

CITY OF PORTLAND, MAINE

130 CONGRESS STREET
PORTLAND, MAINE 04101
(207) 5-5431



DEPARTMENT OF PLANNING & URBAN DEVELOPMENT

P. SAMUEL HOFFSES, CHIEF
INSPECTION SERVICES DIVISION

End of Malilly Road
Lot on Easterly Side

October 6, 1988

Mr. Barry Scott
and Mr. Milton N. Scott
28 Byfield Road
Portland, Maine 04103

Dear Sirs:

Based upon a recorded subdivision plat for Malilly Road, which was approved by the City Planning Board on February 6, 1959, it appears that the turn-around at the end of Malilly Road on the easterly side is designated on the plan as a "backaround 30 feet by 40 feet and is located on top of the Fall Brook Sewer right-of-way.

In view of the above, it would appear that this turn-around is a valid feature of the recorded subdivision plat. If you wish to develop this lot, then you will have to provide the City with an alternative turn-around. We understand that you would be willing to provide the City with the land for an alternative site, but will not be willing to pay for the construction costs of the new turn-around. This is reported to be unacceptable to the Public Works Department.

If any of the section of street is unaccepted, then the applicant would become responsible for improving the street for the frontage to the furthest side line of your lot or of the new turn-around, whichever is furthest from the existing paved area of the street. Such improvements must be made to City standards and include improvements to City standards, such as sewers, storm drains, pavement, sidewalks and curbs. The lot owner must submit to Public Works a plan for these street improvements subject to approval and a performance guarantee and inspection fee must be paid before the City can issue a building permit for the lot or lots in question.

Sincerely,

Warren J. Turner
Warren J. Turner
Zoning Enforcement Inspector

Enclosure: Relating papers concerning this proposed project

cc: P. Samuel Hoffses, Chief, Inspection Services
George A. Flaherty, Chief, Parks & Public Works
Alexander Juegan, Chief Planner
Natalie Burns, Associate Corporation Counsel
Harland Wing, Code Enforcement Officer

CITY OF PORTLAND, MAINE
M E M O R A N D U M

TO: Warren J. Turner, Zoning Enforcement Inspector
FROM: Natalie L. Burns, Associate Corporation Counsel NLB
DATE: October 4, 1988
RE: Proposed Single Family Dwelling on Malilly Road

David Lourie has referred to me your memo of September 2, 1988. Barry Scott has previously requested that the City look into the status of the turn-around at the end of Malilly Road. As a result of the inquiries made at that time, the City is satisfied that it does have a valid turn-around. If the Scotts wish to develop this lot at this time, they will have to provide the City with an alternative turn-around. It is my understanding that they will provide the City with land but will not pay for the construction costs of the new turn-around. This is unacceptable to the Public Works Department.

While I am not familiar with the status of that end of Malilly Road, you are correct in your statement that the street would have to be improved to City standards. In addition, the person seeking to build on an unaccepted portion of the street would have to submit to the City a deed from the owner of the lot conveying to the City all of the lot owner's right, title, and interest in and to that portion of the street. In conjunction with this, the lot owner would have to submit to the City a waiver and indemnity concerning damages for the laying out and taking of the street.

If the lot abuts a portion of a street which is unimproved the lot owner will have to improve the portion which abuts the lot and any other unimproved portion of the street which runs between the lot owner's portion and the nearest permanently paved street. Such improvements must be made to City standards and include such items as sewers, storm drains, pavement, and curbs. It may also include sidewalks if the street is determined to be part of a designated school walking route. The lot owner must submit to the Public Works authority a plan of the street improvements. This plan must be approved by the Public Works authority and a performance guarantee and an inspection fee must be paid before the City can issue a building permit for the lot in question.

Please contact me if you have any further questions about this.

cc: David Lourie, Corporation Counsel
Joseph E. Gray, Jr., Director of Planning and
Urban Development
P. Samuel Hoffses, Chief of Inspection Services
Marland Wing, Code Enforcement Officer
Steven Harris, Planning Engineer
Bruce Bell, Superintendent of Streets and Sanitation
Charles Lane, Associate Corporation Counsel

CITY OF PORTLAND, MAINE
M E M O R A N D U M

TO: Warren J. Turner, Zoning Enforcement Inspector
FROM: George A. Flaherty, Director of Parks and Public Works
DATE: 08/29/88
SUBJECT: Proposed Single Family Dwelling -- Malilly Road (171-A-28)

This is to acknowledge receipt of your memorandum dated August 18, 1988. The issue has been referred to the City Engineer for his review with his staff.

