

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT

BARNSTABLE, SS.

CATHERINE BEATTY, et al.,
Plaintiffs,

v.

TOWN OF CHATHAM, MASSACHUSETTS,
Defendant.

C.A. No. 1672cv00057

AGREEMENT FOR JUDGMENT

The parties to the within action hereby agree to the entry of Final Judgment pursuant to Mass. R. Civ. P. 54 as follows:

1. The Town's September 10, 1997 Order of Taking in Land in Chatham Improvement for Highway Purposes Battlefield Road, Cedar Street, Champlain Road, Port Fortune Lane, Sears Road, Stage Harbor Road and Stage Neck Road, as recorded in the Barnstable Registry of Deeds in Book 10949 at Pages 89-122 is hereby declared to have been invalidly adopted and shall be rescinded and replaced in accordance with the terms of an Agreed Final Judgment, as stipulated herein.

2. In connection with and at the next Annual Town Meeting or at a duly convened Special Town Meeting, the Town shall take such steps as are necessary or appropriate to enable its Board of Selectmen to adopt a replacement Order of Taking for Public Way and Maintenance Purposes of Easements in Certain Land Located on Battlefield Road, Cedar Street, Champlain Road, Port Fortune Lane, Sears Road, Stage Harbor Road, and Stage Neck Road in the form of (save for such date and name changes as may be necessary) the document attached hereto as

Exhibit A (the “2019 Order of Taking”). Once duly authorized, the Town’s Board of Selectmen shall adopt the aforesaid replacement 2019 Order of Taking. The Town shall then promptly cause the 2019 Order of Taking to be duly recorded in the Barnstable Registry of Deeds, whereupon the September 10, 1997 Order of Taking shall be rescinded and the Town shall thereafter act in conformity with the 2019 Order of Taking.

3. With respect to the Plaintiffs, the Town shall cause the Takings Plans that shall be referred to and incorporated by reference in the 2019 Order of Taking to conform to and to be consistent with, with such lesser detail as is appropriate, the sketches attached hereto as Exhibit B.

4. The Plaintiffs, in consideration of the Town’s undertaking the actions stipulated herein and adhering to the 2019 Order of Taking, the sufficiency of which consideration is hereby acknowledged, do hereby agree, for said Plaintiffs, their heirs, successors and assigns, to release and discharge the Town, its officers, employees, successors and assigns from all damages, debts, demands, actions, reckonings, covenants, contracts, controversies, agreements, promises, doings, omissions, liabilities and any and all other claims of whatever nature and description, both in law and equity, arising from or in consequence of the September 10, 1997 Order of Taking in and over the premises *and* the 2019 Order of Taking to be effected in accordance with the terms hereof.

5. Upon the entry of the Agreed Final Judgment stipulated herein, this action shall be dismissed with prejudice, with each side to bear its own costs and fees.

Executed this 9th day of January 2019 by the undersigned duly authorized counsel on behalf of the parties hereto in full and final satisfaction of all claims asserted in the within action.

The Plaintiffs,
Catherine Beatty, et al.
By their Attorney,

Laura Steinberg

Laura Steinberg (BBO# 478440)
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Boston, MA 02109
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Tel.: (617) 338-2800
Fax: (617) 338-2880

The Defendant,
Town of Chatham, Massachusetts
By its Attorney,

Patrick J. Costello

Patrick J. Costello (BBO #531761)
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Town Counsel
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EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss: _____, 2019

ORDER OF TAKING FOR PUBLIC WAY AND MAINTENANCE PURPOSES OF EASEMENTS IN CERTAIN LAND LOCATED ON BATTLEFIELD ROAD, CEDAR STREET, CHAMPLAIN ROAD, PORT FORTUNE LANE, SEARS ROAD, STAGE HARBOR ROAD, AND STAGE NECK ROAD

WE, PETER K. COCOLIS, SHAREEN DAVIS, JEFFREY S. DYKENS, CORY J. METTERS, and DEAN P. NICASTRO, the duly elected BOARD OF SELECTMEN of the TOWN OF CHATHAM, a municipal corporation within the County of Barnstable and the Commonwealth of Massachusetts with a mailing address of 549 Main Street, Chatham, Massachusetts 02633, by virtue of and in pursuance of the vote of the Inhabitants of the Town of Chatham under Article of the _____, 2019 Town Meeting Warrant, having complied with all preliminary requirements prescribed and directed by law, in the name of and for the benefit of the Inhabitants of the said Town of Chatham, for the purposes of the creation and maintenance of certain public ways and certain equipment installed on, under, or above such public ways for the public good, DO HEREBY ORDER the taking and DO HEREBY TAKE BY EMINENT DOMAIN, under the provisions of Chapter 79 of the Massachusetts General Laws, of easements as set forth below:

