

An Ordinance Limiting the Town of Searsport's Power of Eminent Domain

WHEREAS, the residents of the Town of Searsport (hereinafter the Town) have an individual, fundamental and natural right to own and maintain title to private property, and,

WHEREAS, the Town understands that it may exercise the power of eminent domain within the bounds and procedures established by state (1 MRSA §14 et seq.) and federal law, but,

NOTWITHSTANDING the breadth of state and federal eminent domain powers, the Town recognizes that eminent domain proceedings are often harsh; that they should only be utilized as a last resort; and then, only in accordance with the procedures established by this ordinance, and for an actual "public use" as defined by this ordinance.

IT IS THEREFORE ORDAINED BY ORDINANCE THAT:

A. General: Notwithstanding provisions of state and federal law with respect to the use of eminent domain powers, the Town (including all of its departments and sub-units of government) shall only utilize its eminent domain powers to acquire private property for sites and facilities owned and operated by public instrumentalities that undertake an actual "public use" of the acquired property such as, but not limited to, parks, cemeteries, recreational sites and facilities, schools, roads, public buildings (including town halls, police, fire, and public works buildings or storage areas), public utility rights-of way, treatment plants, solid waste disposal sites and facilities, public transportation facilities (including public parking sites and/or garage facilities), etc. Broadly defined "public purpose" or "public benefit" rationales will not justify the Town's taking of property by eminent domain.

B. Exceptions: The above limitation is subject to two narrow exceptions. The Town may acquire property by eminent domain to be dedicated, sold, leased, or otherwise transferred to a private person, partnership, corporation, or any other private entity if the transferee is: 1. a public utility or common carrier recognized and licensed under the laws of Maine; or 2. occupies an incidental area within a larger public site or facility (of the type noted above) providing a useful or essential retail or food service benefit to the clients or employees of the larger public site or facility.

C. Procedures: The Town's exercise of eminent domain shall in every case be subject to the following preconditions and/or procedures.

1. Prior to any exercise of eminent domain, the Town, acting through the Board of Selectmen, and/or their designated agent, must make a good faith effort to purchase (at or above fair market value) the private property needed; a final written offer to purchase the property must be made by the Town. A market transaction freely entered into by the Town and the private property owner will avoid the need to exercise eminent domain powers and the use of such property will, therefore, not be governed by this ordinance.

2. If private property needed by the Town cannot be acquired by purchase, thus requiring the use of eminent domain, the Town, acting through the Board of Selectmen, may, after giving written notice to the owner(s) and/or tenant(s) of the property(ies) in question, only initiate that process by holding a public hearing,, at which:

- a. the physical location of, and the owner(s) of the private property interests to be taken are fully identified.
- b. the health, safety, and general welfare need for the property sought to be taken is fully outlined.
- c. the public use justifying the taking is identified and shown to fall within the "general" or "exception" provisions of this ordinance.
- d. the procedures and requirements of this ordinance, and any provisions of state or federal eminent domain law intended to benefit the private landowner, are shown to have been complied with.

At the public hearing residents of the Town may speak in favor of, or against the proposed use of eminent domain; residents may submit questions before hand, or raise questions at the public hearing designed to illicit information that would suggest the use of eminent domain was inappropriate and/or that would more fully justify or explain the proposed use of eminent domain. The Board of Selectmen (or a designated agent, such as Town counsel) must be prepared to answer all questions posed, and/or to continue the hearing in order to provide meaningful answers to all questions posed.

3. A final decision as to whether eminent domain should be used to acquire the private property identified in para. #2 shall be made at a special or the annual Town meeting held no sooner than 30 days after the conclusion of the hearing(s) held pursuant to para. #2. The Town's use of eminent domain is permitted only if a majority of those present and voting vote in the affirmative on this issue.
4. If the use of eminent domain is authorized pursuant to para. #3, the Town's determination of "just compensation" shall be established by: 1. the average fair market value of the property as determined by two state qualified independent appraisers (at least one of which is selected by the condemnee), or 2. the final written offer of the Town made pursuant to para. #1, whichever is higher.
5. In the event that the private property cannot or will not be used for the stated purpose, the private property shall be first offered to the original condemnee or condemnee's heirs for thirty days by written notice via certified mail for the amounts provided in 1 M.R.S.A. § 815.
6. The effective date of this Ordinance is October 10, 2006.

This is a true and attested copy by

Deborah Plourde

Deborah Plourde, Town Clerk