



James G. Ward  
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April 6, 2015

John Long  
City Clerk of the City of Somerville  
City Hall – Aldermanic Chamber  
93 Highland Avenue  
Somerville, MA 02143

Re: CPC-T Holdings, LLC  
Petition to Board of Aldermen to Discontinue Cross Street East  
Residential Development at Cross Street East, Somerville, Ma

2015 APR -6 P 5:14  
CITY CLERK'S OFFICE  
SOMERVILLE, MA

Dear Mr. Long:

Pursuant to M.G.L. c. 82 § 21, Section 17 of Title 3 of the City of Somerville Charter (the "Charter") and Section 11-22 of the City of Somerville Code of Ordinances (the "Code"), CPC-T Holdings, LLC ("CPC") requests that the Board of Aldermen (the "Board") discontinue the way known as Cross Street East in Somerville, from the intersection of Cross Street East and Pennsylvania Avenue to the intersection of Cross Street East and Mystic Avenue (the portion of Cross Street East to be discontinued is hereinafter referred to as the "Way") and to abandon and relocate the City's rights to access the CPC Property.<sup>1</sup>

I. The Board of Alderman may discontinue the Way.

M.G.L. c. 82 § 21 authorizes the Board to "discontinue a town way or a private way." Under Section 17 of Title 3 of the Charter, the Board of Aldermen may discontinue public ways and streets after a public hearing on the matter (pursuant to the notice requirements of M.G.L. c. 82 § 3), subject to the veto power of the Mayor. In order to discontinue the Way, certain requirements of Section 11-22 of the Code must be met through a petition to the Board. These include:

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<sup>1</sup> CPC also requests, in a separate filing to the Mayor, a copy of which is enclosed for your convenience, that the City abandon its easement in the Way and enter into an agreement with CPC for pedestrian only access on the Way, renovation of the former Harris Street playground (the "Park") to be funded by CPC and transfer ownership of the General Insulation Building to the City. As part of the abandonment of the easement rights of the City, both in the Way and the underlying fee pursuant to the Derelict Fee Statute, the City would reserve to itself and the public the continued right to access the entire width and length of the Way for pedestrian purposes and to access the renovated Park. These proposed changes, along with improvements CPC proposes for the Mystic Avenue pedestrian crossing, will benefit the neighborhood by eliminating cut-through traffic, upgrading the park and providing open space for the public, and revitalizing the Project area.



- A plan showing the street to be discontinued, abutting properties and improvements frontage on each abutting property and the names of abutting property owners;
- A release from all persons who claim no damage from the discontinuance; and
- A list of any parties that will accept specific damages resulting from the discontinuance, including the amount of such damages.

Upon receipt of the completed petition and materials required by Section 11-22 of the Code and referral of the matter to the committee on public works, the committee on public works shall report to the Board its judgment on the discontinuance, including a finding that common convenience and necessity require the Way to be discontinued. Following a duly noticed public hearing, the Board can then vote to discontinue the Way.

II. The Board can properly find that common convenience and necessity require the Way to be discontinued.

The discontinuance of the Way is part of CPC's proposal to construct a seventy-five (75) unit condominium project at Garfield Avenue and Cross Street East in Somerville (the "Project"). CPC proposes to permanently close the Way at Mystic Avenue to vehicle traffic and eliminate parking along the Way, resulting in pedestrian only access along the Way between Pennsylvania and Mystic Avenues. CPC will also provide benefit to the City and neighborhood by renovating the Park and transferring ownership of the General Insulation Building to the City. These proposed changes, along with improvements CPC proposes for the Mystic Avenue pedestrian crossing, will benefit the neighborhood by eliminating cut-through traffic, upgrading the park and providing open space for the public, and revitalizing the Project area.

These improvements, along with the fact that access to the Way has been temporarily blocked from Mystic Avenue, to prevent cut-through traffic, support a finding that common convenience and necessity require the Way to be discontinued.

As shown on the attached Road Discontinuance Plan (Exhibit A),<sup>2</sup> the only properties abutting the Way are the Project site, the City owned Park and a portion of 129 Pennsylvania Avenue (a private residence). Pursuant to Massachusetts law, the City has an easement for public travel in the Way, but does not own the underlying fee in the Way. As such, upon discontinuance, the underlying fee will revert to these abutting property owners.

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<sup>2</sup> Three sets of the full size plans copies of all plans referenced in this petition are attached for your convenience.





