

H & A Hopkinson & Abbondanza
A T T O R N E Y S

Please respond to our Bath office

- James A. Hopkinson
- Richard J. Abbondanza
- Caitlin Fullerton DiMillo
- Gerald B. Schofield, Jr.

A TRUE COPY

May 14, 2014

Peter C. Dugas
Anastasia Antonacos
243 State Street
Portland, Maine 04101

VIA MAIL

Re: 97 Cumberland Avenue, Portland, Maine ("Lot 3")

Dear Mr. Dugas and Mrs. Antonacos:

Our office represents James and Carol Pike with respect to their property located at 93 Cumberland Avenue, Portland, Maine. The Pike's own their property by virtue of a deed dated July 31, 2009 and recorded in the Cumberland County Registry of Deeds ("CCRD") in Book 27152, Page 57¹. Their property consists of a three-unit home, and is subject to a right-of-way ("ROW") over the westerly portion of their property.

You own your property located at 97 Cumberland Avenue, Portland, Maine by virtue of a deed dated March 12, 2013 and recorded in the CCRD in Book 30478, Page 113. Your property used to consist of land plus a one-unit home, but, according to my knowledge, is now just land. Additionally, your property was conveyed to you with certain rights over the ROW existing on the Pikes' property. More particularly, your property was conveyed to you (and to your predecessors in title) "[t]ogether with a right of way over, along and upon said lot numbered one (1) as shown on said plot plan², easterly of and adjacent to the premises herein described." The ROW was originally crafted to provide the owners of Lots 2 and 3 access to their properties. At the time of creation, these lots were residential, consisting of one-unit homes. This is clear on the Plan. Your property has its own road frontage on Cumberland Avenue.

It is our understanding that you wish to create a five-unit building ("Building") on your property, and, additionally, plan to provide access to the occupants, guests, and invitees of that Building by virtue of the ROW existing over my client's property. It is unclear to me what other acts or actions you may plan to take with respect to your property, the Building, and the ROW. To the

¹ This property was formerly held only in Carol Pike's name by virtue of a deed dated July 10, 1996 and recorded in the CCRD in Book 12557, Page 204.

² The "plot plan" (hereinafter referred to as the "Plan") is the "Plot Plan Showing Property of Walter A. Gerry at 93 and 97 Cumberland Avenue, Portland, Maine, as drawn by Varney Engineering Company, North Windham, Maine, Dated October 8, 1946" and recorded in the CCRD in Plan Book 32, Page 28. Said Plan refers to the Pikes' lot as Lot 1, your lot as Lot 3, and the third, back lot, as Lot 2 (which also consists of a one-unit home).

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extent you plan to provide access to the Building by virtue of your own privately-created driveway off of Cumberland Avenue, kindly advise me of the same.

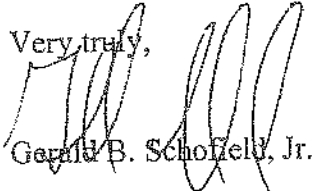
Your ROW over the Pikes' property is not an ownership interest in their land, but, rather, a mere privilege to use their land in a very particular manner. The ROW, by its very nature, involves limited rights to enjoy someone else's property. Your rights in and to the Pikes' property are limited to those rights incidental or necessary to the proper enjoyment of the ROW. The extent and nature of your deeded ROW is determined by the construction of the deeds, and the past use and acts with respect to the ROW. At the time that this ROW was created, Lots 2 and 3 had one-unit homes on them. Your creation of a five-unit Building on your property, to the extent you plan for the inhabitants of the Building to access the Building by virtue of the ROW, will change the very nature of your use of the ROW from residential to commercial. This is use that was not contemplated, nor intended, at the time the ROW was created and deeded.

This letter shall serve as formal notice that the Pikes will consider use of the ROW by the inhabitants, guests, and invitees of the Building to be an overburdening of the ROW, and, as such, a trespass upon their property. If you would like to create a five-unit Building upon your property, that is your prerogative. However, you should arrange for your own driveway access to your property that is not over the ROW. Additionally, you have also told the Pikes' that you are going to pave the ROW. This act will also be considered an overburdening of the ROW, and an unlawful expansion of your rights. To the extent you use the ROW in such an increased capacity, the Pikes' will consider any and all legal and equitable remedies that may be available to them, including, but not limited to, a civil action for trespass and any ensuing damages therefrom. Please refrain from taking any additional action with respect to the ROW until we have had an opportunity to discuss these matters with you and/or your legal counsel.

Finally, the Pike's never received proper notice of the April 14, 2014 neighborhood meeting. The City of Portland Planning and Urban Development Department has been made aware of such failure. It is our hope to resolve this matter amicably now, before any potential issue with respect to the ROW arises after the construction of the proposed Building. Please feel free to contact me at your leisure to let me know your intent with respect to use over and upon the ROW. To the extent that you are represented by counsel, please let me know such that I may contact him or her directly.

Thank you for your anticipated attention and cooperation.

Very truly,


Gerald B. Schofield, Jr., Esq.

Cc: James and Carol Pike