

Order 63-18/19

Passage: 8-0 (Ali absent) on 9/5/2018

Effective 9/15/2018

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY M. COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING PURCHASE AND SALE AGREEMENT
WITH ROBERT COTT FOR PROPERTY IN REDLON AREA AND
PLACING THAT LAND IN THE PORTLAND LAND BANK**

ORDERED, that the Purchase and Sale Agreement with Robert Cott in the amount of \$1.00 for property in Redlon area is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that that land will be in and is to be maintained as part of the City's Land Bank; and

BE IT FURTHER ORDERED, that the City Manager is hereby authorized to execute the Purchase and Sale Agreement and whatever other documents are necessary to effect the intent and purpose of this order.

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT for the purchase and sale of real estate made this _____ day of _____, 2018 by and between the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "CITY" of "Buyer"), and ROBERT E. COTT, an individual with a mailing address of 43 Redlon Park Road, Portland, ME 04102 (hereinafter referred to as "SELLER").

W I T N E S S E T H:

WHEREAS, SELLER is the owner of certain real estate located at 43 Redlon Park Road, Portland, Maine, as more fully described in the deed attached hereto as Exhibit 1, and incorporated herein ("Seller's Property"); and

WHEREAS, the CITY desires to purchase a portion of Seller's Property, such portion being generally depicted on the diagram attached hereto as Exhibit 2 and incorporated herein (the "Premises");

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the parties, intending to be legally bound, hereby agree as follows:

1. SALE. SELLER agrees to sell to CITY the Premises as generally depicted on Exhibit 2, and CITY agrees to buy the Premises, and accept the deed to the same, for the consideration, and subject to the terms and conditions, set forth herein.
2. CONSIDERATION. The consideration for the portion of the Premises shall be One Dollar (\$1.00) (the "Purchase Price").
3. TITLE; DUE DILIGENCE; INSPECTIONS
 - a. Due Diligence Period. Buyer will have from the date of this Agreement until 4:00 PM Eastern Daylight Savings Time on the day that is one hundred twenty (120) days after the date of this Agreement (the "Due Diligence Period"), unless otherwise provided herein, to complete any survey, environmental review, regulatory approvals, and title examinations.
 - b. Property Description. The property description contained in the deed will be a survey description based upon a survey plan (the "Premises"), to be provided by the City, that will more specifically describe the property shown on Exhibit 2 hereto. The Premises will be distributed to the parties hereto prior to expiration of the Due Diligence Period and the parties will agree on the property description prior to closing. The Due Diligence Period shall be extended in the event that the survey plan is not completed by the end of the Due Diligence Period and Buyer is afforded reasonable time to review the plan and make any title objections as provided below.

- c. Title and Survey Objections. Buyer will have until the end of the Due Diligence Period, unless otherwise extended as provided for herein to obtain any regulatory approvals required for the Premises, to deliver to Seller any written objections to title, environmental, or survey matters (other than the permitted exceptions identified herein) that materially affect marketability or use. Objections not made prior to the end of the Due Diligence Period will be deemed waived; provided, however, that objections pertaining to matters of record first appearing after the end of the Due Diligence Period may be made at any time prior to the closing.
- d. Option to Cure. In the event of a title or survey objection, Seller will have the option, but not the obligation, to cure the objection and will notify Buyer of its election within ten (10) business days after receipt of the objection. In the event that the Seller elects to cure the objection, it will have sixty (60) days from the date of the notice of election, or such other reasonable time as the parties may agree, to cure the objection. In the event that the Seller does not elect to cure the objection, or, having elected to cure the objection fails to timely do so to Buyer's reasonable satisfaction, Buyer will have the option to (1) terminate this Agreement, (2) waive the objection and close, or (3) undertake the cure of such objection at its own expense (in which case it shall have 60 days to do so).
- e. Deed. Seller shall convey the Premises to Buyer at the closing in fee simple by a warranty deed. Title shall be good, marketable, and insurable title, free and clear of all encumbrances except (i) easements described herein; (ii) easements for utilities servicing the property, (ii) City ordinances, and (iii) real estate taxes not yet due and payable.
- f. During the Due Diligence Period, Buyer and its employees, consultants, contractors and agents shall have the right, at Buyer's expense, to enter on the Premises at reasonable times in order to (i) inspect the same, (ii) conduct engineering studies, percolation tests, geotechnical exams, environmental assessments, and other such studies, tests, exams, and assessments, and (iii) do such other things as Buyer determines, it is sole discretion, to be required to determine the suitability of the Premises for Buyer's intended use (collectively, the "Inspections"). The Seller acknowledges that such Inspections may include the digging of test pits, which the Seller hereby approves.
- g. Buyer shall exercise the access and inspection rights granted hereunder at its sole risk and expense.
- h. In the event that Buyer does not purchase the Premises, Buyer agrees to return the Premises as nearly as possible to its original condition after conducting the Inspections, or, at the Buyer's option, reimburse the Seller for the reasonable costs of any physical damage caused to the Premises in connection with the Inspections; provided, however, the Seller hereby acknowledges and agrees that the term "physical damage" does not include any disturbance of any pre-existing environmental contamination on the Premises caused by such inspections, studies, tests, exams, and assessments, and that Buyer shall have no obligation to clean-up,

