



Agenda for Special City Council Meeting

Cummings Street Bridge

December 6, 2017

4:00 P.M.

- 1) Site Inspection

City Council Chambers, City Hall

December 6, 2017

5:00 P. M.

- 2) Call to Order by the Mayor
- 3) 17-368. Review and Approve Agenda
- 4) 17-369. Public Hearing: Cummings Street Bridge/Condemnation of Easements in Private Property
- 5) *Adjournment*

CITY OF MONTPELIER VERMONT NOTICE OF PUBLIC HEARING RE: TH 130 BRIDGE
PROJECT (CUMMINGS STREET) BRIDGE NO. 13 RECONSTRUCTION

TH 130 (CUMMINGS STREET) RECONSTRUCTION BO 1446(36)

CONDEMNATION, NECESSITY AND DAMAGES PROCEEDINGS

The City Council of the City of Montpelier, Vermont will meet to conduct a site inspection at Cummings Street, which is approximately 1.1 miles northerly from Montpelier City Hall and 0.045 miles east of the junction of Elm Street (VT Rte 12) and Cummings Street (at the Cummings St. Bridge), at 4:00 p.m. on December 6, 2017. The inspection will continue along Cummings Street approximately 0.067 miles to the northeasterly end of the project.

Following the site inspection, the City Council will recess to the City Hall at 39 Main Street, Montpelier, Vermont, at 5:00 p.m. on December 6, 2017 for the purpose of receiving testimony and hearing all persons interested in the matter of whether the City of Montpelier shall undertake the project which will involve the replacement of the Cummings St. Bridge and includes, by way of general description: the need at 3 Cummings St. Montpelier, Vermont for temporary easements to enter upon land during the period of construction for general construction purposes, including the right to install project demarcation fence, construct a drive, cut and dispose of all trees, down timber, stubs, brush, bushes, and debris, and install erosion control barriers together with the right to keep the erosion control barriers clear of debris and functioning properly throughout project construction; the need for a temporary easement to extend slopes and embankments at such an angle as will hold the material of said slopes in repose against ordinary erosion in accordance with the standard practice of Transportation Agency construction together with the right to remove anything from the slope area; and the need for permanent easements to install and maintain guardrail and to construct and maintain the channel of the North Branch of the Winooski River. For more information see the revised Project plans and additional project-related information as filed on May 20, 2016 at the Montpelier City Hall which is located at 39 Main Street, Montpelier, Vermont. Questions may be made to Carolyn Carlson, Senior Structures Project Manager, by phone at (802) 828-0048, or by email at carolyn.carlson@vermont.gov. Requests for accommodations may be made to Tom McArdle, Director of Public Works, by phone at (802) 223-9508, or by email at tmcardle@montpelier-vt.com. The plans may also be viewed at:

[https://outside.vermont.gov/agency/VTRANS/external/Projects/Structures/13J082/Montpelier%20BO%201446\(36\)%20Final%20Plans%20to%20Town%2010-24-17.pdf](https://outside.vermont.gov/agency/VTRANS/external/Projects/Structures/13J082/Montpelier%20BO%201446(36)%20Final%20Plans%20to%20Town%2010-24-17.pdf)

All interested parties are invited to attend the site inspection on December 6, 2017 and to offer testimony on December 6, 2017.

If, after examination of the project site and hearing any and all interested persons, the City Council judges that the public good, necessity and convenience of the inhabitants of the City of Montpelier require that said highway be so altered, and easements be obtained by condemnation it will be so ordered. In addition, the City Council will determine, in accordance with the provisions of 19 V.S.A. § 712, the amount of damages, if any, to be paid to any person through whose land said highway alteration passes or abuts.

Dated at Montpelier, Vermont, this 3rd day of November, 2017.

By: 

William J. Fraser, City Manager

Notices:

Certified Mail to property owner (not less than 30 days in advance):

Cora V. Brooks

Montpelier Planning Commission

Posted Montpelier City Clerk's Office

Publication in local newspaper of general circulation (not less than 10 days in advance)

MEMORANDUM

RICE AND RILEY, PLLC

TO: Members of the Montpelier City Council and Mayor John Hollar

FROM: William H. Rice, Esq.

DATE: December 1, 2017

RE: Cummings Street Bridge Replacement Condemnation

SUBMITTING DEPARTMENT: Public Works.

RECOMMENDED ACTION: The Public Works Department respectfully requests that the City Council review the evidence gathered from the site visit and public hearing and, if the Council determines that the public good, necessity and convenience of the inhabitants of the City of Montpelier require the alteration of Cummings Street by replacing the Cummings Street Bridge, that the easements needed on the property at 3 Cummings Street for the project be condemned. The Public Works Department also respectfully requests that damages be set for the taking.

RELATED COUNCIL GOAL/PRIOR ACTION: The City Council previously approved the initiation of the Cummings Street Bridge replacement project on February 10, 2014.

EXPENDITURE REQUIRED: The 2013 Scoping Report States that total project cost will be \$1,580,000; Montpelier's share will be \$158,000.

SOURCE OF FUNDS: The City of Montpelier has entered into a Finance and Maintenance Agreement with the Vermont Agency of Transportation which provides that the Bridge replacement project be funded as follows: 80% federal funding; 10% State funding; 10% municipal funding.

LEGAL REQUIREMENTS: The procedures for municipal condemnations may largely be found in 19 V.S.A. Chapter 7, Subchapter 2.

There are two components to an eminent domain proceeding: necessity and damages. Necessity is defined to mean:

“a reasonable need which considers the greatest public good and the least inconvenience and expense to the condemning party and to the property owner. Necessity shall not be measured merely by expense or convenience to the condemning party. Necessity includes a reasonable need for the highway project in general as well as a reasonable need to take a particular property and to take it to the extent proposed. In determining necessity, consideration shall be given to the:

- (A) adequacy of other property and locations;
- (B) quantity, kind, and extent of cultivated and agricultural land which may be taken or rendered unfit for use, immediately and over the long term, by the proposed taking;
- (C) effect upon home and homestead rights and the convenience of the owner of the land;
- (D) effect of the highway upon the scenic and recreational values of the highway;
- (E) need to accommodate present and future utility installations within the highway corridor;
- (F) need to mitigate the environmental impacts of highway construction; and
- (G) effect upon town grand lists and revenues.”

19 V.S.A. §501(1).

Damages are defined to mean:

“the value for the most reasonable use of the property or right in the property, and of the business on the property, and the direct and proximate decrease in the value of the remaining property or right in the property and the business on the property. The added value, if any, to the remaining property or right in the property which accrues directly to the owner of the property as a result of the taking or use, as distinguished from the general public benefit, shall be considered in the determination of damages.”

19 V.S.A. §501(2). Additionally, the Vermont Agency of Transportation must comply with federal requirements for determining damages in order to obtain federal funding.

BACKGROUND INFORMATION: The current Cummings Street Bridge was built in 1928; after almost 90 years the Bridge is in a severely deteriorated condition. A Bridge Inspection Report prepared by the Vermont Agency of Transportation earlier this year describes the geometry of the Bridge deck as being “intolerable” and that “replacement [is] needed.” The report quoted from the 2016 Inspection Report that the “deck still has potential for full depth holes to form. Bridge has reached the end of its useful life, and needs replacement.” The Bridge’s superstructure is also rated as being poor. Cummings Street is a dead end street and the 33 residences on the easterly side of the North Branch are reliant on the Bridge for access.

