

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, MARCH 16, 2020 TIME: 6:00PM

AN ANTICIPATED NON-PUBLIC SESSION WILL BE HELD AT THE END OF THE CITY COUNCIL MEETING RE: MCINTYRE – RSA 91-A:3, II (e)

- I. **6:00PM WORK SESSION – SAGAMORE AVENUE SEWER EXTENSION**
- II. **PUBLIC DIALOGUE SESSION** *[when applicable – every other regularly scheduled meeting]*
- III. **CALL TO ORDER** [7:00 p.m. or thereafter]
- IV. **ROLL CALL**
- V. **INVOCATION**
- VI. **PLEDGE OF ALLEGIANCE**

- VII. **ACCEPTANCE OF MINUTES – JANUARY 28, 2020**

- VIII. **RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS**
 - Recognition of 5th Grade Little Harbour School student Aadhavan “Addy” Veerendra, winner of the NH Spelling Bee with Principal Lawson and Spelling Bee Club teacher Molly Green

- IX. **PUBLIC COMMENT SESSION**

- X. **PUBLIC DIALOGUE SUMMARY** *[when applicable]*

- XI. **PUBLIC HEARING AND VOTES ON ORDINANCES AND/OR RESOLUTIONS**
 - A. First reading of Ordinance amending Chapter 7, Article I, Section 7.105 C – Designated Motorcycle Parking Area (***Sample motion – move to pass first reading and schedule a public hearing and second reading at the April 6, 2020 City Council meeting***)

- XII. **MAYOR BECKSTED**
 1. Appointments to be Considered:
 - Appointment of Beth Margeson to the Conservation Commission as an Alternate
 - Reappointment of Jessica Blasko to the Conservation Commission
 - Reappointment of Allison Tanner to the Conservation Commission
 - Reappointment of Jackie Cali-Pitts to the Recreation Board
 - Reappointment of Lisa Louttit to the Recreation Board
 2. *Appointments to be Voted:
 - Reappointment of Barbara McMillan to the Conservation Commission
 - Reappointment of William Townsend to the Peirce Island Committee
 - Reappointment of John Simon to the Peirce Island Committee
 - Appointment of Kara Rodeneizer to the Portsmouth Housing Authority
 - Reappointment of Robin Pickering to the Portsmouth Housing Authority – Resident Member

- Appointment of David Cosgrove to the Citywide Neighborhood Committee
 - Appointment of Mark Syracuse to the Citywide Neighborhood Committee
3. *Establish Committee for Negotiations Re: Boyle

XIII. CITY COUNCIL MEMBERS

A. ASSISTANT MAYOR SPLAINE

1. *Jones Avenue Landfill
2. *Coronavirus Planning and Preparation – and Observations/Concerns from Economic Development Commission meeting of Friday, March 6, 2020

B. COUNCILOR McEACHERN

1. *Creation of a Subcommittee comprised of 2 Council members and 4 residents selected by the Mayor and approved by the Council to discuss current ADU Approval process and ways to improve

C. COUNCILOR WHELAN

1. *McIntyre Subcommittee Report

D. COUNCILOR KENNEDY

1. Impact Fees
I would recommend the following suggestions to support The City of Portsmouth's Infrastructure:
 For projects over two units the following impact fees would apply:
 1-Bedroom or 1,000 sq. ft. or less \$25,000/unit
 2-Bedrooms or 1,500 sq. ft. or less \$50,000/unit
 3-Bedrooms or 2,000 sq. ft. or less \$75,000/unit
 4-Bedrooms or 2,500 sq. ft. or less \$100,000/unit
 5-Bedrooms or 3,000 sq. ft. or less \$125,000/unit
 The following motion I will be making:
(Sample motion – move to have the City Manager, Legal Staff, Fees Committee and Planning Board Review and Report Back on the suggested Impact Fees by the April 20, 2020 City Council meeting. I would also encourage other suggestions from these groups on Impact Fees with a Report Back on April 20, 2020)

E. COUNCILOR HUDA

1. Annual Budget Spending Request by Department

Does that mean the Department Manager has the ability to spend those dollars on anything as long as they stay within the budget dollars appropriated to them?

(Sample motion – move to request a report back from the City Manager on the following: (In a language & format that can be understood by all City residents)
 - ***To Clarify the dollar limit spending authority granted to different positions (i.e. Directors, Department Managers, City Purchasing Agent, City Manager)***

- **To discuss if there is a dollar limit restriction on the City Department Directors or Managers ability to transfer dollars among the various line items in their appropriated budgets. Do these transfers require the approval of either the Finance Director or City Manager.**
 - **Please include references to source documentation that authorizes such dollar limits.**
 - **Please include a discussion on the various controls applied to the above.**
2. To Clarify the City Managers, Interpretation of Section 7.23 Information Technology Management of the City Charter as it relates to the Information Technology section of the Administrative Code?
 - **Is there any conflict?**
 - **Based on the interpretation of the above, is the City following the City Charter or the Administrative Code?**

XIV. APPROVAL OF GRANTS/DONATIONS

1. Acceptance of Donations to the Portsmouth Police Department:
 - Mr. Gormley and Ms. Inguchi in support of Portsmouth Police Department – \$1,000.00
 - Ms. Marchi in support of Police Explorer Cadets - \$20.00

(Sample motion – move to accept and approve the donations for the Police Department as presented)
2. Acceptance of Grant from the NH Department of Safety for Night Vision Equipment - \$37,500.00 ***(Sample motion – move to accept and approve the grant for the Police Department as presented)***

XV. CITY MANAGER’S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

City Manager’s Items Which Require Action:

1. Market Street Property Purchase from NH Department of Transportation
2. Report Back from Planning Regarding 27 Thaxter Road
3. Foundry Place Agreements and Easements
4. Request to Establish a Work Session Regarding Prescott Park
5. Request to Renew Seacoast Growers’ Association (Farmer’s Market) Proposed 2020 License Agreement
6. Request for Public Hearing Regarding Bonding of Fire Apparatus
7. Request to Establish Public Hearing Regarding Petition for Discontinuance of a Portion of Cate Street Connector Road

XVI. CONSENT AGENDA

- A. Request for License to Install Projecting Sign for owner Harrison Schoaneu of Fresh House for property located at 76 Congress Street (***Anticipated action - move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement for this request***)

Planning Director's Stipulations

- ***The license shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of projecting sign, for any reason, shall be done at no cost to the City; and***
- ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***

- B. Request for License to Install Projecting Sign for owner Nuttaya Nicholas of 5 Thai Bistro for property located at 40 Pleasant Street (***Anticipated action - move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement for this request***)

Planning Director's Stipulations

- ***The license shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of projecting sign, for any reason, shall be done at no cost to the City; and***
- ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***

- C. Letter from Monte Bohanan, Portsmouth Halloween Parade, requesting permission to hold the 26th Annual Portsmouth Halloween Parade on Saturday, October 31, 2020 at 7:00 p.m. (***Anticipated action – move to refer to the City Manager with authority to act***)

XVII. PRESENTATIONS & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Email Correspondence (***Sample motion – move to accept and place on file***)
- B. *Report from the City's Health Department regarding Covid-19
- C. Letter from Marc Stettner Re: Designated Motorcycle Moped Parking Area

- D. Letter from Craig M. Steigerwalt Re: Petition for Release of Interest in Paper Street contiguous to 276 Dennett Street (Tax Map 143, Lot 13) pursuant to RSA 231:51 and 231:52 (**Sample motion – move to refer to the Planning Board for report back**)
- E. Letter from Attorney Daniel C. Hoefle Re: Request for Release of Paper Street Pursuant to NH RSA 231:51 and 231:52 – 294 Dennett Street (Tax Map 143, Lot 26) (**Sample motion – move to refer to the Planning Board for report back**)
- F. Letter from Seth Levine regarding the Middle Street Bike Lanes (**Sample motion – move to accept and place on file**)
- G. Letter from Jim Fernald regarding proposed dock on 21 Fernald Court
- H. Background Information from Deb & Ken Jennings on 27 Thaxter Road

XVIII. CITY MANAGER’S INFORMATIONAL ITEMS

- 1. Market Street Pedestrian Bridge
- 2. *Questions from Councilor Huda from the 3/2/20 City Council meeting
- 3. Memorandum on Consultants, Contracts and Purchases over \$10,000.00

XIX. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

XX. ADJOURNMENT [at 10:00 p.m. or earlier]

**KELLI L. BARNABY, MMC/CNHMC
CITY CLERK**

** Indicates verbal report*

SPECIAL CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: TUESDAY, JANUARY 28, 2020

PORTSMOUTH, NH
TIME: 6:30PM

I. CALL TO ORDER

Mayor Becksted called the Special City Council meeting to order at 6:30 p.m.

II. ROLL CALL

Present: Mayor Becksted, Assistant Mayor Splaine, Councilors McEachern, Whelan, Lazenby, Kennedy, Huda, Tabor and Trace

III. MCINTYRE PROJECT

Mayor Becksted passed the gavel to Assistant Mayor Splaine.

Mayor Becksted said he will provide information on what has happened over the last several months. He stated with the change of the City Council, questions were asked regarding the McIntyre Project. He indicated on January 2, 2020, he came in for a meeting to establish an agenda for the January 8th Special City Council meeting. He stated during the makeup of that meeting he was made aware of a letter of litigation threat dated December 30th. Mayor Becksted said time is of the essence that is why we are having this Special City Council meeting. He stated it is time that the City Council moves this issue forward.

Assistant Mayor Splaine returned the gavel to Mayor Becksted.

Councilor Trace moved that we take action and not approve, we deny the current draft form of the Ground Lease dated December 7th, written for use between the City of Portsmouth and SoBo Square, LLC also known as Redgate/Kane. Seconded by Councilor Whelan.

Assistant Mayor Splaine said we need to hold off the lawsuit.

City Attorney Sullivan said given that we are under threat of serious litigation, he recommended entering into Non-Public Session to further discuss matters.

Councilor McEachern moved to enter into a Non-Public Session to discuss the draft Ground Lease. Seconded by Councilor Lazenby.

Assistant Mayor Splaine would like to listen to the public before entering into Non-Public Session and act on the motion.

City Attorney Sullivan said the motion should be to restructure the agenda to hear public comment.

Assistant Mayor Splaine moved to restructure the agenda to allow public comment before entering into a Non-Public Session. Seconded by Councilor McEachern. *Motion not acted upon.*

Councilor Trace moved to suspend the rules to allow anyone present to speak during Public Comment. Seconded by Assistant Mayor Splaine and voted.

V. PUBLIC COMMENT

Bill Downy thanked the City Council for this meeting. He asked City Attorney Sullivan about the application period ending October 7th and clarification on the matter. He said he does not feel this is a last minute decision.

Bernard Mulligan said the project is important and expressed concern over what the building will look like with the project before the Council. He said he wants the post office to return to the downtown. He stated we need to provide a lease to the building that will house the post office and make it a separate building with a lease at little to no cost. Mr. Mulligan said the City Council needs to consider that it would be up to \$2,000,000.00 for a post office building and this should be a separate question.

Ted Jankowski said he submitted a letter for this evening for the City Council to review. He spoke to this being a complicated project and the City has dealt with complicated projects before. He spoke to when the City hired a national firm to handle the base closure and said that is what you need in this instance. He said it has been 18 years and not once have you gone to Washington, DC. He urged the City Council to authorize the City Manager to hire an outside expert.

Allen Nelson thanked the City Council for listening to both sides of this issue. He stated the McIntyre Project is a serious matter and the public has not been made privy to all the issues. He spoke to when Senator Judd Gregg talked about the City getting the building for \$1.00. Mr. Nelson said this matter can be resolved by thinking outside of the box. He stated downtown is under stress and it is not just a building, it is important and will have a big effect on the area.

Dave MacDonald said unfortunately you have to deal with this issue that was created by the previous City Council and people did not like the way the project was being managed. He questioned whether the City is bound by the decisions of the former Council. He said almost everyone agrees that this is not the project for the City. Mr. MacDonald said you need to start over and make a statement on what direction you want the project to go.

Senator Martha Fuller Clark said the entire burden does not rest with the City Council. She stated she asked Michael Kane to come up with a different proposal and think of a compromise for the design. She said that this is the most significant piece of property in our downtown and we need to find something more appropriate.

Danielle Lee said the worst case scenario is not getting sued by Redgate/Kane, the worst case would be getting what the residents don't want. She would like to see Redgate/Kane come forward with a new design that everyone can agree upon.

Nancy MacDonald said the City Council was elected to change the Redgate/Kane project and this is a serious vote. She stated Redgate/Kane does not benefit the City.

Justin Richardson said there is an opportunity, and he has experience negotiating public/private partnerships. He spoke to his surprise on how the public/private partnership was designed and set up. He stated we need to go through preservation review and suggested asking this to go back to the developer. Mr. Richardson said the application has been rejected by the National Park Service and recommended going back and negotiating a better deal for the City.

Mark Brighton said any talk about the current City Council lacking transparency is inaccurate. He stated there were back room deals by the former Council.

Jane Zill spoke to the 600 signature petition asked the prior City Council to look at the project. She applauded the City Council for taking the City out of this process.

Mayor Becksted closed the Public Comment.

Assistant Mayor Splaine said we need a Non-Public Session and hear from the City Attorney on this matter. He said the City Council would come back to the Chambers at the close of the Non-Public Session.

Councilor Lazenby echoed the remarks of Assistant Mayor Splaine to take careful consideration on this matter. He said we will need time and are spending time working on this matter.

On a roll call vote 4-5, motion to enter into a Non-Public Session to discuss the draft Ground Lease failed to pass. Assistant Mayor Splaine, Councilors McEachern, Lazenby and Tabor voted in favor. Councilors Whelan, Kennedy, Huda, Trace and Mayor Becksted voted opposed.

Councilor McEachern said we have spent a great deal of time dealing with this matter but not talking about it is wrong. He said he has not heard any information since the Non-Public Session and has strong objections to put the City in jeopardy. He said we need to negotiate in good faith. He stated we have a responsibility to the public and he appreciates that we want to act on this matter but we have not addressed the answers to go back to the National Park Service that addresses the issue of mass of the building and financials. Councilor McEachern said this motion is hasty and we have not finished the conversation from the last Non-Public Session.

Councilor Tabor said he voted yes to hear from the City Attorney on his legal opinion.

Councilor Whelan said we open the dialogue between us as a City Council. He said he was elected in November and the first communication from Redate/Kane was a threat of litigation. He said we are sending the proper message to Redgate/Kane that we want to look at the project. He indicated he would make another motion on receiving feedback regarding where we stand with the National Park Service.

Councilor Lazenby said the form of Ground Lease drafted is dated December 7, 2019, that we received in an email in January, is that document on the website and available. He said he is concerned that we are trying to move forward with public input and the form of the Ground Lease has not been available for the public to review and it does not feel clear to him or transparent.

Councilor Kennedy said she was voted on the City Council regarding the McIntyre Project. She tried to get the developer to get the design changed. She said the Ground Lease has not been voted on and it is time to make a decision and move on. She stated we need to make sure that GSA does not give up on us. She stated it is time to listen to Councilor Trace's motion and called for a vote.

Assistant Mayor Splaine said 25 months ago on December 20, 2017, the vote was 8-1 to set up the process, and led to the selection of Redgate/Kane for the project. He said he has been involved in this matter since day one. Assistant Mayor Splaine said not getting the advice from the City Attorney whether we agree with it or not, we need to listen to City Attorney Sullivan. He stated we need to hire someone that can give expert advice, we need to revisit the McIntyre Project, and not get us in a law suit. He said he is concerned we are not moving into Non-Public Session.

City Manager Conard said she agrees with Assistant Mayor Splaine and urges the Council that we go into Non-Public Session because we have new information to rely to the City Council.

Councilor Tabor moved to reconsider and enter into Non-Public Session. Seconded by Councilor McEachern. On a roll call vote 4-5, motion failed to pass, a two-thirds vote was required. Assistant Mayor Splaine, Councilors McEachern, Lazenby and Tabor voted in favor. Councilors Whelan, Kennedy, Huda, Trace and Mayor Becksted voted opposed.

Councilor Lazenby said he echoes much of what Assistant Mayor Splaine has said, and he does not feel we will move ahead to do what is in the best interest of the City Council.

Mayor Becksted passed the gavel to Assistant Mayor Splaine.

Mayor Becksted said he has worked hard on this over the last three weeks. He respects City Attorney Sullivan and what is being asked for the Ground Lease but this negates nothing, the partnership still stands and we need to come up with a plan to move forward.

Assistant Mayor Splaine returned the gavel to Mayor Becksted.

Assistant Mayor Splaine asked City Attorney Sullivan if he could share any of the new information, which has come forward.

Councilor McEachern asked City Attorney Sullivan if he is able to share any of the legal advice shared with Mayor Becksted.

City Attorney Sullivan said he cannot share the new information unless we were in Non-Public Session.

On a roll call 6-3, voted to pass main motion that we take action and not approve, we deny the current draft form of the Ground Lease dated December 7th , written for use between the City of Portsmouth and SoBo Square, LLC also known as Redgate/Kane. Councilors Whelan, Kennedy, Huda, Tabor Trace and Mayor Becksted voted in favor. Assistant Mayor Splaine, Councilors McEachern and Lazenby voted opposed.

Councilor Whelan moved to instruct the City Manager to arrange a meeting with the entire City Council and the National Park Service as soon as possible. Seconded by Councilor Kennedy.

City Attorney Sullivan said in terms of whether a lawsuit will be forthcoming is the opinion of Redgate/Kane and their feeling whether the Council will act in good faith, but it is his belief that the City Council is continuing to act in good faith and work to come up with a new Ground Lease.

Assistant Mayor Splaine supports the motion and taking steps the National Park Service as we need to act.

Mayor Becksted passed the gavel to Assistant Mayor Splaine.

Mayor Becksted said mistakes were made by having a small committee on the McIntyre Project. He said the entire Council will be aware of any matters and we will work together in good faith.

Assistant Mayor Splaine returned the gavel to Mayor Becksted.

Assistant Mayor Splaine said we need proper expertise and expert legal advice.

Councilor Kennedy thanked Mayor Becksted for standing strong and being a leader.

Councilor Trace said she looks forward to meeting with the National Park Service and hearing their concerns and that is part of acting in good faith. She stated the Council needs to take the interest of the 600 that signed the petition. She said we need to look at the answers that we are going to hear from going into Non-Public Session.

Councilor Tabor said we need to plan for a meeting with the National Park Service and operate in good faith with our developer, and learn what the National Park Service thinks about the project.

Councilor McEachern said in the spirit of this he would like to set aside time to discuss answers that are in edited form and discuss them as a group. He said the Council needs to discuss answers before meeting with the National Park Service and meet with staff on how we get there.

Assistant Mayor Splaine suggested that on February 3rd the Council plans a Non-Public Session with the City Attorney to review the updates he has at that time.

Mayor Becksted said he will be meeting on setting the agenda tomorrow and will plan for a Non-Public Session.

Motion passed.

VI. ADJOURNMENT

At 7:45 p.m., Mayor Becksted adjourned the meeting.



KELLI L. BARNABY, MMC/CNHMC
CITY CLERK

ORDINANCE #

THE CITY OF PORTSMOUTH ORDAINS

That Chapter 7, Article I, Section 7.105 – **PARKING** 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):

ARTICLE I: PARKING METERS

Section 7.105: PARKING

C. MOTORCYCLE PARKING

A. Designated Motorcycle Parking Area.

The following location is established as an exclusive “Designated Motorcycle Parking Area” for the months of April 1st through November 30th only:

1. Pleasant Street: On the easterly side of Pleasant Street, beginning at a point 24 feet South of the extension of the southerly curb line of Market Square running southerly the distance of 24 feet.

~~Motorcycles are subject to reduced parking meter fees for the hours of enforcement as set forth in this Chapter in this Designated Motorcycle Parking Area. When more than one Motorcycle parks in a regular parking space only one of the Motorcycles occupying the space shall be required to pay for the parking space at the regular parking rate as set forth in this Chapter.~~

Motorcycles parking in the Designated Motorcycle Parking Area shall pay the “Designated Motorcycle Parking Area Rate” which is \$0.50 less than the Downtown High Occupancy Rate. Parking for verified Portsmouth residents shall be \$0.50 less than the Designated Motorcycle Parking Area Rate. Payment of the reduced rate is achieved through the use of a mobile phone application.

B. Motorcycle Parking.

Motorcycles parking in parking spaces other than the Designated Motorcycle Parking Area shall pay the rate of the

parking meter zone in which the parking space is located less the verified Portsmouth resident reduction of \$0.50 per hour if applicable. One or more motorcycles may park in a single parking space. When more than one motorcycle parks in a single parking space, payment is required from only one of the motorcycles occupying the parking space.

Motorcycles are subject to reduced parking meter fees for the posted hourly time limits within the hours of enforcement as set forth in this Chapter.

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:

Rick Becksted, Mayor

ADOPTED BY COUNCIL:

Kelli L. Barnaby, City Clerk

CITY OF PORTSMOUTH

LEGAL DEPARTMENT

MEMORANDUM

TO: PARKING AND TRAFFIC SAFETY COMMITTEE

FROM: JANE FERRINI, ASSISTANT CITY ATTORNEY, TREVOR MCOURT, LAW CLERK

DATE: AUGUST 28, 2019

RE: REPORT BACK REGARDING PARKING AND TRAFFIC SAFETY COMMITTEE'S AUTHORITY TO ENACT AMENDMENT TO DESIGNATED MOTORCYCLE PARKING AREA ORDINANCE TO ESTABLISH FEES

At its August 1, 2019 Meeting, the Parking and Traffic Safety Committee voted to request a report back from the Legal Department regarding questions raised in a letter from Marc Stettner dated July 28, 2019.

A. DOES THE PTS COMMITTEE HAVE AUTHORITY TO SET PARKING METER FEES OR SHOULD THE FEES BE RECOMMENDED TO THE CITY COUNCIL BY THE FEE SCHEDULE STUDY COMMITTEE?

The Fee Committee should not be the Committee to recommend meter fees to the City Council. The current budget specifically exempts parking violations and parking meter fees from the adoption of fees by resolution of the City Council. Appendix III, page 111-2 of the Fee Schedule of the 2020 budget provides "[p]arking violations and Parking Meters governed under different ordinance than local ordinance Chapter 1, Art XVI." It is Chapter 7 of the City's ordinance, not the budget that sets forth parking fees and fines for parking violations.

The City's ability to regulate streets and parking fees is based on an express grant of authority from the State as an exercise of the City's police power. *In re Opinion of the Justices*, 94 NH 501, 504 (1947). See also RSA 47:17, VII, VIII and XVIII. The City's ordinance that regulates meters and fees is set forth in Chapter 7, Article I, Section 7.112, which provides:

The fee required for said meters is hereby levied as a police regulation and inspection fee to cover the cost of providing parking spaces, parking meters, and inspection, operation, installation and maintenance thereof, the cost of regulation and control and use of the parking meter spaces, and zones created therein, for the regulation and control of traffic and moving in and out of an parking in said parking spaces and zones so created and for the cost of any resultant traffic administration expense and for the maintenance and improvement of streets and highways and for the acquisition, construction, improvement, maintenance and management of public parking areas.

When a municipality validly exercises a police power, that procedure is governed by the City Charter. See *14 NH Practice Series: Local Government Law* § 897. Portsmouth's Charter permits the City Council to "exercise all the powers and duties by law vested in boards of aldermen and city councils under state law." Portsmouth City Charter Section 4.2. State statute provides "[t]he city council of any city shall have the power to . . . establish reasonable charges for parking". RSA 231:130. The statute does not elaborate on how those charges for parking should be established nor does the state statute prohibit the City Council from delegating that authority.

The City of Portsmouth established the Parking and Traffic Safety Committee whose authority is set forth in Chapter 7, Article 1, Section 7.103 B as follows:

The Committee shall have the authority to recommend temporary parking and traffic regulations to the City Council by means of the presentation of written minutes. The acceptance of such minutes by the City Council shall constitute the authorization to implement such temporary regulations for a period not to exceed one (1) year. The implementation shall begin at the time designated in the Parking and Traffic Safety recommendation unless otherwise determined by the City Council. After any such change has been implemented for up to one (1) year, or such lesser time as might be determined by the City Council, the City Council may consider making the temporary regulation permanent by means of a duly adopted ordinance. Failure to adopt such an ordinance shall cause the temporary regulation to expire at the end of one (1) year at which time the prior ordinance in effect shall become operable.

Chapter 7, Article 1, section 7.104 contemplates PTS may recommend the installation of parking meters on a temporary basis as the ordinance authorizes the City Manager "...to purchase, install and maintain public parking meters and/or any other type of parking regulation equipment or technology necessary to implement any action taken by the City Council or the Parking and Traffic Safety Committee." A broad reading of the City Charter, City ordinance and state statute would support PTS recommending the temporary installation of parking meters which is authorized and approved by the Council when it approves PTS minutes.

However, interpretations of statutes and ordinances are always subject to challenge. There is some risk that RSA 231:130 and the City Charter could be interpreted to restrict the City Council from delegating its authority to the PTS Committee. Instead of the current structure, a more prudent measure to enact temporary parking meter and fee changes would be for the City Council to adopt an ordinance with properly published notice and public hearings. Portsmouth City Charter Section 4.5. There is no need to enact a temporary measure and wait for the omnibus to adopt a permanent ordinance. In addition, failure to pay a parking fee might result in traffic penalties which could result in fines and immobilization or towing of vehicles. When dealing with parking control provisions that might result in these types of traffic penalties, prudence would dictate that the City Council adopt the ordinance with the specific requirements of notice and public hearing proscribed by the City Charter in Section 4.5.

B. WHETHER THE FEE SET BY THE PTS WAS A FEE REDUCTION?

The Designated Motorcycle Parking Area is in the High Occupancy Zone. The rate per hour for parking spaces in the High Occupancy Zone is \$2.00 per hour. The proposed amendment sets an hourly rate of \$1.50 per hour. This is a fee reduction of \$0.50 per hour. City residents would receive an additional \$0.50 reduction per hour if they apply for and receive the residency discount. With the residency rate the proposed amendment fee would be \$1.00 an hour, half of the regular rate in the High Occupancy Zone. A motorcycle parking in the

Designated Motorcycle Parking Area under the proposed amendment would pay a lower parking rate than a vehicle parking in a High Occupancy Zone.

The Designated Motorcycle Parking Area in Chapter Seven, Article I, Section 7.105 C 1 provides in part:

Motorcycles are subject to reduced parking meter fees for the hours of enforcement as set forth in this Chapter in this Designated Motorcycle Parking Area. When more than one Motorcycle parks in a regular parking space only one of the Motorcycles occupying the parking space shall be required to pay for the parking space at the regular parking rate as set forth in this Chapter.

The second sentence of the ordinance can be read to permit one motorcycle to park in a regular parking space and additional motorcycles to park in the same space for no fee. For example, if 4 motorcycles park in a regular parking space, one would pay the regular rate of \$2.00 if in the High Occupancy Rate Zone, and the three other motorcycles would pay nothing. These three motorcycles would pay less than the reduced rate in the proposed amendment.

C. WHETHER THE CITY IS ESTOPPED FROM SETTING A FEE NOW BECAUSE IT DID NOT SET ONE INTIALLY WHEN THE DESIGNATED MOTORCYCLE PARKING AREA WAS ADOPTED?

The City is not estopped from amending an ordinance to include a fee that was omitted when the ordinance was originally adopted. The four elements of municipal estoppel are set forth below.

1. a representation of concealment of material facts made with the knowledge of those facts;
2. the party to whom the representation was made must have been ignorant of the truth of the matter;
3. the representation must have been made with the intention of inducing the other party to rely upon it; and
4. the other party must have been induced to rely upon the representation to his or her injury.

City of Concord v. Tompkins, 124 NH 463, 467-468. The City never concealed a material fact or intended to induce reliance and there is no injury. The party asserting municipal estoppel has the burden of proof and as such, a claim for municipal estoppel under these facts would very likely fail.

D. WHETHER THE FEE REDUCTION SHOULD BE LIMITED TO ONLY THOSE WHO USE THE PARKING APP.

It would appear that the question is asking whether the ordinance would apply equally to all citizens, and if not, is the Equal Protection Clause implicated.¹ Simply put, the question is whether the proposed amendment discriminate against those who don't have a smartphone who would not get the discount in the Designated Motorcycle Parking Area. When a law does

¹ For a comprehensive discussion of the varying levels of scrutiny under the New Hampshire Constitution, see *Cnty. Res. for Justice, Inc. v. City of Manchester*, 154 N.H. 748 (2007).

not implicate an important, substantive right, and does not discriminate on the basis of a suspect category, then a court looks to whether the law implicated is rationally related to a legitimate government interest. The regulation of parking on public ways has long been held to satisfy this test based on various factors. See, e.g., *Peters v. Univ. of N.H.*, 112 N.H. 120, 120 (1972) (denying an equal protection claim challenging a parking restriction in a public lot which limited access based on employment at UNH); *State v. Martin* 2016 N.H. LEXIS 223 (2016) (an unpublished opinion reaffirming that it is a privilege and not a right to travel on public roadways). Finally, the City has the authority to charge fees for parking on these public ways in the form of metering. RSA 231:130; *In re Opinion of the Justices*, 94 N.H. 501 (1947). Therefore, a challenge to the proposed amendment processed exclusively by the App under the Equal Protection clause would likely fail, as the City has unqualified ability to establish, abolish, and modify parking meters and fees, so long as those fees are “reasonable,” and not based on some suspect class.

That being said, there may be a way to allow those without smartphones to receive the benefit of any proposed amendment by drafting the amendment to use coupons or personal meters as provided Chapter 7, Article I, Section 7.101, which provides in part:

The word “meter” shall mean any device for buying parking time that displays the length of time for which a vehicle may remain legally parked in a parking space. Such devices include but are not limited to public meters such as a meter at an individual parking space or a central meter, or personal meters such as an in-vehicle meter, coupon or any other metering device including mobile phone applications as shall be approved from time to time by the City Council. The display of parking time purchased may be on the meter itself, a paper receipt or by other duly authorized means of display.

E. WHETHER THE APP CAN PROCESS THE FEE

Ben Fletcher will describe how the App processes parking fees.

F. WHAT IS THE EFFECT OF THE CITY COUNCIL’S APPROVAL OF THE PTS MINTUES REGARDING THE MOTION CONTAINED IN THE PTS MINUTES

See A above.

Proposed Action: Refer proposed amendment to the Designated Motorcycle Parking Area ordinance to the Legal Department to amend pursuant to the issues raised in this memorandum for referral back to PTS. PTS will then review and approve a draft of the proposed amendment to submit to the City Council for first reading.



PARKPORTSMOUTH

Motorcycle Parking at Market Square

Finalizing Chapter 7, Section 7.105 C

3.16.2020

History

On April 16th, 2018, City Ordinance Chapter 7 was Amended to Include Section 7.105 C: Designated Motorcycle Parking Area

- Term: April 1st – November 30th
- Location: Easterly Side of Pleasant Street at Market Street
- Motorcycles Subject to ‘Reduced Parking Meter Fees’
 - *Fee Was Not Established*
 - This Has Led to Enforcement and Citation Appeals Issues

Motorcycle Parking Area

Five Spaces at Market Square



Motorcycle Parking Area

Five Spaces at Market Square



Recommendations

- Motorcycle Fee: Established Zone A Rate less \$.50/hour; standard 3 Hour Limit
- Enable a Special Motorcycle Zone within the ParkMobile App to Facilitate Reduced-Rate Pricing
- Allow for Resident Discount Already Existing Within the ParkMobile App for Qualified Portsmouth Residents



PARKPORTSMOUTH

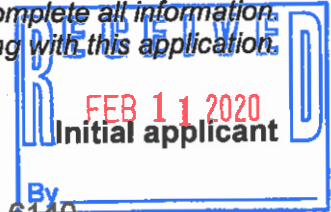
Discussion



CITY OF PORTSMOUTH, N.H. BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

*Instructions: Please print or type and complete all information.
Please submit resume' along with this application.*



Committee: Recreation Board Conservation Commission

Name: Beth S. Margeson Telephone: 603-436-6140

Could you be contacted at work? YES/NO If so, telephone # No

Street address: 24 Marcy Street, Portsmouth, New Hampshire 03801

Mailing address (if different): _____

Email address (for clerk's office communication): bmargeson@myfairpoint.net

How long have you been a resident of Portsmouth? 7 years, 7 months

Occupational background:

Attorney at Law, Division for Children, Youth and Families, Pease Tradeport, Portsmouth, NH

Please list experience you have in respect to this Board/Commission:

Program Assistant, National Football League's Punt, Pass and Kick Competition

Portsmouth Little League, Board Member

Program Coordinator, Little Harbour School, PEP After School Program, 2013 - 2016



Have you contacted the chair of the Board/Commission to determine the time commitment involved? YES/NO Yes, at time of initial application in 2019

Would you be able to commit to attending all meetings? YES/NO Yes

Reasons for wishing to serve: Recreation programs are a crucial part of strong communities - for children, adults and senior citizens. I have long been interested in these programs and my children have participated in many of Portsmouth's offerings - soccer, basketball, Camp Fun Stuff, tennis, swimming lessons, and baseball through Portsmouth Little League. I would like to serve on the Recreation Board to assist in keeping the recreational programs vital and strong.

Please list any organizations, groups, or other committees you are involved in:

Portsmouth Women's City Club, Scholarship Committee, former Treasurer and board member;

Citizens for Voters Education, Moderator;

Benevolent and Protective Order of Elks, Lodge No. 97;

Friends of South End, Faerie House Tour Volunteer; and

Friends of Prescott Park, Inc., Secretary

Please list two character references not related to you or city staff members:
(Portsmouth references preferred)

1) Phyllis Eldridge, 50 South School Street, Portsmouth, NH, 603-431-1293

Name, address, telephone number

2) Judy Nerbonne, 189 Gates Street, Portsmouth, NH 603-475-4108

Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

1. This application is for consideration and does not mean you will necessarily be appointed to this Board/Commission; and
2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
5. Application will be kept on file for one year from date of receipt.

Signature: Beth A. Margolis Date: 2/11/2020

If you do not receive the appointment you are requesting, would you be interested in serving on another board or commission? Yes No

Please submit application to the City Clerks Office, 1 Junkins Avenue, Portsmouth, NH 03801



CITY OF PORTSMOUTH, N.H. BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information
Please submit resume along with this application



Committee: Conservation Commission

Name: Jessica Blasko Telephone: 603-828-9203

Could you be contacted at work? YES/NO - If so, telephone# Same as above

Street address: 74 Wentworth Rd. Portsmouth

Mailing address (if different): _____

Email address (for clerk's office communication): jess@jptphysicaltherapy.com

How long have you been a resident of Portsmouth? 10+ years

Occupational background:

Physical therapist for almost 18 years. Earned both Master's and Doctorate degree in physical therapy from Northeastern University. Self-employed on Seacoast for over 10 years, primarily in Portsmouth.

Would you be able to commit to attending all meetings? YES NO

Reasons for wishing to continue serving: Would like to continue to be involved in community in this capacity and continue to learn from fellow commissioners and greater statewide resources on NH's natural world and how to care for it as our state and city grow and change.



Please list any organizations, groups, or other committees you are involved in:

Board Member for Clipper Foundation
Volunteer for Cooking Matters/NH Foodbank
Member of Music Hall, Seacoast Science Center and
Surf Rider Foundation

Please list two character references not related to you or city staff members:

(Portsmouth references preferred)

1) Phil Pettis 82 Court St. Portsmouth 603. 319. 1074

Name, address, telephone number

2) Priscilla Coughlin Broad St. Portsmouth 603. 828. 7027

Name, address, telephone number

Jim Jalbert C#J 185 Grafton Dr. Portsmouth W-603-433-8715
C 603-817-1717

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

1. This reappointment application is for consideration and does not mean you will necessarily be reappointed to this Board/Commission; and
2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
5. Application will be kept on file for one year from date of receipt.

Signature: Jessica Blasko Date: 3/2/2020

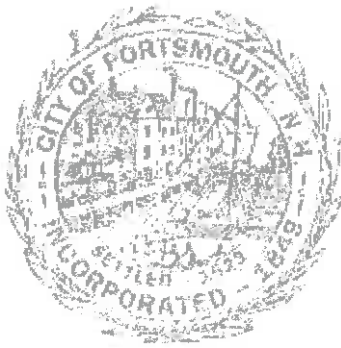
CITY CLERK INFORMATION ONLY:

New Term Expiration Date: 4-1-2023

Annual Number of Meetings: 9 (2019) Number of Meetings Absent: 3

Date of Original Appointment: 3-9-2019

Please submit application to: City Clerk's Office, 1 Junkins Avenue, Portsmouth, NH 03801



CITY OF PORTSMOUTH, N.H. BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information
Please submit resume along with this application

RECEIVED
MAR 02 2020
Renewing applicant
By _____

Committee: Conservation Commission

Name: Allison Tanner Telephone: (603) 431-4147

Could you be contacted at work? YES NO - If so, telephone# 207-985-5323

Street address: 380 Greenleaf Ave, Portsmouth, NH 03801

Mailing address (if different): _____

Email address (for clerk's office communication): inventivetechnologies@comcast.net

How long have you been a resident of Portsmouth? 41 years

Occupational background:

Scientist, Corning Incorporated, Kennebunk, ME 04043
PhD candidate Tufts Sackler School Biomedical Sciences
Registered Nurse Portsmouth Hospital
Greenscare Tree & Grounds Service, owner, Portsmouth, NH

Would you be able to commit to attending all meetings? YES NO

Reasons for wishing to continue serving: Since I have been on the
Conservation Commission for more than 25 years,
I've had the opportunity to learn from some
of the best people how to help maintain our
quality of life & the environment here in Portsmouth.

OVER
➔

Please list any organizations, groups, or other committees you are involved in:

Please list two character references not related to you or city staff members:
(Portsmouth references preferred)

- 1) Pilar Pardo 55 Meadow Road Portsmouth, NH 03801 436-0269
Name, address, telephone number
- 2) Barbara McMillan 84 Hillside Dr. Portsmouth, NH 03801 438-6488
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

- 1. This reappointment application is for consideration and does not mean you will necessarily be reappointed to this Board/Commission; and
- 2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
- 3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
- 4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
- 5. Application will be kept on file for one year from date of receipt.

Signature: Ashton Turner Date: 2/28/2023

CITY CLERK INFORMATION ONLY:

New Term Expiration Date: 4-1-2023
 Annual Number of Meetings: 12 (2019) Number of Meetings Absent: 1
 Date of Original Appointment: 1/15/1990

Please submit application to: City Clerk's Office, 1 Junkins Avenue, Portsmouth, NH 03801



CITY OF PORTSMOUTH, N.H.
BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information
Please submit resume along with this application

RECEIVED
FEB 24 2020
Renewing applicant
By

Committee: Recreation

Name: JACQUELINE CANI-RTS Telephone: 603 451-7654

Could you be contacted at work? YES NO If so, telephone # Retired

Street address: 40 Bedford Way #112

Mailing address (if different): Same

Email address (for clerk's office communication): CANI0917@AOL.COM

How long have you been a resident of Portsmouth? 46 yrs

Occupational background:

Dept. of State AIT - Retired phone 603
BA, AA UNH
ON Rec Since 1984

Would you be able to commit to attending all meetings? YES NO

Reasons for wishing to continue serving: I have made I think
I make a good effort at participating and keep the
recreation board active. I have seen the board grow &
become a model in the city. There are several
projects in the works I would like to see to completion



Please list any organizations, groups, or other committees you are involved in:

State bar
National Federation of Women Legislators

Please list two character references not related to you or city staff members:
(Portsmouth references preferred)

1) Randy Wilson
Name, address, telephone number
2) Rick Beckett
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

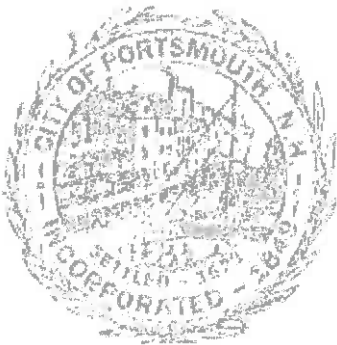
1. This reappointment application is for consideration and does not mean you will necessarily be reappointed to this Board/Commission; and
2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
5. Application will be kept on file for one year from date of receipt.

Signature: [Signature] Date: 2/24/20

CITY CLERK INFORMATION ONLY:

New Term Expiration Date: 04-01-2023
Annual Number of Meetings: 6 Number of Meetings Absent: 0
Date of Original Appointment: 12/10/1989

Please submit application to: City Clerk's Office, 1 Junkins Avenue, Portsmouth, NH 03801



CITY OF PORTSMOUTH, N.H. BOARDS AND COMMISSIONS

APPOINTMENT APPLICATION

Instructions: Please print or type and complete all information
Please submit resume' along with this application



Committee: Recreation

Name: Lisa Lauth Telephone: 508-561-8169

Could you be contacted at work? YES/NO - If so, telephone # _____

Street address: 113 Bow St

Mailing address (if different): _____

Email address (for clerk's office communication): Lisagle@comcast.net

How long have you been a resident of Portsmouth? 7 yrs

Occupational background:

Real estate sales

CASA

Would you be able to commit to attending all meetings? YES/NO

Reasons for wishing to continue serving: Looking forward to the opening of the new senior center & our new fields!



Please list any organizations, groups, or other committees you are involved in:

Peirce Island
OASA

Please list two character references not related to you or city staff members:
(Portsmouth references preferred)

- 1) Mary Carey Foley (603) 498-2994 113 Bow St
Name, address, telephone number
- 2) Leslie Williams 603-205-0506 1338 Woodbury rd
Name, address, telephone number

BY SUBMITTING THIS APPLICATION YOU UNDERSTAND THAT:

- 1. This reappointment application is for consideration and does not mean you will necessarily be reappointed to this Board/Commission; and
- 2. The Mayor will review your application, may contact you, check your references, and determine any potential conflict of interests; and
- 3. This application may be forwarded to the City Council for consideration at the Mayor's discretion; and
- 4. If this application is forwarded to the City Council, they may consider the application and vote on it at the next scheduled meeting.
- 5. Application will be kept on file for one year from date of receipt.

Signature: Lisa Loutter Date: 3/3/22

CITY CLERK INFORMATION ONLY:

New Term Expiration Date: 4-1-2023

Annual Number of Meetings: 6 (2019) Number of Meetings Absent: 0

Date of Original Appointment: 8/9/2019

Please submit application to: City Clerk's Office, 1 Junkins Avenue, Portsmouth, NH 03801

Impact Fees

I would recommend the following suggestions to support City of Portsmouth's infrastructure:

For projects over two units the following impact fees would apply:

1-Bedroom or 1,000 sq ft or less \$25,000/unit

2- Bedrooms or 1,500 sq ft or less \$50,000/unit

3-Bedrooms or 2,000 sq ft or less \$75,000/unit

4- Bedrooms or 2,500 sq ft or less \$100,000/unit

5-Bedrooms or 3000 sq ft or less \$125,000/unit

The following motion I will be making:

I move to have the city manager, legal staff, fees committee and planning board review and report back on the suggested impact fees by our April 20 City Council Meeting. I would also encourage other suggestions from these groups on impact fees with a report back on April 20, 2020

DATE: MARCH 11,2020

TO: CITY CLERK KELLI BARNABY
MAYOR BECKSTED
CITY MANAGER CONARD

FROM: CITY COUNCILOR HUDA

SUBJECT: MAR 16TH CITY COUNCIL MEETING AGENDA REQUEST
PLEASE PUT THIS UNDER MY NAME. THANK YOU

**1 MOVE TO REQUEST A REPORT BACK FROM THE CITY MANAGER ON THE FOLLOWING:
(IN A LANGUAGE & FORMAT THAT CAN BE UNDERSTOOD BY ALL CITY RESIDENTS)**

- > TO CLARIFY THE DOLLAR LIMIT SPENDING AUTHORITY GRANTED TO DIFFERENT POSITIONS
(I.E. DIRECTORS, DEPT. MANAGERS , CITY PURCHASING AGENT, CITY MANAGER)**
- > TO DISCUSS IF THERE IS A DOLLAR LIMIT RESTRICTION ON THE CITY DEPT. DIRECTORS OR MANAGERS
ABILITY TO TRANSFER DOLLARS AMONG THE VARIOUS LINE ITEMS IN THEIR APPROPRIATED BUDGETS.
DO THESE TRANSFERS REQUIRE THE APPROVAL OF EITHER THE FINANCE DIRECTOR OR CITY MANAGER.**
- > PLEASE INCLUDE REFERENCES TO SOURCE DOCUMENTATION THAT AUTHORIZES SUCH DOLLAR LIMITS.**
- > PLEASE INCLUDE A DISCUSSION ON THE VARIOUS INTERNAL CONTROLS APPLIED TO THE ABOVE.**

NOTE:

**THIS REQUEST STEMS FROM A RESIDENT QUESTION AFTER THE LAST CITY COUNCIL MEETING
ASKING:
SO ONCE THE CITY COUNCIL APPROVES THE ANNUAL BUDGET SPENDING REQUEST
BY DEPARTMENT, DOES THAT MEAN THE DEPT. MANAGER HAS THE ABILITY TO SPEND
THOSE DOLLARS ON ANYTHING AS LONG AS THEY STAY WITHIN THE BUDGET DOLLARS
APPROPRIATED TO THEM?**

**2 TO CLARIFY THE CITY MANAGER'S INTERPERTATION OF SECTION 7.23 INFORMATION TECHNOLOGY MANAGEMENT
OF THE CITY CHARTER AS IT RELATES TO THE INFORMATION TECHNOLOGY SECTION OF
THE ADMINMISTRATIVE CODE?**

> IS THERE ANY CONFLICT?