1. An EASEMENT, for purposes of the creation and maintenance of public ways, in certain parcels of land within said Town of Chatham, as shown in the schedules attached hereto and made a part hereof, and also being shown as the areas labeled "Public Way" on a set of plans (comprised of Sheets 1 through 14) dated as of _____, 201_, entitled "Taking Plan of Battlefield Road, Cedar Street, Champlain Road, Port Fortune Lane, Sears Road, Stage Harbor Road, and Stage Neck Road in Chatham, Massachusetts prepared for: Town of Chatham, scale 1" = 40', prepared by Eldredge Surveying & Engineering, 1038 Main Street, Chatham, MA 02633" (hereinafter referred to as the "2019 Takings Plans"), which plans are incorporated by reference as a part of this Order of Taking and are recorded with Barnstable County Registry of Deeds in Plan Book _____, Pages _____; and

2. A separate additional EASEMENT, referred to herein and labeled on the 2019 Takings Plan as the "Maintenance Area," for the purpose of enabling and facilitating the installation, connection, repair, upgrade and maintenance of the Town of Chatham's infrastructure located within the Public Ways areas and Maintenance Area, including all appurtenances relating thereto (including without limitation fire hydrants, gates, gate boxes, hand holes, valves, manholes, catch basins, frames, covers, grates, service shut-offs, service laterals, forcemains, low pressure flushing stations, pumping stations, chambers/meter pits, chimneys and/or clean outs) and including all materials, bedding, installations, connections, testing requirements to perform all work in accordance with Local, State and Federal requirements as applicable for each of the utilities listed below:

a. Utility pole, anchor and distribution lines relating to electric, telephone and cable facilities/equipment;

- b. Water distribution system;
- c. Sewer distribution system;
- d. Storm and surface drainage collection system;
- e. Existing sidewalk and curbing (repair, maintenance and replacement of existing sidewalks and curbs shown on the 2019 Taking Plans only);
- f. Guard rails;
- g. Signage and posts;
- h. Gas distribution system;
- i. Monumentation;
- j. Snow removal/deposit snow from adjacent Public Way areas, street sweeping, and maintenance, repairs, and improvements to the portion of the "Public Way" defined in Paragraph 1 that is adjacent to the Maintenance Area.

Within the Maintenance Area the Town shall have the right:

To permit its employees and agents who are servicing the adjacent Public Way areas, and the employees and agents of utility companies servicing or providing the public utilities within the Public Ways and/or the Maintenance Area, to enter upon the Maintenance Area to perform such servicing without committing trespass against any fee holder of the Maintenance Area.

Within the Maintenance Area the Town shall have only those rights specified in a. through j. above. In connection with its use of the Maintenance Area, the Town shall take reasonable and due care not to disturb, damage, destroy, or remove any existing structures or plantings or irrigation systems or electrical equipment or facilities within or above the Maintenance Area. If during any repair, installation, replacement and/or maintenance of the utilities authorized in a through j., the Town and/or its agents are required to remove temporarily any existing structures or plantings or irrigation systems or electrical equipment or facilities within or above the Maintenance Area, the Town shall provide reasonable advance notice to the fee holder and (save for pruned branches) shall replace as near as possible to their prior condition any such existing structures or plantings or irrigation systems or electrical equipment or facilities removed or damaged as a result of said work.

Excepted and excluded from this Taking Order are easements previously granted to public utility companies, and all right, title and interest in and to the personal property belonging to the utility companies and located within the Public Way area or Maintenance Area described above. This Taking Order shall not preclude any trimming, pruning, and/or tree work required by a utility company servicing or providing public utilities installed below or above the Public

Way and/or the Maintenance Area necessary to ensure continuous utility service to the abutting properties and/or other areas of the Town of Chatham, provided that this Taking Order shall not be construed to grant any utility company any greater rights than it previously possessed.

Subject to the foregoing, the easements taken as described herein include the right to install and maintain all utilities, including the right to drainage and sewers, which the Town of Chatham may now or may hereinafter provide.

This Order is adopted on _____, 2019 at Chatham, Massachusetts by:

SELECTMEN OF THE TOWN OF CHATHAM

EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT

BARNSTABLE, SS.

CATHERINE BEATTY, *et al.*,
Plaintiffs,

v.

TOWN OF CHATHAM, MASSACHUSETTS,
Defendant.


C.A. No. 1672cv00057

ASSENTED-TO MOTION TO REVIVE CASE AND TO ENTER AGREED FINAL JUDGMENT

Plaintiffs Catherine Beatty, *et al.* hereby respectfully request that the Court vacate its November 21, 2018 dismissal without prejudice of the Complaint herein and reinstate the Complaint for purposes of entry of final judgment in the form attached hereto as Exhibit A. In support of this motion, Plaintiffs state that they have reached agreement with Defendant Town of Chatham, that the Town has agreed to entry of final judgment herein in the form of Attachment A hereto, and that entry of the agreed final judgment will serve the public interest by resolving this matter without need for further judicial resources.

