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CITY CLERK'S OFFICE

City Clerk Laura Swistak
Newport City Hall
lswistak@cityofnewport.com

July 19, 2022

Re: City Council agenda: Smoke House Cafe encroachment on Scott's Wharf right-of-way.

Dear Clerk Swistak,

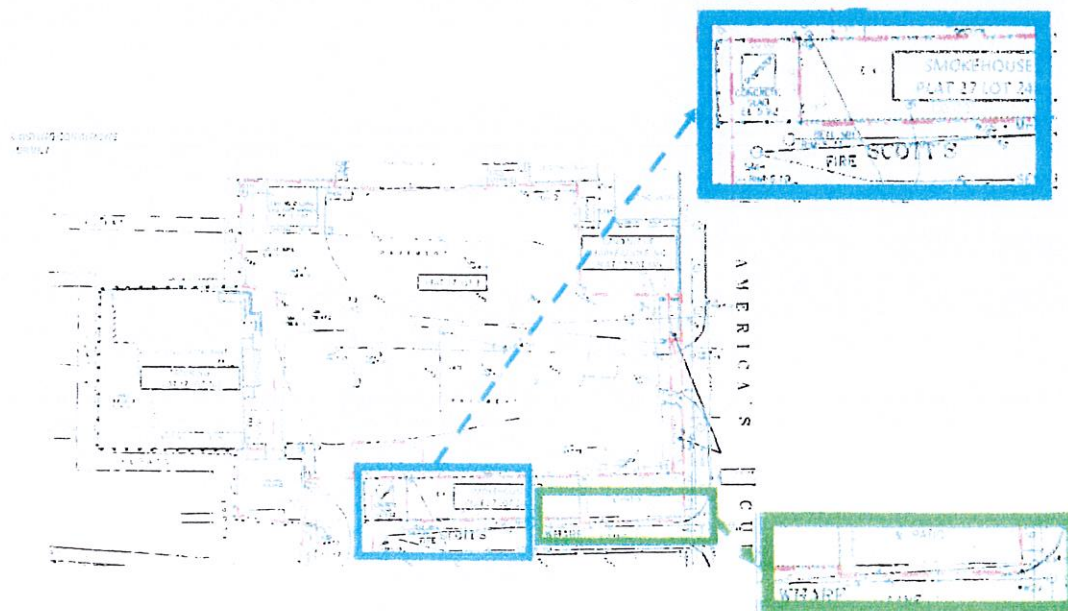
My client, Friends of the Waterfront (FOW), asks you to put the above item on the agenda of the July 27, 2022 City Council meeting.

In the wake of recent activity by the Planning Board (PB) and Zoning Board of Review (ZBR) on applications for a special use permit and dimensional zoning variance by the owners of the Smoke House Cafe, FOW conducted a review of the history of public access on Sayer's Wharf as well as the adjacent Scott's Wharf. This is the location where significant litigation ending in 2005 settled disputes on public rights-of-way in the public's favor. This review showed one clear existing encroachment by the Smoke House on public property on the adjoining Scott's Wharf. Moreover, apparently, Scott's Wharf would be further encroached upon by the proposed plan; the right-of-way seemingly would be slightly narrowed.

The owners' recent opposition to the requirement imposed by the PB for additional public access across the site accentuates the need to preserve all existing public ways and areas.

1. Clear encroachment by the concrete slab and dumpster on the north branch of the Scott's Wharf "T"

The owners' own survey reveals, on its face, a right-of-way blockage (highlighted by my addition of blue border and an inset). This is totally outside of the red lines representing the private lot boundaries:



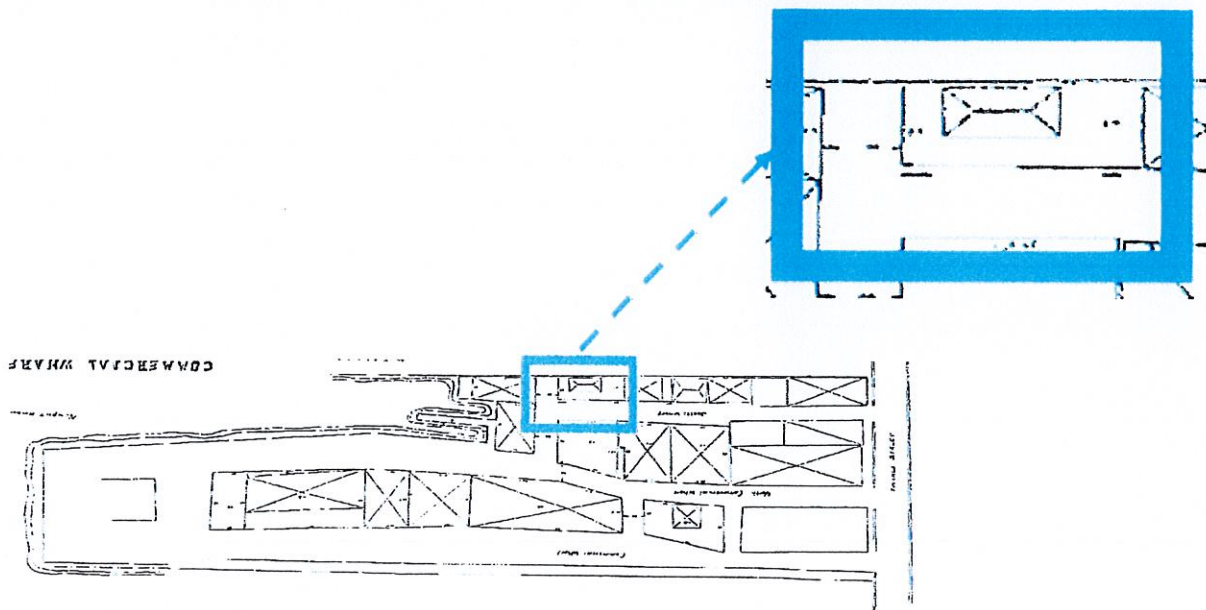
Owners' own survey plan. Red intermittent boundary lines are part of the original. Blue and green borders and magnifications are added by this writer. (The areas highlighted or framed in green will be explored below.)

