

# CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH  
DATE: MONDAY, OCTOBER 17, 2016 TIME: 7:00PM

## AGENDA

- I. CALL TO ORDER
- II. ROLL CALL
- III. INVOCATION
- IV. PLEDGE OF ALLEGIANCE

### PRESENTATION

- 1. Update Re: Various Parking Programs – Parking Manager Joey Giordano

- V. ACCEPTANCE OF MINUTES – *(There are no minutes on for acceptance this evening)*

- VI. PUBLIC COMMENT SESSION

- VII. PUBLIC HEARINGS

- A. ORDINANCE AMENDING CHAPTER 3, ARTICLE II, SECTION 3.2 SOLID WASTE, YARD WASTE AND RECYCLING AND AN AMENDMENT TO CHAPTER 1, ARTICLE XIII, SECTION 1.13 – MUNICIPAL ENFORCEMENT PROCEDURES
- B. RESOLUTION AUTHORIZING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF THREE HUNDRED AND FORTY-FIVE THOUSAND (\$345,000.00) DOLLARS FROM THE SEWER FUND UNRESTRICTED NET POSITION FOR LAND ACQUISITION THROUGH EMINENT DOMAIN RE: 150 GREENLEAF AVENUE

- VIII. CONSIDERATION OF RESOLUTIONS AND ORDINANCES

- A. Second reading of Ordinance amending Chapter 3, Article II, Section 3.2 Solid Waste, Yard Waste and Recycling and an amendment to Chapter 1, Article XIII, Section 1.13 – Municipal Enforcement Procedures
- B. Adoption of Resolution Authorizing a Supplemental Appropriation in the amount of Three Hundred and Forty-Five Thousand (\$345,000.00) Dollars from the Sewer Fund Unrestricted Net Position for Land Acquisition Through Eminent Domain Re: 150 Greenleaf Avenue
- C. Third and final reading of Ordinance amending Chapter 14, Article II – Demolition – The Preservation of Buildings and Places of Historic, Architectural and Community Value

**IX. CONSENT AGENDA**

***A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA***

*(There are no items under this section of the agenda)*

**X. PRESENTATION & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS**

*(There are no items under this section of the agenda)*

**XI. REPORTS AND COMMUNICATIONS FROM CITY OFFICIALS**

**A. CITY MANAGER**

**City Manager's Items Which Require Action:**

1. Purchase & Sale Re: Elliott Property
2. City Hall Building North Facade Replacement Design
3. Report Back Re: 400<sup>th</sup> Anniversary Celebration
4. Request to Dispose of Surplus Vehicles and Equipment
5. Commerce Way
6. Request to Extend Existing License at 64 Market Street

**Informational items**

1. Events Listing
2. Report Back Re: Food Truck Vendors
3. Status Report Regarding Conversion of West Road (Service Road) into a City Street
4. Reminder Re: Household Hazardous Waste Day  
<http://cityofportsmouth.com/publicworks/solidwaste-recycle-hhw.htm>.

**B. MAYOR BLALOCK**

1. Appointment to be Voted:
  - Appointment of Jody Record to the Planning Board as a Regular Member
  - Appointment of Jeffrey Kisiel to the Planning Board as an Alternate Member
  - Reappointment of Bruce Boley to the Board of Library Trustees
  - Reappointment of Jack Jamison to the Board of Library Trustees

**C. COUNCILOR DWYER**

1. \*Prescott Park Master Plan Update

**D. COUNCILOR LOWN**

1. Parking and Traffic Safety Committee Meeting Action Sheet and Minutes of October 6, 2016 (***Sample motion – move to approve and accept the Action Sheet and Minutes of the October 6, 2016 Parking & Traffic Safety Committee meeting***)

**E. COUNCILOR PEARSON**

1. \*Feasibility of Creating a Public Park at the current Bridge Street Parking Lot Location

**F. COUNCILOR SPEAR**

1. \*Discontinue Free Holiday Parking
2. Article Entitled Against Transparency (*No Action Required*)

**G. COUNCILOR DENTON**

1. \*Hodgson Brook Advisory Committee

**XII. MISCELLANEOUS/UNFINISHED BUSINESS**

**XIII. ADJOURNMENT**

**KELLI L. BARNABY, MMC, CMC, CNHMC**

**CITY CLERK**

*\*Indicates Verbal Report*

**NOTICE TO THE PUBLIC WHO ARE HEARING IMPAIRED: Please contact Dianna Fogarty at 603-610-7270 one-week prior to the meeting for assistance.**



**PARKPORTSMOUTH**  
Parking Division Update

Presenter: Joey Giordano, Parking Manager

# Parking Program Update:

- ▶ Parking Program Guiding Principles
- ▶ Comprehensive Parking Program
- ▶ Current Parking Projects



**PARKPORTSMOUTH**

# Parking Program Guiding Principles

- ▶ Parking Study History
  - ▶ City Council Adopted 2012, “Guiding Parking Principles”
  - ▶ Burke, “June 2012 Study”
  - ▶ Nelson/Nygaard, January 2012 “*Parking Supply and Demand Analysis*”
  - ▶ Walker, June 2015 “*Parking Operations Study*”



PARKPORTSMOUTH

# Parking Program Guiding Principles

- ▶ A balance mix of retail/restaurants, office, and residential use is key to downtown vitality
- ▶ A downtown parking supply that is convenient, viable, and central to downtown destinations is key to the health of the City's retail, restaurant, and office economy
- ▶ Manage parking and increase supply to address peak parking demands and avoid perfect Friday/Saturday night storm when residents/customers cannot find parking
- ▶ Parking for retail/restaurants and office users in the downtown is primarily a City responsibility

# Burke Study

## Occupancy Numbers

### July 2015

▶ Market Street	99.2%
▶ Congress Street	92.9%
▶ Bow Street	97.0%
▶ Worth Parking Lot	92.1%

### May/October 2015

▶ Market Street	93.4%
▶ Congress Street	92.9%
▶ Bow Street	94.2%
▶ Worth Parking Lot	91.3%



# Nelson/Nygaard Report

- ▶ Key Point from the Nelson/Nygaard Report:
  - ▶ Properly use the existing underutilized downtown parking inventory.



PARKPORTSMOUTH

# Walker Study

- ▶ **Walker Highlights**
  - ▶ Hanover Credit Card System
  - ▶ Branding Program
  - ▶ Eliminate the 12 hour Garage Rate
  - ▶ Converting Coin-Only Meters to Coin/Credit Smart Meters
  - ▶ Web Based Retailer Validation System

# Comprehensive Parking Program

- ▶ Simply raising rates does not fix the problem. We need to:
- ▶ Increase inventory
- ▶ Properly price existing inventory
- ▶ Provide lower cost/free remote parking alternatives
- ▶ Research transportation solutions
  - ▶ Shuttle, bike share



# Areas of Opportunity

- ▶ Urban Land Institute's methodology of sharing parking spaces between various land uses over the course of a day.
- ▶ Examples:
  - Church/Synagogue parking available to the public on weekdays
  - Bank parking available in the evenings



PARKPORTSMOUTH

# Areas of Opportunity

- ▶ Locating and managing these spaces is a full time job
- ▶ Exploring partnering with private company to create these relationships and manage the lots:
  - ▶ No cost to the City
  - ▶ Increase the parking inventory
  - ▶ Keeping with our current parking program guidelines and directives



**PARKPORTSMOUTH**

# Current Parking Projects

- ▶ Passport Parking
- ▶ Increase our public/private parking inventory
- ▶ Implementing credit card capable smart meters to replace mechanical coin only meters
- ▶ Real-time data based decision making



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# Current Parking Projects

## Passport Parking

- ▶ Download the app
- ▶ No device to purchase
- ▶ Create an account
- ▶ Locate zone number
- ▶ Park



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# Current Parking Projects

## Passport Parking

### Features:

- ▶ No return trip to your vehicle
- ▶ Add time remotely
- ▶ Notification that your parking session is ending
- ▶ Local businesses can participate in a validation program



# Current Parking Projects

## Increase Inventory

- ▶ Deer Street Garage Project
- ▶ Continue to research underutilized parking
- ▶ Test a public/private management agreement

# Current Parking Projects

## Smart Meters

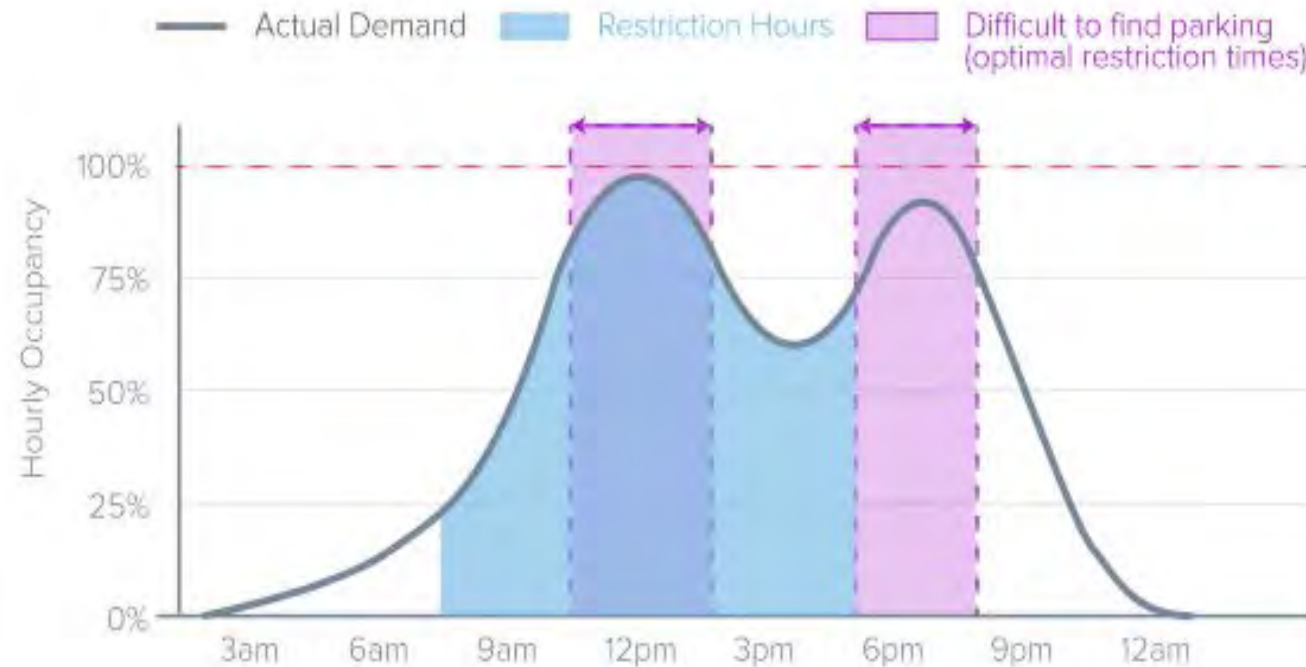
- ▶ Currently testing credit card/coin “smart” meters on Daniel Street
- ▶ Replace the 215 mechanical “coin only” meters



# Current Parking Projects

## Real Time Data

- ▶ Analyze our multiple data streams to make informed decisions



Questions?



LEGAL NOTICE

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, October 17, 2016 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH on a proposed Ordinance amending Chapter 3, Article II, Section 3.2 Solid Waste, Yard Waste and Recycling and an amendment to Chapter 1, Article XIII, Section 1.13 – Municipal Enforcement Procedures. The complete Ordinance is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

Kelli L. Barnaby, MMC, CMC, CNHMC  
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Kelli L. Barnaby, MMC, CMC, CNHMC  
City Clerk

PN-00233992

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS:

That Chapter 3, Article II, Section 3.2 – SOLID WASTE, YARD WASTE AND RECYCLING - of the Ordinances of the City of Portsmouth which shall read as follows (deletions from existing language ~~stricken~~; additions to existing language **bolded**; remaining language unchanged from existing):

**ARTICLE II: SOLID WASTE, YARD WASTE AND RECYCLING**

**Section 3.201: PURPOSE**

The City of Portsmouth recognizes that a comprehensive municipal program for the disposal of solid waste and yard waste, as well as the recycling of materials is necessary for the convenience of its citizens and the protection of the environment of the municipality. The City further recognizes that such program must be developed and administered in the most cost efficient manner consistent with the goals of the program.

**Section 3.202: DEFINITIONS**

For the purposes of this ordinance, the following definitions apply:

*Bulky Waste:* any items whose large size or weight precludes or complicates their handling by normal collection, processing or disposal methods.

*Downtown Business District:* For the purposes of this section, the Downtown Business District shall mean the following areas:

Congress Street from ~~Bridge~~ Middle Street to Market Square;  
High Street from Congress Street to Ladd Street;  
Ladd Street from High Street to Market Street;  
Market Street from Market Square to ~~Hanover~~ Deer Street;  
Daniel Street from ~~Wright Avenue~~ State Street to Market Square;  
~~Wright Avenue from Daniel Street to State Street;~~  
State Street from ~~Wright Avenue~~ Daniel Street to ~~Pleasant~~ Middle Street;  
Pleasant Street from Court Street to Market Square;  
Chapel Street from ~~Daniel~~ Bow Street to State Street;  
Porter Street from Middle Street to Pleasant Street;  
Sheafe Street from Chapel Street to Penhallow Street;  
Bow Street from Daniel Street to Market Street;  
Penhallow Street from State Street to Bow Street;  
Hanover Street from Market Street to Maplewood Avenue;  
High Street from Hanover Street to Deer Street;  
Feet Street from Hanover Street to State Street

*Non-Business Districts:* For the purposes of this section, the Non-Business Districts shall mean all areas other than those designated as being within the Downtown Business District.

*Commercial Property:* any property the predominate use of which is a structure used for commercial or business purposes including, but not limited to, the following:

- Properties containing five (5) or more dwelling units;
- Hotels, restaurants, warehouses;

- ~~Trailer~~ Manufactured Housing Parks ~~containing five (5) or more dwelling units;~~
- Markets, bakeries, grocery stores, fruit stands;
- Manufacturing or industrial;
- Business offices;
- Condominiums; and
- Any non-residential use

*Construction and Demolition (C&D):* waste from the building, tearing down or destruction of a structure or part of a structure.

*Garbage:* All putrescible waste material including, but not limited to wastes resulting from the handling, preparation, cooking and consumption of food. Garbage shall not include yard, industrial, hazardous and/or radioactive waste.

*Hazardous Waste:* A solid, semi-solid, liquid or contained gaseous waste, or combination of, which because of quantity, concentration, or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious or incapacitating illness, or pose a health hazard to humans and the environment when improperly treated, stored, transported or disposed.

*Industrial Waste:* Byproducts or scrap remaining from an industrial manufacturing process.

*Putrescible Waste:* Any organic material, which can decompose and give rise to foul odors and noxious byproducts.

*Radioactive Waste:* Material regulated by the Atomic Energy Commission.

*Recyclable Materials and/or Single Stream Mixed Recyclables* are defined as follows:

- ~~“Metal”~~ “Aluminum” means cans made of aluminum, tin or steel
- “Glass” means jars and bottles colored green, brown or clear
- “Paper” means fibrous material derived mainly from wood, examples of such are cardboard, newspapers, ~~inserts~~, junk mail, magazines, office paper, ~~and office manila folders~~, phone books, paperback books, paper board (cereal and pasta boxes), wax coated milk and juice cartons, and paper egg cartons
- ~~“Plastic”~~ means plastic bottles, jars, jugs and containers labeled number 1 through 7 all polyethylene terephthalate (PET) and high density polyethylene (HDPE) plastic containers such as soda, milk and detergent containers. This definition includes all plastic containers encoded on the bottom with a number “1” or “2” inside a three-arrow recycling symbol
- ~~“Steel” or “tin” cans means cans made of those materials~~
- This list of recyclables may be modified as needed by the Department of Public Works;

*Refuse:* Any solid waste composed wholly or partly of garbage and rubbish.

*Residential Property:* Any property the predominate use of which is a residential structure containing at least one (1) dwelling unit but not more than four (4) dwelling units.

*Rubbish:* All nonputrescible waste material including, but not limited to, paper, cigarettes, cardboard, cans, wood, glass, bedding and crockery. Rubbish shall not include yard, industrial, hazardous and/or radioactive waste.

*Yard Waste:* Leaves, grass, clippings, garden debris, small brush (no greater than 5” in diameter) or chipped branches.

### Section 3.203: PROGRAM COMPONENTS

The City's program for waste disposal and materials recycling shall consist of the following components, each of which is to be administered in accordance with the provisions of this ordinance:

#### A. Curbside Placement Time

~~A. The City shall maintain a regularly scheduled program of curbside solid waste pick-up from residential properties and commercial properties in the Downtown Business District.~~

~~1. Non-Business District waste shall be placed curbside no earlier than 7:00 p.m. the evening before collection~~

~~2. The Department of Public Works shall determine and publish the days and hours under which the curbside collection shall be available to residents and property owners.~~

~~3. Downtown Business District waste shall be placed curbside no earlier than two (2) hours prior to the scheduled collection time which will be determined and published by the Department of Public Works.~~

#### A.B. Solid Waste Disposal (Curbside pick-up):

~~The City shall maintain a regularly scheduled program of curbside solid waste pick-up from residential properties and commercial properties in the Business District. Solid waste may consist of garbage and refuse, but shall exclude other types of waste. The limitations on curbside solid waste pick-up are as follows:~~

~~1.2. Weekly pick-up from residential properties shall not exceed 300 over twelve cubic feet or 3—45 U.S. gallons trash barrel of municipal solid waste~~

~~2.3. Weekly pick-up for from commercial properties in the Downtown Business District shall not exceed 300 over one cubic yard or 9—45 U.S. gallons of solid waste, trash barrels. Where a non-residential structure contains five or more business establishments, including multi-family housing, and is located in the Downtown Business District, that building shall be considered one unit limited to not more than 300 U.S. gallons, more than one cubic yard~~

~~3.4. All waste placed for curbside pick-up shall be kept in sealed covered, sanitary containers not exceeding a volume of 100 U.S. gallons, fifty (50) pounds each~~

~~4.5. Trash containers shall not be so filled so as to be grossly unwieldy; containers smaller larger than a volume of 45 U.S. gallons may not exceed fifty (50) pounds each or be so worn or damaged as to make them likely to fail. Containers larger than 45 gallons but smaller than 100 gallons must have working wheels and stop bar compatible with collection trucks hydraulic tipper.~~



~~5. Non-Business District waste shall be placed curbside no earlier than 7:00 p.m. the evening before collection~~

~~6. The Department of Public Works shall determine and publish the days and hours under which the curbside collection shall be available to residents and property owners.~~

~~6.7. Business District waste shall be placed curbside no earlier than two (2) hours prior to the scheduled collection time which will be determined and published by the Department of Public Works, 4:30 p.m. but no later than 6:00 p.m. on the day of collection~~

7.8. Every rental and leased dwelling unit shall be provided by the property owner with adequate storage receptacles with tight fitting covers for rubbish and garbage. These containers must be maintained in a clean and sanitary condition and disposal procedures must comply with this ordinance.

8.9. In the **Downtown** Business District, materials for disposal or recycling shall not be placed in plastic or paper bags, unless the bags are within ~~sealed~~ covered containers.

#### B.C. Recycling:

Recycling of recyclable materials is mandatory for all residential and commercial property owners or residents who dispose of waste at the Recycling Center or who utilize the curbside collection service of the City. The recycling program shall operate under the following terms and conditions:

1. The City shall make available ~~provide all residential properties with at least one marked~~ recycling container for use in connection with the curbside recycling program. These containers shall not be used for any materials other than specified recyclable materials.

2. All recyclable materials do not need to be separated and may be placed in a common recycling container.

3. If recycling materials exceed the capacity of one recycling container, multiple additional recycling containers may be left for pick up provided the additional containers are labeled "Recycling".

2.4. All fiber, metal ~~aluminum,~~ glass and plastic to be recycled shall be cleaned and placed together in the recycling container. Recyclables shall not be placed in plastic bags. ~~Lids, caps, corks and neck rings shall be removed from all materials.~~

3.5. Excess Paper and cardboard ~~to be recycled~~ shall be placed on top of or next to the recycling container in a manner to prevent the scattering of paper. Paper and flattened cardboard ~~shall~~ shall either be packed in standard paper grocery bags, cardboard boxes, or securely tied in flat bundles, none of which shall weigh greater than fifty pounds.

~~4.6.~~ If there are more recyclables than can be held in one container, the resident shall flatten those materials which can be flattened and/or place the additional recyclables next to the recycling container in a separate cardboard box or other suitable container clearly marked "recyclables."

~~5.7.~~ No person other than an authorized agent of the City acting in the course of his/her employment shall collect or pick-up or cause to be collected or picked up any recyclable material placed at curbside.

~~6.8.~~ **Mixed r**Recyclable materials generated at both commercial and residential properties in the City may be delivered to the City's Recycling Center.

~~7.9.~~ Recyclable materials shall be separated from municipal solid waste when placed at curbside.

~~C.D.~~ Bulky Waste (Curbside Collection):

Residential properties which qualify for curbside collection of municipal solid waste shall also be permitted to utilize an on demand curbside bulky waste collection service maintained by the City. Curbside pick-up of bulky waste shall be performed under the following terms and conditions:

1. The property owner or resident shall schedule bulky waste pick-up on an appointment basis by arrangement with the Department of Public Works.
2. Each property shall be allowed up to four curbside collections of bulky waste per calendar quarter, each of which shall be limited to a maximum of sixty-four cubic feet per collection (64 cubic feet is approximately the bed size of a mid-sized pick-up truck).
3. All bulky waste items set out at curbside must be properly sorted by type in accordance with categories to be established by the Department of Public Works and communicated to the property owner/resident at the scheduling of the appointment. Bulky waste shall be placed curbside no earlier than the Saturday prior to collection.
4. Any bulky waste which is not collected by the City due to lack of compliance with the provisions of this ordinance must be removed from the curbside by the property owner/resident within twenty-four (24) hours of being provided notice that the Department of Public Works will not collect the bulky waste.
5. Where bulky waste is not picked up by the City for any reason, proper disposal is the responsibility of the owner/resident.

~~D.E.~~ Bulky Waste and Municipal Solid Waste (Recycling Center):

The City shall maintain a recycling service for bulky waste and municipal solid waste.

The terms and conditions under which the Recycling Center shall operate are as follows:

1. The Department of Public Works shall determine and publish the days and hours under which the Recycling Center shall be available to residents and property owners.
2. The Recycling Center shall be available only for waste generated by residential properties.
3. The Recycling Center shall be available to Portsmouth Commercial Properties for single stream mixed recyclables only, materials exclusively provided they obtain an annual pass is obtained from the City. The fee, if any, for the annual pass shall be established by the City Council during its annual budget process.

E.F. Yard Waste

Yard waste shall be collected by the City in accordance with the following terms and conditions:

1. Yard waste shall be collected at curbside in accordance with a collection schedule to be determined and published by the Department of Public Works.
2. Brush which is placed at curbside must be cut into lengths not exceeding four (4) feet; contain no pieces of brush greater than five inches in diameter, and be tied in neat bundles the diameter of which shall not exceed one (1) foot and a weight of which shall not exceed greater than fifty (50) pounds.
3. Other than brush, yard waste which is placed at curbside must either:
  - A. be placed in commercially manufactured biodegradable bags which are factory labeled to indicate that they are 100% biodegradable; or
  - B. be placed in open containers which are clearly labeled, "Yard Waste."

Neither the biodegradable bags nor the open containers shall weigh more than fifty (50) pounds each when filled and placed at the curbside.

4. Any yard waste placed at curbside which the Public Works Department refuses to collect due to lack of compliance with this ordinance must be removed from the curbside by the property owner/resident within twenty-four (24) hours of being provided notice by the Public Works Department that the yard waste will not be collected.
5. The Director of Public Works may designate a central repository to which residential properties may deliver yard waste. Landscape contractors may utilize the same repository for a processing fee. The fee shall be established by the City Council during its annual budget process. Yard waste must originate from Portsmouth residential property only, provided the yard waste originated from a Portsmouth residential property.

### Section 3.204: PROHIBITIONS:

The following acts are not permitted in the City of Portsmouth:

1. The disposal at City's Recycling Center or the placement at curbside for municipal pick-up of any hazardous waste or radioactive waste.
2. The disposal of any materials on public or private property in any manner not permitted by this ordinance or by state law.
3. The placement of solid waste for curbside pick-up, the placement of bulky waste for curbside pick-up or the deposit of any waste or recyclables at the City's Recycling Center or other repository by any person, firm or corporation not expressly authorized to do so under the provisions of this ordinance.
4. The bringing of materials into the City of Portsmouth from elsewhere for disposal or recycling by the City.
5. The use of public trash containers for disposal of commercial or residential garbage, rubbish or refuse.

### Section 3.205: RIGHT OF INSPECTION

The placement of any materials at curbside for municipal pick-up conveys to the City the right to inspect such materials for compliance with this ordinance as well as local, state and federal law.

### Section 3.206: PENALTIES AND REMEDIES

In addition to any other penalty or remedy permissible at-by law for violation of this ordinance, the following shall apply:

1. Any person, firm or corporation violating any provision of this ordinance shall be subject to a penalty, upon conviction, up to the maximum amount authorized under state law.
2. The Public Works Department is authorized to issue citations to persons, firms or corporations violating this ordinance in accordance with municipal citation authorization contained in the ordinances of the City of Portsmouth; All except that all citations issued for violation of this ordinance shall be in the amount of \$100.00 for the first violation, \$250 for the second violation and \$500 for third violation and loss of municipal services for subsequent violations. ;
3. The Public Works Department may refuse to accept or pick-up any waste of any kind which is not delivered or placed in accordance with the provisions of this ordinance or any rules adopted hereunder by the Department of Public Works. In all such circumstances, proper disposal of the waste is the responsibility of the owner/resident.

4. The Public Works Department has the right to refuse residents/commercial properties access to the Recycling Center who misuse the Center, are negligent and/or abusive to City employees.
5. The City Attorney is authorized to file any appropriate legal proceedings, including but not limited to requests for injunctive relief, necessary to prevent violation of this ordinance.
6. The Public Works Department may negotiate and settle civil claims involving violations of this ordinance.

**Section 3.207: SEVERABILITY**

In the event that any portion of this ordinance is found to be unenforceable for any reason, the remaining provisions shall remain in full force and effect.

(Amended Article II by deleting it in its entirety and replaced with the following on 12/16/2003).  
(This ordinance shall take effect on January 1, 2003 except for mandatory recycling in the business district which shall become effective on July 1, 2003).

ORDINANCE #  
THE CITY OF PORTSMOUTH ORDAINS

That Chapter 1, Article XIII, Section 1.13 – MUNICIPAL ENFORCEMENT PROCEDURES of the Ordinances of the City of Portsmouth be amended as follows (deletions from existing language **stricken**; additions to existing language **bolded**; remaining language unchanged from existing):

Section 1.1302: DEPARTMENTS AUTHORIZED

- A. The heads of the Fire and Planning, Inspections and **Environment** ~~Department~~ **Department of Public Works** employees designated by the heads of those department s are hereby authorized to issue such citations.
- B. All proposed citations are to be reviewed with the Office of the City Attorney prior to issuance.

The City Clerk shall properly alphabetize and/or re-number the ordinance as necessary in accordance with this amendment.

All ordinances or parts of ordinances inconsistent herewith are hereby deleted.

This ordinance shall take effect upon its passage.

APPROVED:

\_\_\_\_\_  
Jack Blalock, Mayor

ADOPTED BY COUNCIL:

\_\_\_\_\_  
Kelli L. Barnaby, City Clerk

**LEGAL NOTICE**

NOTICE IS HEREBY GIVEN that a Public Hearing will be held by the Portsmouth City Council on Monday, October 17, 2016 at 7:00 p.m., Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, NH on a Resolution Authorizing a Supplemental Appropriation from the Sewer Fund Unrestricted Net Position for Land Acquisition through Eminent Domain. The complete Resolution is available for review in the Office of the City Clerk and Portsmouth Public Library, during regular business hours.

Kelli L. Barnaby, MMC, CMC, CNHMC  
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City Clerk

PM00233993

**CITY OF PORTSMOUTH, NEW HAMPSHIRE  
SUPPLEMENTAL APPROPRIATION  
FOR THE FISCAL YEAR ENDING JUNE 30, 2017**

**RESOLUTION # -**

**A RESOLUTION AUTHORIZING A SUPPLEMENTAL  
APPROPRIATION FROM THE SEWER FUND  
UNRESTRICTED NET POSITION FOR LAND ACQUISITION  
THROUGH EMINENT DOMAIN.**

**RESOLVED: BY THE CITY COUNCIL OF THE CITY OF PORTSMOUTH,  
NEW HAMPSHIRE ASSEMBLED AS FOLLOWS:**

**THAT**, the City Council has determined that the sum of up to **Three  
Hundred and Forty-Five Thousand (\$345,000) Dollars** is  
to be appropriated from the Sewer Fund Unrestricted Net Position to  
defray the expenditures related to Land Acquisition through eminent  
domain for the Fiscal Year ending in June 30, 2017.

**THAT**, to meet this appropriation, the City Manager is authorized to  
transfer these funds from the Sewer Fund Unrestricted Net Position.

**APPROVED BY:**

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**JACK BLALOCK, MAYOR**

**ADOPTED BY CITY COUNCIL  
DATE**

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**KELLI BARNABY, CMC/CNHMC  
CITY CLERK**

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**SECTION 7.14-AMENDMENTS TO BUDGET AFTER ADOPTION**

No appropriation shall be made for any purpose not included in the annual budget as adopted unless voted by a two-thirds (2/3) majority of the Council after a public hearing held to discuss said appropriation. The Council shall, by resolution, designate the source of any money so appropriated.



## *Items Which Require Action Under Other Sections of the Agenda:*

### 1. Public Hearing:

- 1.1 **Public Necessity Hearing to Acquire a Portion of Property at 150 Greenleaf Avenue by Eminent Domain.** City Attorney Robert Sullivan, Deputy City Attorney Suzanne Woodland and Attorney Charles Bauer, as outside counsel, will make a presentation as part of the public hearing for a proposed eminent domain action concerning a portion of the property at 150 Greenleaf Avenue.

