

RESOLUTION OF THE CITY COUNCIL

No. 302

Approved May 21, 2002

WHEREAS, Narragansett Bay Water Quality Control District Commission has sought the abandonment of a portion of Ellis Street; and

WHEREAS, said abandonment was previously approved (Resolution No. 702 approved December 4, 2001); and

WHEREAS, said Resolution of abandonment was subsequently amended so as to remedy an incorrect map number referenced thereon. (Resolution No. 179 Approved March 26, 2002); and

WHEREAS, the Petitioner Narragansett Bay seeks, through correspondence addressed to the Council Committee on Public Works, the reduction or elimination of the fair market cost assigned to that realty in the December, 2001 resolution; and

WHEREAS, the purposes for which the abandonment was sought will assist all the citizens of Rhode Island; and

WHEREAS, the citizens of Providence wish to be good neighbors to all the people of the State,

NOW, THEREFORE, BE IT RESOLVED, that Resolution No. 702 approved December 14, 2001 as has been amended by Resolution No. 179 approved March 26, 2002 is further amended to read as follows:

WHEREAS, upon review of "Resolution No. 702 Approved December 14, 2001," the map number referenced thereon is incorrect; and

WHEREAS, the City Council wishes to correct said error,

BY CITY COUNCIL

APR 18 2002

FIRST READING
REFERRED TO COMMITTEE ON
PUBLIC WORKS

Michael R. Clement
ans

THE COMMITTEE ON
PUBLIC WORKS

Approves Recommendation as Amended
The Within Resolution

Ann M. Stebbins

5-6-02 Clark

NOW, THEREFORE, BE IT RESOLVED, that the above-referenced Resolution is reconsidered.

BE IT FURTHER RESOLVED, that the amended Resolution shall read as follows and shall include that amendatory map attached hereto:

RESOLVED, DECREED, AND ORDERED:

That the following-named street shown on a cross-hatched area on the accompanying map entitled "Prov., RI, DPW-Engineering Office, Street line Section Plan No. 064668 dated July 26, 2001."

VIZ: Ellis Street as described in Attachment "A" and shown as a cross-hatched area on the accompanying plan and designated by the letters A-B-C-D-A, having ceased to be useful to the public and is proposed to be abandoned as a public highway. Said abandonment is specifically conditioned precedent upon the following:

1. The Petitioner agrees to tender the amount of Twenty-Three Thousand Dollars (\$23,000.00) in legal tender U.S. currency to the City of Providence.

2. The petitioner shall convey an easement acceptable to the Narragansett Electric Co. which will permit retention of its facilities in their existing location, together with the right to inspect, maintain, operate and replace the same and with twenty-four hour access to said facilities, or in the alternative should it be determined by the petitioner that any such facilities need be relocated in order to comply with an intended use, the Petitioner shall assume all costs of relocation.

3. The Petitioner shall convey an easement acceptable to Providence Gas Company which will permit retention of its facilities in their existing location, together with the right to inspect, maintain, operate and replace the same and with twenty-four hour access to said facilities, or in the alternative should it be determined by the Petitioner that any such facilities need be relocated in order to comply with an intended use, the Petitioner shall assume all costs of relocation;

4. The Petitioner shall convey an easement acceptable to Verizon which will permit retention of its facilities in their existing location, together with the right to inspect, maintain, operate and replace the same and with twenty-four hour access to said facilities, or in the alternative should it be determined by the Petitioner that any such

facilities need be relocated in order to comply with an intended use, the Petitioner shall assume all costs of relocation;

5. Petitioner shall assume all costs of severing existing water and hydrant services at the abandoned location and shall assume all costs incurred for reconnection of necessary water services for residential, commercial, industrial and public safety uses. Petitioner shall comply with all conditions posited in a letter dated 15 June, 2001 from the Providence Water Supply Board to the Council Committee on Public Works which is attached hereto as Exhibit "B."

6. The City of Providence shall retain for itself, its heirs, successors and assigns full sewer and fire hydrant easements on Ellis Street which will permit retention of its facilities in their existing location, together with the right to inspect, maintain, operate and replace the same and with twenty-four hour access to said facilities, or in the alternative should it be determined by the City that any such facilities need be relocated in order to comply with an intended use, the Petitioner shall assume all costs of relocation;

7. Petitioner shall comply with all conditions contained herein not later than sixty (60) days from its approval. Upon failure to so comply for any reason, the within resolution shall automatically and without further action by the City become a nullity.