**> BASED ON THE INTERPERTATION OF THE ABOVE, IS THE CITY FOLLOWING CITY CHARTER
OR THE ADMINISTRATIVE CODE?**

PORTSMOUTH POLICE COMMISSION

MEMORANDUM

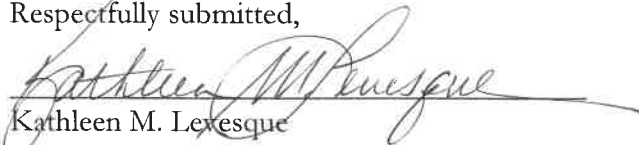
DATE: FEBRUARY 26TH, 2020
TO: KAREN CONARD, CITY MANAGER
FROM: JOSEPH ONOSKO, PORTSMOUTH POLICE COMMISSION
ROBERT M. MERNER, CHIEF OF POLICE
RE: GRANT AND DONATIONS

At the February 25, 2020 Police Commission meeting, the Board of Police Commissioners accepted the following donations:

1. Donation: A donation of \$1,000 from Mr. Gormley and Ms. Iguchi in support of the Portsmouth Police Department.
2. A donation in the amount of \$20 from Ms. Marchi in support of the Portsmouth Police Explorer Cadets.

We submit the information to you pursuant to City Policy Memorandum #94-36, for the City Council's consideration and approval at their March 16th, 2020 meeting. We respectfully request this item be placed on the City Council meeting agenda for the March 16th, 2020 regular City Council meeting.

Respectfully submitted,


Kathleen M. Levesque
Office of the Chief

Attachments:

copies: Board of Police Commissioners
Finance Director Judie Belanger

Admin. Mgr. Karen Senecal
Business Asst. Tammie Perez

PORTSMOUTH POLICE COMMISSION

MEMORANDUM

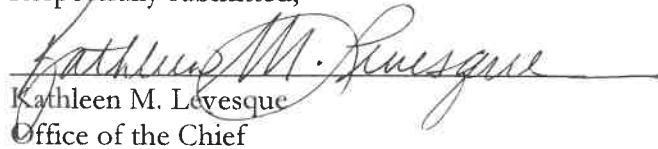
DATE: MARCH 6, 2020
TO: KAREN CONARD, CITY MANAGER
FROM: JOSEPH ONOSKO, PORTSMOUTH POLICE COMMISSION
ROBERT M. MERNER, CHIEF OF POLICE
RE: GRANT AND DONATIONS

At the March 6th, 2020 Special Police Commission meeting, the Board of Police Commissioners accepted the following grant:

- a.) A grant in the amount of \$37,500 from the New Hampshire Dept. of Safety for Night Vision Equipment.

We submit the information to you pursuant to City Policy Memorandum #94-36, for the City Council's consideration and approval at their March 16, 2020 meeting. We respectfully request this item be placed on the City Council meeting agenda for the March 16, 2020 regular City Council meeting.

Respectfully submitted,


Kathleen M. Levesque
Office of the Chief

Attachments: Notice of Award

copies: Board of Police Commissioners
Finance Director Judie Belanger

Admin. Mgr. Karen Senecal
Business Asst. Tammie Perez



Karen S. Conard
City Manager

CITY OF PORTSMOUTH

City Hall, One Junkins Avenue
Portsmouth, New Hampshire 03801
kconard@cityofportsmouth.com
(603) 610-7201

Date: March 12, 2020

To: Honorable Mayor Rick Becksted and City Council Members

From: Karen Conard, City Manager *KSC*

Re: City Manager's Comments on City Council Agenda of March 16, 2020

Work Session:

The City Engineer, Terry Desmarais, and the Deputy City Attorney, Suzanne Woodland, will facilitate a work session regarding the Sagamore Avenue Sewer Extension Project. The purpose of the work session is to discuss in detail those aspects of the project that would benefit from City Council decision-making in terms of scope, apportionment of costs, funding and other policy aspects of the project. Please reference the City's [Sagamore Avenue Sewer Extension project webpage](#) for additional background information.

XI. Public Hearings and Votes on Ordinances and/or Resolutions:

1. First Reading of Ordinance Amending Chapter 7, Article I, Section 7.105 C – Designated Motorcycle Parking Area:

In June 2019, the Parking and Traffic Safety Committee approved an amendment to the Designated Motorcycle Parking Area Ordinance (Chapter 7, Article I, Section 7.105 C). A citizen raised concerns regarding the amendment, and in August the Committee rescinded its approval and requested a report back from City staff. Upon review, the Committee voted to request a revised amendment in September. On February 6, 2020, the Parking and Traffic Safety Committee voted to approve the [attached amendment](#) to Chapter 7, Article I, Section 7.105 C and to refer it to the City Council to request first reading. At its March 2nd meeting, the City Council voted to bring back the ordinance for a first reading this evening.

Ben Fletcher, Director of Parking, will provide a brief presentation on the amended ordinance.

I recommend that the City Council move to approve the first reading of an amendment to Chapter 7, Article I, Section 7.105 C, the Designated Motorcycle Parking Area Ordinance, and schedule a public hearing and a second reading at the April 6, 2020 Council meeting.

XIV. Approval of Grants/Donations:

1. Police Department Donations:

At its February 25th meeting, the Board of Police Commissioners accepted the following donations:

- a. A donation of \$1,000 from Mr. Gormley and Ms. Iguchi in support of the Portsmouth Police Department.
- b. A donation in the amount of \$20 from Ms. Marchi in support of the Portsmouth Police Explorer Cadets.

I recommend that the City Council move to approve and accept the donations to the Portsmouth Police Department as presented.

2. Police Department Grant:

At its March 6th Special meeting, the Board of Police Commissioners accepted the following grant:

- a. A grant in the amount of \$37,500 from the New Hampshire Department of Safety for Night Vision Equipment.

I recommend that the City Council move to approve and accept the grant to the Portsmouth Police Department as presented.

XV. City Manager's Items which Require Action:

1. Market Street Property Purchase from NH Department of Transportation:

Department of Public Works staff have been working with the New Hampshire Department of Transportation (NH DOT) to procure a 7,834 sq. ft parcel of land on Market Street (see [attached map](#)) from the State of NH to improve stormwater maintenance associated with a pond bounded by Market Street, Maplewood Avenue, McGee Drive and the Heritage Hill Condominiums.

Purchase of this land is necessary to improve access to drainage structures that control the water level in this pond. The need for added control of this pond was identified during the stormwater design of the on-going Maplewood Avenue Reconstruction Project. The State has valued the parcel at \$1,100 which would be paid for as part of the Maplewood Avenue project cost. With Planning Board concurrence and City Council approval, City staff will work with the State to complete the purchase of this land.

I recommend that the City Council move to refer procurement of land from the NH DOT to the Planning Board for a recommendation back to City Council.

2. Report Back from Planning Regarding 27 Thaxter Road:

This memorandum represents the most recent chapter of a lengthy consideration by the City government concerning a request by a property owner on Thaxter Road to separate two lots which had been previously conjoined by the City and an objection to that action taken by the owners of an abutting lot.

On May 20, 2019 the City Council reviewed a request from Chad Callihan and a recommendation from the Planning Board, subsequently voting to unmerge two lots on Thaxter Road owned by Mr. Callihan. The lots were believed to have been involuntarily merged by the City. See NH RSA 674:39-aa (copy is [attached](#) for reference).

Abutters Kenneth and Deborah Jennings of 63 Thaxter Road then appealed that decision of the City Council to the Board of Adjustment as allowed by the statute. The Board of Adjustment heard the appeal on September 17, 2019 and then continued its deliberations to the October 15, 2019 meeting. At the first hearing on the appeal, Attorney Ralph Woodman, on behalf of the appealing abutters, indicated to the Board of Adjustment that there was information which had not been available to the City Council at the time of its initial vote, and that the information should have been considered prior to granting the unmerging of the lots. The hearing and the deliberation of the Board of Adjustment on this matter may be reviewed on YouTube at <https://youtu.be/kXgZE42ztOk?t=1296> (September 17, 2019 hearing) and <https://youtu.be/MOfxZ5gIur4?t=1374> (October 15, 2019 meeting). Subsequent to the hearing and deliberation, the Board of Adjustment voted to remand the matter to the City Council for the Council to take whatever action it deemed to be appropriate under the circumstances.

The matter went back to the Council on December 16, 2019. At that time, attorneys for each side were asked to present their arguments in writing, with a limit of seven pages each. Those writings are [attached](#). After some discussion and subsequent to the failure to pass a motion to uphold the City Council's previous decision to unmerge the lots, the City Council moved to refer the unmerging question to the Planning Board.

On January 16, 2020 the referral from the City Council was addressed by the Planning Board. At that time, the Planning Board "recommended to the City Council restoration of the involuntarily merged lots, as originally recommended."

Therefore, the matter is back before the City Council, with a recommendation from the Planning Board that the Council uphold its previous decision of May 20, 2019 to unmerge the lots.

I recommend that the City Council move to approve the unmerging of the two involved lots at 27 Thaxter Road as requested by the applicant Chad Callihan and as recommended by the Planning Board.

3. **Foundry Place Agreements and Easements:**

After several years of development, Deer Street Associates (DSA) is prepared to move forward with “The Hotel at Foundry Place”, located at 165 Foundry Place. This development has the approval of both the Technical Advisory Committee (January 30, 2018) and the Planning Board (February 15, 2018). The Planning Board’s approval of this project stipulated that a community space easement ([Exhibit D](#)), a construction and access easement ([Exhibit E](#)), and a landscaping license agreement ([Exhibit F](#)) be executed, each of which requires City Council acceptance. In addition, because the City purchased the property for the Foundry Garage from DSA as a part of its development of the surrounding lots, the City and DSA are required by a contract, the Post Closing Obligations Agreement (PCOA), to enter into additional agreements relating to this development, which are also before City Council.

These documents include a parking agreement ([Exhibit G](#)), the termination of water and sewer easements over DSA property ([Exhibit H](#)), and an affidavit addressing the relocation of the Railroad Agency Office ([Exhibit I](#)).

As explained below, the first set of documents require City Council acceptance prior to execution, while the second set of documents arise from approvals granted by the City Council on August 15, 2016.

History of the Planning Board Approvals

On September 7, 2016, the Planning Board approved a subdivision of land owned by DSA adjacent to Deer Street and Bridge Street. That subdivision created six lots. A highlighted version of the subdivision plan is [attached as Exhibit A](#) for reference. DSA sold Lot 1 to the City, where the City constructed the Foundry Garage and Foundry Place, a public right of way. Lot 2 was reserved for community space, and Lots 2 through 6 were retained by DSA for development.

On February 15, 2018, the Planning Board granted site plan review approval for property located at 165 Deer Street, marked as Lot 3 on [Exhibit A](#). This site plan approval was for a 5-story mixed use building including a hotel restaurant and first floor parking garage with a footprint of 22,073 square feet and 104,020 square feet gross floor area. The Planning Board approved the development, which is 5 stories and 60 feet tall, where 4 stories and 50 feet are permitted in this district. The Planning Board also approved the 22,073 square foot footprint, which exceeds the 20,000 square foot footprint permitted in this district. Each of these conditional use permits were granted pursuant to Section 10.5A46 of the Zoning Ordinance.

Per Section 10.5A46.10 of the Zoning Ordinance, DSA is providing 5,301 square feet of community space to the City in order to receive the above-mentioned incentives for its building. The [attached Exhibit B](#) reflects the allocation of community space between the primary lot, Lot 3, and the adjacent lot, Lot 2. The area shaded in blue is community space allocated for the Lot 3 incentives, and the green shaded area is reserved for Lot 6. Per Section 10.5A46.22 (2), 3,881 square feet of community space will be located on

Lot 2, which, pursuant to Planning Board stipulations, must be conveyed to the City prior to the issuance of a Certificate of Occupancy. Lot 2 is also secured by a mortgage, and DSA is required to post a bond for the construction of the improvements on Lot 2.

The remaining 1,420 square feet of required community space will be located on Lot 3, and is included in the community space easement, attached as [Exhibit D](#).

In addition to the community space easements, the project as approved by the Planning Board includes areas where the upper story of the building will encroach into Lot 2. While Lot 2 is owned by an entity related to DSA, DSA intends to convey Lot 2 to the City as community space, and therefore City Council approval is required for the City to convey this interest in land. These locations are shown on the easement plan attached as [Exhibit C](#), and as described in the easement [attached as Exhibit E](#), and will not interfere with the use of that space as open community space.

The Planning Board approval also required that DSA enter into a landscape agreement, whereby DSA can maintain the area of land between the sidewalk and Foundry Place, the City right of way. That agreement is [attached as Exhibit F](#).

All of the foregoing has been approved by the Planning Board and is recommended by the Planning and Legal Departments. In order for the City to accept these easements, City Council approval of the form of the documents is needed. However, the City Council is empowered only to review the form of the documents, and not to overrule the previous regulatory decisions of the Planning Board. See Ehrenberg v. Concord, 120 N.H. 656 (1980).

History of the City Acquisition of the Foundry Garage and the PCOA

In 2016, the City Council not only approved the execution of a purchase and sale agreement to effect the sale of Lot 1, but City Council also approved the execution of the PCOA. While the purchase and sale agreement governed how the land and money would be transferred, the PCOA set forth the responsibilities and obligations of DSA and the City moving forward. Given the complex reality of the land transfers, the PCOA addressed additional outstanding issues related to the transaction. Therefore, in order to complete the transaction, the City and DSA are contractually bound to comply with the terms of the PCOA, and execute all documents as defined thereunder. Several of these agreements, listed below, are still outstanding.

Therefore, pursuant to the authority granted by the 2016 vote, the following documents have been fully negotiated, and are now presented to City Council for informational purposes.

The Parking Agreement

When the City purchased the land for the Foundry Garage from DSA in 2016, the development was intended to fall under Section 10.1113.111 of the Zoning Ordinance. That section permits a developer to locate required parking on a lot other than principal use if the development included the construction of a municipal parking garage. Therefore, an agreement had to be drafted to govern DSA’s use of parking spaces in the Foundry Garage. The PCOA required this agreement be drafted, and that the parties agree to several essential terms.

[Attached as Exhibit G](#), the parking agreement fulfills the requirements of the PCOA. The PCOA requires that DSA receive 68 paid parking passes in the Foundry Garage. Due to the nature of the bonding for the Foundry Garage, only 10% minus one pass may be allocated to one private entity on a non-terminable basis. Therefore, because the Foundry Garage contains 616 spaces, the parking agreement provides 60 paid parking passes in the Foundry Garage to DSA on a non-terminable basis. The remaining 8 spaces must also be paid for by DSA, and are terminable by the City upon 50-days written notice.

Under the terms of this agreement, DSA will be subject to the same terms and conditions as any other user of the garage. While DSA may assign the parking garage spaces to owners of the various lots, it may only do so if the assignment would not violate any site plan approval. This document has the recommendation of the Legal, Planning and Parking Departments.

This document still awaits final approval of bond counsel, and has yet to be approved in final form by DSA, however this is the form recommended by the Legal Department.

The Termination of the Municipal Waterline Easement and Municipal Sewer Easement

Before the City acquired the Foundry Garage parcel, there were sewer and water lines within easements crossing the property DSA wished to develop. As a part of the transaction, the City also acquired the land which is now Foundry Place, a public right of way. The PCOA required that the sewer and water lines would be relocated to the new right of way, and the easements would then be extinguished. These utility lines have since been relocated to the right of way, and this release fulfills the City’s corresponding contractual obligation imposed by the 2016 City Council approval. This termination agreement is attached as [Exhibit H](#).

Assumption Agreement Regarding the Railroad Agency Office

The PCOA required that the City house a Railroad Agency Office within the Foundry Garage. The Agency Office benefits Boston and Maine Corporation, and is currently located within the Foundry Garage. Due to restrictions within the purchase and sale agreement, the Foundry Garage parcel must house the Agency Office. The attached affidavit ([Exhibit I](#)) confirms that the Agency Office is located on City property, and

pursuant to the PCOA, it confirms that the City has assumed all obligations relative to the Agency Office. This document is executed in lieu of a formal assumption agreement as required by the PCOA, and the attached limited release agreement ([Exhibit J](#)) from DSA confirms that this affidavit extinguishes any outstanding requirement relative to the Agency Office.

I recommend that the City Council move to authorize the City Manager to negotiate, execute and accept the community space easement ([Exhibit D](#)), an easement for construction and egress on Lot 2 ([Exhibit E](#)), and a landscape license agreement ([Exhibit F](#)) in a form similar to those attached.

4. **Request to Establish a Work Session Regarding Prescott Park:**

City staff would like to request a work session with the City Council be scheduled for April 6, 2020 at 6:00 p.m in Council Chambers. At this session, representatives from Weston and Sampson will update the Council on progress made on the Prescott Park Master Plan.

I recommend that the City Council move to schedule a work session on April 6, 2020 for the purposes of reviewing the Prescott Park Master Plan.

5. **Request to Renew Seacoast Growers' Association (Farmers' Market) Proposed 2020 License Agreement:**

[Attached](#) please find a License Agreement between the City of Portsmouth and Seacoast Growers' Association to allow a Farmers' Market at the City's municipal complex. The Seacoast Growers' Association has been conducting their Farmers' Market at the municipal complex for over ten years.

I recommend that the City Council move to authorize the City Manager to execute the License Agreement allowing Seacoast Growers' Association to operate a Farmers' Market on Saturdays from May 2, 2020 through November 7, 2020.

6. **Request for Public Hearing Regarding Bonding of Fire Apparatus:**

Please find [attached](#) a letter from Fire Chief Todd Germain requesting that the City Council establish a public hearing at the April 6, 2020 Council meeting regarding the authorization to bond One Million Four Hundred Dollars (\$1,400,000) for the purchase of one fire apparatus. This item has been identified in the FY21 Capital Improvement Plan ([element sheet attached](#)). Chief Germain would like to receive authorization on this expenditure to both take advantage of current pricing (prices will be increasing at the end of April) and to start the procurement process. These types of apparatus take over 14 months to build once an order is placed. A draft bond authorization resolution is [attached](#).

I recommend that the City Council move to establish a public hearing for the April 6, 2020 Council meeting regarding the bonding of up to One Million Four Hundred Dollars (\$1,400,000) for the acquisition of one fire apparatus.

7. **Request to Establish Public Hearing regarding Petition for Discontinuance of a Portion of Cate Street Connector Road:**

Last year, the City Council approved a land swap involving City and privately-owned land as well as a development agreement between the City and a private developer, both of which relate to the future construction of what has been referenced as the “Cate Street Connector Road”. The land swap conveys to the City the portion of private property required to complete a new road extension in return for a portion of what is currently City land to be used by Cate Street Development LLC (a private developer) for the construction of the West End Yards mixed-use development project. In addition, the development agreement entered into between the City and the project developer outlines the specifics of the conveyance of land as well as the allocation of responsibility for construction and funding of the new public road, which is to be shared between the City and the developer.

The land swap, as previously approved by the City Council, will convey 136,919 square feet of private land to the City in exchange for 47,470 square feet of City land. The land conveyed to the City will enable the construction of a connector road to provide direct access between Bartlett Street to the Borthwick Avenue traffic signal on the Route 1 Bypass. At the Bartlett Street end, the proposed road will follow the existing Cate Street right-of-way for approximately 250 feet and then travel across what is currently private property to connect to the Bypass. All of the existing properties that currently abut Cate Street will have access to the newly re-aligned road, and the current connection to Cottage Street will remain.

Because the new road extension to Cate Street will require re-routing a portion of the existing Cate Street, the final step in this process is to discontinue the use of that land as a public street. Under New Hampshire State statutes, Cate Street is considered a “Class V public highway”. Once public highways are created, it is presumed that the rights of the public last indefinitely, unless a formal public decision is made to discontinue those rights (RSA 231:43). The City cannot simply relocate the subject portion of Cate Street without a formal discontinuance decision from City Council.

The requirements for discontinuing a public road require that a public hearing occur and that all direct abutters of the road be sent notification via certified letter 14 days prior to the public hearing.

I recommend that the City Council move to establish a public hearing for the April 6, 2020 Council meeting.

XVI. Consent Agenda:

A. **Projecting Sign License - 76 Congress Street:**

Permission is being sought to install a [projecting sign](#) that extends over the public right of way, as follows:

Sign dimensions: 28.5” x 30”

Sign area: 6 sq. ft.

The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed. *Therefore, I recommend approval of a revocable municipal license, subject to the following conditions:*

- 1. The license shall be approved by the Legal Department as to content and form;*
- 2. Any removal or relocation of the sign, for any reason, shall be done at no cost to the City; and*
- 3. Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the signs, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.*

B. Projecting Sign License - 40 Pleasant Street:

Permission is being sought to install a **projecting sign** that extends over the public right of way, as follows:

Sign dimensions: 38” x 38”

Sign area: 10 sq. ft.

The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed. *Therefore, I recommend approval of a revocable municipal license, subject to the following conditions:*

- 1. The license shall be approved by the Legal Department as to content and form;*
- 2. Any removal or relocation of the sign, for any reason, shall be done at no cost to the City; and*
- 3. Any disturbance of the sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the signs, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.*

XVII. Presentations and Consideration of Written Communications and Petitions:

- B. The City Health Department continues to monitor the Coronavirus (Covid-19) outbreak and assist in planning for response. Health Officer, Kim McNamara, will provide a brief presentation to update City Councilors and the public on the current status of these efforts.

XVIII. City Manager’s Informational Items:

1. **Market Street Pedestrian Bridge:**

A Public Information Meeting will take place on March 25, 2020 at 6:00 p.m. at the Osprey Landing Community Center, 10 Sanderling Way in Portsmouth to discuss plans for the Market Street Pedestrian Bridge at Portsmouth Boulevard.

Last summer, the Department of Public Works completed a detailed engineering inspection of this bridge as part of the City’s bridge maintenance program. The Market Street Pedestrian Bridge was previously identified as a priority candidate for preventative maintenance measures. The purpose of the meeting on March 25, 2020 is to gauge public interest in maintaining the bridge versus removing and replacing it with a signalized, “at-grade” pedestrian crossing.

This bridge is among the projects included in the City’s Bridge Capital Improvement Program. All City bridges are inspected by the New Hampshire Department of Transportation, at a minimum, once every two years. Please find [attached](#) a press release outlining the project’s details.

2. **Questions from Councilor Huda from the 3/2/20 City Council meeting:**

The following is in response to the questions placed on the March 2, 2020 City Council meeting under Councilor Huda’s name. The Councilor’s question/comments are in **orange**. The intention is to answer the questions and/or clear up any misconception as relates to these questions.

Discuss the Annual Budget Process:

Purpose>>Timing>>Results>>Relationship to Property Taxes

In regards to this comment, the [FY20 Proposed Annual Budget](#) document includes the budget process for the Capital Improvement Program and the Operating and Non-Operating budget. Charter requirements, budget cycle, budget schedule, purpose, and the relationship to property taxes are clearly outlined on pages 93-105.

The budget process approach over the last several years began as early as fall with the City Council or Joint Budget Committee in order to discuss the legal and inflationary expenditures facing the City for the next fiscal year. For fiscal year 2021, in light of the new City Council, a budget work session was not held until January 2020 after the new City Council inauguration.

**The following are questions from residents I received:
(These questions relate to the general fund based on the following statement).**

If the city is a “not for profit government entity” meaning that property taxes are billed to residents to fund the operations of the city government (general fund) and at year

end should net to zero. (This assumes the city should have spent the dollars requested of the taxpayers through property taxes).

Note: Property tax levy and property taxes for local governments are not set to “make a profit” as in the private sector. The annual budget is prudently established to pay for the operations of the services each local government has determined for its taxpayers, as well as obligations subject to externally enforceable legal purpose restrictions imposed by creditors, grantors, contributors, or laws and regulations of other governments through constitutional provisions or enabling legislation.

The tax levy (the amount raised from property taxes) is the difference between the adopted annual budget and estimated revenues for the next fiscal year for the local government.

[ANNUAL BUDGET *less* ESTIMATED REVENUES *equals* TAX LEVY]

Keep in mind that in the State of New Hampshire the tax rate is calculated by the Department of Revenue based on the annual budget adopted by the City Council, estimated revenues based on facts and trends, property valuation as of April 1 (after the budget adoption) and any adjustments mandated by the State of New Hampshire prior to the official tax rate.

During the fiscal year there are many events that can result in either a surplus or a deficit.

- In the event of a surplus, which is the net result of revenues exceeding expenditures during a specific period of time (for the City of Portsmouth, the fiscal year) then the surplus is closed to Fund Balance to be used to offset future property taxes.
- In the event of a potential deficit, which means revenues are not materializing resulting from a change in the economy or an overstatement of estimated revenues, the City Manager would have to freeze future expenditures outside of legal obligations, which could have a major impact on services for the remaining of the fiscal year. If this deficit is greater than anticipated and Fund Balance is depleted, the City would have to establish an additional tax levy through the Department of Revenue and send out a supplemental tax bill.

1) What does it mean when the City of Portsmouth has a year-end surplus in the General Fund? The City of Portsmouth had a surplus in the General Fund for the Last 3 years

Source:

FY17	\$5,550,104
FY 18	\$4,587,708
FY 19	<u>\$5,159,103</u>
3 Year Total	\$15,296,915

As answered above, a surplus is the net result of revenues exceeding expenditures during a specific period of time (a Fiscal Year).

The surpluses questioned above are the result of the fiscal year's activity and reported in the budget to actual statement. To understand what happens with a surplus at the end of the fiscal year, an understanding of the governmental Fund Balance sheet is essential. The General Fund Balance sheet is prepared using the current financial resources measurement focus and the modified accrual basis of accounting. In other words, with a few exceptions the governmental funds balance sheet reports cash and other financial resources (such as receivables) as assets and amounts owed that are expected to be paid off within a short period of time as liabilities. Meaning, no long-term assets or liabilities are reported on this balance sheet. The Fund Balance is essentially what is left over after the fund's current assets have been used to meet current liabilities.

As reported on page 45 of the [Comprehensive Annual Financial Report \(CAFR\) for Fiscal Year 2019](#), the City's Fund Balance is made of four sections:

- 1) Nonspendable Fund Balance – Inherently nonspendable (long-term loans receivable)
- 2) Committed Fund Balance – Reserves and stabilizations reserves
- 3) Assigned Fund Balance – Constraint purposes (encumbrances)
- 4) Unassigned Fund Balance – Not intended for any purpose

The following table depicts the activity that occurred in Fund Balance at the year-end close of fiscal year 2017, 2018 and 2019. Although there were surpluses to Fund Balance, there were also reductions as a result of the budgetary use of reserves in accordance with policies for long-term financial planning and use of Fund Balance during the budgetary process.

Over the last three fiscal years there was \$15,296,917 in surpluses added to Fund Balance. Over the same time period there was a net reduction to Fund Balance of \$16,618,919 primarily from budgetary use or supplemental appropriations of \$12,863,398; use of reserves to record abatement liabilities of \$3,684,590; and use of reserves for the health and leave at termination stabilization funds of \$1,441,052. Overall, from FY17 to FY19, total Fund Balance went down by \$1,322,002 (\$15,296,917 less \$16,618,919).

Fund Balance	FY 17	FY 18	FY 19	Total
Fiscal Year Surpluses	5,550,104	4,587,709	5,159,103	15,296,917
Adjustments to Fund Balance				
Change to Encumbrances	(128,972)	285,312	1,213,781	1,370,122
Abatement Liabilities	(669,977)	(747,051)	(2,267,562)	(3,684,590)
Health Stabilization	(63,620)	(548,897)	(860,512)	(1,473,028)
Leave at Termination	292,565	28,959	(289,547)	31,976
Budgetary Use-Reserve Tax Appraisal	(73,500)	(150,000)	(150,000)	(373,500)
Budgetary Use-Debt Service Reserve	(1,700,000)	(2,400,000)	(2,123,000)	(6,223,000)
Budgetary Use-Reserve for Bond Premium	(1,850,000)	(1,269,148)	(1,286,114)	(4,405,263)
Budgetary Use of Committed Fund Balance	(250,000)	(231,000)		(481,000)
Statewide Property Tax	(30,000)	(50,000)		(80,000)
Coakley Monitoring		(239,818)	(367,850)	(607,668)
Supplemental Appropriations	(665,800)	(27,167)		(692,967)
Total Net Adjustment	(5,139,304)	(5,348,810)	(6,130,804)	(16,618,919)
Total Change in Fund Balance	410,800	(761,101)	(971,701)	(1,322,002)

2) The City financial reports tell us that this surplus goes back into the General Fund so then where did this surplus go?

This question was answered in question #1.

3) When the City has a surplus in the General Fund who decides where to apply that surplus?

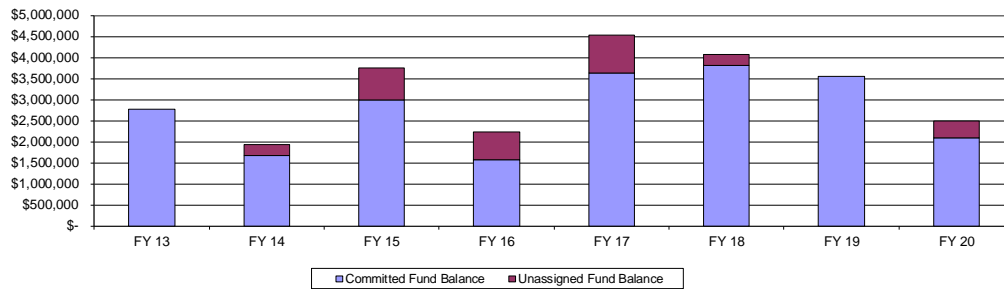
At year end, fiscal policies, City ordinance and current/future commitments drive the decision making of ending Fund Balance. The City has an Unassigned Fund Balance Ordinance to maintain Unassigned Fund Balance at a certain level. Use of health insurance and leave at termination stabilization reserves are utilized in accordance with the long term policies of the City. Use of Fund Balance is approved during the budget process and use of reserve for abatement liabilities are utilized to report the liabilities.

4) If the property taxes being paid are higher than what is needed to fund city operations, as estimated in the General Fund per the annual budget, should the surplus be put in a specific fund to decrease the following year’s property taxes?

Referring to the table and explanation above, the City does use Fund Balance to lower property taxes. Over the last three years, the net reduction of \$16,618,919 in Fund Balance was used rather than property taxes to fund operations and liabilities of the City.

The chart below shows the use of Fund Balance through the budgetary process and supplemental appropriations adopted by the City Council. This is a clear demonstration that

surpluses in any fiscal year are used to offset taxes and maintain fiscal stability. As depicted in the chart below, the City has used \$25,339,369 from Fund Balance from FY13 to FY20.



Use of:	FY 13	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19	FY 20	Total FY13-FY20
Committed Fund Balance	2,772,742	1,673,500	2,991,397	1,573,500	3,623,500	3,819,149	3,559,114	2,100,000	22,112,902
Unassigned Fund Balance	-	247,000	755,500	650,000	915,800	258,167	-	400,000	3,226,467
Total Use of Fund Balance	2,772,742	1,920,500	3,746,897	2,223,500	4,539,300	4,077,316	3,559,114	2,500,000	25,339,369
Average Use Per Year									3,167,421

5) Who has the authority to make the decision to set up a Special Fund?

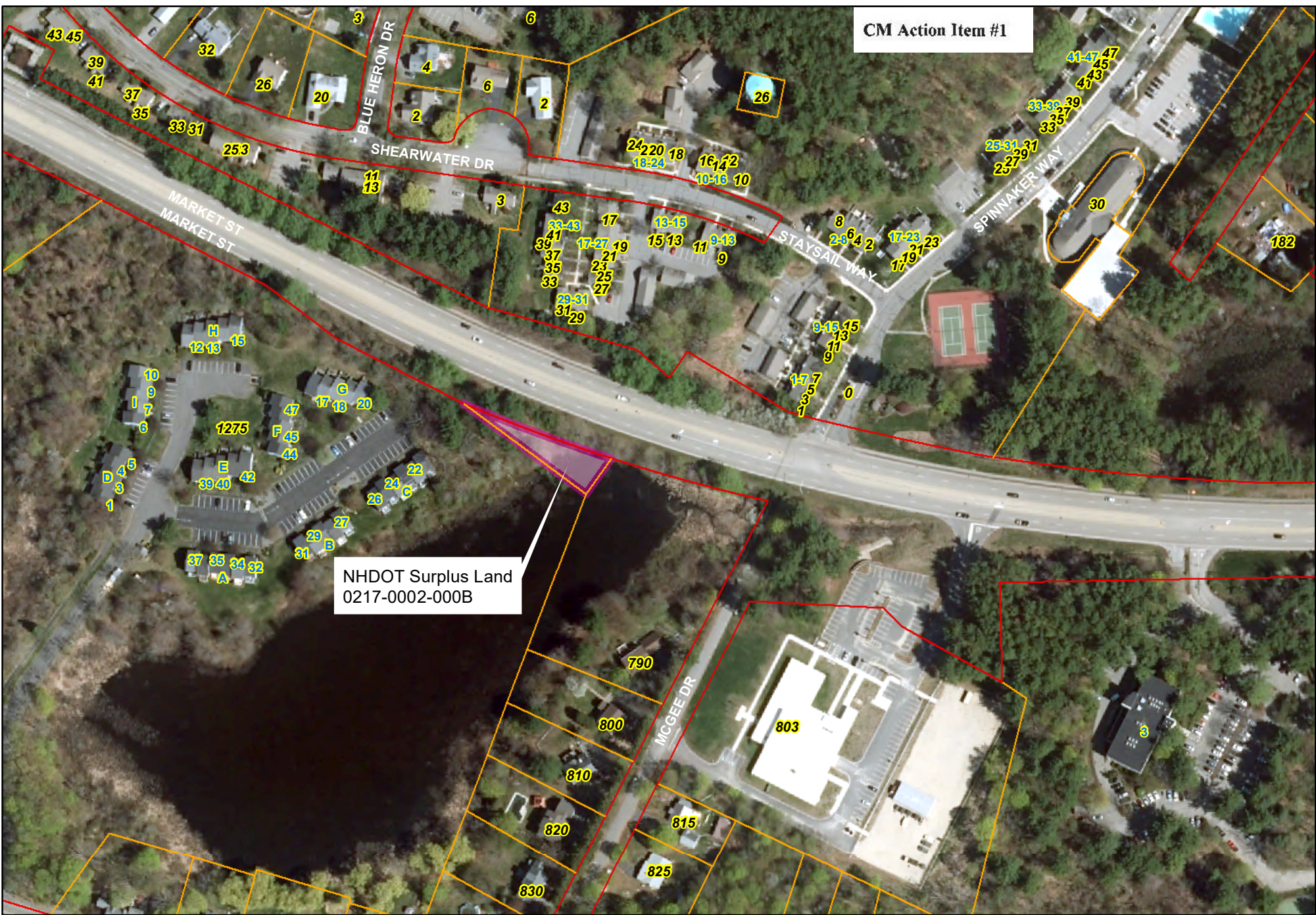
Surplus at the end of the fiscal year is closed to Fund Balance. The City Council approves the use of Fund Balance to offset property taxes through the budget process annually.

3. Memorandum on Consultants, Contracts and Purchases over \$10,000.00:

In response to the City Council’s interest in additional information regarding contracts over \$10,000 and the use of consultants and contracted services, the following documents are provided for information. These are working, internal documents and not maintained for purposes of publication and may contain typographical and other errors.

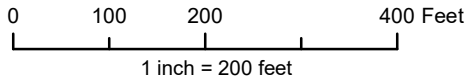
1. [Document 1](#) is a list of all Purchase Orders over \$10,000 for fiscal year 2019 (July 1, 2018 through June 30, 2019). There were 190 purchase orders over \$10,000 issued in FY19. These purchase orders cover everything from equipment to capital improvement construction projects to engineering services.
2. [Document 2](#) is an annotated version of the previously distributed “consultant/contracted service” list. This list was annotated to provide additional information on the nature of the work and whether the work could be performed “in-house” by City employees. Note that there will not be a corresponding purchase order in Document 1 above for each consultant/contracted service listed in Document 2.
3. [Document 3](#) is an excerpt of a current working excel spreadsheet maintained by the Purchasing Clerk for tracking potential bids and requests for proposals (RFP). The actual worksheet contains over 24 columns tracking sign offs, advertising, opening and award information. This excerpt has been made available for purposes of responding to the City Council’s interest in the subject of contracts. Sometimes bid and RFP numbers are assigned by the Purchasing Clerk for projected work, but the bid or RFP will not be finalized and advertised for a variety of reasons.

CM Action Item #1



NHDOT Surplus Land
0217-0002-000B

The City of Portsmouth provides these Geographic Information System maps and data as a public information service. Every reasonable effort has been made to assure the accuracy of these maps and associated data. The maps and data being provided herein are intended for informational purposes only. No guarantee is made as to the accuracy of the maps and data and they should not be relied upon for any purpose other than general information.



NHDOT Surplus Land
0217-0002-000B

Printed: 3/9/2020
Map prepared by Portsmouth Department of Public Works

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Regulation of Subdivision of Land

Section 674:39-aa

674:39-aa Restoration of Involuntarily Merged Lots. –

I. In this section:

(a) "Involuntary merger" and "involuntarily merged" mean lots merged by municipal action for zoning, assessing, or taxation purposes without the consent of the owner.

(b) "Owner" means the person or entity that holds legal title to the lots in question, even if such person or entity did not hold legal title at the time of the involuntary merger.

(c) "Voluntary merger" and "voluntarily merged" mean a merger under RSA 674:39-a, or any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line.

II. Lots or parcels that were involuntarily merged prior to September 18, 2010 by a city, town, county, village district, or any other municipality, shall at the request of the owner, be restored to their premerger status and all zoning and tax maps shall be updated to identify the premerger boundaries of said lots or parcels as recorded at the appropriate registry of deeds, provided:

(a) The request is submitted to the governing body prior to December 31, 2021.

(b) No owner in the chain of title voluntarily merged his or her lots. If any owner in the chain of title voluntarily merged his or her lots, then all subsequent owners shall be estopped from requesting restoration. The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots.

III. All decisions of the governing body may be appealed in accordance with the provisions of RSA 676.

IV. Any municipality may adopt local ordinances, including ordinances enacted prior to the effective date of this section, to restore previously merged properties that are less restrictive than the provisions in paragraph I and II.

V. The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing local land use ordinances.

VI. Municipalities shall post a notice informing residents that any involuntarily merged lots may be restored to premerger status upon the owner's request. Such notice shall be posted in a public place no later than January 1, 2012 and shall remain posted through December 31, 2016. Each municipality shall also publish the same or similar notice in its 2011 through 2015 annual reports.

Source. 2011, 206:4, eff. July 24, 2011. 2016, 327:2, eff. Aug. 23, 2016.

BOSEN & ASSOCIATES, P.L.L.C.
ATTORNEYS AT LAW

December 11, 2019

VIA HAND DELIVERY


Kelli Barnaby, Clerk
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

**RE: *Appeal of Restoration of Involuntarily Merged Lots Pursuant to RSA
674:39-aa (27 Thaxter Road / Tax Map 166, Lot 39)***

Dear Ms. Barnaby:

Enclosed please find the original and four copies of our memorandum relative to the above matter. Thank you for your attention.

Sincerely,



Christopher P. Mulligan

CPM/

Enclosures

cc: Chad Callihan (w/ enclosures)
Ralph R. Woodman, Jr. (w/ enclosures)

MEMORANDUM to City Council

Re: *Appeal of Restoration of Involuntarily Merged Lots Pursuant to RSA 674:39-aa (27 Thaxter Road / Tax Map 166, Lot 39)*

On May 20, 2019, following the unanimous recommendation of the Planning Board, the Council voted to restore two involuntarily merged lots located at 27 Thaxter Road owned by Chad Callihan. Kenneth and Deborah Jennings, owners of the abutting property, have objected and appealed this decision to the Board of Adjustment, which in turn has remanded the matter to the Council for further consideration.

The property in question, 27 Thaxter Road, presently exists as a single lot for taxation purposes as Tax Map 166, Lot 39. It was created from three (3) previously existing lots, as is graphically depicted on the attached Exhibit A. These were known as Tax Map 52, Lots 44, 45 and 46. It is Lot 46 that this Council previously voted to restore as a separate lot.

There is no question that Lot 46 existed as a separately taxed Lot in 1971. See Exhibit B. Furthermore, the 1981 tax card (which renumbered the entirety as Tax Map U66 Lot 39) identifies the property as comprising a "primary site" and a "secondary" site. See Exhibit C. It is therefore indisputable that sometime between 1972 and 1981, but prior to 2011, the City involuntarily merged these separate lots into a single, unified lot for tax purposes.

In 2011, RSA 674:39-aa was enacted, requiring municipalities to restore involuntarily merged lots at the request of the property owner. A prerequisite for such restoration is that no owner in the chain of title voluntarily merged the lots in question. RSA 674:39-aa, II(b). Notably, the burden of proof to show that a prior owner acted in a manner to voluntarily merge the lots rests with the municipality. *Id.*

The lots in question have never been voluntarily merged by formal instrument as provided for in RSA 674:39-a. Therefore, it is the burden of the City to establish specific conduct of prior owners in the chain of title sufficient to establish those owners regarded the lots as merged.

Before the Board of Adjustment, the Jennings abandoned their contention that the deed history prior to 1971, including the outsale of a portion of the former Lot 46 to the Jennings' predecessor in title, was relevant to this matter. The lots as they existed as of 1971 were obviously merged by the City by 1981, as demonstrated by Exhibits B and C. The statute requires the restoration of lots so merged prior to September 18, 2010.

The Jennings' sole remaining contention before the Board of Adjustment was that the zoning history of 27 Thaxter Road supports an inference that the prior owners treated the lots as merged. However, neither of the variance requests identified relied on a representation of lot area, lot area per dwelling, frontage, or any other dimensional characteristic that the prior owners were looking to take advantage of that would be vitiated by the restoration of the former Lot 46.

The first request for variances, to allow for the separation of two contiguous lots in common ownership, is wholly irrelevant. The lots in question had never been merged, relief was necessary to convert a formerly commercial lot into a now non-conforming residential lot. This relief was requested in 2004, years before RSA 674:39-aa was enacted. That the prior owner's application identified what is now 27 Thaxter Road as having identical dimensions of the entirety of the lots sought to be restored is hardly surprising, since that was the way the City recognized the lots at the time, as a single lot. In fact, it is unlikely the Planning Department would have accepted the application for consideration if the applicant referred to the lots' dimensions in any other manner. Applicants are certainly not free to simply make up their own dimensions and other physical characteristics without regard to official City records. This is not sufficient evidence that the prior owner considered the lots merged, but merely a recognition of how the lots were treated in City records at the time. As Exhibit C establishes, the City had already treated these lots as merged for tax purposes for more than 20 years.

Similarly, the 2011 variance request for relief to build an addition on the existing structure at 27 Thaxter Road was filed on January 26, 2011. RSA 674:39-aa was enacted in 2011 and was not effective until July 24, 2011. Again, that the prior owner's application includes a site plan that shows dimensions which conform to the City's records at the time is completely understandable, for the reasons set forth above. Notably, the relief requested was side yard setback relief, on the side opposite from the restored lot. Had the applicant sought relief to build within the restored lot (former Lot 46) or in some manner that obviously impacted it, that would present far different considerations. However, the Jennings' contention that these variance applications and the dimensional representations made in connection with them constitute overt action indicating the prior owners considered the lots as merged is simply not accurate. To adopt this reasoning would likely effectively estop any property owner who received a prior variance from availing himself of the rights afforded by RSA 674:39-aa.

The fact that prior owners placed a fence around the entirety was duly considered by the Planning Department staff, the Planning Board and the City Council and was properly found to be insufficient evidence of an intent to treat the lots as voluntarily merged. A fence, unlike a garage, barn or dwelling, is not a structure of such permanence that it evinces an intent to abandon a lot line forever. Nor is anecdotal evidence offered Councilor Beckstead at the May meeting that children had played in the combined lots sufficient to rebut the City's burden of proof. The existing dwelling on 27 Thaxter Road, built in 1929, is not in any way oriented toward former Lot 46 in any manner that would suggest that the lots were intentionally developed as a unified whole.

This latter point is significant because in the lone case interpreting RSA 674:39-aa, Roberts v. Windham, 165 NH 186 (2013) is clear that the fact that the lots have historically been conveyed in a single deed is not legally sufficient to effect a voluntary merger. Nor is acquiescence to taxation as a single lot. It is the property's physical characteristics and historical use that is central to any determination of a voluntary merger by conduct.

In this case, the existing single family dwelling situated on former Lots 44 and 45 is oriented in such a manner that it faces the street, not former Lot 46. The prior owner's placement of a fence is not indicative of an intent to permanently utilize the Lots as a unified lot. By

contrast, the property owner in Roberts had permanent structures, including a garage within two inches of the lot line for the lot sought to be restored, and access to said garage was only over the lot in question. The Court held "although a shared driveway alone may not be indicative of an intent to merge lots, when viewed in *conjunction with evidence of the placement of the garage and bunkhouse*, the use of a single driveway to serve multiple lots supports the conclusion that the prior owners intended to merge the lots." (Emphasis added). There is nothing comparable in this case which would suggest any permanent intent to treat this Lot as one with the larger property. This is in contrast to the existing garage which spans Lots 44 and 45, and clearly evinces an intent to treat those lots as one. See Exhibit A.