For the City Council's consideration is the legal acquisition by eminent domain of approximately 4.6 acres of a 13.78 acre parcel through which a municipal sewer line, installed within a berm, was constructed by the City in 1967 and 1968. The parcel is owned by the 150 Greenleaf Avenue Trust, James Boyle, Trustee. The proposed area with municipal structure to be acquired is shown on the plan included with the proposed City Council Resolution.

The presentation will include an overview of the alleged defects in permanent rights for the City to maintain the sewer line in its current configuration within the berm which runs through the historically swampy area. The presentation will also address the public use, public necessity, and public benefit for such action, weighing the needs of the City with the rights of the landowner.

The public sewer line serves, and has served for nearly 50 years, the Lois Street residential neighborhood and a portion of Middle Road including the Riverbrook Condominiums. The historically swampy wetlands area also serves, and has served the public, to detain storm water as a low point in the area. The landowner will continue to fully own and operate an automotive dealership on the remaining fully developed portion of the property. The landowner will be reasonably and justly compensated for the proposed acquisition.

As will be explained further as part of the presentation, this hearing is part of the legal due process and procedures required by New Hampshire statutes for the eminent domain acquisition of property. That due process includes an appraisal, a copy of which is provided to the property owner. This step has been completed and the appraisal report has been posted to the City's website.

The appraisal report provides two methodologies for determining value of the property to be acquired. Using the method most favorable to the landowner, the City would propose to offer to the landowner \$345,000 to acquire the parcel for public use. The estimated costs of removing and replacing the sewer line for continued municipal services to residents and landowners, which would require state and local approvals, would greatly exceed the acquisition expense.

If the City Council elects to proceed with the eminent domain, there will be a 60 to 90 day period of negotiation and statutorily required notices to various parties. Within the statutory structure, the landowner will have the opportunity to challenge the public use, public necessity, public benefit, and just compensation.

Attached is the proposed Resolution for the City Council's adoption with attached plan.

*The City Legal team recommends the City Council move to adopt the Resolution entitled "Regarding the Public Necessity for the City to Condemn Certain Property Located at 150 Greenleaf Avenue Portsmouth New Hampshire for Sewer, Drainage, and Stormwater Purposes with Just Compensation to the Landowner." Action on this matter should take place under Section IX of the Agenda.*

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That the Ordinances of the City of Portsmouth, Chapter 14 – Housing Code, be amended by deleting the existing Article II: Demolition and inserting in its place the following new Article II:

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ARTICLE II: DEMOLITION

Section 14.201 PURPOSE

The purpose of this Article is to encourage the preservation of buildings and places of historic, architectural and community value.

Section 14.202 DEFINITIONS

As used in this Article, the following words or phrases shall have the meanings set forth below, except when the context requires a different meaning.

Demolition: Razing or destruction, entirely or in part, of a building or structure, whether or not reconstruction is planned after demolition, or removal of a building or structure in whole or in part from its present location. For the purpose of this Article, demolition shall not include (a) interior demolition that does not affect the exterior of the building or structure, or (b) work necessary to repair or replace exterior finishes such as roofing, siding, trim or windows.

Demolition Review Committee: A committee appointed by the City Council and comprised of five members as follows: one member of the Historic District Commission, one member of the Planning Board, one member of the Portsmouth Historical Society, the Chief Building Inspector or his/her designee, and the Planning Director or his/her designee. Representatives of the Historic District Commission and Planning Board shall be appointed annually or as necessary.

Section 14.203 APPLICABILITY

The requirements of this Article shall apply to any demolition except:

- (1) Demolition of a building or structure that has been granted a Certificate of Approval by the Historic District Commission; or
- (2) Demolition of any “dangerous building” that has been ordered to be demolished pursuant to Chapter 14, Article I, Section 14.109(C).

Section 14.204: APPLICATION AND NOTICE

- A. Prior to the commencement of any demolition, the owner(s), contractor, or agent (hereinafter Applicant) must (a) submit a completed Demolition Permit Application (hereinafter Application) to the Inspection Department, (b) post a sign or signs as required by paragraph B below, and (c) publish a legal notice as required by paragraph B below.
- B. The applicant shall post one or more signs on the building to be demolished, or on the lot where such building is located, so as to be clearly visible from all public ways. In the event that visibility at the building's location would be hindered in such a manner as to obstruct notice of the sign, the applicant will be required to post a sufficient number of signs as to insure clear visibility. Said sign(s) shall be provided by the Inspection Department at the time of application for the Permit.
  - (1) If the building to be demolished was constructed more than 50 years prior to the date of application and the area to be demolished (building footprint or gross floor area) is greater than 500 square feet, the notice shall read as follows:

NOTICE

An application has been submitted to demolish this building or a portion thereof. Further information about the proposed demolition is available from the Inspection Department, City Hall, 1 Junkins Avenue, Portsmouth, NH 03801 (tel. 610-7243). You may object to the demolition by filing a written objection with the Inspection Department at the above address.

If no written objection is received in the Inspection Department within 30 days from the date of this notice, the Demolition Permit will be issued. If a written objection is received within said period, the Demolition Review Committee will hold a public hearing on the matter within 75 days from the date of this notice. Notice of the public hearing will be published in a newspaper of general circulation, posted on the City's website, and given to all parties who have filed objections to the proposed demolition.

Date of this Notice: \_\_\_\_\_.

- (2) If the building to be demolished was constructed 50 years or less prior to the date of application, or the area to be demolished (building footprint or

gross floor area) is 500 square feet or less, the notice shall read as follows:

### NOTICE

An application has been submitted to demolish this building or a portion thereof. Further information about the proposed demolition is available from the Inspection Department, City Hall, 1 Junkins Avenue, Portsmouth, NH 03801 (tel. 610-7243). You may object to the demolition by filing a written objection with the Inspection Department at the above address.

If no written objection is received in the Inspection Department within 30 days from the date of this notice, the Demolition Permit will be issued. If a written objection is received within said period, the Inspector may order an additional delay in issuing the Demolition Permit, up to a maximum of 90 days from the date of this notice.

Date of this Notice: \_\_\_\_\_.

- (3) In either case, the required sign(s) shall remain posted until the Inspection Department has issued a demolition permit.
- C. The applicant shall, within seven (7) days of submitting an Application, have published a legal notice in a newspaper of general circulation in Portsmouth. All costs which are incurred for publication of the legal notice are to be paid by the applicant who also will provide copies of the published legal notice to the Inspection Department prior to the expiration of the thirty (30) day period contained in the legal notice. The legal notice shall include the wording required by Section 14.204.B (1) or (2), as applicable, and shall also contain the address and description of the building or structure to be demolished and the name and address of the applicant.

#### Section 14.205: PROCEDURE

- A. If the building to be demolished was constructed more than 50 years prior to the date of application and the area to be demolished (building footprint or gross floor area) is greater than 500 square feet, the following procedure shall be followed:
  - (1) If a written objection is not received by the Inspection Department within thirty (30) days of the date of notice, the Building Inspector shall verify that the notice requirements in Section 14.204 have been satisfied and the demolition may proceed.

- (2) If a written objection is received by the Inspection Department within thirty (30) days of the date of notice, the Building Inspector shall have fifteen (15) days to notify the applicant in writing that the demolition must be reviewed by the Demolition Review Committee before proceeding and forward the application to each member of the Demolition Review Committee.
- (a) The Demolition Review Committee shall schedule a public hearing within thirty (30) days of notification from the Building Inspector. Notice of the public hearing shall be given to all parties who have filed objections, posted in two public places and on the City's website, and published in a newspaper of general circulation at least ten (10) days prior to the hearing, not including the day of the hearing or the day of posting.
  - (b) The Demolition Review Committee shall hear all public testimony on the building's significance. The owner or the owner's representative shall be invited to attend the hearing.
  - (c) At the conclusion of the hearing, the Demolition Review Committee shall determine that the building is "significant" or "not significant" based on whether the building is of such historic, architectural or community value that its removal would be to the detriment of the public interest.
  - (d) If the Committee finds the building is "not significant," no further review is required.
  - (e) If the Committee finds the building is "significant," the following steps shall be taken:
    - (i) The Committee shall hold a meeting with the owner or owner's representative within fifteen (15) days, or at the applicant's earliest convenience, to discuss alternatives to demolition.
    - (ii) After the meeting provided for in paragraph (i) above, if no alternatives to demolition have been identified and agreed to by the applicant, and if the applicant agrees, the applicant shall submit basic measured drawings of the building (plan and elevations) as determined by the Demolition Review Committee. In addition, if the applicant agrees, the Committee shall document the building photographically. The applicant shall also be encouraged to salvage significant architectural features identified by the Committee.

- (iii) Following the completion of documentation and (if applicable) salvage as set forth in (ii) above, no further review is required.

B. If the building to be demolished was constructed 50 years or less prior to the date of application, or the area to be demolished (building footprint or gross floor area) is 500 square feet or less, the following procedure shall be followed:

- (1) If a written objection is not received by the Inspection Department within thirty (30) days of the date of notice, the Building Inspector shall verify that the notice requirements in Section 14.204 have been satisfied.
- (2) If a written objection is received by the Inspection Department within thirty (30) days of the date of notice, the Building Inspector shall order an additional delay period, not to exceed sixty (60) days from the date of receipt of the written objection(s). However, in no event shall the delay period ordered by the Building Inspector exceed ninety (90) days from date of notice.

#### Section 14.206: DEMOLITION PERMIT

Upon completion of the procedure outlined in Section 14.205, the Building Inspector shall issue a Demolition Permit after the expiration of any delay period ordered pursuant to Section 14.205.

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The City Clerk shall properly alphabetize and/or re-number the ordinances as necessary in accordance with this amendment.

All ordinances or parts of ordinances inconsistent herewith are hereby deleted.

This ordinance shall take effect upon its passage.

APPROVED:


\_\_\_\_\_  
Jack Blalock, Mayor

ADOPTED BY COUNCIL:

\_\_\_\_\_  
Kelli L. Barnaby, City Clerk

**CITY OF PORTSMOUTH  
PORTSMOUTH, NH 03801**

**Office of the City Manager**

**Date:** October 12, 2016  
**To:** Honorable Mayor Jack Blalock and City Council Members  
**From:** John P. Bohenko, City Manager   
**Re:** City Manager's Comments on October 17, 2016 City Council Agenda

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***Presentation:***

1. **Update Re: Various Parking Programs.** On Monday evening, Joseph Giordano, Parking Manager, will make a presentation to update the City Council regarding various parking programs. [See attached PowerPoint presentation.](#)

***Items Which Require Action Under Other Sections of the Agenda:***

1. **Public Hearing/Second Reading of Proposed Ordinance Amendments.**
  - 1.1 **Public Hearing/Second Reading of Proposed Ordinance amending Chapter 3, Article II, Section 3.2 Solid Waste, Yard Waste and Recycling and an amendment to Chapter 1, Article XIII, Section 1.13 – Municipal Enforcement Procedures.** As a result of the October 3<sup>rd</sup> City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and second reading the [attached proposed Ordinance amending Chapter 3, Article II, Section 3.2 Solid Waste, Yard Waste and Recycling.](#)

In order to give the Department of Public Works authority to issue citations under the Solid Waste Ordinance, an amendment to Chapter 1, Article XIII, Section 1.13 – Municipal Enforcement Procedures is necessary ([see attached amendment](#)). The term “Environment Department” was replaced with “Department of Public Works.”

The Department of Public Works recommends updating the City's Solid Waste Ordinance to accommodate current waste material collection practices and future growth of the program, and requests a public hearing and second reading at the



October 17, 2016 City Council Meeting. The proposed updates to the City's Solid Waste Ordinance do not significantly alter the ordinance, but update the ordinance to reflect common practices already taking place. For example, under the current language trash containers cannot be larger than 45 gallons, thus residents are technically not allowed to be using the 64 or 95 gallon wheeled totes frequently purchased for curbside collection.

The changes to this Ordinance include the following:

- Update the maximum weight and volume of acceptable curbside containers from 45 gallons to include up to 100 gallons; so long as any container larger than 45 gallons has a stop bar compatible with the hydraulic tipper and has working wheels.
- Update Business District curbside collection hours (currently listed as 4:30pm-6:00pm) to allow DPW to add a morning pick up for residents and provide future adaptability to alter routes as needed for operational efficiency. The days and hours of collection will be published by the Department of Public Works.
- Update penalties and remedies to better enforce ordinance violations.
- Modernize the definitions classifying waste and how they are handled.

*I recommend the City Council move to pass second reading and schedule a third and final reading of the proposed Ordinance at the November 21, 2016 City Council meeting, as presented. Action on this matter should take place under Section VIII of the Agenda.*

## 2. **Public Hearing and Adoption of Resolution.**

- 2.1 **Public Hearing and Adoption of Resolution Authorizing a Supplemental Appropriation in the amount of Three Hundred and Forty-Five Thousand (\$345,000) Dollars from the Sewer Fund Unrestricted Net Position for Land Acquisition Through Eminent Domain Re: 150 Greenleaf Avenue.** As a result of the October 3<sup>rd</sup> City Council meeting, under Section VII of the Agenda, I am bringing back for public hearing and adoption the [attached Resolution authorizing a supplement appropriation in the amount of Three Hundred and Forty-Five Thousand \(\\$345,000\) Dollars from the Sewer Fund Unrestricted Net Position for Land Acquisition Through Eminent Domain Re: 150 Greenleaf Avenue.](#)

Also, attached is a copy of the City Manager's Comments from the September 6, 2016 meeting regarding the legal acquisition by eminent domain of approximately 4.8 acres through which a municipal sewer line, installed within a berm, was constructed by the City in 1967 and 1968.

*Therefore, I recommend the City Council move to adopt a Resolution to raise and appropriate \$345,000 from the Sewer Fund net position for land acquisition through eminent domain regarding 150 Greenleaf Avenue. Action on this matter should take place under Section VIII of the Agenda.*

3. **Third and Final Reading of Proposed Ordinance Amendments.**

- 3.1 **Third and Final Reading of Ordinance amending Chapter 14, Article II – Demolition – The Preservation of Buildings and Places of Historic, Architectural and Community Value.** As a result of the October 3<sup>rd</sup> City Council meeting, under Section IX of the Agenda, I am bringing back for third and final reading the [attached proposed demolition ordinance](#) (City Ordinances, Chapter 14 – Housing Code, Article II – Demolition). This revision has been prepared in response to a referral by the City Council at its meeting on February 1, 2016.

The draft revised ordinance provides for additional review, including a public hearing, whenever demolition is proposed for a building that is more than 50 years old. The purpose of this additional review is to allow for a determination as to whether the building has historic, architectural or community value, and for identification of alternatives to demolition. Where no such alternatives are identified or acceptable to the owner, if the applicant agrees, the draft ordinance requires documentation in the form of photographs and measured drawings, and encourages salvage of historic building elements. Please note the change in the proposed Ordinance that allows the applicant to refuse that the house be photographed. A draft of the revised ordinance was provided to Portsmouth Advocates for review, and the current document incorporates several changes suggested by the Advocates, including posting of notices on the City’s website in addition to the newspaper.

*I recommend the City Council move to pass third and final reading of the proposed Ordinance. Action on this matter should take place under Section VIII of the Agenda.*

***City Manager’s Items Which Require Action:***

1. **Purchase & Sale Re: Elliott Property.** The City has been in discussions with George Elliott and his attorney, Richard Foley, with regard to settling a dispute related to drainage impacts to the property at 850 Banfield Road ([see attached](#)). The property is located at a low point in a series of drainages originating along Route 1 through the Portsmouth Industrial Parks on Constitution Avenue and Heritage Avenue which outlet through a railroad culvert into the Great Bog. Due to changing development patterns and lack of maintenance by the railroad, the property at 850 Banfield Road has experienced a history of storm-water inundation impacting Mr Elliott’s property. In addition to the storm-water inundation, Mr. Elliott believes his drinking water well was impacted by the change in ground water hydrology.

The lengthy negotiations have included a number of potential solutions including securing a drainage easement, purchasing a portion of the property and purchasing all of the property. The property owner has indicated that he prefers that the City purchase the entire parcel.

In an effort to avoid potential litigation the City has negotiated an agreement with Mr. Elliott to purchase the entire parcel, approximately 7.1 acres, for \$550,000. Please note that 3.3 acres in wetlands will be used to help stormwater management. The remaining 3.8 acres are in uplands and can be subdivided to be sold as possibly two building lots whereby the City could recover a majority of the cost of purchasing this land. It is recommended that \$150,000 come from the Conservation Fund and the remaining \$400,000 come from Fund Balance. This property abuts conservation land the City already owns. The purchase of this property would provide better stormwater management options over the long term and supports conservation efforts.

*I recommend the City Council move the following motions:*

- 1) *Move to authorize the expenditure of \$150,000 Conservation Fund contingent upon Conservation Commission approval;*
  - 2) *Establish a public hearing for November 21, 2016 appropriating \$400,000 from Unassigned Fund Balance for the purchase of land;*
  - 3) *Move to refer this matter to the Planning Board for report back to the City Council; and,*
  - 4) *Further, authorize the City Manager to enter into a Purchase and Sale Agreement subject to funding.*
2. **City Hall Building North Façade Replacement Design.** In 2014, the City addressed structural concerns on the North Wall of City Hall, in addition to having Lavallee Brensinger Architects conduct a Municipal Complex Programmatic Needs study to commence long-term planning for improvements to the entire City Hall facility. The North Wall of City Hall facing the South Mill Pond was inspected by structural engineers after showing stress cracks in the brick veneer. The result of that structural evaluation showed the brick façade was at risk of complete failure and immediate repairs were made to secure the façade. These repairs were a temporary fix intended to allow the City time to design a permanent facade replacement.

Following this work, Lavallee Brensinger Architects developed conceptual designs for a new North Wall Façade. Three conceptual plans were developed and presented to the City Council on August 15, 2016, and the Historic District Commission on September 7, 2016. In addition, the alternatives were a topic of discussion at the October 1, 2016 City Council retreat. The consensus of these discussions was the selection of Alternative B, Curtain Wall and Masonry façade (see [attached](#) figure).

Although the façade has had temporary repairs, it is critical that the façade replacement move forward to avoid the potential consequence of a complete failure. Final selection of Alternative B will allow for the design to be completed and the project to be bid by the

spring of 2017. The estimated project cost of \$3.2M will be funded from previously-approved bond premiums and 2016 Facilities Capital moneys.

*I recommend the City Council move to approve selection of Alternative B, Curtain Wall and Masonry façade for the replacement of the Municipal Complex's 1962 Building facade.*

3. **Report Back Re: 400<sup>th</sup> Anniversary Celebration.** On Saturday, October 1, 2016 the Portsmouth Historical Society/Discover Portsmouth Center (PHS/DPC) made a presentation to the City Council outlining key goals in creating an ongoing celebration for Portsmouth's 400<sup>th</sup> anniversary.

As Portsmouth approaches its 400<sup>th</sup> anniversary in 2023, PHS/DPC will be the conveners of this celebration, one that will not only encompass a momentous event in 2023 but serve as a layered program throughout each year up to and beyond this milestone.

I am requesting that the City Council move forward to support the development of a trust to endorse the formation of this program and partnership between the City and PHS/DPC. With an established trust, a formal connection can be clarified and PHS/DPC can begin their planning in earnest and develop a steering committee to oversee all anniversary activities.

Annual funding will provide needed support in creating a varied, organized and informed curriculum in which the community can engage in and have a sense of pride for both our past and our future.

*I recommend the City Council move to authorize the development of a trust for the 400<sup>th</sup> Anniversary Celebration, and further, authorize the City Manager to enter into a partnership agreement with the Portsmouth Historical Society/Discover Portsmouth Center to provide an annual contribution from the City of Portsmouth to the PHS/DPC which will provide a base level of support to create a varied, organized and informed set of activities in which the community can engage to develop a sense of pride for Portsmouth's past and future.*

4. **Request to Dispose of Surplus Vehicles and Equipment.** The City currently has surplus inventory comprising of vehicles and equipment ready for disposal (see [attached](#) lists). As in the past, we have disposed of surplus inventory through a sealed bid process in which the item is sold to the highest bidder. According to City Ordinance Section 1.505, property valued at \$500.00 or more must receive approval from the City Council prior to bidding.

*I would recommend the City Council move to authorize the City Manager to dispose of surplus vehicles and equipment by the sealed bid process.*

5. **Commerce Way.** The City Council voted on September 17, 2012 to proceed with a Conditional Road Layout and Betterment Assessment of Commerce Way. A bond resolution for \$1,600,000 was passed to pay for the reconstruction of the roadway. The bond resolution provided that no amount could be borrowed or expended unless all right, title and interest in Commerce Way was conveyed by its current owners to the City.

The City was conveyed the land for the roadway in three separate deeds. See attached deeds and Plan D-38901 entitled “Right of Way & Easement Plan Affecting Lands of Commerce Way LLC, Arnold Katz & Blair Finnegan and Commerce Center at Portsmouth Situated on Commerce Way Portsmouth, New Hampshire, dated June 23, 2015. Hereinafter “Plan” attached. Each conveyance has been highlighted in a different color on the Plan.

- Deed 1 Land for the roadway from the original Commerce Way layout (Depicted as yellow on Plan)  
Recorded at Rockingham County Registry of Deeds at Book 5631, Page 1041.
- Deed 2 Land for small parcel ((672 sq feet) on inside curve to accommodate a radius conforming to City standards. See Area 1 on Plan. (Depicted in pink on Plan)  
Recorded at Rockingham County Registry of Deeds at Book 5631 Page 1051.
- Deed 3 Land to correct title for small parcel connecting Woodbury Ave with Commerce Way. See Note 7 on attached Plan. (Depicted as blue on Plan)  
Recorded at Rockingham County Registry of Deeds at Book 5722, Page 0322.

Two Drainage Easements Deeds were also transferred to the City because they were necessary to meet City construction standards. See Easements attached and Recorded at the Rockingham County Registry of Deeds at Book 5631, Page 1057 and Book 5631, Page 1054.

The newly design roadway modifies a curve in the road. That modification leaves a small parcel conveyed to the City that is not part of the new roadway. The original proposal approved by the Council in 2012 indicated that this parcel was to be conveyed to the owner of 135 Commerce Way after construction was complete and the road was accepted by the City. The attached deed reflects this conveyance and requires City Council approval.

- Deed 4 Land to be conveyed by City to 135 Commerce Way to reflect as built roadway. See Area 2 on Plan. (Depicted in green).

The second condition imposed by the Council was that the City Attorney draft a letter to the City Manager confirming the layout process complied with State statute. This letter was completed and sent on May 26, 2016.

The roadway has been built and has been inspected by the Department of Public Works and is built to City standards and specifications. Because the conditions of the layout approved by the Council in 2012 have been met, Commerce Way is now a public right of

way. The City is ready to issue the betterment assessment to those abutters who are served by the road.

*I recommend the City Council move the following motions.*

- 1) *Move to accept transfer of land and drainage easements to the City necessary for the layout and construction of Commerce Way. This vote is subject to Planning Board issuing a report or waiver of referral. Said land and easements are recorded at the Rockingham County Registry of Deeds at Book 5631, Page 1041; Book 5631, Page 1051; and Book 5722, Page 0322; and are shown on the Plan D-38901 and drainage easements are recorded at Book 5631, Page 1057 and Book 5631, Page 1054.*
  - 2) *Move to convey .228 acres of land to 135 Commerce Way, LLC as contemplated in the original roadway design to reflect as built roadway conditions of Commerce Way. This vote is subject to Planning Board issuing a report or waiver of referral. Said conveyance is shown on Plan D-38901; and,*
  - 3) *Move to refer this matter to the Planning Board for report or waiver.*
6. **Request to Extend Existing License at 64 Market Street.** Careno Construction Company received a license by vote of the City Council on May 18, 2016 to encumber a certain portion of the public parking lot and alley adjacent to 64 Market Street (the Gaslight Restaurant) to facilitate the reconstruction and repair of the fire-damaged restaurant. [See attached picture of licensed area.](#) Careno has requested that the license be extended to November 18, 2016 so that punch list items can be completed and to facilitate the delivery and installation of new kitchen equipment. All the terms and conditions of the existing encumbrance permit will be maintained. Staff has no objection to the extension.

*I recommend the City Council move to authorize the City Manager to extend the license with Careno Construction to finalize reconstruction activities of the Gaslight Restaurant.*

### ***Informational Items:***

1. **Events Listing.** For your information, [attached is a copy of the Events Listing](#) updated after the last City Council meeting on October 3, 2016. In addition, this can be found on the City's website.
2. **Report Back Re: Food Truck Vendors.** As requested by Councilor Rebecca Perkins, [attached is a memorandum from Deputy City Manager Nancy Colbert Puff](#) regarding food truck vendors.

3. **Status Report Regarding Conversion of West Road (Service Road) into a City Street.** For your information, [attached is a memorandum from City Attorney Robert Sullivan](#) regarding a status report about the conversion of West Road (Service Road) into a City street.
  
4. **Reminder Re: Household Hazardous Waste Day.** This is a reminder that Household Hazardous Waste Day is scheduled for Saturday, October 22, 2016 from 8:00 a.m. to Noon at the Department of Public Works, 680 Peverly Hill Road. Residents must show proof of residency. More information regarding Household Hazardous Waste Day can be found on the City's Website at <http://cityofportsmouth.com/publicworks/solidwaste-recycle-hhw.htm>.

## PURCHASE AND SALE AGREEMENT

The City of Portsmouth a municipal corporation with a principal place of business at 1 Junkins Avenue, Portsmouth, Rockingham County and State of New Hampshire (hereinafter "City") and George Wayne Elliott of 850 Banfield Road, Portsmouth, Rockingham County and State of New Hampshire (hereinafter "Elliott") hereby enter this Agreement for the sale and purchase of certain real estate under the terms and conditions described herein.

1. **Premises:** This Agreement addresses all of the real estate owned by Elliott located 850 Banfield Road, Rockingham County and State of New Hampshire as generally described in Exhibit A attached hereto, the assessing property record card of the City of Portsmouth for account number 32110 (the "Premises").
2. **Purchase Price:** The total purchase price for the Premises and for other consideration recited herein shall be Five Hundred and Fifty Thousand Dollars (\$550,000.00). Of this sum, Four Hundred Thousand Dollars (\$400,000.00) shall be allocated to the actual purchase of the real estate, and One Hundred Fifty Thousand Dollars (\$150,000.00) shall be allocated to the remainder of the consideration as recited in this Agreement.
3. **Payment Terms:**
  - (a) The sum of Ten Thousand Dollars (\$20,000.00) (the escrowed funds) shall be paid by the City to Richard N. Foley Esq. (hereinafter "Foley") as agent for Elliott within two (2) business days of the completed execution of this Agreement by both parties. Attorney Richard Foley shall hold the funds in an interest bearing account for disbursement in accordance with this Agreement.
  - (b) The remaining sum of Five Hundred Thirty Thousand Dollars (\$530,000.00) plus the escrowed funds shall be paid by the City and Foley to Elliott on the recording of a deed conveying the Premises to the City in accordance with the terms and conditions of this Agreement and the delivery of a fully executed General Release from Elliott to the City as described in this Agreement.
  - (c) If, for any reason other than the fault of the City, the transaction contemplated by this Agreement does not occur then any City funds paid to Foley or Elliott with accumulated interest shall be returned to the City within seven business (7) days of the determination by the City that this Agreement will not be implemented.



- (d) In the event of City's default in the purchase of the Premises, then Foley shall pay to Elliott the retained the escrowed funds as complete and reasonable liquidated damages. The parties agree that damages are difficult to ascertain with any reasonable degree of certainty at the time of the execution of this Agreement, and that the escrowed funds have been set at a level to compensate Elliott in the event of the City's default.
4. **Title:** Elliott shall convey the Premises to the City in fee simple with good and marketable title free and clear of all defects and encumbrances, including but not limited to mortgages and liens, including but not limited to mechanics liens.
  5. **Deed:** Elliott shall convey the Premises to the City by Warranty Deed.
  6. **Risk of Loss:** Until transfer of title the risk of loss or damages to the Premises by fire or otherwise shall remain with Elliott.
  7. **Taxes and Utilities:** At closing, taxes and utilities shall be prorated between Elliott and the City a follows:
    - (a) Taxes to be prorated on the assumption that each tax bill covers a period of time commencing three (3) months before and continuing until three (3) months after the due date on the tax bill.
    - (b) All utilities including municipal water and sewer shall be prorated based upon the billing dates for the utilities.
  8. **Transfer and Recording Fees:** The City shall pay recording fees for the deed to the Premises and the transfer taxes and other fees due in recording shall be paid as required by State law.
  9. **Inspections and Due Diligence:** Prior to the transfer of title to the premises the City shall have complete and unimpeded right to inspect any aspect of the Premises for any purpose deemed appropriate by the City. Such inspection shall include but not be limited to environmental purposes. All inspections will be done by inspectors chosen and paid for by the City. If the result of any inspection is unsatisfactory to the City, the City may declare this Agreement null and void by notifying Elliott in writing within forty-five (45) days of the completed execution of this Agreement setting forth the reason that the result of such inspection is deemed unsatisfactory. In the event that the City determines the result of an inspection to be unsatisfactory, Elliott shall have a thirty (30) calendar day period to cure any unsatisfactory inspection result to meet the City's satisfaction.
  10. **Financing:** The parties understand that the City must follow appropriate procedural steps necessary to secure the purchase money for the acquisition of the premises. These steps may include acquisition of purchase money from the

municipal bond market, reallocation of otherwise allocated funds within the municipal budget or the acquisition of funds from any other source deemed appropriate by the City. Accordingly, notwithstanding any other provision in this Agreement, the parties agree that the City shall have any reasonable amount of time to acquire said funds as long as the City diligently pursues the acquisition of the funds. In the event that the City has not received the funds by the date forty-five (45) calendar days after the completed execution of this Agreement, then at the option of the City by notice to Elliott the period allowed by this Agreement for the City to acquire the funds shall be extended for another fifteen (15) calendar days. Any further extension of the time allowed by this Agreement for the City to secure the funds shall only be by mutual agreement of the parties. If at any time thereafter Elliott does not agree to provide the City with further time to secure the funds, then the transaction shall be cancelled and Elliott may keep the escrowed funds in accordance with item #3 above.

