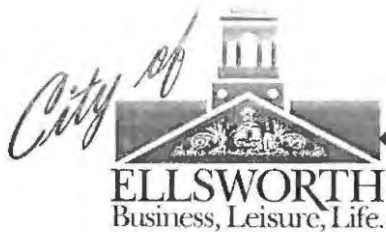


**SPECIAL MEETING OF THE
ELLSWORTH CITY COUNCIL**

A special meeting of the Ellsworth City Council will be held on Friday, September 13, 2019 at 8:00 AM. The meeting will be held in the Ellsworth City Hall Council Chambers.

AGENDA

1. Call to Order.
2. Council Order #091900, Discussion and action on taking by eminent domain an easement to clear the title of an existing road leading from Christian Ridge Road to Leonard Lake.
3. Adjournment.



City Manager

1 City Hall Plaza ♦ Ellsworth, ME 04605-1942
Phone (207) 669-6616 ♦ Fax (207) 667-4908
www.ellsworthmaine.gov

MEMO

To: City Council

From: David Cole

Date: September 10, 2019

Re: Taking of Road Easement to Leonard Lake and Former Branch Lake Stream Dam

I am recommending that the City Council approve the proposed Order of Commendation (attached) related to the taking of a new easement to reestablish access from Christian Ridge Road to the former Branch Lake Stream Dam.

As background, the City has maintained a roadway from Christian Ridge Road to the dam site for over a hundred years by virtue of an 1889 easement. The dam is now in a state of disintegration, representing a potential liability to the City. The dam debris also obstructs fish passage, according to the Downeast Salmon Federation (DSF). The group approached the City approximately three years ago with the goal of raising the funds necessary to remove the remnants of the dam in order to improve fish migration. DSF subsequently received a federal grant to support the dam removal, worked out an agreement with the City as owner to allow the work to go forward, and hired a contractor to complete the work.

The root of the problem relates to a survey recently commissioned by DSF, which shows that much of the roadway is outside of the original 1889 easement. As a result, the property owner has posted "no trespassing" signs on the road. Given the City has used this road for well over a century, the City believes it already has the prescriptive rights to use the road for all purposes of a public way, regardless of the boundaries of the original easement.

Time is of the essence, as the contractor is scheduled to begin work within the next couple of weeks, to take advantage of post-Labor Day water levels which provide better access to the dam, and to ensure compliance with critical habitat restrictions set by DEP which limit construction during spawning season. As such, there isn't sufficient time to settle the matter in court through a "quiet title action", plus simply taking the property to clear title is quicker and less expensive for all concerned.

A fair market acquisition price of \$200.00 was calculated by City Assessor Larry Gardner. Keeping in mind that the City believes that it already has the right to use the road, the new easement does include an additional .12 of an acre for a turnaround area at the end of the road adjacent to the dam site to ensure that construction related equipment can be accommodated.

Finally, it should be noted that the City posted the taking notice in three locations: City Hall, the U.S. Post Office, and at the subject road site. Further, the property owner was contacted in writing to see if he was willing to voluntarily convey the easement in lieu of taking the property. He was further notified in writing of the Special Council Meeting and provided a copy of the Order of Commendation along with the "Layout of Proposed Public Way" as posted.

Accordingly, the following motion is suggested:

Move to adopt the Order of Condemnation for the taking of the Leonard Lake Road and to appropriate \$200 in acquisition fees as specified in the order.