It is my understanding that this area on Malilly Road was developed some time ago by a Developer and that the turnaround was built by Developer not the City. I also understand that the turnaround has been used by the City during its snow plowing operations. Whether it is there legally or illegally is a legal question which I will not address.

I further understand that this area has a sewer easement which runs through it. From memory it is my recollection that he was advised that if the lot was developed, the property owner would be responsible for extending the street to the total front of his property to the City's current standards and that he would be required to construct in accordance with our new subdivision requirements another hammerhead turnaround on the right hand side of the street. Therefore, the issue has now been referred to the engineers to review the issue to see if the lot is buildable.

At this particular time, I do not believe we have ever seen a footprint for any proposed structure, and they may have other issues besides this which need to be answered before your questions can be fully addressed.

GAF
8/31/88
cc: Thomas H. Eaton, City Engineer
William S. Boothby, Principal Engineer
Stephen K. Harris, Planning Engineer
Bruce A. Ball, Superintendent of Streets and Sanitation



CITY OF PORTLAND

DAVID A. LOURIE
CORPORATION COUNSEL

November 30, 1987

Milton N. Scott
12 A Ocean Avenue
Scarborough, ME 04074

Dear Mr. Scott:

I have reviewed the City's records concerning the turn-around easement on the end of Malilly Road. These records indicate that the City has a valid easement at this time. Because this information is in conflict with the results of the title search performed for the Scotts, I would like to review the results of that title search or to speak with Mr. Polman about them.

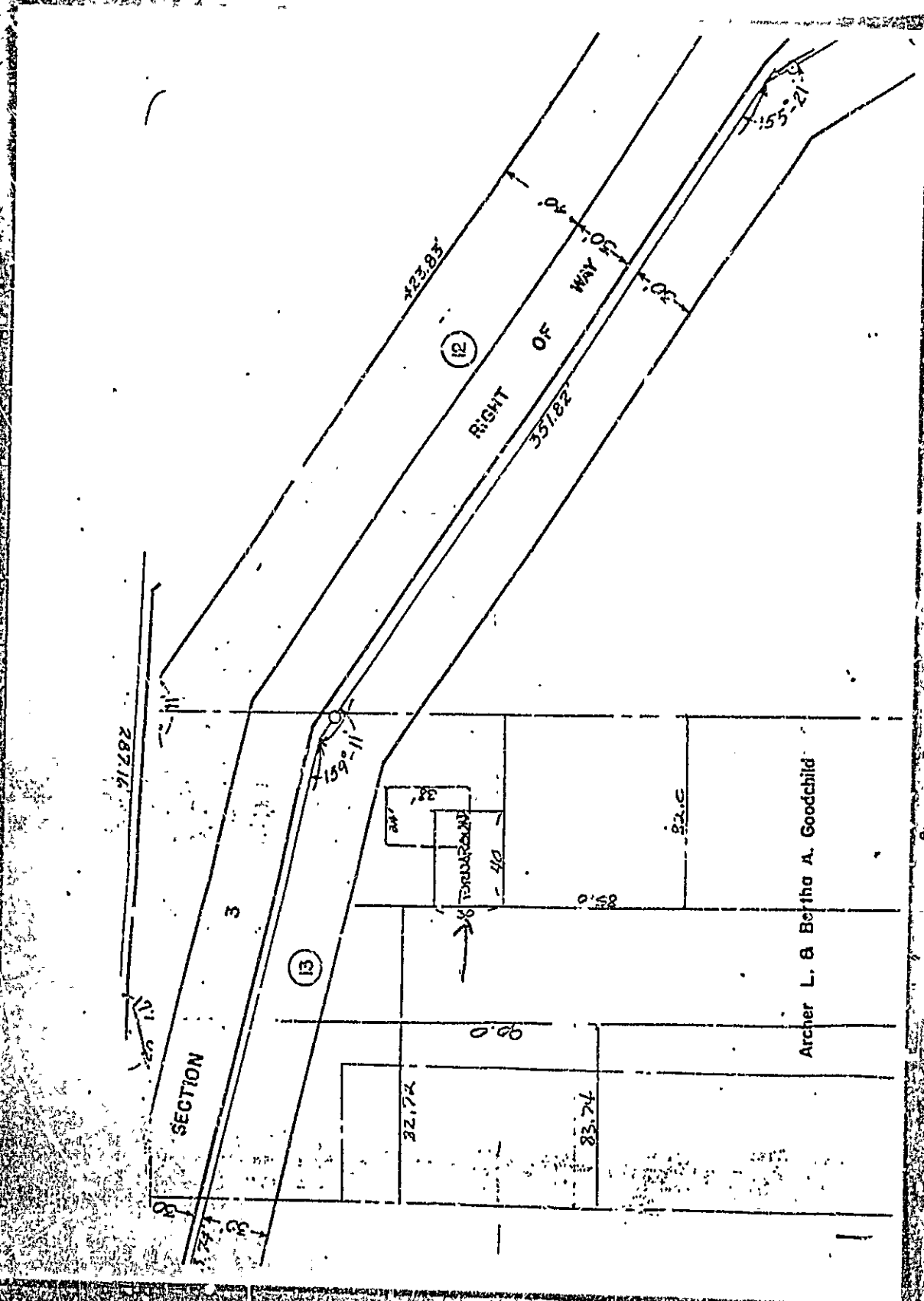
Please contact me as soon as possible to let me know how you wish to handle this matter.