Based upon the foregoing, the City cannot sustain its burden to prove Mr. Callihan or his predecessors voluntarily merged the lots in question and the prior decision of the Council must be upheld.

Thank you for your consideration.

Respectfully submitted,



Christopher P. Mulligan, Esquire
Attorney for Chad Callihan
27 Thaxter Road
Portsmouth, NH 03801

Date: December 11, 2019





PROPERTY ASSESSMENT RECORD - CITY OF PORTSMOUTH, N.H.

52
2.1.1

LOT ONLY - LANDS

232
500
300
100

6-11-17
1985

CRIMMOLDEN
NEWBIE A. GARDNER
1903/1908

PROPERTY CLASSIFICATION	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT RATIO
RESIDENTIAL				
COMMERCIAL				
INDUSTRIAL				
AGRICULTURAL				
UNIMPROVED LAND				
TOTAL VALUE				

PROPERTY CLASSIFICATION	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT RATIO
RESIDENTIAL	70	86	156	93
COMMERCIAL				
INDUSTRIAL				
AGRICULTURAL				
UNIMPROVED LAND				
TOTAL VALUE	70	86	156	93

PROPERTY VALUE \$250

LAW OFFICES

**BOYNTON WALDRON DOLEAC
WOODMAN & SCOTT, P.A.**

CHARLES B. DOLEAC*†
RALPH R. WOODMAN, JR.
WILLIAM G. SCOTT
FRANCIS X. QUINN, JR.*
CHRISTOPHER E. GRANT*†△
CHRISTINE WOODMAN CASA*
PHILIP L. PETTIS
CHRISTOPHER J. FISCHER
MICHAEL H. DARLING †

82 COURT STREET
PORTSMOUTH, NEW HAMPSHIRE 03801
TELEPHONE (603)436-4010
FAX (603)431-9973

www.boyntonwaldron.com

JEREMY R. WALDRON
(1921-2012)

WYMAN P. BOYNTON
(1908-1997)

* ALSO MEMBER OF MAINE BAR
† ALSO MEMBER OF MASSACHUSETTS BAR
△ ALSO MEMBER OF VERMONT BAR

HAND DELIVERED
December 11, 2019

City of Portsmouth
Attn: Kelli Barnaby, City Clerk
1 Junkins Avenue
Portsmouth, NH 03801

RE: Jennings Memorandum on Remand to City Council

Dear Ms. Barnaby:

Enclosed are an original and five (5) copies of the Jennings Memorandum on Remand to the City Council – which I understand will be reviewed by the City Council Members prior to the December 16, 2017 Remand Hearing.

I am sending copies of this to Attorney Sullivan and Attorney Mulligan by email today.

Please contact me at r.woodmanjr@comcast.net with any questions. (I've got a bad cold and don't expect to go back to work today).

Very truly yours,



Ralph R. Woodman, Jr.

RRW/jcd

Enclosures

Cc: Robert Sullivan, Esquire
Christopher Mulligan, Esquire

**JENNINGS MEMORANDUM
ON
REMAND TO CITY COUNCIL**

Kenneth and Deborah Jennings (owners of the home at 63 Thaxter Road and direct abutters to the property at 27 Thaxter Road) submit this Memorandum on the Remand by the Zoning Board of Adjustment (ZBA) to the City Council.

This Remand, as stated by the Planning Department in its letter of October 28, 2019, was voted by the ZBA in order to allow the Council

"..to **consider new information** that was not originally available."

As you will see, this information was "NEW" because neither Mr. Callihan nor the Planning Department staff had previously made it available to the Council.

THE LAW

Under certain circumstances, RSA 674:39-a allows for the "restoration of involuntarily merged lots."

This "restoration" has restrictions under the statute and is not allowed by the City Council if the owner of the lot – or **any previous owner of the property**

"..voluntarily merged his or her lots."
674:39 a II (b), with

a "voluntary merger" being defined by the statute as "**any overt action or conduct** that indicates an owner regarded said lots as merged such as, but not limited to, abandoning its lot line." RSA 674:39-a II (b).

The statute states that in the event that **anyone** who owned the lots in question **at any time** (being the property now known as 27 Thaxter Road) voluntarily merged them, then

"all subsequent owners shall be estopped from requesting restoration" RSA 674:39-a II (b).

Although there is not a great deal of NH Supreme Court cases on the subject in Roberts v. Windham, 165 NH 186 (2013) the Court said the Town properly considered

"the use of the property in its entirety" p. 193
in determining whether a voluntary merger had occurred.

Also, Newbury v. Landrigan 165 NH 236 (2013) was a case involving "voluntary merger" issues.

In Newbury the Court recognized as a factor (in determining whether "any overt action or conduct" a voluntary merger had occurred) that the owners

"treated the property as a single lot when they applied to the Town for building permits" at 241

So the issue in this matter is has "any overt action or conduct (occurred) that indicates the owner (of the lots at 27 Thaxter) regarded said lots as merged"?

As you will see, 27 Thaxter Road and Lots 44, 45 and a portion of 46 were **created** as a single lot by the action or conduct of the owners in 2004.

As you will also see, the Newbury case is the same way that earlier owners (Tong and Healy) treated 27 Thaxter Road in 2011.

**HISTORY OF 27 THAXTER ROAD
WHAT LOTS MAKE UP 27 THAXTER ROAD?
(CURRENTLY OWNED BY CHAD CALLIHAN)**

By letter dated February 21, 2019 to the City Council, counsel for Chad Callihan stated that "... between 1972 and 1988... the City involuntarily merged the lots into a single unified lot for tax purposes."

"The lots" which now are called and known as 27 Thaxter Road (Callihan's property) are:

- 44
- 45
- A part of 46 (30 ft. frontage on Thaxter)

all originally shown on an old Plan of Westfield Park (Attached as "A"), with these lots surrounded in green on Attachment A.

In total, these lots today (27 Thaxter Road) contain approximately 12,850 square feet of area and 130 feet of frontage on Thaxter Road.

Chad Callihan now seeks to unmerge a "lot" with only 30 feet of frontage on Thaxter Road and 100 feet deep. This "lot" was formerly known – prior to its merger- as a portion of Lot 46. This is **NOT** the entire original Lot 46, just a portion that is only 30 feet wide.

Prior to 2004, four and one-half (4.5) lots on the Plan of Westfield Park, being lots 42, 43, 44, 45 and a portion of Lot 46 had been merged into **one lot** owned by one owner (Guptill). The lots contained the Guptill residence on Thaxter and Portsmouth's famous "False Tooth Building" on Islington street (where Mr. Guptill worked).

These 4.5 lots are all shown surrounded in red on Attachment A as being on both Thaxter Road and Islington Street, which were considered as one lot by the City until 2004.

NEW INFORMATION

When a person takes a careful look at the Registry of Deeds, ZBA historical records and records available at City Hall, they clearly show that owners of 27 Thaxter Road before Chad Callihan took "action or conduct" which shows that they regarded the lots which comprise 27 Thaxter Road (being Lots 44, 45, and a portion of Lot 46) as "merged."

NONE of this information was disclosed by the Applicant or the Planning Department to the City Council, the City Manager, Planning Board, or ZBA.

In summary, these actions or conduct by the previous owners are:

1. In 2004, the owner (Guptill at that time) of lots 42, 43, 44, 45 and a portion of 46 (which were merged together as **one** single lot at the time – this one lot is surrounded in red on Attachment A), petitioned the ZBA for a variance in order to create **two separate lots** to allow the separation of one lot into two lots with one home on each lot and the two separated lots becoming:
 - a. Lot 52, having 10,475 square feet and known as 17 Thaxter Road (previously Lots 42 & 43 – surrounded in black); and
 - b. Lot 39 having 12,580 square feet and known as 27 Thaxter Road (previously Lots 44 & 45 and a portion of Lot 46 surrounded in green).

(See ZBA Agenda attached as Attachment B.)

As a result of the actions of the prior owner (Guptill), Lots 44, 45 and a part of Lot 46 were then merged to become **ONE LOT** (Lot 39 with 12,580 square feet and 130 feet of frontage on Thaxter Road) which is the **exact same property** Chad Callihan owns today which is known as 27 Thaxter Road (surrounded in green).

Lots 42 and 43 were then merged to become a separate single lot (Lot 52) with 10,475 square feet and known today at 17 Thaxter Road (surrounded in black).

IN OTHER WORDS, IT IS CLEAR THAT THE SINGLE LOT KNOWN AS 27 THAXTER ROAD WAS CREATED AS A SINGLE LOT IN 2004 AS A RESULT OF THE ACTIONS OF THE OWNERS AT THAT TIME BEFORE THE ZBA. THE "ACTIONS" OF THE THEN OWNER (GUPTILL) WERE SIMPLE AND STRAIGHTFORWARD, HE ASKED THAT 27 THAXTER ROAD (FORMERLY LOTS 44, 45 AND A PORTION OF LOT 46) BE CREATED AS A **SINGLE LOT**, WITH LOTS 43 AND 44 AS A SECOND SINGLE LOT.

The May 27, 2004 ZBA letter to the then owner (Attachment C) confirmed that the owner's request to allow for the creation of a single lot (formerly Lots 44, 45 and a portion of Lot 46) at 27 Thaxter Road was allowed at the ZBA meeting of May 25, 2004.

2. In 2011, the then owners of 27 Thaxter Road (a single separate lot created in 2004) filed a ZBA Application for a lot-line variance. This was requested by the owners at the time – Tong and Healy.

As part of that application they filed an Existing Site Plan dated January 17, 2011 with the ZBA.

This site plan, filed for the owners, clearly showed the entirety of 27 Thaxter Road as a **SINGLE LOT**.

In addition the owners representing to the City that lots 44, 45 and a portion of lot 46 = 27 Thaxter Road were a **SINGLE LOT**, that "Existing Site Plan" shows a single fence around the perimeter of the single lot. (See existing Site Plan for 27 Thaxter Road attached as Attachment D.) This is the same voluntarily merged single lot surrounded in green on Attachment D as was created and surrounded in green on Attachment A.

This white picket fence around the perimeter of the entirety of 27 Thaxter Road is also shown in pictures which were presented to the ZBA, but not able to be shown here due to "page restriction" for this Memo.

The facts as stated in this Section are all **new information** which had not previously been known to the City Council, Planning Board or ZBA.

If this information had been known, you'd think that the Planning Department staff would have mentioned it in its memo – which it did not.

PRIOR CITY COUNCIL AND PLANNING DEPARTMENT ACTION

The City Council referred Chad Callihan's earlier request to unmerge a portion of 27 Thaxter Road (the small 30 foot x 100 foot area) to the Planning Board.

The Planning Department staff did a memo on the request, but neither the acts by prior owners of 2004 or 2011 are referred to in the report.

The City Council was **not informed** of the 2004 and 2011 actions as stated in the above New Information Section prior to the time of the Council's May 20, 2019 6-3 vote to unmerge the lots.

The City Council was not informed of the actions in 2004 and 2011 by the applicant, the Planning Department or otherwise.

It is possible the Planning Department did not find the minutes of the May 25, 2004 meeting due to them being wrongly filed and therefore missing on the website.

REMAND

In any event, we now know what occurred with 27 Thaxter Road property in 2004 and 2011, including how Lots 44, 45 and a portion of Lot 46 were created as a single lot known as 27 Thaxter Road at the request of the owner in 2004 and thereafter continue to be treated as a single lot by subsequent owners.


This is the "new information" as referred to in the October 18, 2019 letter from the ZBA.

The City Council now has the opportunity to correct its decision on this matter based on facts now known to it, by denying Chad Callihan's request to unmerge his property, which RSA 674-39 a II (B) requires.

Kenneth and Deborah Jennings
By: Boynton, Waldron, Doleac,
Woodman & Scott, P.A.

Dated: December 11, 2019

By:


Ralph R. Woodman, Esquire
82 Court Street • Portsmouth, NH 03801
603.436.4010



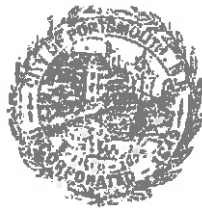
ATTACHMENT B

AGENDA, Board of Adjustment, May 18 & May 25, 2004

THE FOLLOWING PETITIONS WILL BE HEARD ON TUESDAY, MAY 25, 2004

I. PUBLIC HEARINGS

14) Petition of Orville N. Gupill Revocable Trust, owners, for property located at 27 Thaxter Road wherein Variance from Article III, Sections 10-301(A)(4) and 10-302(A) are requested to allow the separation of two lots in common ownership with lot 52 having 10,475 sf and lot 39 having 12,580 sf in a district where the minimum lot area is 15,000 sf. Said property is shown on Assessor Plan 166 as Lots 52 & 39 and lie within the Single Residence B district. Case # 5-8A



CITY OF PORTSMOUTH

Community Development Department
(603) 431-2006, ext 232

Planning Department
(603) 431-2006, ext 216

PLANNING DEPARTMENT

ATTACHMENT C

May 27, 2004

Orville N. Gupill Revocable Trust
27 Thaxter Road
Portsmouth, NH 03801

Re: Property at 27 Thaxter Road
Assessor Plan 166 Lots 52 & 39

Dear Gentlemen:

The Board of Adjustment, at its meeting of May 25, 2004, and after due Public Hearing, completed its consideration of your application wherein the following was requested: Variances from Article III, Sections 10-301(A)(4) and 10-302(A) to allow the separation of two lots in common ownership with lot 52 having 10,475 sf and lot 39 having 12,580 sf in a district where the minimum lot area is 15,000 sf.

As a result of this consideration, the Board voted to grant your request as advertised and presented with the following stipulations:

- That the curb cut be located on Thaxter Road.
- That there is no intent to stipulate how the house is oriented.

Stating that the requested Variance would not be contrary to the public interest, the Board spoke to the size of the lots, which would be close to the first and second largest lots on the block. They noted that this was the only vacant lot in an otherwise, fully developed neighborhood, and they saw no benefit to leaving it vacant. They felt it would also be in the public interest to demolish an unattractive commercial building on the edge of the lot.

The Board felt that special conditions exist in the fact that there is a vacant unusable building on the lot. The lot it is located in an area that is commercial in part, and abuts a residential area with small lots.

For this particular neighborhood, the Board felt that literal enforcement of the Ordinance would result in unnecessary hardship. They saw no advantage to retaining the lots as vacant and unbuildable; and, stated that no one had spoken in terms of injury to either public or private rights.

They stated that the requested Variance was consistent with the spirit of the Ordinance as it would provide housing in this residentially zoned area. They stated that substantial justice would be done, as there is a good use to which this property could be put. They felt there were no detrimental factors in making its use residential and that justice would be done to the owner in regards to the fact that the two lots have been taxed separately as buildable lots.

They felt that granting the Variance would not diminish the value of surrounding properties and noted a letter from a realtor to that effect.

Prior to the issuance of a building permit, the Building Inspector will need to review and approve construction drawings/sketches. Contact the Inspector at 603-431-2006, ext. 243 between the hours of 8:30 - 10:00 a.m. Applicants should note that other approvals may also be required from other Committees and/or Boards prior to the issuance of a Building Permit.

The minutes and tape recording of the meeting may be reviewed in the Planning Department.

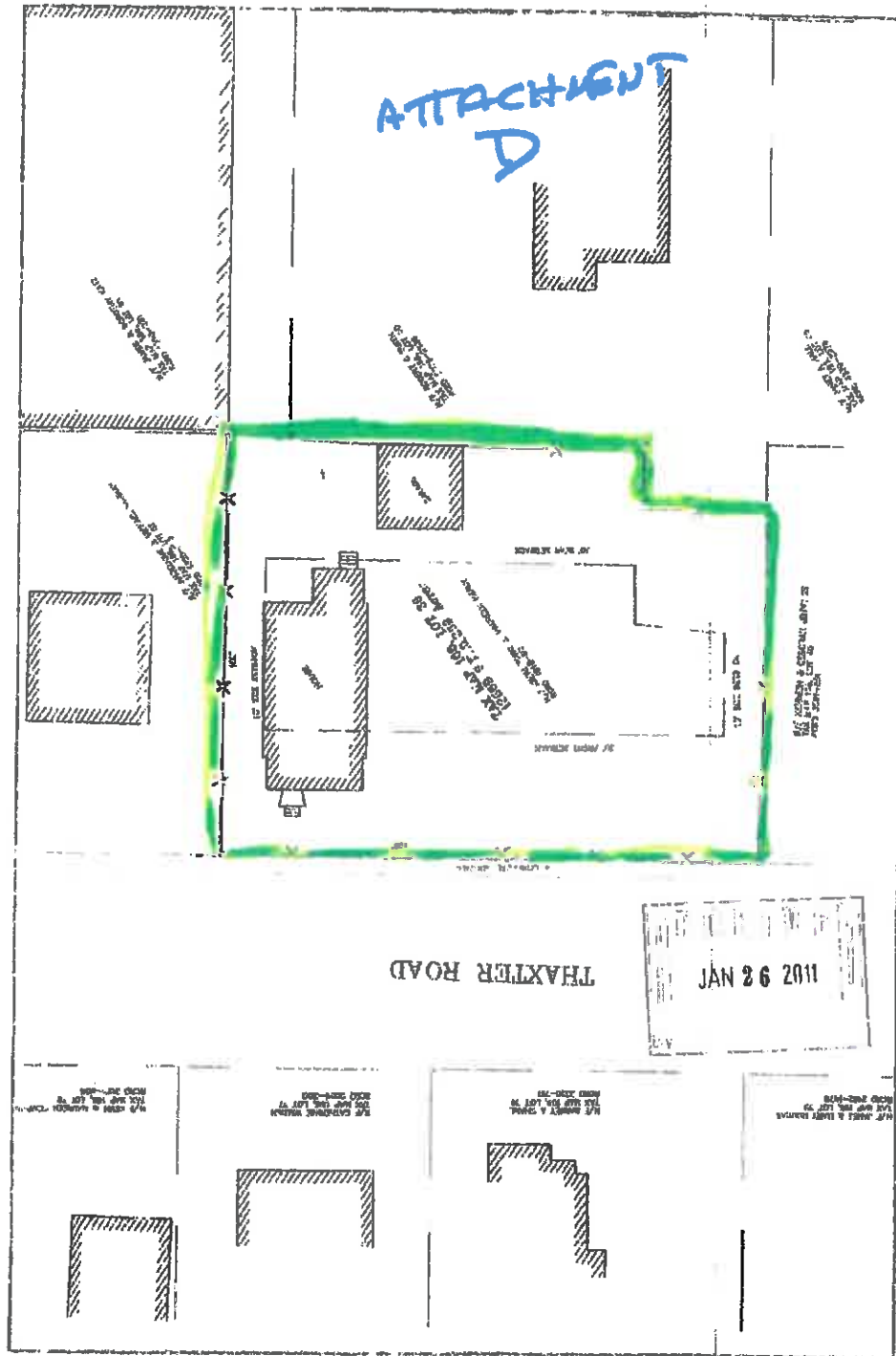
Very truly yours,



Charles A. Le Blanc, Chairman
Board of Adjustment

CAL/jac

cc: Richard A. Hopley, Building Inspector
Charles A. Griffin, Esq.



LITTLE GREEN HOMES, LLC
 CHRIS REICHMUND - Designer
 23 Autumn Pond Park - Greenland, NH 03840
 603-313-8995 www.littlegreenhomes.com

TONG RESIDENCE
 23 Autumn Pond Park - Greenland, NH

TITLE: EXISTING SITE PLAN
 SCALE: 1/32" = 1'-0" | DATE: 17 JAN 2011

EXHIBIT A

- DSA Land
- Community Space
- Land Conveyed from DSA to CoP
- Land Conveyed from CoP to DSA
- Land Conveyed from Gray Trust to CoP

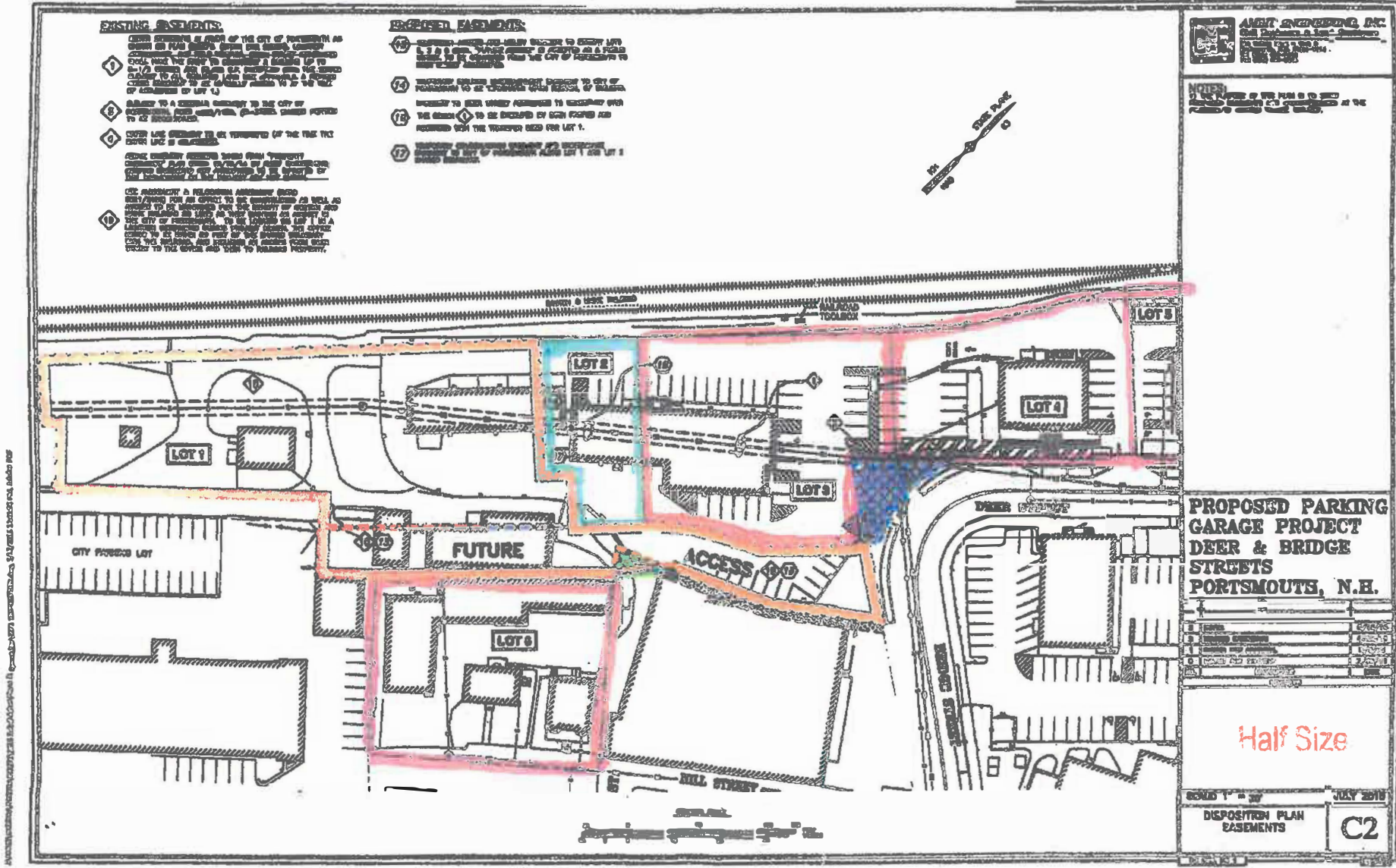
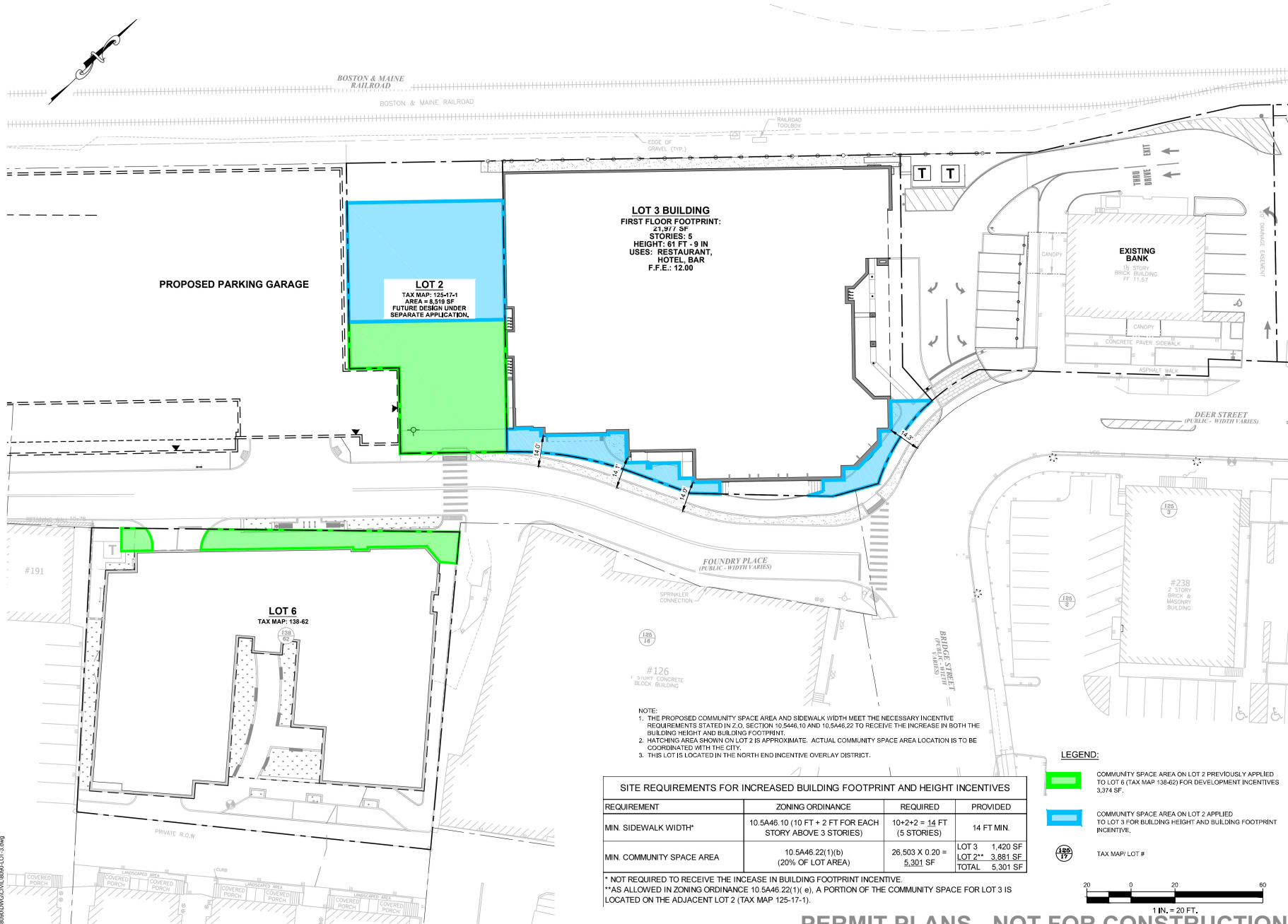


EXHIBIT B



LOT 3 BUILDING
 FIRST FLOOR FOOTPRINT:
 21,977 SF
 STORIES: 5
 HEIGHT: 81 FT - 9 IN
 USES: RESTAURANT,
 HOTEL, BAR
 F.F.E.: 12.00

LOT 2
 TAX MAP: 125-17-1
 AREA = 3,819 SF
 FUTURE DESIGN UNDER
 SEPARATE APPLICATION.

LOT 6
 TAX MAP: 138-62

- NOTE:
1. THE PROPOSED COMMUNITY SPACE AREA AND SIDEWALK WIDTH MEET THE NECESSARY INCENTIVE REQUIREMENTS STATED IN Z.O. SECTION 10.5446.10 AND 10.5446.22 TO RECEIVE THE INCREASE IN BOTH THE BUILDING HEIGHT AND BUILDING FOOTPRINT.
 2. HATCHING AREA SHOWN ON LOT 2 IS APPROXIMATE. ACTUAL COMMUNITY SPACE AREA LOCATION IS TO BE COORDINATED WITH THE CITY.
 3. THIS LOT IS LOCATED IN THE NORTH END INCENTIVE OVERLAY DISTRICT.

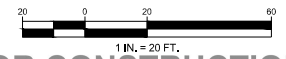
SITE REQUIREMENTS FOR INCREASED BUILDING FOOTPRINT AND HEIGHT INCENTIVES

REQUIREMENT	ZONING ORDINANCE	REQUIRED	PROVIDED
MIN. SIDEWALK WIDTH*	10.5446.10 (10 FT + 2 FT FOR EACH STORY ABOVE 3 STORIES)	10+2*2 = 14 FT (5 STORIES)	14 FT MIN.
MIN. COMMUNITY SPACE AREA	10.5446.22(1)(b) (20% OF LOT AREA)	26,503 X 0.20 = 5,301 SF	LOT 3 1,420 SF LOT 2** 3,881 SF TOTAL 5,301 SF

* NOT REQUIRED TO RECEIVE THE INCREASE IN BUILDING FOOTPRINT INCENTIVE.
 ** AS ALLOWED IN ZONING ORDINANCE 10.5446.22(1)(e), A PORTION OF THE COMMUNITY SPACE FOR LOT 3 IS LOCATED ON THE ADJACENT LOT 2 (TAX MAP 125-17-1).

LEGEND:

- COMMUNITY SPACE AREA ON LOT 2 PREVIOUSLY APPLIED TO LOT 6 (TAX MAP 138-62) FOR DEVELOPMENT INCENTIVES 3,374 SF.
- COMMUNITY SPACE AREA ON LOT 2 APPLIED TO LOT 3 FOR BUILDING HEIGHT AND BUILDING FOOTPRINT INCENTIVE.
- TAX MAP LOT #



273 CORPORATE DRIVE
 PORTSMOUTH, NH 03801
 T 603.438.2551 www.jsainc.com

GEONIGHT, INC.
 GEOTECH & CIVIL
 MANCHESTER, NEW HAMPSHIRE

GREENMAN-PEDERSEN, INC.
 LANDSCAPE ARCHITECT
 PORTSMOUTH, NEW HAMPSHIRE

AMBIT ENGINEERING, INC.
 SURVEY
 FULFORDSMOUTH, NEW HAMPSHIRE

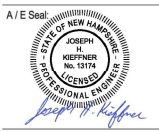
ENGINEERED BUILDING SYSTEMS
 ELECTRICAL ENGINEER
 DERRY, NEW HAMPSHIRE

ENGINEERED SYSTEMS INC.
 MPPF ENGINEER
 WOBURN, MASSACHUSETTS

JSN ASSOCIATES, INC.
 STRUCTURAL ENGINEER
 PORTSMOUTH, NEW HAMPSHIRE

THE HOTEL AT FOUNDRY PLACE,
 "LOT 3": 165 DEER STREET, ASSESSORS MAP 125 LOT 17, AND RELATED IMPROVEMENTS TO LOTS 2, 4 & 5
 PORTSMOUTH, NH 03801

OWNER:
Foundry Place, LLC (Lots 2&3)
Deer Street Associates (Lots 4&5)
 7 BANKS ROCK ROAD
 YORK HARBOR, ME



Date: 2/06/2018
 Project Number: 14837.02
 (Geonight 8090)

REVISIONS

NO.	DESCRIPTION	DATE
6	PLANNING BOARD	2/06/2018

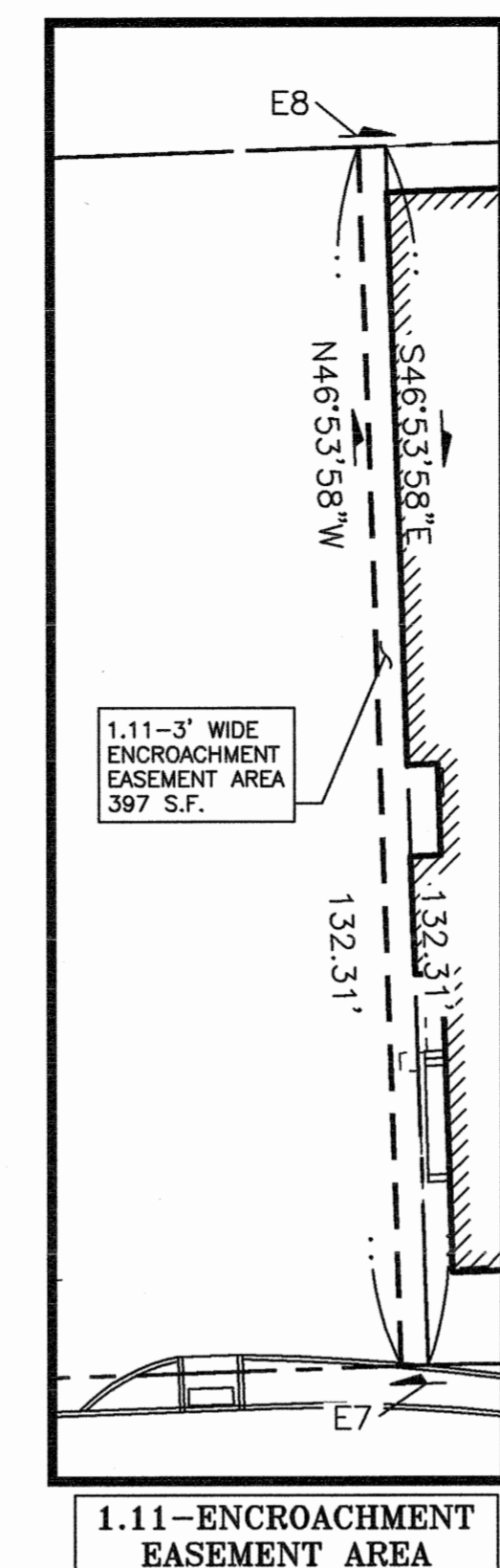
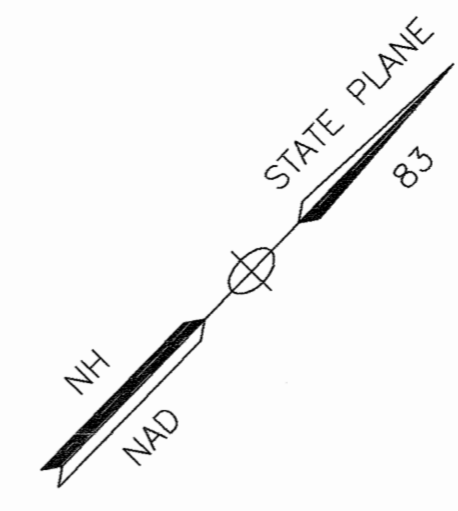
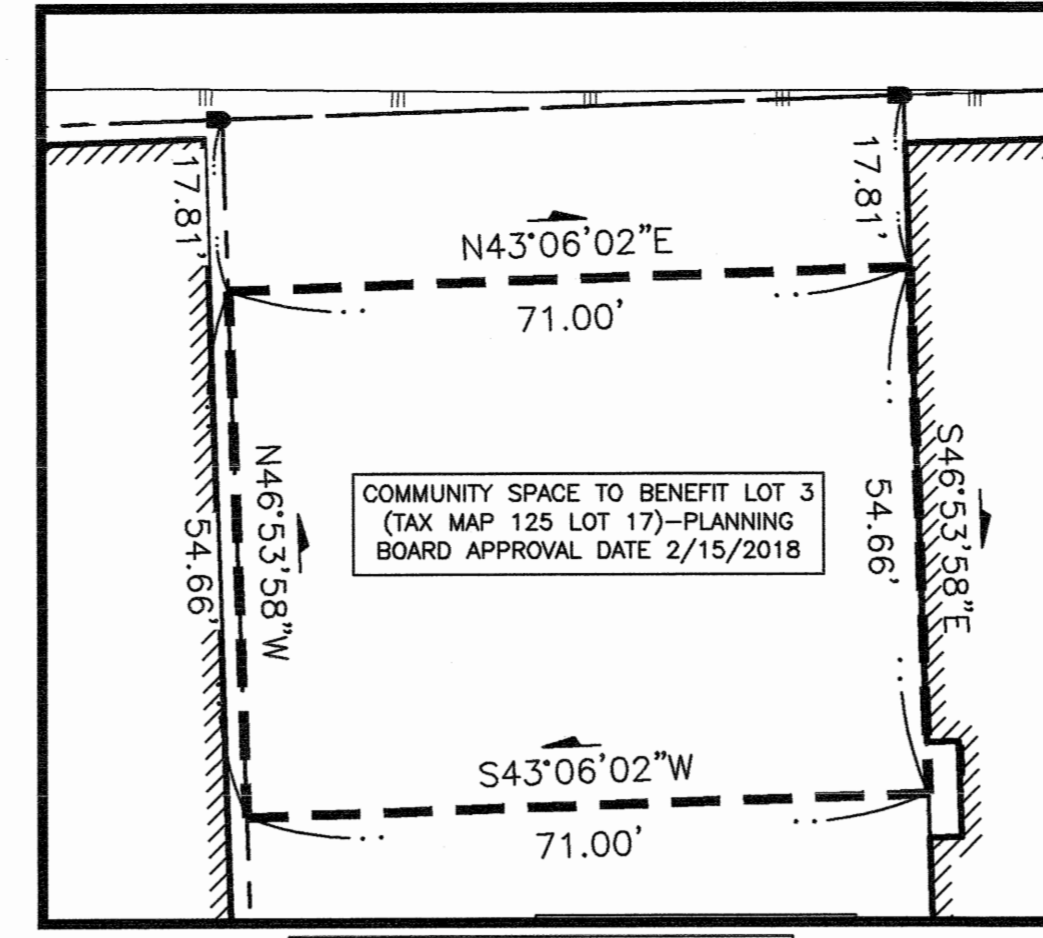
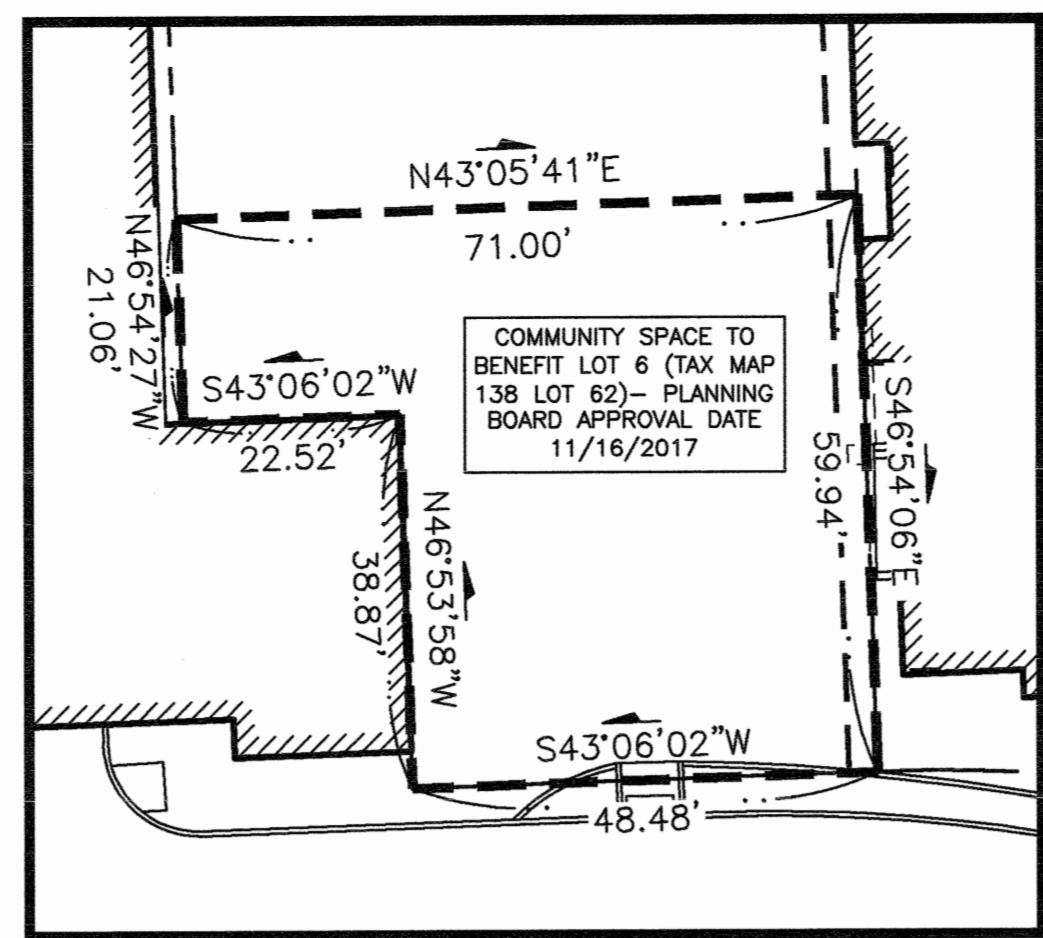
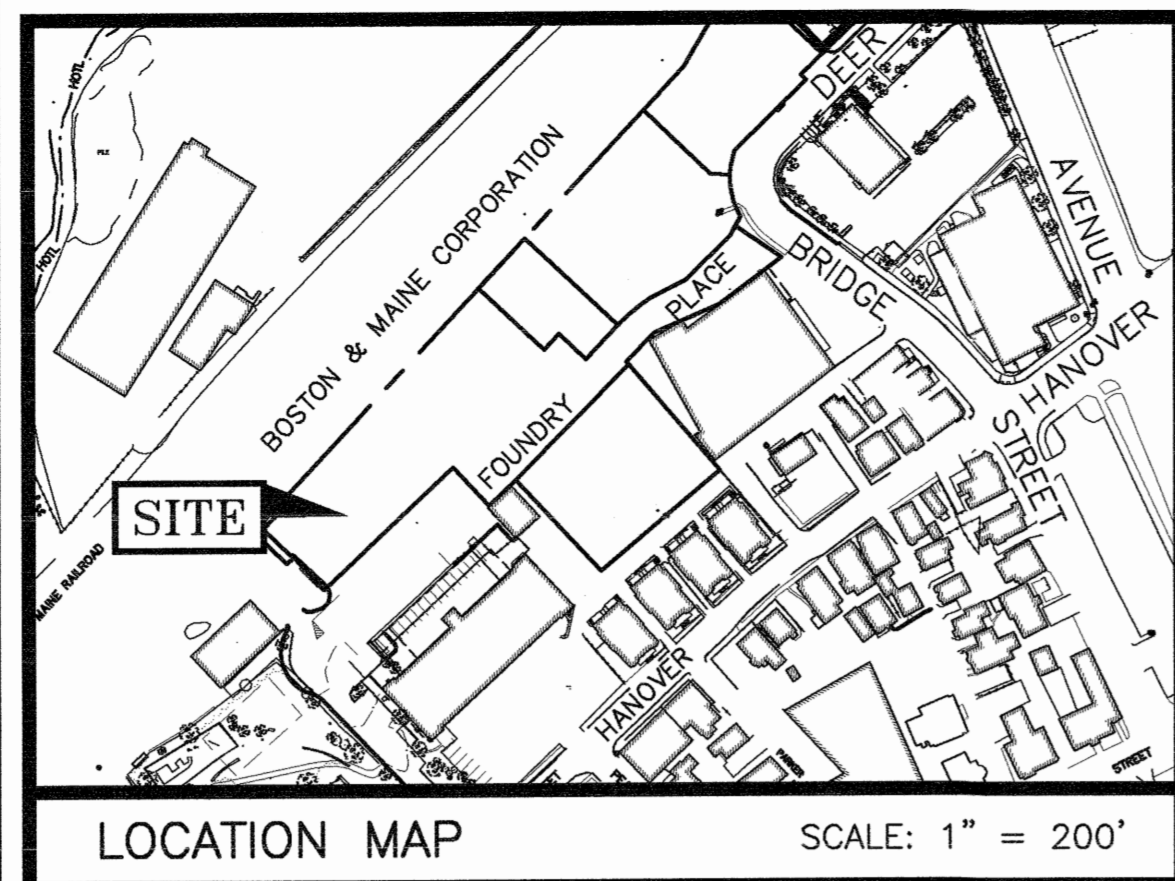
SITE PLAN REVIEW
DEVELOPMENT INCENTIVES PLAN

C3.4
 COPYRIGHT © 2018

PERMIT PLANS - NOT FOR CONSTRUCTION



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315



LEGEND:

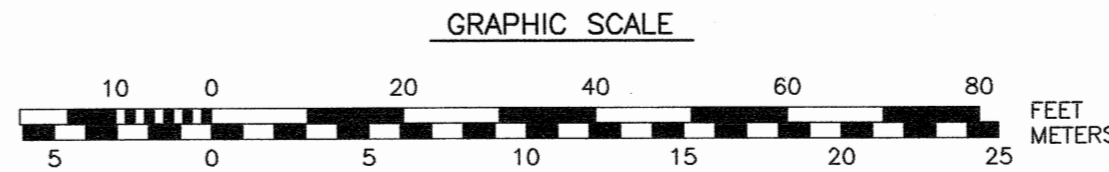
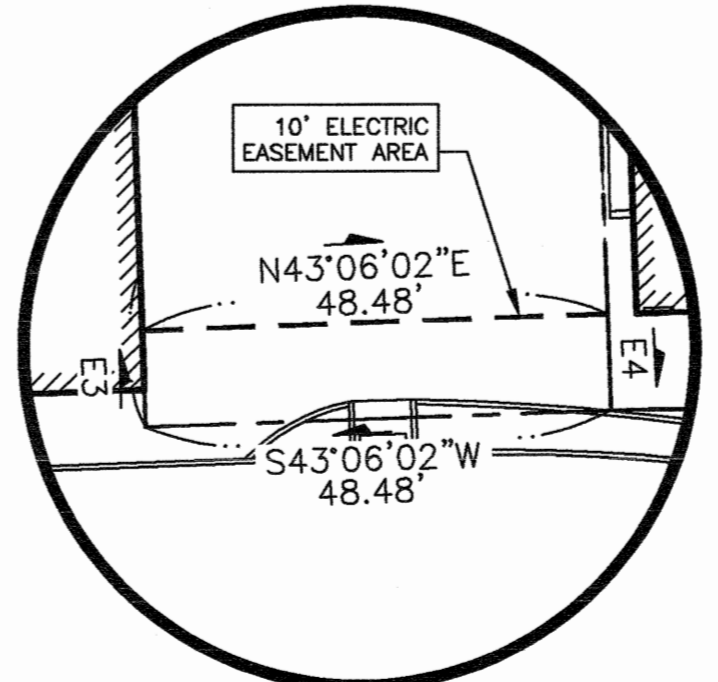
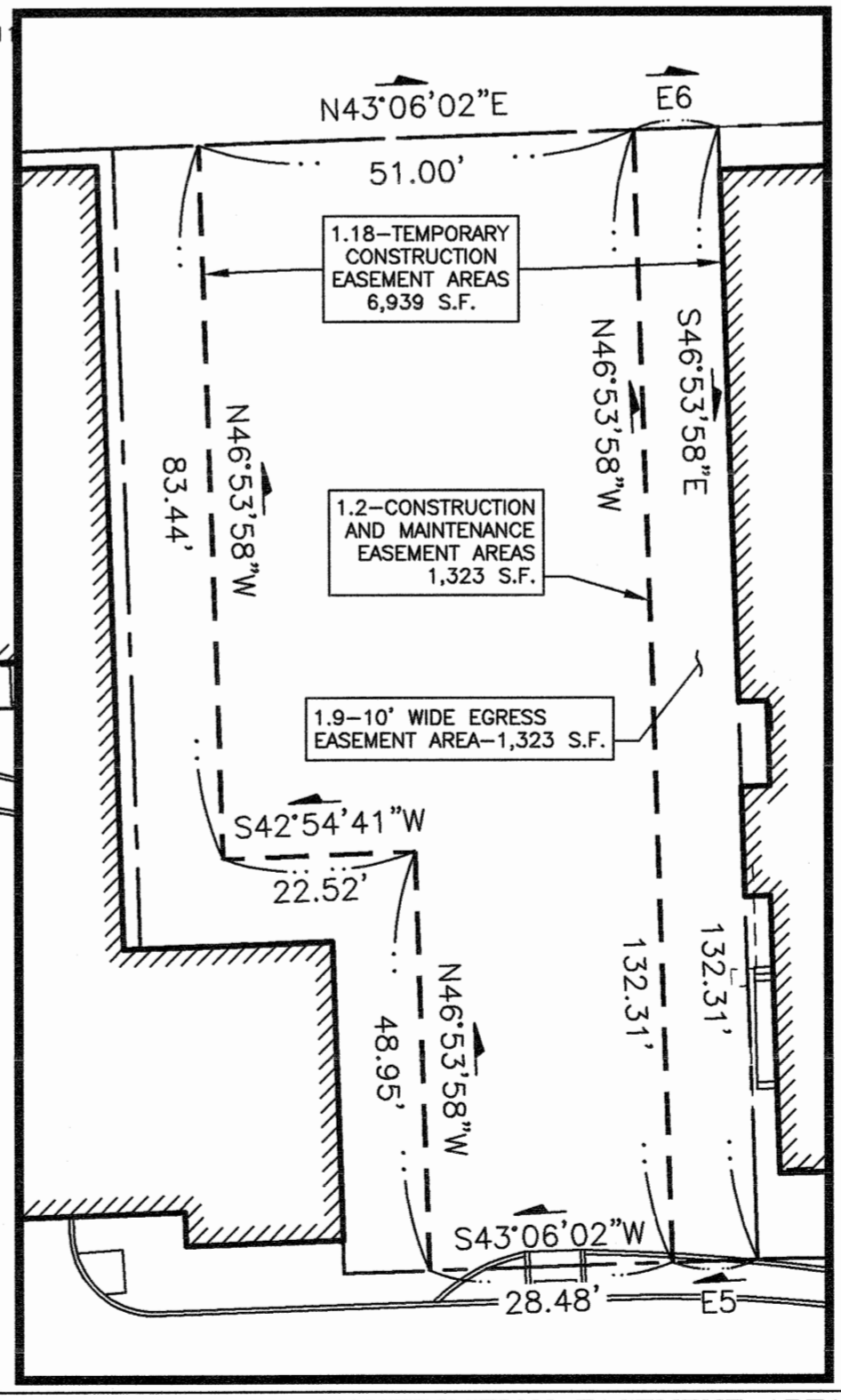
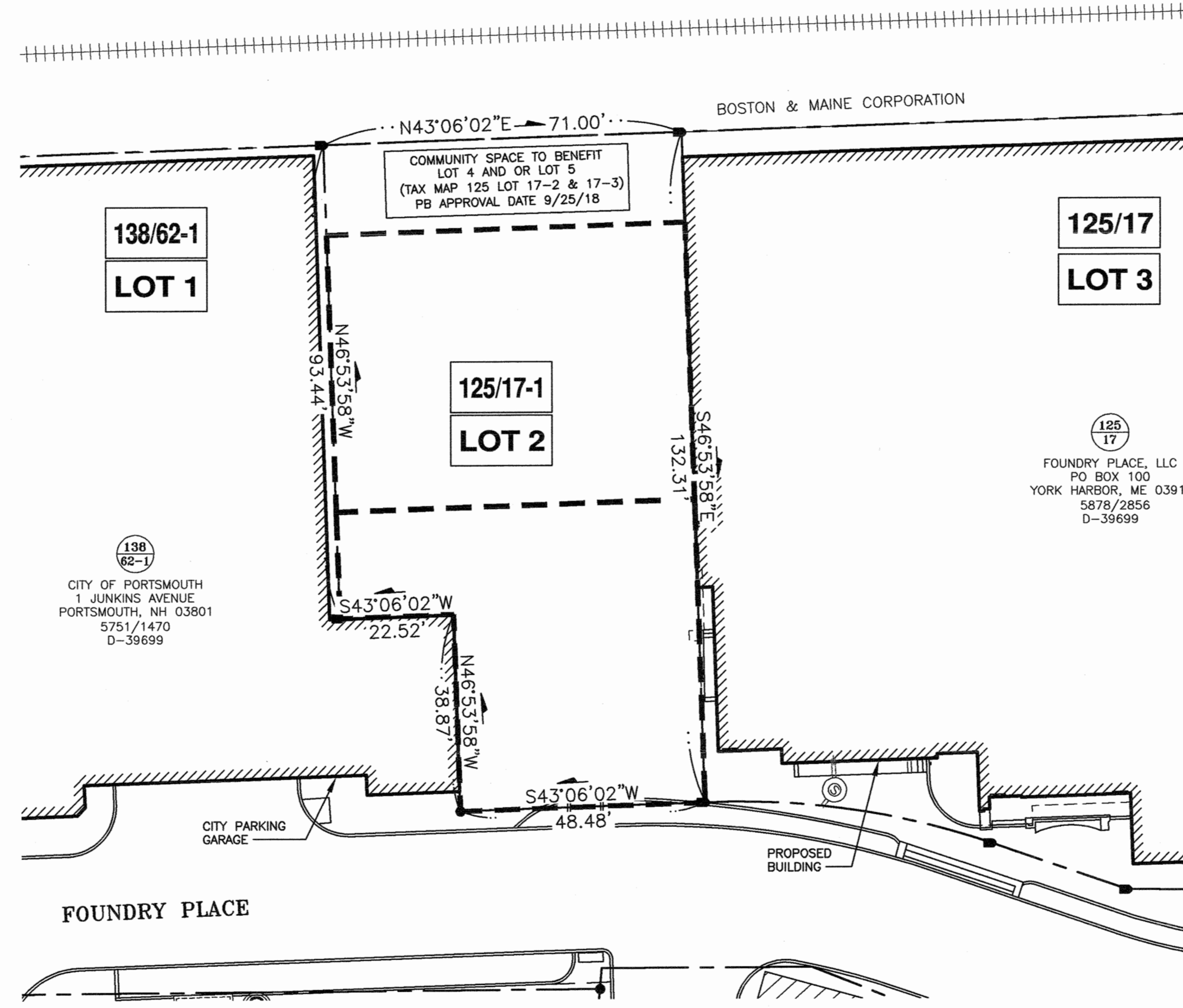
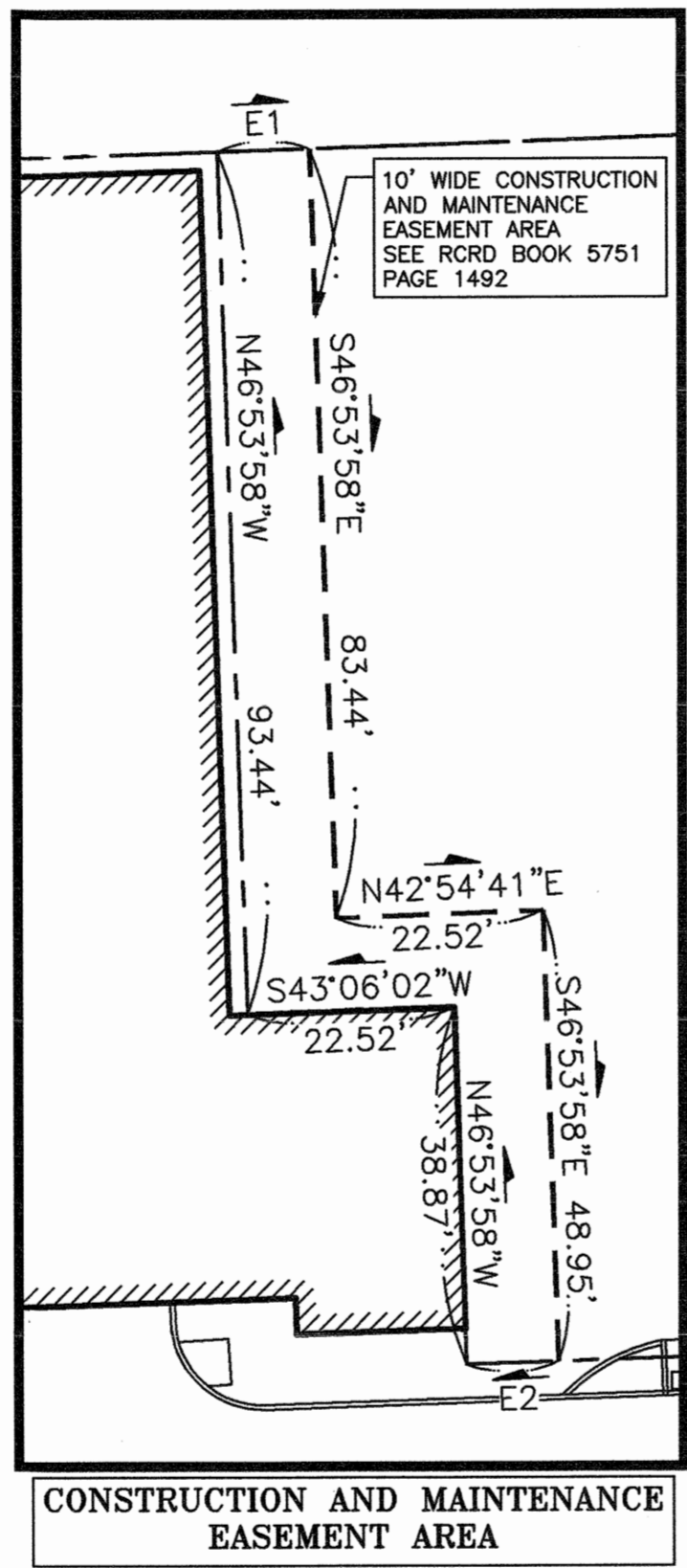
- N/F NOW OR FORMERLY
- PB PLANNING BOARD
- RP RECORD OF PROBATE
- RCRD ROCKINGHAM COUNTY REGISTRY OF DEEDS
- RR SPK RAILROAD SPIKE
- MAP 11/LOT 21
- IR FND IRON ROD FOUND
- IP FND IRON PIPE FOUND
- IR SET IRON ROD SET
- DH FND DRILL HOLE FOUND
- DH SET DRILL HOLE SET
- NHHB NHDOT BOUND FOUND
- TB TOWN BOUND
- BND w/DH BOUND WITH DRILL HOLE
- ST BND w/DH STONE BOUND WITH DRILL HOLE

PLAN REFERENCES:

- 1) CONSOLIDATION & SUBDIVISION PLAN, TAX MAP 125, LOT 17 & TAX MAP 138, LOT 62, DEER STREET ASSOCIATES BY AMBIT ENGINEERING, INC. DATED JULY 2015, FINAL REVISION DATE MAY 18, 2016. RCRD D-39699.
- 2) SEE REFERENCE PLAN 1 FOR ADDITIONAL PLAN REFERENCES

EASEMENT LENGTH TABLE

LINE	BEARING	DISTANCE
E1	N43°06'02"E	10.00'
E2	S43°06'02"W	10.00'
E3	N46°53'58"W	10.00'
E4	S46°53'58"E	10.00'
E5	S43°06'02"W	10.00'
E6	N43°06'02"E	10.00'
E7	S43°06'02"W	3.00'
E8	N43°06'02"E	3.00'



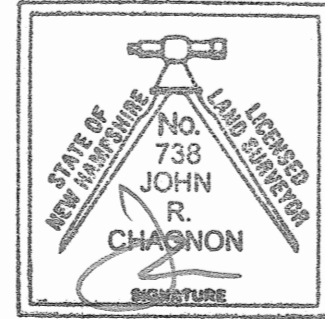
- NOTES:**
- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAPS AS MAP 125 LOT 17-1.
 - 2) OWNER: FOUNDRY PLACE, LLC
PO BOX 100
YORK HARBOR, ME 03911
5878/2856
D-39699
 - 3) PARCELS ARE NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259E. EFFECTIVE DATE MAY 17, 2005.
 - 4) THE PURPOSE OF THIS PLAN IS TO SHOW PROPOSED EASEMENTS ENCUMBERING AND BENEFITING TAX MAP 125 LOT 17-1. SEE DECLARATION OF EASEMENTS AND RESTRICTIVE COVENANTS RECORDED HEREWITH.

NO.	DESCRIPTION	DATE
5	EDITS PER CITY OF PORTSMOUTH	1/29/20
4	MINOR REVISION	12/24/18
3	GENERAL REVISION	12/19/18
2	ADD METES & BOUNDS TO TEMPORARY CONSTRUCTION EASEMENT TO LOT 3	10/17/18
1	COMMUNITY SPACE	8/8/18
0	ISSUED FOR COMMENT	7/27/18

EASEMENT PLAN
TAX MAP 125 -
LOT 17-1
OWNER:
FOUNDRY PLACE, LLC
FOUNDRY PLACE
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE

I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.

JOHN R. CHAGNON, LLS #738
DATE: 1-29-20



**EASEMENTS FOR PUBLIC ACCESS TO COMMUNITY SPACE
(SIDEWALK)**

FOUNDRY PLACE, LLC, a New Hampshire limited liability company with an address of 157 Deer Street, Portsmouth NH 03801, Portsmouth, New Hampshire 03801, (“Grantor”) and for consideration of One Dollar (\$1.00) paid by the City, and other good consideration, receipt of which is acknowledged by Grantor, grants unto the **CITY OF PORTSMOUTH**, a municipal corporation, having an address of 1 Junkins Avenue, Portsmouth, New Hampshire, 03801 (“City”), an easement for public access to and use of community space as set forth herein as pedestrian sidewalks.

WHEREAS, Grantor acquired a tract of land located at 165 Deer Street, Portsmouth, Rockingham County, New Hampshire by Quitclaim Deed of Deer Street Associates dated December 12, 2017, and recorded at the Rockingham County Registry of Deeds at Book 5878, Page 2856, and depicted as **Lot 3**, on a plan entitled "Consolidation & Subdivision Plan – Tax Map 125, Lot 17 & Tax Map 138, Lot 62 – Deer Street Associates – Bridge, Deer & Hill Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1” = 50’ “ dated July, 2015 and last revised 5/18/16, and recorded at the Rockingham County Registry of Deeds as Plan D-39699 (the “Property”);

WHEREAS, reference is made to a plan entitled “Easement Plan – Tax Map 125 – Lot 17” for property owned by Foundry Place, LLC and located at and known as Foundry Place, Portsmouth, Rockingham County, New Hampshire, and recorded in the Rockingham County Registry of Deeds as Plan # _____ (the “Easement Plan”);

NOW THEREFORE, in consideration of the sum of One Dollar (\$1.00), to be paid by the City, and other good and valuable consideration, the receipt of which is hereby acknowledged by the Grantor, Grantor conveys the following easement, located in the City of Portsmouth, County of Rockingham, State of New Hampshire (the "Easement"):

1. Pedestrian Sidewalk Easement. The Grantor hereby grants to the City and declares for the benefit of the public a permanent right and easement upon, over and across a sidewalk, including approved landscaping therein, identified on the Easement Plan (Sheet 1 of 3) as "Sidewalk Easement Area", consisting of _____ square feet, more or less, in a manner that will permit free and unobstructed use by pedestrians and non-motorized vehicles for travel along the perimeter of the Property as shown on the Easement Plan.

The Easement granted herein shall be subject to the electric and telecom easements shown on the Easement Plan (and all other uses not inconsistent with the use of the easement area as a public sidewalk), and to the following terms and conditions:

1. Terms of Public Use: The public use permitted by the Easement shall be governed and determined at the sole discretion of the City, as expressed by the City Manager or the highest ranking administrative officer of the City, subject to the terms and conditions of the Easement. The City shall provide reasonable notice to the Grantor of an extraordinary event to be scheduled for the easement areas but failure to do so shall not result in termination of this Easement.
2. Rights to Private Property: This Easement does not convey any right to the public to access or utilize the private property of the Grantor outside the easement areas.
3. Maintenance: Maintenance of the easement areas shall be the sole responsibility of the Grantor, its successors or assigns. The City shall have the right, but not the obligation, to access the easement areas for the purpose of maintenance, repair or replacement, after providing reasonable notice to the Grantor of the scope and cost of such work, all as reasonably determined by the City. Such maintenance costs incurred by the City shall be at the sole expense of the Grantor, its successors and assigns.
4. Covenants Run with the Land: All rights, privileges, obligations, and liabilities created by this instrument shall inure to the benefit of and be binding upon the heirs, devisees, administrators, executors, successors, and assignees of the Grantee and of the Grantor, the parties hereto, and all subsequent owners of the Property, and shall run with the land.
5. City Ordinance Application: Any use, public or private of the sidewalk easement areas shall be subject to and comply with the City Ordinances.
6. Notices. Any notice, demand, request, or other communication that either party

desires or is required to give to the other under this instrument shall be in writing and either served personally or sent by United States mail, postage prepaid, certified, return receipt requested, and shall be mailed to the parties at the following addresses:

To Grantor:

Foundry Place, LLC

Portsmouth, NH 03801

(or as listed and at the address shown on the City's current Tax Records)

To City:

City Manager (or the highest ranking administrative officer)

City of Portsmouth, New Hampshire

1 Junkins Avenue

Portsmouth, NH 03801

(or to such other address as City notifies Grantor in accordance with the terms hereof)

7. Amendment. Grantor and Grantee may mutually agree to amend or modify this Easement, provided that any such amendment or modification is approved by the City Council at a noticed public hearing, in writing and signed by both parties, consistent with the purpose and intent of the Portsmouth Zoning Ordinance. No amendment or modification of this Easement shall take effect unless and until it is recorded in the Rockingham County Registry of Deeds.
8. Costs and Liabilities. Grantor agrees to bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Property, and to defend the City of Portsmouth, from and against any and all actions, claims, damages, liabilities, or expenses that may be asserted by any person or entity, including Grantor, relating thereto. Without limiting the foregoing, the City of Portsmouth shall not be liable to Grantor or any other person or entity in connection with any entry upon the Property pursuant to this Easement, or on account of any claim, liability, damage, or expense suffered or incurred by or threaten against Grantor or any other person or entity, except as such claim, liability, damage, or expense is the result of the City of Portsmouth's, its agents or employee's negligence or willful misconduct.
9. Applicable Law. This instrument shall be construed and interpreted according to the substantive law of the State of New Hampshire.
10. Easement to Bind Successors. The provisions of this Easement shall be binding upon and inure to the benefit of Grantor and its successors and assigns. The Easements shall be appurtenant to, and for the benefit of, Grantee and shall run with title to the Property and shall continue in perpetuity.

Meaning and intending to convey an easement over a portion of the Property conveyed to the Grantor by Quitclaim Deed of Deer Street Associates dated December 12, 2017, and recorded at the Rockingham County Registry of Deeds at Book 5878, Page 2856.

This is an exempt transfer pursuant to RSA 78-B:2(I)

IN WITNESS WHEREOF, Grantor and City have executed this Easement as set forth, below.

Grantor:

Foundry Place, LLC

By its Manager,

GL Rogers and Company, Inc.

By: _____

Kim S. Rogers, President

Witness

City:

City of Portsmouth, New Hampshire

Witness

By: _____
_____, City Manager
Per vote of the City Council on _____.

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this day of _____, 2020, by Kim S. Rogers, as President of GL Rogers and Company, Inc., a New Hampshire corporation acting as manager of Foundry Place, LLC, a New Hampshire limited liability company.

Notary Public:
My Commission Expires:

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this _____ day of January, 2020, by _____, as the duly authorized City Manager of the City of Portsmouth New Hampshire.

Notary Public:
My Commission Expires:

Return to:

Pierce Atwood LLP
One New Hampshire Avenue, Suite 350
Portsmouth, NH 03801

(Recording information above this line)

DECLARATION OF EASEMENTS AND RESTRICTIVE COVENANTS

FOUNDRY PLACE, LLC, a New Hampshire limited liability company with an address of P.O. Box 100, York Harbor, Maine 03911 (hereinafter and together with all successors and assigns, the “Grantor”), for consideration paid, grants to **FOUNDRY PLACE HOTEL, LLC**, a New Hampshire limited liability company with an address of 157 Deer Street, Portsmouth, NH 03801 (hereinafter and together with all successors and assigns, the “Grantee”), without covenants of title and subject and pursuant to the terms, conditions, rights and reservations set forth herein, the: (a) Construction and Maintenance Easement; (b) Egress Easement; (c) Encroachment Easement; and (d) Temporary Construction Easement, all being located in the City of Portsmouth, County of Rockingham, and State of New Hampshire. Grantor and Grantee hereby further agree to declare upon, impose and subject Grantor’s Property to the Restrictive Covenants, for the benefit of Grantee’s Property and further for the benefit of the Grantor’s Other Property and the DSA Lots.

1. **Definitions.** The following definitions shall be applicable to this Declaration of Easements and Restrictive Covenants:

- 1.1. “Construction and Maintenance Easement” means an easement over, across, and upon the Construction and Maintenance Easement Area for the construction, erection, expansion, use, improvement, cleaning, maintenance, repair, renovation, and replacement of any buildings and improvements now or hereafter located on the Grantee’s Property.

- 1.2. “Construction and Maintenance Easement Area” means that portion of Grantor’s Property shown and described on the Easement Plan as “1.2 Construction and Maintenance Easement Areas”, located in the City of Portsmouth, County of Rockingham, State of New Hampshire and further described on Schedule 1.2 attached hereto and incorporated herein by reference.

- 1.3. “Declaration of Easements” means this instrument.

- 1.4. “DSA Lots” means property now or formerly owned by Deer Street Associates in the City of Portsmouth, County of Rockingham, State of New Hampshire and identified as Lot 4 and Lot 5 on that certain “Consolidation & Subdivision Plan – Tax Map 125, Lot 17 & Tax Map 138, Lot 62 – Deer Street Associates – Bridge, Deer & Hill

Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1” = 50’ ” dated July, 2015 and last revised 5/18/16, recorded in the Registry as Plan #39699.

1.5. “Easement Areas” means the Construction and Maintenance Easement Area, the Egress Easement Area, the Encroachment Easement Area, and the Temporary Construction Easement Area.

1.6. “Easement Plan” means that certain “Easement Plan – Tax Map 125 Lot 17-1 – Owner: Foundry Place, LLC – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1” = 20’ “ dated July, 2018 and last revised _____, recorded in the Registry as Plan # [REDACTED].

1.7. “Easements” means the Construction and Maintenance Easement, the Egress Easement, the Encroachment Easement and the Temporary Construction Easement.

1.8. “Egress Easement” means an easement of pedestrian egress from Grantor’s Property to Foundry Place over and across the Egress Easement Area.

1.9. “Egress Easement Area” means that portion of Grantor’s Property shown and described on the Easement Plan as “1.9 – 10’ Wide Egress Easement Area”, located in the City of Portsmouth, County of Rockingham, State of New Hampshire and further described on Schedule 1.9 attached hereto and incorporated herein by reference.

1.10. “Encroachment Easement” means an easement to construct, erect, expand, use, improve, clean, maintain, repair, renovate, and replace encroachments which now or hereafter exist, including without limitation building footings and overhangs, and building and lighting fixtures.

1.11. “Encroachment Easement Area” means that portion of Grantor’s Property shown and described on the Easement Plan as “1.11 – 3’ Wide Encroachment Easement Area”, located in the City of Portsmouth, County of Rockingham, State of New Hampshire and further described on Schedule 1.11 attached hereto and incorporated herein by reference. In addition, the “Encroachment Easement Area” shall include an additional one (1) foot extending beyond the boundary of the Encroachment Easement Area onto Grantor’s Property resulting from the construction, reconstruction, repair, shifting, settlement or other movement of any portion of the improvements now or hereafter located on Grantee’s Property, during the period of the encroachment, and for the maintenance thereof; provided, however, that in no event shall a valid easement for encroachment in such additional area be created in favor of Grantee’s Property if such encroachment occurred due to the willful conduct of Grantee or any of Grantee’s Parties.

1.12. “Grantee’s Property” means property owned by the Grantee in the City of Portsmouth, County of Rockingham, State of New Hampshire and identified as Lot 3 on that certain “Consolidation & Subdivision Plan – Tax Map 125, Lot 17 & Tax Map 138, Lot 62 – Deer Street Associates – Bridge, Deer & Hill Streets – City of Portsmouth,

County of Rockingham, State of New Hampshire – Scale 1” = 50’ ” dated July, 2015 and last revised 5/18/16, recorded in the Registry as Plan #39699.

1.13. “Grantor’s Other Property” means property owned by the Grantor in the City of Portsmouth, County of Rockingham, State of New Hampshire and identified as Lot 6 on that certain “Consolidation & Subdivision Plan – Tax Map 125, Lot 17 & Tax Map 138, Lot 62 – Deer Street Associates – Bridge, Deer & Hill Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1” = 50’ ” dated July, 2015 and last revised 5/18/16, recorded in the Registry as Plan #39699.

1.14. “Grantor’s Property” means property owned by the Grantor in the City of Portsmouth, County of Rockingham, State of New Hampshire and identified as Lot 2 on that certain “Consolidation & Subdivision Plan – Tax Map 125, Lot 17 & Tax Map 138, Lot 62 – Deer Street Associates – Bridge, Deer & Hill Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1” = 50’ ” dated July, 2015 and last revised 5/18/16, recorded in the Registry as Plan #39699.

1.15. “Recording Office” or “Registry” means the Rockingham County Registry of Deeds.

1.16. “Restrictive Covenants” means the following covenants and restrictions:

- (a) The Grantor’s Property shall not include any permanent buildings or structures within thirty (30) feet of the boundary line shared with the Grantor’s Property and the Grantee’s Property (other than a fence, if any, running along the northerly boundary of the Grantor’s Property adjacent to land now or formerly of Boston and Maine Corporation), without the prior written consent of the owner of the Grantee’s Property, which consent shall not be unreasonably withheld, conditioned or delayed.
- (b) The Grantor’s Property shall be dedicated for public use, qualify as unoccupied space and otherwise have qualities sufficient for purposes of meeting the requirements of Exception 1.2 of IBC-2009, Section 705.8.1, Exception 1.2.
- (c) At the written request of the Grantee, the Grantor shall grant and transfer the Grantor’s Property to the City of Portsmouth, New Hampshire. In the event that such grant and transfer occurs prior to the issuance of a certificate of occupancy for the redevelopment of Grantor’s Other Property, such grant and transfer shall be made subject to a temporary construction easement declared prior thereto or otherwise reserved in the transfer deed, upon the same terms and conditions as the Temporary Construction Easement granted herein, over and across the areas of Grantor’s Property not encumbered by the Easements, until initial certificates of

occupancy are issued with respect to the redevelopment of Grantor's Other Property.

- (d) Upon the grant and transfer of the Grantor's Property to the City of Portsmouth, New Hampshire, whether at the request of Grantee or not, and at all times subsequent thereto (subject to the easement described in Section 1.16(c), if any), the Grantor's Property shall be maintained as an attractive, park-like public community space that generally enhances and does not cause disruption to the neighborhood.

1.17. "Temporary Construction Easement" means an easement over, across, and upon the Temporary Construction Easement Area for the construction, erection, expansion, use, improvement, cleaning, maintenance, repair, renovation, and replacement of any buildings and improvements now or hereafter located on the Grantee's Property.

1.18. "Temporary Construction Easement Area" means that portion of Grantor's Property shown and described on the Easement Plan as "1.18 - Temporary Construction Easement Areas", located in the City of Portsmouth, County of Rockingham, State of New Hampshire and further described on Schedule 1.18 attached hereto and incorporated herein by reference.

2. Reserved Rights. The Grantor shall have the right to use Grantor's Property and the Easement Areas for any purpose that is not inconsistent with the Easements conveyed or restrictions imposed pursuant to this Declaration of Easements, including without limitation the right to grant or reserve rights and privileges for the benefit of other persons or properties within the Easement Areas.

3. Specific Easement Provisions.

- 3.1. Construction and Maintenance Easement.

3.1.1 The use of the Construction and Maintenance Easement Area under the Construction and Maintenance Easement shall include, without limitation, the following incidental rights and privileges: (i) the right to have pedestrian and vehicular access and egress across the Grantor's Property to access the Construction and Maintenance Easement Area as reasonably necessary for its intended purpose and use; (ii) the right to use heavy equipment within the Construction and Maintenance Easement Area; (iii) the right to build and erect temporary staging within the Construction and Maintenance Easement Area; and (iv) the right to temporarily stack or store construction, building, and/or maintenance supplies and materials within the Construction and Maintenance Easement Area.

3.2. Temporary Construction Easement

3.2.1 The use of the Temporary Construction Easement Area under the Temporary Construction Easement shall include, without limitation, the following incidental rights and privileges: (i) the right to have pedestrian and vehicular access and egress across the Grantor's Property to access the Temporary Construction Easement Area as reasonably necessary for its intended purpose and use; (ii) the right to use heavy equipment within the Temporary Construction Easement Area; (iii) the right to build and erect temporary staging within the Temporary Construction Easement Area; and (iv) the right to temporarily stack or store construction, building, and/or maintenance supplies and materials within the Temporary Construction Easement Area.

3.2.2 The Temporary Construction Easement shall terminate automatically upon the issuance of a certificate of occupancy by the City of Portsmouth for the hotel to be constructed on Grantee's Property.

4. Property Title. The easement rights granted herein are subject to all other easements, covenants, restrictions, conditions, encumbrances and reservations affecting the Grantor's Property.
5. Grantee Improvements; Taxes. All improvements constructed by through or under Grantee within, upon or under the Easement Areas shall remain the property of the Grantee (the "Grantee Improvements"). Grantee shall maintain the Grantee Improvements: (i) in good, safe, sanitary condition and repair, (ii) in compliance with all applicable laws, rules, regulations and ordinances, and (iii) sufficient in all respects for their use for the purposes contemplated in this Declaration of Easements. Such maintenance, repair or replacement shall be at the sole cost and expense of the Grantee, without any right of contribution from the Grantor. Grantee shall timely pay all taxes, real or personal, assessed or levied against the Grantee Improvements either directly to the government authority, or if taxed with all or any portion of Grantor's Property, to Grantor upon demand of a portion of such taxes reasonably allocated to the Grantee Improvements by Grantor.
6. Improvement Work and Restoration. Prior to commencing any construction, reconstruction, maintenance or repair work (any such work being referred to herein as "Improvement Work") within an Easement Area as permitted relative to the easement rights granted herein, the Grantee shall, at least thirty (30) days prior to beginning such Improvement Work (except in cases of emergency, when no notice will be required) provide written notice to the Grantor describing in reasonable detail (i) the type of Improvement Work to be performed, and (ii) the area(s) of the Grantor's Property that will be impacted by such Improvement Work. All Improvement Work shall be performed and completed so as to minimize the impact on and the interruption to the operation, maintenance, and use of the Grantor Property on which the Improvement Work is performed. The obligations in this section shall include, without limitation, the obligation of the Grantee, at its expense, to provide reasonable and customary temporary

bridges, crosswalks, and other means of access as necessary to minimize the interruption of usage of the Grantor's Property. Grantee shall exercise all reasonable precautions (including, but not limited to, erecting barricades) to prevent injury to persons or property as a result of any Improvement Work. Grantee shall, at its sole expense and within thirty (30) days after substantial completion of any Improvement Work performed by or on behalf of the Grantee, restore the applicable portions of the Easement Area and Grantor's Property that are affected by such Improvement Work (all such areas collectively being the "Affected Areas") as near as practicable to the condition that existed immediately prior to the commencement of such Improvement Work. Such restoration obligation shall include, without limitation, restoring the surface of the land, ground covers, plantings, sidewalks, structures, parking areas, roadways and driveways, and repairing any damage to the turf areas of the Affected Areas using sod of the same type as the grass damaged. If such repairs (other than planting and landscaping which would be better done during a different season of the year) are not completed within thirty (30) days after the Improvement Work is substantially completed, the Grantor may give the Grantee written notice of such failure. Subject to matters beyond the reasonable control of the Grantee, if, at the end of ten (10) days after such written notice is given, the Grantee has not completed the restoration of the Affected Areas (other than planting and landscaping which would be better done during a different season of the year), the Grantor shall be entitled to complete such restoration but only to the standard required by this Section 6, without any further notice to the Grantee, and the Grantee will be liable to Grantor for the full cost of such work performed but only to the standard required by this Section 6 and any other damages, excluding consequential damages, which Grantor may suffer as a result of the Grantee's failure to comply with the provision of this Section 6. If Grantor elects to restore the Grantor's Property pursuant to the immediately preceding sentence, the Grantee shall pay the full cost of the work permitted to be performed by Grantor within thirty (30) days after an invoice is given by Grantor to Grantee. At any time when demolition or construction work is being performed on or about the Grantor's Property by or on behalf of Grantee, the Grantee shall keep in full force and effect the following insurance coverage in each instance with policies reasonably acceptable to Grantor: (i) builder's risk completed value (non-reporting form) in such form and affording such protections as required by Grantor, naming Grantor and its mortgagees as additional insured; and (ii) workers' compensation or similar insurance in form and amounts required by law. Grantee shall cause a certificate or certificates of such insurance to be delivered to Grantor prior to the commencement of any work in or about the Grantor's Property, in default of which Grantor shall have the right, but not the obligation, to obtain any or all such insurance at the expense of Grantee, in addition to any other right or remedy of Grantor.

7. Release and Indemnity; Condition and Use. Given the Grantee's use of Grantor's Property within the Easement Areas, the Grantor and Grantee agree as follows:

7.1. Release. The Grantor shall not be responsible for any loss, injury, or damage to persons or property in or about the Easement Areas relating directly or indirectly to use of the Easements by Grantee, and/or Grantee's contractors, agents, guests and/or invitees (collectively, "Grantee Parties"). The Grantee, on Grantee's behalf and on behalf of all those claiming by, through or under Grantee, hereby remises, discharges, and

releases forever the Grantor, and each of Grantor's agents, guests or representatives (collectively, the "Released Parties") from any and all actions, causes of actions, demands, damages, costs, debts, loss of life, personal injuries, and/or damage to real or personal property and equipment or any other loss or claim, in law or in equity, which the Grantee Parties hereafter can, shall or may have against the Released Parties on account of or in any way arising out of, directly or indirectly, any act or omission of or by the Grantee or any of the Grantee Parties in or upon any of the Easement Areas, or in any way connected or related to the use of any of the Easements and/or the Easement Area (except to the extent caused by the gross negligence or willful misconduct of any of the Released Parties).

7.2. Indemnity. Grantee hereby covenants to indemnify and hold harmless the Released Parties of and from any and all actions, causes of action, claims, demands, taxes (including without limitation real property taxes), damages, costs, debts, fees and expenses, including reasonable attorney's fees, that the Grantor or any of the other Released Parties may have to pay in connection with the loss of life, personal injury, and/or damage to real or personal property or equipment, or the assessment of taxes, on account of or in any way arising, directly or indirectly, from any act or omission by the Grantee and/or all those claiming by, through or under Grantee (including without limitation the Grantee Parties) while in or upon any of the Easement Areas pursuant to any of the Easements, or in any way connected or related to the use of any of the Easements and/or the Easement Area (except to the extent caused by the gross negligence or willful misconduct of any of the Released Parties).

7.3. Condition and Use. Grantor makes no representations regarding the suitability of the Easement Areas for their intended purposes or any other use. The Grantee agrees to accept the Easement Areas in their "as-is" condition. The Grantee shall use the Easement Areas only in full accordance and compliance with all applicable laws, regulations and ordinances, and shall otherwise use the Easement Areas in a safe and reasonable manner at all times and in no event in any way which would negatively affect the insurability of the Grantor's Property.

8. Miscellaneous.

8.1. Amendment and Waiver. This Declaration of Easements may not be amended or modified in any way except by an instrument in writing executed by the Grantor and Grantee, together with the owner of the DSA Lots and Grantor's Other Property in the event of any amendment to or modification of provisions or terms hereof applicable to the Restrictive Covenants. The failure to seek redress for a violation of, or to insist upon the strict performance of, any covenant, condition or obligation of this Declaration of Easements by a person entitled thereto shall not be deemed a waiver of such violation nor prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The waiver by Grantor or Grantee of any breach of any term, covenant or condition contained in this Declaration of Easements shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach thereof or of any other term, covenant or condition contained in this Declaration of Easements.

8.2. Running with the Land; Successors and Assigns. The terms and provisions and burdens and benefits of this Declaration of Easements shall run with the land and title to the Grantor Property, the Grantor's Other Property, the DSA Lots and the Grantee Property. The Easements, Restrictive Covenants, and the terms and conditions of this Declaration of Easements shall be binding upon and inure to the benefit of the Grantor, the owner of the DSA Lots, and the Grantee and their respective successors and assigns. Each grantee, transferee, assignee, lessee, sublessee, licensee or occupant of all or any portion of the Grantor Property, the Grantor's Other Property, the DSA Lots and the Grantee Property, together with their respective successors and assigns, shall be deemed by their acceptance of a deed, lease or other instrument conveying, transferring, assigning, leasing, licensing, encumbering or creating any interest in any portion of the Grantor Property, the Grantor's Other Property, the DSA Lots and the Grantee Property, or by their occupation of any portion of the Grantor Property, the Grantor's Other Property, the DSA Lots and the Grantee Property, to have covenanted and agreed to fully and timely observe, comply with and be bound by the terms and conditions of this Declaration of Easements. Every person or entity who owns, occupies or acquires any right, title, estate or interest in or to any portion of the Grantor Property, the Grantor's Other Property, the DSA Lots and the Grantee Property shall be conclusively deemed to have consented and agreed to every limitation, restriction, right, license, easement, reservation, condition and covenant contained in this Declaration of Easements, whether or not any reference hereto is contained in the instrument by which such person or entity acquired an interest in such portion of the Grantor Property, the Grantor's Other Property, the DSA Lots and the Grantee Property.

8.3. Severability. Except as expressly provided to the contrary herein, each section, part, term, or provision of this Declaration of Easements shall be considered severable, and if, for any reason, any section, part, term, or provision herein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation by a court or governmental agency having valid jurisdiction, such determination shall not impair the operation of, or have any other effect on, other sections, parts, terms, or provisions of this Declaration of Easements as may remain otherwise intelligible, and the

latter shall continue to be given full force and effect and bind the parties hereto, and said invalid sections, parts, terms, or provisions shall not be deemed to be a part of this Declaration of Easements.

8.4. Survival. All covenants, agreements, representations, and warranties made herein shall survive the execution and delivery of (i) this Declaration of Easements, and (ii) all other documents and instruments to be executed and delivered in accordance herewith, and shall continue in full force and effect.

8.5. Governing Law and Venue. This Declaration of Easements shall be governed by and construed under the laws of the State of New Hampshire. Any action brought to enforce or interpret this Declaration of Easements shall be brought exclusively in the court of appropriate jurisdiction in New Hampshire.

8.6. Captions. Captions, titles to sections, and paragraph headings used herein are for convenience of reference and shall not be deemed to limit or alter any provision of this Declaration of Easements.

8.7. Intended Third Party Beneficiaries. The owner of the DSA Lots, and each of their successors and assigns, are intended third party beneficiaries with respect to the Restrictive Covenants, and shall have the right to enforce such Restrictive Covenants directly to the extent it deems necessary or advisable to protect its right thereunder.

8.8. Private Easements. The provisions of this Declaration of Easements are not intended to, and do not, constitute a dedication for public use, and the rights and Easements herein created are private and for the benefit of the Grantor, the Grantee and the owner of the DSA Lots.

[remainder of page intentionally blank – signature pages and schedules follow]

WITNESS our hands and seals this ___ day of _____, 2020.

GRANTOR:

FOUNDRY PLACE, LLC

By its Manager,
GL Rogers and Company, Inc.

Witness

By: Kim S. Rogers
Its: President

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 2020 by Kim S. Rogers, as President of GL ROGERS AND COMPANY, INC., a New Hampshire corporation and the manager of FOUNDRY PLACE, LLC, a New Hampshire limited liability company, on behalf of said corporation and limited liability company.

Justice of the Peace/Notary Public
My commission expires:
Affix Seal

GRANTEE:

FOUNDRY PLACE HOTEL, LLC

By its Manager,
GL Rogers and Company, Inc.

Witness

By: Kim S. Rogers
Its: President

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 2020 by Kim S. Rogers, as President of GL ROGERS AND COMPANY, INC., a New Hampshire corporation and the manager of FOUNDRY PLACE HOTEL, LLC, a New Hampshire limited liability company, on behalf of said corporation and limited liability company.

Justice of the Peace/Notary Public
My commission expires:
Affix Seal

Schedule 1.2
Construction and Maintenance Easement Area
Legal Description

Land located in the City of Portsmouth, County of Rockingham, State of New Hampshire, more particularly bounded and described as follows:

Beginning at a point on the northwesterly side of Foundry Place, so-called, at other land of the Grantor known as Lot 3, thence running along the northwesterly side of Foundry Place S 43°06'02" W a distance of 10.00 feet to a point; thence turning and running over and across land of the Grantor known as Lot 2 N 46°53'58" W a distance of 132.31 feet to a point at land of Boston and Maine Corporation; thence turning and running along land of Boston and Maine Corporation N 43°06'02" E a distance of 10.00 feet to a point at other land of Grantor known as Lot 3; thence turning and running along other land of Foundry Place, LLC known as Lot 3 S 46°53'58" E a distance of 132.31 feet to the point of beginning, the above described easement having an area of 1,323 square feet, more or less.

Schedule 1.9
Egress Easement Area
Legal Description

Land located in the City of Portsmouth, County of Rockingham, State of New Hampshire, more particularly bounded and described as follows:

Beginning at a point on the northwesterly side of Foundry Place, so-called, at other land of the Grantor known as Lot 3, thence running along the northwesterly side of Foundry Place S 43°06'02" W a distance of 10.00 feet to a point; thence turning and running over and across land of the Grantor known as Lot 2 N 46°53'58" W a distance of 132.31 feet to a point at land of Boston and Maine Corporation; thence turning and running along land of Boston and Maine Corporation N 43°06'02" E a distance of 10.00 feet to a point at other land of Grantor known as Lot 3; thence turning and running along other land of Foundry Place, LLC known as Lot 3 S 46°53'58" E a distance of 132.31 feet to the point of beginning, the above described easement having an area of 1,323 square feet, more or less.

Schedule 1.11
Encroachment Easement Area
Legal Description

Land located in the City of Portsmouth, County of Rockingham, State of New Hampshire, more particularly bounded and described as follows:

Beginning at a point on the northwesterly side of Foundry Place, so-called, at other land of the Grantor known as Lot 3, thence running along the northwesterly side of Foundry Place S 43°06'02" W a distance of 3.00 feet to a point; thence turning and running over and across land of the Grantor known as Lot 2 N 46°53'58" W a distance of 132.31 feet to a point at land of Boston and Maine Corporation; thence turning and running along land of Boston and Maine Corporation N 43°06'02" E a distance of 3.00 feet to a point at other land of Grantor known as Lot 3; thence turning and running along other land of Foundry Place, LLC known as Lot 3 S 46°53'58" E a distance of 132.31 feet to the point of beginning, the above described easement having an area of 397 square feet, more or less.

