

Marge Schmuckal - Re: Clarification on Fence Installation Through Drainage Easement

From: Marge Schmuckal
To: bvigue1@roadrunner.com
Date: 5/14/2012 12:38 PM
Subject: Re: Clarification on Fence Installation Through Drainage Easement
CC: Barbara Barhydt ; Danielle West-Chuhta

R-3

Hi Bradley & Vanessa,

When the City reviewed this new subdivision on Yale Street, there must have been enough concern over the drainage easement to put strong restrictions on it. The City of Portland is the grantee, not me personally. I am the Zoning Administrator for the City of Portland. Zoning per se would not regulate the fence that you envision.

You may need to amend the approved site plan to revise the drainage easement agreement to propose that it allow fences. It would be a review that would begin in the Planning Department. Such a proposal will need to be reviewed by several Departments in the City before recommending approval or disapproval.

I have copied Barbara Barhydt of the Planning Department on this e-mail.

I hope this helps you,

Marge Schmuckal
 Zoning Administrator

>>> <bvigue1@roadrunner.com> 5/11/2012 12:11 PM >>>

Mrs. Schmuckal,

438-A-16

Our home, located at 118 Yale Street, Portland, Maine, and 14 others located on the same Street are subject to a Drainage Easement Deed (from Wescott & Payson, II, LLC to the City of Portland) filed at the Cumberland County Registry of Deeds under Book 23733, page 39 - see attached (scan0001.jpg and scan0002.jpg).

The Deed pertaining to our parcel of land is 65'x25' for which we pay annual property taxes on. For additional reference, I have included a boundary survey of our Lot (#6) performed by Livingston-Hughes dated 3/23/10 - see attached (scan0003.jpg).

My wife and I have a 5 year old daughter. We would like to construct a backyard fence to provide ourselves peace of mind, comfort, safety, and privacy from unwanted strangers, and dogs (stray or neighboring). Constructing this fence would allow us to safely utilize our backyard to its fullest potential.

Our closest Yale Street neighbors, including Jim Wescott (Yale Court) do not have a problem with our fence proposal.

Could you, the "Grantee", please clarify what this Deed specific verbage, "...provided that no building or any kind of permanent structure, including, but not limited to, walls and fences, shall be erected on said strip by (us)..." means?

My wife and I are having a hard time believing that we cannot put up a fence on property we pay taxes on...and if provided we get the ok to put up the fence, that the City of Portland won't come back demanding we rip/tear or they themselves won't rip/tear down our proposed investment (upwards of \$7,000) because now after 6 years (or in the future) they decide to uphold random maintenance, if there is such a task, of the Easement which may require us to deconstruct (at our cost) the fence temporarily or permanently.

Marge Schmuckal - Clarification on Fence Installation Through Drainage Easement

From: <bviguel@roadrunner.com>
To: "Marge Schmuckal" <MES@portlandmaine.gov>
Date: 5/11/2012 12:17 PM
Subject: Clarification on Fence Installation Through Drainage Easement
CC: "Home" <bviguel@roadrunner.com>
Attachments: 428.JPG; 429.JPG; 430.JPG; scan0001.jpg; scan0002.jpg; scan0003.jpg

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Additionally, I have attached 3 photos:

428.JPG: standing in the backyard facing NW...sticks represent 25' from the capped iron rods set in the backyard
429.JPG: standing in the backyard facing SE...large stick to the left with pink ribbon represents capped iron rod set, and stick to the right represents 25' marker
430.JPG: standing in the backyard facing NW...stick to the right represents capped iron rod set, and stick to the left represents 25' marker

Could you please assist us?

Kindest Regards,

Bradley and Vanessa Vigue
118 Yale Street
Portland, ME

LOCUS DEED REFERENCE :

