



AGENDA ITEM #: 18-118  
COUNCIL MTG OF: October 23, 2018  
FROM: D. Caron, Town Administrator  
OFFERED BY: M. Fowler, Public Works Director  
PREPARED BY: M. Fowler, Public Works Director  
SUBJECT: Release of Public Servitude – Eastman Drive

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STAFF REPORT  
*Public Hearing 11-20-18*

#### PURPOSE

The purpose of this document is to provide information regarding a resident request to release public servitude for a previously dedicated right-of-way on Eastman Drive.

#### TOWN ADMINISTRATOR COMMENTS

The Town Council is encouraged to continue the public hearing until November 20 to ensure that required notifications have been completed, and after the hearing, adopt Resolution #2018-059.

#### BACKGROUND

Mary Morgan of 4 Sheldon Road has submitted a formal request asking the Town of Derry to release a section dedicated right-of-way between the end of Eastman Drive and Sheldon Road from public servitude.

The right-of-way connecting Eastman Drive to Sheldon Road was dedicated in a 1980 plan (RCRD C-9856) but this section of right-of-way was never constructed and Eastman Drive terminates with a circular turn-around. The area requested for release is approximately 475 feet by 50 feet.

It should be noted that the petitioner is not a direct abutter along the right-of-way and she has raised questions about the underlying title and land ownership of Eastman Drive right-of-way. A Town Council action to release public servitude should be considered independent of any private action by the petitioner and/or the abutters to acquire the underlying land.

#### DISCUSSION

Department Heads have reviewed this request and responded to the Town Administrator. There were no objections as there is no need to connect the two streets given that Eastman Drive is a developed subdivision with single family homes and has access to Hampstead Road via Spollett Drive.

RSA 231:52 is the mechanism by which a municipality may discharge a dedicated public right-of-way. If Town Council votes to release this portion of Eastman Drive from public servitude, each abutter has default rights to the center of the former right-of-way. Owners of record for the two abutting properties:

Parcel 10098-071 – 14 Eastman Drive – Joseph and Jeanne Laratro

Parcel 10098-070 – 15 Eastman Drive – Justine Kurek

#### FISCAL IMPACT

Legal and survey costs would be borne by the petitioner, no fiscal impact to the Town

RECOMMENDED ACTION BY COUNCIL

Staff recommends that the Town Council vote affirmatively to release the portion of Eastman Drive never constructed from public servitude, pursuant to RSA 231:52.

RECOMMENDED MOTION

See attached Resolution #2018-059



## RESOLUTION

Number 2018-059

To Release from Public Servitude a Street from Eastman Drive to  
Sheldon Road

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WHEREAS, RSA 231:52 authorizes the Town Council to release and discharge any way dedicated from all public servitude; and

WHEREAS, the Town has received such a request from Mary Morgan, 4 Sheldon Road; and

WHEREAS, no Town department or Committee has expressed a need to retain the paper street; and

WHEREAS, all abutters and interested parties have been notified of this request;

NOW, THEREFORE, BE IT RESOLVED IN COUNCIL that the Council hereby releases from Public Servitude the paper street which leads from Eastman Drive to Sheldon Road depicted on plan #C9856 at the Registry of Deeds, that the Petitioner shall be responsible for all costs associated with this action; further that the Town Administrator is hereby authorized to execute all documents necessary to implement this Resolution.

This Resolution shall take effect immediately upon its passage.

Adopted: November 20, 2018

Attest:

X \_\_\_\_\_

James Morgan, Council Chair

Date: \_\_\_\_\_

X \_\_\_\_\_

Daniel Healey, Town Clerk

Date: \_\_\_\_\_