The Cora Brooks property is on the westerly side of the North Branch and is adjacent to the Bridge. The City of Montpelier is seeking several temporary and two permanent easements. The house itself will not be impacted.

Install & Maintain Guardrail (Permanent Easement): The proposed guardrail itself will not be on the Brooks property but a small area of the associated roadway shoulder needed to support it will be on the Brooks property, and will need to be maintained.

Channel (Permanent Easement): This easement is for earthwork and installation and maintenance of stone fill along the river bank, and is necessary for the integrity of the bridge structure, as well as protection of the river bank and the Brooks property. The area will be unavailable for use by the property owner during the project. The property owner will have the use of this area after project construction, but the City of Montpelier will have the perpetual right to enter this area for maintenance, repairs or reconstruction of the river bank.

Install Project Demarcation Fence (Temporary Easement): A project demarcation fence, or PDF, is usually a series of wooden grade stakes set in the ground with plastic tape strung between them, or sometimes a woven plastic fence is used. The fence serves two purposes; it delineates the area which the contractor has legal access to, and serves a safety purpose by dissuading pedestrians from entering the project area. The easement delineates a small area along the frontage of the Brooks property which will be unavailable for use by the property owner during project construction.

Drive (Temporary Easement): The driveway apron adjacent to the roadway will need to be graded to match into the proposed road and repaved. The area of this easement is 33 square feet. Access to the property by the owner will be maintained at all times except for brief periods during the actual driveway work.

Slope (Temporary Easement): The area between the east side of the house and the proposed channel work will need to be graded to effect a smooth transition and help ensure proper drainage, and will be seeded with grass afterward. The area will be unavailable for use by the property owner during the project. The area of this easement is 91 square feet.

SUPPORTING DOCUMENTS:

Written Testimony of Thomas McArdle

Written Testimony of Carolyn Carlson

Written Testimony of Edward Pierce

INTERESTED PARTIES: Cora Brooks

cc: Cora Brooks

**STATE OF VERMONT
CITY COUNCIL OF THE CITY OF MONTPELIER**

IN RE: Cummings Street – Bridge Replacement
City of Montpelier
County of Washington

WRITTEN TESTIMONY OF THOMAS McARDLE

Now comes Thomas McArdle who under oath deposes and says the following:

1. I am a resident of Calais, Vermont.
2. I currently serve as the Director of the City of Montpelier Public Works Department. I have served in this position for about three years and as a Public Works employee for over 35 years as a project manager and then as assistant director.
3. Introduction of Exhibits to occur during the hearing.
4. In that role I am very familiar with Bridge 13, the Cummings Street bridge (the Bridge). The Bridge was built in 1928 and is in a deteriorated condition. The steel superstructure is severely corroded, the deck is in poor condition, the concrete rail and curbing is delaminated, and the westerly abutment would require extensive repair to retain it. In 2008 a hole developed where the bridge deck connects to the westerly abutment wall and a steel plate was installed as a temporary measure only to keep the bridge in service until the bridge can be replaced. Based on my observations of the critical bridge components, I agree with the VTrans bridge inspection reports which conclude that the bridge needs to be replaced. The bridge is also substandard geometrically (width & alignment).
5. The City of Montpelier provided statutory notice of its December 6, 2017 site visit and its December 6, 2017 hearing by sending written notice by certified mail to the affected record property owner, Cora Brooks, on November 3, 2017 at least 30 days prior to the site visit and hearing. Exhibit 3a and 3b. At the Montpelier Post Office, I personally posted the notice by certified mail to both of Ms. Brooks' known residences. Notice was also sent to the Planning Commission and was posted in the City of Montpelier Clerk's office.
6. The hearing notice was published in the Times Argus Newspaper a local newspaper of general circulation within the area not less than ten days prior to

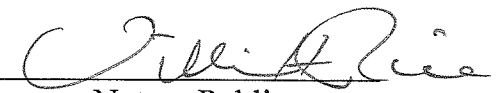
the site visit and hearing on November 22nd and 25th /26th, 2017. Exhibit 4a and 4b.

7. I have reviewed the Scoping Report, Exhibit 1, and concur with the Agency of Transportations conclusions that replacement of the Bridge is necessary and that a temporary bridge to the north of the current Bridge is the best way to provide access to the portion of Cummings Street Easterly of the North Branch.
8. I also attended the meeting of the Montpelier City Council on February 12, 2014 and observed the vote in favor of initiating the alteration of the Bridge. I prepared the letter to Christopher Williams, VTrans Structures Project Manager providing the required official notice of the City Council action.
9. The City of Montpelier has entered into a Finance and Maintenance Agreement with the Vermont Agency of Transportation which provides that the Bridge replacement project be funded as follows: 80% federal funding; 10% State funding; 10% municipal funding. Ex. 5.
10. Impact on Grand List. The City has programmed its 10% share through the Capital Improvement Program (CIP) which is a budgeting method to provide annual funding for repair or replacement of fixed assets ranging from equipment and buildings to streets, sidewalks and bridges. As the sole means of access for 5 single-family properties, 1 garage/office building and 28 apartments (total of 4 buildings) situated on the easterly side of the North Branch River (a total appraised value of \$2,337,700) the bridge is vitally important to a significant number of residents and a business. If the bridge must be condemned for safety reasons and emergency services are unable to reach the area via conventional response, consideration would need to be given to evacuating the residents. Logically, there would be a corresponding decrease in the value of those properties and tax revenue to the City.

Dated at Montpelier, Vermont this 30 day of November, 2017.


Affiant

Subscribed and sworn before me this 30 day of November 2017.


Notary Public

**STATE OF VERMONT
CITY COUNCIL OF THE CITY OF MONTPELIER**

IN RE: Cummings Street – Bridge Replacement
City of Montpelier
County of Washington

WRITTEN TESTIMONY OF CAROLYN CARLSON

Now comes Carolyn Carlson who under oath deposes and says the following:

1. I am a resident of Essex, Vermont.
2. I am a licensed Professional Engineer.
3. I currently serve as a Senior Structures Project Manager with the Vermont Agency of Transportation where I have been employed since 1985. I currently manage 13 projects and a staff of 12, project managers, engineers and technicians. Among many other projects I managed the Richmond Checkered House Bridge widening project, a first in the nation project to widen a historic truss bridge.
4. Among the projects that I am currently managing is the replacement of the Cummings Street Bridge over the North Branch of the Winooski River in Montpelier, Vermont. For purposes of this testimony, I will refer to that structure as “the Bridge” and the overall project as “the Project”.
5. Introduction of exhibits to occur during the hearing.
6. The project consists of the installation of a temporary bridge, removal of the current bridge, construction of a new bridge, removal of the temporary bridge and related improvements.
7. Generally, Cummings Street proceeds from Elm Street in a northeasterly direction. The surface of Cummings Street consists of asphalt.
7. The Bridge is located on Cummings Street approximately 200 ft east of the intersection of Elm St and Cummings St. Cummings St is a dead end street located in the Lower Elm Street section of Montpelier. This section of the City is primarily residential although there are some small businesses located on the northwest side of the bridge and a commercial warehouse is located further down Cummings St. There are 33 residences that rely on the Bridge for access to Elm Street and the City beyond.

8. Cummings Street is Classification Urban Local and is maintained by the City of Montpelier.

9. The Bridge type is Rolled Beam and Concrete. It was built in 1928.

10. The Bridge has the following deficiencies:

a. It is structurally deficient with a poor deck rating.

b. The lane and shoulders are too narrow for the roadway classification considering the vehicle and pedestrian traffic anticipated at the river crossing.

c. The approach railings are substandard surrounding the bridge.

d. The crest vertical curve on Cummings St over the river is substandard.

d. The deck and superstructure continue to deteriorate.