11. **General Release:** As partial consideration for the City's acquisition of the premises under the terms and conditions of this Agreement Elliott agrees at closing to deliver to the City a fully executed general release in accordance with the form attached hereto as Exhibit B.
12. **Prior Statements:** This Agreement sets forth the entire agreement between the City and Elliott and there are no other representations, agreements or understandings with respect to the acquisition of the Premises by the City.
13. **Heirs and Assigns:** This agreement shall extend to and be obligatory on the heirs, personal representatives, successors and assigns of the City and Elliott.
14. **Counterparts:** This Agreement shall be executed in duplicate original, with the City and Elliott each retaining one original.
15. **Closing Date:** The City and Elliott shall each exercise the best efforts to bring about a closing of this transaction at which the premises will be conveyed to the City and the purchase money paid to Elliott no later than ten (10) business days after the City has notified Elliott that the funds for the purchase are available pursuant to item 10 above. However, time is not of the essence in this transaction.
16. **City Council Approval:** Upon execution by Elliott of this Agreement it shall be presented to the Portsmouth City Council for approval following the City's normal property acquisition process, which includes an advisory referral to the Planning Board required by the ordinances of the City. Upon approval by the City Council the Agreement shall be executed by the City Manager. Upon execution by the City Manager this Agreement shall be deemed fully executed (completed execution).

17. Subsequent to the closing, the City agrees to allow Elliot seven (7) calendar days to remove his personal property from the Premises. Elliot agrees to indemnify and hold the City harmless from all liability, risks and costs of any kind, arising in any way from the existence of this provision. This duty on the part of Elliot shall survive the closing.

**CITY OF PORTSMOUTH**

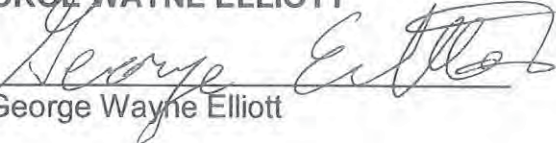
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
John P. Bohenko, City Manager

Pursuant to vote by the City Council at its meeting of \_\_\_\_\_, 2016

**GEORGE WAYNE ELLIOTT**

Dated: \_\_\_\_\_

By:   
George Wayne Elliott

**RICHARD N. FOLEY, ESQ.  
(As to escrow)**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Richard N. Foley, Esq.

## SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

**WHEREAS**, George Wayne Elliott of 850 Banfield Road, Portsmouth, NH (hereinafter "Elliott"), after an opportunity to consult with his counsel, and being desirous of resolving all claims which he may hold against the City of Portsmouth (hereinafter "City" or "Releasee"), knowingly and voluntarily agrees to remise, release, discharge, and waive any and all claims, actions, causes of action, suits, administrative charges, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, verdicts, demands, rights, loss of consortium, damages, losses, attorneys' fees, loss of services, costs, expenses, compensation, liabilities and obligations whatsoever, from the beginning of time to the date of this Release, in law or in equity, at common law or under any statute, regulation or law, whether State or Federal, including but not limited to:

- a. all State and Federal tort and contract claims;
- b. all State and Federal common law rights;
- c. all State and Federal claims for attorney's fees and costs;
- d. all State and Federal claims for exemplary, enhanced, and punitive damages; and
- e. any and all other State and Federal claims which he ever had, now has, or which his heirs, beneficiaries, administrators, or executors, can, shall, or may have against the City of Portsmouth and its officials, employees or agents ("**Releasees**" as defined below) for, or by reason of, any matter, cause or thing whatsoever, including but not limited to past, present, and future bodily injuries, personal injuries, pain and suffering, mental anguish, economic damages, property damages, psychological and/or emotional distress, loss of consortium, attorneys' fees, costs, expenses, or interest, on account of any matters allegedly arising out of, or in any way associated with the property at 850 Banfield Road, Portsmouth, NH.

**NOW THEREFORE**, in consideration of the terms and conditions contained herein, Elliott acknowledges and agrees to the following:

1. **General Release of All Claims:** Elliott, for his executors, administrators, beneficiaries, or assigns, hereby fully remises, releases, and discharges Releases and their successors, and assigns, in their individual, business, and official capacities, as well as any other person and/or entity to the extent that such other person and/or entity could be deemed liable, by, through or under them (collectively referred to as “**Releasees**”), from any and all **Claims** (as previously defined in this Release) whatsoever, in law or in equity, which he ever had, now has, or which he can, shall, or may have against **Releasees**, from the beginning of time to the date of this Release for, or by reason of, any matter, cause, or thing whatsoever, arising out of, or in any way associated with the property at 850 Banfield Road.

2. **Non-Admission:** This Release and settlement is a compromise of disputed claims. This Release is not to be construed, considered, or understood by Elliott, Releasees, any news agencies, the general public, or any other person or entity, as an admission of liability, wrongdoing, or culpability on the part of Respondent, or any other person or entity. Releasees expressly deny any and all liability, wrongdoing, and culpability regarding 850 Banfield Road, Portsmouth NH.

3. **Consideration:** Consideration will be provided as described in a certain Purchase and Sales Agreement between Elliott and the City to which this release is appended.

4. **Responsibility and Indemnification with respect to Tax Treatment, if**

**any:** Elliott acknowledges and agrees that should the consideration set forth above, or any part thereof, be subject to any taxes, penalties, or interest, Elliott shall be solely responsible for all taxes, penalties, or interest. Further, Elliott will indemnify, defend, and hold Releasees harmless from any claims by any taxing authority against Releasees concerning such taxes, penalties, or interest. Elliott further agrees that he will not assert, file or make any claims against Releasees for any such taxes, penalties, or interest he may be compelled to pay in connection with any disputes with the Internal Revenue Service or other taxing authority.

5. **Waiver/Purpose/Representations:** Elliott acknowledges, agrees, and represents the following:

- a) Elliott is not a prevailing party in any Litigation against the Releasees;
- b) Elliott is not entitled to request or be awarded attorneys' fees, interest or costs under any Federal, State, or administrative law or regulation;
- c) Elliott waives any such claims of attorneys' fees, interest, and costs;
- d) The purpose of this Release is to "buy peace" from further dispute and controversy between and among Elliott and Releasees;
- e) The consideration herein may or may not fully compensate Elliott for alleged losses;
- f) Court approval is not required for any provision of this Release;
- g) Elliott has executed this Release with full knowledge of its legal significance;
- h) Elliott has done so to end all Claims;

- i) Elliott will execute and deliver to Releasees, copies of all documents or agreements and do such further acts and things as Releasees may reasonably request when necessary to effectuate the purposes of this Release; and
- j) Should any person or entity not a party hereto challenge the validity of this Release, or any term thereof, pursue recovery of monies from Releasees or bring a claim or claims against Releasees related to payment for items or services related to the injuries claimed in this Litigation, Elliott shall provide to Releasees such cooperation and assistance as Releasees may reasonably request in order to resist such a challenge or defend such a claim.

6. **Consultation with Counsel:** In executing this Release, Elliott acknowledges that he has been advised to, and has consulted with his counsel, and that he has executed this Release knowingly, voluntarily, and without undue influence or duress.

7. **Governing Law:** This Release shall be enforced in accordance with the laws of the State of New Hampshire. In the event of litigation regarding this Release, Elliott expressly submits to the jurisdiction of New Hampshire.

8. **Severability:** Elliott agrees that if any provision of this document is deemed invalid or unenforceable, any such provision shall be divisible, and shall not affect in any way the remainder of this document, which shall remain in full force and effect.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
George Wayne Elliott

STATE OF NEW HAMPSHIRE  
COUNTY OF \_\_\_\_\_

Signed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of October 2016, by George Wayne Elliot, whose identity was determined by **(check box that applies and complete blank line, if any):**

- My personal knowledge of the identity of said person **OR**
- The oath or affirmation of a credible witness, \_\_\_\_\_ (name of witness), the witness being personally known to me **OR**
- The following identification documents: \_\_\_\_\_ (driver's license, passport, other).

\_\_\_\_\_  
Notary Public/Justice of the Peace  
My Commission Expires: \_\_\_\_\_



CURRENT OWNER		TOPO.	UTILITIES	STRT./ROAD	LOCATION	CURRENT ASSESSMENT				
ZAMMIT INGRID M ELLIOTT GEORGE WAYNE 850 BANFIELD RD		1 Level	6 Lake Water	1 Paved	2 Suburban	Description	Code	Appraised Value	Assessed Value	2229 PORTSMOUTH, NH
PORTSMOUTH, NH 03801 Additional Owners:			3 Septic	8 2+ Off-St PKG		RESIDNTL	1010	101,800	101,800	
				11		RES LAND	1010	192,500	192,500	
SUPPLEMENTAL DATA						RESIDNTL	1010	4,000	4,000	<b>VISION</b>
Other ID: 0275-0005-0000		CONDO CV		ASSOC PID#		Total		298,300	298,300	
OLDACTNUM 28340		INLAW Y/N								
PHOTO		LOT SPLIT								
WARD		2015 Reval V JM								
PREC.										
1/2 HSE										
GIS ID: 32110										

RECORD OF OWNERSHIP		BK-VOL/PAGE	SALE DATE	q/u	v/i	SALE PRICE	V.C.	PREVIOUS ASSESSMENTS (HISTORY)								
ZAMMIT INGRID M		4898/1481	03/20/2008		I			Yr.	Code	Assessed Value	Yr.	Code	Assessed Value	Yr.	Code	Assessed Value
								2014	1010	96,800	2013	1010	96,800	2012	1010	99,200
								2014	1010	175,500	2013	1010	175,500	2012	1010	322,200
								2014	1010	3,700	2013	1010	3,700	2012	1010	7,900
								Total:		276,000	Total:		276,000	Total:		429,300

EXEMPTIONS				OTHER ASSESSMENTS				APPRAISED VALUE SUMMARY				
Year	Type	Description	Amount	Code	Description	Number	Amount	Comm. Int.	This signature acknowledges a visit by a Data Collector or Assessor			
Total:												

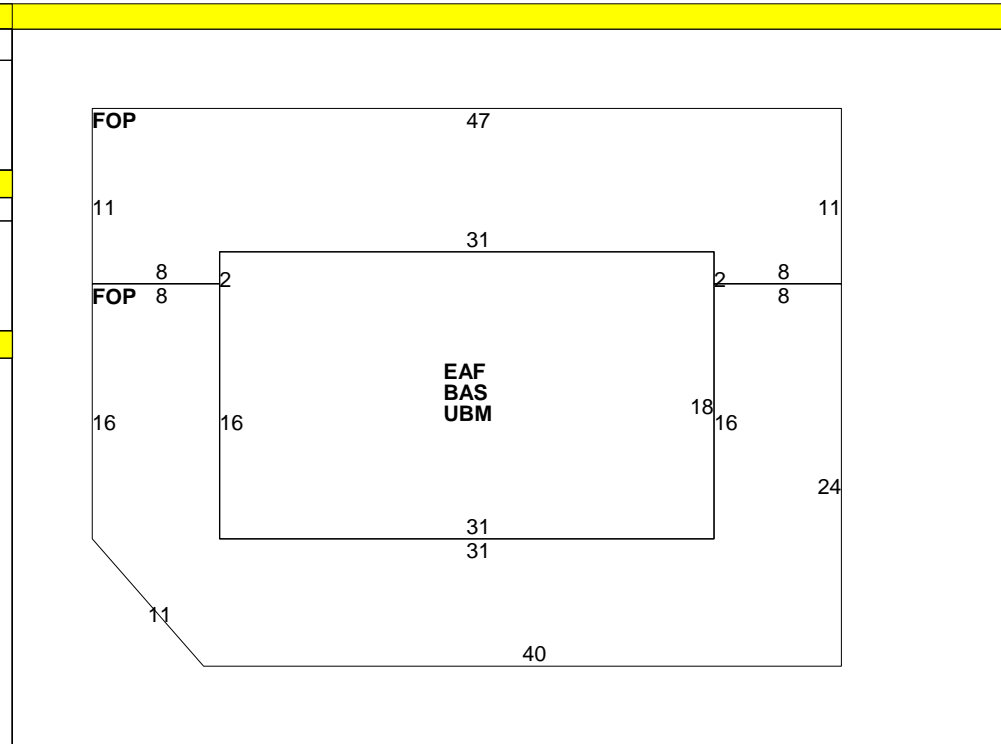
ASSESSING NEIGHBORHOOD				
NBHD/ SUB	NBHD Name	Street Index Name	Tracing	Batch
120/A				

NOTES	
BP#06-245 INS 6/18/09 @ 99% (07) INFO DR REPL DCKS/PRCH CLG/SIDING; NEW WDK; BUILDING FRAME FOR ABV GR POOL 05/10 - BP#06-245 @ 100%; NOH 2010-BUILT ROOF OVER REAR WDK-NOT COMP./ NEED CEILING, PAINT, MISC.	08/12- LARGE SHED COMING DOWN, DIDN'T VIEW UBM; ROOF IN BACK UNFIN; REM DETACHED FOP & SHD1; APPOINTMENT LETTER JULY 21, 2012

BUILDING PERMIT RECORD								VISIT/ CHANGE HISTORY						
Permit ID	Issue Date	Type	Description	Amount	Insp. Date	% Comp.	Date Comp.	Comments	Date	Type	IS	ID	Cd.	Purpose/Result
1 06-245	04/20/2006 04/20/2006			0 10,000		100 100		4 SIDES OF HOUS REPL DECKS & PO	02/04/2015 08/13/2012 06/10/2010 05/27/2010 09/11/2009			DG JM LS JW LS	FR 00 DE 50 50	Field Review Stat Update Measur+Listed Data Entry Building Permit Building Permit

LAND LINE VALUATION SECTION																		
B #	Use Code	Use Description	Zone	D	Front	Depth	Units	Unit Price	I. Factor	S.A.	C. Factor	ST. Idx	Adj.	Notes- Adj	Special Pricing	S Adj Fact	Adj. Unit Price	Land Value
														Spec Use	Spec Calc			
1	1010	SINGLE FAM MDL-01	SRA	R			43,560 SF	3.44	1.0000	1	1.00	120	0.80	0		1.00	2.75	119,900
1	1010	SINGLE FAM MDL-01	SRA				43,560 SF	3.44	1.0000	1	0.35	120	0.80	SECONDARY SITE		1.00	0.96	42,000
1	1010	SINGLE FAM MDL-01	SRA				5.10 AC	15,000.00	1.0000	0	0.50	120	0.80	TOPO/WET		1.00	6,000.00	30,600

CONSTRUCTION DETAIL				CONSTRUCTION DETAIL (CONTINUED)			
Element	Cd.	Ch.	Description	Element	Cd.	Ch.	Description
Style	04		Cape Cod	Bsmt Garage			
Model	01		Residential				
Grade	C+		C+				
Stories	1						
Occupancy	1						
Exterior Wall 1	14		Wood Shingle				
Exterior Wall 2							
Roof Structure	03		Gable/Hip				
Roof Cover	03		Asph/F Gls/Cmp				
Interior Wall 1	05		Drywall/Sheet				
Interior Wall 2							
Interior Flr 1	12		Hardwood	Adj. Base Rate:			133.11
Interior Flr 2	06		Inlaid Sht Gds				
Heat Fuel	02		Oil	Replace Cost			143,360
Heat Type	04		Hot Water	AYB			1920
AC Type	01		None	EYB			1986
Total Bedrooms	02		2 Bedrooms	Dep Code			GD
Total Bthrms	1			Remodel Rating			
Total Half Baths	0			Year Remodeled			
Total Xtra Fixtrs	0			Dep %			29
Total Rooms	4			Functional Obslnc			
Bath Style	1		Avg Quality	External Obslnc			
Kitchen Style	1		Avg Quality	Cost Trend Factor			1
Kitchen Gr				Condition			
				% Complete			
WB Fireplaces	0			Overall % Cond			71
Extra Openings	0			Apprais Val			101,800
Metal Fireplaces	0			Dep % Ovr			0
Extra Openings	0			Dep Ovr Comment			
				Misc Imp Ovr			0
				Misc Imp Ovr Comment			
				Cost to Cure Ovr			0
				Cost to Cure Ovr Comment			



**OB-OUTBUILDING & YARD ITEMS(L) / XF-BUILDING EXTRA FEATURES(B)**

Code	Description	Sub	Sub Descript	L/B	Units	Unit Price	Yr	Gde	Dp Rt	Cnd	%Cnd	Apr Value
SHD1	SHED FRAME			L	1,150	13.00	1970	D		F	30	4,000

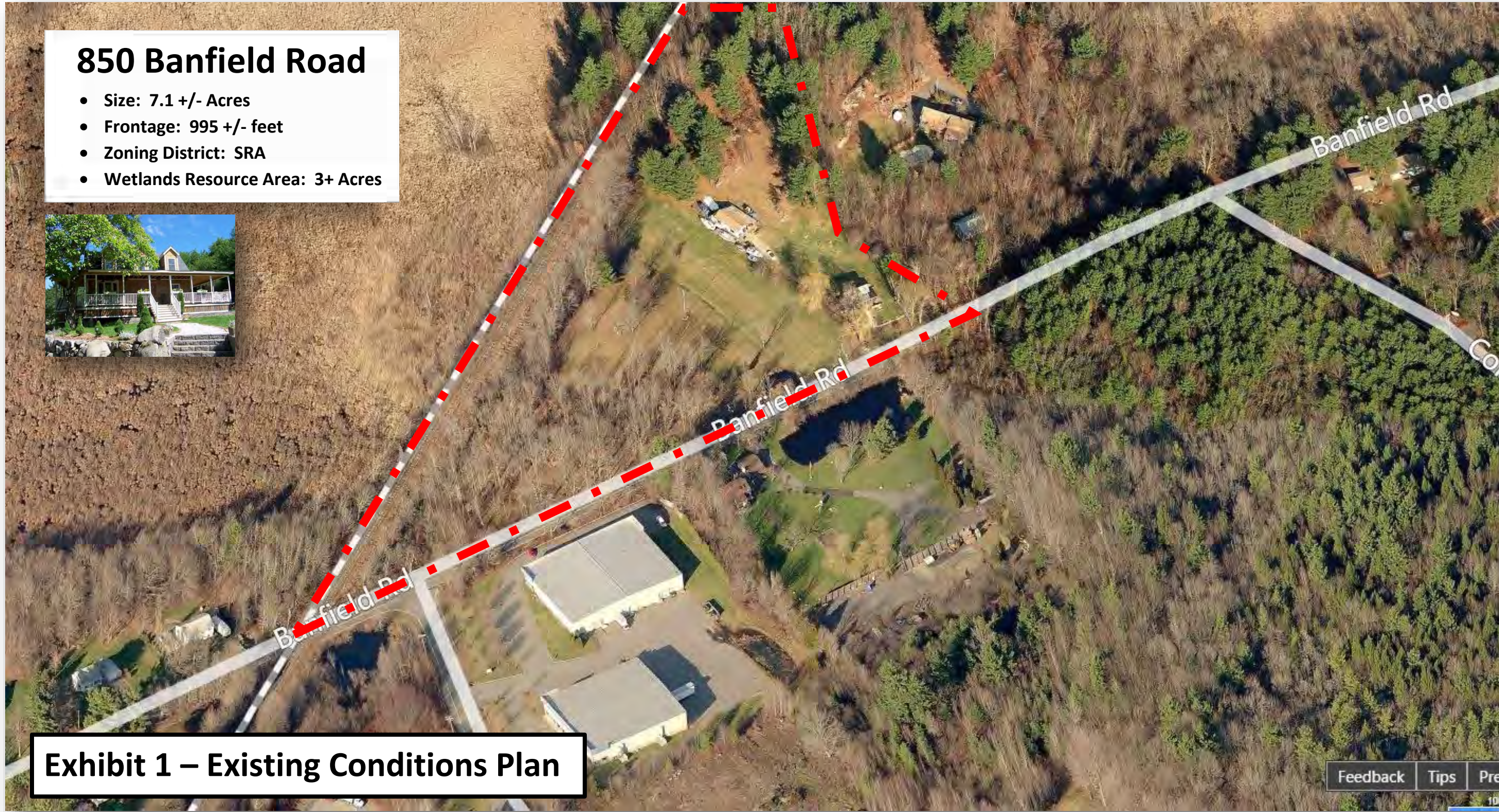
**BUILDING SUB-AREA SUMMARY SECTION**

Code	Description	Living Area	Gross Area	Eff. Area	Unit Cost	Undeprec. Value
BAS	First Floor	558	558	558	133.11	74,276
EAF	Attic Expansion	195	558	195	46.52	25,957
FOP	Porch, Open	0	1,059	212	26.65	28,219
UBM	Basement, Unfinished	0	558	112	26.72	14,908
<b>Ttl. Gross Liv/Lease Area:</b>		<b>753</b>	<b>2,733</b>	<b>1,077</b>		<b>143,360</b>

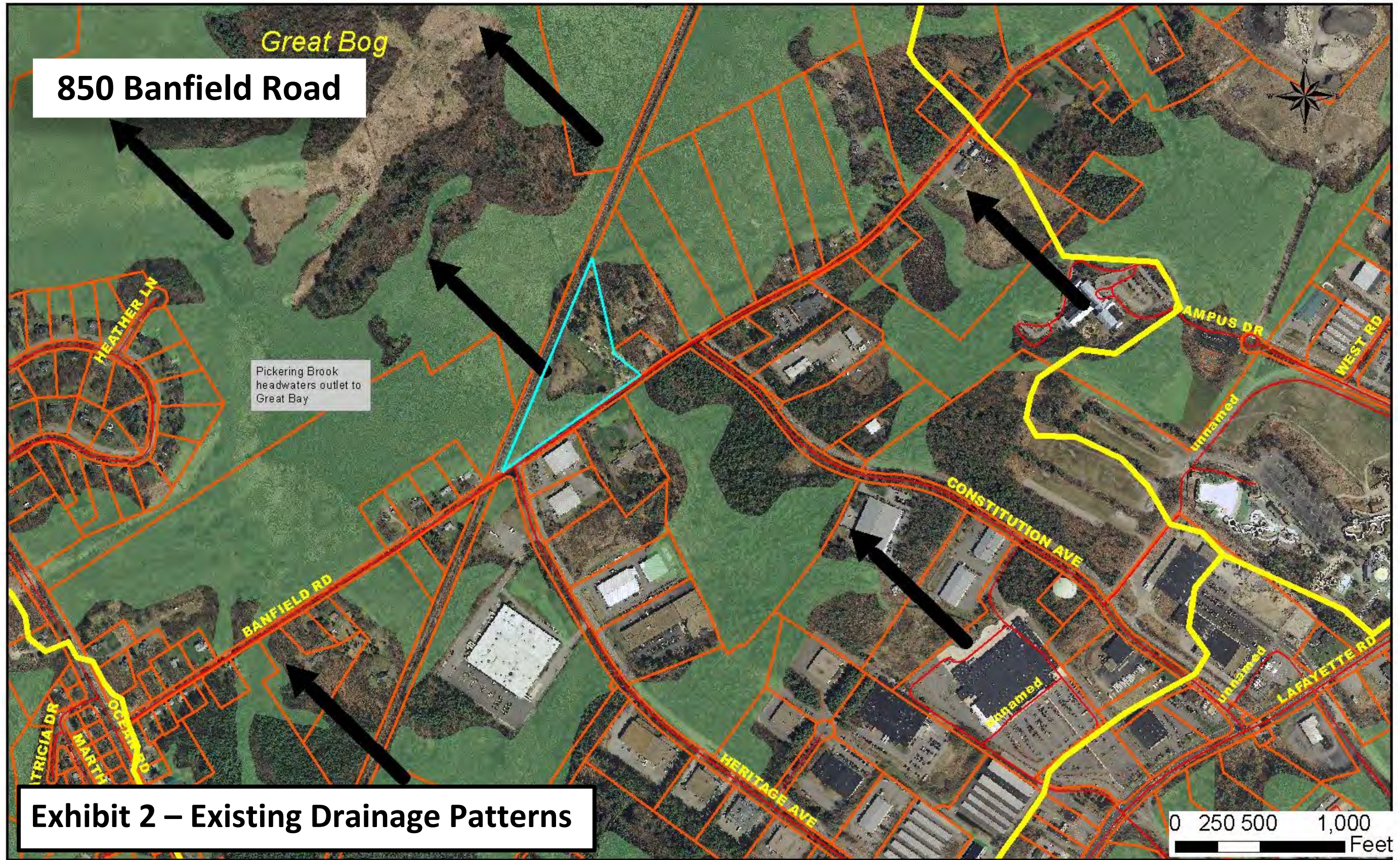


# 850 Banfield Road

- Size: 7.1 +/- Acres
- Frontage: 995 +/- feet
- Zoning District: SRA
- Wetlands Resource Area: 3+ Acres



**Exhibit 1 – Existing Conditions Plan**



**850 Banfield Road**

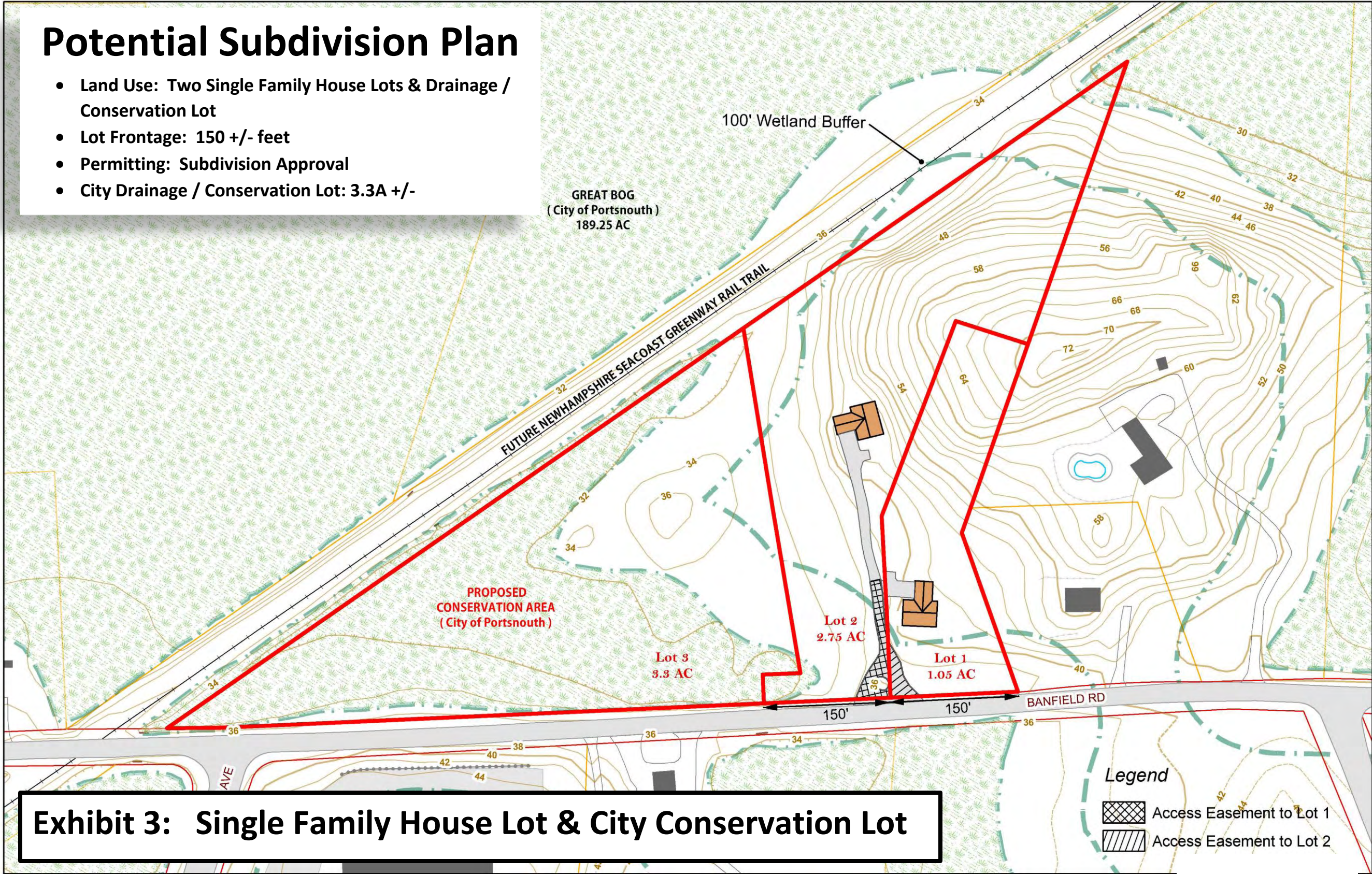
Pickering Brook headwaters outlet to Great Bay

**Exhibit 2 – Existing Drainage Patterns**

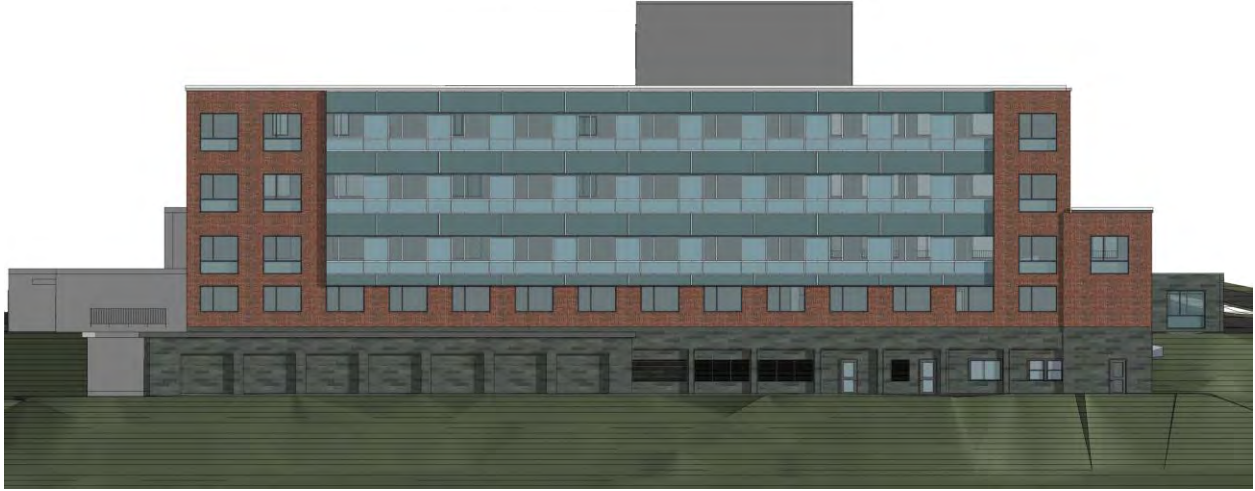
0 250 500 1,000 Feet

# Potential Subdivision Plan

- Land Use: Two Single Family House Lots & Drainage / Conservation Lot
- Lot Frontage: 150 +/- feet
- Permitting: Subdivision Approval
- City Drainage / Conservation Lot: 3.3A +/-



