

# A Brown & Howard Connection to Washington St. Extension Issue?

By Liz Mathinos

Only in Rhode Island and Newport, would a citizen have to wonder about the sudden planned encroachment into the Brown and Howard Right of Way (RoW) and its possible connection to Washington Street Extension.

As reported in the Brown and Howard Hot Spot item, twice in the past year the new owners of the condos and "ice house" under the guise of "improvements" or beautification have introduced plans that obstructed portions of the Coastal Resources Management Council (CRMC) designated in perpetuity RoW. Fortunately, both plans were rejected, and the owners quickly modified the plans.

Bottomline, after all these consciousness-raising years about public access, developers are still trying to TAKE AWAY public access, if they think they can get away with it!

Two different locations, but both about developers pushing-the-envelope to encroach on a public right of way or to acquire through litigation, city property for personal gain. Joe Nicholson, has been asked to push the Washington St. Extension case forward, and hearings commenced in June, with a Summary Judgment to be heard in July. A brief review of the background:

1. Washington St. Extension (WSE) was never Navy property.
2. The City entered a Decree of Eminent Domain, dated December 16, 1916 when the city required the land to extend Washington St. to the Navy property on Cypress St.
3. The City received a deed from the property owners on October 23, 1916. The City paid a fair market price to the property owners for the acquired land.
4. The Newport Bridge was built and opened in 1969, and the short section of Washington St. became a dead end from Cypress St. to the bridge.
5. The City never abandoned the street.
6. In 2003, the three property owners, Terence and Margaret Moy, William Walaska, and Shannon Reagan Ahearn wrote a letter dated August 5, 2003 asking the city to abandon the section of street and offered \$90,000.
7. The City Council rejected the property owner's request and refused the inadequate monetary offer.
8. Allegedly a day after the vote, someone from city hall called and

suggested to the property owners that they work out an agreement with the city, which they did.

9. On Sept. 17, 2003, a letter from abutters was sent to City Council, requesting to rent WSE on a year-to-year basis for one dollar.

10. On Oct. 8, 2003, The City Council, approved 4-3, with Mayor Sardella, Councilors Baccari, O'Neill and Napolitano voting for the Memorandum of Understanding (MOU).

11. When reported in the newspapers, taxpayers were outraged.

12. A clause in the MOU said the Council could terminate at any time, which they did on Oct. 19, 2004.

13. In the interim, Reagan Construction had torn up the street and planted grass, with a curb blocking any access from Cypress St. A sign stating "Public access, sidewalk only" was erected.

14. Despite the fact that the City had a legal right to terminate the MOU at any time for any cause, the property owners filed a lawsuit with former Speaker of the House Joe DeAngelis as their attorney.

15. The case is now going forward. Summary judgement will be heard in Superior Court.

Since the city never abandoned the street, this lawsuit appears to be frivolous and should be dismissed.

## FoW Launches Partnership with URI Coastal Resources to Survey CRMC RoW

FoW has asked the University of Rhode Island Coastal Resources Center/Sea Grant Commission to survey and map all the designated CRMC right of ways in Newport. Dave Wixted and Jim Perrier met with URI's Jennifer McCann and Teresa Crean on this project

FoW provided the list of CRMC rights of way with Waite's Wharf; Lee's Wharf, Brown & Howard Wharf, and West Howard Wharf at the top of the list.

The commission has obtained the CRMC files and is presently gathering as much data as possible to allow the mapping to go smoothly. The board of FOW will keep the membership informed of the progress of this effort via e mail.

## Waterfront HOT SPOTS

### Brown & Howard Wharf

The developer of Brown and Howard wharf condos presented a plan to beautify the area surrounding the condos to the city council. The proposed design violated the agreement between the city and the developers on the issue of the public right of way. Jim Perrier, acting president of the FoW, presented FoW's position based on FoW research and Waterfront Commission meetings:

**"The Friends of the Waterfront position is that the right of way which was granted in perpetuity in the agreement of May 22, 1988 between the city of Newport and Brown and Howard Co., defined that the Right of Way from Thames St. to the water's edge must be free from any encroachments and/or obstacles as depicted in the proposed development plan for Brown and Howard Wharf."**

The Newport City Council after a short discussion voted 7 to 0 to deny the developer the proposed change. This was a big win for FOW.

### Brown & Howard Ice House

The developers of the old ice house on Brown & Howard petitioned the Zoning Board to demolish the old ice house and replace it with a 3-story building containing retail stores and retail offices on the first and second floors, and a restaurant on the third floor. Developer's plans placed the stairway from the first floor to the second and third floors in the designated right of way.

After FoW talked to the chair person of the zoning board the developer was informed that before the Board would hear the case the issue of the obstruction in the right of way had to be go to city council. After some deep thought and not wanting to go to the city council over the right of way issue the developer changed his plan to remove the stairway from the plan. There are still issues about building height and parking to resolve, but ROW issue was won again by FoW.

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