remove or take any other action with respect to any pre-existing environmental contamination disturbed thereby.

- i. The parties hereto acknowledge and agree that it is a condition to Buyer's obligations under this Agreement that the results of the Inspections be acceptable to Buyer in its sole discretion. If the results of such due diligence are not acceptable to Buyer in its sole discretion, Buyer may terminate this Agreement, and neither party shall have any further obligations or liabilities under this Agreement except as expressly set forth in this Agreement.
4. REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX. SELLER shall be liable for all real estate taxes due through the closing date. The Maine real estate transfer tax shall be paid for by SELLER in accordance with 36 M.R.S. § 4641-A. CITY is exempt from paying the transfer tax pursuant to 36 M.R.S. § 4641-C. The recording fee for the deed of conveyance shall be paid for by CITY.
 5. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller represents and warrants to Buyer that the following are true as of the date of this Agreement and will be true as of the closing:
 - a. There are no outstanding pending or threatened liens, claims, rights of first refusal, licenses or encumbrances against or affecting the Premises
 - b. All outstanding bills and/or accounts payable concerning the Premises are either paid or will be paid prior to or at the time of closing.
 - c. There are no outstanding claims, losses or demands against Seller by any person respecting Seller's ownership, use or occupancy of the Premises.
 - d. The Premises has not been used for any dumping of waste materials or landfilling and is free of special wastes, underground storage tanks, radon, asbestos, lead substances, and any hazardous, biomedical, radioactive or toxic, substances, materials or wastes. The terms used in the foregoing sentence shall include, without limitation, all substances, materials, etc., designated by such terms under any laws, ordinances or regulations, whether federal, state or local.
 - e. Seller has no knowledge of any boundary disputes or encroachments affecting the Premises.
 - f. There are rights of ingress and egress in perpetuity from the Premises to a public way for vehicular and pedestrian traffic and utilities.
 - g. The above representations and warranties shall survive the closing of the sale of the Property.
 6. CONDITIONS PRECEDENT. Buyer's obligation to close hereunder is subject to Buyer's full and complete satisfaction with all of the following:
 - a. There shall have been no material adverse change in the condition of the Premises occurring after the conclusion of Buyer's inspections described above, and the Premises shall be substantially in the same condition as they were at the time of the inspections;
 - b. Title to the Premises shall be good and marketable and insurable; and
 - c. As of the date hereof, and as of the Closing Date, all of Seller's representations and warranties shall be true and correct in all material respects.

- d. If the conditions described in subsections (a) through (c) above are not satisfied as of the dates specified, or if no date is specified, by the Closing Date, then Buyer shall have the option of terminating this Agreement.
7. CLOSING. Time is of the essence in the performance of this agreement. The closing shall be held at City Hall at a time agreeable to the parties on or before the day that is 30 days after the end of the Due Diligence period (the "Closing Date"). At the Closing:
 - a. Seller shall execute, acknowledge and deliver to Buyer a warranty deed conveying to Buyer good, marketable, and insurable title to the Premises, free and clear of all encumbrances except as otherwise set forth herein.
 - b. Buyer shall deliver the balance of the Purchase Price to the Seller.
 - c. Each party shall deliver to the other such other documents, certificates and the like as may be required herein or as may be necessary to carry out the obligations under this Agreement.
8. DEFAULT AND REMEDIES. In the event that SELLER defaults hereunder for a reason other than the default of the CITY, shall have the right to pursue and all legal and equitable remedies available to it, including specific performance. In the event that CITY defaults hereunder for a reason other than the default of the SELLER, SELLER shall have the right to terminate this Agreement as its sole remedy.
9. ENTIRE AGREEMENT. This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Premises hereunder. This Agreement cannot be amended except by written instrument executed by CITY and SELLER.
10. HEADINGS AND CAPTIONS. The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.
11. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.
12. GOVERNING LAW. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.
13. NOTICE. Any notice required or permitted under this Agreement shall be deemed sufficient if mailed with first class postage affixed or delivered in person to:

FOR THE CITY:

City of Portland
ATTN: CITY MANAGER
389 Congress Street
Portland, ME 04101

FOR SELLER:

Robert E. Cott
43 Redlon Park Road
Portland, ME 04102

- 14. SIGNATURES; MULTIPLE COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a faxed, pdf or other reproduced or electronic document shall be considered the equivalent of an original signature.
- 15. BROKERS. SELLER represents and warrants that is has not dealt with a real estate broker in connection with this transaction. SELLER agrees to indemnify and hold harmless CITY from any claims made by any broker should Buyer's representation in this paragraph be false.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first written above.

CITY OF PORTLAND

WITNESS

Jon P. Jennings
Its City Manager



WITNESS

SELLER
ROBERT E. COTT
Printed Name: Robert E. Cott

Approved as to form:

Corporation Counsel's Office

BK 13446PG038 7210203515

069279

WARRANTY DEED
(Maine Statutory Short Form)

COTTAGE PARK, INC., a Maine corporation with a place of business at Portland, Cumberland County, Maine, for valuable consideration, grants to ROBERT B. COTT, with a mailing address of Chandlers Wharf, Portland, Maine, 04101, with Warranty Covenants, the following described real property situated at Lot 1, Redlon Park, Portland, Cumberland County, Maine:

A certain lot or parcel of land with any buildings situated thereon in said Portland, and being more particularly described on Exhibit A attached hereto and made a part hereof.

Meaning and intending to convey a portion of the premises described in a deed from Housing Resources Corporation to the Grantor herein dated November 13, 1997, and recorded in the Cumberland County Registry of Deeds in Book 13440, Page 134.

Joining in this deed is the Chairman of the Redlon Park Association Design Review Board to certify that the Board has reviewed and approved the building plans and specifications for Lot 1.

IN WITNESS WHEREOF, COTTAGE PARK, INC. has caused this instrument to be signed in its corporate name by its duly authorized officer this 14th day of November, 1997.

MAINE REAL ESTATE TAX PAID

[Signature]
Witness

COTTAGE PARK, INC.
BY: [Signature]
Ric Weinschenk
Its President

To both

BY: [Signature]
Ric Weinschenk, Chairman
Redlon Park Association
Design Review Board

STATE OF MAINE
CUMBERLAND, SS.

November 14, 1997

Personally appeared the above named Ric Weinschenk, President and Chairman of the Redlon Park Association Design Review Board and acknowledged the foregoing instrument to be his free act and deed in said capacity, and the free act and deed of said Corporation and Board.

Before me,

[Signature]
Attorney at Law/Notary Public
KENNETH E. SMITGER
MAINE ATTORNEY AT LAW
Printed Name

BK 13446PG039

Exhibit A

A certain lot or parcel of land situated on Redlon Park Road in the City of Portland, Cumberland County, Maine bounded and described as follows:

Lot 1 as shown on "Planned Residential Unit Development Plan and Subdivision Plan of Redlon Park" dated February 28, 1997 revised through October 27, 1997 recorded in the Cumberland County Registry of Deeds in Plan Book 197, Page 493.

Lot 1 is conveyed subject to Declaration of Covenants and Restrictions, Redlon Park, dated November 14, 1997, recorded in Book 13442, Page 180, and to the easements granted in Redlon Park Road to City of Portland in two easement deeds dated November 14, 1997, to be recorded in the Cumberland County Registry of Deeds by the City of Portland, and to the terms, conditions and restrictions as set forth in an unrecorded Landscape Maintenance Agreement dated October 28, 1997, and an unrecorded Drainage Maintenance Agreement dated October 28, 1997, both instruments on file in the City of Portland Planning Department Office.

Lot 1 is further conveyed subject to wetlands and drainage easements shown on said plan.