11. The Bridge Inspection Report dated 4/5/17 contains the following ratings:

a. Deck Rating 4 Poor.

b. Superstructure Rating 4 Poor.

c. Substructure Rating 5 Fair.

d. Channel Rating 5 Fair.

(Please note that since the bridge was programmed the condition of the superstructure went from fair to poor, and the substructure and channel rating has changed to fair from satisfactory.)

The Report further states that the “Deck Geometry: Intolerable Replacement Needed.” It quotes from the 2016 Inspection Report that “deck still has potential for full depth holes to form. Bridge has reached the end of its useful life, and needs replacement.”

12. Hydraulics: in order to span bank full width, a new structure would need to have an 80’ clear span (normal to the river). The west abutment would need

to be widened, if it is feasible to do so. Since the superstructure would be deeper than the existing, an average low beam elevation of 531.5' would still provide over 1.0' of freeboard at Q25. The existing man made stream constriction on the westerly side of North Branch should be removed to allow free flow of water.

13. Utilities:

- a. There is an existing 4'' water main which extends the Elm Street intersection, along Cummings Street to the housing complex beyond the project area. This water main is attached to the underside of the existing bridge. The existing water main will be replaced with a new 8'' diameter pipe.
- b. There is an existing 8'' force sewer main which also extends from the Elm Street intersection just off the south edge of Cummings Street. This sewer main passes under the river just downstream from the existing bridge and continues along Cummings Street to the housing complex beyond the project area. The sewer line will not be replaced.
- c. The existing aerial lines will be temporarily relocated during construction of the project. Upon completion of the new bridge the lines will be moved to a new permanent location.

- 14. Natural Resources: other natural resources such as species or habits of special concern are not present in the area, and the floodplain/floodway is controlled by the actions conducted at the Wrightsville Reservoir Dam.
- 15. Wetlands: aside from the North Branch itself, the only other natural resource in the area is a wetland to the south of Cummings Street and on the eastern side of the river.
- 16. Wildlife Habitat: there are no known wildlife corridor issues within the project area.
- 17. Rare, Threatened and Endangered Species: there are no known rare, threatened or endangered species within the project area.
- 18. Agricultural: there are no known prime agricultural soils within the project area.
- 19. Stormwater: there are no known Stormwater issues within the project area.

20. Scenic and Recreational Values of the highway: There are multiple recreational paths that can be accessed by pedestrians and bicyclists who travel on the Cummings Street bridge. The updated bridge will allow pedestrians and bicyclists to travel in a safe manner as they cross the bridge in either direction. Further, as I have previously testified the current almost 90 year old bridge is in dilapidated condition. I am confident that the replacement bridge will be more pleasing in appearance.

21. Traffic Access Alternatives: Cummings Street is a dead end road with one access over Bridge 13. Accordingly, alternative access for the residences on the easterly side of the North Branch will need to be provided during construction. The following alternatives were considered:

a. Option 1: Off-Site Detour

Two potential locations for connecting Cummings St to other roads were considered;

b. Option 1a: Northern Access

Travelling farther north on Cummings St before turning on to Elm St would involve getting access through Conserved Land, which would be difficult to permit and justify the need. The costs associated with acquiring the new Right of Way, mitigating any environmental impacts and constructing the additional roadway, estimated around \$500,000, would exceed the cost of Right of Way and a temporary bridge just upstream of the existing bridge.

c. Option 1b: Eastern Access

The second option would eliminate the bridge entirely and connect Cummings St to North St. Breaking the connection with Elm St would change the nature of the neighborhood from Lower Elm Street to North St. Eliminating a bridge that has been designated as historically significant can also be costly and time-consuming. Severing the connection to Elm St may also affect the ability of the GMTA Montpelier Circulator to reach the residents on Cummings St, which could necessitate the installation of a bicycle and pedestrian bridge in this location anyway.

d. Option 2: Phased Construction

Phased construction is the maintenance of one lane of two-way traffic on the existing bridge while building one lane at a time of the proposed structure. This allows one to maintain traffic along the corridor during construction while mitigating the extra expense and impacts required by a temporary bridge. The Bridge has a curb to curb width of 17 feet. In order to provide adequate width on a one lane temporary bridge, the specifications require a curb to curb width of 14 feet 6 inches. Thus, the existing bridge is already essentially a one lane bridge. In order to build a new bridge one lane at a time while maintaining traffic on the existing bridge, the centerline of the roadway would need to be shifted. The existing alignment through the current bridge is already straight, so adding a curve before the bridge would provide a less than ideal alignment for any proposed bridge. The houses and businesses on the west side of the river are close to the existing road and there is no room without moving or removing a house to realign the road to the south. There is room on the north side of the bridge to shift the alignment to that side for the temporary bridge.

e. Option 3: Temporary Bridge

That leaves a temporary bridge as the only reasonable option for maintaining traffic in this location while work is done on the bridge. there is room on the north side of the bridge to place a temporary bridge outside the footprint of the existing and proposed bridge during construction. Based on the traffic volume on Cummings St, a signalized one lane bridge with alternating traffic should be sufficient at this site.

22. Construction Alternatives: Bridge 13 is structurally deficient with a poor deck rating. The lane and shoulders are too narrow and the approach rail and terminal sections are substandard. The hydraulic flood stage standard is met, but the waterway opening is severely restricted on the west bank of the river. And while the sight distance is sufficient along this stretch, the change in grade of the crest vertical curve is substandard for the speed and roadway classification over the bridge. Since the deck is in poor condition and the city already installed a steel plate to span the void between the bridge deck and back wall, it is safe to assume that the bridge will not last another 10 years without further work being performed on the bridge. Thus, the No Action alternative was not considered.

Alternative 1: Rehabilitation

a. Alternative 1a: Deck Replacement

A rehabilitation option would include a deck replacement at a minimum. The bridge deck is too narrow by 5 feet to meet the Standards and the City expressed a concern with the existing width. Thus, a wider deck should be considered in a deck replacement. The existing exterior girders are close enough to the fascia that it is not unreasonable to have a new deck overhang the existing beams in their current configuration to accommodate a wider deck. However, the existing beams are deteriorated and rusting along their entire length, so it does not make sense to place a brand new deck on old beams without cleaning, patching and painting the existing steel.

b. Alternative 1b: Superstructure Replacement

This alternative is similar to the deck replacement, except the existing steel beams would be replaced at the same time. The beams have been rated as fair and after being cleaned, patched and painted, they would still be 80+ years old.

c. Alternative 2: Complete Replacement

This last alternative would address all of the substandard issues at this site and remove the river constriction while replacing the existing bridge with a brand new structure.

23. The Agency of Transportation recommended and the City Council accepted Alternative 2: Complete Replacement with Traffic Maintained on a Temporary Bridge. The proposed solution would include a completely new bridge that is 88 feet long and 22 feet wide curb to curb. Traffic would be maintained on a temporary bridge to the north of the existing structure, while the remaining work would include removing the existing structure; re-grading the channel banks to match the full width up and down stream; and the necessary roadwork to match the new bridge into the existing alignment.

24. Alternative 2 will address all of the existing deficiencies at the river crossing with a new structure designed to last another 80+ years.

Dated at Montpelier, Vermont this 30 day of November, 2017.