**Exhibit 3: Single Family House Lot & City Conservation Lot**



Alternative B Curtain Wall and Masonry Facade

<b>Public Works</b>	<b>Use</b>	<b>Model</b>	<b>Make</b>	<b>Year</b>	<b>Mileage/Hours</b>	<b>Serial /VIN</b>	<b>Comments</b>
PARKING	Meter Tech.	4x4 Utility Body (yel)	CHEVY	2003	62,335	1GBHK24U02E282818	MEYERS PLOW SET-UP
SEWER	Collections	4X4 F-450 (YEL)	FORD	2008	65,802	1FDXF47R68EE09980	
HIGHWAY	Leaf Collections	16 H/P OHV	BILLY GOAT	N/A	N/A	N/A	LEAF COLLECTIONS
HIGHWAY	Plastic House	N/A	N/A	N/A	N/A	N/A	SMALL PLASTIC UTILITY HOUSE
WATER	Water Dist.	4X4 F-450 (YEL)	FORD	2008	86,125	1FDXF47R88EE09981	FISHER PLOW SET-UP. BLOWN MOTOR
WATER	WATER DIST.	4X4 F-450(YEL)	FORD	2008	66,325	1FDXF47RX8EE09979	FISHER PLOW SET-UP
HIGHWAY	SNOW BUCKET	N/A	HEWITT	N/A	N/A	N/A	LOADER BUCKET 9' 2'WIDE COUPLER.
HIGHWAY	BACKHOE BUCKET	N/A	N/A	N/A	N/A	N/A	BACKHOE BUCKET, OLDER
HIGHWAY	PLOWING	V-PLOW	BOMBARDIER	N/A	N/A	N/A	V-PLOW FOR TRACKED BOMBARDIER
HIGHWAY	PLOWING	V-PLOW	BOMBARDIER	N/A	N/A	N/A	V-PLOW FOR TRACKED BOMBARDIER
PARKING	SALTING	METERS/DIAMOND	MEYERS	2003	N/A	62577	ONE YARD SALTER W/PONY MOTOR
HIGHWAY	ELCTRC PANEL	1200 AMP SWITCH	THOMAS&BETT	N/A	N/A	H-368-TB	1200AMP SWITCH 600 VOLTS
HIGHWAY	ELCTRC PANEL	1200 AMP SWITCH	THOMAS&BETT	N/A	N/A	H-368-TB	1200AMP SWITCH 600 VOLTS
W/W	COMPRESSOR	N/A	GARDNER DNVR	N/A	19621 HRS	M59057	460 VOLTS COMPRESSOR
HIGHWAY	PLOWING	N/A	N/A	N/A	N/A	N/A	OLDER 10' PLOW
HIGHWAY	MESSAGE BOARD	PORTABLE MESSAGE BD	AMRCN SIGNAL		N/A	1A9AS432432228468	MESSAGE BOARD AMERICAN SIGNAL CO.
WATER	W/D	CHEVY 1 TON	CHEVY	2002		1GBJK34G02E283436	TRUCK COMES WITH A PLOW
<b>SCHOOL DEPARTMENT</b>							
SCHOOL	SCHOOL	PKUP K-2500	CHEVY	2000	79202	1GCGK24UIYE151333	COLOR BLUE. Car sat for three year. Was operational at the time. No known major problems at that time.
SCHOOL	SCHOOL	PKUP K-2500	CHEVY	2000	68871	1GCGK24UOYE156099	COLOR BLUE. Car sat for three year. Was operational at the time. No known major problems at that time.
SCHOOL	SCHOOL	PKUP CK 25903	CHEVY	2001	71815	1GCHK24U91E267244	COLOR BLUE. Brake and floor board issues. May be need to be replaced.
SCHOOL	SCHOOL	PKUP K- 2500	CHEVY	2003	70718	1GCHK24U53E201020	COLOR BLUE. Rust under frame . Coolant line needs to be replaced.
<b>FIRE DEPARTMENT</b>							
FIRE	FIRE DEPARTMENT	EXPLORER	FORD	2002	96,000	1FMZU72EO2UC60841	

**POLICE DEPARTMENT**

VEHICLES ARE LOCATED AT THE CITY HALL LOWER- PARKING LOT

OLD CRUISER - COLOR BLACK AND WHITE	K-9	CROWN VIC, 8 cyl	FORD	2010	MILES - 99059, Hrs. 5246	2FABP7BV3AX124228	OVERHEATING ISSUE, REAR WINDOW DEFROSTER INOPERABLE, ABS LIGHT ON, SRS LIGHT ON, NEEDS BATTERY, AND WILL NEED TO BE PAINTED
OLD CRUISER - COLOR BLACK	PATROL	CROWN VIC, 8 cyl	FORD	2006	88921	2FAHP71W16X113420	NEEDS BATTERY OR STARTER, NEEDS ODOMETER COMPUTER, MAY NEED REAR AXLE- GRINDING NOISE, PAINT PEELING FROM BODY UNDERCARRIAGE RUST
OLD CRUISER - COLOR BLACK AND WHITE	K-9	CROWN VIC, 8 cyl	FORD	2010	MILES - 127,189 Hrs. 7458	2FABP7BV1AX124230	NEEDS BATTERY, MINOR DAMAGE TO LEFT FRONT FENDER AND MARKER LIGHT, MAY NEED BRAKES AND ROTORS, TRUNK KEY LOCK WILL OPEN WITH ANY KEY. WILL NEED TO BE PAINTED.



027251

2015 JUN 30 AM 10:20

ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

**THIS IS A TRANSFER TO THE CITY OF PORTSMOUTH, NH AND IS THEREFORE EXEMPT FROM THE NEW HAMPSHIRE REAL ESTATE TRANSFER TAX PURSUANT TO RSA 78-B:2, I AND FROM THE L-CHIP FEE PURSUANT TO RSA 478:17-g, II (a)**

**QUITCLAIM DEED**

KNOW ALL MEN BY THESE PRESENTS, that **COMMERCE WAY, LLC**, a New Hampshire limited liability company, having an address of 210 Commerce Way, Suite 300, Portsmouth, New Hampshire 03801; **BLAIR J. FINNEGAN**, of 273 Corporate Drive, Suite 150, Portsmouth, New Hampshire; and **JOANNE R. KATZ**, of 251 Crandon Boulevard, Key Biscayne, Florida 33149 and **ALBERT J. SRETER**, of 33 Bedford Street, Lexington, Massachusetts 02420, as **CO-TRUSTEES OF THE ARNOLD S. KATZ TRUST OF DECEMBER 1, 1994**, for consideration paid, grant to the **CITY OF PORTSMOUTH**, a New Hampshire municipal corporation, with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801, with **QUITCLAIM COVENANTS**, the following described premises:

A certain tract or parcel of land located on the easterly side of Woodbury Avenue in Portsmouth, County of Rockingham, State of New Hampshire, and shown as "Commerce Way" on a plan of land entitled "Right Of Way & Easement Plan Affecting Lands Of Commerce Way LLC, Arnold Katz & Blair Finnegan and Commerce Center At Portsmouth, Situated On Commerce Way, Portsmouth, New Hampshire", by Doucet Survey, Inc. dated June 23, 2015 and recorded in the Rockingham County Registry of Deeds as Plan No. D-38901, as more particularly described as follows:

Beginning at an iron pipe on the northeasterly sideline of Woodbury Avenue at the northwesterly corner of a private way known as "Commerce Way"; thence running along said Commerce Way the following courses and distances:

N 63° 07' 47" E a distance of 136.65 feet to an iron pipe;  
 thence S 24° 51' 02" E a distance of 43.41 feet to a rebar;  
 thence N 35° 01' 01" E a distance of 114.60 feet to a concrete bound;  
 thence N 34° 44' 58" E a distance of 585.37 feet to a concrete bound;  
 thence N 34° 44' 57" E a distance of 36.37 feet;  
 thence N 35° 17' 37" E a distance of 158.63 feet;  
 thence N 34° 30' 10" E a distance of 127.38 feet;  
 thence N 34° 30' 10" E a distance of 165.46 feet;  
 thence N 34° 52' 54" E a distance of 20.07 feet;  
 thence S 55° 01' 51" E a distance of 55.81 feet;  
 thence with a curve turning to the right with an arc length of 79.83 feet, with a radius of 60.00 feet, with a chord bearing of S 16° 54' 54" E a chord length of 74.07 feet;  
 thence with a reverse curve turning to the left with an arc length of 32.91 feet, with a radius of 25.00 feet, with a chord bearing of S 16° 30' 40" E and a chord length of 30.58 feet to a rebar;  
 thence S 54° 13' 23" E a distance of 14.95 feet to a rebar;  
 thence S 54° 13' 23" E a distance of 965.00 feet to a rebar;  
 thence S 35° 46' 37" W a distance of 3.06 feet;  
 thence with a curve turning to the right with an arc length of 166.42 feet, with a radius of 230.00 feet, with a chord bearing of S 24° 08' 11" E and a chord length of 162.81 feet;  
 thence with a reverse curve turning to the left with an arc length of 141.52 feet, with a radius of 225.00 feet, with a chord bearing of S 21° 25' 37" E and a chord length of 139.20 feet;  
 thence S 39° 26' 45" E a distance of 35.34 feet;  
 thence with a curve turning to the left with an arc length of 45.81 feet, with a radius of 25.00 feet, with a chord bearing of N 88° 02' 55" E and a chord length of 39.66 feet to the westerly sideline of Portsmouth Boulevard;  
 thence along Portsmouth Boulevard, S 35° 32' 46" W a distance of 113.89 feet;  
 thence with a curve turning to the left with an arc length of 32.72 feet, with a radius of 25.00, with a chord bearing of N 01° 57' 05" W and a chord length of 30.43 feet;  
 thence N 39° 26' 45" W a distance of 64.82 feet;  
 thence with a curve turning to the right with an arc length of 179.26 feet, with a radius of 285.00, with a chord bearing of N 21° 25' 37" W and a chord length of 176.32 feet;  
 thence with a reverse curve turning to the left with an arc length of 150.77 feet, with a radius of 170.00 feet, with a chord bearing of N 28° 48' 57" W and a chord length of 145.88 feet;  
 thence N 54° 13' 23" W a distance of 942.56 feet;  
 thence N 54° 13' 23" W a distance of 35.79 feet;  
 thence with a curve turning to the left with an arc length of 39.83 feet, with a radius of 25.00 feet, with a chord bearing of S 80° 08' 24" W and a chord length of 35.75 feet;  
 thence S 34° 30' 10" W a distance of 35.79 feet;  
 thence S 34° 30' 10" W a distance of 127.79 feet;  
 thence S 35° 17' 37" W a distance of 158.76 feet;  
 thence S 34° 44' 57" W a distance of 36.09 feet;  
 thence S 34° 44' 58" W a distance of 585.37 feet;  
 thence S 35° 01' 59" W a distance of 147.54 feet to a rebar;

thence S 28° 06' 54" E a distance of 19.16 feet to a rebar;  
 thence S 63° 11' 53" W a distance of 135.96 feet to the aforementioned Woodbury Avenue;

thence along said Woodbury Avenue on the following courses and distances:

N 17° 26' 40" E a distance of 28.49 feet;  
 thence N 25° 41' 06" W a distance of 54.00 feet;  
 thence N 63° 33' 18" W a distance of 34.57 feet;  
 thence N 25° 38' 24" W a distance of 28.56 feet to the iron pipe at the point of beginning.

Reserving to Commerce Way, LLC, its successors and assigns, an exclusive easement over, across and under the area defined as "Signage Easement" on the above-referenced plan for the purpose of maintaining, repairing and replacing the signage which exists as of the date of this conveyance and installing such additional signage as may be permitted by the City of Portsmouth land use regulations. Grantor, its successors and assigns agrees that it will maintain, repair and restore the landscaping within the easement area, including but not limited to any irrigation system required for the maintenance of landscaping. Grantor, its successors and assigns agrees that it will maintain, repair and be responsible for the operation of lighting associated with signage, including but not limited to the electrical service required to operate said lighting. Grantee retains the right to construct future improvements in portions of the reserved easement area for roadway and utility improvements and any other associated use and purpose. These future improvements may require the relocation of the existing signage within the signage easement area. Grantee will be responsible to replace and restore signage and landscaping to the affected area.

Grantee agrees to convey Area 2 as shown of Plan to Lot 1-11, presently owned by 135 Commerce Way, LLC, upon Grantee's acceptance of the right of way as a public road.

SUBJECT TO such matters as are set forth on the above-referenced plan.

SUBJECT TO such matters as are set forth in a Subdivision/Consolidation Plan prepared by CLD Consulting Engineers for Brora, LLC recorded in the Rockingham County Registry of Deeds as Plan No. D-28385.

ALSO SUBJECT TO the right of ingress and egress, both pedestrian and vehicular, over the subject property as shown on said Plan. Such right shall continue until the time when the City of Portsmouth accepts said property as a public road following construction and inspection. Commerce Way, LLC shall continue to maintain the subject property until it is accepted as a public road. The lots which are benefitted by this right are all of the lots shown on Plan of land entitled "Subdivision Plan of Land for Magna Corp., Woodbury Ave., Portsmouth, NH, County of Rockingham" dated 8/1/84 and prepared by Richard P. Millette and Associates and recorded at Rockingham County Registry of Deeds Plan #D-13251 and also, currently, shown on the City of Portsmouth Tax Map 216, Lots 1-1, 1-2, 1-4, 1-5, 1-8B, 1-8A, 1-8, 1-9, 1-10, 1-11 and 3, Map 215, Lot 14 and Map 214, Lot 2.

Commerce Way, LLC acquired title to Commerce Way, a 60 foot wide roadway, pursuant to deed of Arnold S. Katz and Blair J. Finnegan recorded in said Registry at Book 4364, Page 1626. To the extent that said deed did not convey Commerce Way Extension, so-called, said extension was conveyed to Arnold S. Katz and Blair J. Finnegan by deeds recorded at Book 3523, Page 2278 and at Book 3523, Page 2284. Arnold S. Katz died in Key Biscayne, Florida on January 1, 2005 (Miami Dade County Probate Court #05 014 91 CP 01) leaving the remainder of his estate to the Arnold S. Katz Trust dated December 1, 1994. Joanne S. Katz and Albert J. Sreter are its current Trustees.

The undersigned Trustees, as Co-Trustees of the Arnold S. Katz Trust of December 1, 1994, and pursuant thereto have full and absolute power in said Trust Agreement to execute, sign and deliver a deed for real estate of other property held in said Trust, and no purchaser or third party shall be bound to inquire whether the Trustees have said power or are properly exercising said power or to see to the application of any trust asset paid to the Trustees for the sale thereof.

***{SIGNATURES ON FOLLOWING PAGES}***

EXECUTED this 20<sup>th</sup> day of June, 2015.

COMMERCE WAY, LLC

Ann & Kinty  
Witness

[Signature]  
By: Blair J. Finnegan, Manager

Ann & Kinty  
Witness

[Signature]  
Blair J. Finnegan, Individually

~~ARNOLD S. KATZ TRUST OF  
DECEMBER 1, 1994~~

~~\_\_\_\_\_  
Witness~~

~~By: Joanne R. Katz, Co-Trustee~~

~~\_\_\_\_\_  
Witness~~

~~By: Albert J. Sreter, Co-Trustee~~

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss.

On this 20<sup>th</sup> day of June, 2015, before me, personally appeared Blair J. Finnegan, duly authorized Manager of Commerce Way, LLC, a New Hampshire limited liability company, known to me, or proven to me through satisfactory evidence of identification, to be the individual whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained on behalf of said limited liability company.

(Affix Notarial Seal)

Kathleen M Sedlock  
Notary Public/Justice of the Peace  
Printed Name: Kathleen M Sedlock  
My Commission expires: 3/12/19

KATHLEEN M. SEDLOCK  
Notary Public - New Hampshire  
My Commission Expires March 12, 2019

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss.

On this 20<sup>th</sup> day of June, 2015, before me, personally appeared Blair J. Finnegan, known to me, or proven to me through satisfactory evidence of identification, to be the individual whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained.

*(Affix Notarial Seal)*

Kathleen M Sedlock  
Notary Public/Justice of the Peace  
Printed Name: Kathleen M Sedlock  
My Commission expires: 3/12/19

**KATHLEEN M. SEDLOCK**  
Notary Public - New Hampshire  
My Commission Expires March 12, 2019

EXECUTED this 26<sup>th</sup> day of June, 2015.

~~COMMERCE WAY, LLC~~

Witness

~~By: Blair J. Finnegan, Manager~~

Witness

~~Blair J. Finnegan, Individually~~

ARNOLD S. KATZ TRUST OF  
DECEMBER 1, 1994

Aaren L. Harty  
Witness

Joanne R. Katz  
By: Joanne R. Katz, Co-Trustee

Witness

~~By: Albert J. Sreter, Co-Trustee~~

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss.

On this \_\_\_\_\_ day of June, 2015, before me, personally appeared Blair J. Finnegan, duly authorized Manager of Commerce Way, LLC, a New Hampshire limited liability company, known to me, or proven to me through satisfactory evidence of identification, to be the individual whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained on behalf of said limited liability company.

*(Affix Notarial Seal)*

Notary Public/Justice of the Peace

Printed Name: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss.

On this 25<sup>th</sup> day of June, 2015, before me, personally appeared Joanne R. Katz, duly authorized Co-Trustee of the Arnold S. Katz Trust of December 1, 1994, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same for the purposes therein contained on behalf of Trust.

(Affix Notarial Seal)  
**KATHLEEN M. SEDLOCK**  
Notary Public - New Hampshire  
My Commission Expires March 12, 2019

Kathleen M Sedlock  
Notary Public  
Printed Name: Kathleen M Sedlock  
My Commission expires: 3/12/19

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF MIDDLESEX, ss.

~~On this \_\_\_\_\_ day of June, 2015, before me, personally appeared Albert J. Sreter, duly authorized Co-Trustee of the Arnold S. Katz Trust of December 1, 1994, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained on behalf of Trust.~~

~~(Affix Notarial Seal)~~

~~\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_~~



EXECUTED this 24<sup>th</sup> day of June, 2015.

COMMERCE WAY, LLC

Witness

By: Blair J. Finnegan, Manager

Witness

Blair J. Finnegan, Individually

ARNOLD S. KATZ TRUST OF  
DECEMBER 1, 1994

Witness

By: ~~Joanne R. Katz, Co-Trustee~~

Witness

By: Albert J. Sreter, Co-Trustee

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss.

On this \_\_\_\_\_ day of June, 2015, before me, personally appeared Blair J. Finnegan, duly authorized Manager of Commerce Way, LLC, a New Hampshire limited liability company, known to me, or proven to me through satisfactory evidence of identification, to be the individual whose name is subscribed to the foregoing instrument, and acknowledged that he ~~executed the same~~ for the purposes therein contained on behalf of said limited liability company.

*(Affix Notarial Seal)*

Notary Public/Justice of the Peace

Printed Name: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss.

On this \_\_\_\_\_ day of June, 2015, before me, personally appeared Joanne R. Katz, duly authorized Co-Trustee of the Arnold S. Katz Trust of December 1, 1994, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same for the purposes therein contained on behalf of Trust.

(Affix Notarial Seal)

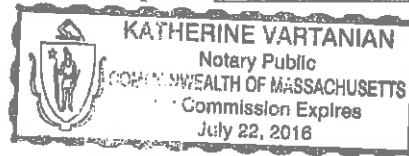
\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF MIDDLESEX, ss.

On this 25<sup>th</sup> day of June, 2015, before me, personally appeared Albert J. Sreter, duly authorized Co-Trustee of the Arnold S. Katz Trust of December 1, 1994, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained on behalf of Trust.

(Affix Notarial Seal)

Katherine Vartanian  
\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_



027252

2015 JUN 30 AM 10: 20

ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

**THIS IS A TRANSFER TO THE CITY OF PORTSMOUTH, NH AND IS THEREFORE EXEMPT FROM THE NEW HAMPSHIRE REAL ESTATE TRANSFER TAX PURSUANT TO RSA 78-B:2, I AND FROM THE L-CHIP FEE PURSUANT TO RSA 478:17-g, II (a)**

**QUITCLAIM DEED**

NOW COMES, **COMMERCE WAY, LLC**, a New Hampshire limited liability company, with an address of 210 Commerce Way, Suite 100, Portsmouth, New Hampshire 03801, **for consideration paid**, grants to the **CITY OF PORTSMOUTH**, a New Hampshire municipal corporation, having a place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801, with QUITCLAIM COVENANTS, the following described premises:

A certain parcel of land located on the westerly side of Commerce Way in Portsmouth, County of Rockingham, State of New Hampshire, and shown as "Area 1" on a particular plan entitled "Right Of Way & Easement Plan Affecting Lands Of Commerce Way LLC, Arnold Katz & Blair Finnegan and Commerce Center At Portsmouth, Situated On Commerce Way, Portsmouth, New Hampshire", by Doucet Survey, Inc. dated June 23, 2015 to be recorded in the Rockingham County Registry of Deeds, as more particularly described as follows:

Beginning at a point on said Commerce Way lying N 54°13'23" W, distant approximately 268.01' +/- from the common lot line between Lot 1-1 and Lot 1-2 as shown on said plan, thence running;

with a curve turning to the left with an arc length of 95.58', a radius of 60.00', a chord bearing of S 80°08'24" W, and a chord length of 85.79';

Thence N 34°30'10" E a distance of 35.79';

Thence with a curve turning to the right with an arc length of 39.83', a radius of 25.00', a chord bearing of N 80°08'24" E, and a chord length of 35.75';

Thence S 54°13'23" E a distance of 35.79' to the point of beginning.

Said parcel having an area of 672 square feet or 0.015 acres.

Meaning and intending to describe and convey a portion of the premises conveyed to Commerce Way, LLC by deed of Arnold S. Katz and Blair Finnegan, Trustees of the Commerce Center Trust dated August 31, 2004 and recorded in the Rockingham County Registry of Deeds at Book 4364, Page 1624.

This is not homestead property.

*{SIGNATURES ON FOLLOWING PAGES}*

WHEREFORE, Grantors have hereunto set their hands this 26<sup>th</sup> day of June, 2015.

COMMERCE WAY, LLC

Karen L. Rivity  
Witness

By: [Signature]  
Blair J. Finnegan, Manager

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss

Before me, personally appeared Blair J. Finnegan, duly authorized Manager of Commerce Way, LLC, known to me, or proven to me through satisfactory evidence of identification, to be the individual whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained.

**KATHLEEN M. SEDLOCK**  
Notary Public - New Hampshire  
My Commission Expires March 12, 2019

Kathleen M Sedlock  
Notary Public/Justice of the Peace  
Printed Name: Kathleen M Sedlock  
My Commission expires: 3/12/19

023611

**THIS IS A TRANSFER TO THE CITY OF PORTSMOUTH, NH AND IS THEREFORE EXEMPT FROM THE NEW HAMPSHIRE REAL ESTATE TRANSFER TAX PURSUANT TO RSA 78-B:2, I AND FROM THE L-CHIP FEE PURSUANT TO RSA 478:17-g, II (a)**

**RELEASE DEED**

KNOW ALL MEN BY THESE PRESENTS, that **BLAIR J. FINNEGAN**, of 273 Corporate Drive, Suite 150, Portsmouth, New Hampshire; and **JOANNE R. KATZ**, of 251 Crandon Boulevard, Key Biscayne, Florida 33149 and **ALBERT J. SRETER**, of 33 Bedford Street, Lexington, Massachusetts 02420, as **CO-TRUSTEES OF THE ARNOLD S. KATZ TRUST OF DECEMBER 1, 1994** (hereinafter collectively "Grantor"), for good and valuable consideration received, hereby release to the **CITY OF PORTSMOUTH**, a New Hampshire municipal corporation, with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801, without covenants, any and all right, title and interest Grantor may have in and to the following described premises:

A certain tract or parcel of land located on the easterly side of Woodbury Avenue, in Portsmouth, County of Rockingham, State of New Hampshire, and shown as the cross-hatched area situated between the sideline of said Woodbury Avenue and Commerce Way on a plan of land entitled "Right Of Way & Easement Plan Affecting Lands Of Commerce Way LLC, Arnold Katz & Blair Finnegan and Commerce Center At Portsmouth, Situated On Commerce Way, Portsmouth, New Hampshire", by Doucet Survey, Inc. dated June 23, 2015 and recorded in the Rockingham County Registry of Deeds as Plan No. D-38901 (the "Plan"), as more particularly described as follows:

Beginning on the easterly sideline of Woodbury Avenue at point 28.56 feet southeasterly of the iron pipe found (held) marking the northwesterly corner of a private way known as "Commerce Way"; thence running along the sideline of Woodbury Avenue in a straight line to a point 1.86 feet {See Rockingham County Registry of Deeds Plan D-28385} from a 5/8" rebar

2016 JUN -9 PM 12: 17

ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

found (not held) {See Note 6 on the Plan}; thence N 17° 26' 40" E a distance of 28.49 feet; thence N 25° 41' 06" W a distance of 54.00 feet; thence N 63° 33' 18" W a distance of 34.57 feet to the point and place of beginning.

SUBJECT TO such matters as are set forth on the above-referenced plan.


SUBJECT TO such matters as are set forth in a Subdivision/Consolidation Plan prepared by CLD Consulting Engineers for Brora, LLC recorded in the Rockingham County Registry of Deeds as Plan No. D-28385.

Arnold S. Katz and Blair J. Finnegan acquired title to this property, together with the remainder of Parcel 4, as shown on Rockingham County Registry of Deeds Plan D- 7288, pursuant to deed of Sydney H. Frink and State of New Hampshire, dated December 6, 1984 and recorded in the Rockingham County Registry of Deeds at Book 2523, Page 1572. Thereafter, Arnold S. Katz and Blair J. Finnegan conveyed a portion of the premises to Commerce Way, LLC premises pursuant to deed dated September 21, 2004 and recorded in said Registry at Book 4364, Page 1626.

The undersigned Trustees, as Co-Trustees of the Arnold S. Katz Trust of December 1, 1994, and pursuant thereto have full and absolute power in said Trust Agreement to execute, sign and deliver a deed for real estate of other property held in said Trust, and no purchaser or third party shall be bound to inquire whether the Trustees have said power or are properly exercising said power or to see to the application of any trust asset paid to the Trustees for the sale thereof.

*{SIGNATURES ON FOLLOWING PAGES}*

EXECUTED this 31st day of May, 2016.

Witness 

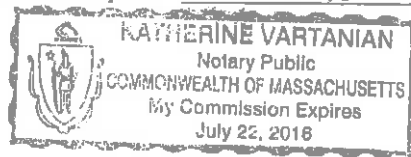
  
Blair J. Finnegan

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss.

On this 31st day of May, 2016, 2016, before me, personally appeared Blair J. Finnegan, known to me, or proven to me through satisfactory evidence of identification, to be the individual whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained.

(Affix Notarial Seal)

Katherine Vartanian  
Notary Public/Justice of the Peace  
Printed Name: Katherine Vartanian  
My Commission expires: 7-22-16





EXECUTED this 31<sup>st</sup> day of May, 2016.

ARNOLD S. KATZ TRUST OF  
DECEMBER 1, 1994

Geraldine Dupresse  
Witness

Joanne R. Katz  
By: Joanne R. Katz, Co-Trustee

New Hampshire  
STATE OF ~~FLORIDA~~  
COUNTY OF Rockingham, ss.

On this 31<sup>st</sup> day of May, 2016, before me, personally appeared Joanne R. Katz, duly authorized Co-Trustee of the Arnold S. Katz Trust of December 1, 1994, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same for the purposes therein contained on behalf of Trust.

(Affix Notarial Seal)

**KATHLEEN M. SEDLOCK**  
Notary Public - New Hampshire  
My Commission Expires March 12, 2019

Kathleen M Sedlock  
Notary Public  
Printed Name: Kathleen M Sedlock  
My Commission expires: 3/12/19

EXECUTED this 31st day of May, 2016.

ARNOLD S. KATZ TRUST OF  
DECEMBER 1, 1994

Gaila M. Dean  
Witness

[Signature]  
By: Albert J. Sreter, Co-Trustee

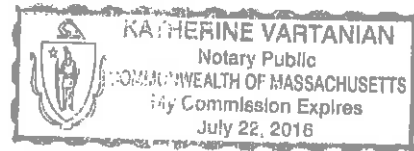
COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF Middlesex, ss.

On this 31st day of May, 2016, before me, personally appeared Albert J. Sreter, duly authorized Co-Trustee of the Arnold S. Katz Trust of December 1, 1994, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained on behalf of Trust.