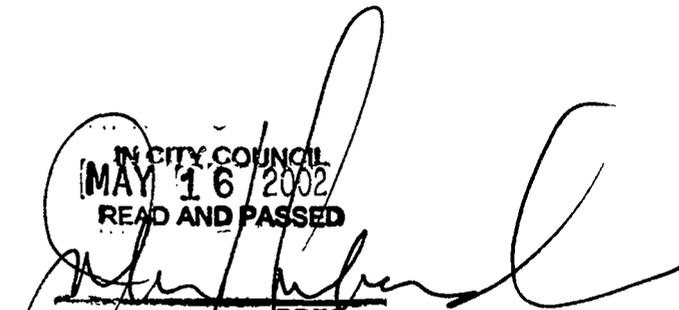
8. Petitioner shall submit to the City Clerk copies of a traffic study to which it has made reference at the working study of the Council Committee on Public Works of 8 November, 2001 and shall as soon as practicable at its sole costs erect the traffic control devices referenced therein and at the meeting of that date.

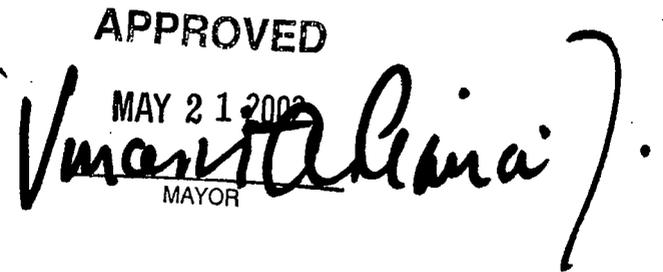
9. Petitioner shall indemnify and hold harmless the City of Providence, its officers, agents, employees and servants from any demand(s), claim(s) of cause(s) of action of any kind arising from any level of environmental contamination at the abandoned situs.

ORDERED, That the Traffic Engineer be and he is hereby directed to cause a sign to be place on the above-named highway abandoned as aforesaid, having thereon the words, "Not a Public Highway," and it is further

ORDERED, That after the entry of this order or decree the City Clerk shall cause a notice thereof to be published in a newspaper, published in the County of Providence at

least once a week for three successive weeks and a further and personal notice shall be served by the City Sergeant upon every owner of land abutting the above-named highway which has been abandoned, who is known to reside within the State.

IN CITY COUNCIL
MAY 16 2002
READ AND PASSED

PRES.
Michael B. Clement
CLERK *CB*

APPROVED
MAY 21 2002

MAYOR

ADLER POLLOCK & SHEEHAN

Adler Pollock & Sheehan PC
250 BankBoston Plaza
Providence, RI 02903-2443
Telephone (401) 274-7277
Fax (401) 751-6644 351-6677

175 Federal Street
Boston, MA 02110-2897
Telephone (617) 482-6000
Fax (617) 482-6004

April 8, 2002

VIA HAND DELIVERY

Barbara A. Poirier
First Deputy Clerk
Providence City Hall
25 Dorrance Street
Providence, RI 02903

John D'Amico, Esq.
City of Providence
275 Westminster Street, Suite 200
Providence, RI 02903

**Re: Abandonment of Ellis Street
Reconsideration of Compensation**

Dear Barbara and John:

I represent the Narragansett Bay Commission ("NBC"). We request that you place the issue of the amount of compensation for the abandonment of Ellis Street on the agenda for the Committee on Public Works. Specifically, we request that the compensation of \$50,500 required by the resolution of abandonment of Ellis Street approved December 14, 2001 (the "Resolution") be reconsidered and reduced to \$23,000. In as much as the compensation pursuant to the Resolution was not paid within 60 days of the approval of the Resolution, the Resolution should also be readopted, with the requested reduction in compensation.

When Tom Brueckner, an engineer with the NBC and I attended the State Properties Committee (SPC) meeting on February 12, 2002 to obtain their approval for the compensation sought by the City of Providence, the SPC felt strongly that the City should abandon the Ellis Street Parcel without the requirement of

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Barbara A. Poirier
John D'Amico, Esq.
April 8, 2002
Page 2

compensation considering the overall benefits of the CSO Project to the State and especially the City.