Schedule 1.18
Temporary Construction Easement Area
Legal Description

Land located in the City of Portsmouth, County of Rockingham, State of New Hampshire, more particularly bounded and described as follows:

Beginning at a point on the northwesterly side of Foundry Place, so-called, at other land of the Grantor known as Lot 3, thence running along the northwesterly side of Foundry Place S 43°06'02" W a distance of 38.48 feet to a point; thence turning and running over and across land of the Grantor known as Lot 2 N 46°53'58" W a distance of 48.95 feet to a point; thence turning and running over and across land of the Grantor known as Lot 2 S 42°54'41" W a distance of 22.52 feet to a point; thence turning and running over and across land of the Grantor known as Lot 2 N 46°53'58" W a distance of 83.44 feet to a point at land now or formerly of the Boston and Maine Corporation; thence turning and running along land now or formerly of said Boston and Maine Corporation N 43°06'02" E a distance of 61.00 feet to the northerly corner of land of the Grantor known as Lot 2 at other land of the Grantor known as Lot 3; thence turning and running along other land of the Grantor known as Lot 3 S 46°53'58" E a distance of 132.31 feet to the point of beginning, the above described easement having an area of 6,939 square feet, more or less.

DEER STREET/FOUNDRY PLACE
LANDSCAPING INSTALLATION AND MAINTENANCE LICENSE AGREEMENT

THIS LANDSCAPING MAINTENANCE LICENSE AGREEMENT (“Agreement”) is made as of the ____ day of _____, 2020 by and between the CITY OF PORTSMOUTH, NEW HAMPSHIRE a municipal corporation with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (“City”), and FOUNDRY PLACE HOTEL, LLC, a New Hampshire limited liability company with an address of P.O. Box 100, York Harbor Maine 03911 (“FPH”).

WITNESSETH THAT

WHEREAS, the City has constructed a public roadway connecting Deer Street and Rock Street in the City of Portsmouth, County of Rockingham, State of New Hampshire, known as Foundry Place (“Foundry Place”).

WHEREAS, FPH proposes to develop and operate a hotel on certain property adjacent to Foundry Place and Deer Street and depicted as **Lot 3** on certain plan entitled “Consolidation & Subdivision Plan – Tax Map 125, Lot 17 & Tax Map 138, Lot 62 – Deer Street Associates – Bridge, Deer & Hill Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1” = 50’ ” dated July, 2015 and last revised 5/18/16 recorded in the Rockingham County Registry of Deeds as Plan D-39699 (“Lot 3”), which project received conditional approval from the City Planning Board on or about February 15, 2018 (the “Project”).

WHEREAS, the Project contemplates the installation and maintenance of plantings and other landscaping in the portions of Foundry Place and Deer Street rights of way adjacent to Building/Lot 3 (the “Adjacent Streets”) as indicated on the “Landscape Plan, Sheet L1, prepared by Gorrill Palmer for Deer Street Associates for Hyatt Place – Foundry Place dated November 5, 2019”. (“Landscape Area”).

WHEREAS, the site plan approval granted by the Planning Board on February 15, 2018 was conditioned in part upon the City and FPH entering into a Landscaping Agreement.

NOW THEREFORE, in consideration of the mutual covenants, agreements and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and FPH agree as follows:

AGREEMENT

The purpose of this landscape license agreement, and the City hereby grants a non-exclusive license to allow FPH access to the Landscape Area for the purpose of maintaining and replacing landscaping of all types, including install bricks, raised planting beds, and landscaping, in and upon the public right of way. FPH shall install bricks, raised planting beds, and landscaping within the Landscaping Area as shown on and in accordance with the landscaping plan(s) approved by the City Planning Board pursuant to its site plan review for Lot 3 on or about February 15, 2018 (the “Landscaping”), and shall maintain and replace such Landscaping as needed. FPH shall not be responsible for maintaining any portion of the adjacent public way.

The City may, at its discretion, assume maintenance of the Landscaping, upon written notice to FPH. The City may, at its discretion, terminate the terms of this license upon written

notice to FPH. The City shall not be in any way responsible to assume the maintenance of the Landscaping.

Signed this _____ day of _____, 2020.

CITY OF PORTSMOUTH

By: _____
Karen Sawyer Conard, City Manager

Witness

As authorized by the City Council vote of _____, 2020

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, SS.

On this _____ day of _____, 2020, before me, _____, the undersigned officer, personally appeared Karen Sawyer Conard, who acknowledged herself to be the City Manager, of the City of Portsmouth, a municipal corporation, and that she, as such City Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the municipal corporation by himself as the City Manager.

In witness whereof I hereunto set my hand and official seal.

Notary Public
Printed Name:
My Commission Expires:

FOUNDRY PLACE HOTEL, LLC

By its Manager,
GL Rogers and Company, Inc.

Witness
Its: President

By: Kim S. Rogers

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 2020 by Kim S. Rogers, as President of GL ROGERS AND COMPANY, INC., a New Hampshire corporation and the manager of FOUNDRY PLACE HOTEL, LLC, a New Hampshire limited liability company, on behalf of said corporation and limited liability company.

Justice of the Peace/Notary Public
My commission expires:
Affix Seal

DRAFT

PARKING AGREEMENT

The **CITY OF PORTSMOUTH, NEW HAMPSHIRE**, a municipal corporation with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (the "City") and **DEER STREET ASSOCIATES**, a New Hampshire limited partnership with an address of P.O. Box 100, York Harbor Maine 03911 ("DSA") hereby enter into this Parking Agreement ("Agreement") in consideration of the mutual promises and for the purposes stated herein, and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge.

This Agreement is entered into pursuant to a certain Post Closing Obligations Agreement between the aforesaid parties dated September 9, 2016 ("PCOA") and is intended to satisfy the provisions of the PCOA with respect to DSA's contractual right to park on premises described as "City Property" in the PCOA and located in the City of Portsmouth, County of Rockingham, State of New Hampshire, and further described on Exhibit A attached hereto and incorporated herein by reference (the "City Property").

NOW THEREFORE, the parties do hereby agree as follows:

1. Subject to the provisions of paragraphs four (4) and five (5) below, DSA shall have and hereby does have the contractual right to access and utilize sixty-eight (68) parking spaces located within any parking garage now or hereafter constructed on the City Property (on a floating basis, see paragraph 4 below), hereinafter referred to as the "Parking Garage Spaces"; provided, however, that eight (8) of the Parking Garage Spaces shall be terminable upon fifty (50) days written notice from the City to DSA (collectively, the "Terminable Spaces"). Once issued and assigned to a Lot Owner (hereinafter defined), termination of any or all of the Terminable Spaces by the City in accordance with the foregoing: (i) shall not affect treatment of said terminated Terminable Space(s) as parking spaces for purposes of zoning requirements and other ordinances of the City, including but not limited to the provisions of Section 10.1113.10 of the Portsmouth, New Hampshire Zoning Ordinances; and (ii) notwithstanding (i), at DSA's option and if required by City Zoning Ordinances, if the Terminable Spaces are terminated for reason other than failure to pay under Paragraph 2, the

City shall provide the Terminable Spaces in accordance with all the rights and obligations of this Agreement in another public parking facility not located on the City Property.

2. DSA's access to and use of the Parking Garage Spaces shall be under the then current terms and conditions, including parking rates, which may be established by the City from time to time with respect to off-street municipal parking spaces on the City Property (which shall generally be consistent with terms and conditions offered for similar City parking on the City Property on a non-discriminatory basis). Notwithstanding the foregoing, in the event of any conflict between said terms and conditions adopted by the City and the terms and conditions set forth in this Agreement, the terms and conditions set forth in this Agreement shall control. DSA or a Lot Owner must begin payment for those Parking Garage Spaces assigned to a lot when the lot receives a certificate of occupancy from the City which requires the use of said Parking Garage Spaces, or when issued to DSA or a Lot Owner pursuant to this Agreement, whichever comes first.
3. The rights of DSA under this Agreement shall commence on _____, 2020 and run for so long as the City shall own all or any portion of the City Property which is utilized for public parking of vehicles, but in no event less than thirty (30) years from the date of recording of this Agreement at the Rockingham County Registry of Deeds regardless of ownership and/or use.
4. This Agreement does not provide DSA with any interest in property owned by the City or the right of access to or use of any particular or designated parking spaces. Rather, DSA shall have the right of access to and use of the specified number of floating Parking Garage Spaces located on the City Property (or, if applicable, other property of the City per paragraph 1 of this Agreement with respect to the Terminable Spaces) utilizing a method chosen by the City to assure the continuous availability of the required number of Parking Garage Spaces on a 24/7 basis (subject to maintenance requirements).
5. The City shall maintain the Parking Garage Spaces in good condition and repair, and in accordance with all applicable laws, rules, regulations and ordinances, which shall include keeping the same free and clear of all debris, snow and ice in accordance with normal City policies and practices.
6. This Agreement is to be executed in recordable form and placed on record at the Rockingham County Registry of Deeds, and shall be binding on the heirs and assigns of the parties hereto.
7. DSA may assign its right to access and use all or any portion of the Parking Garage Spaces to any owner of all or any portion of a lot shown on the

certain plan entitled “Consolidation & Subdivision Plan – Tax Map 125, Lot 17 & Tax Map 138, Lot 62 – Deer Street Associates – Bridge, Deer & Hill Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1” = 50’ ” dated July, 2015 and last revised 5/18/16 recorded in the Rockingham County Registry of Deeds as Plan D-39699 (each, a “Lot Owner”), or to any tenant, employee or occupant of such lots designated by a Lot Owner; provided that pursuant to such assignment the assignee agrees to and assumes the obligations of DSA pursuant to this Agreement with respect to the assigned Parking Garage Spaces for the period thereof. No Parking Garage Space may be assigned to more than one Lot Owner or any other person.

8. The assignee of any Parking Garage Spaces may re-assign all or any portion of the same to DSA, or may assign all or any portion of the same to any other Lot Owner, or to any tenant, employee or occupant of such lots designated by a Lot Owner (collectively, “Permitted Assignees”). DSA and any Permitted Assignee shall have the right to assign its rights pursuant to this Agreement to any lender as security for any obligation of DSA or such Permitted Assignee to said lender. Notwithstanding the forgoing, no assignment of Parking Garage Spaces shall be permitted if such assignment would reduce parking requirements to an amount less than required by the Site Plan Approval for such lot.
9. This Agreement shall not be amended except by written instrument signed by DSA, the City, and each assignee Lot Owner (if any) then having assigned rights in any Parking Garage Spaces, which amendment shall become effective when recorded in the Rockingham County Registry of Deeds.

[signature pages to follow]

DEER STREET ASSOCIATES

Dated: _____

By DSA Rogers LLC,
Its General Partner
By its Manager,
G.L. Rogers and Company, Inc.

Witness

By: Kim S. Rogers
Its: President

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, SS

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by Kim S. Rogers, as President of G.L. ROGERS and Company, INC., a New Hampshire corporation and the manager of DSA ROGERS LLC, a New Hampshire limited liability company and the general partner of DEER STREET ASSOCIATES, a New Hampshire limited partnership, on behalf of said corporation, limited liability company and limited partnership.

Justice of the Peace/Notary Public
My commission expires:

Dated: _____

CITY OF PORTSMOUTH

Witness

By: _____
Karen Sawyer Conard, City Manager

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM, SS.

On this ____ day of _____, 2020, before me, _____, the undersigned officer, personally appeared **Karen Sawyer Conard**, who acknowledged himself to be the **City Manager**, of the City of Portsmouth, a municipal corporation, and that he, as such **City Manager**, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the municipal corporation by himself as the City Manager.

In witness whereof I hereunto set my hand and official seal.

Notary Public
Printed Name: _____
My Commission Expires: _____

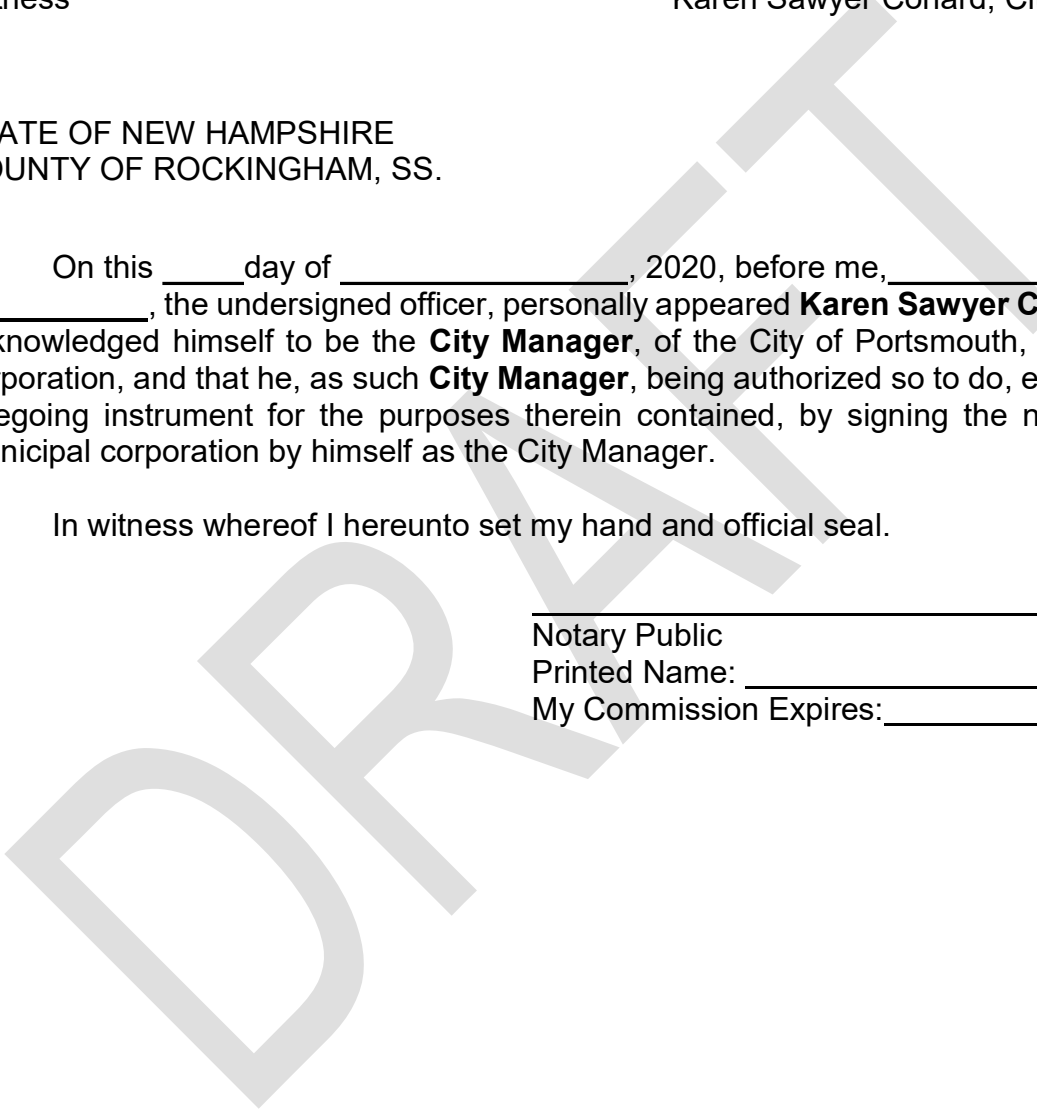


Exhibit A

City Property Legal Description

A certain tract or parcel of land located in the City of Portsmouth, County of Rockingham and State of New Hampshire, depicted as **Lot 1** on certain plan entitled "Consolidation & Subdivision Plan – Tax Map 125, Lot 17 & Tax Map 138, Lot 62 – Deer Street Associates – Bridge, Deer & Hill Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1" = 50' " dated July, 2015 and last revised 5/18/16 recorded in the Rockingham County Registry of Deeds as Plan D-39699, said tract being more particularly bounded and described as follows:

Beginning at an iron rod set at the north west corner of the parcel; thence running along land of the Boston and Maine Railroad N 43°06'02"E a distance of 343.96 feet to a point at a RR Spk set; thence turning and running along land of the Grantor S 46°53'58"E a distance of 93.44 feet to a point at a RR Spk set; thence turning and running along land of the Grantor N 43°06'02"E a distance of 22.52 feet to a point at a RR Spk set; thence turning and running along land of the Grantor S 46°53'58"E a distance of 38.87 feet to a point at an IR set; thence turning and running along land of the Grantor N 43°06'02"E a distance of 49.82 feet to a point at a RR Spk set; thence running along land of the Grantor on a curve turning to the right with an arc length of 56.30', a radius of 155.00', a chord bearing of N 53°24'20"E, a chord length of 55.99', and a delta angle of 20°48'45" to a point at a RR Spk set; thence turning and running along land of the Grantor N 63°48'43"E a distance of 28.42 feet to a point at a RR Spk set; thence turning and running along land of the Grantor N 45°20'34"E a distance of 64.73 feet to a point at a RR Spk set; thence turning and running along land of the Grantor N 28°12'12"E a distance of 10.82 feet to a point at an IR set on the westerly sideline of Bridge Street; thence turning and running along the westerly sideline of Bridge Street S 55°38'43"E a distance of 58.09 feet to land of Gray to an IR Fnd; thence turning and running along land of Gray S 53°35'47"W a distance of 81.12 feet to a point at an IR Fnd; thence turning and running along land of Gray S 66°38'33"W a distance of 116.65 feet to a point at an IR Fnd; thence turning and running along land of Gray S 40°13'28"E a distance of 20.31 feet to a point at an IR set; thence turning and running along land of the Grantor S 44°38'09"W a distance of 167.36 feet to a stone bound; thence turning and running S 47°00'33"W a distance of 38.74 feet to a point at a DH Fnd; thence turning and running N 42°48'33"W a distance of 54.65 feet to a point at an IR Fnd; thence turning and running S 46°46'01"W a distance of 184.94 feet to an iron rod; thence turning and running N 43°03'00"W a distance of 46.10 feet to a point at an IR Fnd; thence turning and running S 46°48'04"W a distance of 10.00 feet to a point at an IR set; thence turning and running N 46°09'30"W a distance of 48.26 feet to the point of beginning, having an area 54,017 square feet, more or less.

Except and excluding a certain tract or parcel of land located in the City of Portsmouth, County of Rockingham, State of New Hampshire, and more particularly bounded and described as follows:

Beginning at an iron rod found at the south east corner of the parcel; thence running along land of John W. Gray Revocable Trust & Bradford A. Gray Revocable Trust S 53°35'47" W a distance of 81.12 feet to a point; thence turning and continuing along land of John W. Gray Revocable Trust & Bradford A. Gray Revocable Trust S 66°38'33" W a distance of 73.30 feet to a point; thence turning and running over land of John W. Gray Revocable Trust & Bradford A. Gray Revocable Trust S 39°12'52" W a distance of 42.20 feet to an iron rod set; thence turning and running along land of Deer Street Associates S 44°38'09" W a distance of 167.36 feet to a stone bound found; thence turning and running along land of the Kearsarge Mill Condominium

Association S 47°00'33" W a distance of 38.74 feet to a drill hole found; thence turning and running along land of the City of Portsmouth N 42°48'33" W a distance of 35.00 feet to a point; thence turning and running through land of Deer Street Associates N 45°02'22" E a distance of 177.16 feet to an iron rod set; thence turning and running along other land of Deer Street Associates N 43°06'02" E a distance of 48.48 feet to a railroad spike set; thence continuing on the same line and other land of Deer Street Associates N 43°06'02" E a distance of 1.34 feet to a point; thence turning and continuing along land of Deer Street Associates with a curve turning to the right with an arc length of 56.30 feet, with a radius of 155.00 feet, said curve having a chord bearing of N 53°24'20" E, with a chord length of 55.99 feet to a railroad spike set; thence turning and continuing along land of Deer Street Associates N 63°48'43" E a distance of 28.42 feet to a railroad spike set; thence turning and continuing along land of Deer Street Associates N 45°20'34" E a distance of 64.73 feet to a railroad spike set; thence turning and continuing along land of Deer Street Associates N 28°12'12" E a distance of 10.82 feet to an iron rod set; thence turning and running along Bridge Street S 55°38'43" E a distance of 58.09 feet to the point of beginning, having an area of 14,956 square feet, more or less.

After recording, return to:
Denis O. Robinson, Esq.
Pierce Atwood LLP
One New Hampshire Avenue, Suite 350
Portsmouth, NH 03801

TERMINATION AND RELEASE of MUNICIPAL WATERLINE EASEMENT AND
MUNICIPAL SEWER EASEMENT

WHEREAS the **City of Portsmouth, New Hampshire** is the owner and holder of sewer and stormwater drainage easements (any and all such sewer and stormwater drainage easements being collectively, “Municipal Sewer Easements”) located on Lots 2 through 5, inclusive, which Lots are shown on that certain plan entitled “Consolidation & Subdivision Plan – Tax Map 125, Lot 17 & Tax Map 138, Lot 62 – Deer Street Associates – Bridge, Deer & Hill Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1” = 50’ ” dated July, 2015 and last revised 5/18/16, approved by the City Planning Board on August 20, 2015, and recorded in the Rockingham County Registry of Deeds (the “Registry”) as Plan #D-39699 (the “Plan”), and which Lots 2 and 3 are owned by **Foundry Place, LLC**, a New Hampshire limited liability company, and which Lots 4 and 5 are owned by **Deer Street Associates**, a New Hampshire limited partnership;

WHEREAS, the City of Portsmouth is the owner and holder of a waterline easement described in a Waterline Easement Deed from Deer Street Associates to the City dated September 16, 2005 and recorded in the Registry on September 19, 2005 at Book 4550, Page 1887 (the “Municipal Waterline Easement”);

WHEREAS, the City of Portsmouth is the owner and holder of a drainage easement described in a Warranty Deed from Portsmouth Housing Authority to John M. Goodwin dated January 16, 1973

and recorded in the Registry on February 12, 1973 at Book 2196, Page 1068 (the “Municipal Drainage Easement”);

WHEREAS, Foundry Place, LLC, Deer Street Associates, and the City of Portsmouth have agreed to terminate and release the Municipal Sewer Easements and the Municipal Waterline Easement;

WHEREAS, the City of Portsmouth voted to discontinue said Municipal Sewer Easements and the Municipal Waterline Easement;

NOW THEREFORE:

KNOW ALL MEN BY THESE PRESENTS, that the **City of Portsmouth, New Hampshire**, a New Hampshire municipal Corporation, with a principal place of business at 1 Junkins Avenue, Portsmouth, County of Rockingham, State of New Hampshire, 03801 (the “City”), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, conveys and releases:

to **Deer Street Associates**, a New Hampshire limited partnership with a mailing address of P.O. Box 100, York Harbor, Maine 03911, without any warranties or covenants of title whatsoever, all of the City’s right, title and interest in and to the Municipal Sewer Easements and the Municipal Waterline Easement located in the City of Portsmouth, County of Rockingham, State of New Hampshire located in whole or in part on Lot 4 or 5 shown on the Plan;

to **Foundry Place, LLC**, a New Hampshire limited liability company with a mailing address of P.O. Box 100, York Harbor, Maine 03911 without any warranties or covenants of title whatsoever, all of the City’s right, title and interest in and to the Municipal Sewer Easements and the Municipal Waterline Easement located in the City of Portsmouth, County of Rockingham, State of New Hampshire located in whole or in part on Lot 2 or 3 shown on the Plan;

Specifically excepting from this conveyance the Municipal Drainage Easement;

The Premises Released are conveyed subject to all easements, rights, title, and matters of record (if any).

This is NOT Homestead Property.

[Remainder of page intentionally blank – signature page to follow]

IN WITNESS WHEREOF, the said CITY OF PORTSMOUTH, NEW HAMPSHIRE has caused this Termination and Release of Municipal Waterline Easement and Municipal Sewer Easement to be executed on its behalf by its City Manager, thereunto duly authorized, this _____ day of _____, 2020.

GRANTOR:
**CITY OF PORTSMOUTH,
NEW HAMPSHIRE**

Witness

By: _____
Karen S. Conard, City Manager
As authorized by vote of the Portsmouth City
Council dated May 16, 2016

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

On this _____ day of _____, 2020, before me the undersigned, personally appeared **Karen S. Conard**, who acknowledged herself to be the **City Manager** of the **City of Portsmouth, New Hampshire** and acting in that capacity, being authorized to do so, executed the foregoing instrument on behalf of the **City of Portsmouth, New Hampshire** as his voluntary act and deed for the purposes herein contained.

Notary Public/Justice of the Peace
My Commission Expires:
(Affix Seal)

AFFIDAVIT

I, KAREN S. CONARD, City Manager of the City of Portsmouth (the "City"), 1, Junkins Avenue, Portsmouth, New Hampshire 03801 being duly sworn, depose and state as follows:

1. The City is the owner of Lot 1 ("Lot 1") shown on that certain plan entitled "Consolidation & Subdivision Plan – Tax Map 125, Lot 17 & Tax Map 138, Lot 62 – Deer Street Associates – Bridge, Deer & Hill Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1" = 50' " dated July, 2015 and last revised 5/18/16, approved by the City Planning Board on August 20, 2015, and recorded in the Rockingham County Registry of Deeds (the "Registry") as Plan #D-39699 (the "Plan"), upon which it has constructed a municipal parking garage (the "Garage").
2. Lot 1 is subject to a certain Amendment and Relocation Agreement dated March 22, 2016 and recorded in the Registry at Book 5701, Page 2460 (the "Relocation Agreement").
3. The Relocation Agreement requires the City to maintain an Agency Office for the benefit of the Boston and Maine Corporation on Lot 1 within the Agency Office Relocation Area, and to provide access to the Agency Office across Lot 1 within the Access Relocation Area, once the Agency Office is substantially completed or the Boston and Maine Corporation takes occupancy thereof.
4. The Agency Office was relocated to and is currently located on Lot 1 within the Agency Relocation Area, and the BMC Access was relocated to and is currently located on Lot 1 within the Access Relocation Area.
5. Capitalized terms not otherwise defined in this Affidavit have the meaning ascribed to them in the Relocation Agreement.

Signed under the pains and penalties of perjury this _____ day of _____, 2020.

Karen S. Conard
City Manager

COUNTY OF ROCKINGHAM

STATE OF NEW HAMPSHIRE

The foregoing instrument was acknowledged, subscribed and sworn to before me this __ day of _____, 2020, by Karen S. Conard, as the City Manager for the City of Portsmouth, New Hampshire.

In witness whereof I hereunto set my hand and official seal.

Justice of the Peace /Notary Public
My commission expires:_____

LIMITED RELEASE AGREEMENT

The following Agreement is among and between the City of Portsmouth, a municipal corporation with a principal place of business of 1 Junkins Ave, Portsmouth, New Hampshire 03801 (the "City"), and Deer Street Associates, a New Hampshire limited partnership of 157 Deer Street, Portsmouth, NH 03801 ("DSA") (collectively the "Parties").

WHEREAS, the Parties entered into a certain Post Closing Obligations Agreement dated September 9, 2016 ("PCOA"), and;

WHEREAS, the PCOA contains a requirement that the City execute and deliver an Assumption Agreement (the "Assumption Agreement") to be recorded at the Rockingham County Registry of Deeds regarding the City's assumption of relocated Agency Office Covenant obligations and Access Covenant obligations benefitting BMC and further described in that certain Amendment and Relocation Agreement recorded in the Rockingham County Registry of Deeds at Book 5701, Page 2460 (the "Relocation Agreement"), and;

WHEREAS, pursuant to the Relocation Agreement, substantial completion or occupancy by BMC of the Railroad Agency Office within the Agency Office Relocation Area results in the Agency Office Covenant burdening solely the Agency Office Relocation Area, and the Access Covenant burdening solely the Access Relocation Area, which Agency Office Relocation Area and Access Relocation Area are located wholly upon the City's property shown as Lot 1 on certain plan entitled "Consolidation & Subdivision Plan – Tax Map 125, Lot 17 & Tax Map 138, Lot 62 – Deer Street Associates – Bridge, Deer & Hill Streets – City of Portsmouth, County of Rockingham, State of New Hampshire – Scale 1" = 50' " dated July, 2015 and last revised 5/18/16 recorded in the Rockingham County Registry of Deeds as Plan D-39699 (the "Plan"), and;

WHEREAS, the Agency Office has been substantially completed and BMC has taken occupancy thereof, and;

WHEREAS, the City has requested that DSA accept, and DSA is willing to accept, a recordable affidavit in the form attached hereto as Exhibit A in lieu of execution and delivery of the Assumption Agreement.

NOW, THEREFORE, upon DSA's receipt of the fully executed and duly authorized Affidavit, and except as otherwise expressly set forth herein, DSA, for itself, its successors and assigns, shall and does by these presents remise, release, and forever discharge the City, its successors and assigns, of and from all claims and demands arising from the non-delivery of the Assumption Agreement in accordance with the terms of the PCOA, and from all manners of action and actions, cause and causes of action and actions, suits, debts, dues, duties, sum and sums of money, accounts, reckonings, bonds, bills, specifications, covenants, contracts, agreements, promises, variances, damages, judgments, extents, executions, claims and

demand, whatsoever in law of equity, or otherwise, against the City, its successors and assigns, which it, its successors and assigns ever had, now have or which it, its successors and assigns hereafter can shall or may have, for, upon or by reason of the failure of the City to execute and deliver the Assumption Agreement; from the beginning of record time to the date of these presents.

The Parties agree to execute and deliver such other documents, instruments, affidavits and certificates as may be reasonably required to confirm that neither the Agency Office Covenant nor the Access Covenant burden Lots 2, 3, 4, 5 or 6 as shown on the Plan.

All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Relocation Agreement.

IN WITNESS WHEREOF,

DEER STREET ASSOCIATES

Dated: _____

By DSA Rogers LLC,
Its General Partner
By its Manager,
G.L. Rogers and Company, Inc.

Witness

By: Kim S. Rogers
Its: President

Dated: _____

CITY OF PORTSMOUTH

Witness

By: _____
Karen Sawyer Conard, City Manager

EXHIBIT A
AFFIDAVIT

DRAFT

LICENSE AGREEMENT

The City of Portsmouth, a municipal corporation with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (hereinafter "City") and the Seacoast Growers' Association, a non-profit association of individual vendors (hereinafter "Vendors" or "Association") with a principal place of business at Portsmouth, New Hampshire and a mailing address at PO Box 4401, Portsmouth New Hampshire 03802-4401 agree as follows:

1) The Seacoast Growers' Association is licensed by the Portsmouth City Council to operate a Farmers' Market on Saturday mornings between May 2, 2020 through November 7, 2020 pursuant to the conditions enumerated below.

2) Each individual member Vendor of the Seacoast Growers' Association, as well as the Association itself, jointly and severally agree to the following conditions relative to permission to use the Upper Municipal Lot by the Seacoast Growers' Association granted by the City.

A. SITE CONDITIONS:

- The City Hall Municipal Lot will be reserved for use by the Association as defined in the attached Appendix I. The Association is authorized to cover the existing handicap parking signs in the municipal parking lot and to utilize the spaces as otherwise designated as handicap spaces during the hours in which the Farmer's Market is authorized. The Association shall immediately remove the coverings from the handicap parking space signs at the end of the authorized period. There shall be no use by the Association of Lot B as shown on the attached Appendix I.
- Parking on grassy areas prohibited.
- Market area to be left in broom-clean condition one hour after closing.
- All trash generated by the market shall be removed by the Association upon closing of the Farmers' Market and shall be maintained in a clean, neat condition during the market operation.
- The Vendors shall implement any temporary marking of Vendor spaces which may be directed by the City.
- The Seacoast Growers' Association shall provide police coverage from 8:00 a.m. to 12:00 p.m. unless otherwise determinate by the Police Chief, at its own expense, to control traffic and monitor parking during the hours when the Farmers' Market is in operation.

- A centrally located hand washing booth shall be available at all times.
- The Seacoast Growers' Association agrees to operate the Farmer's Market during the 2020 season on a "CARRY IN – CARRY OUT" basis.

B. HOURS AND TIME OF MARKET:

- Hours of operation will be 8:00 a.m. until 1:00 p.m.
- Set up and breakdown time will be two hours before and one hour after operation hours.

C. SALE OF ITEMS:

- Products which may be sold at the Seacoast Growers' Association market shall follow the guidelines and definitions outlined within the Association's Bylaws and Rules and Regulations (a copy of which is attached hereto as Appendix II).
- New food vendor permit applications will be processed within thirty (30) days.
- After the commencement of the season new food vendors may only be added to the Farmer's Market on two dates to be predetermined by the Health Officer.

D. HEALTH REQUIREMENTS:

The Health Officer will have the authority to shut down the entire market if any single Vendor fails to comply with any Health Officer's directive to cure any situation creating a public health concern. The Health Officer shall make reasonable efforts to notify the President of the Seacoast Growers' Association or his/her assignee(s) at the time a warning is issued. Specific health requirements include, but are not limited to the following:

- Vendors shall be excepted from the general City requirement of obtaining a Hawkers & Peddlers License (\$250.00). The following license fee schedule shall apply to Farmer's Market Vendors:
 1. Fruit and vegetable vendors at the Farmer's Market pay no fee.
 2. Non-produce/Non-food vendors at the Farmer's Market pay no fee.

3. Prepared food vendors (anything other than non-prepared fruits and vegetables) and sellers of potentially hazardous agricultural products pay a seasonal fee of \$140.00 per season.
- Non-recycled farm fresh eggs may be sold provided that they are stored at proper temperature (at or below forty-one (41) degrees Fahrenheit) during transport to and while displayed at the Farmers' Market.
 - Baked goods sold at the Farmers' Market must be individually or collectively wrapped while displayed and sold and baked in a licensed facility.
 - Any Vendor who sells potentially hazardous foods (which includes any perishable food or food product which consists in whole or in part of milk or any other ingredient capable of supporting rapid and progressive growth of infectious and toxigenic micro-organisms including, but not limited to, cream fillings and pies, cakes and pastries, custard products, meringue-topped baked goods or butter-cream type fillings in bakery products meats and poultry), shall take appropriate measures to ensure that such products are transported, stored, and displayed in refrigerated or ice-cooled containers to maintain temperature of such products at 41 degrees Fahrenheit or below at all times so to prevent spoilage or contamination.
 - All animals are prohibited within the Farmers' Market with the exception of hearing ear dogs, guide dogs and service dogs as they are defined in RSA 167-D:1.
 - The above items do not eliminate or supersede other areas of compliance set by ordinance or regulations or within the grant of authority by the Portsmouth City Council.
 - In addition to the foregoing, each Vendor member of the Seacoast Growers' Association shall comply with all applicable Federal, State and Municipal laws, regulations and ordinances.
 - No vendor shall provide fruit or vegetables to be sampled onsite unless a three bay sink is provided, to properly wash-rinse-sanitize all equipment and utensils used for sampling (knife, cutting board, colander, etc.). The colander is then used for washing fruits and vegetables to be sampled. No spillage onto the ground shall be permitted from the three bay sink.
 - On-site food preparation and equipment are limited to simple grilling, reheating/hot holding, dispensing and assembling of foods and beverages.

E. OTHER CONDITIONS:

- The Seacoast Growers' Association shall provide the City with a current list of board members with appropriate contact information.
- The Seacoast Growers' Association agrees to indemnify and hold the City of Portsmouth harmless for any and all claims of liability, (including bodily injury or property damage) of any type or kind arising out of the Association's operation or use of this license agreement. This provision shall survive termination of this agreement.
- Additionally, the Seacoast Growers' Association shall maintain general liability insurance in the amount of Two Million Dollars (\$2,000,000.00) naming the City of Portsmouth as an additional insured. A certificate demonstrating this insurance shall be kept on file with the City Clerk of the City at all times relevant to the operation of the Association under this agreement.
- The City hereby approves the sale and tastings as allowed by the New Hampshire State Liquor commission of the following alcohol products at the Farmer's Market by Association members:
 1. Squamscott Vineyard & Winery; and
 2. Beer by Throwback Brewery.

No other alcohol sales or possession is approved.

There shall be no other open containers or consumption of alcoholic beverage on municipal premises. All alcoholic beverage sales must be conducted in strict accordance with state law and any rules adopted pursuant thereto by the State of New Hampshire Liquor Commission. This provision of the license agreement with the Association may be revoked immediately and without cause if that action is determined to be appropriate by the City.

- Should Seacoast Growers' Association provide patrons access to the restroom facilities located in City Hall, an individual will be designated for each date of operation to escort patrons to the restroom and out of the building. A list of responsible persons and the dates they are assigned this responsibility shall be submitted to the Health Department with the application packet. The Health Department must approve in advance of any modification.
- For the purpose of operating the Farmer's Market on the property of the City of Portsmouth it is understood that neither a Homestead License issued by

the State of New Hampshire nor a Home Food Processors License issued by the State of Maine is recognized or confers any benefit to the vendor.

- This agreement may be terminated at the sole discretion of the City of Portsmouth in the event that:
 1. The Seacoast Growers' Association fails to abide by the terms of this agreement.
 2. It is determined that the City of Portsmouth has a paramount need for the area which would otherwise be utilized by the Seacoast Growers' Association.
- The City reserves the right to modify any provision in this agreement in the event that such modification is made necessary by any change in state or federal law.

CITY OF PORTSMOUTH

Dated: _____

By: _____
Karen S. Conard, City Manager
Pursuant to vote of the City Council on
_____, 2020.

SEACOAST GROWERS' ASSOCIATION

Dated: _____

By: _____
Jessica Romano, President
Pursuant to vote by the Seacoast Growers'
Association on _____.



Portsmouth Fire Department

Administration

To: City Manager Karen Conard

From: Fire Chief Todd Germain

Date: 3/11/2020

Re: **Authorization for early purchase of replacement aerial platform**

Ms. Conard,

I write to formally request a public hearing on April 6, 2020 to begin the borrowing authorization process to enter into a contract with Greenwood Fire Apparatus for the purchase of a 2020 E-One Rear Mount Model 95 Platform truck for \$1,334,476. As you are aware, it is part of the FY21 CIP which was adopted by the City Council at its March 2, 2020 meeting. I have been informed by Greenwood Fire Apparatus that a price increase of 2.5% will occur on April 30, 2020. Securing authorization to order this vehicle prior to that date will save the City approximately \$33,000 and allow a three month head start on a fourteen month build out for this particular model apparatus.

Please reach out with questions.

Chief Germain

Department Memorandum

VE-20-FD-02: VEHICLE REPLACEMENT – LADDER 2

Department	Fire Department
Project Location	Station 2 (3010 Lafayette Rd)
Project Type	Replacement or Purchase of a Vehicle
Commence FY	2021
Priority	A (needed within 0 to 3 years)
Impact on Operating Budget	Reduce (will reduce Operating Costs)

Evaluation Criteria	Satisfy
Identified in Planning Document or Study – Self-Assessment of FD Operations: April 2015	Y
Improves Quality of Existing Services	Y
Provides Added Capacity to Existing Services	
Addresses Public Health or Safety Need	Y
Reduces Long-Term Operating Costs	Y
Alleviates Substandard Conditions or Deficiencies	
Provides Incentive to Economic Development	
Responds to Federal or State Requirement	
Eligible for Matching Funds with Limited Availability	



Description: This project continues the CIP Rolling Stock Replacement Program for large apparatus. This allocation will purchase a new 95' aerial / platform truck with a 4-person cab with medical compartments, a minimum of a 2,000 GPM pump, and related equipment to replace this 2005 E-1 Ladder Truck. Funds include complete set-up including radio, lettering and striping as well as equipment.

Useful Website Links:

- [Portsmouth Fire Department Homepage](#)
- [FY20-25 CIP page](#)

		FY21	FY22	FY23	FY24	FY25	FY26	Totals 21-26	6 PY's Funding	Totals
GF	0%							\$0	\$0	\$0
Fed/ State	0%							\$0	\$0	\$0
Bond/ Lease	100%	\$1,400,000						\$1,400,000	\$0	\$1,400,000
Other	0%							\$0	\$0	\$0
Revenues	0%							\$0	\$0	\$0
PPP	0%							\$0	\$0	\$0
	Totals	\$1,400,000	\$0	\$0	\$0	\$0	\$0	\$1,400,000	\$0	\$1,400,000

**THE CITY OF PORTSMOUTH
TWO THOUSAND TWENTY
PORTSMOUTH, NH**

RESOLUTION # 20-

A RESOLUTION AUTHORIZING A BOND ISSUE, AND/OR NOTES, OR EXECUTION OF LEASE PURCHASE AGREEMENT OF UP TO ONE MILLION FOUR HUNDRED THOUSAND (\$1,400,000) DOLLARS FOR THE ACQUISITION OF ONE FIRE APPARATUS.

BE IT RESOLVED:

THAT the sum of **One Million Four Hundred Thousand (\$1,400,000) Dollars** be and is hereby appropriated for the acquisition of one Fire Apparatus.

THAT in order to meet said appropriation the City Treasurer, with approval of the City Manager, is authorized to borrow, on a competitive or negotiated basis, up to **One Million Four Hundred Thousand (\$1,400,000) Dollars** through the issue of bonds and/or notes of the City under the Municipal Finance Act and/or the execution of lease purchase agreements.

THAT the expected useful life of the fire apparatus is determined to be at least 10 years.

THAT this resolution shall take effect upon its passage.

APPROVED BY:

RICK BECKSTED, MAYOR

ADOPTED BY CITY COUNCIL

KELLI BARNABY, CMC/CNHMC

CITY CLERK

BOSEN & ASSOCIATES, P.L.L.C.
ATTORNEYS AT LAW

John K. Bosen
Admitted in NH & MA

Christopher P. Mulligan
Admitted in NH & ME

Molly C. Ferrara
Admitted in NH & ME

Bernard W. Pelech
Admitted in NH & ME

March 10, 2020

The Honorable Rick Beckstead, Mayor
Portsmouth Municipal Complex
1 Junkins Avenue
Portsmouth, N.H. 03801

Re: Cate Street Relocation

Dear Mayor Beckstead and Members of the City Council

As you are aware, for the past 25 years the City has pursued a goal of connecting the Route #1 ByPass with Bartlett Street to take traffic (including truck traffic) off Woodbury Avenue and provide a more convenient access to the Islington Street area. That goal became a reality when the owners of the land necessary for this connector entered into a land swap agreement with the City and as a result, construction is now underway.

In addition to the traffic relief that the relocated roadway will provide, the agreement with the City will add a vital link in the City's long standing goal of protecting and enhancing Hodgson Brook. The amount of pavement in the area will be significantly reduced and all of the surface water run off that now flows directly into the brook will be treated. The project will also allow for a multiuse path along the brook.

As part of the process for the relocation and construction of a new roadway, the existing roadway must be technically "discontinued." To address that requirement, I have prepared a "Petition to Discontinue." I respectfully request that this Petition be placed on the March 16 Council agenda for informational purposes and placed

on the April 6, City Council Agenda for consideration. All of the abutters to the existing roadway will be given certified mail notice of the April 6 meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "John K. Bosen". The signature is stylized with several loops and a long horizontal stroke at the end.

John K. Bosen

**PETITION FOR DISCONTINUANCE OF A PORTION OF THE PUBLIC HIGHWAY
KNOWN AS CATE STREET**

**TO THE HONORABLE MAYOR
AND CITY COUNCIL OF THE CITY OF PORTSMOUTH:**

The undersigned respectfully represents that for the accommodation of the public there is occasion for discontinuing completely and absolutely that portion of the public highway known as Cate Street described and depicted on Exhibit A attached hereto, which is incorporated by reference herein and made a part hereof.

Discontinuance is conditioned upon the discontinued portion of the road being kept open, maintained, and unmodified by the owners of the northerly abutting parcels (Tax Map 163, Lots 33 and 34) to which title to the underlying fee of the northerly half of the road will revert, specifically, Cate Street Development, LLC, and their successors, until such time as the travel lanes of the new, proposed public highway, also to be known as Cate Street, as shown on the plan attached as Exhibit A hereto, are completely constructed and open for public use.

Due to the ancient age of the existing public highway known as Cate Street, no prior layout by the City of Portsmouth nor deed conveying title thereto was found.

The undersigned therefore requests that the Mayor and City Council discontinue the within-described portion of the public highway known as Cate Street, subject to the within conditions.