RECEIVED
CUMBERLAND COUNTY REGISTRY OF DEEDS

1997 NOV 18 AM 11:32

CUMBERLAND COUNTY

John B. O'Brien

**QUITCLAIM DEED
(With Covenant)
Statutory Short Form**

KNOW ALL PERSONS BY THESE PRESENTS, that I, **ROBERT J. CHENEY**, of Buxton, County of York and State of Maine, in consideration of One Dollar and other valuable consideration paid, do hereby convey to **ROBERT E. COTT, JR.**, of Portland, County of Portland, and State of Maine, with a mailing address of 43 Redlon Park Road, Portland Maine 04102, with **Quitclaim Covenants**, the following described real estate in Portland, Maine:

Caroline Street Lot, Portland

A certain lot or parcel of land on the northerly side of Caroline Street, situated in the City of Portland, County of Cumberland and State of Maine, being bounded and described as follows:

Being Lot 26A as shown on Plan of Re-Subdivision of Motley and Caroline Street Lots dated April 1916, and recorded in Plan Book 13, Page 52.

Motley Street Lot, Portland

Also, a certain lot or parcel of land on the southerly side of Motley Street, situated in the City of Portland, County of Cumberland, State of Maine, bounded and described as follows:

BEING Lot No. 75B as shown on Plan of Re-Subdivision of Motley and Caroline Street Lots dated April 1916, and recorded in Plan Book 13, Page 52.

IN WITNESS WHEREOF, the said **ROBERT J. CHENEY** has hereunto set his hand and seal this 17th day of November, 1998.

WITNESS:

Diana Panetta

Robert J. Cheney
ROBERT J. CHENEY

STATE OF MAINE
COUNTY OF York, ss.

November 17 1998

Then personally appeared the above-named **Robert J. Cheney** and acknowledged the foregoing instrument to be his free act and deed.

Before me,

Marilyn E. Hopkins
Notary Public/~~Attorney at Law~~

MARILYN E. HOPKINS
Notary Public, Maine
My Commission Expires 05, 2001

CORRECTIVE DEED
Quitclaim Deed Without Covenant
(Release Deed)
[Deed Affecting Prior Deed]

KNOW ALL MEN BY THESE PRESENTS, that CHENEY REALTY CO., a Maine corporation, by and through NICHOLAS S. NADZO, W. SCOTT CARLISLE III, and MARGARET H. BOYCE, as liquidating trustees of said Cheney Realty Co., does hereby RELEASE to ROBERT J. CHENEY, of Buxton, County of York, State of Maine, whose mailing address is P.O. Box 925, Buxton, Maine 04093, the following property in Portland, Maine:

A certain lot or parcel of land on the northerly side of Caroline Street, situated in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Being Lot 26A as shown on Plan of Re-Subdivision of Motley and Caroline Street Lots dated April 1916 and recorded in Plan Book 13, Page 52 of the Cumberland County Registry of Deeds.

For the Grantor's source of title, reference is made to the following deeds: (1) deed of City of Portland, dated June 10, 1970, recorded at Book 3131, Page 295 in said Registry of Deeds; and (2) deed of Minat Corporation dated February 8, 1980, recorded in said Registry of Deeds at Book 4564, Page 87. Said premises were inadvertently omitted from the property description contained in a deed from Cheney Realty Co. to Robert J. Cheney dated July 30, 1980, and recorded at Book 4637, Page 231 in said Registry of Deeds.

The Grantor corporation was dissolved pursuant to Articles of Dissolution dated January 20, 1981, and filed with the Office of the Secretary of State of Maine. The undersigned execute this instrument as liquidating trustees of the corporation pursuant to Title 13-A M.R.S.A. § 1122(2).

IN WITNESS WHEREOF, the said CHENEY REALTY CO. by and through NICHOLAS S. NADZO, W. SCOTT CARLISLE III, and MARGARET H. BOYCE, its liquidating trustees, have hereunto set their hands and seals this _____ day of December, 1998.

Signed, Sealed and Delivered
in the presence of

CHENEY REALTY CO., INC.

Tracy J. Kelley

Nicholas S. Nadzo
Nicholas S. Nadzo
Liquidating Trustee

Amber K. Davis

W. Scott Carlisle III
W. Scott Carlisle III
Liquidating Trustee

Tracy J. Kelley

Margaret H. Boyce
Margaret H. Boyce
Liquidating Trustee

STATE OF MAINE
CUMBERLAND, SS.