LAYOUT OF PROPOSED PUBLIC WAY
Leonard Lake Road

Pursuant to Title 23 of the Maine Revised Statutes, Part 3, Chapter 304, the City of Ellsworth hereby lays out a proposed easement for a public way, described below:

A certain lot or parcel of land, with any improvements located thereon, situated on the easterly side of the Christian Ridge Road in the City of Ellsworth, Hancock County, Maine bounded and described as follows, to wit:

Beginning at a one (1) inch galvanized pipe found set in the ground at or near the easterly sideline of the Christian Ridge Road at the southwesterly corner of a lot of land conveyed to Mary L. and Francis Branca from Mary L. Branca and Lillian Fuchs in a deed dated September 25, 1979 and recorded in the Hancock County Registry of Deeds Book 1360 Page 423. Said pipe also being the northwesterly corner of a lot of land conveyed to Steven Joy from Benjamin Franklin Maddocks in a deed dated October 30, 2014 and recorded in said Registry of Deeds Book 6306 Page 78;

Thence S87°00'E by and along the southerly line of said land of Branca and the northerly line of said land of Joy three hundred fifty-nine and eighty-one hundredths (359.81) feet to a one half (1/2) inch iron pin found set in the ground;

Thence continuing same course (S87°00'E) by and along said southerly line of land of Branca and said northerly line of land of Joy and the northerly line of a lot of land conveyed to City of Ellsworth, Maine from Ellsworth Water Company in Parcel 1 of a deed dated December 5, 1985 and recorded in said Registry Book 1561 Page 573 one hundred eleven (111) feet, more or less, to the waters of Branch Lake Stream;

Thence running in a southeasterly direction by and along said waters of Branch Lake Stream one hundred (100) feet, more or less, to the center of the top of a concrete dam;

Thence S52°55'W seventy-three (73) feet, more or less, to an unmarked point which bears S37°05'E from the aforementioned one half (1/2) inch iron pin found;

Thence N37°05'W one hundred twenty and twenty-nine hundredths (120.29) feet to an unmarked point which is S37°05'E forty-three and thirteen hundredths (43.13) feet from said one half (1/2) iron pin found and also being S03°00'W and thirty-three and zero tenths (33.0) feet from aforementioned southerly line of land of Branca and northerly line of land of Joy;

Thence N87°00'W remaining at all times thirty-three and zero tenths (33.0) feet southerly from said southerly line of land of Branca and said northerly line of land of Joy three hundred eighty-four and eleven hundredths (384.11) feet to an unmarked point on the aforementioned easterly sideline of the Christian Ridge Road;

Thence N03°00'W by and along said easterly sideline of the Christian Ridge Road thirty-three and eighteen hundredths (33.18) feet to the pipe at the point of beginning and containing 0.5 acres, more or less.

The above mentioned bearings are oriented to Magnetic North 2019.

Date Posted: August 22 2019

Locations Posted:

1. City Hall and City Website (Bulletin board 8/22/2019 @ 3:42 pm / Tech. R 3:40 pm)
2. Ellsworth Post Office 8/22/2019 @ 3:42 pm
3. Noted Property

Posted By:

Printed name:

David A. Cole
David A. Cole 1

**ORDER OF CONDEMNATION,
Taking Leonard Lake Road, Ellsworth, Hancock County, Maine**

WHEREAS, there is an existing unnamed road in the City of Ellsworth that is currently being used to access Leonard Lake, the former Branch Lake Stream dam from Christian Ridge Road, and a small parcel of City-owned land located at the end of the road; and

WHEREAS, this road has been in existence and used by the City of Ellsworth and the public since the late 19th century; and

WHEREAS, a portion of this road is located on an easement owned by the City of Ellsworth and the remainder is located on private property (property located at 263 Christian Ridge Road); and

WHEREAS, the City of Ellsworth posted a layout of the entire road, including the portion located on privately-owned land, in two public places in the City and in the vicinity of the proposed right-of-way for seven (7) days in compliance with the provisions of 23 M.R.S.A. § 3022; and

WHEREAS, once a right-of-way, or any part thereof, has been laid out, 23 M.R.S.A. § 3023 authorizes a municipality to take the property for highway purposes where the municipal officers determine that public exigency requires the immediate taking of such property interests, if the municipality is unable to purchase it at what the municipal officers deem reasonable valuation, or if title is defective; and

WHEREAS, the City of Ellsworth tentatively proposes to call this road “Leonard Lake Road;”

NOW THEREFORE, BE IT ORDERED THAT:

Section 1. Finding of Public Exigency. The Ellsworth City Council hereby finds that public exigency requires the immediate taking of a road as described in Section 2 to ensure access for the City and the general public to Leonard Lake, the former Branch Stream dam, and the small City-owned parcel located at the end of the road. The City Council also finds that the City is unable to purchase the property at what the Ellsworth City Council deems a reasonable valuation under the circumstances.