CATE STREET DEVELOPMENT, LLC

By: 
Name: Jay Bisognano
Title: Manager

ABUTTERS

TAX MAP 158, LOT 13
SLATTERY & DUMONT, LLC
66 OLD CONCORD TURNPIKE #10
BARRINGTON, NH 03825
R.C.R.D. BOOK 3471, PAGE 196

TAX MAP 163, LOT 37
CITY OF PORTSMOUTH
PO BOX 628
PORTSMOUTH, NH 03802
R.C.R.D. BOOK 2284 PAGE 812

TAX MAP 165, LOT 1
CATE STREET LLC
105 BARTLETT STREET
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 5903 PAGE 1436

TAX MAP 174, LOT 14
AER RE LLC
185 COTTAGE STREET
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 5965, PAGE 2216

TAX MAP 234, LOT 51
MEADOWBROOK INN CORP.
C/O PORTSMOUTH CHEVROLET
549 ROUTE 1 BYPASS
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 2382, PAGE 1968

TAX MAP 163, LOT 1
M & B PROPERTIES, LLC
54 BARTLETT STREET
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 5794, PAGE 996

TAX MAP 164, LOT 1
PORTSMOUTH LUMBER & HARDWARE, LLC
105 BARTLETT STREET
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 5372, PAGE 2606

TAX MAP 165, LOT 14
BOSTON AND MAINE CORP
IRON HORSE PK HIGH ST
NO BILLERICA, MA 01862
R.C.R.D. BOOK PAGE

TAX MAP 233, LOT 145
CITY OF PORTSMOUTH
1 JUNKINS AVENUE
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 5127, PAGE 2074

TAX MAP 163, LOT 2
INDUSTRIAL RENTS-NH, LLC
6 WAYNE ROAD
WESTFORD, MA 01886
R.C.R.D. BOOK 5606, PAGE 2334

TAX MAP 164, LOT 2
PORTSMOUTH LUMBER & HARDWARE, LLC
105 BARTLETT STREET
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 5808, PAGE 1379

TAX MAP 172, LOT 2
406 HIGHWAY 1 BYPASS, LLC
549 US HIGHWAY 1 BYPASS
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 5671 PAGE 2150

TAX MAP 234, LOT 2A
PUBLIC SERVICE CO. OF NH
PO BOX 270
HARTFORD, CT 06141
R.C.R.D. BOOK 1257, PAGE 324

TAX MAP 163, LOT 32
SHARAN R. GROSS REV. TRUST
180 BIRCH HILL RD
YORK, ME 03909
R.C.R.D. BOOK 5261 PAGE 2208
R.C.R.D. BOOK 3406 PAGE 1383

TAX MAP 164, LOT 4
BOSTON & MAINE CORP.
IRON HORSE PARK, HIGH STREET
NO. BILLERICA, MA 01862

TAX MAP 173, LOT 3
EDGAR W. & JANICE E. ANDERSON
224 CATE ST
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 2956 PAGE 1071

TAX MAP 234, LOT 3
PUBLIC SERVICE CO. OF NH
PO BOX 270
HARTFORD, CT 06141
R.C.R.D. BOOK 5548, PAGE 738

TAX MAP 163, LOT 35
ELDRIDGE BREWERY REALTY PARTNERSHIP
1 CATE ST
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 2572 PAGE 2635

TAX MAP 164, LOT 5
HOUSTON HOLDINGS, LLC
653 ISLINGTON STREET
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 3558, PAGE 464

TAX MAP 173, LOT 9
PAUL J. HOLLOWAY
C/O COAST POINTAC
500 US HWY 1 BYPASS
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 3107, PAGE 950

TAX MAP 234, LOT 5
SEACOAST DEVELOPMENT GROUP, LLC
505 US ROUTE 1 BYPASS
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 3107, PAGE 950

TAX MAP 163, LOT 36
CST HOLDINGS, LLC
3 CATE ST
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 3923 PAGE 202

TAX MAP 164, LOT 12
JOSEPH GOBBI SUPPLY CORP.
PO BOX 125
PORTSMOUTH, NH 03802
R.C.R.D. BOOK 3233, PAGE 1949

TAX MAP 173, LOT 10
AREC 13, LLC C/O U-HAUL INTERNATIONAL
PO BOX 29046
PHOENIX, AZ 85038
R.C.R.D. BOOK 4575 PAGE 950

TAX MAP 234, LOT 7-6
CRETHI WARAMAUG PORTSMOUTH, LLC
C/O CTMI, LLC
PO BOX 741328
DALLAS, TX 75374
R.C.R.D. BOOK 5620, PAGE 1675

NOTES:

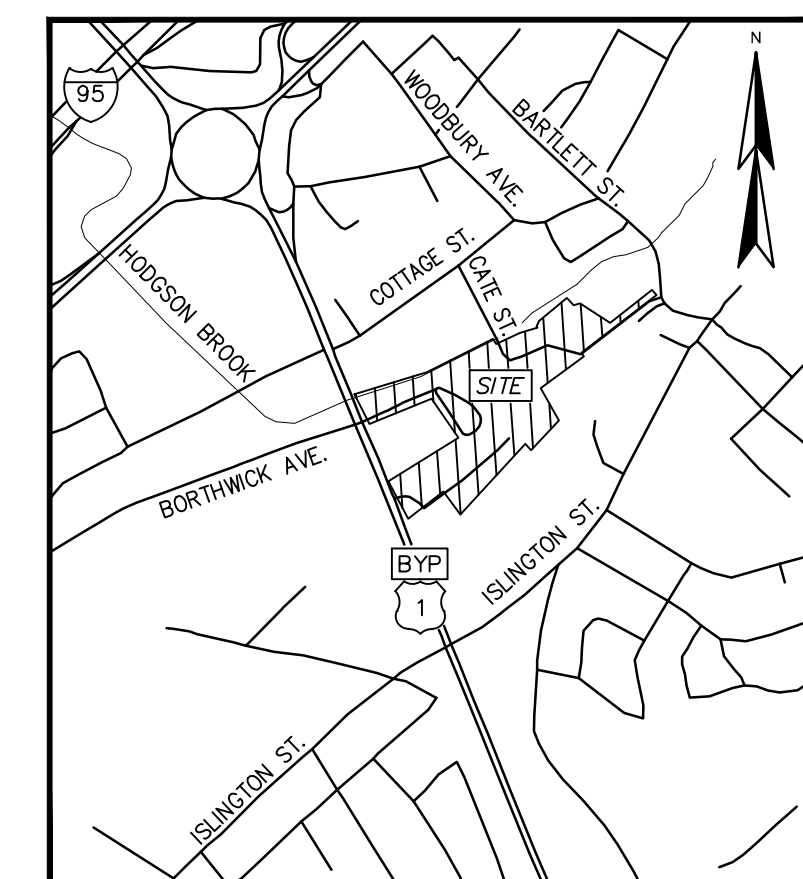
1. REFERENCE: TAX MAP 163, LOT 33 – 12,230 SF OR 0.28 AC.
TAX MAP 163, LOT 34 – 64,109 SF OR 1.47 AC.

TAX MAP 165, LOT 2
TAX MAP 172, LOT 1
TAX MAP 173, LOT 2
COMBINED AREA – 451,572 SF OR 10.37 AC.
2. OWNER OF RECORD: CATE STREET DEVELOPMENT LLC
11 ELKINS STREET, SUITE 420
BOSTON, MA 02127
R.C.R.D. BOOK 5959, PAGE 109
3. ZONES: GW1—GATEWAY NEIGHBORHOOD MIXED USE CORRIDOR (SEE CITY OF PORTSMOUTH ZONING ORDINANCE FOR DIMENSIONAL REQUIREMENTS. SUBJECT LOTS WERE REZONED TO GW1 ON DECEMBER 4, 2017 PER SAID ORDINANCE.)

—SEE SITE PLANS FOR DIMENSIONAL REQUIREMENTS AND DEVELOPMENT SITE STANDARDS.
4. FIELD SURVEY PERFORMED BY P.J.S. & J.C.M. DURING NOVEMBER 2016 USING A TRIMBLE S6 TOTAL STATION, A TRIMBLE R8 SURVEY GRADE GPS UNIT, A TRIMBLE TSC3 DATA COLLECTOR AND A SOKKIA B21 AUTO LEVEL, BY L.P.S. & S.N.F. DURING JULY 2018 AND T.M.M. & J.C.M. IN SEPTEMBER & OCTOBER 2018 USING A TRIMBLE S6 TOTAL STATION WITH A TRIMBLE TSC3 DATA COLLECTOR. TRAVERSE ADJUSTMENT BASED ON LEAST SQUARE ANALYSIS. ADDITIONAL FIELD SURVEY PERFORMED BY M.C. DURING NOVEMBER 2016 AND OCTOBER 2018 USING A LEICA HDS SCANNER.
5. THE LIMITS OF JURISDICTIONAL WETLANDS WERE DELINEATED BY MARC JACOBS IN NOVEMBER 2016 AND REVIEWED BY GOVE ENVIRONMENTAL SERVICES, INC. DURING APRIL 2018 IN ACCORDING TO THE US ARMY CORPS OF ENGINEERS WETLAND DELINEATION MANUAL, TECHNICAL REPORT Y-87-1, JANUARY 1987 AND REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHCENTRAL AND NORTHEAST REGION, VERSION 2.0, JANUARY 2102 AND FIELD INDICATORS FOR IDENTIFYING HYDRIC SOILS IN NEW ENGLAND, VERSION 4, MAY 2017, NEW ENGLAND HYDRIC SOILS TECHNICAL COMMITTEE.

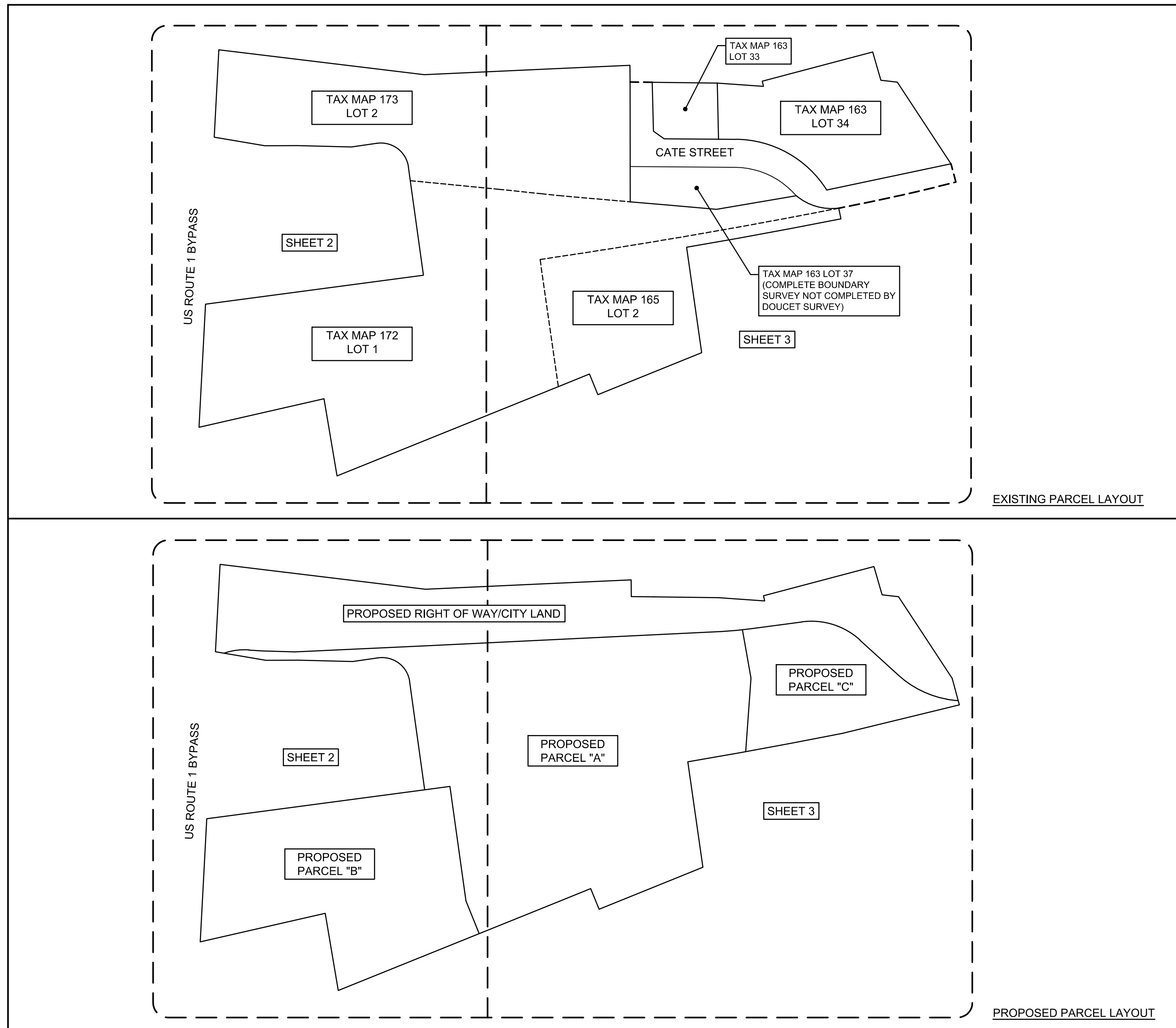
6. FLOOD HAZARD ZONE: "X", PER FIRM MAP #33015C0259E, DATED 5/17/05.
7. VERTICAL DATUM IS BASED ON NGVD29 PER DISK V 28 1942 ELEV. 25.59.
8. HORIZONTAL DATUM BASED ON NEW HAMPSHIRE STATE PLANE(2800) NAD83(2011) DERIVED FROM REDUNDANT GPS OBSERVATIONS UTILIZING THE KEYNET GPS VRS NETWORK.
9. THE INTENT OF THIS PLAN IS TO SHOW THE LOCATION OF BOUNDARIES IN ACCORDANCE WITH AND IN RELATION TO THE CURRENT LEGAL DESCRIPTION, AND IS NOT AN ATTEMPT TO DEFINE UNWRITTEN RIGHTS, DETERMINE THE EXTENT OF OWNERSHIP, OR DEFINE THE LIMITS OF TITLE.
10. DUE TO THE COMPLEXITY OF RESEARCHING ROAD RECORDS AS A RESULT OF INCOMPLETE, UNORGANIZED, INCONCLUSIVE, OBLITERATED, OR LOST DOCUMENTS, THERE IS AN INHERENT UNCERTAINTY INVOLVED WHEN ATTEMPTING TO DETERMINE THE LOCATION AND WIDTH OF A ROADWAY RIGHT OF WAY. THE EXTENT OF (THE ROAD(S)) AS DEPICTED HEREON IS/ARE BASED ON RESEARCH CONDUCTED AT THE PORTSMOUTH CITY HALL, PORTSMOUTH DEPARTMENT OF ENGINEERING, THE ROCKINGHAM COUNTY REGISTRY OF DEEDS, AND THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION.
11. FINAL MONUMENTATION MAY BE DIFFERENT THAN THE PROPOSED MONUMENTATION SHOWN HEREON, DUE TO THE FACT THAT SITE CONDITIONS WILL DICTATE THE ACTUAL LOCATION AND TYPE OF MONUMENTS INSTALLED IN THE FIELD. PLEASE REFER TO EITHER THE "MONUMENTATION LOCATION PLAN" TO BE RECORDED OR CONTACT DOUCET SURVEY FOR CLARIFICATION OF MONUMENTS SET. (A RECORDED PLAN WILL BE PRODUCED AT THE DISCRETION OF DOUCET SURVEY).

-SEE SHEET 4 FOR NOTES 12 & 13 SPECIFIC TO EXISTING AND PROPOSED EASEMENT.
-SEE SHEET 7 FOR NOTES SPECIFIC TO EXISTING CONDITIONS.



REFERENCE PLANS

1. "MAINE-NEW HAMPSHIRE INTERSTATE BRIDGE AUTHORITY, PISCATAQUA RIVER BRIDGE, KITTERY, MAINE-PORTSMOUTH, NEW HAMPSHIRE, RIGHT OF WAY MAPS, N.H. APPROACH, BY ALBERT MOULTON, CE, DATED 1954, ON FILE A THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION.
2. "PLAT OF LAND U.S. ROUTE 1 BY-PASS PORTSMOUTH, NEW HAMPSHIRE FOR GRIFFIN FAMILY CORP.", BY DURGIN, VERRA AND ASSOCIATES, INC., DATED JANUARY 20, 1992, RECEIVED FROM THE OFFICE OF JAMES VERRA.
3. "LOT LINE REVISION U.S. ROUTE ONE BY-PASS, PORTSMOUTH, N.H. FOR WIGGIN, PARSONS, & O'BRIEN, BY JOHN W. DURGIN ASSOCIATES, INC., DATED JANUARY 22, 1982, R.C.R.D. PLAN D-10722.
4. "PLAN OF LAND FOR JOSEPH J. O'BRIEN JR. & SR., CATE STREET/ROUTE 1 BY-PASS, PORTSMOUTH, N.H., BY RICHARD P. MILLETTE AND ASSOCIATES, DATED NOVEMBER 17, 1988, R.C.R.D. PLAN D-19110.
5. "LAND IN PORTSMOUTH, N.H., BOSTON AND MAINE RAILROAD TO ALL STATE REALTY CORPORATION", BY BRENTON V. SCHOFIELD, DATED FEBRUARY 1964, R.C.R.D. PLAN 160.
6. "LOT LINE RELOCATION PLAN FOR U-HAUL REAL ESTATE COMPANY AND FRANCIS J. COSTELLO CATE STREET/ROUTE 1 BY-PASS, PORTSMOUTH, N.H.", BY RICHARD P. MILLETTE AND ASSOCIATES, DATED MAY 25, 1995, R.C.R.D. PLAN D-24912.
7. "SUBDIVISION OF LAND HEIRS OF CORNELIUS COAKLEY", BY MCKENNA ASSOCIATES, DATED JULY 26, 1972, R.C.R.D. PLAN D-3790.
8. "LOT LINE REVISION PORTSMOUTH, N.H. FOR MICHAEL A. PAGANO", BY JOHN W. DURGIN ASSOCIATES, DATED JUNE 26, 1981, R.C.R.D. PLAN D-10278.
9. "SITE PLAN OF ELDRIDGE PARK WEST PREPARED FOR ELDRIDGE BREWERY REALTY PARTNERSHIP", BY KIMBALL CHASE COMPANY, INC., DATED JULY 23, 1987, R.C.R.D. PLAN D-16894.
10. "PLAN OF LAND OF FRANK JONES BREWING CORP. & PAUL C. BADGER & NORMAN E. RAND PORTSMOUTH, N.H.", BY JOHN W. DURGIN, CIVIL ENGINEERS, DATED SEPTEMBER 1950, R.C.R.D. PLAN 01635.
11. "LOT LINE ADJUSTMENT PLAN FOR LAND OWNED BY SHARON R. GROSS REVOCABLE TRUST, KNOWN AS TAX MAP 163, LOT 31 & 32 LOCATED ALONG #201 & 235 CATE STREET", BY KNIGHT HILL LAND SURVEYING SERVICES, INC., DATED JULY 28, 2011, R.C.R.D. PLAN D-37021.
12. "SITE REVIEW PLAN FOR LAND OWNED BY SHARON R. GROSS REVOCABLE TRUST, KNOWN AS TAX MAP 163, LOT 32 LOCATED ALONG #201 & CATE STREET", BY KNIGHT HILL LAND SURVEYING SERVICES, INC., DATED DECEMBER 2002, R.C.R.D. PLAN D-30850.
13. "PLAN SHOWING DIVISION OF ELDRIDGE BREWING CO. LOT IN PORTSMOUTH, N.H. OWNED BY ALBERT HISLOP", BY WM A. GROVER, DATED DECEMBER 11, 1918, R.C.R.D. PLAN 18.
14. "PLAN OF LAND PORTSMOUTH, N.H. ATLANTIC REALTY CORP. TO KITTERY LAUNDRY, INC.", BY JOHN W. DURGIN, DATED AUGUST 1964, R.C.R.D. PLAN 300.
15. "CITY OF PORTSMOUTH, N.H. DEFENSE HOMES SEWER LOCATION PLAN", BY JOHN W. DURGIN DATED MAY 1961, R.C.R.D. PLAN 1106.
16. "LAND IN PORTSMOUTH, N.H. BOSTON AND MAINE RAILROAD TO M.H. PARSONS & SONS LUMBER COMPANY, INC.", R.C.R.D. BOOK 1267, PAGE 16.
17. "PLAN OF LAND PORTSMOUTH, N.H. FOR M.H. PARSONS REALTY CORP.", BY JOHN W. DURGIN, DATED DECEMBER 1956, R.C.R.D. BOOK 1431, PAGE 275.
18. "SITE PLAN PORTSMOUTH, N.H. PREPARED FOR U-HAUL OF N.H. AND VT., INC.", BY JOHN W. DURGIN, DATED JUNE 4, 1980, R.C.R.D. PLAN D-9642.
19. "STANDARD PROPERTY SURVEY & PROPOSED SIDEWALK EASEMENT FOR THE CITY OF PORTSMOUTH FOR PROPERTY AT 185 COTTAGE STREET OWNED BY COLMAN C. GARLAND", BY EASTERLY SURVEYING, INC., SAIED NOVEMBER 30, 2012, R.C.R.D. PLAN D-38047.
20. "PLOT PLAN FOR MARIAN M. BADGER, PORTSMOUTH, N.H.", BY JOHN W. DURGIN, DATED JULY 1973, RECIEVED FROM THE OFFICE OF JAMES VERRA.
21. "LAND ON CATE STREET, PORTSMOUTH, N.H., BADGER & RAND TO PORTSMOUTH POWER CO.", BY JOHN W. DURGIN, DATED JANUARY 8, 1926, RECEIVED FROM THE OFFICE OF JAMES VERRA.
22. "RIGHT-OF-WAY AND TRACK MAP BOSTON AND MAINE R.R. OPERATED BY THE BOSTON & MAINE R.R., STATION 2928+05 TO 2966+20", DATED JUNE 30, 1914, ON FILE AT THE NH DEPARTMENT OF TRANSPORTATION.
23. "ALTA/ACSM LAND TITLE SURVEY, TAX MAP 234, LOT 51 PROPERTY OF THE MEADOWBROOK INN CORPORATION", BY MSC CIVIL ENGINEERS & LAND SURVEYORS, DATED DECEMBER 2, 2018, R.C.R.D. PLAN D-36980.
24. "LOT LINE REVISION PLAN TAX MAP R-34 LOTS 6 & 7-6, LOCATED ON BORTHWICK AVE., COAKLEY ROAD AND U.S. ROUTE 1 BYPASS IN PORTSMOUTH, NH", BY KIMBALL CHASE, DATED OCTOBER 20, 1993, R.C.R.D. PLAN D-22686.
25. "PLAN OF LAND FOR SEACOAST DEVELOPMENT GROUP, LLC, US ROUTE 1 BYPASS & COAKLEY ROAD, PORTSMOUTH, NH", BY MILLETTE, SPRAGUE & COLWELL, INC., DATED JUNE 7, 2002, R.C.R.D. PLAN D-30041.
26. "LOT LINE REVISION PLAN LAND OF SEARAY REALTY, LLC", BY DOUCET SURVEY, INC., DATED MARCH 12, 2014, R.C.R.D. PLAN D-38435.
27. "STANDARD PROPERTY SURVEY & PROPOSED SIDEWALK EASEMENT FOR THE CITY OF PORTSMOUTH FOR PROPERTY AT 185 COTTAGE STREET PORTSMOUTH, NH OWNED BY COLMAN C. GARLAND", BY NORTH EASTERLY SURVEYING, INC., DATED NOVEMBER 30, 2012, R.C.R.D. PLAN D-38017.
28. "PLAN OF A LOT OF LAND BELONGING TO FRANK JONES", DATED JULY 1901, R.C.R.D. PLAN 223.
29. "MEADOWBROOK INN CONDOMINIUM SITE PLAN, MAP 234, LOT 51 IN PORTSMOUTH, NH, PREPARED FOR THE MEADOWBROOK INN CORPORATION", BY VANASSE HANGEN BRUSTLIN, INC., DATED SEPTEMBER 25, 2009, R.C.R.D. PLAN D-36162.
30. "PROPOSED EASEMENTS - BARTLETT STREET, BARTLETT SEWER SEPARATION PROJECT OVER LAND OF PAN AM RAILWAYS, PORTSMOUTH, NH FOR CITY OF PORTSMOUTH", BY JAMES VERRA AND ASSOCIATES, INC., DATED OCTOBER 1, 2007, R.C.R.D. PLAN D-35477.
31. "EASEMENT PLAN - 653 ISLINGTON STREET, BARTLETT SEWER SEPARATION PROJECT OVER LAND OF HOUSTON HOLDINGS, LLC", BY JAMES VERRA AND ASSOCIATES, INC., DATED JUNE 22, 2009, R.C.R.D. PLAN D-35957.
32. "LAND TRANSFER AND EASEMENT PLAN, 30 CATE STREET PORTSMOUTH, NH OWNED BY MERTON ALAN INVESTMENTS, LLC", BY TF MORAN/MS, DATED OCTOBER 31, 2017, R.C.R.D. PLAN D-40742.
33. "LAND IN PORTSMOUTH, N.H. BARTLETT & CATE STREET", BY JOHN W. DURGIN CIVIL ENGINEER, DATED JULY 1924, R.C.R.D. PLAN 0133.



APPROVED FOR THE RECORD
CHAIRMAN PORTSMOUTH PLANNING BOARD DATE

I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY ME OR BY THOSE UNDER MY DIRECT SUPERVISION AND FALLS UNDER THE URBAN 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.

_____, L.L.S. #989
_____, DATE

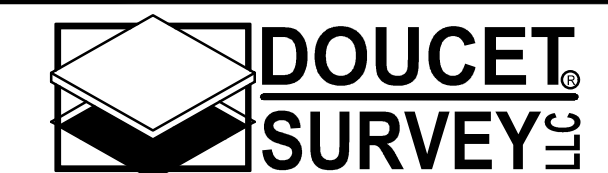
THE CERTIFICATIONS SHOWN HEREON ARE INTENDED TO MEET REGISTRY OF DEED REQUIREMENTS AND ARE NOT A CERTIFICATION TO TITLE OR OWNERSHIP OF PROPERTY SHOWN. OWNERS OF ADJOINING PROPERTIES ARE ACCORDING TO CURRENT TOWN ASSESSORS RECORDS.

CM Action Item #7

SUBDIVISION & EASEMENT PLAN FOR CATE STREET DEVELOPMENT LLC OF TAX MAP 163, LOTS 33 & 34 TAX MAP 165, LOT 2 TAX MAP 172, LOT 1 TAX MAP 173, LOT 2 CATE STREET & US ROUTE 1 BYPASS PORTSMOUTH, NEW HAMPSHIRE

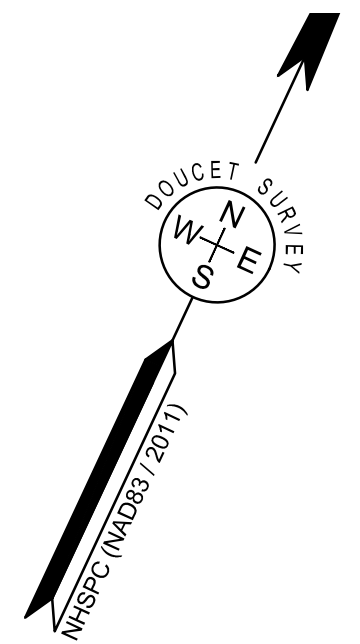
NO.	DATE	DESCRIPTION	BY
4	11/14/19	REVISE EASEMENTS	MWF
3	9/30/19	ADD ADDITIONAL TOPO	MTL
2	9/6/19	ADD ADDITIONAL EASEMENTS	MWF
1	8/19/19	ADD ADDITIONAL EASEMENTS	MWF

DRAWN BY:	M.W.F.	DATE:	JULY 3, 2019
CHECKED BY:	W.J.D.	DRAWING NO.:	5517D
JOB NO.:	5517	SHEET	1 OF 12



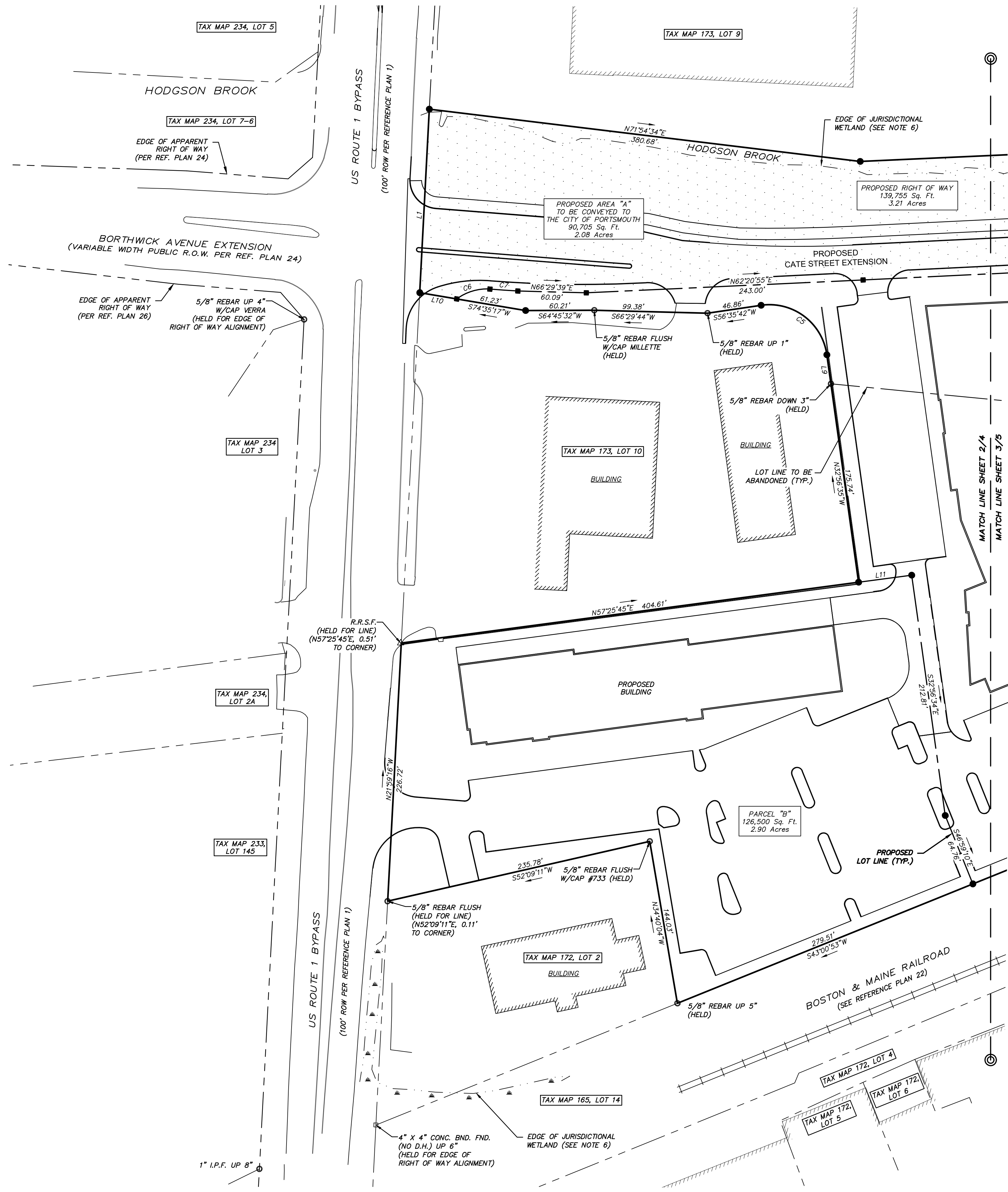
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10 Storer Street (Riverview Suite) Kennebunk, ME (207) 502-7005
http://www.doucetsurvey.com

CM Action Item #7



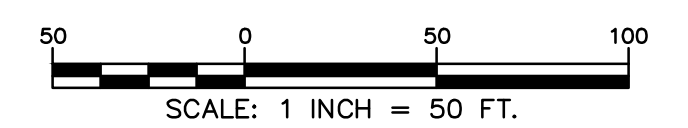
CURVE TABLE					
CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	66.21'	178.00'	21°18'42"	N85°47'06"E	65.83'
C2	20.94'	178.00'	6°44'29"	N71°45'30"E	20.93'
C3	180.71'	11451.20'	0°54'15"	N54°18'39"E	180.71'
C4	108.14'	11451.20'	0°32'28"	N55°02'01"E	108.14'
C5	80.85'	51.00'	90°49'33"	S78°21'38"E	72.64'
C6	30.94'	45.00'	39°23'52"	N48°30'09"E	30.34'
C7	24.56'	1008.50'	1°23'42"	N68°53'56"E	24.56'
C8	38.52'	635.87'	3°28'15"	N60°29'39"E	38.51'
C9	15.14'	635.87'	1°21'52"	N58°04'35"E	15.14'
C10	115.78'	133.00'	49°52'37"	N82°19'58"E	112.16'
C11	33.65'	178.00'	10°49'50"	S78°08'38"E	33.60'
C12	181.57'	200.00'	52°00'57"	S83°14'19"E	175.40'
C13	84.14'	100.00'	48°12'27"	N81°13'11"E	81.68'
C14	134.92'	2836.93'	2°43'29"	N52°04'44"E	134.90'
C15	101.35'	148.44'	39°07'10"	N84°55'36"W	99.39'
C16	26.01'	148.44'	10°02'24"	N70°29'37"E	25.98'
C17	18.43'	200.00'	5°16'48"	N68°06'49"E	18.42'

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N21°59'16"W	161.10'
L2	S25°06'26"E	30.74'
L3	N65°44'42"E	40.75'
L4	N38°11'17"W	10.00'
L5	N71°55'42"E	30.64'
L6	S40°12'57"E	42.38'
L7	S36°26'29"E	20.00'
L8	N46°59'07"W	41.00'
L9	N32°56'35"W	25.61'
L10	S74°35'17"W	32.98'
L11	N57°25'45"E	47.00'
L12	S26°33'24"E	20.39'
L13	S79°44'51"E	24.00'
L14	N65°28'25"E	31.49'
L15	S55°22'43"W	92.06'
L16	S55°22'43"W	56.61'
L17	N20°49'54"W	60.72'
L18	N20°49'54"W	65.36'
L19	N35°02'16"W	44.30'
L20	N35°02'16"W	46.03'



LEGEND

---	LOT LINE
- - - -	PROPOSED LOT LINE
- · - · -	APPARENT RIGHT OF WAY LINE
- · - · -	LOT LINE TO BE ABANDONED
- · - · -	APPROXIMATE ABUTTER LOT LINE
- · - · -	EDGE OF WETLAND
□	BOUND FOUND
△	RAILROAD SPIKE FOUND
○	IRON PIPE/ROD FOUND
●	4"x4" GRANITE BOUND TO BE SET
●	5/8" REBAR W/ID CAP TO BE SET
○	BOUND FOUND
○	IRON PIPE FOUND
○	I.P.F.
○	CONC.
○	DRILL HOLE
□	AREA TO BE CONVEYED TO THE CITY OF PORTSMOUTH



SUBDIVISION & EASEMENT PLAN
FOR
CATE STREET DEVELOPMENT LLC
OF
TAX MAP 163, LOTS 33 & 34
TAX MAP 165, LOT 2
TAX MAP 172, LOT 1
TAX MAP 173, LOT 2
CATE STREET & US ROUTE 1 BYPASS
PORTSMOUTH, NEW HAMPSHIRE

NO.	DATE	DESCRIPTION	BY
4	11/14/19	REVISE EASEMENTS	MWF
3	9/30/19	ADD ADDITIONAL TOPO	MTL
2	9/6/19	ADD ADDITIONAL EASEMENTS	MWF
1	8/19/19	ADD ADDITIONAL EASEMENTS	MWF

DRAWN BY:	M.W.F.	DATE:	JULY 3, 2019
CHECKED BY:	W.J.D.	DRAWING NO.:	5517D
JOB NO.:	5517	SHEET	2 OF 12

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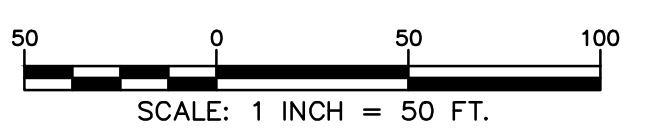
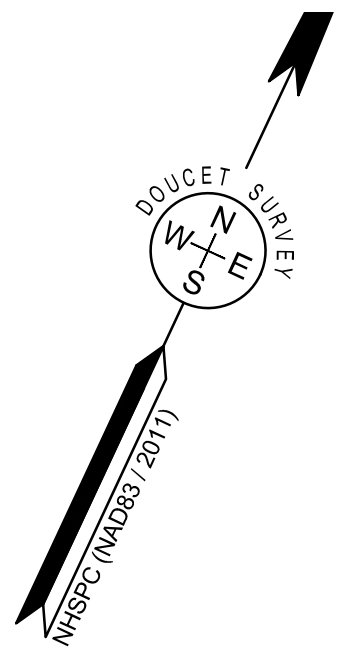
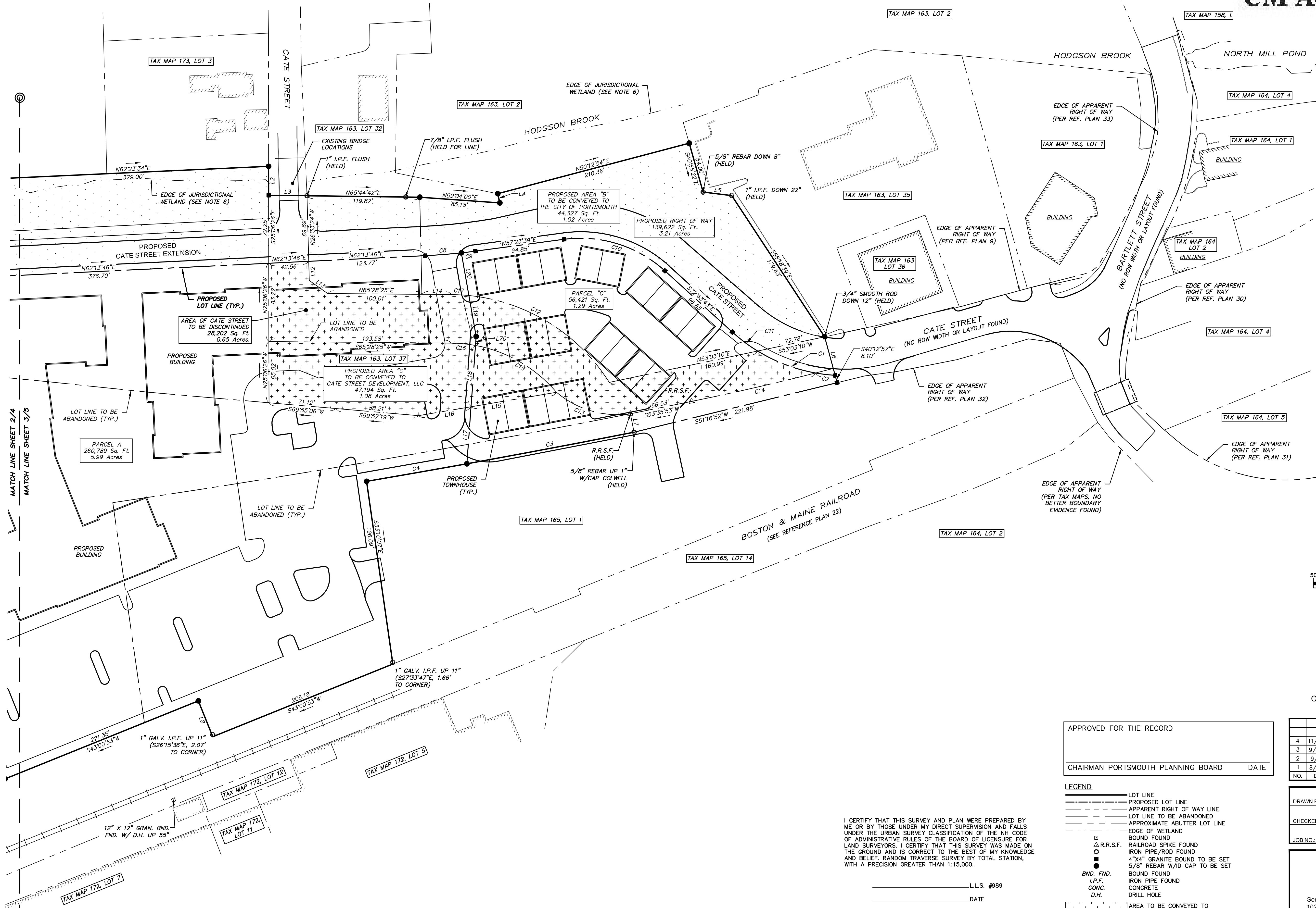
APPROVED FOR THE RECORD
CHAIRMAN PORTSMOUTH PLANNING BOARD DATE

I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY ME OR BY THOSE UNDER MY DIRECT SUPERVISION AND FALLS UNDER THE URBAN 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.

L.L.S. #989
DATE

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CM Action Item #7



SUBDIVISION & EASEMENT PLAN
FOR
CATE STREET DEVELOPMENT LLC
OF
TAX MAP 163, LOTS 33 & 34
TAX MAP 165, LOT 2
TAX MAP 172, LOT 1
TAX MAP 173, LOT 2
CATE STREET & US ROUTE 1 BYPASS
PORTSMOUTH, NEW HAMPSHIRE

NO.	DATE	DESCRIPTION	BY
4	11/14/19	REVISE EASEMENTS	MWF
3	9/30/19	ADD ADDITIONAL TOPO	MTL
2	9/6/19	ADD ADDITIONAL EASEMENTS	MWF
1	8/19/19	ADD ADDITIONAL EASEMENTS	MWF

DRAWN BY:	M.W.F.	DATE:	JULY 3, 2019
CHECKED BY:	W.J.D.	DRAWING NO.:	5517D
JOB NO.:	5517	SHEET	3 OF 12

APPROVED FOR THE RECORD

CHAIRMAN PORTSMOUTH PLANNING BOARD DATE

LEGEND

—	LOT LINE
- - - - -	PROPOSED LOT LINE
- · - · -	APPROXIMATE ABUTTER LOT LINE
- · - · -	EDGE OF WETLAND
□	BOUND FOUND
△	R.R.S.F. RAILROAD SPIKE FOUND
○	IRON PIPE/ROD FOUND
●	4"x4" GRANITE BOUND TO BE SET
■	5/8" REBAR W/ID CAP TO BE SET
□	BOUND FOUND
○	IRON PIPE FOUND
■	CONCRETE
○	DRILL HOLE
+	AREA TO BE CONVEYED TO CATE STREET DEVELOPMENT LLC
·	AREA TO BE CONVEYED TO THE CITY OF PORTSMOUTH

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DATE

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FILE NAME: Y:\WORK\5517.DWG DATE: 4/19/2019 10:51:59 AM PLOT NAME: SUB PLANS.dwg LAYOUT NAME: SUB (3) PLOTTED: Thursday, February 16, 2020 - 12:26pm

MEMORANDUM

TO: Karen Conard, City Manager

FROM: Juliet T. H. Walker, Planning Director *JTW*

DATE: March 6, 2020

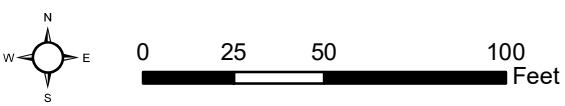
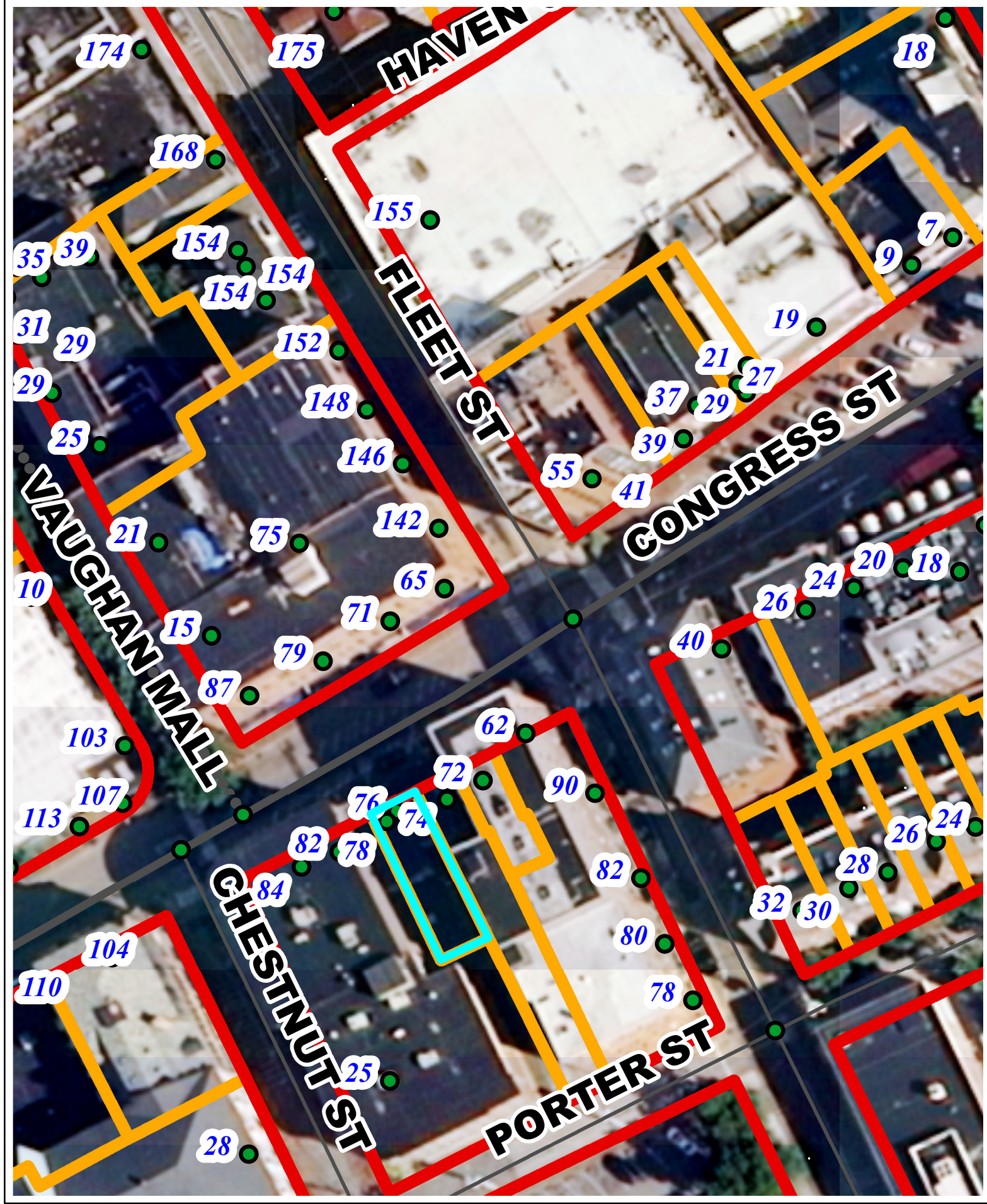
RE: City Council Referral – Projecting Sign
Address: 76 Congress Street
Business Name: Fresh House
Business Owner: Harrison Schoaneu

Permission is being sought to install a projecting sign that extends over the public right of way, as follows:

Sign dimensions: 28.5" x 30"
Sign area: 6 sq. ft.

