



Town of Falmouth Community Development Department  
271 Falmouth Road  
Falmouth, ME 04105  
☎ 207.781.5253  
📠 207.781.8677  
💻 [www.town.falmouth.me.us](http://www.town.falmouth.me.us)

## Memorandum

Date: July 11, 2013  
To: Town Council  
From: Amanda L. Stearns, Community Development Director  
Cc: Nathan A. Poore, Town Manager  
Ethan Croce, Senior Planner  
Re: Docks on Town Land, Carroll Street

Property owners at 30 and 32 Carroll Street have submitted a request to the Council for access rights across town owned land between their property and Casco Bay for the purpose of installing a seasonal dock. Such an installation requires Town Council approval in some form as well as a Shoreland Approval from the Planning Board. The Planning Board will not hear an application until an applicant has RTI (right/title/interest) in the property so addressing the Council is the first step.

The town acquired the property shown on the attached tax map from the original developer in the late 60s as part of a federal program to expand the sewer. Additional segments were purchased in the 80s to accommodate the location of the pump station. The sewer line goes along the coast to just south of Brown Street, then heads inland to a pump station and then into Brown Street and to Route One.

Four properties (18, 24, 30 and 32 Carroll Street) have applied for and received an approval from the Planning Board and temporary access from the Town Manager to make improvements to the property for shoreline stabilization. The Town Manager may approve temporary use of town property. Council action is required for any license, easement or acquisition that allows semi-permanent or permanent rights.

Attached are several photos that show the location of all properties that are adjacent to the town land. This includes 5 properties along Carroll Street and two along Brown Street. The second photo, from Google Maps, shows two docks. To date, staff have not been able to find any evidence that either property owner has access rights from the Town, so this initial decision will set precedence for future requests.

Also attached for your review are the 1999 Council minutes where one property owner at 24 Carroll Street requested rights from the Council. That request was denied.

Ethan Croce asked for comments from various town staff that might have information or an interest in the subject. Their comments are organized below by the policy question for which they are related. Those staff were Lucky D'Ascanio, Parks and Community Programs Director; Ed Tolan, Police Chief; Howard Rice, Fire Chief; Theo Holtwijk, Director of Long-range Planning; Pete Clark, Wastewater Superintendent; Bob Shafto, Open Space Ombudsman and me.

**Policy questions the Council may want to consider are:**

**?1 What is the value of the property? Are there other uses that the town might consider for this property in the future such as public access?**

**?2 If the Council decides that granting access is appropriate how should that occur?**

Options are license, easement, or sale of property with reservations for uses the Town wants to maintain.

- ◆ If it is solely to locate, maintain and improve the sewer line than maybe the Town should require the property owner to pay for an appraisal and purchase the property at fair market value and reserve an easement that keeps any function the Town requires, including shoreland stabilization. Then the property owner pays for the true cost of water access and the Town gets what it needs out of the property. If there is a greater value to the property other than the sewer line, such as public access and shoreland stability, then the Town should keep the property and either deny access or structure a license very narrowly.
- ◆ If rights are given to the land owners, the preference is to use a revocable license instead of an easement.

**?3 What restrictions should be placed on the license/easement/sale?**

- ◆ The Town may wish to record in writing that it is not taking on any future maintenance responsibilities (e.g. with respect to slope erosion and other damage)
- ◆ Mandate language in the legal agreement requiring the dock owners to remove the dock if needed for sewer work in the area.
- ◆ Include language in the legal document that allows the Town to remove the docks at its discretion, and without obligation to replace, using reasonable care, and at the owner's expense, in case the Town does not want to wait for the dock owners to act.
- ◆ It will be important to protect the Town's infrastructure. This includes, but is not limited to, the land, vegetation, sideslope stability, shoreland zone rules, drainage system (outfalls and main lines), sewer infrastructure, and so forth. These items should be protected in some manner through some legally binding measure.
- ◆ Include a no use/no disturbance clause for all areas outside of the access area, specifically stating that no mowing, trimming or cutting or vegetation can be conducted without the Town's express consent.
- ◆ Include a provision stating that the Town has a right to enter the property at any time for inspections and that the dock owners cannot block the public from using or accessing any other part of the parcel.
- ◆ Give the town access over a portion of the dock owners' property (area should be specified) for access to the Town parcel.

**?4 What compensation should be required?**

- ◆ The Town Council may want to consider charging an annual fee to any home owner for the right to use Town property to access the ocean in exchange for the permission that is being sought.

<b>?5</b>	<b>What provisions should be made for renewals or violations of the agreement?</b>
-----------	--

- ◆ Structure the use license to include a 60 day window for the land owner to apply for an extension so that the burden is on the applicant to renew the license.
- ◆ Include an out clause in the legal agreement - If the property is violating any portion of the license, the license automatically becomes null and void.