(Affix Notarial Seal)

Katherine Vartanian  
Notary Public  
Printed Name: Katherine Vartanian  
My Commission expires: 7-22-16

S:\CO-CR\Commerce Way, LLC\Woodbury Ave Release\2016 05 03 Deed.docx



027254

2015 JUN 30 AM 10: 20

ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

**THIS IS A TRANSFER TO THE CITY OF PORTSMOUTH, NH AND IS THEREFORE EXEMPT FROM THE NEW HAMPSHIRE REAL ESTATE TRANSFER TAX PURSUANT TO RSA 78-B:2, I AND FROM THE L-CHIP FEE PURSUANT TO RSA 478:17-g, II (a)**

**DRAINAGE EASEMENT DEED**

NOW COMES, **COMMERCE CENTER AT PORTSMOUTH, LLC**, a New Hampshire limited liability company, with an address of 273 Corporate Drive, Suite 150, Portsmouth, New Hampshire 03801, for **consideration paid**, grants to the **CITY OF PORTSMOUTH**, a New Hampshire municipal corporation, having a place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801, the following described drainage easement:

A drainage easement over a certain parcel of land located on the westerly side of Commerce Way in Portsmouth, County of Rockingham, State of New Hampshire, and shown as "Proposed 20' Drainage Easement Over Lot 1-2" on a particular plan entitled "Right Of Way & Easement Plan Affecting Lands Of Commerce Way LLC, Arnold Katz & Blair Finnegan and Commerce Center At Portsmouth, Situated On Commerce Way, Portsmouth, New Hampshire", by Doucet Survey, Inc. dated June 23, 2015 to be recorded in the Rockingham County Registry of Deeds, as more particularly described as follows:

Beginning at a point on said Commerce Way lying S 54°13'23" E, distant approximately 202.4' from the common lot line between Lot 1-1 and Lot 1-2 as shown on said plan, thence running;

S 54°13'23" E a distance of 20.00' along said Commerce Way;

Thence S 35°46'37" W a distance of 334.25';

Thence N 54°13'23" W a distance of 20.00';

Thence N 35°46'37" E a distance of 334.25' to the point of beginning.

Said parcel having an area of 6,685 square feet.

1. **Purpose and Rights:** The Grantee shall have a permanent easement for the purpose of drainage of the roadway and discharge of water over the land of Grantor. This permanent easement also includes the right of Grantee to discharge water from the drainage pipe in the wetland area located on the lot. Grantee shall have the right to remove trees, bushes, undergrowth and other obstructions interfering with the activities authorized herein and to take such other actions as may be necessary, useful or convenient for the enjoyment of the easement rights herein granted.
2. **Grantee's Responsibility to Restore:** Disturbed areas within the Permanent Easement Area shall be back-filled and restored at the Grantee's expense.
3. **Grantor's Retained Rights:** Grantor retains the right to freely use and enjoy its interest in the Permanent Easement Area insofar as the exercise thereof does not endanger or interfere with the purpose of this instrument. Grantor shall not, however, erect any building, shed, deck or other structure within the Permanent Easement Area, substantially change the grade or slope or install any pipes without prior written consent of the Grantee. Grantor retains the right to apply the area encumbered by this easement for all setback, buffer, open space and other zoning, subdivision and like regulatory requirements.
4. **Personal Property.** It is agreed that the pipes and related facilities installed within the Permanent Easement Area, whether fixed to the realty or not, shall be and remain the property of the Grantee.
5. **Easement to Run with Land:** All rights and privileges, obligations and liabilities created by this instrument shall inure to the benefit of, and be binding upon, the heirs, devisees, administrators, executor, successors and assignees of the Grantee and of the Grantor, the parties hereto and all subsequent owners of the Premises and shall run with the land.

Meaning and intending to convey easements over a portion of the premises conveyed to Commerce Center at Portsmouth, LLC by deed of Arnold S. Katz and Blair Finnegan, Trustees of the Commerce Center Trust dated September 28, 2000 and recorded in the Rockingham County Registry of Deeds at Book 3507, Page 2405.

***{SIGNATURES ON FOLLOWING PAGES}***

This is not homestead property.

WHEREFORE, Grantors have hereunto set their hands this 25<sup>th</sup> day of June, 2015.

COMMERCE CENTER AT  
PORTSMOUTH, LLC

[Signature]  
Witness

[Signature]  
Joanne R. Katz, Manager

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

Before me, personally appeared Joanne R. Katz, duly authorized Manager of Commerce Center at Portsmouth, LLC, known to me, or proven to me through satisfactory evidence of identification, to be the individual whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same for the purposes therein contained.

KATHLEEN M. SEDLOCK  
Notary Public - New Hampshire  
My Commission Expires March 12, 2019

[Signature]  
Notary Public/Justice of the Peace  
Printed Name: Kathleen M Sedlock  
My Commission expires: 3/12/19

AGREED TO AND ACCEPTED:  
CITY OF PORTSMOUTH

By: \_\_\_\_\_  
Duly authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

Before me, personally appeared \_\_\_\_\_ duly authorized City Manager of the City of Portsmouth, known to me, or proven to me through satisfactory evidence of identification, to be the individual whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained on behalf of the City.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
Printed Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

027253

**THIS IS A TRANSFER TO THE CITY OF PORTSMOUTH, NH AND IS THEREFORE EXEMPT FROM THE NEW HAMPSHIRE REAL ESTATE TRANSFER TAX PURSUANT TO RSA 78-B:2, I AND FROM THE L-CHIP FEE PURSUANT TO RSA 478:17-g, II (a)**

**DRAINAGE EASEMENT DEED**

NOW COMES, **COMMERCE WAY, LLC**, a New Hampshire limited liability company, with an address of 210 Commerce Way, Suite 100, Portsmouth, New Hampshire 03801, **for consideration paid**, grants to the **CITY OF PORTSMOUTH**, a New Hampshire municipal corporation, having a place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801, the following described drainage easement:

A permanent drainage easement over a certain parcel of land located on the westerly side of Commerce Way in Portsmouth, County of Rockingham, State of New Hampshire, and shown as "Proposed 20' Drainage Easement Over Lot 1-1" on a particular plan entitled "Right Of Way & Easement Plan Affecting Lands Of Commerce Way LLC, Arnold Katz & Blair Finnegan and Commerce Center At Portsmouth, Situated On Commerce Way, Portsmouth, New Hampshire", by Doucet Survey, Inc. dated June 23, 2015 to be recorded in the Rockingham County Registry of Deeds, as more particularly described as follows:

**Permanent Easement Area**

Beginning at a point on said Commerce Way lying N 54°13'23" W, distant approximately 109.4' from the common lot line between Lot 1-1 and Lot 1-2 as shown on said plan, thence running;

N 79°24'16" W a distance of 65.87';

Thence N 10°35'44" E a distance of 20.00';

Thence S 79°24'16" E a distance of 23.31' to said Commerce Way;

2015 JUN 30 AM 10:20

ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

Thence along said Commerce Way S 54°13'23" E a distance of 47.03' to the point of beginning.

Said parcel having an area of 892 square feet.

1. **Purpose and Rights:** The Grantee shall have a permanent easement for the purpose of drainage of the roadway and discharge of water over the land of Grantor. This permanent easement also includes the right of Grantee to discharge water from the drainage pipe into the wetland area located on the lot. Grantee shall have the right to remove trees, bushes, undergrowth and other obstructions interfering with the activities authorized herein and to take such other actions as may be necessary, useful or convenient for the enjoyment of the easement rights herein granted.
2. **Grantee's Responsibility to Restore:** Disturbed areas within the Permanent Easement Area shall be back-filled and restored at the Grantee's expense.
3. **Grantor's Retained Rights:** Grantor retains the right to freely use and enjoy its interest in the Permanent Easement Area insofar as the exercise thereof does not endanger or interfere with the purpose of this instrument. Grantor shall not, however, erect any building, shed, deck or other structure within the Permanent Easement Area, substantially change the grade or slope or install any pipes without prior written consent of the Grantee. Grantor retains the right to apply the area encumbered by this easement for all setback, buffer, open space and other zoning, subdivision and like regulatory requirements.
4. **Personal Property.** It is agreed that the pipes and related facilities installed within the Permanent Easement Area, whether fixed to the realty or not, shall be and remain the property of the Grantee.
5. **Easement to Run with Land:** All rights and privileges, obligations and liabilities created by this instrument shall inure to the benefit of, and be binding upon, the heirs, devisees, administrators, executor, successors and assignees of the Grantee and of the Grantor, the parties hereto and all subsequent owners of the Premises and shall run with the land.

Meaning and intending to convey easements over a portion of the premises conveyed to Commerce Way, LLC by deed of Arnold S. Katz and Blair Finnegan, Trustees of the Commerce Center Trust dated August 31, 2004 and recorded in the Rockingham County Registry of Deeds at Book 4364, Page 1624.

***{SIGNATURES ON FOLLOWING PAGES}***

WHEREFORE, Grantors have hereunto set their hands this 26<sup>th</sup> day of June, 2015.

[Signature]  
Witness

COMMERCE WAY, LLC  
[Signature]  
Blair J. Finnegan, Manager

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

Before me, personally appeared Blair J. Finnegan, duly authorized Manager of Commerce Way, LLC, known to me, or proven to me through satisfactory evidence of identification, to be the individual whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained.

KATHLEEN M. SEDLOCK  
Notary Public - New Hampshire  
My Commission Expires March 12, 2019

[Signature]  
Notary Public/Justice of the Peace  
Printed Name: Kathleen M Sedlock  
My Commission expires: 3/12/19

AGREED TO AND ACCEPTED:  
CITY OF PORTSMOUTH

By: \_\_\_\_\_  
John Bohenko, City Manager  
Duly authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

Before me, personally appeared John Bohenko, duly authorized City Manager of the City of Portsmouth, known to me, or proven to me through satisfactory evidence of identification, to be the individual whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained on behalf of the City.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
Printed Name: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_



**THIS IS A TRANSFER FROM THE CITY OF PORTSMOUTH, NH AND IS THEREFORE PARTIALLY EXEMPT FROM THE NEW HAMPSHIRE REAL ESTATE TRANSFER TAX PURSUANT TO RSA 78-B:2 AND WHOLLY EXEMPT FROM THE L-CHIP FEE PURSUANT TO RSA 478:17-g, II (a)**

**QUITCLAIM DEED**

KNOW ALL MEN BY THESE PRESENTS, that the **CITY OF PORTSMOUTH**, a New Hampshire municipal corporation, having a place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801, for consideration paid, grants to **135 COMMERCE WAY, LLC**, a New Hampshire limited liability company, with an address of 210 Commerce Way, Suite 100, Portsmouth, New Hampshire 03801, with QUITCLAIM COVENANTS, the following described premises:

A certain parcel of land located on the northeasterly side of Commerce Way in Portsmouth, County of Rockingham, State of New Hampshire, and shown as "Area 2" on a plan entitled "Right of Way & Easement Plan Affecting Lands of Commerce Way LLC, Arnold Katz & Blair Finnegan and Commerce Center at Portsmouth, Situated on Commerce Way, Portsmouth, New Hampshire", by Doucet Survey, Inc., dated June 23, 2015 and recorded in the Rockingham County Registry of Deeds as Plan No. D-38901, as more particularly described as follows:

Beginning at a 5/8" rebar found on the northeasterly side of Commerce Way and land of 135 Commerce Way, LLC (Tax Map 216 Lot 1-11), thence running N 54° 13' 23" W a distance of 14.95 feet to a point:

Thence turning and running along said Commerce Way on a curve to the left with an arc length of 191.16 feet, with a radius of 120.00 feet, a chord bearing of S 80° 08' 24" W a chord length of 171.58 feet to a point on the northwesterly sideline of said Commerce Way:

Thence turning and running N 34° 30' 10" E a distance of 165.46 feet to a point:

Thence turning and running N 34° 52' 54" E a distance of 20.07 feet to a point

Thence turning and running S 55° 01' 51" E a distance of 55.81 feet to a point;

Thence on a curve to the right with an arc length of 79.83 feet, with a radius of 60.00 feet, a chord bearing of S 16° 54' 54" E a chord length of 74.07 feet to a point;

Thence with a reverse curve turning to the left with an arc length of 32.91 feet, with a radius of 25.00 feet, a chord bearing of S 16° 30' 40" E a chord length of 30.58 feet to the 5/8" rebar at the point and place of beginning.

Said parcel containing 9.933 square feet, or 0.228 acres according to said plan.

Meaning and intending to describe and convey "Area 2" as shown on said plan and being a portion of the premises conveyed to the City of Portsmouth by deed of Commerce Way, I.L.C., dated June 26, 2015 and recorded in the Rockingham County Registry of Deeds at Book 5631, Page 1041.

This is not homestead property.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF PORTSMOUTH

Witness

By: John P. Bohenko, City Manager, duly authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, personally appeared John P. Bohenko, City Manager of the City of Portsmouth, a New Hampshire municipal corporation, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained on behalf of the company.

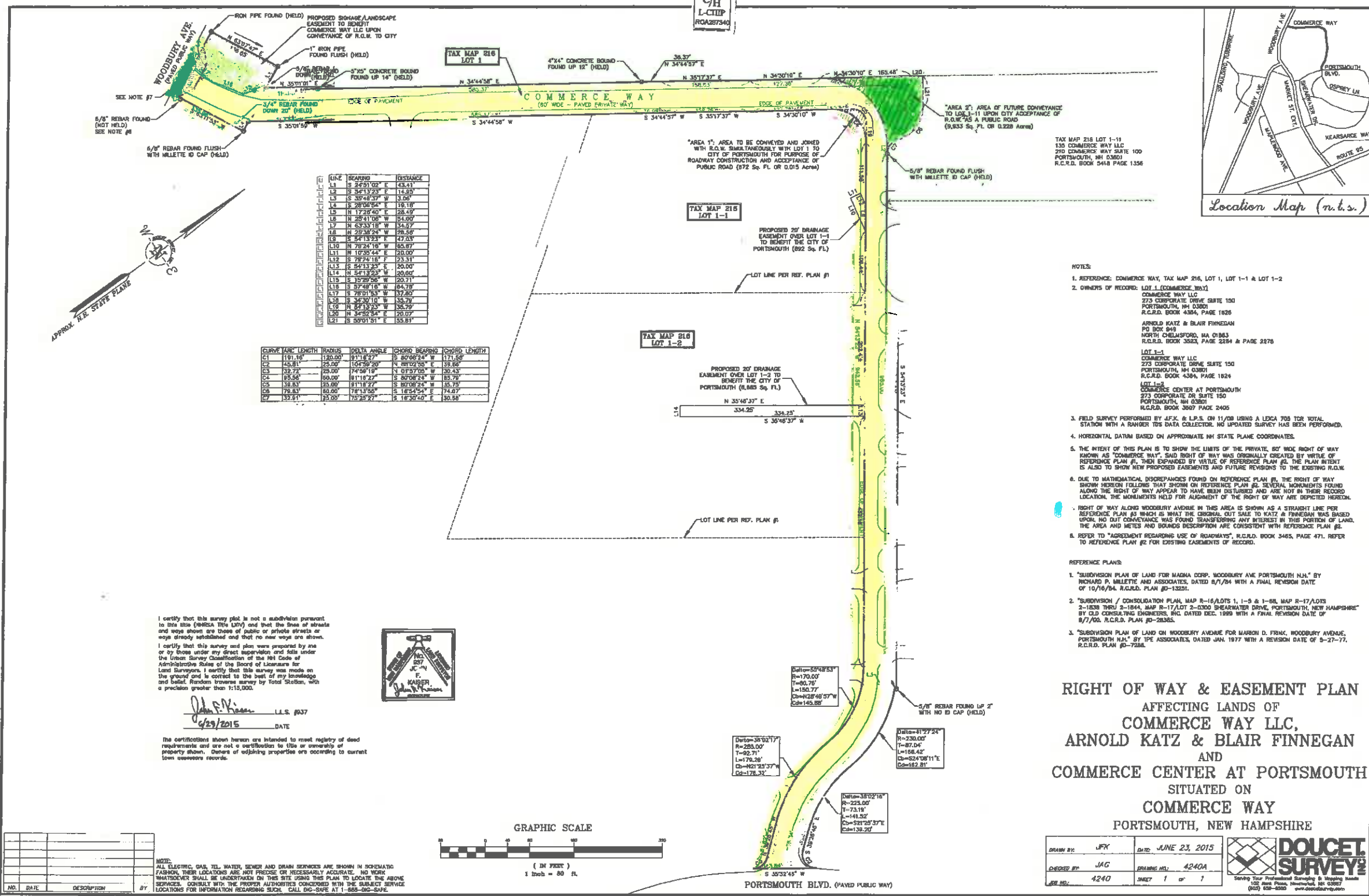
*(Affix Notarial Seal)*

Notary Public/Justice of the Peace

Printed Name:

My Commission expires:

2015 JUN 30 04:10:19 027250



LINE	BEARING	DISTANCE
L1	S 24°51'02" E	133.11
L2	S 34°13'23" E	14.33
L3	S 38°48'37" W	3.00
L4	S 28°05'54" W	18.18
L5	N 17°28'40" E	28.49
L6	N 28°41'08" W	54.00
L7	N 63°33'18" W	34.57
L8	N 52°38'24" W	78.39
L9	S 54°13'23" E	47.03
L10	N 78°24'10" W	85.87
L11	N 12°34'44" E	20.00
L12	S 78°24'18" E	23.31
L13	S 54°13'23" E	20.00
L14	N 54°13'23" W	20.00
L15	S 12°29'56" W	20.71
L16	S 57°48'18" W	64.78
L17	S 76°01'53" W	57.80
L18	S 32°36'10" W	38.79
L19	N 54°13'23" E	38.79
L20	N 34°52'54" E	20.07
L21	S 59°01'51" E	55.81

CHORD	ARC LENGTH	RADIUS	CHORD ANGLE	CHORD BEARING	CHORD LENGTH
C1	191.48	120.00	81°18'27"	S 87°08'24" W	171.58
C2	45.81	25.00	104°59'20"	N 89°02'35" E	39.69
C3	32.72	25.00	74°36'18"	N 07°37'05" W	28.43
C4	85.56	50.00	81°18'27"	S 87°08'24" W	83.79
C5	38.83	25.00	81°18'27"	S 87°08'24" W	35.79
C6	78.83	50.00	78°13'58"	S 18°54'54" E	74.87
C7	32.51	25.00	75°38'37"	S 16°30'40" E	30.59

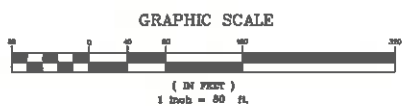
I certify that this survey plot is not a subdivision pursuant to the title (WHEREAS THE LOTS) and that the lines of streets and ways shown are those of public or private streets as ways already established and that no new ways are shown.

I certify that this survey and plan were prepared by me or by those under my direct supervision and title under the Uniform Survey Classification of the NH Code of Administrative Rules of the Board of Licensure for Land Surveyors. I certify that this survey was made on the ground and is correct to the best of my knowledge and belief. Random traverse survey by Total Station, with a precision greater than 1:15,000.

*John F. Kaiser* L.L.S. #837  
 6/29/2015 DATE



The certifications shown herein are intended to meet registry of deed requirements and are not a certification to title or ownership of property shown. Owners of adjoining properties are according to current town assessors records.



NO.	DATE	DESCRIPTION	BY

NOTE: ALL ELECTRIC, GAS, TEL, WATER, SEWER AND DRAIN SERVICES ARE SHOWN IN SCHEMATIC FASHION. THEIR LOCATIONS ARE NOT PRECISE OR NECESSARILY ACCURATE. NO WORK WHATSOEVER SHALL BE UNDERTAKEN ON THIS SITE USING THIS PLAN TO LOCATE THE ABOVE SERVICES. CONSULT WITH THE PROPER AUTHORITIES CONCERNED WITH THE SUBJECT SERVICE LOCATIONS FOR INFORMATION REGARDING SUCH. CALL 800-SAVE AT 1-888-882-SAVE.



- NOTES:
- REFERENCE: COMMERCE WAY, TAX MAP 216, LOT 1, LOT 1-1 & LOT 1-2
  - OWNERS OF RECORD: LOT 1 (COMMERCE WAY) COMMERCE WAY LLC 273 CORPORATE DRIVE SUITE 100 PORTSMOUTH, NH 03801 R.C.R.D. BOOK 4364, PAGE 1826  
 ARNOLD KATZ & BLAIR FINNEGAN PO BOX 845 NORTH CHELSEA, MA 01863 R.C.R.D. BOOK 3523, PAGE 2284 & PAGE 2278  
 LOT 1-1 COMMERCE WAY LLC 273 CORPORATE DRIVE SUITE 100 PORTSMOUTH, NH 03801 R.C.R.D. BOOK 4364, PAGE 1824  
 LOT 1-2 COMMERCE CENTER AT PORTSMOUTH 273 CORPORATE DR SUITE 150 PORTSMOUTH, NH 03801 R.C.R.D. BOOK 3807 PAGE 2405
  - FIELD SURVEY PERFORMED BY J.F.K. & L.P.S. ON 11/08 USING A LEICA T08 TOTAL STATION WITH A RANGER TS2 DATA COLLECTOR. NO UPDATED SURVEY HAS BEEN PERFORMED.
  - HORIZONTAL DATUM BASED ON APPROXIMATE NH STATE PLANE COORDINATES.
  - THE INTENT OF THIS PLAN IS TO SHOW THE LIMITS OF THE PRIVATE, 80' WIDE RIGHT OF WAY SHOWN AS "COMMERCE WAY". SAID RIGHT OF WAY WAS ORIGINALLY CREATED BY VIRTUE OF REFERENCE PLAN #1, THEN EXPANDED BY VIRTUE OF REFERENCE PLAN #2. THE PLAN INTENT IS ALSO TO SHOW NEW PROPOSED EASEMENTS AND FUTURE REVISIONS TO THE EXISTING R.O.W.
  - DUE TO MATHEMATICAL DISCREPANCIES FOUND ON REFERENCE PLAN #1, THE RIGHT OF WAY SHOWN HEREIN FOLLOWS WHAT SHOWS ON REFERENCE PLAN #2. SEVERAL MONUMENTS FOUND ALONG THE RIGHT OF WAY APPEAR TO HAVE BEEN DISTURBED AND ARE NOT IN THEIR RECORD LOCATION. THE MONUMENTS HELD FOR ALIGNMENT OF THE RIGHT OF WAY ARE DEPICTED HEREIN.
  - RIGHT OF WAY ALONG WOODBURY AVENUE IN THIS AREA IS SHOWN AS A STRAIGHT LINE PER REFERENCE PLAN #3 WHICH IS WHAT THE ORIGINAL, OUT TO SALE TO KATZ & FINNEGAN WAS BASED UPON. NO OUT CONVEYANCE WAS FOUND TRANSFERRING ANY INTEREST IN THIS PORTION OF LAND. THE AREA AND METES AND BOUNDS DESCRIPTION ARE CONSISTENT WITH REFERENCE PLAN #2.
  - REFER TO "AGREEMENT REGARDING USE OF ROADWAYS", R.C.R.D. BOOK 3485, PAGE 471. REFER TO REFERENCE PLAN #2 FOR EXISTING EASEMENTS OF RECORD.

- REFERENCE PLANS:
- "SUBDIVISION PLAN OF LAND FOR MAGNA CORP., WOODBURY AVE PORTSMOUTH, N.H." BY RICHARD P. WILLETTE AND ASSOCIATES, DATED 8/1/74 WITH A FINAL REVISION DATE OF 10/16/84, R.C.R.D. PLAN #0-13321.
  - "SUBDIVISION / CONSOLIDATION PLAN, MAP R-16/LOTS 1, 1-3 & 1-6, MAP R-17/LOTS 2-1838 THRU 2-1844, MAP R-17/LOT 2-0300 SHEARWATER DRIVE, PORTSMOUTH, NEW HAMPSHIRE" BY OLD CONSULTING ENGINEERS, INC. DATED DEC. 1999 WITH A FINAL REVISION DATE OF 8/7/00, R.C.R.D. PLAN #0-28385.
  - "SUBDIVISION PLAN OF LAND ON WOODBURY AVENUE FOR MARION D. FRANK, WOODBURY AVENUE, PORTSMOUTH, N.H." BY THE ASSOCIATES, DATED JAN. 1977 WITH A REVISION DATE OF 9-27-77, R.C.R.D. PLAN #0-7288.

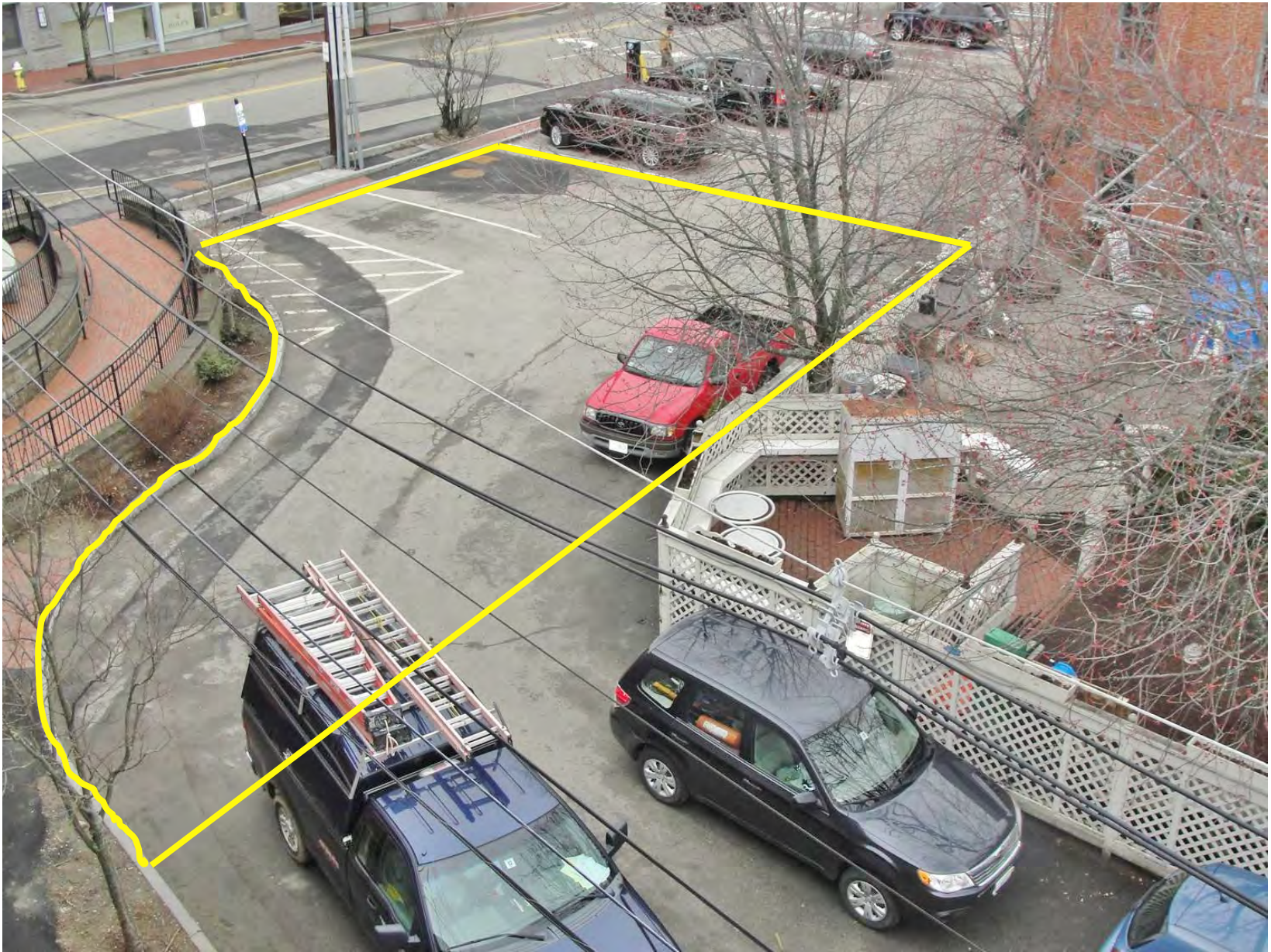
**RIGHT OF WAY & EASEMENT PLAN**  
 AFFECTING LANDS OF  
**COMMERCE WAY LLC,**  
**ARNOLD KATZ & BLAIR FINNEGAN**  
 AND  
**COMMERCE CENTER AT PORTSMOUTH**  
 SITUATED ON  
**COMMERCE WAY**  
 PORTSMOUTH, NEW HAMPSHIRE

DRAWN BY: JFY	DATE: JUNE 23, 2015	
CHECKED BY: JAG	DRAWING NO.: 4240A	
REV. NO.: 4240	SHEET 1 OF 1	

**DOUCET SURVEY**  
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 www.doucetsurvey.com

D-38901

Proposed License Area  
Careno Construction Co.  
Gaslight Rebuild/Repair Project



Run: 10/13/16  
9:08AM

## Event Listing by Date

Page: 1

Starting Date: 10/ 3/2016

Ending Date: 8/31/2017

Start End	Type Description	Location	Requestor	Vote Date
10/ 9/2016 10/ 9/2016	ROAD RACE Contacts: (Date changed to October 9, 2016 instead of October 8th) Ben Anderson - ben@prescottpark.org Angela Greene - angela@prescottpark.org Race Start: 10:00 a.m. Registration: 8:00 a.m.	Memorial Bridge Portsmouth	Memorial Bridge Road Race	12/ 7/2015
10/13/2016 10/16/2016	FESTIVAL Amber Day is the contact for this event. (603) 534-0905	Chestnut Street	New Hampshire Film Festival	9/19/2016
10/22/2016 10/22/2016	WALK Contact Susan von Hemert Annual Memorial Bridge Walk walking across Memorial Bridge to Prescott Park	Memorial Bridge Walk to Prescott Park	Seacoast Rotary	3/ 3/2016
10/22/2016 10/22/2016	WALK Mary-Jo Monusky, Executive Director is the contact for this event. This 5K walk begins at 9:00 a.m. to 11:00 a.m.	Start and Finish on Jewell Court	Arts in Reach - RESCHEDULED TO	10/22/2016
10/31/2016 10/31/2016	PARADE	Peirce Island thru downtown to Prescott Park	Portsmouth Halloween Parade	7/11/2016
11/13/2016 11/13/2016	ROAD RACE Jay Diener, Co-race Director is the contact for this event. He can be reached at (603) 758-1177 Runners start at 8:30 a.m.	Portsmouth, New Castle, Rye	Seacoast Half Marathon	4/18/2016
11/24/2016 11/24/2016	ROAD RACE Matt Junkin, Race Director is the contact for this event. This is the Thanksgiving Day Turkey Trot which begins at Peirce Island and ends at Strawberry Banke. Registration begins at 7:00 a.m. Race commences at 8:30 a.m.	Peirce Island is the start - Strawberry Banke is th	Seacoast Rotary Turkey Trot 5K	11/16/2015
12/11/2016 12/11/2016	ROAD RACE Thomas M. Bringle is the contact for this event. Tel. 603-724-6080 tbringle@arthritis.org. Registration begins at 9:00 a.m. Race start time: 10:00 a.m.	Little Harbour School	Arthritis Foundation - Jingle	1/25/2016
12/31/2016 12/31/2016	FESTIVAL Barbara Massar is the contact for this event. This event begins at 4:00 p.m. to Midnight	Downtown - Various Locations throughout Market Squ	First Night - Pro Portsmouth	9/ 6/2016
1/ 1/2017 1/ 1/2017	RACE Michael Rennebu is the contact for this event. Cell #603-969-9783 Race Start: 11:00 a.m. Registration: 9:00 a.m.	Portsmouth Middle School	Great Bay Services	12/ 7/2015