Subsequent to the SPC meeting, I did some further research on this issue. RIGL §24-6-1 allows a community of over 100,000 to sell a roadway to the abutting owner at fair market value. In order to determine fair market value, we hired Joseph Riker to prepare an appraisal. His appraisal, a copy of which is attached, establishes the fair market value as \$23,000. I am authorized to offer the City on behalf of the NBC the sum of \$23,000 for the abandonment of the Ellis Street Parcel. I would ask that in evaluating this offer the Committee consider the appraisal and the fact that the City does not own a fee simple interest in the Ellis Street Parcel. The fee simple interest in a street is owned by the abutters on each side of the street to the centerline of the street. The NBC owns both sides of the Ellis Street Parcel. The City in essence is only a trustee of the public right of way, which is nothing more than an easement. Therefore, the interest to be acquired from the City is only the extinguishment of the public right of way or easement and not the fee simple interest in the property. The compensation for the abandonment should reflect that fact. As the Court in Wolfe vs. City of Providence, 74 A2d 843 (RI 1950) stated when referring to the City of Providence, "*A town as such has no property rights in a public highway unless it appears that it has acquired the fee therein. It's simply the representative of or trustee for the traveling public whose right in the highway is merely an easement of passage.*" Newman v. Mayor of City [77 R.I. 203] of Newport, supra." Wolfe at 849 [emphasis added]. See also Adams vs. John R. White & Son, 103A230 (RI 1918), which held that the owner of the premises abutting on a city street is presumed to own the fee to the middle of the street adjacent to the premises, subject at most to an easement therein as a way on the part of the public.

Considering that (1) the NBC as abutter of both sides of Ellis Street owns the street in fee simple, (2) the City does not have a property right in the street. (3) the parcel being abandoned is subject to several utility easements and (4) the appraised value is \$23,000, NBC's \$23,000 offer is more than fair and adequate compensation for the rights to be abandoned by the City.

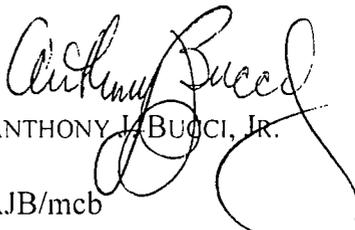
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Barbara A. Poirier
John D'Amico, Esq.
April 8, 2002
Page 3

Please schedule this matter for the next meeting of the Committee on Public Works and notify me of the date and time of said meeting. I have enclosed eight additional copies of this correspondence and request that you forward a copy to each council member sitting on the Public Works Committee.

If you or the council needs anything further, please do not hesitate to contact me.

Sincerely,



ANTHONY J. BUCCI, JR.

AJB/mcb

Enclosure

cc: Thomas Brueckner
Dennis M. Lynch

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[Handwritten signature]
IN CITY COUNCIL
MAY 16 2002
READ AND PASSED
PRES.
Michael R. Clement
CLERK *CB*

APPROVED
MAY 21 2002
Vernita Alvin
MAYOR

A true copy,
Attest:
Michael R. Clement
Michael R. Clement
City Clerk

ADLER POLLOCK & SHEEHAN

Adler Pollock & Sheehan LLP

250 BankBoston Plaza
Providence, RI 02903-2400
Telephone (401) 274-7200
Fax (401) 751-0000 / 351-0000

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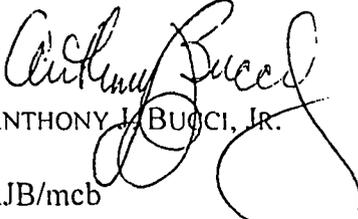
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cc: Thomas Brueckner
Dennis M. Lynch

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PROVIDENCE, RI
RECEIVED FOR RECORD
2002 JUN 18 A 9:48
BARBARA A. TRONCY
ACTING RECORDER OF DEEDS
Barbara A. Troncy
Acting Recorder of Deeds

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PROVIDENCE, RI
RECEIVED FOR RECORD

2002 JUN 18 A 9:48

BARBARA A. TRONCY
ACTING RECORDER OF DEEDS



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