

**Property Committee Report
June 13, 2016**

Distressed Property Notice of Violations

Mo is finalizing violation notices per City Council direction at the May meeting. Mo will update the council on the status of issuing the violations at the June meeting.

DRAFT Policy – Disposition of City Owned Property

As directed by the council at the May meeting, the committee asked Eric Stumpfel to clarify his recommendation on section 3.2 – city manager recommendations on possible eviction of former owners. I have attached a copy of Eric's response with this report. The committee discussed the response and recommends that the Council approve the policy as originally drafted (also attached)

Request for Easement Fish and Game Road.

Andy Kokernak from McNaughton Construction, on behalf of Bud Lord, requests an easement from the City for the Fish and Game road to allow trucks to travel the road. The request is in preparation for a planning committee application to establish a gravel pit on land owned by the Lords. The committee hosted three meetings on the request including Andy, and interested parties Michael Laflin and Rosemary Presnar (representing the conservation commission). The committee also received feedback from Eric Stumpfel regarding the ability of the trucks to use the road with or without city approval for an easement (attached). The committee considered the following

- Review and discussion of the Laflin easements for the Fish and Game Road issued in 2013. The easements include land locked home properties and a gravel pit that has been in place since the 70's. Today the gravel pit has access with Central St., at the time the easement was granted the pit was land locked. The easement does allow Laflin gravel trucks on the Fish and Game road. Laflin's maintain the road, no concerns expressed to the committee by the neither interim city manager nor Chris Buck.
- Discussion of zoning including the road and the adjacent res. Zoning supports conservation of water quality
- Discussion and review of Lord lot proposed for new gravel pit, lot has existing access to Central St. with a road across the property to the proposed gravel pit sight. Improvements to the existing road would need to be made by the Lords to accommodate gravel trucks. Access from Fish and Game Road much closer to the proposed site of the pit.
- Conservation Commission asks that the City not grant the easement (attached)
- Andy Kokernak asks for the same treatment in approval of an easement that has already been granted to the Laflin's with a gravel pit on the Fish and Game Road.

After lengthy discussion the Property Committee recommends that the request for an easement not be approved noting the Lord property has an existing road on the lot with access to Central St, the gravel pit is a new use application to the planning committee. Andy Kokernak reported to the committee that his attorney will contact the city/council regarding the recommendation.

Question for the council – Given that trucks can access the Fish and Game Road would the council like the property committee to discuss and recommend a vehicle weight limit or other options to manage risk of truck traffic on the road beyond what has been approved in the existing easements? The city brush pile is accessed via this road so the public is allowed on this road.

The following is Erik Stumpfel's explanation for the additional language in Section 3.2 of the property disposition policy.

From: Erik M. Stumpfel [mailto:estumpfel@rudmanwinchell.com]
Sent: Wednesday, May 11, 2016 2:51 PM
To: Maureen Aucoin
Subject: RE: Sending: Hallowell Disposition of Tax-Acquired Property Policy (R1614547).DOC

Maureen,

Eviction is simply the quickest way to get possession of a tax- or sewer lien-acquired property, if the former owner or (sometimes) the former owner's tenant remains on the property after the lien foreclosure date. Whether or not to evict is a judgment call for the City Council in any particular case. Some pros and cons:

- (Pro) An eviction action under the forcible entry and detainer (f.e.d.) statute is a summary proceeding in District Court. Start to finish, it usually takes a couple of months, if a hearing date is available on the court's docket. In contrast, an action for equitable relief under Title 36 section 946 [Link: <http://www.mainelegislature.org/legis/statutes/36/title36sec946.htm>], or a quiet title action under Title 14 section 6551 *et seq.*, can be filed in District or Superior Court, but is placed on the regular civil docket, and can take considerably longer to get to trial.
- (Pro) Even after a successful action for equitable relief or quiet title action, an f.e.d. may still be necessary to physically remove the former owner or tenant, if they refuse to leave.
- (Pro) Under the applicable Law Court decisions, the municipality's evidentiary burden in an eviction action is slight. Basically, once you put your tax liens into evidence, you have established a sufficient case, unless the defendant affirmatively demonstrates a defect in the lien process or notices.
- (Pro) In a few cases, an actual eviction may *finally* persuade certain long-term tax delinquent property owners with sufficient means, of the need to pay off their back taxes in return for a quitclaim deed, to avoid loss of the property concerned.
- (Con) An eviction action only adjudges the right to immediate possession, and not the underlying title. As a result, it does not satisfy the Maine Title Standards requirements for marketable title, when title is based on a tax- or sewer lien foreclosure. A judgment in an eviction action also is not binding in future cases between the same or other parties. For example, the former owner or someone claiming title by virtue of a deed from the former owner may still file their own quiet title action challenging the City's title, even after a successful eviction action.
- (Con) The City acquires potential premises liability for tax-foreclosed properties, 60 days after actual possession by the former owner or someone claiming through the former owner ceases. See 36 M.R.S. sec. 8104-A(2)(B) [Link: <http://www.mainelegislature.org/legis/statutes/14/title14sec8104-A.html>]. This statute is cited in Hallowell's policy as triggering a need to insure such properties.