The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed. Therefore, I recommend approval of a revocable municipal license, subject to the following conditions:

1. The license shall be approved by the Legal Department as to content and form;
2. Any removal or relocation of the sign, for any reason, shall be done at no cost to the City; and
3. Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the signs, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.



**Request for license
76 Congress Street**



REVISION:

All orders under \$250 include 1 revision only. All orders over \$250 include 3 revisions only. Additional revisions will be charged at \$25 per revision.

PLEASE NOTE:

Designs are NOT actual size and color may vary depending on printer and/or monitor.

3/5/2020

I understand this Order Form is the final production order and replaces all previous drawings, notes and verbal instructions to this job. Standard vinyl & paint colors will be used. Custom colors and specific matches to PMS colors will be an additional fee. I have carefully reviewed this form and verify that it contains all necessary specifications and represents my order. I authorize fabrication according to this approval.

RETURN SIGNED TO: service@portsmouthsign.com

SIGNATURE: _____ Date: _____

Member of:



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Shop Use Only → Qty: SS DS Materials: _____ Background Color: _____ Vinyl Color: _____ Other: _____
 HP Int



MEMORANDUM

TO: Karen Conard, City Manager

FROM: Juliet T. H. Walker, Planning Director *JTW*

DATE: March 6, 2020

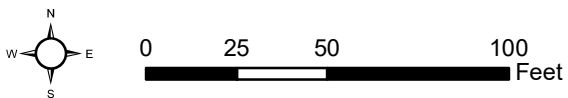
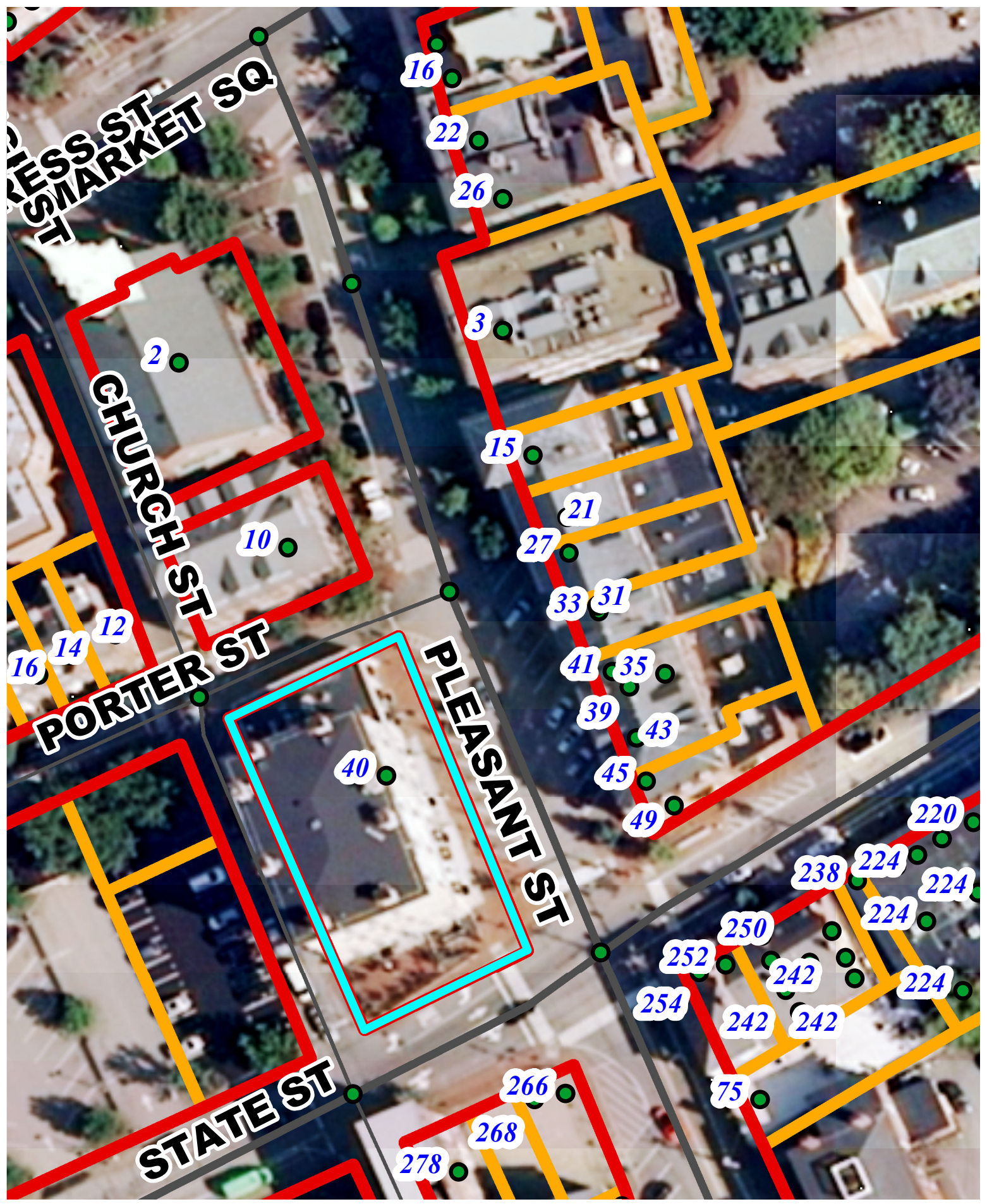
RE: City Council Referral – Projecting Sign
Address: 40 Pleasant Street
Business Name: 5 Thai Bistro
Business Owner: Nuttaya Nicholas

Permission is being sought to install a projecting sign that extends over the public right of way, as follows:

Sign dimensions: 38" x 38"
Sign area: 10 sq. ft.

The proposed sign complies with zoning requirements. If a license is granted by the City Council, no other municipal approvals are needed. Therefore, I recommend approval of a revocable municipal license, subject to the following conditions:

1. The license shall be approved by the Legal Department as to content and form;
2. Any removal or relocation of the sign, for any reason, shall be done at no cost to the City; and
3. Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the signs, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.



**Request for license
40 Pleasant Street**



PortsmouthSign.com
603-436-0047

REVISION:

All orders under \$250 include 1 revision only.
All orders over \$250 include 3 revisions only.
Additional revisions will be charged at \$25 per revision.

PLEASE NOTE:

Designs are NOT actual size and color may vary depending on printer and/or monitor.

3/5/2020

I understand this Order Form is the final production order and replaces all previous drawings, notes and verbal instructions to this job. Standard vinyl & paint colors will be used. Custom colors and specific matches to PMS colors will be an additional fee. I have carefully reviewed this form and verify that it contains all necessary specifications and represents my order. I authorize fabrication according to this approval.

RETURN SIGNED TO: service@portsmouthsign.com

SIGNATURE: _____ Date: _____

Member of:



GREATER
PORTSMOUTH
CHAMBER OF COMMERCE

the **Greater**
York Region
Chamber of Commerce



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Shop Use
Only

Qty: SS DS

Materials:

Background Color:

Vinyl Color:
HP Int

Other:





Color Palette

	R 43 G 95 B 108 C 85 M 51 Y 45 K 21 #295F6C PANTONE 7699 C		R 255 G 233 B 207 C 0 M 9 Y 18 K 0 #FFE9CF PANTONE 9180 U
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REVISION:

All orders under \$250 include 1 revision only.
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PLEASE NOTE:

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11/5/19

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RETURN SIGNED TO: service@portsmouthsign.com

SIGNATURE: _____ Date: _____

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GREATER
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CHAMBER OF COMMERCE

the Greater
York Region
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Shop Use Only	Qty:	Materials:	Background Color:	Vinyl Color:	Other:
	SS <input type="checkbox"/> DS <input type="checkbox"/>			HP <input type="checkbox"/> Int <input type="checkbox"/>	



March 2, 2020

To: The City Manager
1 Junkins Ave
Portsmouth, NH 03801

Dear Ms. Conard:

I am writing today to request that we be allowed to hold our 26th Annual Portsmouth Halloween Parade again this year on Saturday, October 31st at 7:00pm. We will have the usual insurance that is required and look forward to your response. We also look forward to again working with city staff and public safety to ensure a smooth and fun Parade.

Sincerely,

A handwritten signature in black ink, appearing to read 'Monte Bohanan', with a long horizontal flourish extending to the right.

Monte Bohanan
President, Board of the Portsmouth Halloween Parade
mbohanan@themusichall.org
603.674.3378 (cell)

CITY COUNCIL E-MAILS

March 2, 2020 (after 4:00 p.m. – March 12, 2020 (9:00 a.m.)

March 16, 2020 Council Meeting

Below is the result of your feedback form. It was submitted by Joe Mulqueen (njmulqueen@msn.com) on Monday, March 2, 2020 at 15:40:46

address: 38 Fells Road

comments: My wife and I will not be available for the meeting about the Middle Street bike lanes but we did want to register our thoughts on this matter.

We have walked or driven on Middle Street nearly every day for years. It was a lovely experience and a nice introduction to downtown Portsmouth until the bike lanes were installed. According to the data collected by the City, and our own observations, bike use did not increase and remains at a very low level. None of the absurd claims made for the installation of the bike lanes came true.

Meanwhile, driving on Middle Street is now more dangerous and all the black marks on the bollards show how many vehicles have had difficulty navigating the artificially very narrow lanes. It is difficult to see the traffic when pulling out of side streets and it is only the very low level of bike traffic that has kept a tragic bike accident from happening (so far).

Way too much time, resources, and money has been spent on this boondoggle. End this failed nonsense before it leads to a disastrous event.

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Effie Malley (Effie.malley@gmail.com) on Tuesday, March 3, 2020 at 07:42:24

address: 428 Pleasant

comments: Please vote to pass Councilor Lazenby's motion to rescind the vote rejecting the ground lease. I look forward to the Council and city manager working with Redgate Kane. Thank you.

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Stephen little (Slsurfaol@gmail.com) on Wednesday, March 4, 2020 at 09:21:38

address: 2 Moebus terrace

comments: Ms. Kennedy has suggested an impact fee. Absolutely! I have long thought we taxpayers were missing out on an important source of city funding. I have never been able to get an answer to why we have not instituted this funding source. I don't buy the argument that housing will be too expensive...if it slows down development that is good and Portsmouth housing can easily absorb the costs. It's already cost prohibitive to a large swath of lower income levels to even get into housing in Portsmouth Support an impact fee!

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Amy-Mae Court (amymaemassage@gmail.com) on Wednesday, March 4, 2020 at 14:04:46

address: 47 Taft Road

comments: It was proposed at a neighborhood meeting last night that sidewalks, cared for by the city, would be installed in certain areas for a safe walk to school, along with a raised sidewalk, as well as a flashing sign for crossing Elwyn road into the urban forestry center. I am very much in favor of the plan. I've lived in the neighborhood for 13 years, my husband for 20, and the home has been in the family since the 70s. Thank you.

-Amy

includeInRecords: on

Engage: Submit

Below is the result of your feedback form. It was submitted by Brenna Alicia Jennings (brennaj@gmail.com) on Wednesday, March 4, 2020 at 14:41:31

address: 54, Taft Road

comments: Good afternoon,

I'm writing as a 13-year resident of Elwyn Park, a newbie by Portsmouth standards but long enough to have put one child through Dondero Elementary as a "walker," and to have scowled at, glared at and occasionally hand-gestured in the general direction of distracted or inconsiderate drivers during the school commute.

My daughter is now old enough to look out for herself heading to the middle school bus, but there are plenty of new families with little kids (and future little kids) who need safer passage to school. If we're going to talk about getting kids more active, outdoors and mobile, let's ensure they have safe routes to make it possible.

We've been talking about this project for years, I don't believe we need to implement another committee to see it through.

Thank you for your dedication and consideration, and thanks to the planners and data crunchers working to get this implemented.

Brenna Jennings and Steve De Trolio

54 Taft Rd.

207-370-7017

includeInRecords: on

Engage: Submit

Below is the result of your feedback form. It was submitted by Matthew Glenn (matthglenn@gmail.com) on Wednesday, March 4, 2020 at 18:48:35

address: 34 Harrison Ave

comments: Dear City Council,

As you may know, last night around 50 residents of Elwyn Park attended a meeting where planning director Walker and a consultant from Alta Planning presented preliminary recommendations for traffic calming and sidewalks in our neighborhood. I really appreciate the efforts of city staff to get this far, including public works, the planning dept., and city manager Conard who also attended. At the same time, I'm frustrated that recommendations back in 2010 from the Safe Routes to School Action Plan still haven't been implemented. New Franklin and Little Harbor Schools have several new sidewalks and bike improvements resulting from

that ten year old plan, while Dondero has only a painted white line to suggest where walkers should be on the busy roadway-- and even that is frequently blocked by parked cars.

The city's recent survey of Elwyn Park residents received 201 responses and showed strong support for sidewalks on one side of the three busiest connector streets, and for traffic calming. 67% favor sidewalks, 13% might support but have questions, and 20% are opposed. I think many of those questions were answered last night, and there was a lot of support in the room to move forward. The proposal is to put a sidewalk on the south side of McKinley and on one side of about half of Harding and Van Buren-- the roads most used by children getting to school and also the connector roads to Lafayette and Urban Forestry. Most likely there would be no loss of street parking, although this would depend on final design choices. There was also support for traffic calming, including an intersection change at the end of McKinley and some improved raised crosswalks near the school. The suggested on-demand crosswalk signal to access Urban Forestry from Harding is also a really great idea.

This project has neighborhood buy-in, and just needs funding. Please don't wait on this-- I just read that pedestrian fatalities nationwide have been climbing since the 90's, and are at a 30 year high due to widespread distracted driving and larger vehicles. I know that one resident is asking for a new "blue ribbon" committee to look into this with members on both sides of the issue, but to many of us that sounds like a delaying tactic when in fact there is strong support. It has been thoroughly vetted by both experts and neighbors, and I hope you will delay no more and make funding this a priority.

Thank you,
Matthew and Megan Glenn
34 Harrison Ave

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Steve McCormick (xcoastie2@aol.com) on Friday, March 6, 2020 at 09:10:20

address: 131 Osprey Drive

comments: Dear Counciler,

I'll like to start by saying Thank-you for your service to this town!

I've got a concern that I hope you can remedy. It seems that this is a case of blatant discrimination based on economic status? Please correct me if I'm wrong.

As you know, Portsmouth has an elderly exemption for property taxes.

Ages 65-74 the exemption is \$125,000

Ages 75-79 the exemption is \$175,000

ages 80 + the exemption is \$225,000

Income limits are \$42,471 single, \$58,398 married Asset limit single/married is \$175,000. The house + land is Excluded from this limit.

These tax breaks are given only to homeowners. What about the renters????

They are taxpayers too! The only difference is that they pay their taxes to the landlord in the form of rent.

Then the landlord pays the city the property tax, I am a renter and have lived in the same Osprey Landing apartment for 24 years. Each year the rent goes up and the owners keep paying the property tax from the rent collected from me.

A homeowner can own an expensive home (as almost all are in Portsmouth) and still receive a tax credit worth roughly between \$1875 and \$3375 depending on age.

A renter with the same income + assets, except for the expensive house, gets \$0.

How is this fair???

An elderly renter is usually in a much tougher situation than a homeowner. They have a monthly rent bill that goes up every year. With the tight rental market in Portsmouth, they are at the mercy of the landlord. An elderly homeowner likely has paid off the house and has no bill, or has a mortgage with a fixed cost.

I would like to see the Portsmouth elderly tax exemption changed/amended to allow renters (that meet the income/asset criteria) the exact same benefit as a homeowner.

As you know, Portsmouth is a very inclusive city that does not allow discrimination of any kind, but here we are. I can't see this issue any other way, except discrimination. Am I wrong?

Thank-you for your consideration of this matter!!!
Looking forward to a reply and/or action to remedy it.

Sincerely,
Steve McCormick

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Mark Dorley (Markdorley@hotmail.com) on Sunday, March 8, 2020 at 13:39:36

address: 777 Middle Rd #25

comments: Unfortunately I will be out of town on business the day of the public meeting in regards to Middle St. I would like to voice my concern about the current configuration of the bike lanes on Middle St. As a life long resident of Portsmouth and a father of 2 children I have biked and driven on this road for over 40 years. Prior to the bike lanes being installed I never felt unsafe traveling this section of road. I cannot make the same claim anymore. I now witness cars daily crossing over the double yellow line due to the greatly reduced width of the vehicle travel lanes. Last fall I was forced to drive over bollards to make way for an emergency vehicle. Probably the most hazardous aspect of the current design are the parked cars off of the curb. Drivers that exit these spots are directly in the vehicular travel path. Take a drive and observe the smashed off side view mirrors of the cars that have to park in these spots. I personally have had to swerve crossing the double yellow to avoid hitting a person exiting their car in one of these spots. What I would like to see happen is a compromise. Keep the bike lane, but make the following adjustments:

I would like to see the parked cars put back against the curb and the bike lane come out around them. Remove all the unnecessary buffer zones and return the vehicular travel lanes back to how they were and do not reinstall the bollards. Remember at the end of the day this is a road first and foremost that is used by a very large number of cars. I hope the City Council will listen to people concerns and not just the loud bike lobbyists. Thank you for your time.

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by ROBERT KOZMAN (kozman@comcast.net) on Monday, March 9, 2020 at 17:56:14

address: 81 Park St

comments: Dear City Council,

I can't make it to the special meeting on the bicycle lanes on Middle Street and Lafayette Road, so I hope you will accept this written statement of my concerns.

I am in favor of making our streets safe for bicycles and cars. However, the current arrangement of bollards and cars parked far from the curb is more dangerous for both. I drive a Toyota Tacoma which is longer than a small coupe or sedan, and the current situation makes it much more difficult for me to

negotiate the curves, especially with oncoming traffic crossing the yellow line. There is no flexibility for cars trying to avoid oncoming traffic. The bollard problem is always there, even though bicycles are rare.

Let's park cars against the curb—by the water drains and where leaf and trash debris collects—instead of in the middle of the street.

I advocate eliminating bollards. They are a driving hazard. Bollards send the signal that the city believes that drivers must be too stupid to deal with bikes. I like the idea of allowing bicycles on the sidewalk like on the access road to the Little Harbor School.

Middle Street is probably the nicest boulevard into the downtown, and the bollards and white paint all over the road make it a cluttered eyesore.

Sincerely,
Robert Kozman
81 Park St.
Portsmouth, NH

includeInRecords: on
Engage: Submit

Below is the result of your feedback form. It was submitted by Jane Zill (janeizll@comcast.net) on Wednesday, March 11, 2020 at 13:06:15

address: 27 Shaw Road, Portsmouth

comments: Dear City Counselors and Attorney Woodland,

In preparation for the March 16th work session on the Sagamore Avenue Sewer Extension Project, I'm writing with a few questions and concerns. In advance, thank you for your kind consideration.

- 1) As part of the sewer extension project, will roads in the Walker Bungalow neighborhood (Walker Bungalow, Shaw, and Little Harbor) remain the same width or will resident land be annexed to widen them?
- 2) If land is developed in the Walker Bungalow/Little Harbor Road area and homes are added, what will be the impact on the individual pump/grinder systems already in place? Or, if commercial development occurs to the south and west, what could go wrong for residents with individual pump and grinder systems? For example, grease from restaurants had been a problem for the Peirce Island wastewater treatment plant. How might large amounts of restaurant grease impact the functioning of a low-pressure system with multiple, interconnected, individual pump/grinder systems?
- 3) Several residents are at the bottom of the Sagamore Avenue/Walker Bungalow Road hill. If there is a failure in the system, what safeguards should be in place to protect residents from sewage that would flow downhill? There have been sewage spills at Currier's Cove due to careless construction. The point being, accidents happen.
- 4) What might be the impact of blasting on radon emission? Can radon emission from blasting be mitigated in any way?
- 5) What is the plan regarding blasting and home damage, including documentation of home foundations and walls prior to blasting?
- 6) What is the current timeline regarding the commencement of construction of the project? When will residents be notified?

Best,
Jane Zill
includeInRecords: on

Below is the result of your feedback form. It was submitted by Dixie Tarbell (dixiemcleantarbell@gmail.com) on Wednesday, March 11, 2020 at 20:28:05

address: 25 Driftwood Lane

comments: R-K has a very strong case and I urge you all to speed up resolving this unnecessary conflict which will result in unfair costs to us taxpayers, all over matters of personal preferences which don't matter nearly as much as the cost to us taxpayers. Most residents don't live downtown. We just want to be able to afford to stay in Portsmouth and not sweat over every detail of every change as Portsmouth evolves and makes new history. Let it go! Thank you for rational fiscal responsibility to us taxpayers.

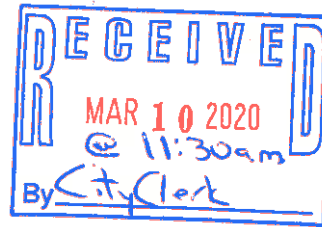
includeInRecords: on

Engage: Submit

Marc Stettner
91 Fairview Ave
Portsmouth NH 03801

3/09/2020

Portsmouth City Council
Attn: Honorable Mayor Rick Becksted
1 Junkins Avenue
Portsmouth, NH 03801



RE: DESIGNATED MOTORCYCLE MOPED PARKING AREA

Dear Mayor Rick Becksted & City Council Members,

I am writing to request that the City of Portsmouth does not adopt the recommendation for fees and any other changes to the dedicated motorcycle/moped parking as proposed. The proposed changes are not comparable to motorcycle/moped rules found across the country. I am recommending that the Council send the proposed changes to the City Fee Committee to research comparable fees from multiple cities across the country and provide this data to the City Council and the public so informed decisions can be made on this matter. Alternative I am requesting that the City set the fee to zero.

It is readily apparent that City of Portsmouth, at times, does not have enough parking spaces to accommodate the large number of residents, employees or tourists that come to Portsmouth. Maximizing high density parking is one way to alleviate parking issues. Encouraging the use of two wheel transportation (bicycles, mopeds, scooters, motorcycles) and providing them with desirable parking is one way for Portsmouth to reduce the parking problem. The cities of Boston and Portland have already adopted two wheel friendly ordinances as a way to reduce their parking issues as many other cities across the county has also done.

To encourage two wheel modes of transportation the following criteria is usually adopted by municipalities:

- Dedicated two wheel parking is centrally located and desirably placed.
- Highly reduced or no parking fees are charged for two wheel parking.
- Two wheel parking is designated in highly visible locations to discourage theft. This is especially important for bicycles and mopeds.

I am requesting that the City of Portsmouth make the following changes (noted in red underlined text) to the proposed ordinances as noted below:

ARTICLE I: PARKING METERS

Section 7.105: PARKING

C. MOTORCYCLE PARKING

A. Designated Motorcycle Parking Area.

The following location is established as an exclusive "Designated Motorcycle Parking Area" for the months of April 1st through November 30th only:

1. Pleasant Street: On the easterly side of Pleasant Street, beginning at a point 24 feet South of the extension of the southerly curb line of Market Square running southerly the distance of 24 feet.

Motorcycles are subject to zero parking meter fees for the hours of enforcement as set forth in this Chapter in this Designated Motorcycle Parking Area.

No motorcycle shall park in the designated parking area on Pleasant Street for more than 7 continuous hours.

B. Motorcycle Parking.

Motorcycles parking in parking spaces other than the Designated Motorcycle Parking Area shall pay the rate of the parking meter zone in which the parking space is located. Verified Portsmouth residents can obtain a parking sticker/permit to allow them to park their motorcycle for free in any city parking space. One or more motorcycles may park in a single parking space. When more than one motorcycle parks in single parking space, payment is required from only one of the motorcycles occupying the parking space. Portsmouth residents with a parking sticker attached to their motorcycle and Veterans are exempt from fees when parking their motorcycle in a regular parking.

Rational: The way the current ordinance proposed is written is not fair where motorcycles are charged almost the same fees as a car for a fraction of the parking space used per foot. Adding “reduced or zero” resolves this concern. This change also gives a real break to the City of Portsmouth residents and Veterans by allowing them to obtain a sticker to allow them to park their 2 wheel vehicles at no charge.

I would like inform the new City Council members that Motorcycles cannot be banned nor excluded from utilizing regular vehicle parking spots per NH RSA 265:119.

Please review the information I included with this letter that shows what Boston and Portland have done to accommodate two wheel vehicles such as motorcycles and mopeds.

Thank you in advance for considering these changes to help elevate some of the parking issues while promoting high density low impact parking options such as motorcycles, mopeds and bicycles.

Sincerely,

Marc Stettner /s/

MOTOR SCOOTER COMMUTERS EARN EXCLUSIVE PARKING SPACES IN BOSTON

Vespa Congratulates the City of Boston for Sustainability Effort

NEW YORK (Sept. 7, 2010) Metropolitan traffic congestion is an ever-growing concern that perplexes most U.S. cities, frustrating urban planners and residents alike. Increasing the use of two-wheel transportation is a simple alternative to reducing traffic congestion that urban commuters face daily across America.

For the growing number of residents living in metro Boston looking for the same solution to their in-town transportation challenges, switching to motor scooters is a very appealing option. However, with the switch, urban commuters sometimes find it difficult to locate designated parking areas, which prompted Boston to implement a motor scooter parking program modeled after successful efforts in other major metropolitan cities.

On August 26, the city of Boston began executing a motor scooter and motorcycle on-street parking pilot program to better accommodate two-wheel commuting in the city. Scooter enthusiasts will now find 40 spaces designated for scooter and motorcycle parking throughout the Back Bay area. The spaces are metered and pro-rated with 25 cents buying one hour instead of the standard 15 minutes. For commuters, the meters will be on from 8 a.m. to 8 p.m., and off at nights. Additionally, the parking spots do not have a time limit, eliminating the need to feed the meter.

"I'd like to congratulate Mayor Thomas Menino on his decision to execute a two-wheel parking program for the city of Boston," said Paolo Timoni, president and CEO of Piaggio Group Americas, importers of Vespa motor scooters. "With better fuel economy than hybrid cars, scooters are not only a viable solution when it comes to reducing traffic congestion, but equally effective at reducing America's oil consumption and protecting our environment. With this new initiative, therefore, Mayor Thomas Menino has also taken a concrete step to help Bostonians to reduce their oil consumption and carbon footprint. I can only hope that more cities will follow Boston's example and offer similar programs for two-wheel commuters."

In 2007 Piaggio Group Americas conducted a traffic model study in New York City in response to the growing concerns about traffic congestion. The results showed by shifting the daytime vehicle mix to 80 percent cars / 20 percent scooters, the following would result annually:

- * A total decrease in delay of more than 4.6 million hours per year which translates to time savings of nearly 100 working hours per person;
- * Reduction in carbon dioxide (CO₂) emissions by more than 26,000 tons (52,000,000-pounds) per year;
- * A decrease in fuel consumption by more than 2.5 million gallons per year
- * A total savings for New York City of more than \$122 million per year in fuel and labor productivity.

In addition to Boston, many other US metropolitan cities already have programs and incentives for two-wheel commuters. San Francisco has more than 1,000 designated parking spaces and areas for motor scooters, and several other cities have orchestrated motor scooter commuter days, including Atlanta and Philadelphia. On a national level, the annual Ride to Work Day (set for June 20, 2011; see more at www.ridetowork.org) continues to raise the visibility of two-wheel commuting and demonstrates how motor scooters and motorcycles make parking easier and help traffic flow.

For more information about the benefits of two-wheel transportation, visit www.vespausa.com and click on the Vespanomics section.

About The Piaggio Group

Established in 1884 by Rinaldo Piaggio, and based out of Pontedera in Pisa, Italy; the Piaggio Group is one of the world's top manufacturers of two-wheel motor vehicles. With more than 7,000 employees, an annual production of more than 610,000 vehicles in 2009, five R&D centers, seven production facilities in Europe and Asia and operations in more than 50 countries - the Piaggio Group has a consolidated leadership in the European two-wheeler market. The company produces scooters, motorcycles and mopeds in the 50cc to 1,200cc displacement range, marketed under the Piaggio, Vespa, Gilera, Derbi, Aprilia, Scarabeo and Moto Guzzi brands. The Group also manufactures three- and four-wheel light transportation vehicles for the Ape, Porter and Quargo ranges.

Boston Launches Program With Dedicated Motorcycle And Scooter On-Street Parking Spaces

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Parking Clerk

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- | [Parking Ticket Payment](#)
- | [Notification Service](#)
- | [Ticket Fines & Codes](#)
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Scooter and Motorcycle Parking

Newbury and Boylston streets now offer the City's first metered parking slots specifically for scooters and motorcycles.

The Boston Transportation Department divided six standard car spots to create space for 39 scooters or motorcycles. The meter rate is 25 cents per hour but there is no time limit, allowing scooter and motorcycle owners to feed the meter for the day.

The new parking initiative serves to recognize Boston's growing population of scooter and motorcycle drivers, while giving them parking privileges similar to those of other motor vehicle owners. The creation of the slots keeps the vehicles from being parked illegally on sidewalks and obstructing the paths of pedestrians.

The parking spaces also aid in Boston's Green Initiatives program by encouraging the use of the smaller, more environmentally friendly transportation alternatives. The slots are even labeled with green signs, further adding the new step in Green Initiatives.

The Boston Transportation Department will be monitoring this pilot program carefully over the next few months, looking for any necessary changes to be made.

Publications

[Scooter & Motorcycle Parking Spot Map](#) 

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AGENDAS, PACKETS & MINUTES

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Where can I park my motorcycle or mopeds?

Motorcycle may park at parking meters for a fee or park for up to 10 hours for free at designated motorcycle/moped parking areas.

Motorcyclists need to pay to park motorcycles at parking meters. Receipts from multispace meters must be securely displayed on the motorcycle. Detach the perforated stub and take it with you as a receipt in the event the receipt falls off your motorcycle.

Additionally, there are various locations where motorcycles can park for free at motorcycle / moped only designated spots throughout the city.

The City of Portland has dedicated certain on street parking areas to be used exclusively by motorcycles / mopeds only, allowing them to park for up to 10 hours for free without moving. The City Council approved this to enhance the viability of alternative transportation choices as well as free up existing vehicle parking spaces now used by mopeds and motorcycles.

48 moped / motorcycle parking spaces on the following streets

- Bramhall St. @ Hill St.
- Commercial St. @ Chandler's Wharf
- Commercial St. @ Cross St.
- Commercial St. @ Union Wharf
- Congress St @ Atlantic St
- Congress St. @ Myrtle St.
- Federal St. @ Market St.
- High St. between Spring St. and Congress St.
- High St. @ Deering St.
- Market St. @ Middle St.
- Middle St @ Market St
- Myrtle St. @ Congress St.
- 72 Oak St (Between Congress St & Cumberland Ave)
- Pine St @ Winter St

MEDIA CENTER

 **ONLINE PAYMENTS**

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 **EMPLOYMENT**

FIX IT PORTLAND

- Silver St. @ Fore St.
- Spring St. – Southside near Union St.
- State St. @ Deering St.
- Temple St. @ Free St.

PERMITS

Motorcycles / mopeds can also park at metered spaces, and multiple two-wheelers can use the same space as long as the meter is fed. If it expires all the vehicles in that space can be ticketed.



TITLE XXI MOTOR VEHICLES

CHAPTER 265 RULES OF THE ROAD

Special Rules for Motorcycles

Section 265:119

265:119 Traffic Laws Apply to Persons Driving Motorcycles. – Every person driving a motorcycle shall be granted all the rights and shall be subject to all the duties applicable to the driver of any other vehicle under this title, except as to provisions of this title which indicate otherwise and except as to those provisions of the title which by their nature can have no application.

Source. RSA 263:29-h. 1969, 82:1. 1981, 146:1; 479:47, eff. Jan. 1, 1982 at 12:01 a.m.



March 5, 2020

The Honorable Mayor Richard Becksted
Portsmouth City Council
1 Junkins Avenue
Portsmouth, NH 03801

Subject: Petition for Release of Interest in Paper Street contiguous to 276 Dennett Street (Tax Map 143, Lot 13) pursuant to RSA 231:51 and 231:52.

Dear Mr. Mayor:

My wife, Anne C. Shiembob, and I are the owners of 276 Dennett Street. I write to request that City formally release its interest in a portion of the paper street abutting our property at 276 Dennett Street.

This land was dedicated as a portion of Ruth Street pursuant to a plan recorded in 1902 at the Rockingham County Registry of Deeds titled, "Plan of Lots of Land Belonging to C.I Pinkham and J.M Marden," (the "Plan"), which also created our lot.

When lots are sold with reference to a recorded plan that shows existing or proposed streets, a deed to the lot will convey title to the centerline of the street unless otherwise stated in the deed. *See Gagnon v. Moreau*, 107 N.H. 507, 509, (1967) (stating, "It is familiar law that where lots are sold by reference to a recorded plat or plan showing existing or proposed streets which constitute boundaries of the lots, a conveyance ordinarily operates to convey to the grantee the fee simple to land underlying adjoining streets and rights of way to the center line thereof. . . .")

The original deed for our property was recorded in the Rockingham County Registry of Deeds at Book 799, Page 287 (see copy attached) and did not exclude our interest in the proposed street, making us the fee simple owners out to the centerline of the proposed street.

In 1913, RSA 231:51 was enacted to require that municipalities accept paper streets within twenty years of their dedication or lose the right of acceptance. Prior to 1945, the only methods of acceptance were for the public to use the land as a street for a period of twenty years or for a public authority to construct the street. *See Polizzo v. Hampton*, 126 N.H. 398, 402 (1985) (stating that "in 1945, RSA 229:1 was amended to provide that a dedicated street would become a public highway when it was 'accepted' by a city or town, independent of a laying out by public authority or twenty years' use by the public.")


In this case, the land shown as Ruth Street on the 1902 Plan, located between our property and Tax Map 143, Lot 126 (294 Dennett Street), was never used as a street by the

Page 2
Honorable Mayor Richard Becksted
March 5, 2020

public and never laid out as a street by a public authority. Consequently, the City's right to accept this proposed street was terminated in 1922.

We respectfully request that the City recognize these circumstances and formally relinquish its rights in this portion of Ruth street in accordance with RSA 231:52, in order to eliminate any lingering questions regarding the status of our title to this land.

Very truly yours,



Craig M. Steigerwalt

\$ 1.00
Per

Know all Men by these Presents,

287
287

THAT I, Charles I. Pinkham, of Portsmouth in the County of Rockingham and State of New Hampshire

for and in consideration of the sum of one dollar
to me in hand, before the delivery hereof well and truly paid by Arthur W. Hensley of said
Portsmouth

Pinkham
to
Hensley

the receipt whereof I do hereby acknowledge, have given, granted, bargained and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said Hensley and his heirs and assigns forever,

del. to
C. H. Batchelder.

Two certain lots of land in said Portsmouth, being lots numbered one (1) and two (2) on a plan recorded in Rockingham Registry of Deeds, Book 631, Page 481, and bounded and described as follows: - northwesterly by Bennett Street one hundred feet, more or less; northeasterly by land of M^r Court, formerly of Harry J. Freeman, one hundred four feet six inches, more or less; southeasterly by lot number three (3) on said plan one hundred fifteen feet, more or less; and southwestly by a proposed street one hundred feet, more or less.

Being a part of the premises acquired by me by deeds recorded in said Registry, Book 584, Page 229, and Book 664, Page 272.

To have and to hold the said granted premises, with all the privileges and appurtenances to the same belonging, to him the said Hensley and his heirs and assigns, to his and their only proper use and benefit forever. And I the said Pinkham and my heirs, executors and administrators, do hereby covenant, grant and agree, to and with the said Hensley and his heirs and assigns, that until the delivery hereof I am the lawful owner of the said premises, and seized and possessed thereof in my own right and fee simple; and have full power and lawful authority to grant and convey the same in manner aforesaid; that the said premises are free and clear from all and every incumbrance whatsoever; and that I and my heirs, executors and administrators, shall and will warrant and defend the same to the said Hensley and his heirs and assigns, against the lawful claims and demands of any person or persons whomsoever.

And I, Lydia L. Pinkham, wife of the said Charles I. Pinkham, in consideration aforesaid, do hereby release, discharge and waive all such rights of exemption from attachment and levy or sale on execution and such other rights whatsoever in said premises and in each and every part thereof, as are reserved or secured to us, or either of us, by the Statute of the State of New Hampshire, passed July 27, 1842, entitled "An Act to exempt the Homestead of Families from attachment and levy or sale or execution," or by any other Statute or Statutes of said State.

In Witness whereof we have hereunto set our hands and seals this twenty ninth day of August in the year of our Lord one thousand nine hundred and 25

SIGNED, SEALED AND DELIVERED IN PRESENCE OF US:
Chas. H. Batchelder

Charles I. Pinkham (L.S.)
Lydia L. Pinkham (L.S.)

STATE OF NEW HAMPSHIRE, ROCKINGHAM, ss. Aug. 29. A. D. 1925.
Personally appeared the above named Charles I. Pinkham and Lydia L. Pinkham and acknowledged the foregoing instrument to be their voluntary act and deed.

BEFORE ME,
Aug. 31st 1925
Received and recorded Aug. 31st 1925
Chas. H. Batchelder Justice of the Peace.
John W. Green Register.

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

March 5, 2020

3/9/20

The Honorable Mayor Richard Becksted
Portsmouth City Council
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Request for Release of Paper Street Pursuant to NH RSA 231:51 and
231: 52 - 294 Dennett Street (Tax Map 143, Lot 26)**

Dear Mayor Becksted and Members of the Council:

This office represents Zachary and Kirsten Jenkins, owners of the above referenced property. Please consider this a formal petition for the release to our clients of all right, title and interest the City has in the paper street known as "Ruth Street" to the centerline of where it abuts my clients' property, pursuant to NH RSA 231:51 and 52. Abutting property owners, Craig Steigerwalt and Anne Shiembob (Tax Map 143, Lot 13), are filing a similar request at this time.

By way of background, the Jenkins acquired the above referenced lot in 2016 by deed which references the "unnamed street" that begins on Dennett Street abutting the properties of 294 and 276 Dennett Street. I enclose copies of the Jenkins' deed and the current tax map [Exhibits A & B]. This "unnamed street" refers to the portion of Ruth Street toward the northwest beginning at 38 Thornton Street, which is currently undeveloped.

City of Portsmouth Tax Map 143 shows Ruth Street as extending further past 28 Thornton Street, all the way to Dennett Street and our clients' property. However, this extension of Ruth Street was never constructed and has never been used by the public. In reality, Ruth Street ends where it intersects with Thornton Street next to the property

DANIEL C. HOEFLE	R. PETER TAYLOR	KEVIN M. BAUM	ERICA A. DUMORE
R. TIMOTHY PHOENIX	JOHN AHLGREN	GREGORY D. ROBBINS	OF COUNSEL:
LAWRENCE B. GORMLEY	KIMBERLY J.H. MEMMESHEIMER	MONICA F. KIESER	SAMUEL R. REID
STEPHEN H. ROBERTS	MATTHEW G. STACHOWSKE	SAMUEL HARKINSON	

The Honorable Mayor Richard Becksted
March 5, 2020
Page 2

of 38 Dennett Street, and the paper street portion now contains a garden, a front lawn, a small shed and a gravel driveway. I enclose copies of the current GoogleMaps aerial photographs of the street in question, as well as photographs taken of this same area [Exhibits C & D].

Ruth Street was dedicated pursuant to a plan recorded at the Rockingham County Registry of Deeds in 1902 as "Plan of Lots of Land Belonging to C.I. Pinkham and J.M. Marden" [Exhibit E]. As the paper street portion of Ruth Street was dedicated to public use over one hundred years ago and has not been opened, built or used for public travel where it abuts the Jenkins' property since that time, it should be released from public servitude pursuant to RSA 231:51, and because it is no longer necessary for public travel, should be released pursuant to RSA 231:52.

Furthermore, the City of Portsmouth no longer has any interest in this portion of Ruth Street. This is because between the years of 1893 and 1969, dedication of a street was automatically terminated after twenty (20) years unless the street was accepted before this time period was over. See RSA 231:51 (1982) (amended 1989). Ruth Street was first dedicated in 1902 when the "Plan of Lots of Land Belonging to C.I. Pinkham and J.M. Marden" was filed with the Rockingham County Registry of Deeds, and the portion abutting our clients' property has never been accepted over one hundred (100) years later.

Acceptance can be either explicit or implicit. Neither occurred in this instance. There is no evidence of substantial public use that would constitute an implicit acceptance, nor was our office able to find any evidence of formal acceptance by a City Council vote in the years of 1902-1922, before the dedication would have been automatically terminated. No sewer, water or gas lines exist under the street, nor has the City ever plowed the gravel driveway which exists on the paper street, either of which are examples of maintenance and thus could have constituted an implicit acceptance (*Catalano v. Town of Windham*, 133 N.H. 504 (1990)). I enclose a map of the sewer, water and gas lines of the surrounding area obtained from the City of Portsmouth, Department of Public Works [Exhibit F].

We believe the non-constructed portion of Ruth Street was never accepted, dedication automatically terminated and reverted to the abutting owners in 1922 and the City no longer has any interest in the paper street. In order to clarify the record to

The Honorable Mayor Richard Becksted
March 5, 2020
Page 3

create clean title for the abutting owners, we request the City confirm the release of its right, title and interest in and to the non-constructed portion of Ruth Street pursuant to RSA 231:51 and RSA 231:52.

Permitting the physical extension of Ruth Street beyond the existing street would serve no public purpose as there is no remaining room for the development of further lots abutting the proposed street, and all existing lots already have frontage, thus providing direct access from a public street. Extension of this street would only serve to cost the City money and to have a negative effect on the homes along the paper street.

Please do not hesitate to contact me for any additional information or if anything further is needed to complete the requested release. Thank for your time and attention to this request.

Very truly yours,

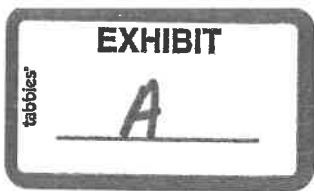


Daniel C. Hoefle

/sch

Enclosures

cc: Zachary & Kirsten Jenkins



BK 5735 PG 0976

Return To: Zachary D. Jenkins and Kirsten M. Janson
294 Dennett St.

Portsmouth, NH 03801

E 31250



WARRANTY DEED

KNOW ALL MEN BY THESE PRESENT: That Josephine Campbell Donovan, Single, of 294 Dennett Street, Portsmouth, NH 03801, for consideration paid grant(s) to Zachary D. Jenkins, Single, and Kirsten M. Janson, Single both of 777 Middle Road Unit #13, Portsmouth, NH 03801, as Joint Tenants with Rights of Survivorship with WARRANTY COVENANTS:

A certain parcel of land with the buildings thereon on the Southerly side of Dennett Street in Portsmouth, Rockingham County, and the State of New Hampshire bounded and described as follows:

BEGINNING On Dennett Street at an unnamed street, formerly land of Moses H. Goodrich and running Southerly on said unnamed street one hundred (100) feet, more or less, to land now or formerly of William J. Colliton; thence turning and running Westerly seventy-three (73) feet, more or less, by land of said Colliton to land now or formerly of Gladys Clark; thence turning and running Northerly by said Clark land one hundred (100) feet, more or less, to Dennett Street; thence turning and running Easterly by Dennett Street fifty-eight (58) feet, more or less, to the point of beginning.

Meaning and intending to describe and convey the same premises conveyed to Josephine Campbell Donovan by virtue of a Quitclaim deed from Josephine Campbell Donovan and Anne Rhodenbaugh Barrett dated 03/12/1993 and recorded at the Rockingham County Registry of Deeds in Book 2975, Page 1861.

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

2016 Jul 21 PM 01:08

I/We, the grantor(s) hereby release all rights of homestead in the above described premises.

Executed this July 18, 2016.

Josephine Campbell Donovan
Josephine Campbell Donovan

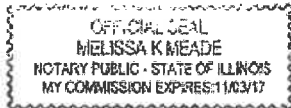
State of Illinois
County of Champaign

7/18, 2016

Then personally appeared before me on this 7/18, 2016, the said Josephine Campbell Donovan, by Janet Sylvester, Attorney in Fact and acknowledged the foregoing to be his/her/their voluntary act and deed.