The City will suffer no damage from the discontinuance of the Way because pedestrian access to the renovated Park will continue via an esplanade within the former Way. Further, based on the attached draft release from the owner of 129 Pennsylvania Avenue (Exhibit B)<sup>3</sup>, no other abutting party impacted by the discontinuance will assert damages as a result of the discontinuance. In fact, the proposed upgrades to the area will provide substantial benefits to the neighborhood rather than damage any property.

This petition meets all of the requirements of Section 11-22 of the Code. Further, CPC will enter into a separate agreement with the City to undertake the improvements discussed in this petition, maintain the renovated park and pedestrian access in the Way in perpetuity, and include other City requested improvements and amenities in the Project (as submitted to the City of Somerville Planning Board). CPC has provided a draft easement (Exhibit C), which abandons and relocates the City's access rights to the CPC Property and provides for the improvement and maintenance of the Way and Harris Park Playground. Thus, the Board can properly find that common convenience and necessity require the Way to be discontinued.

### III. Conclusion.

Under Massachusetts law, the City only has an easement in the Way. As such, the City, through the Board of Aldermen, has the authority to discontinue the Way, abandon the easement in conjunction with the Mayor, and allow ownership of the underlying fee to revert to the abutting property owners. Such an arrangement will benefit the City and neighborhood by eliminating traffic and revitalizing the Park and neighborhood.

CPC looks forward to working with the Board to move forward with this petition and the creation of this pedestrian friendly neighborhood.

Very truly yours,

James G. Ward

Enclosures

cc: George Proakis, City of Somerville  
Jack Englert  
Melissa A. Mintz  
Conor Nagle, VHB

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<sup>3</sup> CPC is in the process of having the release executed, and will provide a final executed version at the hearing on this matter.

John Long  
City Clerk of the City of Somerville  
April 6, 2015  
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2706199.4

**EXHIBIT A**  
**PLAN**

- ### General Notes
- 1) THE PROPERTY LINES SHOWN ON THIS PLAN ARE TAKEN FROM A PLAN ENTITLED "MILANCOM TITLE TRUST, MYSTIC AVENUE AND WILMOUTH HIGHWAY, WILMOUTH, MASSACHUSETTS," PREPARED BY BOSTONICK ENGINEERING, INC., 100 STATE STREET, SUITE 200, WILMOUTH, MA 01981, DATED 12/27/87 AND VERIFIED BY AN ACTUAL GROUND SURVEY BY V&B, INC.
  - 2) THE PURPOSE OF THIS PLAN IS TO CONTINUE CROSS EAST STREET ROAD.

**EXHIBIT B**  
**RELEASE FROM DAMAGES**

RELEASE FROM DAMAGES

TO: City of Somerville Board of Aldermen  
c/o John Long, City Clerk of the City of Somerville  
City Hall – Aldermanic Chamber  
93 Highland Avenue  
Somerville, MA 02143

CPC-T Holdings, LLC  
14160 No. Dallas Parkway, Suite 750  
Dallas, TX 75254

FROM: Tsamla Tsmala and Jang C. Sherpa

RE: Discontinuance of Cross Street East from Pennsylvania Avenue to Mystic Avenue as shown on a plan of land entitled “Road Discontinuance Plan of Land in Somerville, Massachusetts, Date: March 11, 2015,” which plan of land is recorded in the Middlesex South Registry of Deeds herewith at Book \_\_\_\_, Page \_\_\_\_.

The discontinuance for the above-referenced road was recorded with the Middlesex South Registry of Deeds herewith at Book \_\_\_\_, Page \_\_\_\_.

Dear Members of the Board of Aldermen:

We, Tsamla Tsmala and Jang C. Sherpa, the owners of the property at 129 Pennsylvania Avenue in Somerville, Massachusetts, identified as Parcel 89-B-9 by the City of Somerville Assessing Department, hereby release any and all claims that we may have now or in the future against the City of Somerville or CPC-T Holdings, LLC, resulting from the discontinuance of Cross Street East from Pennsylvania Avenue to Mystic Avenue and waive all rights pursuant to M.G.L. c. 82 to seek damages resulting from the discontinuance. We further acknowledge that the discontinuance does not damage our property at 129 Pennsylvania Avenue in Somerville, Massachusetts.



Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Tsamla Tsmala

Name:

Dated: \_\_\_\_\_

Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Jang C. Sherpa

Name:

Dated: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. \_\_\_\_\_, 2015

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned notary public, personally appeared the above-named Jang C. Sherpa, known by me personally to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it as his free act and deed for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. \_\_\_\_\_, 2015

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned notary public, personally appeared the above-named Tsamla Tsmala, known by me personally to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it as his free act and deed for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires:

2774162.1

2777313.1

**EXHIBIT C**  
**DRAFT EASEMENT**

**EXHIBIT 1**  
**DRAFT EASEMENT**

## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2015, by and between **CPC-T Holdings, LLC**, a Massachusetts Limited Liability Company, having an address of 1601 Trapelo Road, Suite 280, Waltham, MA 02451 ("CPC"), and the **City of Somerville**, a body corporate and politic with a usual address at 93 Highland Avenue, Somerville, Massachusetts 02143 (the "City").

### RECITALS

1. CPC is the owner of those certain parcels of land commonly known as and numbered \_\_\_\_\_ Cross Street East, Somerville, Massachusetts (the "CPC Property"), as described in a deed recorded with the Middlesex South District Registry of Deeds (the "Registry") in Book \_\_\_\_\_, Page \_\_\_\_\_, and shown as "CPC Property" on the plan entitled "Post Discontinuance Layout Plan of Land in Somerville, Massachusetts" dated March 11, 2015, prepared by Vanasse Hangen Brustlin, Inc., a reduced copy of which is attached hereto as **Exhibit A-1** (the "Property Layout Plan").
2. The City is the owner of a certain parcel of land commonly known as and numbered \_\_\_\_\_ Cross Street East, Somerville, Massachusetts, and referred to as the Harris Street Playground, described in a deed recorded with the Registry in Book \_\_\_\_\_, Page \_\_\_\_\_, which land abuts the CPC Property across Cross Street East and is further shown as "Playground" on the Property Layout Plan (the "Playground Property").
3. The City has certain access rights in the CPC Property as described in an Open Space Covenant and Restrictions, recorded at the Middlesex South Registry of Deeds at Book 45560, Page 480.
4. CPC intends to redevelop the CPC Property into a residential development, which has been approved, subject to certain conditions, by the Somerville Planning Board pursuant to Order No. \_\_\_\_\_. The Special Permit for the project has been recorded with the Registry in Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Special Permit").
5. Condition \_\_\_\_ of the Special Permit requires CPC to execute an easement agreement with the City for use and access to the discontinued way known as Cross Street East, which will be developed in accordance with the Special Permit as the Pedestrian Esplanade for public pedestrian uses, all as shown on the plan entitled "Pedestrian Esplanade Easement Plan of Land in Somerville, Massachusetts" dated March 11, 2015, prepared by Vanasse Hangen Brustlin, Inc., a reduced copy of which is attached hereto as **Exhibit A-2** (the "Easement Area Plan"). The Pedestrian Esplanade in the former Cross Street East is located partially in the CPC Property and partially in the Playground Property, as shown on the Easement Area Plan.

6. Condition \_\_\_\_ of the Special Permit requires CPC to renovate the Playground Property into a Passive Lawn Area as shown on the Easement Area Plan and provide for maintenance into the future.
7. The City has agreed to grant CPC certain easement rights over the Playground Property, including access by CPC and users of the CPC Property along the former Cross Street East in the Pedestrian Esplanade and access to construct the improvements and thereafter conduct maintenance on the Passive Lawn Area as described herein and as more particularly shown on the Easement Area Plan, and to cooperate with CPC in establishing maintenance obligations for the Passive Lawn Area, and certain related work as described in this Agreement. In addition, the City will abandon and relocate its access rights over the CPC Property as described herein.
8. CPC has agreed to grant the City certain easement rights over the CPC Property, including public pedestrian access along the former Cross Street East in the Pedestrian Esplanade from Pennsylvania Avenue to Mystic Avenue as more particularly shown on the Easement Area Plan, and certain related work as described in this Agreement.

#### AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements herein contained and \$10.00 consideration paid, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby mutually act and agree as follows:

1. Grant of Easements Benefitting CPC Property. The City hereby grants to CPC, with quitclaim covenants, the following rights and easements over the Playground Property, which shall be appurtenant to the CPC Property and shall run with the land:
  - a. Access Rights. The perpetual, non-exclusive right and easement to enter upon the portion of the Playground Property shown as "Former Cross Street East" on the Property Layout Plan, **Exhibit A-1** recorded herewith, to the extent necessary, for CPC and users of the CPC Property to access the CPC Property, travel to and from Pennsylvania Avenue and Mystic Avenue and access the Passive Lawn Area on the Playground Property.
  - b. Construction and Maintenance Rights. The perpetual, non-exclusive right and easement to enter upon the Playground Property, as shown on the on the Property Layout Plan, **Exhibit A-1** recorded herewith, by CPC to construct and thereafter maintain the renovations to the Passive Lawn Area required by the Special Permit and in order to fulfill CPC's obligations under the Special Permit and this Agreement. As required by the Special Permit, CPC shall (a) renovate the Playground Property with input from the City and neighborhood and (b) perform such maintenance and repairs as may be necessary to keep the Playground Property in a good order, condition and repair (collectively, the "Maintenance Work").

2. Grant of Easements Benefitting the Playground Property. CPC hereby grants to the City, with quitclaim covenants, the following rights and easements over the CPC Property, which shall be appurtenant to the Playground Property and shall run with the land. The perpetual, non-exclusive right and easement to enter upon the portion of the CPC shown as the "Pedestrian Esplanade" on the Easement Area Plan, **Exhibit A-2** recorded herewith to the extent necessary, for the City and the public to access the Playground Property, travel to and from Pennsylvania Avenue and Mystic Avenue and access the Passive Lawn Area on the Playground Property.
3. Release of Easements. In exchange for the easements granted to the City by this Agreement, and for other good and valuable consideration paid, the receipt and sufficiency of which are hereby acknowledged, the City hereby releases all of its right, title and interest, without covenants, in any easements, restrictions and open space covenants affecting the CPC Property, including but not limited to the Open Space Covenant and Restrictions, recorded at the Middlesex South Registry of Deeds at Book 45560, Page 480.
4. Required Permits. CPC and the City shall be responsible for obtaining any permits or approvals required in connection with the renovation of the Playground Property and the Maintenance Work. The City agrees to reasonably cooperate with CPC in connection with applications for any such required permits, including executing any applications for the portion of the Maintenance Work to be performed within the Playground Property, and agrees not to oppose any such applications.
5. Performance of Work. All work to be performed hereunder shall be performed by CPC in a good and workerlike manner and in compliance with all applicable laws, rules, regulations and ordinances and at CPC's sole cost and expense.
6. Reservation of Rights. The City shall have the right to use the Pedestrian Esplanade and Playground Property, or any portion thereof, for any purpose or use consistent with CPC's rights and obligations hereunder.
7. Amendment to Agreement. This Agreement may not be terminated, released, modified or amended in whole or in part except by written instrument executed by the City and CPC.
8. Bind and Inure. This Agreement and the rights and easements herein created shall run with the CPC Property and the Playground Property, and any portion of either, and be binding and inure to the benefit of the parties and their respective successors and assigns.
9. Severability. If any provision of this Agreement is to any extent invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) is not to be affected thereby, and each provision of this Agreement is valid and enforceable to the fullest extent permitted by law.



10. Applicable Law. This Agreement and the performance hereof shall be interpreted and governed by the laws of The Commonwealth of Massachusetts.
11. Compliance with Law. The parties shall comply with all applicable laws and regulations in exercising their rights under this Agreement.
12. Authority. CPC warrants to the City that the person executing this Agreement on its behalf has authority to do so and that such execution has fully obligated and bound CPC to all terms and provisions of this Agreement. The City warrants to CPC that the person or persons executing this Agreement on its behalf has or have authority to do so and that such execution has fully obligated and bound the City to all terms and provisions of this Agreement. Notwithstanding anything to the contrary contained herein, in no event whatsoever shall any manager, trustee or beneficiary of CPC have any personal liability hereunder.

[SIGNATURES ON FOLLOWING PAGE]

EXECUTED under seal as of the day and year first above written.

**CPC-T HOLDINGS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**THE CITY OF SOMERVILLE**

[INSERT SIGNATURE BLOCK]

By: \_\_\_\_\_  
Name:  
Title:

[Notary Acknowledgments on Following Page]

COMMONWEALTH OF MASSACHUSETTS

COUNTY: \_\_\_\_\_, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, in his capacity as a \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY: \_\_\_\_\_, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (s)he signed it voluntarily for its stated purpose, in his/her capacity as \_\_\_\_\_ of the City of Somerville.

\_\_\_\_\_  
Notary Public  
My commission expires:

**Exhibit A-1**

Property Layout Plan

[Attached]

DRAFT



**Exhibit A-2**

Easement Area Plan

[Attached]

2707093.3

DRAFT