December 31, 1998

Then personally appeared the above-named Nicholas S. Nadzo, liquidating trustee of said Grantor corporation as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.

Before me,

Patricia C. Dolnes
Notary Public/Attorney-at-Law

PATRICK & HUNTER
NOTARY PUBLIC OFFICE
MY COMMISSION EXPIRES MAY 18, 2003

STATE OF MAINE
CUMBERLAND, SS.

December 4, 1998

Then personally appeared the above-named W. Scott Carlisle III, liquidating trustee of said Grantor corporation as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.

Before me,

Amber L. Turington Davis
Notary Public/Attorney-at-Law

AMBER L. TURINGTON
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES OCTOBER 30, 2000

STATE OF MAINE
CUMBERLAND, SS.

December 10, 1998

Then personally appeared the above-named Margaret H. Boyce, liquidating trustee of said Grantor corporation as aforesaid, and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said corporation.

Before me,

Pauline W. Kenniston
Notary Public/Attorney-at-Law

PAULINE W. KENNISTON
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES OCTOBER 30, 2000

NSN/Cheney Realty/Corrective Deed

Exhibit 2

Plan produced by the City of Portland
Economic Development Department from
2017 City GIS data. Property bounds and
area subject to survey to be conducted
by the City of Portland. April 2018

Donation of Land to the Portland Land Bank



**Donated Parcel
Bounds and Area
Subject to Survey
+/-11,000 sq ft**

**Cott Parcel
Total Area
+/-32,000 sq ft**

MEMORANDUM
City Council Hearing Item

TO: City Council

FROM: Tuck O'Brien, City Planning Director

DATE: October 10, 2017

SUBJECT: Discussion of Analysis of Housing Options for Redlon Woods

In the Fall of 2016, several properties in the vicinity of Redlon Park Road were brought to the attention of the City Owned and Tax Acquired Properties Committee (COTAPC). These properties are located in proximity to some others in the area that had been of interest to both the Department of Public Works for storm water and to the Landbank Commission for conservation purposes. The total of the properties being examined by the Land Bank and COTAPC at that time was a significantly larger amount of land than the council is now currently considering.

At the time, due to the City's policy goal to create housing, the Planning and Urban Development Department was asked research the reuse of all or some of the land involved in this area for potential housing development. We conducted an informal survey of both market-rate and affordable housing developers about development in the area. Although none of these conversations rose to the level of actively marketing the properties to any party, elements concerning the topography, infrastructure costs, zone and market sub-district were discussed. Specifically, issues which would face any potential redevelopment are the extensive amount of ledge, significant wetland area and lack of infrastructure. A number of paper streets do exist; however, construction of connected roadways within a development and to access the street grid will create significant costs.

In September of 2016, the Planning and Housing staff ran several proformas to examine the likelihood of redevelopment of this land for housing under several disposition scenarios including market-value disposition, partially and fully subsidized. The conclusion of this analysis is that even if disposed of for no cost, that development of the land under R-3 zoning was unlikely. One key component to any development would be the economy of scale to spread the cost of the development over a number of units. When examining the larger potential acquisition at the time the land area (> 3 acres) was sufficient to qualify as a PRUD under the R-3 requirements. Cost analysis of a clustered redevelopment scheme under a PRUD did not appear to be economic without significant subsidy and even with that infrastructure constraints made the project an unlikely target for market rate or affordable housing development. Specific issues which created concern were the amount of ledge and sizable roadway expansion costs combined with sewer and storm water expansion. Accordingly, given that a housing option was unlikely and given the

compelling arguments for adding the land into the Land Bank staff advanced that approach.

The reduced non-contiguous land area before the Council currently totals approximately 2.73 acres (a little more than half the size previously analyzed). Although the staff has not fully investigated the specific land characteristics of each lot, the overall square footage would not qualify for a PRUD and the redevelopment of the parcels into single family homes would face significant infrastructure challenges. Given the location of the parcels within the larger land area much of this land would have to be given over to roadway construction. Some of these lots are fairly inaccessible and the logistics of connecting them very complex. In addition, without the clustering opportunity provided by the PRUD provisions issues such as ledge and wetland would make it very challenging to develop many of the lots into standalone house lots. Again, we have not examined each of these lots but the previous analysis which indicated that a development taking advantage of the economies of scale from the PRUD option would not be feasible makes it unlikely that redevelopment of these lots as individual homes would be feasible.