish that they have suffered “unreasonable limits” on their ability to access a public way, body of water, or common land, as set forth in Title 33, Sec. 3033 (3)(B).

CONCLUSION

We submit that the Applicant has sufficient right, title or interest in the portion of Sheridan Street, north of Walnut Street, to proceed with its application.

Yours truly,


Thomas F. Jewell, Esq.

TFJ/t