Affiant

Subscribed and sworn before me this 30 day of November 2017.


Notary Public

**STATE OF VERMONT
CITY COUNCIL OF THE CITY OF MONTPELIER**

IN RE: Cummings Street – Bridge Replacement
City of Montpelier
County of Washington

WRITTEN TESTIMONY OF EDWARD PIERCE

Now comes Edward Pierce who under oath deposes and says the following:

1. I am a resident of Berlin, Vermont.
2. I currently serve as a Right of Way Agent V with the Vermont Agency of Transportation where I have been employed since 1998. I currently serve as a Negotiator in the Right of Way Acquisitions section, and I negotiate with private property owners to acquire lands and rights needed by the Vermont Agency of Transportation for transportation projects. My duties include preparing Waiver Valuation Estimates.
3. Among the projects that I have prepared Waiver Valuation Estimates for is the replacement of the Cummings Street Bridge over the North Branch of the Winooski River in Montpelier, Vermont.
4. Introduction of exhibits to occur during the hearing.
5. Property acquisition for federally funded projects is governed by the **Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970**. The implementing regulations are **Title 49 of the Code of Federal Regulations**.
6. Generally, the acquiring agency must obtain an appraisal of the land and/or rights to be acquired before negotiations begin.
7. However, the federal regulations allow the acquiring agency to waive the appraisal requirement when the valuation problem is not complicated and the value is below a certain threshold.
8. The standard threshold of value allowing a waiver of the appraisal requirement is **\$10,000**. The Federal Highway Administration has allowed the Vermont Agency of Transportation, “VTrans”, to increase the value threshold to

\$25,000 if VTrans allows the property owner the option of an appraisal. The vast majority of parcels acquired by VTrans are under \$10,000 and are simple valuations, thus qualifying for an appraisal waiver.

9. In cases where the appraisal requirement is waived, an alternative valuation method known as a “**Waiver Valuation Estimate**” is used. Waiver valuation estimates are prepared by VTrans Right of Way staff, who have experience with the local real estate market and VTrans property acquisitions but who are not licensed appraisers. I prepared the waiver valuation estimate for the Cora Brooks property on March 8, 2016, and it was approved by VTrans Right of Way Acquisition Section Chief Bruce Melvin the same day.
10. The values determined by a waiver valuation estimate are based upon the listed value of the land in the municipal land records. The listed value of the entire lot is divided by the number of square feet in the lot to arrive at a price per square foot. For the Cora Brooks property, the listed value of the land was \$36,700, and the area of the lot was 6,534 square feet. Dividing \$36,700 by 6,534 square feet, I arrived at a price per square foot of \$5.62.
11. The price per square foot is then multiplied by the area of each proposed land taking or easement. In the case of an easement, a discount is normally applied to the formula of 80% for a permanent easement and 10% per year for a temporary easement. Also VTrans has established minimum values of \$500 for a permanent easement and \$250 for a temporary easement, with some exceptions. There was no land taking on the Cora Brooks property, and the easements were valued as follows:
 - a. **Install & Maintain Guardrail (Permanent Easement):** The proposed guardrail itself will not be on the Brooks property but a small area of the associated roadway shoulder needed to support it will be on the Brooks property, and will need to be maintained. Because of its small size, there was no square footage calculated for this easement. The proposed guardrail will have the effect of restricting access to the area on the east side of the Brooks property, thus affecting the owner’s reasonable use of the property and possibly reducing the value of the remaining property. Given these factors it was decided that a minimum value of \$500 for this easement was not appropriate, and a value of \$1,000 was assigned. The additional \$500 is considered to be severance damages.

- b. **Channel (Permanent Easement):** This easement is for earthwork and installation and maintenance of stone fill along the river bank, and is necessary for the integrity of the bridge structure, as well as protection of the river bank and the Brooks property. The area will be unavailable for use by the property owner during the project. The property owner will have the use of this area after project construction but the City of Montpelier will have the perpetual right to enter this area for maintenance, repairs or reconstruction of the river bank. The area of the easement is 239 square feet, which when multiplied by the price per square foot of \$5.62 arrived at a value of \$1,343. There are a few trees in this area which will be removed, which could be considered as compensable, but this was balanced by the fact that the stone fill will help prevent erosion and thus is an added value to the property. The final value was rounded up to \$1,500.
- c. **Install Project Demarcation Fence (Temporary Easement):** A project demarcation fence, or PDF, is usually a series of wooden grade stakes set in the ground with plastic tape strung between them, or sometimes a woven plastic fence is used. The fence serves two purposes; it delineates the area which the contractor has legal access to, and serves a safety purpose by dissuading pedestrians from entering the project area. The easement delineates a small area along the frontage of the Brooks property which will be unavailable for use by the property owner during project construction. A nominal value of \$200 was assigned.
- d. **Drive (Temporary Easement):** The driveway apron adjacent to the roadway will need to be graded to match into the proposed road and repaved. The area of this easement is 33 square feet. Access to the property by the owner will be maintained at all times except for brief periods during the actual driveway work. A nominal value of \$100 was assigned.
- e. **Slope (Temporary Easement):** The area between the east side of the house and the proposed channel work will need to be graded to effect a smooth transition and help ensure proper drainage, and will be seeded with grass afterward. The area will be unavailable for use by the property owner during the project. The area of this easement is 91 square feet, which was then multiplied by the square foot value of \$5.62 to arrive at a full fee value of \$511.42. The temporary easement discount of 10% per year was then applied. The project is expected to

take 2 years, so \$511.42 was multiplied by 20% to arrive at an initial value of \$103. This figure was rounded up to \$250.

- f. **Construction (Temporary Easement):** The construction easement provides the contractor the right to clear the area of trees etc. and perform general construction activities. This construction easement is adjacent to the slope easement and the channel easement, and is intended to facilitate the construction of these items, and will be unavailable for use by the property owner during the project. The area will be delineated by a PDF. The area of the construction easement is 177 square feet, which was then multiplied by the square foot value of \$5.62 to arrive at a full fee value of \$994.74. The 20% temporary easement discount was applied to arrive at an initial value of \$199. This figure was rounded up to \$250.

12. Adding all the easement values, the final waiver valuation estimate for the easements needed on the Brooks property was determined to be \$3,300.00. A full description of the easements may be found in Exhibit ____.

13. Vermont law defines damages in the following Manner:

“Damages resulting from the taking or use of property under the provisions of this chapter shall be the value for the most reasonable use of the property or right in the property, and of the business on the property, and the direct and proximate decrease in the value of the remaining property or right in the property and the business on the property. The added value, if any, to the remaining property or right in the property which accrues directly to the owner of the property as a result of the taking or use, as distinguished from the general public benefit, shall be considered in the determination of damages.” 19 V.S.A. §501(2).

14. In this case, there is no business on the property and, therefore, no business damages.

15. Given the small size of the lot and the location in a residential neighborhood the most reasonable use for the property is residential. Accordingly, it is appropriate to use the grand list valuation and formula previously discussed in paragraphs 10 and 11 of this testimony and apply it in the manner discussed in paragraph 11.

16. As discussed previously, there is some added value to the property owner from the stone fill along the river and pavement of a portion of the drive. This was offset by the need to remove existing trees in the slope area.

17. Accordingly, the \$3,300.00 valuation reached using the federal waiver valuation system is also the appropriate valuation under State law.
18. Effect upon home and homestead rights. There will be no effect upon the house and therefore homestead rights are unaffected.
19. Convenience of the property owner. A small portion of the property will be impacted by construction. As previously noted, the house will be unaffected. And, there will be permanent improvements made to the property including pavement and erosion protection. The only permanent easements are for guardrail and channel maintenance.