## Event Listing by Date

Starting Date: 10/ 3/2016

Ending Date: 8/31/2017

Start End	Type Description	Location	Requestor	Vote Date
5/ 6/2017 5/ 6/2017	WALK Jenelle Dolan, Development Specialist is the contact for this event. Tel. 978-729-5849	Little Harbour Elementary School	March of Dimes	7/11/2016
5/ 7/2017 5/ 7/2017	EVENTS Barbara Massar is the contact for this event. This event begins at Noon to 4:00 p.m.	Pleasant Street - State Street - Market Square	Children's Day - Pro Portsmouth	9/ 6/2016
5/ 7/2017 5/ 7/2017	RIDE Melissa Walden, Associate of Development is the contact. This event begins at 7:00 a.m. at Redhook Brewery.	Start at Redhook Brewery	American Lung Association	10/ 3/2016
5/13/2017 5/13/2017	RACE Contact: Carolyn Ostrom, NH Community Relations, Specialist - 617-501-2728 costrom@vtnhkomen.org Ed Harvey, Race Director 603-862-1246 Edmund.Harvey@unh.edu	Strawbery Banke	Susan G. Komen Foundation	8/15/2016
6/10/2017 6/10/2017	FESTIVAL Barbara Massar is the contact for this event. This event begins at 9:00 a.m. to 4:00 p.m.	Market Square	Market Square Day - Pro Portsm	9/ 6/2016
6/10/2017 6/10/2017	ROAD RACE Starts in Market Square Barbara Massar is the contact for this event. The road race starts at 9:00 a.m. in Market Square		Market Square Road Race - Pro	9/ 6/2016
6/17/2017 6/17/2017	RACE	Pleasant Street	Big Brothers Big Sisters of Ne	9/19/2016
6/24/2017 6/24/2017	MUSIC Barbara Massar is the contact for this event. This event begins at 5:00 p.m. to 9:30 p.m.	Market Square - Pleasant Street	Summer in the Street Music Ser	9/ 6/2016
7/ 1/2017 7/ 1/2017	MUSIC Barbara Massar is the contact for this event. This is part of the Summer in the Streets series begins at 5:00 p.m. and ends at 9:30 p.m.	Pleasant Street	Pro Portsmouth - Summer in the	9/ 6/2016
7/ 8/2017 7/ 8/2017	FESTIVAL Barbara Massar is the contact for this event. This event is part of the Summer in Street Series. It begins at 5:00 to 9:30 p.m.	Downtown - Pleasant Street	Pro Portsmouth - Summer in the	9/ 6/2016
7/15/2017 7/15/2017	FESTIVAL Barbara Massar is the contact for this event. This event is part of the Summer in the Streets begins at 5:00 p.m. to 9:30 p.m.	Downtown - Pleasant Street - between State Street	Pro Portsmouth - Summer in the	9/ 6/2016
7/22/2017 7/22/2017	MUSIC Barbara Massar is the contact for this event. This is part of the Summer in the Streets series which begins at 5:00 p.m. and ends at 9:30 p.m.	Pleasant Street	Pro Portsmouth - Summer in the	9/ 6/2017

Run: 10/13/16  
9:08AM

## Event Listing by Date

Page: 3

Starting Date: 10/ 3/2016

Ending Date: 8/31/2017

Start End	Type Description	Location	Requestor	Vote Date
7/29/2017 7/29/2017	MUSIC Barbara Massar is the contact for this event. This event is part of the Summer in the Streets series which begins at 5:00 p.m. and ends at 9:30 p.m.	Pleasant Street	Pro Portsmouth - Summer in the	9/ 6/2016

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# CITY OF PORTSMOUTH

Community Development Department  
(603) 610-7232

Planning Department  
(603) 610-7216

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## INTEROFFICE MEMORANDUM

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**TO:** JOHN P. BOHENKO, CITY MANAGER  
**FROM:** NANCY COLBERT PUFF, DEPUTY CITY MANAGER  
**SUBJECT:** FOOD TRUCK VENDORS – REPORT BACK  
**DATE:** OCTOBER 12, 2016

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Last week I met with Health Director Kim McNamara, Deputy City Attorney Suzanne Woodland, and City Clerk Kelli Barnaby to 1) review our current approach to licensing food trucks/trailers<sup>1</sup>, 2) to discuss the City's most recent efforts (~2010) to address this topic, and 3) brainstorm about how the City might best encourage additional food trucks to operate in the City.

### **1: Existing Food Truck Licensing and Permitting Procedures:**

City Ordinances applicable to food trucks include: Chapter 6: Article XIII: Hawkers and Peddlers, Health Department regulations (pursuant to Chapters III & IV), and Chapter 10: Zoning, while the City's annual budget resolution (pursuant to Chapter I, Article XVI) establishes fees relating thereto.

The City currently allows the location of food truck operations as follows:

- Operation in one or two designated public parking spaces on State and Hanover Streets (allowed via annual RFP, only available from April 15-November 15, 7 am – 11 pm unless otherwise approved, subject to City licensing and minimum bid of \$5,000 - <http://www.cityofportsmouth.com/finance/bids/34-16.pdf>);
- Operation on private property as permitted by the Zoning Ordinance (permitted in zones CD4, CD5, GB, GW, B, CD4-W, OR, I, WI);
- Operation as part of a special event (such as the Red Hook festival); and
- As part of the City's licensing requirements (further itemized below), additional restrictions on location are also in effect: Not within 1,000' of a school (one hour before and after start/dismissal hours); not within 1,000' of a hospital, not within 50' of a public assembly building while in use, and not in front of the North Church.

Regardless of location, in order to operate the City requires all food trucks to:

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<sup>1</sup> We did not address push carts or pre-prepared canteen trucks, as they are regulated somewhat differently, and did not seem to be part of the question at hand.



- a) Receive a **Mobile Food Service Permit** (permit fee \$200) from the Health Department. Key performance measures of this permit include that the units: a) operate out of a licensed, inspected commissary and receive daily service, when operating, at the designated commissary, and b) all equipment must be manufactured by a licensed manufacturer and National Sanitation Foundation (NSF) or equivalent certified with the required hand sinks. No aftermarket alterations or home-built equipment shall be permitted.

[Temporary event/food permits allow food truck vending under somewhat different regulations.]

- b) Receive a **Vendor’s License** from the City Clerk. Requirements of this license include payment of a fee of \$250, proof of an insurance policy (combined single limit of \$1,000,000) naming the City as an additional insured, and compliance with a variety of rules pertaining to public safety, egress, traffic and circulation, cleanliness, trash removal, and noise.

## 2: City’s 2010 Ordinance Revisions

In 2010, the City considered how to regulate food trucks in the downtown. Deliberation concerning appropriate locations was conducted by the Parking and Traffic Safety Committee, while internal administrative procedures focused on providing equal opportunities for bidders, establishing minimum pricing that correlated to the impact of lost parking revenues. In addition, input from the downtown business community urged consideration of potential impacts to “bricks and mortar” establishments, invoking the need to fairly balance all interests.

The resulting ordinance revisions amended Section 6.1307 of Chapter 6 to allow for vending from three parking spaces downtown as recommended by the Parking & Traffic Safety Committee, which is presently limited to two spaces – one on State (occupied by Clyde’s Cupcakes) and one on Hanover (currently vacant).

## 3: Current Considerations

City staff had several observations in response to the question “Why doesn’t the City attract more food trucks?”

- The **Health Department’s requirements** (e.g. NFS-certified units/equipment, licensed commissary relationship, restroom availability for truck employees) may deter many vendors from locating here. However, public health and safety concerns underlie these rules, and the City does not have the resources to otherwise ensure that prospective mobile food vendors are adequately addressing these primary concerns. In addition, attendees of the annual Red Hook food truck event have commented that trucks at the event are notably clean, and well run. There are currently four licensed food trucks that operate within the City: Clyde’s Cupcakes, Sandwich Kings, Kona Ice of the Seacoast, and Northeast Ice Cream. The Health Department does not recommend changing its requirements at this time.

The Health Department does note, however, that some churches have licensed commercial kitchens and some may be able to become licensed, to act as commissaries for food trucks. A full assessment of church kitchens to determine if they are licensable and if the churches are interested in pursuing licensing is recommended.

- With regard to identifying additional locations for food truck operation, we noted that the Zoning Ordinance **allows private properties** to host trucks, which may not be evident to prospective vendors. We speculated that appropriate areas might either be within reasonable walking distance of popular City destinations, or might have excess available parking and also be in a location that experiences frequent visitation. For example, these could include: large employer sites along Borthwick Avenue (Liberty Mutual, Portsmouth Hospital – assuming the 1000’ distance from a hospital prohibition is removed), the Hannaford lot on Islington, or Church parking lots when services are not occurring. Since the use is permitted, owners would simply need to review their existing and proposed site plans with the Planning Department to ensure/achieve zoning compliance. We recommend the City **develop a guidance document/web site** (see Boston’s <https://www.boston.gov/departments/small-business-development/how-get-food-truck-permit>) to assist owners and truck operators in locating here. The Health Department, working in conjunction with the City Clerk and Planning Department, will pursue this objective.
- The City can further consider if it may be appropriate to **allow trucks to operate on City properties in addition to the existing street parking spaces**. Underused municipal parking areas could be targeted: for example, the lower City Hall lot might be a good location on Sundays when it is not in heavy use (see examples: <http://www.crystalcity.org/do/food-truck-thursday5>; <https://www.boston.gov/departments/small-business-development/how-food-truck-licensing-works>); summer Sundays at the Library/Middle School lot, when the Library is closed, the Parrot Avenue lot on weekends when the Courthouse is closed, on Parrot Avenue on the weekend, on Vaughn Mall, etc. If the Council were interested in examining this further, it could request the Parking and Traffic Safety Committee and/or the Department of Public Works to make a recommendation.
- We observed that the City’s procedures with regard to licensing and permitting are not tailored to facilitate ease of use. Chapter 6 applies to all types of vendors, and upon review of sample ordinances from other cities, it may be worthwhile to consider **isolating food trucks into a distinct section of the ordinance** to streamline regulations and procedures. (Attached is an example from Chapel Hill, NC.) If the Council agreed, this could be referred to the Legal Department for drafting.
- With regard to the City’s allowing food trucks to use downtown parking spaces, we note that while Clyde’s has enjoyed two years of success in its location, the vacant Hanover space may indicate a need to **revise our existing procedures** to promote another success. Ideas include: a) lowering the minimum bid fee, b) changing to a flat rate “first come-first served” lottery process in lieu of an annual bid, c) allowing for more flexible use of the space (e.g. shifts/weekly rates, day of the week occupancy, etc.) than seasonal licensing provides, and d) allowing an extension beyond the identified season to enable year-round use. If desired, simple changes to Section 6.1307 can be drafted alongside a new RFP/bid document.



# CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney – 603-610-7204 (Direct Dial)  
Suzanne M. Woodland, Deputy City Attorney – 603-610-7240 (Direct Dial)  
Kathleen M. Dwyer, Assistant City Attorney – 603-498-2126 (Direct Dial)  
Jane M. Ferrini, Assistant City Attorney – 603-610-7256 (Direct Dial)

September 1, 2016

Construction & General Labor  
c/o Local 976 AFL-CIO  
PO Box 4119  
Portsmouth, NH 03802

**RE: 155 West Road  
Conversion of West Road Service Road into City Street**

To Whom It May Concern,

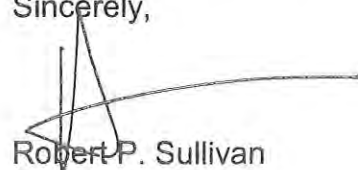
The City is exploring the concept of converting the West Road service road as shown on the attached plan into a City street. In order for that to happen the City would need to acquire from you by deed the right to construct and maintain a City street in the location shown on the plan where the private service road now exists. It would be the City's expectation that the method by which this would occur would be that a document similar to a deed would be prepared for your signature and that of any other persons or entities holding an interest in your property, such as a financing institution.

If all of the parties owning the land underlying the proposed new City street were to sign such documentation for recording in the Registry of Deeds, the City would then be able to accept the private road as a City Street. The decision would be made by the City Council. If any party owning the land underlying the proposed street did not agree to this arrangement, the process could not be commenced in the proposed manner.

There are a number of ways in which City streets can be created, but the process described above has been used before in Portsmouth and seems the most direct way to bring about the result of creating a City street where a private right-of-way now exists.

Please check the box below which reflects your view of the City creating a public street as described above and return this letter by mail or e-mail to this office.

Sincerely,

  
Robert P. Sullivan  
City Attorney

Page Two

September 1, 2016

**RE: 155 West Road**

**Conversion of West Road Service Road into City Street**

Agree to this proposal as outlined above this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Do not agree to this proposal as outlined above this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

**Construction & General Labor  
c/o Local 976 AFL-CIO**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

RPS\rao

enclosure

cc: John P. Bohenko, City Manager  
Peter H. Rice, Public Works Director



Service Road Property Abutters

1 inch = 190 feet



## **ACTION ITEMS**

### **PARKING and TRAFFIC SAFETY COMMITTEE MEETING**

8:00 A.M. – October 6, 2016  
City Hall – Eileen Dondero Foley Council Chambers

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**MEMBERS PRESENT:** Brad Lown, Chairman; Nancy Colbert Puff, Deputy City Manager; Peter Rice, Public Works Director; James Heinz, Deputy Fire Chief; Frank Warchol, Police Captain; Ted Gray, Member; Ronald Cypher, Member; Harold Whitehouse, Member; Shari Donnermeyer, Member; Mary Lou McElwain, Alternate Member

**ALSO PRESENT:** Eric Eby, Parking and Transportation Engineer  
Joey Giordano, Parking Manager  
Juliet Walker, Assistant Planning Director

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**Action Items requiring an immediate ordinance during the next Council meeting:**  
None

**Temporary Action Items requiring an ordinance during the annual omnibus:**  
None

1. Accepted and placed on file the minutes of the Parking and Traffic Safety Committee Meeting held on August 4, 2016.
2. Accepted and placed on file two Financial Reports: September 2016 and October 2016.
3. Public Comment – Eight Speakers: Rick Condon, Dave Palumbo, Judy Miller, Barbara Destefano, Terry Ann Boucher, Denise Courier, Mark Allinson, Bruce Osborn
4. Presentation:  
Middle Street bike lane project by Juliet Walker.

Public Comment – Four Speakers: Charles Griffin, Rick Becksted, Jonathan Sandberg, Peter Gerrish

5. (VII.A.) – **Action Item:** 43 Whidden Street, driveway permit application by Greg Mahanna. – **VOTED** to refer action item to staff and report back next month.
6. (VII.B.) **Action Item:** Portwalk Place, valet parking at Marriott Residence Inn. Application submitted by Parade Residence Hotel, LLC. – **VOTED** to delegate the authority to make final approval on the valet agreement to the Public Works Director and City Attorney.
7. (VII.C.) **Action Item:** Portwalk Place, valet parking at Hampton Inn. Application submitted by Portwalk HI, LLC. – **VOTED** to delegate the authority to make final approval on the valet agreement to the Public Works Director and City Attorney.
8. (VII.D.) **Action Item:** Echo Avenue, neighborhood petition requesting signs to address speeding concerns. Dave Palumbo and Bruce Osborn – **VOTED** to direct staff to report back on potential enhancements to the area.
9. (VII.E.) **Action Item:** Bow Street and Market Street intersection, request for police officer to direct traffic while Sarah Mildred Long Bridge is closed, by Frank Breen. – **VOTED** to refer to Police Department for report back.
10. (VII.F.) **Action Item:** Parking space striping outside of downtown, by Mark DeLorenzo. – **VOTED** to refer to staff for report back.
11. (VII.G.) **Action Item:** 15 minute parking spaces, request for review of their functionality and appropriateness, by Councilor Cyr. – **VOTED** to refer to staff for report back at the November meeting.
12. (VIII.A.) **Action Item:** Bartlett Street and Thornton Street intersection, concern regarding STOP sign compliance, by Randy Leach. Staff to report back on findings.
13. (VIII.B.) **Action Item:** Pleasant Street motorcycle parking spaces. Concern with current parking fee requirements during trial period, by Marc Stettner. – Staff to continue monitoring use and occupancy of spaces during the trial.
14. Informational –
  - A. Neighborhood Traffic Calming program update:
    1. Elwyn Road sidewalk request
    2. Aldrich Road update
    3. Radar speed signs update
    4. Eliminating center lines on selected roads

**VOTED** to table presentation to next month.



- B. Quarterly accident report for 07/27/16 – 09/27/16
- C. Islington Street/Albany Street temporary crosswalk project update  
**VOTED** to leave the pilot project in place until the end of October 2016.
- D. Islington Street corridor project public meeting scheduled for October 19

15. Public Comment Session – One speaker: Rick Becksted

16. Adjournment – At 10:04 a.m., **voted** to adjourn.

Respectfully submitted by:

Amy Chastain  
Secretary to the Committee

## MEETING MINUTES

### **PARKING and TRAFFIC SAFETY COMMITTEE MEETING**

8:00 A.M. – October 6, 2016  
City Hall – Eileen Dondero Foley Council Chambers

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#### I. CALL TO ORDER:

Chairman Lown called the meeting to order at 8:00 a.m.

#### II. ROLL CALL:

##### **Members Present:**

Chairman, Brad Lown  
Deputy City Manager, Nancy Colbert Puff  
Public Works Director, Peter Rice  
Deputy Fire Chief, James Heinz  
Police Captain, Frank Warchol  
Member, Ted Gray  
Member, Harold Whitehouse  
Member, Ronald Cypher  
Member, Shari Donnermeyer  
Alternate Member, Mary Lou McElwain

##### **Staff Advisors Present:**

Parking and Transportation Engineer, Eric Eby  
Parking Manager, Joey Giordano  
Assistant Planning Director, Juliet Walker

#### III. ACCEPTANCE OF THE MINUTES:

Ted Gray motioned to accept the August 4, 2016, meeting minutes.  
Harold Whitehouse seconded.

**Motion passed 9-0.**

#### IV. FINANCIAL REPORT:

Harold Whitehouse motioned to accept the financial reports dated September 2016 and October 2016. Ted Gray seconded.

**Motion passed 9-0.**

## V. PUBLIC COMMENT:

Rick Condon supported the temporary crosswalk on Islington Street at Albany Street, but expressed concern about traffic impacts and the narrowing of Islington Street.

Dave Palumbo spoke about action item (VII.D.), the Echo Avenue neighborhood petition. He stated the major concerns are traffic speed, pedestrian safety, handicapped resident safety, and signage. The neighborhood residents have noticed an influx of vehicles on Echo Avenue. He stated that GPS units are directing traffic into the neighborhood. He expressed concern for the handicapped residents of Betty's Dream.

Mr. Palumbo provided detailed photographs of the neighborhood, pedestrian traffic in the neighborhood, and signage posted in the area.

Recommendations:

The residents would like the City to do the following:

- Contact GPS companies to direct traffic off Echo Avenue.
- Signage on Echo Avenue at Woodbury Avenue and Arthur F. Brady Drive (bypass road) to indicate wheelchairs and children are present.
- Remove the sign on Arthur F. Brady Drive directing traffic onto Echo Avenue
- Sign on Brady Drive to indicate access to Portsmouth/Woodbury Avenue shopping areas.
- Install a speed sign on Echo Avenue at Woodbury Avenue.
- Repair the utility patch on Woodlawn Circle.

Judy Miller, representing the Harbour Hill Condominium Association, submitted a letter and photos to the Committee. The association is requesting the crosswalk at Hanover Street and Fleet Street be reinstalled to increase pedestrian safety prior to the High Hanover project in 2017.

Barbara Destefano expressed support for the crosswalk reinstallation at Hanover Street and Fleet Street.

Terry Ann Boucher supported the Echo Avenue neighborhood association's recommendations. She expressed concern for handicapped pedestrian safety and the need for sidewalks in the neighborhood. She also expressed concerns regarding sidewalk conditions on Woodbury Avenue.

Denise Courier expressed concern for handicapped pedestrians safely traveling on Echo Avenue to Woodbury Avenue.

Mark Allinson questioned why vehicles are allowed to exit from 1900 Lafayette Road. He stated this is the only business in the area granted this option. He expressed concern regarding compliance and safety.

Bruce Osborn requested the City contact the GPS companies that are routing vehicles on Echo Avenue from the Spaulding Turnpike. He expressed concern for neighborhood residents' safety. Mr. Osborn was a representative of the Echo Avenue neighborhood.

## VI. PRESENTATION:

A. Middle Street bike lane project – Juliet Walker, Assistant Planning Director, presented the proposed Middle Street / Lafayette Road Bicycle Lane plans to the Committee. The presentation is available on the City's website under Meetings Calendar 2016, October 6, 2016, Parking and Traffic Safety Committee.

The purpose for the presentation was to solicit feedback from the Committee and the public on the design. Comments collected from the Committee and public will be forwarded to the New Hampshire Department of Transportation (NHDOT) as part of the compliance and federal funding requirements.

The presentation included information on the project background, impacts, funding and design. The project length is 1.3 miles, extending from Andrew Jarvis Drive to Congress Street. Juliet Walker stated the project is primarily a striping, signage and curb ramp project.

The project purpose included:

- Improve safety for cyclists and pedestrians
- Expand connectivity
- Provide bicycle route utilized by all ages
- Enhance pedestrian crossings
- Comply with federal funding requirements and documentation of impacted resources

After conducting parking counts, a demonstration project, and reviewing public comments, it was concluded that protected and buffered bike lanes are the appropriate design choice. A buffered bike lane is defined as: one with additional lateral separation from motor vehicle travel ways. A protected bike lane is defined as: one with vertical separation (parked cars, flexible bollards, plantings, or curbing) from motor vehicle travel ways. The design benefits include:

- Separation from motor vehicle traffic
- Bicyclist traveling in the same direction as motor vehicles traffic
- Minimal impact on historic resources

Juliet Walker presented detailed drawings of each section of the project. She noted that since the last presentation, the major design change was ending the protected and buffered bike lanes on Middle Street (at Highland Street and Cabot Street). Shared lane markings would continue on Middle Street to the downtown. No parking restrictions would occur north of Cabot Street and Highland Street.

Next steps in the project include: final engineering design completed in fall/winter of 2016, final NHDOT Notice to Proceed, bid for construction, and a construction start date in spring/summer 2017.

Harold Whitehouse asked about the amount spent to date on the project. Juliet Walker stated approximately \$40,000. Mr. Whitehouse expressed concern regarding the roadway alteration of Route 1 and asked if federal agencies were contacted. He requested copies of documentation if contacted. He stated he would only support the project if a letter from the Secretary of Transportation in Washington D.C. was provided.

Juliet Walker clarified that the project is in the City's jurisdiction. She stated since federal funding was involved, NHDOT must comply with Federal Highway Administration (FHWA) standards and regulations.

Mary Lou McElwain expressed concern for pedestrian and bicycle safety on the south side of Lafayette Road and the extended area. Juliet Walker stated there is a project to improve the intersection at Andrew Jarvis Drive. NHDOT is preparing to do a major Route 1 corridor project, and the City is working with them to include pedestrian and bicycle improvements as part of the project.

#### PUBLIC COMMENTS:

Charles Griffin opposed the project on Lafayette Road between the intersections of South Street and Andrew Jarvis Drive. He stated he has traveled the South Street and Lafayette Road intersection three days a week for the past five years, and noticed very few high school students riding bicycles. Mr. Griffin said that traffic at the intersection in the morning is gridlocked. He provided photos to the Committee illustrating traffic congestion. He expressed concern about introducing bicycle traffic to the intersection. He is also concerned about altering the roadway to implement the protected and buffered bike lanes, the effect to emergency responders, non-student bicyclist safety, and the character of Lafayette Road.

Rick Becksted opposed the project on Lafayette Road between the intersections of South Street and Andrew Jarvis Drive. He stated he makes multiple trips to the high school and does not see a need for bike lanes. However, he expressed support for bicycles and discussed widening sidewalks for shared use. He noted parking concerns on Highland Street and the neighboring areas.

Jonathan Sandberg expressed support for a protected bike lane from Andrew Jarvis Drive to Richards Avenue. He discussed the 2013 Portsmouth Listens Study Session, the support of multi-modal transportation systems, and the Complete Streets program. He encouraged the Committee to support the project and extend it to Richards Avenue. He stated it would encourage more walking and bicycling and combat the parking and traffic problems in the downtown. Mr. Sandberg discussed the importance of including the section on Middle Street from Highland Street to Richards Avenue and creating shared parking in the neighborhood.

Peter Gerrish, a senior at Portsmouth High School, expressed support for the project. He read a support letter from Principal Mary Lyons. He presented the Committee with a petition signed by 247 students and teachers. He stated the endorsement was supported at every grade level through all class councils.

## VII. NEW BUSINESS:

A. Whidden Street, driveway permit application by Greg Mahanna – Chairman Lown stated a site visit was conducted on Tuesday, October 4, 2016. Eric Eby stated the application was received by the Department of Public Works. He stated it was forwarded to PTS because of the narrow roadway conditions, the need to review open space requirements, and setbacks. Additionally, an approval would remove one on-street parking space. Staff had no recommendation at this time.

Harold Whitehouse motioned to suspend the rules to allow for public comment. Ron Cypher seconded. **Voted 9-0, to suspend rules to allow for public comment.**

Greg Mahanna stated he is seeking approval for an 11' opening onto his property currently being used as a driveway. He stated the benefits of approving the permit included: removing two vehicles from the on-street parking and creating access for city and emergency vehicles. He stated he is not removing one on-street parking space, but removing two vehicles from on-street parking.

Public Works Director Rice motioned to refer the action item to staff and report back next month. Harold Whitehouse seconded.

Shari Donnermeyer supported approving the application. Ron Cypher expressed concern for backing out of area. Greg Mahanna described how he was able to exit with a two point turn. Ted Gray stated he observed that the proposed driveway area (grassy area) did not appear to have had vehicles parked on it. Greg Mahanna stated that vehicles had been parking in area for the last 9 months.

**Voted 9-0, to refer action item to staff and report back next month.**

B. Portwalk Place, valet parking at Marriott Residence Inn. Application submitted by Parade Residence Hotel, LLC. – Public Works Director Rice stated action items VII.B. and VII.C. were related. Both were part of the overall project closeout and bond release. He stated the function had been in place for approximately three years. It was part of a site approval process. He stated this action would formalize the licensing procedures.

Robert Sullivan, City Attorney, addressed the Committee. He stated in August 2016, the developer submitted proposed valet agreements (VII.B. and VII.C. locations), which he reviewed. He prepared a memorandum dated October 3, 2016 to the Parking and Traffic Safety Committee, comparing the Portwalk agreements to a “normal” valet agreement. Attorney

Sullivan discussed some of the comparisons. For example, the Portwalk valet agreements would be automatically renewed without approval by the PTS Committee.

Attorney Sullivan stated that all outstanding issues had been resolved with the developer, but the new language for the agreements had not been written. He recommended two options: delay the vote until next month when he would present completed valet agreements, or delegate the authority to make final approval to Public Works Director Rice (subject to his review).

Harold Whitehouse motioned to delegate the authority to make final approval on the valet agreements to the Public Works Director and City Attorney. Ron Cypher seconded. **Voted 9-0, to delegate the authority to make final approval on the valet agreements (VII.B. and VII.C.) to the Public Works Director and City Attorney.**

C. Portwalk Place, valet parking at Hampton Inn. Application submitted by Portwalk HI, LLC. – Action item vote included in VII.B.

D. Echo Avenue, neighborhood petition requesting signs to address speeding concerns. Dave Palumbo and Bruce Osborn. – Chairman Lown thanked the neighborhood representatives and speakers who participated during the public comment period.

Public Works Director Rice motioned to direct staff to report back on potential enhancements to the area. Harold Whitehouse seconded.

Public Works Director Rice stated that signage improvements could be made in the short term. Sidewalk improvements needed to be addressed as part of the Capital Improvements Plan (CIP). Harold Whitehouse expressed concern for Betty's Dream handicapped residents, who use wheelchairs on roadways when traveling to Woodbury Avenue. He asked about a policy requiring flags or reflectors on wheelchairs.

**Voted 9-0, to direct staff to report back on potential enhancements to the area.**

E. Bow Street and Market Street intersection, request for police officer to direct traffic while Sarah Mildred Long Bridge is closed, by Frank Breen. – Public Works Director Rice motioned to refer to Police Department for report back. Deputy City Manager, Nancy Colbert Puff seconded. **Voted 9-0, to refer to Police Department for report back.**

F. Parking space striping outside of downtown, by Mark DeLorenzo. – Public Works Director Rice motioned to refer to staff and report back. Shari Donnermeyer seconded. **Voted 9-0, to refer to staff for report back.**

G. 15 minute parking spaces, request for review of their functionality and appropriateness, by Councilor Cyr. – Harold Whitehouse motioned to refer to staff and report back at the November meeting. Ted Gray seconded. **Voted 9-0, to refer to staff for report back at the November meeting.**

Public Works Director Rice stated staff would review the 15 minute parking function as part of the modern parking environment.