- (Con) The City can continue to assess the former owner or tenant as “person in possession” after the lien foreclosure date, if they remain in possession of the property. If the property is owned by the City and is vacant, it is not taxable.
- (Con) A paying tenant is sometimes a plus when selling the property, if potential buyers are looking for an investment property.
- (Con) As mentioned below, a rapid sale without first going through the f.e.d. process may be the best way to get the property permanently back on the tax rolls and back into a useful status.

In short, an eviction action will make sense in some cases, but not in others. Mentioning evictions in the policy will remind the City Council of this option for use when appropriate.

Erik

From: Maureen Aucoin [<mailto:ceo-lpi@hallowellmaine.org>]
Sent: Wednesday, May 11, 2016 11:57 AM
To: Erik M. Stumpf
Subject: RE: Sending: Hallowell Disposition of Tax-Acquired Property Policy (R1614547).DOC

Erik,
The City Council reviewed the property disposition policy during Monday’s Council meeting. The only question which came up related to Section 3.2.

The City Manager shall also make recommendations concerning possible eviction of former owners who remain in possession of the property following the tax lien foreclosure.

They asked me to inquire about the reasoning behind adding this to the policy. It was suggested that the City would want to get rid of the property as quickly as possible. (However, Hallowell currently has a tax foreclosure property in which the owner still occupies the building.)

Mo

From: Erik M. Stumpf [<mailto:estumpf@rudmanwinchell.com>]
Sent: Thursday, April 14, 2016 5:35 PM
To: Maureen Aucoin
Subject: Sending: Hallowell Disposition of Tax-Acquired Property Policy (R1614547).DOC

Maureen,

My comments on your draft policy are attached.

The draft is very good and very thorough. Several items that I had flagged with comments in the early sections of the document were fully addressed later on.

I am in the office tomorrow and Monday, if you want to discuss my notes.

Erik

CITY OF HALLOWELL
POLICY FOR
DISPOSITION OF ~~TAX ACQUIRED~~ PROPERTY

1. General

1.1 The purpose of this Policy is to establish procedures for the efficient and fair management, administration and disposition of real property acquired under the tax lien procedures set forth in Title 36 M.R.S.A. §§942 and 943, as amended. Nothing in this Policy shall be interpreted to (1) give additional substantive or procedural rights to owners or former owners of property forfeited for non-payment of taxes or (2) to limit the right of the City Council to waive these guidelines if the City Council deems it to be in the City's best interest to do so.

2. Actions Concerning Tax-Acquired Property Pending Final Disposition

2.1 Following the foreclosure of any tax lien mortgage, the City Treasurer shall by first class mail, return receipt requested, notify the last known owner of record that his or her right to redeem the property has expired. The notification shall also state that the property will be disposed of in accordance with this Policy, a copy of which shall be included with the notification. The same shall be sent via US Mail, 1st Class with Certificate of Mailing.

2.2 Each year the Treasurer shall prepare a list of properties acquired due to non-payment of property taxes and foreclosure of tax liens and provide this list (the "Tax-Acquired Properties List") to the City Manager.