Dated at Montpelier, Vermont this 30 day of November, 2017.



Affiant

Subscribed and sworn before me this 30 day of November, 2017.



Notary Public

**STATE OF VERMONT
CITY COUNCIL OF THE CITY OF MONTPELIER**

IN RE: Cummings Street – Bridge Replacement
City of Montpelier
County of Washington

WRITTEN TESTIMONY OF CAROLYN CARLSON

Now comes Carolyn Carlson who under oath deposes and says the following:

1. I am a resident of Essex, Vermont.
2. I am a licensed Professional Engineer.
3. I currently serve as a Senior Structures Project Manager with the Vermont Agency of Transportation where I have been employed since 1985. I currently manage 13 projects and a staff of 12, project managers, engineers and technicians. Among many other projects I managed the Richmond Checkered House Bridge widening project, a first in the nation project to widen a historic truss bridge.
4. Among the projects that I am currently managing is the replacement of the Cummings Street Bridge over the North Branch of the Winooski River in Montpelier, Vermont. For purposes of this testimony, I will refer to that structure as “the Bridge” and the overall project as “the Project”.
5. Introduction of exhibits to occur during the hearing.
6. The project consists of the installation of a temporary bridge, removal of the current bridge, construction of a new bridge, removal of the temporary bridge and related improvements.
7. Generally, Cummings Street proceeds from Elm Street in a northeasterly direction. The surface of Cummings Street consists of asphalt.
7. The Bridge is located on Cummings Street approximately 200 ft east of the intersection of Elm St and Cummings St. Cummings St is a dead end street located in the Lower Elm Street section of Montpelier. This section of the City is primarily residential although there are some small businesses located on the northwest side of the bridge and a commercial warehouse is located further down Cummings St. There are 33 residences that rely on the Bridge for access to Elm Street and the City beyond.

8. Cummings Street is Classification Urban Local and is maintained by the City of Montpelier.

9. The Bridge type is Rolled Beam and Concrete. It was built in 1928.

10. The Bridge has the following deficiencies:

a. It is structurally deficient with a poor deck rating.

b. The lane and shoulders are too narrow for the roadway classification considering the vehicle and pedestrian traffic anticipated at the river crossing.

c. The approach railings are substandard surrounding the bridge.

d. The crest vertical curve on Cummings St over the river is substandard.

d. The deck and superstructure continue to deteriorate.

11. The Bridge Inspection Report dated 4/5/17 contains the following ratings:

a. Deck Rating 4 Poor.

b. Superstructure Rating 4 Poor.

c. Substructure Rating 5 Fair.

d. Channel Rating 5 Fair.

(Please note that since the bridge was programmed the condition of the superstructure went from fair to poor, and the substructure and channel rating has changed to fair from satisfactory.)

The Report further states that the “Deck Geometry: Intolerable Replacement Needed.” It quotes from the 2016 Inspection Report that “deck still has potential for full depth holes to form. Bridge has reached the end of its useful life, and needs replacement.”

12. Hydraulics: in order to span bank full width, a new structure would need to have an 80’ clear span (normal to the river). The west abutment would need

to be widened, if it is feasible to do so. Since the superstructure would be deeper than the existing, an average low beam elevation of 531.5' would still provide over 1.0' of freeboard at Q25. The existing man made stream constriction on the westerly side of North Branch should be removed to allow free flow of water.

13. Utilities:

- a. There is an existing 4'' water main which extends the Elm Street intersection, along Cummings Street to the housing complex beyond the project area. This water main is attached to the underside of the existing bridge. The existing water main will be replaced with a new 8'' diameter pipe.
- b. There is an existing 8'' force sewer main which also extends from the Elm Street intersection just off the south edge of Cummings Street. This sewer main passes under the river just downstream from the existing bridge and continues along Cummings Street to the housing complex beyond the project area. The sewer line will not be replaced.
- c. The existing aerial lines will be temporarily relocated during construction of the project. Upon completion of the new bridge the lines will be moved to a new permanent location.

- 14. Natural Resources: other natural resources such as species or habits of special concern are not present in the area, and the floodplain/floodway is controlled by the actions conducted at the Wrightsville Reservoir Dam.
- 15. Wetlands: aside from the North Branch itself, the only other natural resource in the area is a wetland to the south of Cummings Street and on the eastern side of the river.
- 16. Wildlife Habitat: there are no known wildlife corridor issues within the project area.
- 17. Rare, Threatened and Endangered Species: there are no known rare, threatened or endangered species within the project area.
- 18. Agricultural: there are no known prime agricultural soils within the project area.
- 19. Stormwater: there are no known Stormwater issues within the project area.

20. Scenic and Recreational Values of the highway: There are multiple recreational paths that can be accessed by pedestrians and bicyclists who travel on the Cummings Street bridge. The updated bridge will allow pedestrians and bicyclists to travel in a safe manner as they cross the bridge in either direction. Further, as I have previously testified the current almost 90 year old bridge is in dilapidated condition. I am confident that the replacement bridge will be more pleasing in appearance.

21. Traffic Access Alternatives: Cummings Street is a dead end road with one access over Bridge 13. Accordingly, alternative access for the residences on the easterly side of the North Branch will need to be provided during construction. The following alternatives were considered:

a. Option 1: Off-Site Detour

Two potential locations for connecting Cummings St to other roads were considered;

b. Option 1a: Northern Access

Travelling farther north on Cummings St before turning on to Elm St would involve getting access through Conserved Land, which would be difficult to permit and justify the need. The costs associated with acquiring the new Right of Way, mitigating any environmental impacts and constructing the additional roadway, estimated around \$500,000, would exceed the cost of Right of Way and a temporary bridge just upstream of the existing bridge.

c. Option 1b: Eastern Access

The second option would eliminate the bridge entirely and connect Cummings St to North St. Breaking the connection with Elm St would change the nature of the neighborhood from Lower Elm Street to North St. Eliminating a bridge that has been designated as historically significant can also be costly and time-consuming. Severing the connection to Elm St may also affect the ability of the GMTA Montpelier Circulator to reach the residents on Cummings St, which could necessitate the installation of a bicycle and pedestrian bridge in this location anyway.

d. Option 2: Phased Construction

Phased construction is the maintenance of one lane of two-way traffic on the existing bridge while building one lane at a time of the proposed structure. This allows one to maintain traffic along the corridor during construction while mitigating the extra expense and impacts required by a temporary bridge. The Bridge has a curb to curb width of 17 feet. In order to provide adequate width on a one lane temporary bridge, the specifications require a curb to curb width of 14 feet 6 inches. Thus, the existing bridge is already essentially a one lane bridge. In order to build a new bridge one lane at a time while maintaining traffic on the existing bridge, the centerline of the roadway would need to be shifted. The existing alignment through the current bridge is already straight, so adding a curve before the bridge would provide a less than ideal alignment for any proposed bridge. The houses and businesses on the west side of the river are close to the existing road and there is no room without moving or removing a house to realign the road to the south. There is room on the north side of the bridge to shift the alignment to that side for the temporary bridge.

e. Option 3: Temporary Bridge

That leaves a temporary bridge as the only reasonable option for maintaining traffic in this location while work is done on the bridge. there is room on the north side of the bridge to place a temporary bridge outside the footprint of the existing and proposed bridge during construction. Based on the traffic volume on Cummings St, a signalized one lane bridge with alternating traffic should be sufficient at this site.