Sincerely yours,

Natalie L. Burns

Natalie L. Burns
Associate Corporation Counsel

NLB/tb



423.93'

(12)

RIGHT OF WAY

357.82'

155°-21'

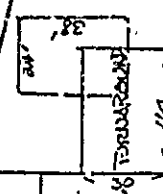
287.16'

159°-11'

SECTION

3

(13)



22.72'

22.0'

22.0'

83.74'

Archer L. & Bertha A. Goodchild



CITY OF PORTLAND

GEORGE A. FLAHERTY
DIRECTOR OF PARKS & PUBLIC WORKS

July 5, 1987

Mr. Milton V. Scott
9-1/2 Ocean Avenue
Higgins Beach
Scarborough Maine 04074

Dear Mr. Scott:

This is to acknowledge our telephone conversation of June 17th concerning a parcel of land at the end of Malilly Road in Portland.

In order to have this lot buildable, the lot that you have identified on a sketch which was submitted with your letter of July 23, 1987, a number of steps would have to be taken.

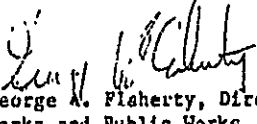
- 1) Malilly road dedication would have to be extended, which would be an expense that you as a developer would have to undertake.
- 2) The new section of road would have to be constructed to the City of Portland's standards and at the developer's expense.
- 3) You would have to obtain from the City the 30' x 40' turnaround. Besides constructing the road to the City's standards, at your cost, you would have to construct a new turnaround of the same size (30' x 40'), which would have to be constructed at the end of your proposed lot. This would mean that the new roadway would have to extend for the terminus the dedicated street to a point 30' beyond the end of your developed lot line and a back-around of the same size (30' x 40') constructed on the same side of the street.

The process you would have to go through would be to develop a site plan showing contours, grades, and property lines, plus the extension of the City street. This would be subject to the City's site plan/review process. If you met all of our conditions for the extension and the construction of the street and the turnaround to our specifications and at your cost, then I can only advise you that the City would give consideration to your offer.

- 2 -

If you have any further questions concerning this issue, I would suggest you contact Joseph E. Gray, Director of Planning and Urban Development, or Alex Jaegerman, Chief Planner.

Sincerely yours,


George A. Fisherty, Director
Parks and Public Works

GAF/nba/

pc: Joseph E. Gray, Jr., Director of Planning/Urban Development
Bruce Bell, Superintendent of Streets/Sanitation
William Boothby, Acting City Engineer
Robert Roy, Planning Engineer

RE: Mr. Milton Scott
Tel. Business - 775-2187
Home - 883-5651

CITY OF PORTLAND, MAINE

55 PORTLAND STREET
PORTLAND, MAINE 04101
(207) 775-5451



PARKS & PUBLIC WORKS

GEORGE A. FLAHERTY
DIRECTOR

April 25, 1988

Mr. Milton N. Scott
12 & Ocean Avenue
Scarborough, Maine 04074

RE: Barry and Mary Scott - Malilly Road

Dear Mr. Scott:

This correspondence is in response to your past request to have the City of Portland vacate its use of a vehicle backroad at the end of Malilly Road in Portland. The Engineering Division has been asked to review this request. We apologize for the lapse in time from your request to now.

It is the Engineering Division's considered opinion that the subject backroad has been dedicated for public use. As such, it is not transferable to private use unless agreed upon by all abutting landowners and by petition to the Portland City Council.

The backroad dedication is shown by the plan recorded in the Registry of Deeds from Plan Book No. 31, Page 13; reference 455/58 with copy attached. This dedication is also referenced on the City of Portland Tax Assessor's Plan, Reference No. 171, also copied and attached. The Assessor's Plan shows the corrected alignment of the combined sewer easement which crosses the subject property. Furthermore, we feel it would be unlikely for the backroad to be approved for relocation by the City Council because of an estimated \$25,000 cost to construct.