Section 2. Condemnation and Property Description. In accordance with the authority granted to the City of Ellsworth by virtue of Title 23 of the Maine Revised Statutes, Part 3, Chapter 304, the Ellsworth City Council hereby condemns and takes by eminent domain a public easement over the following described property in Ellsworth, Maine, for all purposes of a public way, including, but not limited to, construction, reconstruction, and maintenance of the road, grading and drainage improvements, the installation and maintenance of utilities, and for access to and from the river, said road to be called “Leonard Lake Road” or some other name approved by the City Council:

See Exhibit A, attached hereto and incorporated herein by reference

Section 3. Owners Subject to the Taking. The Ellsworth City Council hereby finds that the following persons or entities are the owner of record of the property described in Section 2:

Parcel Impacted	Owner of Record
Tax Assessor's Map and Lot 41-51-2, known as 263 Christian Ridge Road	Steven Joy 2427 Twin Drive Sarasota, FL 34234

Section 4. Damages. The Ellsworth City Council hereby finds and determines the just compensation for all damages to the Owner listed in Section 3 occasioned by this taking of property by eminent domain is the sum of TWO HUNDRED DOLLAR AND ZERO CENTS (\$200.00).

Section 4. The Ellsworth City Clerk is hereby directed to serve upon the Owner listed in Section 3 an attested copy of this Order of Condemnation and a check in the amount of the damages stated in Section 4. The City Clerk is further ordered to record an attested copy of this Order of Condemnation in the Hancock County Registry of Deeds.

Exhibit A
Metes and Bounds of Leonard Lake Road Right-of-Way

A certain lot or parcel of land, with any improvements located thereon, situated on the easterly side of the Christian Ridge Road in the City of Ellsworth, Hancock County, Maine bounded and described as follows, to wit:

Beginning at a one (1) inch galvanized pipe found set in the ground at or near the easterly sideline of the Christian Ridge Road at the southwesterly corner of a lot of land conveyed to Mary L. and Francis Branca from Mary L. Branca and Lillian Fuchs in a deed dated September 25, 1979 and recorded in the Hancock County Registry of Deeds Book 1360 Page 423. Said pipe also being the northwesterly corner of a lot of land conveyed to Steven Joy from Benjamin Franklin Maddocks in a deed dated October 30, 2014 and recorded in said Registry of Deeds Book 6306 Page 78;

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Thence running in a southeasterly direction by and along said waters of Branch Lake Stream one hundred (100) feet, more or less, to the center of the top of a concrete dam;

Thence S52°55'W seventy-three (73) feet, more or less, to an unmarked point which bears S37°05'E from the aforementioned one half (1/2) inch iron pin found;

Thence N37°05'W one hundred twenty and twenty-nine hundredths (120.29) feet to an unmarked point which is S37°05'E forty-three and thirteen hundredths (43.13) feet from said one half (1/2) iron pin found and also being S03°00'W and thirty-three and zero tenths (33.0) feet from aforementioned southerly line of land of Branca and northerly line of land of Joy;

Thence N87°00'W remaining at all times thirty-three and zero tenths (33.0) feet southerly from said southerly line of land of Branca and said northerly line of land of Joy three hundred eighty-four and eleven hundredths (384.11) feet to an unmarked point on the aforementioned easterly sideline of the Christian Ridge Road;

Thence N03°00'W by and along said easterly sideline of the Christian Ridge Road thirty-three and eighteen hundredths (33.18) feet to the pipe at the point of beginning and containing 0.5 acres, more or less.

The above mentioned bearings are oriented to Magnetic North 2019.