22. Construction Alternatives: Bridge 13 is structurally deficient with a poor deck rating. The lane and shoulders are too narrow and the approach rail and terminal sections are substandard. The hydraulic flood stage standard is met, but the waterway opening is severely restricted on the west bank of the river. And while the sight distance is sufficient along this stretch, the change in grade of the crest vertical curve is substandard for the speed and roadway classification over the bridge. Since the deck is in poor condition and the city already installed a steel plate to span the void between the bridge deck and back wall, it is safe to assume that the bridge will not last another 10 years without further work being performed on the bridge. Thus, the No Action alternative was not considered.

Alternative 1: Rehabilitation

a. Alternative 1a: Deck Replacement

A rehabilitation option would include a deck replacement at a minimum. The bridge deck is too narrow by 5 feet to meet the Standards and the City expressed a concern with the existing width. Thus, a wider deck should be considered in a deck replacement. The existing exterior girders are close enough to the fascia that it is not unreasonable to have a new deck overhang the existing beams in their current configuration to accommodate a wider deck. However, the existing beams are deteriorated and rusting along their entire length, so it does not make sense to place a brand new deck on old beams without cleaning, patching and painting the existing steel.

b. Alternative 1b: Superstructure Replacement

This alternative is similar to the deck replacement, except the existing steel beams would be replaced at the same time. The beams have been rated as fair and after being cleaned, patched and painted, they would still be 80+ years old.

c. Alternative 2: Complete Replacement

This last alternative would address all of the substandard issues at this site and remove the river constriction while replacing the existing bridge with a brand new structure.

23. The Agency of Transportation recommended and the City Council accepted Alternative 2: Complete Replacement with Traffic Maintained on a Temporary Bridge. The proposed solution would include a completely new bridge that is 88 feet long and 22 feet wide curb to curb. Traffic would be maintained on a temporary bridge to the north of the existing structure, while the remaining work would include removing the existing structure; re-grading the channel banks to match the full width up and down stream; and the necessary roadwork to match the new bridge into the existing alignment.

24. Alternative 2 will address all of the existing deficiencies at the river crossing with a new structure designed to last another 80+ years.

Dated at Montpelier, Vermont this 30 day of November, 2017.


Affiant

Subscribed and sworn before me this 30 day of November 2017.


Notary Public

**STATE OF VERMONT
CITY COUNCIL OF THE CITY OF MONTPELIER**

IN RE: Cummings Street – Bridge Replacement
City of Montpelier
County of Washington

WRITTEN TESTIMONY OF THOMAS McARDLE

Now comes Thomas McArdle who under oath deposes and says the following:

1. I am a resident of Calais, Vermont.
2. I currently serve as the Director of the City of Montpelier Public Works Department. I have served in this position for about three years and as a Public Works employee for over 35 years as a project manager and then as assistant director.
3. Introduction of Exhibits to occur during the hearing.
4. In that role I am very familiar with Bridge 13, the Cummings Street bridge (the Bridge). The Bridge was built in 1928 and is in a deteriorated condition. The steel superstructure is severely corroded, the deck is in poor condition, the concrete rail and curbing is delaminated, and the westerly abutment would require extensive repair to retain it. In 2008 a hole developed where the bridge deck connects to the westerly abutment wall and a steel plate was installed as a temporary measure only to keep the bridge in service until the bridge can be replaced. Based on my observations of the critical bridge components, I agree with the VTrans bridge inspection reports which conclude that the bridge needs to be replaced. The bridge is also substandard geometrically (width & alignment).
5. The City of Montpelier provided statutory notice of its December 6, 2017 site visit and its December 6, 2017 hearing by sending written notice by certified mail to the affected record property owner, Cora Brooks, on November 3, 2017 at least 30 days prior to the site visit and hearing. Exhibit 3a and 3b. At the Montpelier Post Office, I personally posted the notice by certified mail to both of Ms. Brooks' known residences. Notice was also sent to the Planning Commission and was posted in the City of Montpelier Clerk's office.
6. The hearing notice was published in the Times Argus Newspaper a local newspaper of general circulation within the area not less than ten days prior to

the site visit and hearing on November 22nd and 25th /26th, 2017. Exhibit 4a and 4b.

7. I have reviewed the Scoping Report, Exhibit 1, and concur with the Agency of Transportations conclusions that replacement of the Bridge is necessary and that a temporary bridge to the north of the current Bridge is the best way to provide access to the portion of Cummings Street Easterly of the North Branch.
8. I also attended the meeting of the Montpelier City Council on February 12, 2014 and observed the vote in favor of initiating the alteration of the Bridge. I prepared the letter to Christopher Williams, VTrans Structures Project Manager providing the required official notice of the City Council action.
9. The City of Montpelier has entered into a Finance and Maintenance Agreement with the Vermont Agency of Transportation which provides that the Bridge replacement project be funded as follows: 80% federal funding; 10% State funding; 10% municipal funding. Ex. 5.
10. Impact on Grand List. The City has programmed its 10% share through the Capital Improvement Program (CIP) which is a budgeting method to provide annual funding for repair or replacement of fixed assets ranging from equipment and buildings to streets, sidewalks and bridges. As the sole means of access for 5 single-family properties, 1 garage/office building and 28 apartments (total of 4 buildings) situated on the easterly side of the North Branch River (a total appraised value of \$2,337,700) the bridge is vitally important to a significant number of residents and a business. If the bridge must be condemned for safety reasons and emergency services are unable to reach the area via conventional response, consideration would need to be given to evacuating the residents. Logically, there would be a corresponding decrease in the value of those properties and tax revenue to the City.

Dated at Montpelier, Vermont this 30 day of November, 2017.


Affiant

Subscribed and sworn before me this 30 day of November 2017.


Notary Public

STATE OF VERMONT
CITY COUNCIL OF THE CITY OF MONTPELIER

IN RE: Cummings Street – Bridge Replacement
City of Montpelier
County of Washington

WRITTEN TESTIMONY OF EDWARD PIERCE

Now comes Edward Pierce who under oath deposes and says the following:

1. I am a resident of Berlin, Vermont.
2. I currently serve as a Right of Way Agent V with the Vermont Agency of Transportation where I have been employed since 1998. I currently serve as a Negotiator in the Right of Way Acquisitions section, and I negotiate with private property owners to acquire lands and rights needed by the Vermont Agency of Transportation for transportation projects. My duties include preparing Waiver Valuation Estimates.
3. Among the projects that I have prepared Waiver Valuation Estimates for is the replacement of the Cummings Street Bridge over the North Branch of the Winooski River in Montpelier, Vermont.
4. Introduction of exhibits to occur during the hearing.
5. Property acquisition for federally funded projects is governed by the **Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970**. The implementing regulations are **Title 49 of the Code of Federal Regulations**.
6. Generally, the acquiring agency must obtain an appraisal of the land and/or rights to be acquired before negotiations begin.
7. However, the federal regulations allow the acquiring agency to waive the appraisal requirement when the valuation problem is not complicated and the value is below a certain threshold.
8. The standard threshold of value allowing a waiver of the appraisal requirement is **\$10,000**. The Federal Highway Administration has allowed the Vermont Agency of Transportation, “VTrans”, to increase the value threshold to

\$25,000 if VTrans allows the property owner the option of an appraisal. The vast majority of parcels acquired by VTrans are under \$10,000 and are simple valuations, thus qualifying for an appraisal waiver.