2.3 The City Manager and the Code Enforcement Officer, and as necessary in consultation with the City Solicitor, shall review and inspect (if possible) each property prior to the last City Council meeting before foreclosure, so that they may be identified on the Tax-Acquired Properties List and a determination may be made as to whether the foreclosure is in the best interest of the City, based on the following criteria:

A. The potential liabilities (environmental, structural safety, health or other hazards associated with the property) that the City might assume by taking possession or by operating the property and whether the City's interests in light of such potential liabilities would be best served by immediately disposing of the property or retaining it;

B. The level of insurance required to protect the City's interest in the property and to protect the City from liability in the event that the property is retained; and

C. Whether the property is currently occupied and the likelihood of requiring legal assistance (and estimated costs of the same) to require the occupants to quit the premises.

~~C.~~D. Whether the circumstances of the property or the taxpayer are such that the City should consider filing a waiver of foreclosure pursuant to 36 M.R.S.A. § 944.

2.4 In the event that a tax-acquired property remains or becomes vacant for sixty (60) consecutive days following the date of foreclosure of the tax liens under which the City

becomes the owner of a property, the City Manager shall obtain liability coverage for the property.

3. Review and Disposition of Tax-Acquired Properties

3.1 The City Manager will offer arrangements to the previous owner to secure just and prompt payment of outstanding and current taxes, related interests and costs to be paid within 30 days of foreclosure.

1. The City Manager shall present the taxpayer with a written notice for payment of all past due and currently due taxes, interest, and costs under the tax lien process and all outstanding sewer charges, assessments and other lawful charges as are due and owing to the City.
2. The City's costs shall include all costs incurred or to be incurred by the City in addition to those incurred in the tax lien process and shall include, but not be limited to, insurance costs, registry filing and mailing costs, advertisement costs, and attorney's fees.
3. Failure of an owner to respond within thirty (30) days of a written notice will result in a forfeiture of the property being either retained by the City or sold under the other provisions of this Policy.

3.2 In the event any previous owner fails to respond and forfeits a property, the City Manager will summarize the results of his or her Section 2.3 review of each property and make one of the following recommendations:

1. Retain the property for a particular public purpose. The City Manager, in consultation with the City Solicitor shall review and pursue, if appropriate or required, judicial confirmation of the City's right, title or interests in the subject property under 36 M.R.S.A. § 946 or 14 M.R.S.A. §6651 et seq.
2. Sell the property with or without conditions.
3. Take no action other than to set a date for further consideration by the City Council, which shall occur at least annually.

The City Manager shall also make recommendations concerning possible eviction of former owners who remain in possession of the property following the tax lien foreclosure.

The City Manager shall forward his or her reviews, recommendations and determinations regarding each property to the City Council. The City Council may override a particular recommendation of the City Manager to retain a property but shall otherwise direct that the property be processed in conformance with the terms of this Policy.

4. Property to be retained

4.1 If the City Council deems it to be in the City's best interest, it may retain the acquired property for a specified purpose. By way of example, but not limitation, the City Council may deem it to be in the City's best interest to retain the property where:

- a. the property has or will have recreational value or economic value to the City.
 - b. the property has or will have potential for a public facility or additions to public facilities.
- 4.2 If the property is retained, the City Council may pursue an action for equitable relief in accordance with the provisions of Title 36 M.R.S.A. §946, if desirable.
- 4.3 The City Council shall cause the tax-acquired property retained to be managed and insured as it would any other municipal property.
- 4.4.1 If retained, the City shall pay the outstanding unpaid sewer rates, assessments or other lawful charges.

5. Property to be Sold

- 5.1 The City Council shall determine the method of sale for properties that are owned or acquired by the City. Methods may include but not be limited to brokerage sale, negotiated sale, or public bid process.
- 5.2 Properties sold by means of brokerage or negotiated sale will be subject to a public hearing prior to City Council final approval of the sale transaction. Public hearing notice must be provided to abutting property owners if applicable.
- 5.3 If the public bid process is utilized, the City Manager shall cause to be published a notice of the sale of the ~~tax-acquired~~ property in a local newspaper. The notice shall be posted in a conspicuous place within City Hall. The notice shall be sent to the person from whom the property was acquired and the property owners whose property immediately abuts the property to be sold. The notice shall specify the time and date bids are due and the general terms of the bid. It shall also contain information useful to prospective bidders and the terms of the sale as determined by the City Manager.
- 5.4 All bids shall be submitted on forms prescribed by the City Manager in an envelope clearly marked "~~Tax-Acquired~~ Property Bid" and accompanied by a cashier's or certified check equal to the bid deposit. Bids shall be publicly opened and read on the date and at the time specified.
- 5.5 The City Manager shall review all bids and make recommendations to the City Council. The City Council shall determine the successful bidder.
- 5.6 The City of Hallowell reserves the right to accept or reject any or all bids, and waive any of the requirements of this Policy should the City Council, in its sole determination, judge such actions to be in the best interest of the City of Hallowell. Instances where this right may be invoked include, but are not limited to:
- a. The City Council may wish to sell the property to an abutting property owner rather than the highest bidder.