We realize this is not the response you were desiring; but, if there is more assistance we can provide on this matter, please call me at 775-5451, Extension 444.

Best regards,

Thomas H. Eaton, P.E.
City Engineer

THE/nba

cc: George A. Flaherty, Director of Parks/Public Works
William S. Boothby, Principal Engineer

12A ocean Avenue
Scarborough, Maine 04074
October 30, 1987

Corporate Counsel
City of Portland
City Hall
389 Congress Street
Portland, Maine 04101

Dear Sirs:

I am representing Barry and Mary Scott of 29 Byfield Road in Portland who presently own a lot of land at the end of Malilly Road — also in Portland. Recently Mr. & Mrs. Scott have had the Malilly lot surveyed and title searched attempting to establish its buildability. One obstacle encountered in previous conversations and contacts with city officials has been a 30' X 40' turnaround which apparently is used by the city for their trucks to turn around (this being a dead-end street). This turnaround is positioned perfectly to prevent the Scott's from utilizing this property. After talking with Mr. Lewis Holman, the lawyer who searched the title, and with Mr. Dan LaPoint, the surveyor, we find absolutely no evidence of this turnaround being formally or legally granted to the city of Portland for their use. Following conversations with both of the aforementioned individuals, I checked the Street Acceptance records, maps, and diagrams and still no evidence of a city right-of-way is apparent.

I am convinced that the city has no legal right to use Mr. & Mrs. Scott's land for turnaround purposes. This being the case, the Scott's insist that the city cease to use their land (the turnaround) for any purposes. Recognizing that this is a problem for the city, in terms of servicing the residents on Malilly Road, Mr. & Mrs. Scott have agreed to consider a relocation of this backaround further down the road. This, of course, would be up to the city to bring in any landfill, paving, and restructuring necessary. The actual site for relocation would have to be positioned so as not to render their lot useless, as is currently the case.

Since a good deal of money has already been spent and a great deal of time has passed since first approaching city officials, Mr. & Mrs. Scott would like some immediate action taken to rectify this situation. In hopes of expediting this action, I refer you to the following:

Assessor's Plan 171-A-28	
Registry of Deeds Book 6210	--- Page 345
" 2660	--- " 275
" 2661	--- " 223
" 2521	--- " 460
" 2451	--- " 87
" 2473	--- " 426
" 1580	--- " 153
" 4180	--- " 18
" 2961	--- " 470

Attachment: Map/diagram showing turnaround
Copy of Street Acceptance record for Malilly Road

Please respond to me in writing as soon as possible.

Sincerely,

Milton N. Scott
Milton N. Scott

MNS/bv



CITY OF PORTLAND

DAVID A. LOURIE
CORPORATION COUNSEL

November 23, 1987.

Milton N. Scott
12 A Ocean Avenue
Scarborough, ME 04074

Dear Mr. Scott:

I have received your letter of October 20, 1987 regarding the property of Barry and Mary Scott on Malilly Road. This matter has been referred to the Public Works Department, who will review it and provide me with all the information that they have. At that point I will contact you again regarding the City's position on this matter.