#### VIII. OLD BUSINESS/ACTION ITEMS:

A. Bartlett Street and Thornton Street intersection, concern regarding STOP sign compliance, by Randy Leach. – Eric Eby stated that traffic cameras would be moved to the intersection to monitor activity after the Islington Street pilot project monitoring was completed. Staff to report back on findings.

B. Pleasant Street motorcycle parking spaces. Concern with current parking fee requirements during trial period, by Marc Stettner. – Eric Eby stated that traffic cameras would be used to monitor use during the pilot project. He stated preliminary data had shown that motorcycles were utilizing the designated parking spots because cars were parking in the other spots. Staff to continue monitoring use and occupancy of spaces during the trial.

Chairman Lown asked the Committee to consider moving the Informational Section to the next action item as requested by resident, Rick Becksted. Ted Gray motioned to suspend the rules. Public Works Director Rice seconded. **Voted 9-0, to suspend the rules to move the Informational Section to the next action item.**

#### IX. INFORMATIONAL

- A. Neighborhood Traffic Calming program update:
1. Elwyn Road sidewalk request
  2. Aldrich Road update
  3. Radar speed signs update
  4. Eliminating center lines on selected roads

Public Works Director Rice motioned to table Juliet Walker's presentation on neighborhood traffic calming until next month. Shari Donnermeyer seconded. **Voted 9-0, to table presentation to next month.**

- B. Quarterly accident report for 07/27/16 – 09/27/16

One bicycle accident was reported during the period. Mary Lou McElwain requested more information. Police Captain Warchol stated he would provide more detail on the next quarterly report.



C. Islington Street/Albany Street temporary crosswalk project update

Eric Eby stated that the temporary crosswalk is still in place and traffic cameras continue to monitor activity. He stated after reviewing the data, traffic backed up past the crosswalk several times during peak hours for brief periods. He stated the crosswalk provided a safer pedestrian crossing, and entrance and exit from the White Heron parking lot.

Public Works Director Rice motioned to leave the pilot project in place until the end of October 2016. Harold Whitehouse seconded.

Public Works Director Rice stated the data being collected is very valuable. Due to the number of pedestrians crossing at the location, he supported further review. He stated that the signal at Bartlett Street and Islington Street would be upgraded as part of a different project with preemption technology for emergency vehicles. Harold Whitehouse expressed support. Deputy Fire Chief Heinz noted that the Police Department does not have pre-emption on traffic signals.

**Voted 9-0, to leave the pilot project in place until the end of October 2016.**

D. Islington Street corridor project public meeting scheduled for October 19, 2016

Eric Eby stated this would be the second public meeting regarding the Islington Street Corridor Design Project. It is scheduled on Wednesday, October 19, at 6:30 p.m. in the Library's Levenson Room. VHB, the design consultant, would present preliminary design plans of Islington Street from Maplewood Avenue to the Route 1 Bypass.

X. PUBLIC COMMENT

Rick Becksted stated he had requested the Informational Section be moved because he wanted to hear more about the Neighborhood Traffic Calming program and discussions. He asked if solar powered traffic calming device signs had been researched. Mr. Becksted requested the Echo Avenue neighborhood issues and future issues be addressed: an 80-unit residential development has been proposed in the area.

Eric Eby stated four battery-powered signs had been ordered. Public Works Director Rice stated DPW staff would be responsible for sign maintenance.

XI. MISCELLANEOUS

ADJOURNMENT – At 10:04 a.m., voted to adjourn.

Respectfully submitted by:  
Amy Chastain  
Secretary of the Committee

## Against transparency

*Government officials' email should be private, just like their phone calls.*

*Updated by Matthew Yglesias · @mattyglesias · matt@vox.com · Sep 6, 2016, 8:30a*

TWEET

SHARE



Photo by Joe Raedle/Getty Images

“Can I give you a call?”

It’s the worst possible reply to an email, but one I receive all too often in the course of reporting. Phone calls are journalistically indispensable when you want to conduct an extended interview, but for a routine query or point of clarification, email is much, much better.

Besides which, like any self-respecting person born in the 1980s I hate phone calls.

The issue is that administration officials and other executive branch aides don’t want to leave a record of the conversation that might come to light one day. Not necessarily because they have anything scandalous to say. After all, we live in a world where something as banal as **Doug Band, a top Clinton Foundation aide, asking Huma Abedin, a top State Department aide, for a special diplomatic passport** for a hostage rescue trip to North Korea and being told he can’t have one can be spun as a scandal by a determined team of reporters and editors.

If Band had made a phone call instead of sending an email, Hillary Clinton would have been spared the bad — and totally unjustifiably so — news cycle she suffered last week. Which is why prudent staffers want to do basically everything, no matter how innocent, over the phone.

The issue is that while common sense sees email and phone calls as close substitutes, federal transparency law views them very differently. The relevant laws were written decades ago, in an era when the dichotomy between written words (memos and letters) and spoken words (phone calls and meetings) was much starker than it is today. And because they are written down, emails are treated like formal memos rather than like informal conversations. They are

archived, and if journalists or ideologically motivated activists want to get their hands on them, they can.

It's impossible to write about this issue in today's environment without thinking of Clinton's use of a private email account while serving as secretary of state. But while the question of whether she appropriately followed the existing laws is obviously important, so is the question of whether the laws make sense. And the answer is: no. Treating email as public by default rather than private like phone calls does not serve the public interest. Rather than public servants communicating with the best tool available for communication purposes, they're communicating with an arbitrary legal distinction in mind.

Under current law, if Bill Clinton wants to ask his wife to do something wildly inappropriate as a favor to one of his Clinton Foundation donors, all he has to do is ask her in person. But disclosure laws sit as a constant threat to the adoption and use of efficient communications tools. Your smartphone isn't primarily for making phone calls, but the stuff you do on your "phone" — communicating with other human beings in your life — is the social and economic equivalent of a phone call. It ought to be legally treated that way too.

Government secrecy can be, and in some ways is, out of control. But a private conversation to facilitate a frank exchange of ideas is not the same as a secret bombing campaign in Cambodia. We need to let public officials talk to each other — and to their professional contacts outside the government — in ways that are both honest and technologically modern.

## **Email isn't mail**

The idea that digital text communications are like memos — and should be disclosed as a kind of official government work product — is wrong, but it wasn't

crazy. After all, the pioneers of the email protocol themselves did seem to see it that way. It's called "electronic mail," not "chitchatting with text and emojis."

And the formal properties of the protocol deliberately imitate the formalisms of an interoffice memo from the postwar decades. The distinction between who a message is "to" versus who is merely receiving a carbon copy (or the dread blind carbon copy) has the sender playing the role of executive dictating a memo to his secretary who will type it up, make the copies, and see to the distribution.

From a modern standpoint it's a bit silly, but you can't blame the early emailers for not anticipating how it would be incorporated into the modern vernacular. After all, they couldn't anticipate the hardware *devices* modern people would use to email with. A message dashed off on a phone while riding the bus or a quick thumbs up reply clearly aren't digital versions of an old-time longhand letter.

Most email is informal and conversational, and over time digital communication has moved beyond email to mediums that are even better suited to the conversation approach. Messaging platforms — whether Apple's iMessage, Facebook's WhatsApp, Google's forthcoming Allo — and chat services like the office communication juggernaut Slack take the informal logic of email as it's actually used and improve upon its functionality.

The idea of "group chat" also conveys, much more accurately than the idea of "electronic mail" ever did, the basic purpose of these services.

The eerie silence of the modern newsroom compared with the din portrayed in *All The President's Men* is a cliché inside our industry. Instead of loud typewriters, modern journalists bang away at relatively quiet laptop keyboards. But a big part of it is that the routine chatter of the workplace has been replaced by a silent

cacophony of Slacks and DMs and Gchats — people communicating casually with words and images rather than with voices.

## **Input disclosure versus output disclosure**

One view, of course, is that if email is the new phone call and texting is the new talking, this is simply good news for government transparency. Back in the day, it might have been *desirable* to record and transcribe every single phone call and every meeting in every government office, but there was simply no way to make it happen. So sunshine activists mandated archiving and disclosure of what they could mandate — paper, basically — and let voices go unlogged as a concession to reality.

Digital storage is pretty cheap and easy, so maybe the next step in open government is ubiquitous surveillance of public servants paired with open access to the recordings.

As a journalist and an all-around curious person, I can't deny there's *something* appealing about this.

Historians, too, would surely love to know everything that President Obama and his top aides said to one another regarding budget negotiations with John Boehner rather than needing to rely on secondhand news accounts influenced by the inevitable demands of spin. By the same token, historians *surely* would wish that there were a complete and accurate record of what was said at the Constitutional Convention in 1787 that, instead, famously operated under a policy of anonymous discussions.

But we should be cautioned by James Madison's opinion that "no Constitution would ever have been adopted by the convention if the debates had been public."

His view, which seems sensible, is that public or recorded debates would have been simply exercises in position-taking rather than deliberation, with each delegate playing to his base back home rather than working toward a deal.

“Had the members committed themselves publicly at first, they would have afterwards supposed consistency required them to maintain their ground,” Madison wrote, “whereas by secret discussion no man felt himself obliged to retain his opinions any longer than he was satisfied of their propriety and truth, and was open to the force of argument.”

The example comes to me by way of Cass Sunstein, who formerly held a position as a top regulatory czar in Obama’s White House, and who **delivered a fascinating talk on the subject of government transparency** at a June 2016 Columbia symposium on the occasion of the anniversary of the Freedom of Information Act.

Sunstein asks us to distinguish between disclosure of the government’s *outputs* and disclosure of the government’s *inputs*. Output disclosure is something like the text of the Constitution or when the Obama administration had Medicare change decades of practice and begin publishing information about **what Medicare pays to hospitals and other health providers**.

Input disclosure would be something like the transcript of the debates at the Constitutional Convention or a detailed record of the arguments inside the Obama administration over whether to release the Medicare data. Sunstein’s argument is that it is a mistake to simply conflate the two ideas of disclosure under one broad heading of “transparency” when considerations around the two are very different.

## **Public officials need to have frank discussions**

The fundamental problem with input disclosure is that in addition to serving as a deterrent to misconduct, it serves as a deterrent to frankness and honesty.

There are a lot of things that colleagues might have good reason to say to one another in private that would nonetheless be very damaging if they went viral on Facebook:

- Healthy brainstorming processes often involve tossing out bad or half-baked ideas in order to stimulate thought and elevate better ones.
- A realistic survey of options may require a blunt assessment of the strengths and weaknesses of different members of the team or of outside groups that would be insulting if publicized.
- Policy decisions need to be made with political sustainability in mind, but part of making a politically sustainable policy decision is you don't come out and say you made the decision with politics in mind.
- Someone may want to describe an actual or potential problem in vivid terms to spur action, without wanting to provoke public panic or hysteria through public discussion.
- If a previously embarked-upon course of action isn't working, you may want to quietly change course rather than publicly admit failure.

Journalists are, of course, interested in learning about all such matters. But it's precisely because such things are genuinely interesting that making disclosure inevitable is risky.

Ex post facto disclosure of discussions whose participants didn't realize they would be disclosed would be fascinating and useful. But after a round or two of disclosure, the atmosphere would change. Instead of peeking in on a real



decision-making process, you would have every meeting dominated by the question “what will this look like on the home page of Politico?”

Rather than saying what they mean, participants will be saying what they want to be seen as saying. Actual decision-making will take on the flavor of a stage-managed press conference, where ideas are sanitized and no mistakes are confessed. Reality television doesn’t capture reality precisely because it’s *television*. The people on the show know they are on TV and they’re playing a part. The theory says that sunshine is the best disinfectant, but people also need a dark room to sleep in at night if they’re going to function properly.

### **When email is outlawed, only outlaws will email**

Right now, of course, face-to-face meetings and phone calls operate as that dark room where people can deliberate. Which is to say that instead of excessively harsh transparency, what we have in practice is routine, perfectly legal avoidance of transparency rules.

Visits to the White House are logged by the Secret Service, and the logs are released to the public. So if someone on the White House staff wants to do a meeting and they don't want it on the logs, he might sit down at the Pete’s Coffee on the other side of Pennsylvania Avenue instead. Instead of an email, you do a phone call.

For years, instead of an email from the official government account, you would sometimes get an email from the official’s private Gmail (in July 2016, the DC Circuit ruled that **FOIA applies to official use of unofficial email**, so people will presumably knock it off), but the more risk-averse federal personnel never did it in the first place.

All of which is to say that in a world of imperfect transparency, the main effect of mandatory transparency is to push people into workarounds. If you want to do something genuinely scandalous without leaving a record of it, you can almost certainly get away with it. If you want to be able to speak frankly in a non-scandalous manner that would nonetheless be problematic to see show up splashed out of context on Drudge Report, you need to bear some of the inconvenience of shifting to a verbal communications medium.

As courts continue to scrutinize off-label use of personal communications tools by government officials, and modern digital communications tools continue to worm their way into federal use, the wedge between how normal people communicate and how federal officials communicate will grow.

### **When disclosure is appropriate, FOIA isn't enough**

Even as current transparency measures do too much to force disclosure of public policy inputs, they are curiously inadequate for genuinely useful disclosure.

The FOIA process is grounded in a midcentury technological paradigm that made routine widespread information dissemination impractical. Information is disclosed on request to the requesting parties — which has turned it into a very slow, highly adversarial process that's primarily useful to people with an ax to grind. But the federal government is simply in possession of a lot of accurate information about what is going on in the United States — information that is broadly useful to have and that the government ought to be routinely publishing.

Of course, with certain topics — the unemployment rate, for example, or the weather forecast — this is longstanding practice. The Obama administration, as Sunstein explains, **has pushed further in this direction in useful ways:**

Disclosure often helps agencies to achieve some of their most important goals. In environmental policy, one of the most well-known examples is the Environmental Protection Agency's Toxic Release Inventory, which was created largely as a bookkeeping measure, designed to ensure that the federal government would have information about releases of toxic chemicals. To the surprise of many, the TRI has been a successful *regulatory* approach, because companies did not want to be listed as one of the “dirty dozen” (the worst polluters) in their states.

More recently, the Occupational Safety and Health Administration has taken a similar approach: It posts, very visibly on [osha.gov](http://osha.gov), information about recent deaths in American workplaces, with names of the companies where people died. To say the least, employers do not want their names to appear on that site.

But more could and should be done on this front.

Every agency should see routine publication of what it knows in useful formats as a core function, not a special occasion or something to be done reluctantly at the behest of investigative journalists.

**Erica Groshen**, the commissioner of the Bureau of Labor Statistics, **points out** that in some cases the government isn't even in the habit of sharing information with other parts of the government. Her agency is charged with obtaining and publishing a wide range of statistical information about employment and wages in the United States. It does this largely by relying on surveys that ask employers how many people they employ, and individuals about their demographic status and pay.

But other branches of the federal government — the parts that either actually collect taxes or hand out benefits to people — have much more complete and accurate information about who works for whom and what they are paid. But

even though the government collects this administrative data, statistical agencies are legally required to rely on less accurate surveys when informing the public. This is a boring, inside-baseball problem worlds removed from journalists' interest in gossipy snooping on official email, but **Groshen argues that it's substantively consequential:**

Improving access to government administrative data so that statistical agencies could have access to more data to produce more and better official statistics would improve productivity in three ways: reducing burdens on respondents, improving the values of government statistics, and (likely the largest, but hardest to measure) improving the business, policy and personal decisions (allocation, investment, etc,) in the economy.

For fairly obvious reasons, the government can't just publish every single thing it knows about everyone and everything. But the disclosure process could be greatly simplified. Information should either be held back for national security or privacy reasons, or else it should be published routinely. There's no good case for the current massive third status of information that piles up on servers to be coughed up reluctantly in response to an adversarial process.

## **Effective government beats transparent government**

Americans deserve a government that is effective, with agencies that do their jobs properly. Routine disclosure of what, exactly, those agencies are doing is part and parcel of ensuring effectiveness.

But so is allowing leaders and staff of government agencies to use modern and efficient communications tools. When anti-secrecy legislation was adopted in the 1960s, nobody was suggesting that public officials should never have meetings or talk things over in the hallway. Over time, technology has changed, and normal

modern-day people conduct a lot of discussions that in the past would have been verbal using text-based digital communications tools.

Insisting on treating all uses of these tools as if they were the equivalent of an official directive is conceptually mistaken and practically disastrous. It discourages officials from collaborating in the most efficient and effective way, creates incentives for evasion of existing legal standards, blurs the lines between security concerns and compliance with record-keeping laws, and over time casts a pall of impropriety over the very banal desire to be able to talk things over in private.

The desire to know what people are saying — or texting, or emailing, or chatting, or whatever — to each other is irresistible and understandable. If the information is available for disclosure, it will be disclosed. If it is disclosed, it will be written about. If it is written about, the stories will be read.

But while the press and the public are unquestionably interested in this stuff, it is fundamentally not in the public interest to routinely know about them. Officials who know their dialogue will be fodder for hot takes, and cable news segments will either avoid speaking honestly or else shift their conversations to non-disclosable media.

But there is nothing fundamentally wrong with the desire for private conversation — even among public officials. It's simply a reality of the modern world that much private conversation takes place through digitally transmitted text. Outside of the specific context of American politics, nobody thinks these messages should be treated socially or legally as the equivalent of official memos rather than phone calls or oral conversations. It's time to let common sense reign and let

government personnel communicate with each other through the medium of their choosing with a presumption of privacy.

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Wednesday, 28 May 2014

# 1787 Constitutional Convention: Why the Secrecy Rule?

Written by [Joe Wolverton, II, J.D.](#)

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and twenty-seven years ago this week, the important "business of May," as James Madison once described it, began in Philadelphia. Delegates from 12 of the 13 states gathered in the iconic building where other representatives boldly declared independence from the British empire a scant — though eventful — 11 years earlier.



The "grand experiment" undertaken by our Founding Fathers was to see if they, unlike so many similar would-be lawgivers of the past, could construct a constitution that would avoid contracting the various diseases that destroyed those historic bodies politic. Like the legendary Lycurgus of Sparta, so would James Madison, Alexander Hamilton, James Wilson, and the other 50 or so delegates each carefully study the forms of government of the ancient and modern confederacies, borrowing and adapting the best aspects of them and rejecting the worst.

Finally, on Tuesday, May 29, 1787, with the arrival of John Dickinson of Delaware and Elbridge Gerry of Massachusetts, there was the necessary seven-state quorum in the State House and the real work of revising the Articles of Confederation could begin.

First, however, the body was called upon to consider the secrecy rule proposed prior to the arrival of Dickinson and Gerry.

The secrecy provision mandated "That no copy be taken of any entry on the journal during the sitting of the House, without leave of the House. That nothing spoken in the House be printed, or otherwise published or communicated without leave."

In what may seem surprising to modern readers accustomed to calls for greater transparency in the goings on in government, there was near universal acknowledgment among the delegates of the need for the secrecy.

Two days before the rule was adopted, George Mason of Virginia wrote his son, saying:

It is expected our doors will be shut, and communications upon the business of the Convention be forbidden during its sitting. This, I think, myself, a proper precaution to prevent mistakes and misrepresentation until the business shall have been completed, when the whole may have a very different complexion from that in which the several crude and indigested parts might, in their first shape, appear if submitted to the public eye.

James Madison, the young, slight, sickly, and superbly prepared delegate from Virginia, sounded a very similar tone in a letter to his friend and neighbor — Thomas Jefferson. After voting in favor of the Secrecy Rule, Madison wrote, "It was thought expedient, in order to secure unbiased discussion within doors and to prevent misconceptions and misconstructions without, to establish some rules of caution, which will for no short time restrain even a confidential communication of our proceeding."

Jefferson, living in Paris, was not among those approving of the suppression of information, however. In a letter to John Adams in London, Jefferson decried the rule, saying, "I am sorry they began their deliberations by so abominable a precedent as that of tying of the tongues of their members. Nothing can justify this example but the innocence of their intentions and ignorance of the value of public discussions."

Luther Martin, a representative from Maryland, believed that the mandate of silence violated the terms of the commission granted him by the state legislature. In a letter to that body, Martin criticized the rule:

So far did this rule extend that we were thoroughly prevented from corresponding with gentlemen in the different states upon the subjects under our discussion — a circumstance, sir, which I confess I greatly regretted. I had no idea that all the wisdom, integrity and virtue of this State or of others, were centered in the Convention. I wished to have corresponded freely and confidentially with eminent characters in my own and other states — not implicitly to be dictated by them, but to give their sentiments due weight and consideration. So extremely solicitous were they that their proceedings should not transpire, that the members were prohibited even from taking copies of resolutions on which the Convention were deliberating, or extracts of any kind from the Journals, without formally moving for and obtain permission, by a vote of the Convention for that purpose.

There is something so contrary to our contemporary understanding of how the work of government should be carried out, particularly something as significant as the consideration of amendments to the Constitution, that Martin's description of the strength of the seal of silence sounds unnecessary, unwise, and unacceptable.

Perhaps the true reason for the imposition of the secrecy rule was revealed in a story told years later by Jared Sparks, reporting on a conversation he had with Madison in 1830. Sparks claims Madison told him:

Opinions were so various and at first so crude that it was necessary they should be long debated before any uniform system of opinion could be formed. Meantime, the minds of the members were changing and much was to be gained by a yielding and accommodating spirit. Had the members committed themselves publicly at first, they would have afterwards supposed consistency required them to retain their ground, whereas by secret discussion, no man felt himself obliged to retain his opinions any longer than he was satisfied of their propriety and truth and was open to argument.

Mr. Madison thinks no Constitution would ever have been adopted by the Convention if the debates had been public.

There's the rub. You see, on the same day that the secrecy rule was approved by the convention, a much more radical proposal was introduced by one of the leading delegates from one of the most populous states, a proposal that would forever change the proceedings of the convention and the history of the United States.

Thirty-three years old and already governor of the Old Dominion, standing nearly six feet tall and possessed of a magnetic air of aristocracy and erudition, Virginia's Edmund Randolph rose and, in the words of James Madison, "opened the main business."

After spending the previous day hammering out the rules that would govern the convention ("this was an age of formal manners," observed Catherine Drinker Bowen), the delegates were ready to hit the ground running, revising — they thought — the Articles of Confederation.

Randolph and his Virginia colleagues had another idea, however. In consultations at the Indian Queen pub held prior to the opening of the "main business," Randolph and his fellow Virginia delegates received from James Madison a draft of a plan of a federal government (the Virginia Plan) that scrapped the Articles altogether, replacing it with Madison's vision.

Within the 15 resolutions of the Virginia Plan, a new national government was proposed. A government of three branches — legislative, executive, and judicial — was laid out.



When the Constitutional Convention (not a term any of the 55 or so delegates who attended that meeting would have used to describe it, by the way) began in 1787, the document known as the Articles of Confederation was the constitution of the United States. Article XIII of that constitution mandated that, regarding the changing of the Articles: "Nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State."

When the proceedings got underway in May 1787, that legally binding constitutional requirement was completely ignored. From the moment Edmund Randolph stood and proposed what was known as the "Virginia Plan," the Constitutional Convention of 1787 became a "runaway convention."

Furthermore, there was yet another provision of the Articles of Confederation requiring unanimity in any amendment or change made to that document. Again, in Philadelphia, that provision was not only disregarded, but was completely replaced, eventually, by Article VII of the Constitution created at the convention.

Article VII of our current Constitution reads, "The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same."

That's quite a bit different. With the approval of that new provision, the unanimity rule and the constitution were replaced. What began with a bang ended with a whimper. This is thanks, in no small part, to the secrecy rule.

It is impossible to know what final form the Constitution would have taken — if any — had the press and the public been given access or information. History is not typically kind to secrets, particularly those that throw out constitutions and create from whole cloth new governments.

We were undoubtedly lucky (blessed by God) in the outcome of the runaway convention of 1787. The million-dollar question we face now is: Would we be so lucky again?

Not likely. As I've indicated in other articles, there are scores of socialist organizations slaving at the thought of getting their hands on the Constitution and making it over into something we wouldn't recognize. These groups have adopted Article V as the means to that end — an Article V convention of the states.

There is nothing in Article V limiting the power of a convention called under its authority. Think of the ramifications of a convention called to change the Constitution — a convention without legal limits on its power.

Of course, proponents of this second constitutional convention claim that the gathering they support would not create a new constitution.

That's not the point. The point is that an Article V convention *could* create a new constitution, just as the constitutional convention in Philadelphia did in 1787.



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## Output Transparency vs. Input Transparency

Cass R. Sunstein\*

### Abstract

*Government can be transparent about its “outputs”: its regulations and its policies, its findings about air and water quality, its analysis of costs and benefits, its assessment of the risks associated with cigarette smoking, distracted driving, infectious diseases, and silica in the workplace. It can also be transparent about its “inputs”: about who, within government, said what to whom, and when, and why. The argument for output transparency is often very strong, because members of the public can receive information that can help them in their daily lives, and because output transparency can improve the performance of both public and private institutions. Where the public stands to benefit, government should be disclosing outputs even without a formal request under the Freedom of Information Act. In fact it should be doing that far more than it now does. The argument for input transparency is different and often weaker, because the benefits of disclosure can be low and the costs can be high. There is good reason for a large increase in output transparency -- and for caution about input transparency.*

It was . . . best for the convention for forming the Constitution to sit with closed doors, because opinions were so various and at first so crude that it was necessary they should be long debated before any uniform system of opinion could be formed. Meantime the minds of the members were changing, and much was to be gained by a yielding and accommodating spirit. Had the members committed themselves publicly at first, they would have afterwards supposed consistency required them to maintain their ground, whereas by secret discussion

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\* Robert Walmsley University Professor, Harvard University. From 2009 to 2012, the author served in the Obama administration as Administrator of the Office of Information and Regulatory Affairs, and was involved in some of the matters discussed in this essay. The author is grateful above all to Larry Summers for many valuable discussions of the topic here; we are planning to write a joint essay, elaborating the basic argument; he deserves no blame for mistakes in my exposition here. The author is also grateful to David Pozen, Michael Schudson, and participants in a superb symposium held in June 2016 at Columbia University, in honor of the fiftieth anniversary of the Freedom of Information Act. Pozen and Schudson expect that the papers at that symposium, including this essay, will be published in book form; Pozen in particular deserves thanks for many valuable comments and suggestions. This essay is a written version of a keynote address for the symposium, and readers are asked to make allowances for a written version of what was originally an informal oral presentation.

no man felt himself obliged to retain his opinions any longer than he was satisfied of their propriety and truth, and was open to the force of argument. . . . No Constitution would ever have been adopted by the convention if the debates had been public.

■ James Madison

## I. Outputs and Inputs

There is a distinction between two kinds of transparency: output transparency and input transparency. Suppose that the Department of Transportation has completed a detailed study of what kinds of policies help to reduce deaths on the highways, or that the Department of Labor has produced an analysis of the health risks associated with exposure to silica in the workplace. Or suppose that the Environmental Protection Agency produces a regulation to curtail greenhouse gas emissions from motor vehicles, or adopts a policy about when it will bring enforcement actions against those who violate its water quality regulations. All these are outputs.

The government might also become aware of certain *facts* – for example, the level of inflation in European nations, the number of people who have died in federal prisons, the apparent plans of terrorist organizations, or levels of crime and air pollution in Los Angeles and Chicago. For the most part, facts should also be seen as outputs, at least if they are a product of some kind of process of information acquisition.

Now suppose that officials within the Department of Energy and the Environmental Protection Agency staffs have exchanged views about what form a greenhouse regulation should take, or that political appointees within the Department of Labor have had heated debates about the risks associated with silica in the workplace, and about how those risks are best handled. The various views are inputs.

To be sure, there are intermediate cases. The EPA might conclude that a substance is carcinogenic, and in a sense that conclusion is an output, but it might also be an input into a subsequent regulatory judgment. The Department of Transportation might reach certain conclusions about the environmental effects of allowing a highway to be built, which seem to be an output, but those conclusions might be an input into the decision whether to allow the highway to be built. The National Environmental Policy Act can be seen as a requirement that agencies disclose outputs, in the form of judgments about environmental effects -- but those outputs are, by law, mere inputs into ultimate decisions about what to do. Some outputs are inputs, and in the abstract, it would be possible to characterize them as one or the other, or as both. As we shall see, the appropriate characterization depends in part on whether and how the public would benefit from disclosure.

Acknowledging the existence of hard intermediate cases, I offer two claims here. The first is that for outputs, the argument on behalf of transparency is often exceptionally strong. If the government has information about levels of crime in Boise, about water quality in Flint, Michigan, about security lines at LaGuardia Airport, about the hazards associated with certain

toys, or about the effects of driverless cars, it should usually disclose that information – certainly on request, and if people stand to gain from it, even without request. (The latter point is especially important.) In all of these cases, the benefits of transparency are significant. Sometimes members of the public can use the information in their daily lives, and output transparency can promote accountability and therefore increase transparency. Most of the time, the costs of output transparency are trivial. The U.S. government should offer much more in the way of output transparency. In particular, it should make outputs freely available to the public as a matter of course -- at least if the public could or would benefit from them, and unless there is a particular reason why it needs to remain confidential.

As James Madison's remarks on the Constitutional Convention make clear, input transparency is a much more complicated matter, because the costs of disclosure are often high, and because the benefits may be low, and in any case they are qualitatively different from those that justify output transparency. There are strong reasons to protect processes of internal deliberation, above all to ensure openness, candor, and trust. In addition, it is often unclear that the public would gain much from seeing inputs, not least because of their massive volume (and usual irrelevance to anything that matters). Often the public would gain little or nothing (except perhaps something like gossip). Another way to put the point is that while those who seek to attract eyeballs or to embarrass their political opponents often like input transparency, the public usually does not much benefit from it.

To be sure, transparency about inputs can be informative, and inputs may have keen historical interest. If the public learns that the Deputy Secretary of Transportation had a different view from that of the Secretary on the content of a fuel economy regulation, it knows something; internal disagreement paints a different picture from internal unanimity. But how much, exactly, does the public learn, and why is it important for the public to learn it? It should be acknowledged that in some cases, input transparency is a good idea, especially under circumstances of corruption (or something like it) and when relevant inputs have genuine historic importance (and when their disclosure can reduce mistakes). Nations need catalogues. But the argument for input transparency is much different from the argument for output transparency, and it often stands on weaker ground.