- b. The City Council may determine a use other than the use proposed by the highest bidder is in the best interests of the City
- 5.7 Should the City Council reject all bids, the property may again be offered for sale.
- 5.8 Should the bidder fail to close, the City shall retain the bid deposit. The City Council may offer the property to the next highest or any other bidder, if it determines that it is in the best interest of the City.
- 5.9 Title to tax-acquired property shall be transferred only by means of a Municipal Release Deed.
- 5.10 Unless the property is vacant at the time of sale, the successful bidder shall be responsible for the removal of occupants and contents in a manner according to law.
- 5.11 The proceeds of the sale shall be distributed in the following manner: (1) all taxes, interest and costs under the tax lien process shall be paid, (2) all outstanding sewer rates, assessments or other lawful charges shall be paid, and (3) any balance shall be placed in a General Fund account.
- 6. Waiver of Foreclosure**
- 6.1 In those situations where it has been determined that it would not be in the best interest of the City to acquire the property, the City Council may authorize the Treasurer to record a waiver of foreclosure in the Registry pursuant to 36 M.R.S.A. § 944, provided that this determination is made before the right of redemption expires.
- 6.2 In those situations where it has been determined that it would not be in the best interest of the City to acquire the property, and this determination has been made prior to the issuance of the ~~Impending Foreclosure Notice~~ of Impending Automatic Foreclosure under 36 MRSA § 943, the City Council may instruct the Treasurer not to send the Impending Foreclosure Notice, thereby preventing the foreclosure from occurring.
- 7. Taking Possession of Property**
- 7.1 At such time as it considers the proper disposition of a parcel of tax acquired property, or at such earlier time as may be recommended by the City Manager, the City Council shall consider whether it would be desirable for the City to take immediate possession of the property in order to preserve the value of the property or otherwise protect the interests of the City.
- 7.2 In making the determination under Section 7.1, the City Council shall consider the condition of the property, the occupancy status, any potential risks to the value of the property, the status of insurance, any obstacles to exercising possession, the possible need for court assistance and any other factors that the City Council deems appropriate.

Lisa,
The following is legal advice on what limitations the City can place on use of the Fish and Game Road. I am working on the agenda for Monday's meeting. Would you like me to place property committee update on the agenda or do you want to wait for the June meeting? Also, I met with Andy Kokernak yesterday. He is interested in arranging a site visit with the property committee so you all can get a better idea of access, boundary lines, etc. to the proposed pit. If this is something you are interested in doing in the next couple weeks, let me know and I will set it up.
Mo

From: Erik M. Stumpf [mailto:estumpf@rudmanwinchell.com]
Sent: Thursday, May 19, 2016 10:01 AM
To: Maureen Aucoin
Subject: [GRAYMAIL] RE: Road access

Maureen,

I drafted these two easement deeds for the City back in 2013, to resolve a complicated and somewhat contentious issue. My recollection is that there had been extensive discussions between Mike Starn, the City Council and the easement grantees, before the terms were finally threshed out.

As indicated in the easement deeds, the "Fish and Game Road" is owned by the City, but has not been laid out or accepted as a "public way" within the meaning of the municipal roads chapters of Title 23. The two easement deeds include express language to preserve the road's current status as not having been accepted as a public way. Because it is not a "public way", the City has no statutory obligation to maintain the road for passage by motor vehicles or to permit public access. With respect to anyone other than the holders of the 2013 easement deeds, the City is free to gate, bar or restrict use of the road by any person, including abutting property owners. Also, because the Fish and Game Road is not a former public way that was discontinued, there is no "public easement" for access and utilities such as is normally retained upon discontinuance of a public way. Although the City currently allows the public to use the road as a means of access to the City's brush disposal pile, the City is under no legal obligation to allow that use to continue, or to expand the current use. Except with respect to the holders of the 2013 easements, the City may restrict use of the road in any manner that the City deems proper. In effect, the road has the same legal status as a private driveway that happens to be owned by the City. The only legal obligations the City has in regard to the road are those obligations expressly assumed by the City under the 2013 easement deeds, and only with respect to the grantees named in those deeds or their successors.

