

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

Introduced September 13, 2021

AN ORDER TO AUTHORIZE ACQUISITION OF LAND IN CONNECTION WITH RECONSTRUCTION OF THE CUTTER WEST END FIRE STATION AND TO APPROPRIATE FUNDS FOR THE SAME

Be it ordained by the City Council of the City of Newburyport as follows:

THAT the City Council of the City of Newburyport by virtue of and in accordance with the authority of the provisions of Chapter 79 of the Massachusetts General Laws, as amended, and of any and every other power and authority which is hereunto in any way enabling, adopts an Order of Taking to acquire the entire fee interest for municipal purposes of that certain real estate depicted as “_____,” on the plan entitled “_____,” prepared by _____, dated _____, 2021, having an area of 7,443.92 square feet (the “Taking Parcel”), and to authorize the City Council President to execute any Order(s) of Taking to effectuate the purposes of this vote; and

THAT damages are awarded in the amount of _____ (\$_____.00), the Owners of said property having waived their respective rights to an appraisal and acknowledged such amount as full compensation for all damages sustained, pursuant to a Waiver of Appraisal and Damages, a copy of which is appended to this order as Exhibit A.

THAT, _____ (\$_____.00) is appropriated to pay the damages indicated above, including the payment of all costs incidental and related thereto, and that to meet this appropriation, the Treasurer with the approval of the Mayor, is authorized to borrow said amount under and pursuant to M.G.L. c. 44, §7(1), or pursuant to any other enabling authority, and to issue bonds or notes of the City therefor; and that the Mayor and the Treasurer are authorized to take any other action necessary or convenient to carry out this vote. Any premium received upon the sale of any bonds or notes approved by this order, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with M.G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

Councillor Jared J. Eigerman

Councillor James J. McCauley

Councillor Sharif I. Zeid

EXHIBIT A

Waiver of Appraisal and Damages

KNOW ALL MEN BY THESE PRESENTS, that we, James M. Gabriel and Donna Gabriel, having an address of 1 Lieutenant Leary Drive, Newburyport, MA 01950, being the record owners of that same property (the "Property") by way of a deed recorded with the Essex South Registry of Deeds in Book 15636, Page 18 ("Owners"), in consideration of the sum of _____ (\$ _____ .00) paid and such further good and valuable consideration set forth on Exhibit 1, attached hereto, hereby acknowledged as full compensation for all damages sustained by said Owner on account of a taking made or to be made by the City of Newburyport ("City"), of that portion of the Property depicted as " _____ ", on the plan entitled: " _____ ," prepared by _____, dated _____, 2021, having an area of 7,443.92 square feet (the "Taking Parcel"), by way of an order of taking in substantially the form attached hereto as Exhibit 2, for ourselves and our successors and assigns, pursuant to Massachusetts General Laws Chapter 79, §7A, waive, release and forever discharge the City of Newburyport, its successors and assigns, from all debt, demands, actions, reckonings, bonds, covenants, contracts, agreements, promises, damages, and liabilities and any and all other claims of every kind, nature and description whatsoever, both in Law and Equity, arising from or in consequence of said taking, consent to said taking, and waive all right to an appraisal of damages for said taking (this "Waiver").

EXECUTED UNDER SEAL this _____ day of _____, 2021.

Witness

James M. Gabriel

Witness

Donna Gabriel

EXHIBIT 1

Further Consideration

As further consideration given by the City for the granting of the Waiver to which this Exhibit A is attached:

1. Prior to adopting the order of taking, the City shall amend Section VI-A of the Newburyport Zoning Ordinance to add the underlined language substantially as follows:

No building, structure, or part thereof shall be constructed, altered, moved, added, or reconstructed, except in accordance with the Table of Dimensional Requirements, below, or as exempt therefrom by other provisions of this ordinance, and no buildable or built-upon lot shall be subdivided, altered, or reduced, except by taking by eminent domain or conveyance for a public purpose for which a taking by eminent domain could have been made, so as to result in a violation of the requirements of such Table.

2. Prior to commencement by the City of any construction at the Taking Parcel or the real property commonly known as 153 Storey Avenue, Assessor's Parcel ID 101-23 (the "Cutter West End Fire Station Parcel"), the City shall, at its sole cost, cause the flagpole existing at the Taking Parcel as of the date of this Waiver to be relocated and reinstalled in kind at a reasonable location selected by the Owners on that portion of the Property over which they retain fee ownership.
3. Prior to commencement by the City of any construction at the Taking Parcel or the Cutter West End Fire Station Parcel, the City shall, at its sole cost, cause a temporary construction barrier to be erected along the boundary line between the Taking Parcel and that portion of the Property over which the Owners retain fee ownership, in order to mitigate construction-related noise and dust.
4. Prior to issuance of a certificate of occupancy to the City for any new building or structure at the Taking Parcel or the Cutter West End Fire Station Parcel, the City shall, at its sole cost, cause a permanent fence or wall, not fewer than six (6) feet and not more than seven (7) feet in height, to be erected along the boundary line between the Taking Parcel and that portion of the Property over which the Owners retain fee ownership, in order to mitigate construction-related noise and dust.

EXHIBIT 2

Order of Taking

[to be inserted behind]

In City Council September 13, 2021:

Motion to refer to Budget & Finance and Planning & Development by Councillor Zeid, seconded by Councillor Devlin. So voted.