9. In cases where the appraisal requirement is waived, an alternative valuation method known as a “**Waiver Valuation Estimate**” is used. Waiver valuation estimates are prepared by VTrans Right of Way staff, who have experience with the local real estate market and VTrans property acquisitions but who are not licensed appraisers. I prepared the waiver valuation estimate for the Cora Brooks property on March 8, 2016, and it was approved by VTrans Right of Way Acquisition Section Chief Bruce Melvin the same day.
10. The values determined by a waiver valuation estimate are based upon the listed value of the land in the municipal land records. The listed value of the entire lot is divided by the number of square feet in the lot to arrive at a price per square foot. For the Cora Brooks property, the listed value of the land was \$36,700, and the area of the lot was 6,534 square feet. Dividing \$36,700 by 6,534 square feet, I arrived at a price per square foot of \$5.62.
11. The price per square foot is then multiplied by the area of each proposed land taking or easement. In the case of an easement, a discount is normally applied to the formula of 80% for a permanent easement and 10% per year for a temporary easement. Also VTrans has established minimum values of \$500 for a permanent easement and \$250 for a temporary easement, with some exceptions. There was no land taking on the Cora Brooks property, and the easements were valued as follows:
 - a. **Install & Maintain Guardrail (Permanent Easement):** The proposed guardrail itself will not be on the Brooks property but a small area of the associated roadway shoulder needed to support it will be on the Brooks property, and will need to be maintained. Because of its small size, there was no square footage calculated for this easement. The proposed guardrail will have the effect of restricting access to the area on the east side of the Brooks property, thus affecting the owner’s reasonable use of the property and possibly reducing the value of the remaining property. Given these factors it was decided that a minimum value of \$500 for this easement was not appropriate, and a value of \$1,000 was assigned. The additional \$500 is considered to be severance damages.

- b. **Channel (Permanent Easement):** This easement is for earthwork and installation and maintenance of stone fill along the river bank, and is necessary for the integrity of the bridge structure, as well as protection of the river bank and the Brooks property. The area will be unavailable for use by the property owner during the project. The property owner will have the use of this area after project construction but the City of Montpelier will have the perpetual right to enter this area for maintenance, repairs or reconstruction of the river bank. The area of the easement is 239 square feet, which when multiplied by the price per square foot of \$5.62 arrived at a value of \$1,343. There are a few trees in this area which will be removed, which could be considered as compensable, but this was balanced by the fact that the stone fill will help prevent erosion and thus is an added value to the property. The final value was rounded up to \$1,500.
- c. **Install Project Demarcation Fence (Temporary Easement):** A project demarcation fence, or PDF, is usually a series of wooden grade stakes set in the ground with plastic tape strung between them, or sometimes a woven plastic fence is used. The fence serves two purposes; it delineates the area which the contractor has legal access to, and serves a safety purpose by dissuading pedestrians from entering the project area. The easement delineates a small area along the frontage of the Brooks property which will be unavailable for use by the property owner during project construction. A nominal value of \$200 was assigned.
- d. **Drive (Temporary Easement):** The driveway apron adjacent to the roadway will need to be graded to match into the proposed road and repaved. The area of this easement is 33 square feet. Access to the property by the owner will be maintained at all times except for brief periods during the actual driveway work. A nominal value of \$100 was assigned.
- e. **Slope (Temporary Easement):** The area between the east side of the house and the proposed channel work will need to be graded to effect a smooth transition and help ensure proper drainage, and will be seeded with grass afterward. The area will be unavailable for use by the property owner during the project. The area of this easement is 91 square feet, which was then multiplied by the square foot value of \$5.62 to arrive at a full fee value of \$511.42. The temporary easement discount of 10% per year was then applied. The project is expected to

take 2 years, so \$511.42 was multiplied by 20% to arrive at an initial value of \$103. This figure was rounded up to \$250.

- f. **Construction (Temporary Easement):** The construction easement provides the contractor the right to clear the area of trees etc. and perform general construction activities. This construction easement is adjacent to the slope easement and the channel easement, and is intended to facilitate the construction of these items, and will be unavailable for use by the property owner during the project. The area will be delineated by a PDF. The area of the construction easement is 177 square feet, which was then multiplied by the square foot value of \$5.62 to arrive at a full fee value of \$994.74. The 20% temporary easement discount was applied to arrive at an initial value of \$199. This figure was rounded up to \$250.

12. Adding all the easement values, the final waiver valuation estimate for the easements needed on the Brooks property was determined to be \$3,300.00. A full description of the easements may be found in Exhibit ____.

13. Vermont law defines damages in the following Manner:

“Damages resulting from the taking or use of property under the provisions of this chapter shall be the value for the most reasonable use of the property or right in the property, and of the business on the property, and the direct and proximate decrease in the value of the remaining property or right in the property and the business on the property. The added value, if any, to the remaining property or right in the property which accrues directly to the owner of the property as a result of the taking or use, as distinguished from the general public benefit, shall be considered in the determination of damages.” 19 V.S.A. §501(2).

14. In this case, there is no business on the property and, therefore, no business damages.

15. Given the small size of the lot and the location in a residential neighborhood the most reasonable use for the property is residential. Accordingly, it is appropriate to use the grand list valuation and formula previously discussed in paragraphs 10 and 11 of this testimony and apply it in the manner discussed in paragraph 11.

16. As discussed previously, there is some added value to the property owner from the stone fill along the river and pavement of a portion of the drive. This was offset by the need to remove existing trees in the slope area.

17. Accordingly, the \$3,300.00 valuation reached using the federal waiver valuation system is also the appropriate valuation under State law.
18. Effect upon home and homestead rights. There will be no effect upon the house and therefore homestead rights are unaffected.
19. Convenience of the property owner. A small portion of the property will be impacted by construction. As previously noted, the house will be unaffected. And, there will be permanent improvements made to the property including pavement and erosion protection. The only permanent easements are for guardrail and channel maintenance.

Dated at Montpelier, Vermont this 30 day of November, 2017.



Affiant

Subscribed and sworn before me this 30 day of November, 2017.



Notary Public

MEMORANDUM

RICE AND RILEY, PLLC

TO: Members of the Montpelier City Council and Mayor John Hollar

FROM: William H. Rice, Esq.

DATE: December 1, 2017

RE: Cummings Street Bridge Replacement Condemnation

SUBMITTING DEPARTMENT: Public Works.

RECOMMENDED ACTION: The Public Works Department respectfully requests that the City Council review the evidence gathered from the site visit and public hearing and, if the Council determines that the public good, necessity and convenience of the inhabitants of the City of Montpelier require the alteration of Cummings Street by replacing the Cummings Street Bridge, that the easements needed on the property at 3 Cummings Street for the project be condemned. The Public Works Department also respectfully requests that damages be set for the taking.

RELATED COUNCIL GOAL/PRIOR ACTION: The City Council previously approved the initiation of the Cummings Street Bridge replacement project on February 10, 2014.

EXPENDITURE REQUIRED: The 2013 Scoping Report States that total project cost will be \$1,580,000; Montpelier's share will be \$158,000.

SOURCE OF FUNDS: The City of Montpelier has entered into a Finance and Maintenance Agreement with the Vermont Agency of Transportation which provides that the Bridge replacement project be funded as follows: 80% federal funding; 10% State funding; 10% municipal funding.

LEGAL REQUIREMENTS: The procedures for municipal condemnations may largely be found in 19 V.S.A. Chapter 7, Subchapter 2.