Deed Book 25330/32

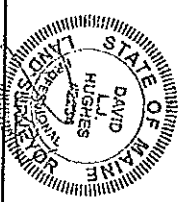
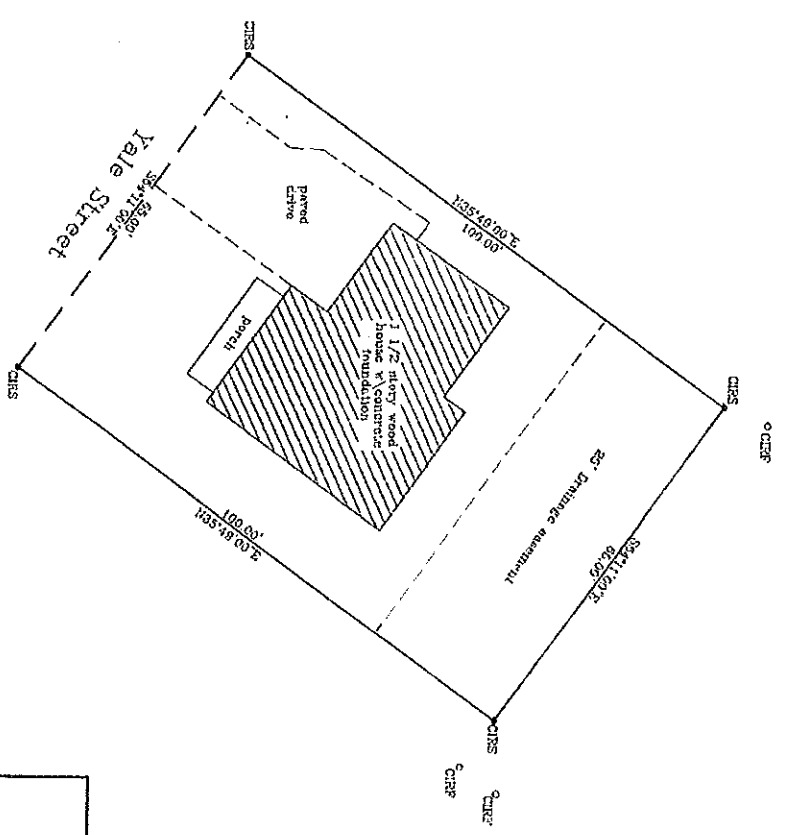
PLAN REFERENCES :

Book 206 Page 153 Lot 6

KEY:

CHS - capped iron rod set
 CRF - capped iron rod found

Graphic Scale 1" = 20'



Sketch Showing Land at
 1:15 Yale Street
 Portland, Maine
 for
 Brad Vigue

Prepared by :
 Livingston-Hughes
 Professional Land Surveying Corporation
 38 Guinea Road Kennebunkport Maine 04046
 Date: 03-23-2010 Drawn: JST Check: LKH Title: M.A. 000-42

DRAINAGE EASEMENT

In consideration of the payment of One Dollar (\$1.00), WESCOTT & PAYSON, II, LLC, a Maine Limited Liability Company, with a mailing address of c/o Michael H. Payson, Jr., 50 Thornhurst Road, Falmouth, Maine 04105 ("Grantor"), hereby grants to the CITY OF PORTLAND, a body politic and corporate with a place of business at 389 Congress Street, Portland, Maine, 04101 ("Grantee"), perpetual easements over the land of the Grantor located off Yale Court, County of Cumberland, State of Maine, as follows:

A drainage easement shown on a recording plat titled Amended Plan of Lots Yale Street, Portland, reference Cumberland County Registry of Deeds Plan Book 206, Page 153, and being delineated and labeled as being twenty feet (20') in width and located on the easterly sideline of Lot 5 and the westerly sideline of property of Barry Moss, reference Cumberland County Registry of Deeds Book 3276, Page 161, all as shown on an Amended Plan of Lots 176 to 195, as described and shown on said Plan. 15!

Also, a drainage easement twenty feet (20') in width located and extending across an area ten feet (10') in width over the easterly sideline of a portion of Lot 8 and extending over an area ten feet (10') in width located adjacent to the westerly sideline of Lot 9 as shown on said Amended Plan.

Also a drainage easement twenty-five (25) feet in width located and extending across and parallel to the northeasterly most boundary of each of Lots one (1) through fifteen (15) as depicted on said Amended Plan.

Said easements are for the sole purpose of and conveying the right to construct, install and perpetually maintain through, under and across said property, such open drains, conduits or pipelines with all necessary fixtures and appurtenances for conveying water and to lay, relay, repair, maintain, clean and remove said drains, or any stormwater pipe or pipes upon or under said strips, with all necessary fixtures and appurtenances, together with the right at all times to make connections with said conduits or pipelines to land adjoining said drainage easement by means of pipes or other services; to trim, cut down and remove trees, bushes, and other vegetation of all kinds, to remove debris and deposits of any kind and to alter and regrade the contours of said drainage easement to such extent as in the sole judgment of the grantee is necessary or appropriate for any of the above purposes; and to enter upon said drainage easement at all times for any of the foregoing purposes, reserving to the grantor and its successors and assigns the use and enjoyment of said strips and for such purposes only as will in no way interfere temporarily or otherwise with the perpetual use thereof by the grantee, its successors and assigns for the purposes above mentioned, provided that no building or any kind of permanent structure, including, but not limited to, walls and fences, shall be erected on said strip by the grantor, its successors or assigns; and that the grantor, its successors and assigns shall not remove earth from said drainage easement without the written permission of the grantee, its successors or assigns.