

CITY OF PORTSMOUTH

LEGAL DEPARTMENT

MEMORANDUM

DATE: April 12, 2007

TO: JOHN P. BOHENKO, CITY MANAGER

FROM: ROBERT P. SULLIVAN, CITY ATTORNEY

RE: PEIRCE ESTATE

As you requested, this memorandum is a status report concerning the City's obligation to resolve the issues created by the intrusion of the Portsmouth Middle School into property restricted by the Estate of Peirce which occurred in the late 1970s. As you know, the general approach to resolution is expected to be that the value of the property interest inadvertently taken will be appraised by an outside appraiser and the sum of money determined thereby paid by either the City's School Department or general administration into a trust to provide a substitute public benefit for the property taken. The City has already retained the services of Harvey Cohen, MAI to perform the appraisal.

Resolution of the matter has been delayed by the fact that the City has yet to eliminate the Peirce Estate property in its entirety as a possible site for a proposed new Middle School. The site could only be used by completing an eminent domain proceeding over the entire site.

Obviously, if there is any chance that the City will have to take the entire Peirce Estate restriction, it would be unnecessarily duplicative to conduct the partial taking for the Middle School as well.

Once the decision has been made by the School Board and City Council as to where the new Middle School might be built, I will contact the outside appraiser to proceed expeditiously with preparing a narrative report to outline the value of the property interest required by the City so that we can resolve any Peirce Estate issues which exist.

All of the foregoing information has previously been conveyed to the office of the New Hampshire Attorney General, Division of Charitable Trusts. I have reviewed the correspondence from Peter Peirce Rice dated March 28, 2007 regarding his meeting with the Attorney General's office. That letter essentially reiterates our understanding of the situation. It is my opinion that the City retains the authority to take any necessary property for a new Middle School by eminent domain. However, there is a legal process which must be successfully completed and compensation which must be paid.