There are two components to an eminent domain proceeding: necessity and damages. Necessity is defined to mean:

“a reasonable need which considers the greatest public good and the least inconvenience and expense to the condemning party and to the property owner. Necessity shall not be measured merely by expense or convenience to the condemning party. Necessity includes a reasonable need for the highway project in general as well as a reasonable need to take a particular property and to take it to the extent proposed. In determining necessity, consideration shall be given to the:

- (A) adequacy of other property and locations;
- (B) quantity, kind, and extent of cultivated and agricultural land which may be taken or rendered unfit for use, immediately and over the long term, by the proposed taking;
- (C) effect upon home and homestead rights and the convenience of the owner of the land;
- (D) effect of the highway upon the scenic and recreational values of the highway;
- (E) need to accommodate present and future utility installations within the highway corridor;
- (F) need to mitigate the environmental impacts of highway construction; and
- (G) effect upon town grand lists and revenues.”

19 V.S.A. §501(1).

Damages are defined to mean:

“the value for the most reasonable use of the property or right in the property, and of the business on the property, and the direct and proximate decrease in the value of the remaining property or right in the property and the business on the property. The added value, if any, to the remaining property or right in the property which accrues directly to the owner of the property as a result of the taking or use, as distinguished from the general public benefit, shall be considered in the determination of damages.”

19 V.S.A. §501(2). Additionally, the Vermont Agency of Transportation must comply with federal requirements for determining damages in order to obtain federal funding.

BACKGROUND INFORMATION: The current Cummings Street Bridge was built in 1928; after almost 90 years the Bridge is in a severely deteriorated condition. A Bridge Inspection Report prepared by the Vermont Agency of Transportation earlier this year describes the geometry of the Bridge deck as being “intolerable” and that “replacement [is] needed.” The report quoted from the 2016 Inspection Report that the “deck still has potential for full depth holes to form. Bridge has reached the end of its useful life, and needs replacement.” The Bridge’s superstructure is also rated as being poor. Cummings Street is a dead end street and the 33 residences on the easterly side of the North Branch are reliant on the Bridge for access.

The Cora Brooks property is on the westerly side of the North Branch and is adjacent to the Bridge. The City of Montpelier is seeking several temporary and two permanent easements. The house itself will not be impacted.

Install & Maintain Guardrail (Permanent Easement): The proposed guardrail itself will not be on the Brooks property but a small area of the associated roadway shoulder needed to support it will be on the Brooks property, and will need to be maintained.

Channel (Permanent Easement): This easement is for earthwork and installation and maintenance of stone fill along the river bank, and is necessary for the integrity of the bridge structure, as well as protection of the river bank and the Brooks property. The area will be unavailable for use by the property owner during the project. The property owner will have the use of this area after project construction, but the City of Montpelier will have the perpetual right to enter this area for maintenance, repairs or reconstruction of the river bank.

Install Project Demarcation Fence (Temporary Easement): A project demarcation fence, or PDF, is usually a series of wooden grade stakes set in the ground with plastic tape strung between them, or sometimes a woven plastic fence is used. The fence serves two purposes; it delineates the area which the contractor has legal access to, and serves a safety purpose by dissuading pedestrians from entering the project area. The easement delineates a small area along the frontage of the Brooks property which will be unavailable for use by the property owner during project construction.

Drive (Temporary Easement): The driveway apron adjacent to the roadway will need to be graded to match into the proposed road and repaved. The area of this easement is 33 square feet. Access to the property by the owner will be maintained at all times except for brief periods during the actual driveway work.

Slope (Temporary Easement): The area between the east side of the house and the proposed channel work will need to be graded to effect a smooth transition and help ensure proper drainage, and will be seeded with grass afterward. The area will be unavailable for use by the property owner during the project. The area of this easement is 91 square feet.

SUPPORTING DOCUMENTS:

Written Testimony of Thomas McArdle

Written Testimony of Carolyn Carlson

Written Testimony of Edward Pierce

INTERESTED PARTIES: Cora Brooks

cc: Cora Brooks

CITY OF MONTPELIER VERMONT NOTICE OF PUBLIC HEARING RE: TH 130 BRIDGE
PROJECT (CUMMINGS STREET) BRIDGE NO. 13 RECONSTRUCTION

TH 130 (CUMMINGS STREET) RECONSTRUCTION BO 1446(36)

CONDEMNATION, NECESSITY AND DAMAGES PROCEEDINGS

The City Council of the City of Montpelier, Vermont will meet to conduct a site inspection at Cummings Street, which is approximately 1.1 miles northerly from Montpelier City Hall and 0.045 miles east of the junction of Elm Street (VT Rte 12) and Cummings Street (at the Cummings St. Bridge), at 4:00 p.m. on December 6, 2017. The inspection will continue along Cummings Street approximately 0.067 miles to the northeasterly end of the project.

Following the site inspection, the City Council will recess to the City Hall at 39 Main Street, Montpelier, Vermont, at 5:00 p.m. on December 6, 2017 for the purpose of receiving testimony and hearing all persons interested in the matter of whether the City of Montpelier shall undertake the project which will involve the replacement of the Cummings St. Bridge and includes, by way of general description: the need at 3 Cummings St. Montpelier, Vermont for temporary easements to enter upon land during the period of construction for general construction purposes, including the right to install project demarcation fence, construct a drive, cut and dispose of all trees, down timber, stubs, brush, bushes, and debris, and install erosion control barriers together with the right to keep the erosion control barriers clear of debris and functioning properly throughout project construction; the need for a temporary easement to extend slopes and embankments at such an angle as will hold the material of said slopes in repose against ordinary erosion in accordance with the standard practice of Transportation Agency construction together with the right to remove anything from the slope area; and the need for permanent easements to install and maintain guardrail and to construct and maintain the channel of the North Branch of the Winooski River. For more information see the revised Project plans and additional project-related information as filed on May 20, 2016 at the Montpelier City Hall which is located at 39 Main Street, Montpelier, Vermont. Questions may be made to Carolyn Carlson, Senior Structures Project Manager, by phone at (802) 828-0048, or by email at carolyn.carlson@vermont.gov. Requests for accommodations may be made to Tom McArdle, Director of Public Works, by phone at (802) 223-9508, or by email at tmcardle@montpelier-vt.com. The plans may also be viewed at:

[https://outside.vermont.gov/agency/VTRANS/external/Projects/Structures/13J082/Montpelier%20BO%201446\(36\)%20Final%20Plans%20to%20Town%2010-24-17.pdf](https://outside.vermont.gov/agency/VTRANS/external/Projects/Structures/13J082/Montpelier%20BO%201446(36)%20Final%20Plans%20to%20Town%2010-24-17.pdf)

All interested parties are invited to attend the site inspection on December 6, 2017 and to offer testimony on December 6, 2017.

If, after examination of the project site and hearing any and all interested persons, the City Council judges that the public good, necessity and convenience of the inhabitants of the City of Montpelier require that said highway be so altered, and easements be obtained by condemnation it will be so ordered. In addition, the City Council will determine, in accordance with the provisions of 19 V.S.A. § 712, the amount of damages, if any, to be paid to any person through whose land said highway alteration passes or abuts.

Dated at Montpelier, Vermont, this 3rd day of November, 2017.

By: 

William J. Fraser, City Manager

Notices:

Certified Mail to property owner (not less than 30 days in advance):

Cora V. Brooks

Montpelier Planning Commission

Posted Montpelier City Clerk's Office

Publication in local newspaper of general circulation (not less than 10 days in advance)