So, the City has the right, but not the obligation, to allow use of the Fish and Game road by Mr. Lord for access to his gravel pit. If the City allows Mr. Lord to use the Fish and Game Road to access his gravel pit, the City may do so by a temporary license agreement; a deeded easement similar to the 2013 easement deeds; or by any other arrangement that the City deems appropriate. The City may also impose conditions on use of the road; for example, a condition that gravel hauling operations be limited to certain hours of the day, days of the week, or time of year. These statements apply equally to use of the road by other abutting property owners or the general public, other than the holders of the 2013 easement deeds.

Erik

From: Maureen Aucoin [<mailto:ceo-lpi@hallowellmaine.org>]
Sent: Wednesday, May 18, 2016 4:01 PM
To: Erik M. Stumpf
Subject: Road access

Erik,
A couple years ago, the City granted an easement to two property owners along a City owned road. It is a dead end dirt road which the owners had used for several decades to haul material from a gravel pit on their land. A third land owner, Duane Lord, now wants an easement along the road to construct a borrow pit on his property. I have attached the previous easements as well as a map of the roadway and land parcels. If the City does not grant an easement to Mr. Lord, is there anything which would prohibit him from using the road for hauling material anyway? It is open to the public because the City brush pile dump is located along the road.
Mo

Maureen AuCoin
Code Enforcement Officer
Assessor's Agent
City of Hallowell
1 Winthrop Street
Hallowell, ME 04347
P: (207) 623-4021 ext 205
F: (207) 621-8317

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, or confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately by e-mail and delete all copies of the message.

NOTICE:

This email and any files transmitted with it are confidential and intended solely for the use of the entity or individual to whom they are addressed, and may contain information that is privileged and/or exempt from discovery or disclosure under applicable law. Unintended transmission shall not constitute waiver of the attorney-client or any other privilege. Unless expressly stated in this e-mail, nothing in this message or any attachment should be construed as a digital or electronic signature, a legal opinion, or establishing an attorney-client relationship. If you have received this email in error, please notify the system manager at Admin@rudmanwinchell.com immediately and permanently delete or destroy the original and its attachments, along with any electronic or physical copies. Rudman Winchell cannot accept responsibility for the accuracy or completeness of this email as it has been transmitted over a public network. If you suspect that the email may have been tampered with, intercepted or amended, please notify the system manager.

May 11, 2016

Councilor Lisa Harvey-McPherson
Chair, Property/Public Lands Committee
City of Hallowell
Hallowell, ME

Dear Councilor Harvey-McPherson,

The Hallowell Conservation Commission (HCC) would like to recommend to you, and Councilors Lapointe and Circo that the Lord family's request for a Fish & Game Rd easement and right-of-way NOT be granted by the City of Hallowell.

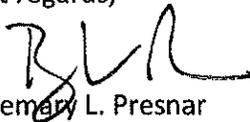
Our concerns with any additional easements or rights-of-way involving the Fish and Game Rd include:

- a) An increase in usage and stress on the unimproved Fish and Game Rd and its proximity to Reservoir #2 leading to negative impact on water quality and habitats.
- b) The potential for setting precedent allowing exclusive easements and rights-of-way near the largest, open space area the City owns leading to additional negative impact on water quality and habitats and conflicts with safe recreational activities. In addition, an increase in approved easements would increase the road maintenance agreements the City would need to manage with landowners.
- c) The requested easement is not a necessity since the Lord's property fronts Central Street.

In a recent correspondence to Councilor Lapointe and the Recreation Commission, the HCC stressed the immediate need for a boundary survey for the Res. The HCC believes the City needs an updated survey prior to engaging in Res land use decisions.

Thank you for considering these concerns when making your final recommendation to the City Council.

Best regards,



Rosemary L. Presnar
2016 Chair, Hallowell Conservation Commission

cc:

Mark Walker, Mayor
Maureen AuCoin, Interim City Manager
2016 Hallowell Conservation Commission Members