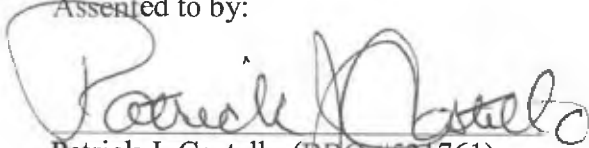
WHEREFORE, Plaintiffs respectfully request that final judgment herein be entered in the form of the attached Agreed Final Judgment.

January 17, 2019



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Sullivan & Worcester LLP
One Post Office Square
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lsteinberg@sandw.com
Tel.: (617) 338-2800
Fax: (617) 338-2880
Counsel for Plaintiffs

Assented to by:




Patrick J. Costello (BBO #531761)
Louison, Costello, Condon & Pfaff, LLP
Town Counsel
101 Summer Street
Boston, MA 02110
pcostello@lccplaw.com
T: (617) 439-0305
F: (617) 439-0325
Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned attorney for Plaintiffs hereby certifies that she has today served the foregoing Assented-to Motion to Revive Case and to Enter Agreed Final Judgment by email sent to *Pcostello@lccplaw.com* and by first class mail, postage prepaid, addressed to:

Patrick J. Costello, Esq.
Louison, Costello, Condon & Pfaff, LLP
101 Summer Street
Boston, MA 02110

January ¹⁷~~10~~, 2019



Laura Steinberg (BBO# 478440)
Sullivan & Worcester LLP
One Post Office Square
Boston, MA 02109
lsteinberg@sandw.com

ATTACHMENT A

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT

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v.

TOWN OF CHATHAM, MASSACHUSETTS,
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AGREED FINAL JUDGMENT

The parties having agreed to entry of the within Final Judgment, the Court accordingly enters judgment herein pursuant to Mass. R. Civ. P. 54 as follows:

1. The Town's September 10, 1997 Order of Taking in Land in Chatham Improvement for Highway Purposes Battlefield Road, Cedar Street, Champlain Road, Port Fortune Lane, Sears Road, Stage Harbor Road and Stage Neck Road, as recorded in the Barnstable Registry of Deeds in Book 10949 at Pages 89-122 is hereby declared to have been invalidly adopted and shall be rescinded and replaced in accordance with the terms of this Agreed Final Judgment.

2. In connection with and at the next annual Town Meeting or at a duly convened Special Meeting, the Town shall take such steps as are necessary or appropriate to enable the Town's Board of Selectmen to adopt a replacement Order of Taking for Public Way and Maintenance Purposes of Easements in Certain Land Located on Battlefield Road, Cedar Street, Champlain Road, Port Fortune Lane, Sears Road, Stage Harbor Road, and Stage Neck Road in the form of (save for such date changes as may be necessary) the document attached hereto as Exhibit A. Once duly authorized, the Town's Board of Selectmen shall adopt the aforesaid replacement

Order of Taking. The Town shall then promptly cause the replacement Order of Taking to be duly recorded in the Barnstable Registry of Deeds and the Town shall thereafter act in conformity therewith.

3. With respect to the Plaintiffs, the Town shall cause the Takings Plans that shall be referred to and incorporated by reference in the replacement Order of Taking to conform to and to be consistent with, with such lesser detail as is appropriate, the sketches attached hereto as Exhibit B.

4. Upon the entry of this Agreed Final Judgment, this action is hereby dismissed with prejudice, with each side to bear its own costs and fees.

Entered by the Court this ____ day of January, 2019.

Justice of the Superior Court

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss:

_____, 2019

**ORDER OF TAKING FOR PUBLIC WAY AND MAINTENANCE PURPOSES OF
EASEMENTS IN CERTAIN LAND LOCATED ON BATTLEFIELD ROAD, CEDAR
STREET, CHAMPLAIN ROAD, PORT FORTUNE LANE, SEARS ROAD, STAGE
HARBOR ROAD, AND STAGE NECK ROAD**

WE, PETER K. COCOLIS, SHAREEN DAVIS, JEFFREY S. DYKENS, CORY J. METTERS, and DEAN P. NICASTRO, the duly elected BOARD OF SELECTMEN of the TOWN OF CHATHAM, a municipal corporation within the County of Barnstable and the Commonwealth of Massachusetts with a mailing address of 549 Main Street, Chatham, Massachusetts 02633, by virtue of and in pursuance of the vote of the Inhabitants of the Town of Chatham under Article of the _____, 2019 Town Meeting Warrant, having complied with all preliminary requirements prescribed and directed by law, in the name of and for the benefit of the Inhabitants of the said Town of Chatham, for the purposes of the creation and maintenance of certain public ways and certain equipment installed on, under, or above such public ways for the public good, DO HEREBY ORDER the taking and DO HEREBY TAKE BY EMINENT DOMAIN, under the provisions of Chapter 79 of the Massachusetts General Laws, of easements as set forth below:

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Subject to the foregoing, the easements taken as described herein include the right to install and maintain all utilities, including the right to drainage and sewers, which the Town of Chatham may now or may hereinafter provide.

This Order is adopted on _____, 2019 at Chatham, Massachusetts by:

SELECTMEN OF THE TOWN OF CHATHAM

EXHIBIT B