Sincerely yours,

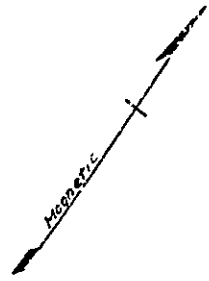
Natalie L. Burns

Natalie L. Burns
Associate Corporation Counsel

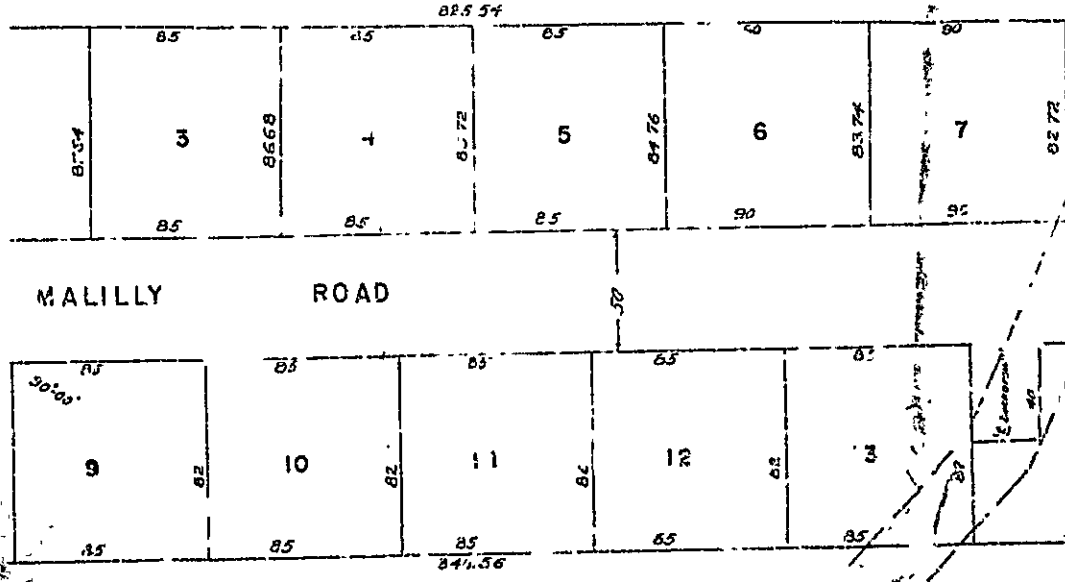
NLB/tb

PLAN OF LOTS
ON
MALILLY ROAD
PORTLAND, MAINE

DEC 958 SCALE 1 IN = 40 FT.



LAND OF GREELY



FORMERLY MELOON

We the members of the Planning Board City of Portland, Maine, certify our approval of this Plan as required in Chapter 30-A, Sec. G-V-A-2 Statutes of Maine, "Revised".
Heleen G. Frost

Alfred C. Hobbs

Harmon R. Lutz

H.E. Brackett

Received Mar 22, 1955
Recorded Plan Book 37 Page 13.

Notes
No Sidewalks Required.

Date Feb. 6, 1952

CITY OF PORTLAND, MAINE
MEMORANDUM

TO: David Lurie, City Corporation Counsel
FROM: Warren J. Turner, Zoning Enforcement Inspector
SUBJECT: Proposed single family dwelling for Malilly Road (172A-28)

DATE:
September 2, 1988

Mr. Barry Scott of 28 Byfield Road has inquired concerning the status of the turnaround on the end of Malilly, which is established by an approved subdivision plan accepted by the City Planning Board on February 6, 1959.

It appears that as it was part of the recorded development plan which the Planning Board approved, it would be necessary for an amendment to be processed through the Planning Department before this turn around could be relocated to another location.

There is an application for a single family dwelling which would be constructed only if the turn around can be relocated. Since it appears that the site of the proposed single family dwelling is located on the unaccepted portion of the street known as Malilly Road, it would then be necessary for whoever seeks the building permit to extend the street to the furthest lot boundary and improve it to City standards in accordance with Section 14-403 of the City Zoning Ordinance.

With regard to the Public Works interest in this proposed project, attention is invited to the attached memorandum and enclosures.

Enclosure: Memo, subject as above, dated August 29, 1988

cc: Joseph E. Gray, Jr., Director, Planning & Urban Development
P. Samuel Hoffses, Chief, Inspection Services
Marland Wing, Code Enforcement Officer
Stephen K. Harris, Planning Engineer, Public Works
Bruce A. Bell, Superintendent of Streets, Public Works
Charles A. Lane, Associate Corporation Counsel

CITY OF PORTLAND, MAINE
M E M O R A N D U M

TO: Warren J. Turner, Zoning Enforcement Inspector

FROM: George A. Flaherty, Director of Parks and Public Works

DATE: 08/29/88

SUBJECT: Proposed Single Family Dwelling -- Malilly Road (171-A-28)

This is to acknowledge receipt of your memorandum dated August 16, 1988. The issue has been referred to the City Engineer for his review with his staff.

It is my understanding that this area of Malilly Road was developed some time ago by a Developer and that the turnaround was built by Developer not the City. I also understand that the turnaround has been used by the City during its snow plowing operations. Whether it is there legally or illegally is a legal question which I will not address.

I further understand that this area has a sewer easement which runs through it. From memory it is my recollection that he was advised that if the lot was developed, the property owner would be responsible for extending the street to the total front of his property to the City's current standards and that he would be required to construct in accordance with our new subdivision requirements another hammerhead turnaround on the right hand side of the street. Therefore, the issue has now been referred to the engineers to review the issue to see if the lot is buildable.

At this particular time, I do not believe we have ever seen a footprint for any proposed structure, and they may have other issues besides this which need to be answered before your questions can be fully addressed.

CAF
CAF/sgg

cc: Thomas H. Eaton, City Engineer
William S. Boothby, Principal Engineer
Stephen K. Harris, Planning Engineer
Bruce A. Bell, Superintendent of Streets and Sanitation