Thus, the owners' own plans — presented to the PB and the Zoning Board of Review (ZBR) — show an enclosure, dumpster and concrete slab occupying one of the branches (the northern branch) of the "T" that forms the Scott's Wharf right-of-way. Visual inspection shows a refrigeration unit as well:



View looking north along the T section of Scott's Wharf. The northern branch of the T is obliterated

The fact that this particular spot is public has already been adjudicated in Newport Realty v. Lynch, 878 A.2d 1021 (R.I. 2005), finding that the following plat in the Newport Land Records forms the basis of a binding accepted dedication. Here, I invert the image for consistent orientation (north on top):



The First Ebbs Plat (inverted), 11/15/21 (prior to the creation of America's Cup Avenue). This is the original plat by which the owners of the wharf (laying to the immediate south) delineated streets, subdivided, and sold-off lots.

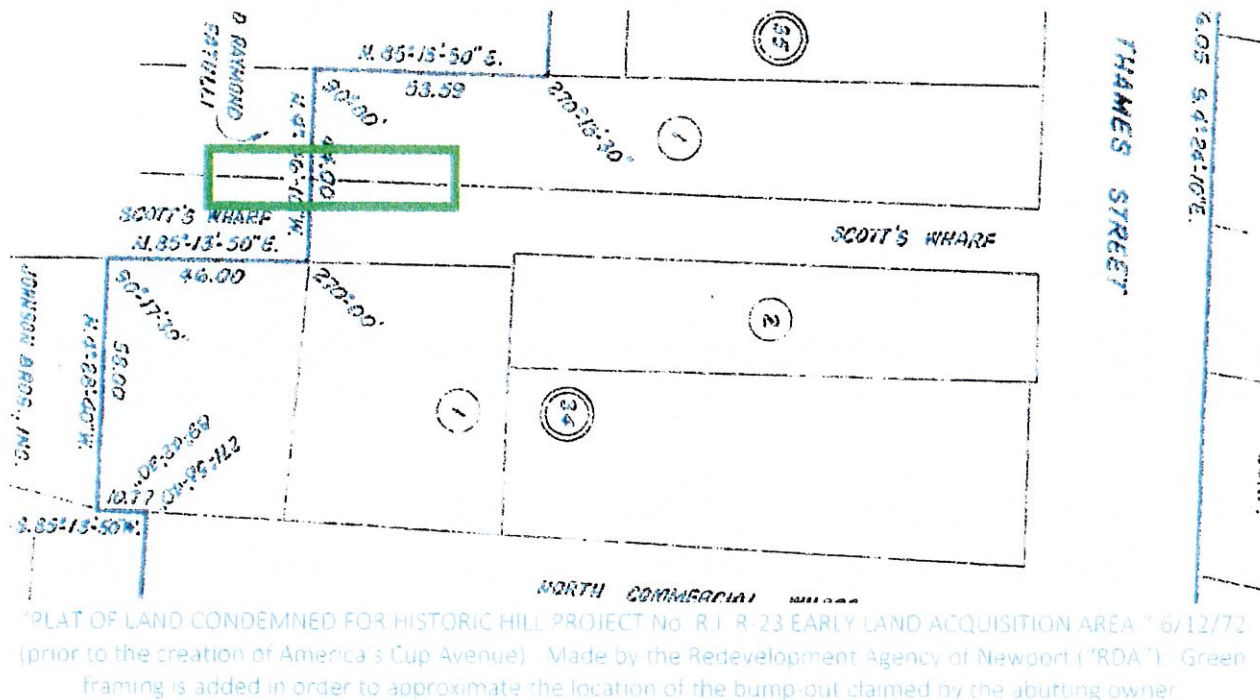
Reinforcing the point, an image of the plat is incorporated as part of the Court decision. Id. at 1046.

I have several dozen additional items — mostly from the current owners or their predecessors — reinforcing the location and public character of the right-of-way that is being obstructed. I am willing to share these items. But suffice it for now to suggest a prompt investigation by the Solicitor in conjunction with the City Engineer. Given the rapid developments, this might be completed in a matter of months.

2. The bump-out that narrows Scott's Wharf is inconsistent with prior plans and deserves scrutiny.

Further, a second area of concern (highlighted in green above and below) is revealed upon comparison with other documents. This is the apparent expansion of the private holdings of the Smoke House — at the seeming expense of the Scott's Wharf right-of-way — in the area close to America's Cup Avenue.

The following is an excerpt of the original 1972 condemnation plat that began the acquisition process that led to the later creation of America's Cup Avenue. My insertion of a green border shows the area in question — the northern line of Scott's Wharf along the location now proposed by the outdoor patio. This is shown to be perfectly straight. The bump-out conjured by the owners' scheme (see survey plan, above) does not exist on this plan. Other documents are to like effect. This discrepancy deserves explanation.



Again, respectfully, the Solicitor should be tasked with examining this problem and reporting back to the City Council on an expedited basis.

* * *

The City's attentive response will go a long way to continuing the Harbor Walk.

Truly and cordially,

Mike Rubin

Cc:

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