It should be clear from these remarks that my approach to this topic is insistently and unabashedly *welfarist*: What are the benefits of transparency and what are the costs? It is true that the benefits and the costs may not be easy to quantify, but some kind of assessment of both is, I suggest, indispensable to an evaluation of when transparency is most and least necessary. For those who are not comfortable with talk of costs and benefits in this context, it might be useful to understand those terms not as an effort not to create some kind of arithmetic straightjacket, but to signal the importance of asking concrete questions about the human consequences of competing approaches. At least for difficult problems, those questions are (I suggest) far more productive than abstractions about "legitimacy" and "the right to know."

A clarification before we begin: I am speaking here about principle, not about the appropriate interpretation of the Freedom of Information Act or about possible amendments to the statute. One of the virtues of the developing case law, and of the most illuminating debates over amendment, is that they tend to be particularistic: They involve situations that are both

specific and highly diverse, complicating broad pronouncements. Here as elsewhere, general propositions do not decide concrete questions. It is easy to find examples that confound my categories. But here as elsewhere, categories can provide useful orientation, or at least that is my hope here.

## II. Output Transparency

### A. Of Usable Information and Sunlight

1. *An instructive finding.* Begin with the remarkable finding, by the economist Amartya Sen, that in the history of the world, there has *never* been a famine in a system with a democratic press and free elections.<sup>1</sup> Sen's starting point here, which he demonstrates empirically, is that famines are a social product, not an inevitable product of scarcity of food. Whether there will be a famine, as opposed to a mere shortage, depends on people's "entitlements," that is, what they are able to obtain. Even when food is limited, entitlements can be allocated in such a way as to ensure that no one will starve.

But when will a government take the necessary steps to prevent starvation? The answer depends on that government's own incentives. When there is a democratic system with free speech and a free press, the government faces a great deal of pressure to ensure that people generally have access to food. And when officials are thus pressured, they respond. But a system without a democratic press or free elections is likely to enable government to escape public accountability and hence not to respond to famines. Government officials will not be exposed, nor will they be at risk of losing their jobs.

Here, then, is a large lesson about the relationship between a well-functioning system of free expression, disclosure of relevant information (outputs), and citizens' well-being. Free speech and freedom of information are not mere luxuries or tastes of members of the most educated classes. On the contrary, they increase the likelihood that government will actually serve people's interests. This lesson suggests some of the virtues, not only for liberty but also for economic goals, of having freedom of speech and freedom of information.<sup>1</sup>

2. *Obama, mostly - and navigability.* In recent years, most of the most prominent transparency initiatives have involved outputs. A revealing example involves the GPS. In 1993, President Clinton unlocked the data that was ultimately used to make the GPS device a familiar part of everyday life. Its availability has helped countless people, often in profound ways; it has even saved lives. A GPS device makes life more *navigable* (literally). If we think about navigability as a more general idea, we can see the value of disclosure of many outputs. Information about safety seats in cars, crime, air and water quality, and much more can be seen as akin to GPS devices, writ large: They tell people how to go in the directions they want.

For all of its years, the Obama Administration made transparency a major priority. (I am insisting on that point while fully acknowledging, and bracketing, the many controversies during

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<sup>1</sup> See AMARTYA SEN, *POVERTY AND FAMINES* (1981).

<sup>2</sup> See AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (1999).

the Obama presidency over potential tradeoffs between transparency and other values.) The priority was signaled by an early and defining presidential memorandum, dedicated specifically to the Freedom of Information Act. (See Appendix.) The memorandum establishes “a clear presumption: In the face of doubt, openness prevails.” Importantly, it adds that “agencies should take affirmative steps to make information public. They should not wait for specific requests from the public.” It directs both the Attorney General and the Director of the Office of Management and Budget to issue new guidance, designed to implement the governing principles.

Both of the resulting documents deserve close attention, but for my purposes here, OMB’s guidance is especially noteworthy.<sup>3</sup> The memorandum directs agencies to publish information online. It adds that “agencies should proactively use modern technology to disseminate useful information, rather than waiting for specific requests under FOIA.” Perhaps most significantly, it requires each agency to create an open government plan and an open government webpage, designed to “create and institutionalize a culture of open government.” The open government plans are required to have “online in an open format at least three high-value data sets,” which are in turn defined as “information that can be used to increase agency accountability and responsiveness; improve public knowledge of the agency and its operations; further the core mission of the agency; create economic opportunity; or respond to need and demand as identified through public consultation.”

In the abstract, it is not clear whether this initiative involves output transparency or input transparency, but in practice, the former has been primary by far.<sup>4</sup> The high-value data sets typically involve outputs. Since 2009, data.gov has become a principal location for posting such data sets, which amount to output transparency in action. The site now offers over 190,000 data sets, with information on agriculture, finance, health, education, energy, and much more. With a click, you can find “Airline On-Time Performance and Causes of Flight Delays: On-Time Data”;<sup>5</sup> Expenditures on Children by Families (with estimates of the cost of raising children from birth through age 17 for major budgetary components); and detailed information about product recalls. There is much more in the same vein, focusing on outputs of policymaking or information-gathering activity.

As a result, people in the private sector have produced numerous apps that provide people with information that they can actually use. One example is AIRNow, which has up-to-the-moment information about air quality. Another is the College Affordability and Transparency Center, which provides information about college costs. Yet another is eRecall, which gives people information about recall information at the time of purchase.

The outputs released on data.gov serve two independent purposes. *First*, people can take advantage of them in their daily lives. Like a GPS device, most of the information makes life simpler and more navigable. The availability of that information on cell phones makes the point far from fanciful. This point is no mere abstraction. If we take the idea of navigability in the large, we can see disclosure as a way of helping people to get to their preferred destinations in

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<sup>3</sup> <https://www.whitehouse.gov/open/documents/open-government-directive>

<sup>4</sup> For a 2016 account, see <https://www.whitehouse.gov/blog/2016/07/14/agencies-continue-deliver-day-one-commitment-open-government>

countless domains, saving money and reducing risks in the process. To my knowledge, the benefits of data.gov have yet to be quantified, but there is little doubt that people are gaining from the disclosures in concrete ways. (Compare the benefits of GPS devices.)

*Second*, release of the outputs can promote accountability for both private and public sectors. Justice Louis Brandies famously said that “sunlight is . . . the best of disinfectants.” If the air quality is terrible in Los Angeles, if a particular university is unusually expensive, if students at a for-profit college do not end up with jobs, if drinking water is unsafe in San Diego, or if a company has a lot of recalled toys, transparency can serve as a spur to change. Transparency increases accountability, and when people are accountable, their performance is likely to improve.<sup>5</sup> The point bears on both public and private institutions. Transparency can tell citizens about the actions of public officials – for example, how long it takes for them to work on a permit application, or the levels of air pollution in San Antonio (for which officials bear some responsibility). It can also inform citizens about the actions of private actors – for example, by disclosing product recalls or ratings of safety seats. In either event, it can spur improved performance.

3. *Policies: disclosure and “core missions.”* One of the most interesting aspects of the OMB memorandum is that it asks agencies to consider whether disclosure might further their “core missions.” That is an exceedingly important idea, which deserves far more agency use in the future, and it involves disclosure of outputs.

Consider just a few illustrations. In environmental policy, one of the most well-known examples is the Toxic Release Inventory, which was created largely as a bookkeeping measure, designed to ensure that the federal government would have information about toxic releases. To the surprise of many people, the TRI has been a successful *regulatory* approach, because companies did not want to be listed as one of the “dirty dozen” in their states.<sup>6</sup> Accountability served as a spur toward emissions reductions. The Occupational Safety and Health Administration has followed this lead by putting, very visibly on osha.gov, information about recent deaths in American workplaces, with names of the companies where people died. The EPA has done something quite similar with its Greenhouse Gas Inventory, one of whose goals was to spur emissions reductions.<sup>7</sup>

In all of these cases, the government is disclosing information that public officials have. We can imagine, of course, a requirement of output transparency imposed by the public sector on the private sector. Requirements of that kind are not always organized under the idea of freedom of information, but they involve transparency, and they can also promote important agency missions. Under the authority of the Affordable Care Act, for example, the Food and Drug Administration has required chain restaurants to disclose the calories associated with their

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<sup>5</sup> For evidence, see Archon Fung et al., *Full Disclosure* (2008).

<sup>6</sup> Archon Fung and Dana O’Rourke, *Reinventing Environmental Regulation from the Grassroots Up: Explaining and Expanding the Success of the Toxics Release Inventory*, 25 *Environmental Management* 115 (2000).

<sup>7</sup> citation

offerings. The early results are quite promising, with significant reductions in BMI among people who really do need to lose weight.<sup>8</sup>

I have offered just a few illustrations of disclosures whose goal is to promote agency missions through output transparency. An excellent collection, generally including outputs, can be found in the numerous action plans of the Open Government Partnership, coming from dozens of nations. (See [opengovernmentpartnership.org](http://opengovernmentpartnership.org).) It is, of course, an empirical question whether transparency will promote agency missions. But in many cases, it can.<sup>9</sup> (It is said that China's interest in air pollution and greenhouse gas emissions has been greatly spurred by the ready availability of the Air Quality Index on cell phones.) Because the costs of output transparency are typically low, there is every reason to adopt a presumption in its favor.

3. *Costs and benefits, in public.* We should understand regulatory impact analyses in this light. In the relevant respect, they are outputs, though they count as inputs as well. Required by presidents from Ronald Reagan<sup>10</sup> to Barack Obama,<sup>11</sup> those analyses offer accounts of the expected effects of regulation, with careful attention to both costs and benefits. If a regulation would prevent two premature deaths per year, the agency must say so, and so too if it would prevent five hundred. The RIA must disclose whether the regulation would cost \$25 million, \$250 million, or \$2.5 billion. As part of rulemaking, it must be provided to the public for scrutiny and review, accompanying proposed and final rules.<sup>12</sup> In its own way, the requirement of an RIA can be seen as a kind of Freedom of Information Act. It enlists sunlight as a disinfectant.

A central reason is that by itself, cost-benefit analysis is an important safeguard against ill-considered regulations. One of its key features is that it promotes transparency about actions and alternatives and indeed about the contents of cost-benefit analyses themselves. Recent administrations have been entirely aware of this point. To promote public understanding and to ensure an "open exchange of information and perspectives," for example, regulatory preambles for lengthy or complex rules (both proposed and final) are required to include straightforward executive summaries. These summaries must describe major provisions and policy choices.<sup>14</sup>

For one illustration of such a summary, consider this table<sup>15</sup>:

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<sup>8</sup> See Partha Deb and Carmen Vargas, *Who Benefits from Calorie Labeling? An Analysis of its Effects on Body Mass* (2016), available at <http://www.nber.org/papers/w21992>

<sup>9</sup> See Fung et al., *supra* note.

<sup>10</sup> See Executive Order 12291.

<sup>11</sup> Executive Order 13563.

<sup>12</sup> Executive Order 12866.

<sup>13</sup> <http://d3i6fh83elv35t.cloudfront.net/newshour/wp-content/uploads/2014/07/EPA-cost-benefits-1024x468.jpg>

<sup>14</sup> [https://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/clarifying-regulatory-requirements\\_executive-summaries.pdf](https://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/clarifying-regulatory-requirements_executive-summaries.pdf)

<sup>15</sup> <http://d3i6fh83elv35t.cloudfront.net/newshour/wp-content/uploads/2014/07/EPA-cost-benefits-1024x468.jpg>



**Benefits and Costs of EPA's Proposed Clean Power Plan Rule in 2030**

(Mid-Point Estimates, Billions of Dollars)

	Climate Change Impacts		Health Impacts (Co-Benefits) of Correlated Pollutants plus ...	
	Domestic	Global	Domestic Climate Impacts	Global Climate Impacts
<b>Benefits</b>				
Climate Change	\$ 3	\$ 31	\$3	\$31
Health Co-Benefits			\$45	\$45
<b>Total Benefits</b>	<b>\$ 3</b>	<b>\$ 31</b>	<b>\$48</b>	<b>\$76</b>
Total Compliance Costs	\$ 9	\$ 9	\$ 9	\$ 9
<b>Net Benefits (Benefits – Costs)</b>	<b>-\$ 6</b>	<b>\$ 22</b>	<b>\$ 39</b>	<b>\$ 67</b>

To be sure, a great deal must be said in order to make a table of this kind fully transparent. It is important to know what these numbers actually mean and how they are derived.<sup>16</sup> For example, the claim that health co-benefits are \$45 billion depends on assumptions about the effects of the plan on emissions and also the effects of emissions reductions on human health. Such assumptions might be controversial. A competent RIA is transparent about those matters as well. If there are uncertainties and reasonable disputes, it will reveal them, and promote accountability in that way as well.

4. *Costs and benefits of output transparency.* I have been painting with a very broad brush – in principle, an unduly broad one. My suggestion has been that disclosure of outputs is justified, or presumptively justified, on welfare grounds, but that is not always the case. We can easily imagine outputs whose disclosure would produce low benefits or high costs. With respect to costs, consider the words of the OMB memorandum: “Nothing in this Directive shall be construed to supersede existing requirements for review and clearance of pre-decisional information by the Director of the Office of Management and Budget relating to legislative, budgetary, administrative, and regulatory materials. Moreover, nothing in this Directive shall be construed to suggest that the presumption of openness precludes the legitimate protection of information whose release would threaten national security, invade personal privacy, breach confidentiality, or damage other genuinely compelling interests.”

In various ways, the Freedom of Information Act recognizes all of these points. No one doubts that the government has a great deal of information whose disclosure would endanger national security, and even if that information can be counted as an output, it should be kept confidential. The government also has “personally identifiable information,” which receives protection under privacy laws. While a balance must be struck between transparency and privacy, some forms of disclosure impose reduce privacy, often in an intolerable way. Some kinds of disclosure could compromise trade secrets or otherwise privileged information. And at

<sup>16</sup> See Lisa Heinzerling, *Regulatory Costs of Mythic Proportions*, 107 Yale L.J. 1981 (1998).

least if disclosure is not automatic or automated, the very act of transparency can impose costs in terms of both money and time.

On the benefit side, distinctions are also important. In principle, and if the costs of assessment were zero, it would make sense not to insist that each and every output should be disclosed, but instead to ask, on a case-by-case basis, whether disclosing specified outputs would or could be beneficial -- for example, to consumers and workers. Of the 190,000 data sets on data.gov, surely some have modest benefits or no benefits; people are not paying the slightest attention to them (and they will not in the future). A welfarist analysis would call for particularized inquiries into that question. The problem, of course, is that those inquiries may not be manageable. At the time when disclosure is being discussed, projection of benefits may be quite difficult. What people will *do* with information (if anything) may not be self-evident. The private sector is ingenious and full of alchemists. What it will find useful, or turn into gold, cannot be predicted in advance.

In view of that fact, it makes sense for agencies to make reasonable judgments about “high-value data sets,” broadly understood, and to get them online *as soon as possible* – and also to announce a general presumption in favor of disclosure of outputs, armed with an intuitive understanding of the domain to which the presumption will be applied. It should be underlined that a degree of automaticity, putting relevant material online as a matter of routine, could be extremely helpful.

With respect to high-value data sets, intuitions should be disciplined by asking two questions: (1) Could people possibly benefit from this information in their daily lives? (2) Could disclosure promote accountability, in a way that would improve public or private performance? And in the words of the 2009 Presidential Memorandum, “The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve.”

Those words are important and correct. But they have one important qualification, to which I now turn.

### **III. Input Transparency**

When I was clerking for Justice Thurgood Marshall in 1980, Bob Woodward and Scott Armstrong published a book on the Supreme Court, called *The Brethren*. I did not speak with Woodward or Armstrong, and I am also confident that none of my three co-clerks did so. But numerous clerks (largely or perhaps entirely from previous terms) decided to open up to the authors. The portrait of Justice Marshall was highly unflattering (and by the way, wildly inaccurate). Marshall was clearly disappointed, much less (I think) because of the unfavorable, unfair, inaccurate portrait than because of what he saw as a breach of loyalty. I do not think it is disloyal to disclose what he said to us, which was roughly this: “I am not going to change how I interact with my clerks, but if you violate my confidence, it’s on your conscience.”

After I left the White House in 2012, many reporters, and some people outside of the world of journalism, asked me questions about internal dynamics. Who said what to the President? Who disagreed with whom? If something happened, or did not happen, who wanted it not to happen, or to happen? Who won and who lost? Of course I did not answer any of these questions, but there was no mistaking the (astounding) persistence with which they were asked. How well I recall a conversation with a superb journalist, working for the Washington Post, who was much focused on the who-disagreed-with-whom questions. I finally suggested to her that she should write something on the substance of the issues that most interested her (environmental policy). To my knowledge, she has yet to do that.

As I understand them here (and consistent with the standard parlance), inputs count as both predecisional and deliberative. These are independent requirements. They are predecisional in the sense that they are not themselves official decisions in any respect. They antedate those decisions and are meant to inform them. If an Assistant Administrator in the Environmental Protection Agency advises the Administrator that a new ozone regulation should set a standard of 60 rather than 65 parts per billion, the communication is predecisional. Inputs are deliberative in the sense that they are part of a process of ongoing discussion about what to do.

I have acknowledged that even with these clarifications, we can imagine difficult cases, as when a report is compiled on (say) the risks associated with silica, and that report will be an input into a regulation. But the core should not be obscure. If law clerks are exchanging memoranda on how to handle a dispute over affirmative action, inputs are involved. If people in the White House are discussing the contents of an open government memorandum, we are dealing with inputs. If White House officials are speaking with the Food and Drug Administration about how to handle the risks associated with certain asthma medicines, inputs are involved.

With respect to inputs, the argument for disclosure is significantly altered, and it is also weakened in two critical respects. First, the benefits of disclosure are usually much lower (not always, but usually). Second, the costs of disclosure are much higher. These are categorical statements with major qualifications, to which I will turn in due course.

#### **A. Inputs and More Inputs, and the Ambiguous Benefits of Disclosing Them**

From the standpoint of the public, it is often not particularly desirable to obtain inputs. To those who believe in transparency, that claim might seem controversial, implausible, or even shocking. But the sheer number and range of inputs is daunting, and it defies belief to think that the public would benefit from seeing all of them. An assistant secretary will have countless conversations in the course of a week, and in many of them, she will be receiving suggestions, venturing possible ideas, requesting more information, joking, offering doubts, and seeing out possible inclinations. Some of the inputs that she receives or offers will not be very interesting. If they are interesting, it might be for a reason that does not exactly argue for disclosure: Someone might have been ventured an idea, for purposes of discussion, that was or is on reflection a really bad one. The idea was (let us suppose) rejected, and so it never became an output. Is it important, or on balance desirable, for the world to see it?

Now suppose that public officials are deciding what to do about particulate matter (an air pollutant). The Director of the National Economic Council urges caution, emphasizing the overriding importance of economic growth. The Domestic Policy Council urges aggressive action, emphasizing that environmental groups keenly want the US government to reduce particulate matter; invoking international relations, the Department of State does the same. The Office of Information and Regulatory Affairs calls for a middle course, with close attention to costs and benefits. The Office of the Chief of Staff is focused on political considerations. Many memoranda are exchanged, offering various alternatives and competing points of views. It is far from clear how much the public would benefit from seeing this material. What most matters is what the government actually does, not who said what to whom.

It is true that for purposes of my thesis here, this example may not be the most convincing. The problem of particulate matter is exceedingly important, which complicates my argument (for reasons to which I will turn in due course). Consider then the general area of federal regulations, the most significant of which must go through the Office of Information and Regulatory Affairs (about 500 per year). Many of those regulations will never be seriously discussed in the newspapers or online. Their issuance is preceded by a great deal of internal discussion, involving paper documents, electronic documents, and email, often raising questions and doubts. This is the quintessence of a deliberative process. A number of people say a number of things. Much of the time, the benefits of disclosing the content of that process are essentially zero.

Within the federal government, what is true for the regulatory process is true for many discussions – but even more so. The volume of emails is extraordinarily high. As in the case of the hypothetical assistant secretary, they might float ideas, offer tentative reactions, report on what some people appear to think. In general, disclosure would serve no purpose at all, except perhaps to those interested in genuine minutiae, or seeking to embarrass, injure, or ruin someone, to create a political uproar, or to uncover some kind of scandal.

## **B. Two Qualifications**

There are two principal qualifications, helping to explain the appeal of input transparency for many observers.

1. *Illegitimate or illicit arguments.* Public disclosure might provide an ex ante deterrent to arguably illegitimate arguments, and it might also provide an ex post corrective. Suppose, for example, that someone opposes a decision not because it is a bad idea, but because it would offend a donor or a powerful interest group, or because a prominent senator might object (with unfortunate consequences for the administration). Let us stipulate that such an argument is objectionable, or at least that the public has a right to know about it, because it might compromise the pursuit of the public interest. Disclosure could make it less likely that such opposition will be voiced, which could be a good thing, and in any case it will create accountability. In this particular respect, an appealing argument, about the beneficial effects of sunlight, applies to input transparency as well as output transparency.

To be sure, disclosure could have the principal effect of shifting the locus of the opposition – from email and paper to telephones. Within the federal government, that already happens a great deal: If people do not want their communications to be disclosed to the public or to Congress, they will say, “Call me.” (In my own experience, this was always innocent; it does not involve anything illicit, but it does involve issues that are somewhat sensitive, such as strong disagreements that are not best placed on email.) Actually there is a substantial risk here. If internal discussions are potentially subject to disclosure, the shift from written to oral exchanges may impose losses, in the form of diminished reliance on careful economic, legal, and other analyses. Nonetheless, it is true that disclosure of inputs can have the beneficial effect of “laundering” them.

There is no question that a concern about illegitimate or illicit inputs animates the argument in favor of input transparency. Suppose that you believe that some process is “rigged” – that regularly or as a matter of course, powerful private interests are dominating federal processes, or that officials, beholden to certain groups, are pushing outcomes in the directions favored by those groups. Of course you want that to stop. But if you cannot stop it directly, you might insist on input transparency, as a way of opening it up to public view. Sunlight might be a disinfectant here as well.<sup>17</sup> True, there is a risk that you will simply drive the relevant influences underground. But in principle, that is a secondary concern. You want to open up internal processes to public scrutiny.

*2. Learning from mistakes.* The second qualification is that journalists and historians can benefit from seeing the give-and-take, if only because they could give a narrative account of what happened. That might appear to be an abstract, academic benefit, but people (including public officials) do learn from the past, and that learning can provide a valuable corrective. The historical record can be absolutely indispensable for finding out what went wrong, and to understand that record, inputs are necessary. Why did the government make some colossal error, in the form of an action or an omission? To answer that question, input transparency might be essential. It can create warning signs about group interactions that work poorly, about institutional blindnesses, about the need for institutional reform.

Suppose, for example, that the United States government has done (too) little to prevent genocide.<sup>18</sup> It may be difficult or even impossible to document the failures without access to inputs. And once the failures are documented, people might take steps to reduce their likelihood in the future. In that sense, the benefits of input disclosure can be high, at least in certain domains.

But there are countervailing points. In many cases, disclosure of inputs has no benefits; it does not reduce the risk of future errors. Disclosure also imposes a risk of distortion. Suppose that people have access to an official’s emails – say, the emails of an Assistant Administrator at the Environmental Protection Agency, or of the Assistant Attorney General for Civil Rights. Suppose that the email has some complaint about the EPA Administrator or about the Attorney General, or about White House officials. The email might reflect a particular day or mood. It

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<sup>17</sup> [http://www.warren.senate.gov/files/documents/2016-3-3\\_Warren\\_ACUS\\_Speech.pdf](http://www.warren.senate.gov/files/documents/2016-3-3_Warren_ACUS_Speech.pdf)

<sup>18</sup> Samantha Power, *A Problem From Hell* (2002).

might be based on the author's incomplete understanding. It might be a matter of venting. It might reflect a badly distorted perspective.

Because journalists often enjoy and benefit from accusations and scandal-mongering, it might be appealing to give a great deal of publicity to this revelation of internal disagreement. Recall that it is a form of gossip. Readers might enjoy the gossip, and in that sense benefit from it, but accusations and scandal-mongering are not necessarily genuine benefits for the public. (A genuine scandal is another matter.)

### C. The Costs of Input Transparency

For input transparency, the most obvious problem, of course, is that disclosure could reduce open-mindedness and discourage candor. In a short space, James Madison captured some of the essential points. In any deliberative process, people's opinions are various and crude, and much is "to be gained by a yielding and accommodating spirit." Once people commit themselves publicly, they might not be willing to shift. Secrecy can promote openness to the force of the argument. And of course Madison's knockout punch: "No Constitution would ever have been adopted by the convention if the debates had been public."

What Madison did not emphasize is that input transparency can lead people not to say what they think. It can reduce candor and the free play of ideas. In that sense, it can ensure that groups will have less information than they need. In well-functioning deliberative processes, there is often a sharp separation between an idea-generating phase and a solution-finding phase. In the former phase, many things are on the table, even if they turn out on reflection to be absurd or intolerable. People say "yes" to getting ideas out there whether or not there is any chance that they will ultimately be adopted. If inputs are transparent, the idea-generating phase would be far more constrained than it ought to be.

Ensuring candor is of course the central idea behind the idea of executive privilege.<sup>19</sup> At best, input transparency would lead people to communicate orally rather than in writing. And in fact, one of the consequences of FOIA is to reduce reliance on email and written documents. In both Republican and Democratic administrations, it is well-known that whatever is put in writing might find its way into the New York Times – which leads people not to put things in writing. At worst, input transparency can lead certain things not to be said at all.

But reduced candor is not the only problem. In view of the incentives of the media and political opponents, disclosure of inputs can produce extremely unfortunate distractions, destructive to self-government. Instead of focusing on outputs – on how, for example, to reduce premature deaths – a spotlight is placed on comments that seem to make some people into villains or wrongdoers, or that put any resulting decisions in the least favorable light. Of course skeptics might respond, with some passion, that it is paternalistic or worse to deprive members of the public of information on the ground that they will misunderstand it or give it undue salience. On one view, receipt of true information should be subject to the marketplace of ideas. But

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<sup>19</sup> See *United States v. Nixon*, 418 U.S. 683 (1974).

insofar as the problem lies not in public misunderstanding but in the incentives of those who seek to fuel fires, there is definitely a downside risk.

#### **D. A Brief Accounting**

With respect to input transparency, we seem to have incommensurable values on both sides of the ledger, not easily placed along a single metric. The benefits are often low – but not always, especially when the historical record can help to avoid massive or catastrophic mistakes. The costs can be high. But are they always?

It must be acknowledged that those costs diminish over time, and they are certainly lower once the relevant people no longer hold public office. It is one thing to tell the Director of the Office of Management and Budget that whatever she says will end up in the newspaper that night or the next day. It is quite another to say that at a future date (say, after an administration has ended), there will be a public record of internal communications, subject to safeguards for national security, personal privacy, and other values. And indeed, the Presidential Records Act<sup>20</sup> ventures an approach of this sort (with a five-year gap). With such an approach, the costs of disclosure are significantly reduced. They are not zero, because candor will be chilled and because people's reputation will be wrongly maligned. But in view of the value of obtaining some kind of historical record, that approach is hardly unreasonable. My aim has not been to reach a definitive conclusion about concrete practices and proposals, but to outline general concerns to help identify the appropriate tradeoffs.

#### **Conclusion**

There is a large difference between output transparency and input transparency. For outputs, transparency can be exceedingly important. A central reason is that government often has information that people can actually use, perhaps to make life more navigable, perhaps to avoid serious risks. It should not keep that information to itself. Another reason is that sunlight can operate as a disinfectant. And whether the information involves the government's own performance or the performance of the private sector, disclosure can spur better performance.

One implication is the immense importance of continuing with, and amplifying, the work of data.gov. It also follows that in numerous contexts, government should not be waiting for FOIA requests; it should be disclosing information on its own. This does not put that every output should be put on the Internet. But it does mean that whenever an output could or would be valuable to members of the public, it deserves to be made public. For the future, we should expect significant developments in this direction, with a significant increase in automaticity.

Inputs belong in a different category. In general, what most matters is what government actually does, not who said what to whom. For the most part, the public is unlikely to benefit if it learns that the Assistant Secretary of State disagreed with the Chief of Staff of the Secretary of State on some trade agreement, or that there was an internal division on how aggressively to regulate greenhouse gases or on the valuation of statistical lives. Disclosure can also have

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<sup>20</sup> 44 U.S.C. §§ 2201–2207.

significant costs. Most obviously, it can lead people to silence themselves, or to communicate in ways that cannot be recorded. More subtly, it can divert attention from the important question, which involves policy and substance, to less important ones, which involve palace intrigue. At the same time, input transparency can put a spotlight on questionable or illicit practices and can also provide an indispensable historical record. People learn from the past, and for current administrations, it can be essential to have a concrete sense of where past administrations went wrong.

My framework throughout has been welfarist; it asks about the costs and benefits of disclosure. It should be acknowledged that the very idea of welfarism needs to be specified, and that many people would start with different foundations – involving, for example, the idea of political legitimacy. It should also be acknowledged that under a welfarist framework, some output transparency does not make much sense, and some input transparency is amply justified, even indispensable. We are speaking of categories, not individual cases. But categories provide orientation. Output transparency should be the central focus of efforts for freedom of information; we need much more of it. Input transparency can be important, especially after an administration has ended; but it should be treated far more cautiously.



## Appendix

### MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES SUBJECT: Freedom of Information Act

A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve. In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.

The presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their Government. Disclosure should be timely.

I direct the Attorney General to issue new guidelines governing the FOIA to the heads of executive departments and agencies, reaffirming the commitment to accountability and transparency, and to publish such guidelines in the Federal Register. In doing so, the Attorney General should review FOIA reports produced by the agencies under Executive Order 13392 of December 14, 2005. I also direct the Director of the Office of Management and Budget to update guidance to the agencies to increase and improve information dissemination to the public, including through the use of new technologies, and to publish such guidance in the Federal Register.

This memorandum does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register. — BARACK OBAMA