Melissa K Meade
Notary Public/Justice of the Peace
Commission expiration: 11/3/17

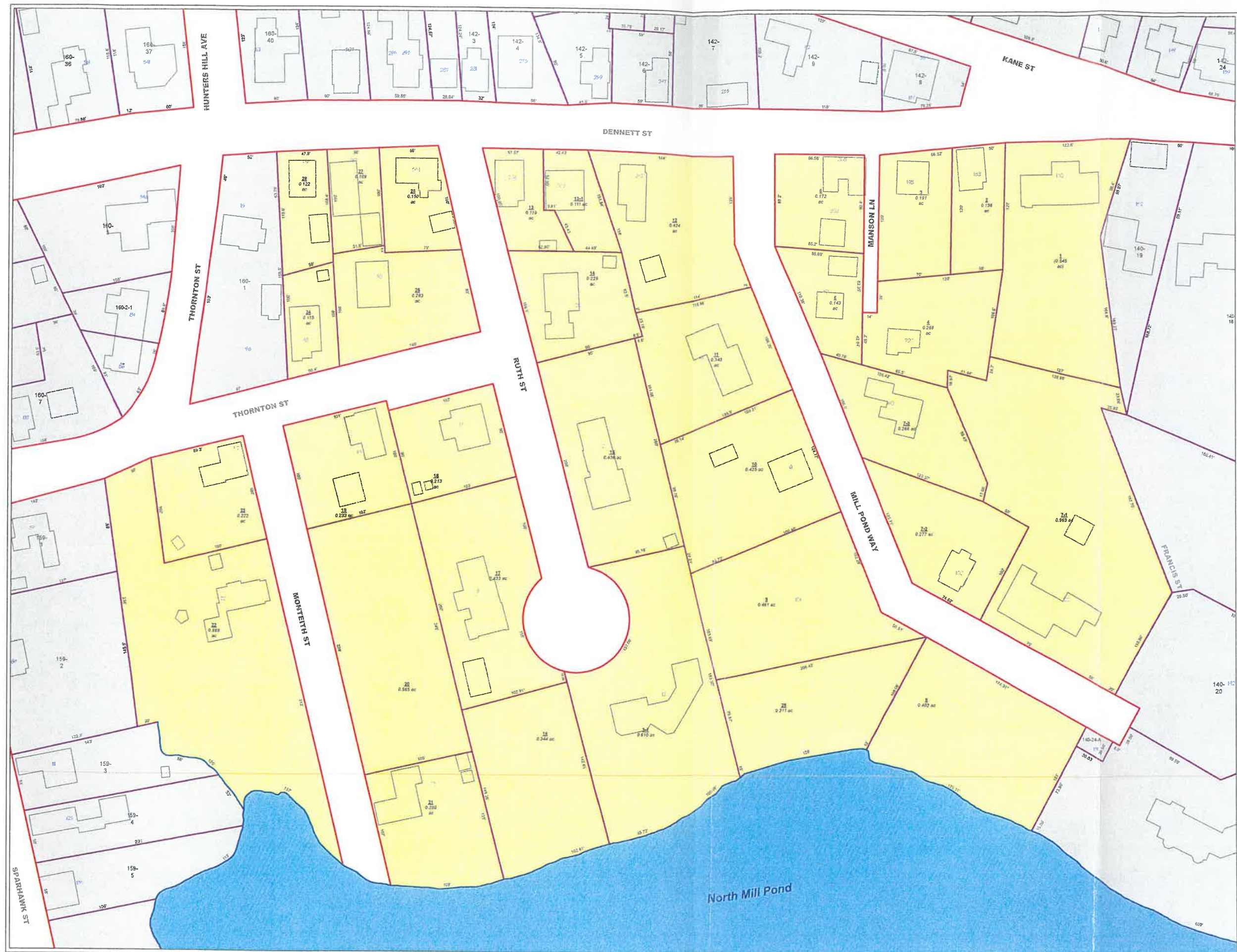
Melissa K Meade



E 31250

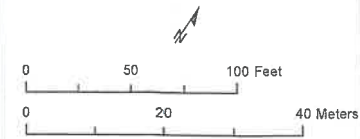
ROCKINGHAM COUNTY
REGISTRY OF DEEDS

EXHIBIT
B



See the cover
7-5A Lot
 2.56 ac Parcel area in acres (ac) or square feet (sf)
 25 Address number
 233-137 Parcel number from a neighboring map
 58 Parcel line dimension

STMS AVE Street name
 Parcel/Parcel boundary
 Parcel/ROW boundary
 Water boundary
 Structure (1994 data)
 Parcel covered by this map
 Parcel from a neighboring map (see other map for current status)



This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.

Nearby Tax Maps



Map Location

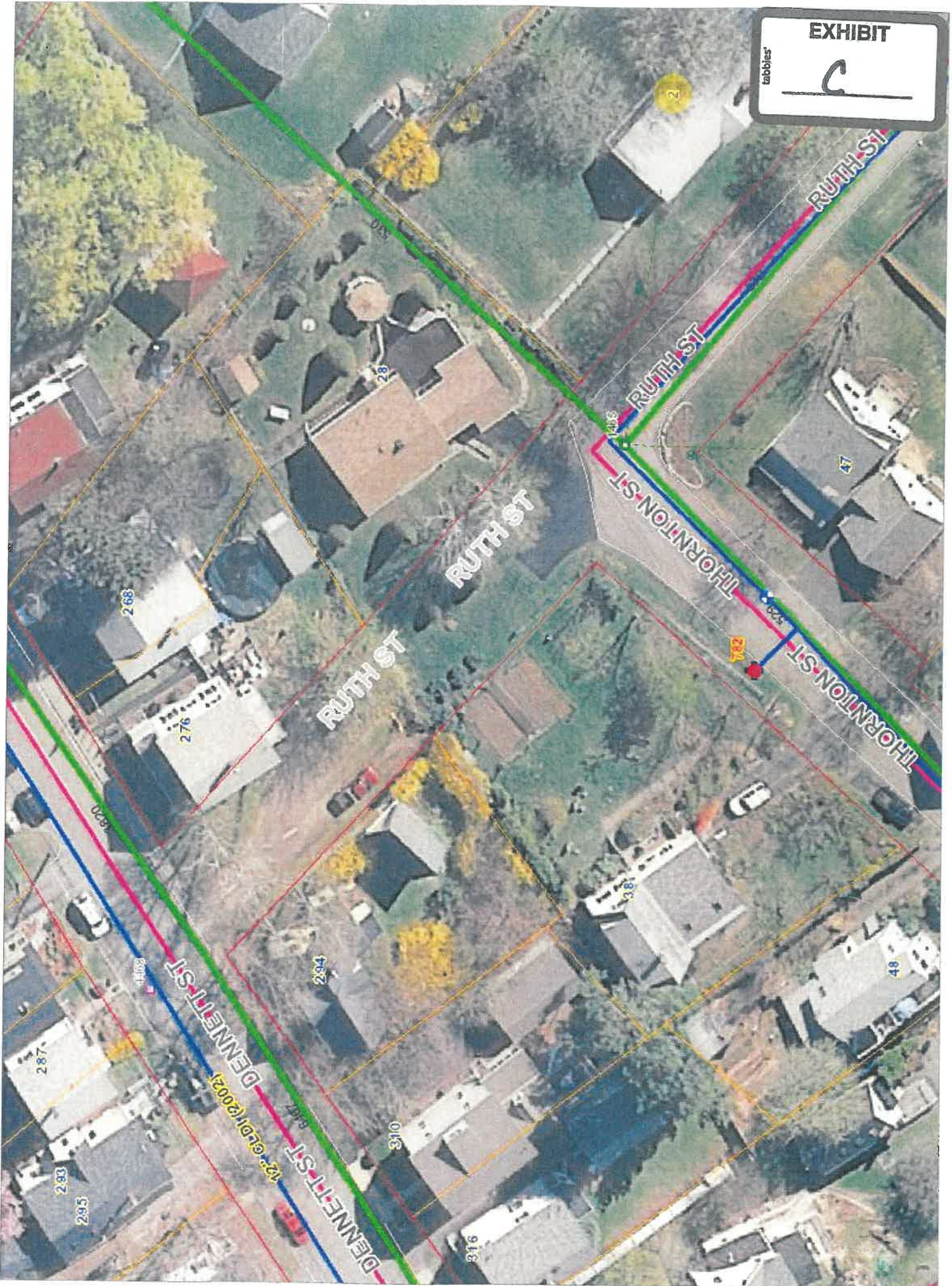


Portsmouth, New Hampshire
2018

Tax Map 143

EXHIBIT

tabbies'



268

276

1570

1453

287

293

295

DENNETT ST
12 - 6411 (2021)

284

147

310

316

RUTH ST

RUTH ST

RUTH ST

RUTH ST

THORNTON ST

THORNTON ST

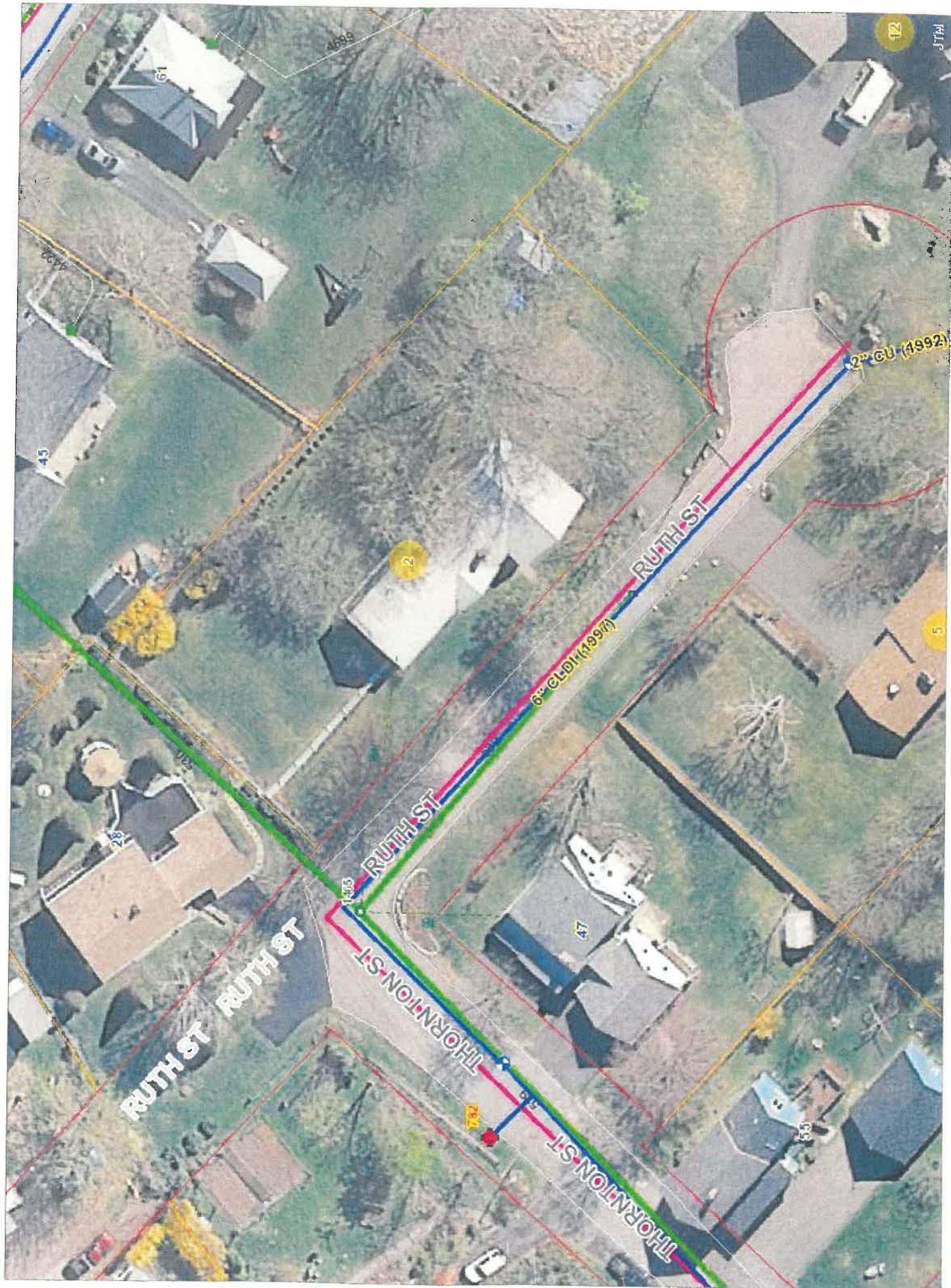
703

525

47

48

2



4692

61

2" CU (1992)

6" CLDI (1997)

2

5

RUTH ST
RUTH ST
RUTH ST

RUTH ST

1436

THORNTON ST

THORNTON ST

732

95

55

664

45

25

115

47



Imagery ©2019 Google, Map data ©2019 United States Terms - Send feedback 20 FT

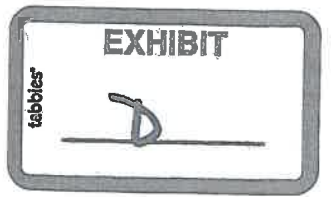








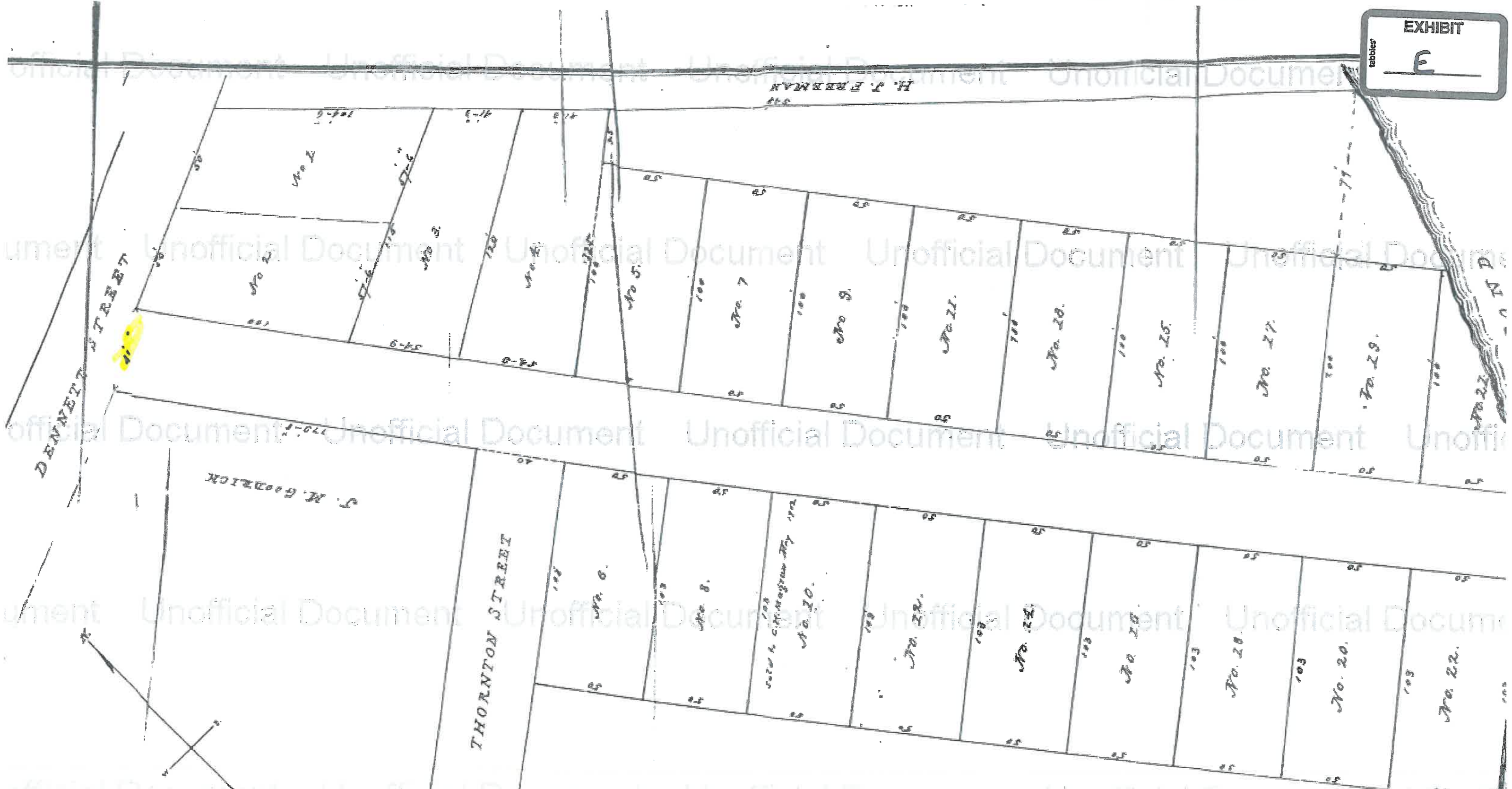




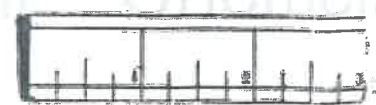




EXHIBIT
E

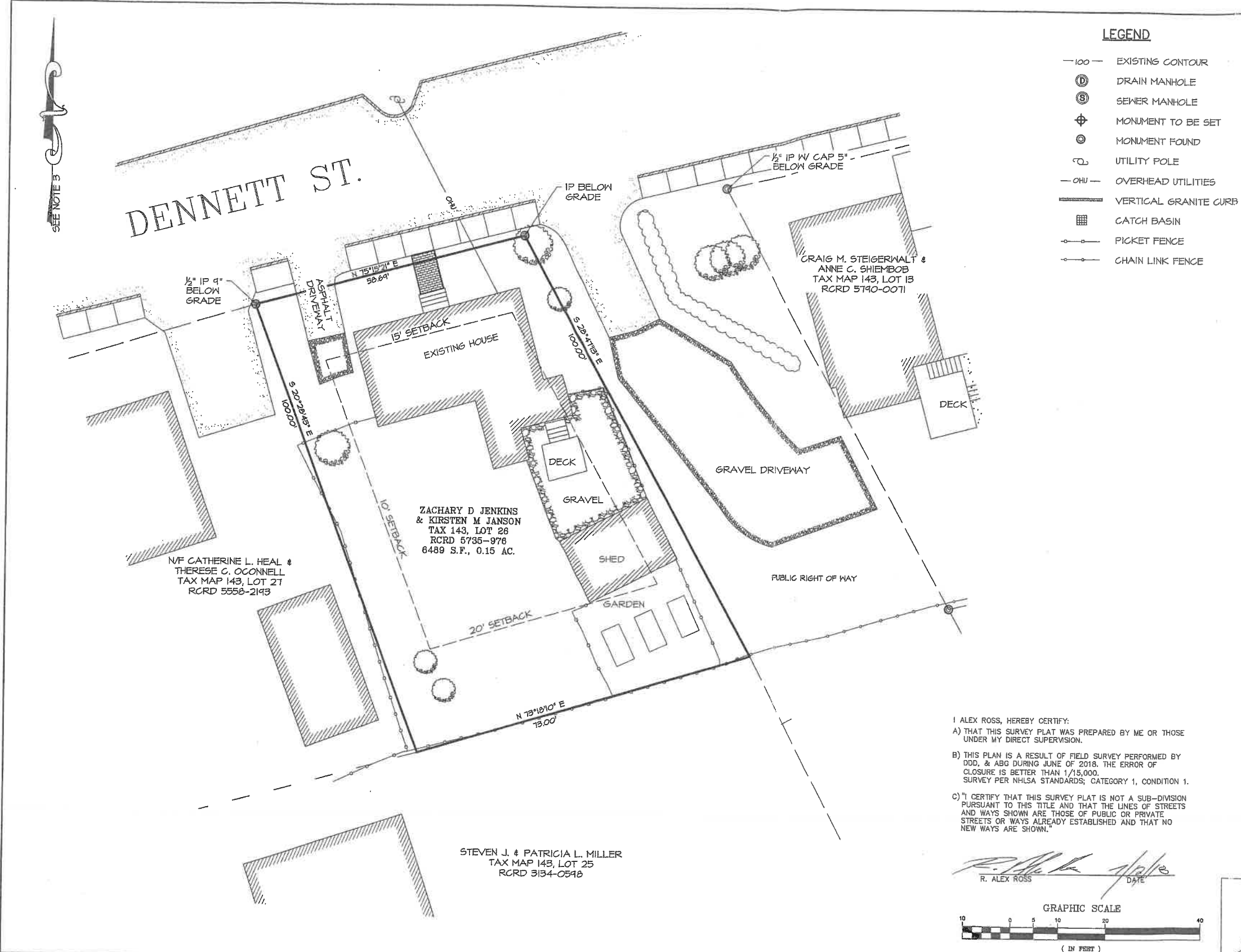


PLAN OF LOTS OF LAND BELONGING TO
C. I. FINKHAM AND J. M. MARDEN
PORTSMOUTH, N. H. MAY, 1902.



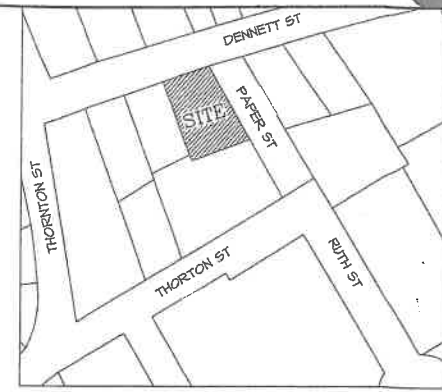
Scale 25 feet to an inch.

Plan # 00245



LEGEND

- 100- EXISTING CONTOUR
- ⊕ DRAIN MANHOLE
- ⊙ SEWER MANHOLE
- ⊕ MONUMENT TO BE SET
- ⊙ MONUMENT FOUND
- ⊕ UTILITY POLE
- OHU- OVERHEAD UTILITIES
- VERTICAL GRANITE CURB
- ▣ CATCH BASIN
- PICKET FENCE
- CHAIN LINK FENCE



NOTES

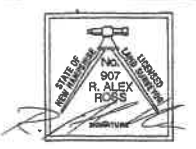
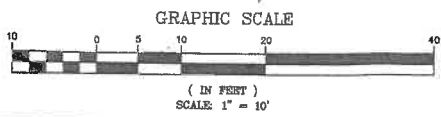
- 1) OWNER OF RECORD:
ZACHARY JENKINS
TAX MAP 143, LOT 26
294 DENNETT STREET
PORTSMOUTH, NH 03801
RCRD: 5735-976
AREA: 6489 SF, 0.15 ACRES
- 2) BASIS OF BEARING HELD FROM PLAN REFERENCE #3.
- 3) PARCEL IS IN GENERAL RESIDENTIAL A ZONE
MINIMUM LOT AREA..... 7500 SF
MIN. LOT AREA PER DWELLING UNIT..... 1500 SF
MINIMUM FRONTAGE..... 100 FT
MINIMUM DEPTH..... 70 FT
SETBACKS:
FRONT..... 15 FT
SIDE..... 10 FT
REAR..... 20 FT
MAXIMUM BUILDING HEIGHT:
SLOPED ROOF..... 35 FT
FLAT ROOF..... 30 FT
MAXIMUM BUILDING COVERAGE..... 25%
MINIMUM OPEN SPACE..... 30%
- 4) THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP #33015C0259E, PANEL 330139, DATED MAY 17, 2005.

REFERENCE PLANS

- 1) "PLAN OF LOTS OF LAND BELONGING TO C.J. PINKHAM AND J.M. MARDEN" DATED MAY, 1902. RCRD 00245
- 2) "BOUNDARY SURVEY FOR STEWGOOD, L.L.C." BY ROSS ENGINEERING, DATED DECEMBER 28, 2016. RCRD D-39925
- 3) "LOT LINE ADJUSTMENT FOR STEWGOOD, L.L.C. & CRAIG M. STEIGERWALT & ANNE C. SHIEMBOB" BY ROSS ENGINEERING, DATED MAY 24, 2017. RCRD D-40257

I ALEX ROSS, HEREBY CERTIFY:
 A) THAT THIS SURVEY PLAT WAS PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION.
 B) THIS PLAN IS A RESULT OF FIELD SURVEY PERFORMED BY DDD, & ABG DURING JUNE OF 2018. THE ERROR OF CLOSURE IS BETTER THAN 1/15,000. SURVEY PER NHLSA STANDARDS; CATEGORY 1, CONDITION 1.
 C) I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUB-DIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN."

R. Alex Ross
 R. ALEX ROSS DATE



ISSUE	DATE	FOR REVIEW	DESCRIPTION OF ISSUE
SCALE	1" = 10'		
CHECKED	A. ROSS		
DRAWN	A.B.G. & D.D.D.		
CHECKED			
ROSS ENGINEERING Civil/Structural Engineering & Surveying 909 Hillington St. Portsmouth, NH 03801 (603) 433-7569			
CLIENT ZACHARY JENKINS 294 DENNETT ST PORTSMOUTH, NH 03801			
TITLE BOUNDARY SURVEY & EXISTING CONDITIONS 294 DENNETT ST PORTSMOUTH, NH 03801 TAX MAP 143, LOT 26			
JOB NUMBER	DWG. NO.	ISSUE	
18-065	1 OF 1	1	

SEE NOTE 3

SETH D. LEVINE
569 MIDDLE STREET
PORTSMOUTH, NH 03801-5012
603-988-4317

March 10, 2020

City Council
City of Portsmouth
Municipal Plaza
One Junkins Avenue
Portsmouth, NH 03801

RE: Middle Street Bicycle Lanes
Information Meeting March 12, 2020

Honorable Members of the Portsmouth City Council:

I reside at 569 Middle Street and offer the following comments regarding the bike lanes installed on Middle Street for consideration by the Council at the meeting scheduled for March 12, 2000.

While I ride a bicycle myself and believe that our City should take steps to become more bicycle and pedestrian friendly, I do not believe that the Middle Street project is appropriate and, consequently, suggest that it should be scrapped or significantly modified.

As the basis for scrapping or modifying the project, it appears that the use by bicyclists is negligible, and that the project does not enhance the safety of operators of motor vehicles or bicycles.

It is impossible to reach a data-based conclusion of the result of the project. However, because of poor visibility resulting from parked cars, I often see motorists inching onto Middle Street from cross streets and almost causing accidents. Because cars parked on Middle Street appear to be stopped in transit, I observe other cars futilely standing behind the parked cars, waiting for the line of cars to proceed, and then cutting back into traffic. And I have watched a bicyclist crash into the curb while attempting to avoid the passenger door of a parked car opened into the bicyclist's path. There are other problems, such as bollards, costs, parking, and more. Personally, I very rarely ride my bike on Middle Street, choosing instead to use Lincoln Street. I have *never* seen the lanes used by school children, few of which even walk to school on Middle Street, and even then never for more than a very short distance.

But the main issue is that this project is only a solution looking for a problem. While I highly support the creative efforts of our Planning Department, which did an absolutely tremendous job of grappling with the tough and important issue of improving pedestrian and bicycle access, it does not appear that the project is effective at promoting either. We are simply paying for something that does not provide the intended result and, instead, causes harm to our citizens.

Honorable Members of the Portsmouth City Council
March 10, 2020
Page Two

Kindly enter this letter into the record of the information meeting scheduled for March 12, 220.

Thank you very much for your consideration.

Sincerely yours,



SETH D. LEVINE

SDL:mjl

March 10, 2020

Mayor Rick Becksted
1 Jenkins Ave
Portsmouth N.H. 03801

Dear Mrs. Mayor and City Council

I am looking to build my dock that was approved in 2007 by the city Council.

Due to the recession of 2008, I had to postpone the construction.

The City Manager suggested I reapply. I have enclosed all the paperwork from June 3, 2004 to October 16, 2007.

I am sure working together on the "Dock design we can come up with a compromise or a dock that will work for us all.

Sincerely

James P Fernald
21 Fernald Court
Portsmouth N.H. 03801



ENVIRONMENTAL
CONSULTANTS



Natural Resources
Management
and Permitting

Erosion and
Sediment Control

Water Resources
Management

Wetland Science

Soil Science

Subsurface
Sewage Disposal

Wildlife

April 26, 2007

James P. Fernald
21 Fernald Court
Portsmouth, NH 03801

Re: Tax Map 207, Lot 53
48 Ball Street
Portsmouth, New Hampshire

Dear Abutter:

Per State of New Hampshire, RSA Chapter 482-A and WT 501.01(c), this letter is to notify you that a Wetlands Bureau permit application has been filed with the New Hampshire Department of Environmental Services for the parcel referenced above. The work proposed involves impacts to tidal waters for the construction of a residential dock.

Plans and details of this application are on file, for your review, at the City of Portsmouth Clerk's Office.

Sincerely,

Sherrie Davis
Assistant Project Manager

The Commons at Kent Place
202 Kent Place
Newmarket, NH 03857
V: 603-659-3559
F: 603-659-7750

Riverbend Professional Building
291 Main Street
P.O. Box 430
Alton, NH 03809



CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney
Kathleen M. Dwyer, Assistant City Attorney – 603-427-1338 (Phone/Fax)
Suzanne M. Woodland, Assistant City Attorney

Municipal Complex
1 Junkins Avenue
Portsmouth, NH 03801
(603) 431-2000
(603) 427-1577 (FAX)

June 3, 2004

Elisabeth A. Fernald Revocable Trust
21 Fernald Court
Portsmouth, NH 03801

RE: New Castle Avenue Docks or Fence Gates

To Whom It May Concern,

Please be advised that last evening the Portsmouth City Council authorized the City Manager to respond to the issue created by private docks located along that portion of New Castle Avenue which is to be reconstructed by the City in accordance with the following policy:

1. All dock owners be advised by the City that the docks must be removed from the current locations by December 31, 2004, so that the reconstruction of Newcastle Avenue may commence with the 2005 building season.
2. Each dock owner who agrees to remove their dock in a timely fashion will be offered a written agreement from the City containing the following elements:
 - A. The reconstruction of Newcastle Avenue will accommodate the potential construction of a gate in the rail on Newcastle Avenue in order to access a reconstructed dock at the location at the prior dock.
 - B. The City will make an assignment or take whatever other action is appropriate in order to allow the former dock owner to apply for a permit from NHDES to construct a new dock.

Dept C Administrative Ser



CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney
Kathleen M. Dwyer, Assistant City Attorney – 603-427-1338 (Phone/Fax)
Suzanne M. Woodland, Assistant City Attorney

Municipal Complex
1 Junkins Avenue
Portsmouth, NH 03801
(603) 431-2000
(603) 427-1577 (FAX)

June 3, 2004

Elisabeth A. Fernald Revocable Trust
21 Fernald Court
Portsmouth, NH 03801

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Page Two

June 3, 2004

RE: **New Castle Avenue Docks or Fence Gates**

- C. In the event that the former dock owner is successful in securing a permit from NHDES, the City will enter a license agreement with that person allowing the reconstruction of the former dock in accordance with the NHDES permit and allowing a gate to be installed in the Newcastle Avenue railing to provide access to that dock. It is anticipated that the actual terms of this license agreement will be brought back to the City Council for approval at the appropriate time.

- D. Any dock owners who do not voluntarily remove their docks will not be offered either an assignment of rights or a license agreement.

Please advise as soon as possible in writing as to whether you wish to participate in going forward with this policy in connection with any dock or float to which you might claim ownership.

Sincerely,



Robert P. Sullivan
City Attorney

RPS/rao

cc: John P. Bohenko, City Manager
John Burke, Division Director of Parking and Transportation

RECEIVED
OCT 14 2004
BY: _____

Municipal Complex
1 Jenkins Avenue
Portsmouth, N.H. 03801

October 13, 2004

RE: New Castle Avenue Docks or Fence Gates

Dear Robert P. Sullivan,

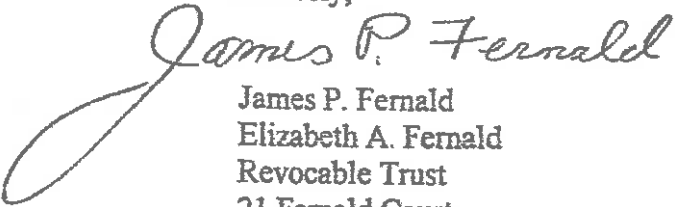
I am writing to you in response to your letter on June 3, 2004. My name is James P. Fernald son of Elizabeth A. Fernald. The letter was addressed to the Elizabeth A. Fernald Revocable Trust.

A few neighbors and I have got together, to "SAVE" the dock and the gate for future use. We will move the dock before December 31, 2004 as you have requested.

We will apply for a new Dock permit with the NHDES. We will also be looking forward to working with NHDES in moving the dock down towards Fernald Court. As to not interfere with the City's plans to make a new "River Walk" along New Castle Avenue.

Thank you and we are all looking forward to the new "River Walk".

Sincerely,



James P. Fernald
Elizabeth A. Fernald
Revocable Trust
21 Fernald Court
Portsmouth, N.H. 03801
(603) 436-8216
jpfernald@comcast.net

"ced"
John Burke
FAD
10/25/04



CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney
Kathleen M. Dwyer, Assistant City Attorney – 603-427-1338 (Phone/Fax)
Suzanne M. Woodland, Assistant City Attorney

Municipal Complex
1 Junkins Avenue
Portsmouth, NH 03801
(603) 431-2000
(603) 427-1577 (FAX)

December 7, 2004

David Tooley
Billie Tooley
166 New Castle Avenue
Portsmouth, NH 03801

RE: New Castle Avenue Dock

Dear David and Billie,

This will acknowledge receipt of yours dated November 25, 2004 concerning one of the docks formerly located on New Castle Avenue. I understand your letter to be in reference to the dock which the City had previously understood to be owned by Elisabeth A. Fernald Revocable Trust.

One issue that needs to be resolved in the fairly near future concerns ownership of the particular dock. I suspect that the permitting agencies, and I know that the City, will be unable to deal with the concept of a "neighborhood dock". There needs to be identified owner who will bear the responsibility for the dock. At the moment that would appear to be Elisabeth A. Fernald Revocable Trust based on the attached letter. However, we will keep your letter on file with respect to the same dock.

Ideally, between yourselves, Jack Kelley and Elisabeth A. Fernald Revocable Trust this issue can be resolved. I suggest that some effort be made to reach that resolution and that the result be conveyed to this office.

Sincerely,

Robert P. Sullivan
City Attorney

RPS/rao
enclosure

cc: John P. Bohenko, City Manager
John Burke, Division Director of Parking and Transportation
Jack Kelley
Elisabeth A. Fernald Revocable Trust

h:\rps\public works\new castle avenue tooley ltr re-dock



CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney – 603-610-7204 (Direct Dial)
Kathleen M. Dwyer, Assistant City Attorney – 603-427-1338 (Phone/Fax)
Suzanne M. Woodland, Assistant City Attorney – 603-610-7240 (Direct Dial)

Municipal Complex
1 Junkins Avenue
Portsmouth, NH 03801
(603) 431-2000
(603) 427-1577 (FAX)

September 8, 2006

James P. Fernald
Elizabeth A. Fernald Revocable Trust
21 Fernald Court
Portsmouth, NH 03801

Mrs. Pat Semprini
300 New Castle Avenue
Portsmouth, NH 03801

Thomas Watson, Esq.
Kathleen Salisbury
200 New Castle Avenue
Portsmouth, NH 03801

RE: New Castle Avenue Docks

To Whom It May Concern,

Enclosed please find a copy of a memorandum to City Manager John P. Bohenko with respect to the captioned. He has now approved the terms recommended in the memorandum. If you have any questions once you have had reviewed the information, please feel free to contact me.

Sincerely,

Robert P. Sullivan
City Attorney

RPS/rao

enclosure

cc: John P. Bohenko, City Manager
Deb Finnigan, Traffic Engineer

h:\rps\public works\new castle ave dock\tr re-gates and license agr memo



CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney – 603-610-7204 (Direct Dial)
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Municipal Complex
1 Junkins Avenue
Portsmouth, NH 03801
(603) 431-2000
(603) 427-1577 (FAX)

December 29, 2006

James P. Fernald
Elizabeth A. Fernald Revocable Trust
21 Fernald Court
Portsmouth, NH 03801

RE: New Castle Avenue Docks

Dear Mr. Fernald,

As you are aware the City amended the plans which it is using for the reconstruction of New Castle Avenue to show the dock which the City anticipates that you would rebuild. This was done with the understanding that it would make the permitting of your dock by NH Department of Environmental Services to be easier for you to accomplish.

Because the waters of the Piscataqua River are navigable waters of the United States, under federal law, the U.S. Army Corps of Engineers has advised the City that you will also need to secure a permit from that agency to rebuild your dock. In general, the Army Corp will require:

1. Any available documentation concerning the construction of your prior dock, including when it was built and whether it was permitted at that time.
2. Confirmation from the Corps regarding the applicability of a so-called "general permit" which would be issued only in the event that the dock was built prior to December 1968.
3. If a "general permit" is not applicable, you will need to provide a sketch plan with the dimensions of the proposed pier, ramp and float.
(NOTE: The Army Corps does not want floats to rest on eel grass.)

Page Two
December 29, 2006

RE: New Castle Avenue Docks

Beyond the foregoing information may be obtained at either a web page established by the Army Corps at <http://www.nae.usace.army.mil/reg/index.htm> or by writing to:

Richard Roach, Regulatory Division
US Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

By an e-mail to this office Mr. Roche has offered to hold a meeting with all dock owners so that state and Army Corps permit requirements can be reconciled. To the extent possible, the City will assist in this process.

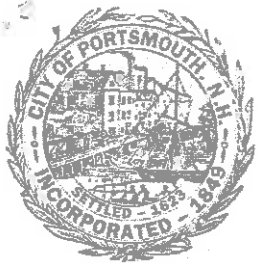
Sincerely,



Robert P. Sullivan
City Attorney

RPS/rao

cc: John P. Bohenko, City Manager
Deb Finnigan, Traffic Engineer
Richard Roach, U.S. Army Corps of Engineers



CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney – 603-610-7204 (Direct Dial)
Kathleen M. Dwyer, Assistant City Attorney – 603-427-1338 (Phone/Fax)
Suzanne M. Woodland, Assistant City Attorney – 603-610-7240 (Direct Dial)
Susan O. Boone, City Prosecutor – 603-610-7478 (Direct Dial), 603-427-1510 (Fax)

Municipal Complex
1 Junkins Avenue
Portsmouth, NH 03801
(603) 431-2000
(603) 427-1577 (FAX)

April 3, 2007

James P. Fernald
Elizabeth A. Fernald Revocable Trust
21 Fernald Court
Portsmouth, NH 03801

RE: New Castle Avenue Docks

Dear Mr. Fernald,

This will advise that the City will be installing a gate along the New Castle Avenue railing to allow access to a dock in accordance with our prior correspondence. It is possible that you may be able to reconstruct your dock as early as autumn of this year.

Accordingly, it is now appropriate for you to resolve any permitting issues necessary for dock construction.

With respect to State permitting issues, your contact is:

Frank D. Richardson, Ph.D.
Senior Wetlands Inspector
Southeast Region Supervisor
NH DES Wetlands Bureau
Pease Field Office
50 International Drive
Portsmouth, NH 03801
(603) 559-1500

With regard to federal Army Corp of Engineer's, your contact is:

Richard Roach, Regulatory Division
US Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

*Debra Finnegan
DAW 766-1415*

Page Two
April 3, 2007

RE: New Castle Avenue Docks

Copies of this letter will be provided to both state and federal contacts. Additionally, insofar as Glenn Normandeau of Pickering Marine is understood to be performing the dock construction work for at least one property owner, a copy of this letter goes to him as well.

Sincerely,

A handwritten signature in black ink, appearing to be 'R. Sullivan', written over a horizontal line.

Robert P. Sullivan
City Attorney

RPS/rao

cc: John P. Bohenko, City Manager
Deb Finnigan, Traffic Engineer
Peter Britz, Environmental Planner
Glenn Normandeau, Pickering Marine



CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney – 603-610-7204 (Direct Dial)
Kathleen M. Dwyer, Assistant City Attorney – 603-427-1338 (Phone/Fax)
Suzanne M. Woodland, Assistant City Attorney – 603-610-7240 (Direct Dial)
Susan O. Boone, City Prosecutor – 603-610-7478 (Direct Dial), 603-427-1510 (Fax)

Municipal Complex
1 Junkins Avenue
Portsmouth, NH 03801
(603) 431-2000
(603) 427-1577 (FAX)

October 16, 2007

Frank D. Richardson, Ph.D.
Senior Wetlands Inspector
Southeast Region Supervisor
NH DES Wetlands Bureau
Pease Field Office
50 International Drive
Portsmouth, NH 03801

**RE: New Castle Avenue Reconstruction/Replacement of
Pre-existing Docks**

Dear Frank,

I understand that there is some confusion concerning the intent of the Portsmouth City Council with respect to the reconstruction of the pre-existing docks which had been connected to City property underlying New Castle Avenue prior to the current reconstruction of that street.

Please be advised that the City's position, as established by the City Council, is as follows:

1. After a lengthy process the City determined that the three docks located where you now see gates built into the railing overlooking Duck Cove could be rebuilt, notwithstanding the rather nebulous manner in which the docks had been constructed initially.
2. The City had intended to have its construction plans modified to reflect that the three docks could be located as described above, "and replaced in-kind". However, due to unrelated issues with the drafter of the plans, no plan modification was possible.
3. The owners of the pre-existing docks which may reconstructed as outlined in this letter are:

Page Two

October 16, 2007

RE: New Castle Avenue Reconstruction/Replacement of Pre-existing Docks

- A. Pat Semprini,
- B. Thomas Watson and Kathleen Salisbury; and
- C. Elizabeth A. Fernald Revocable Trust.

This letter is written to assist you and the dock owners in the permitting process. The actual reconstruction of the docks will be subject to a further agreement related to dock ownership, control and maintenance which needs to be negotiated between the respective dock owners and the City. Until the City Council has approved the terms and conditions of those agreements, the docks may not actually be reconstructed.

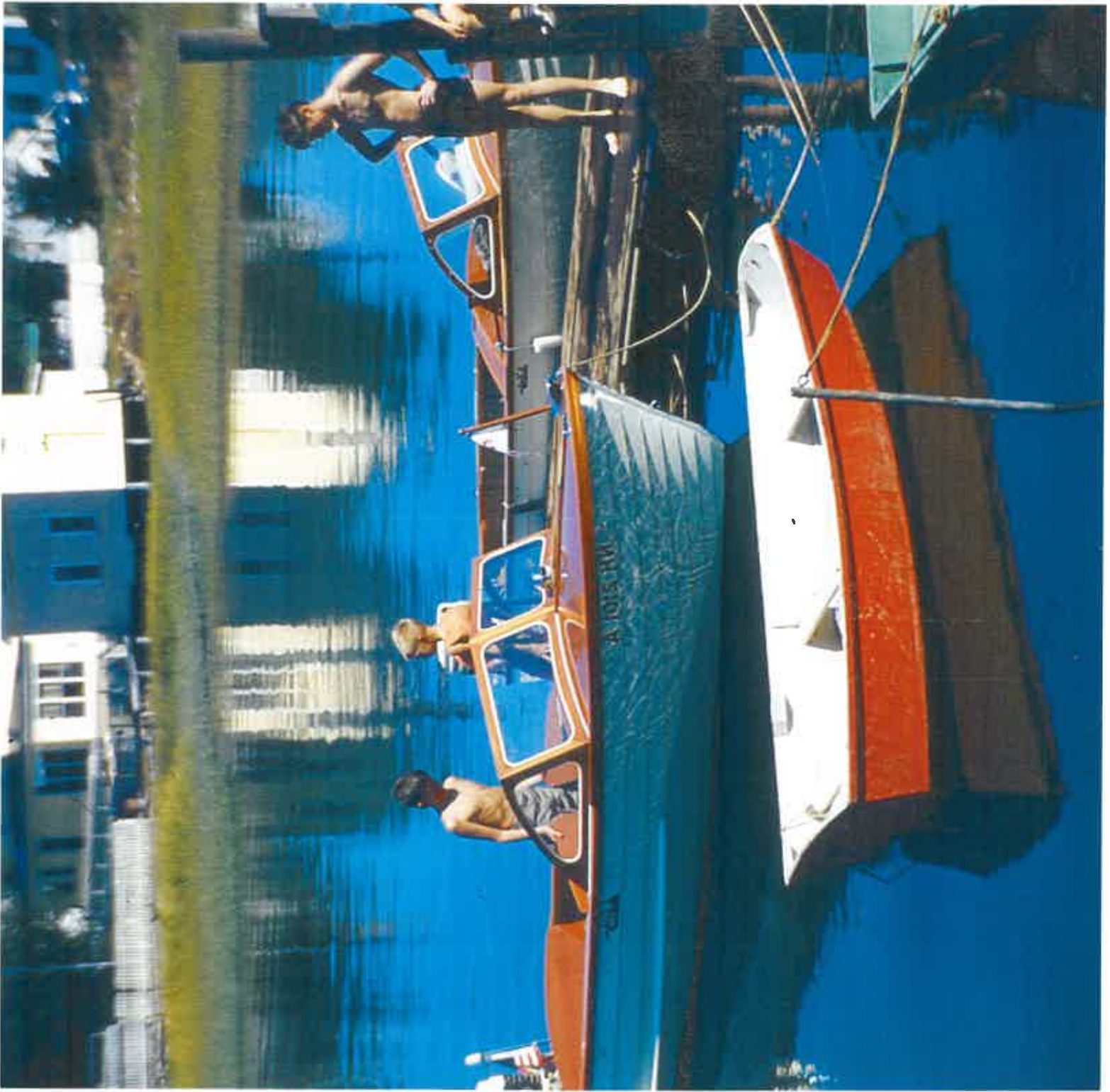
Sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a horizontal line extending to the right.

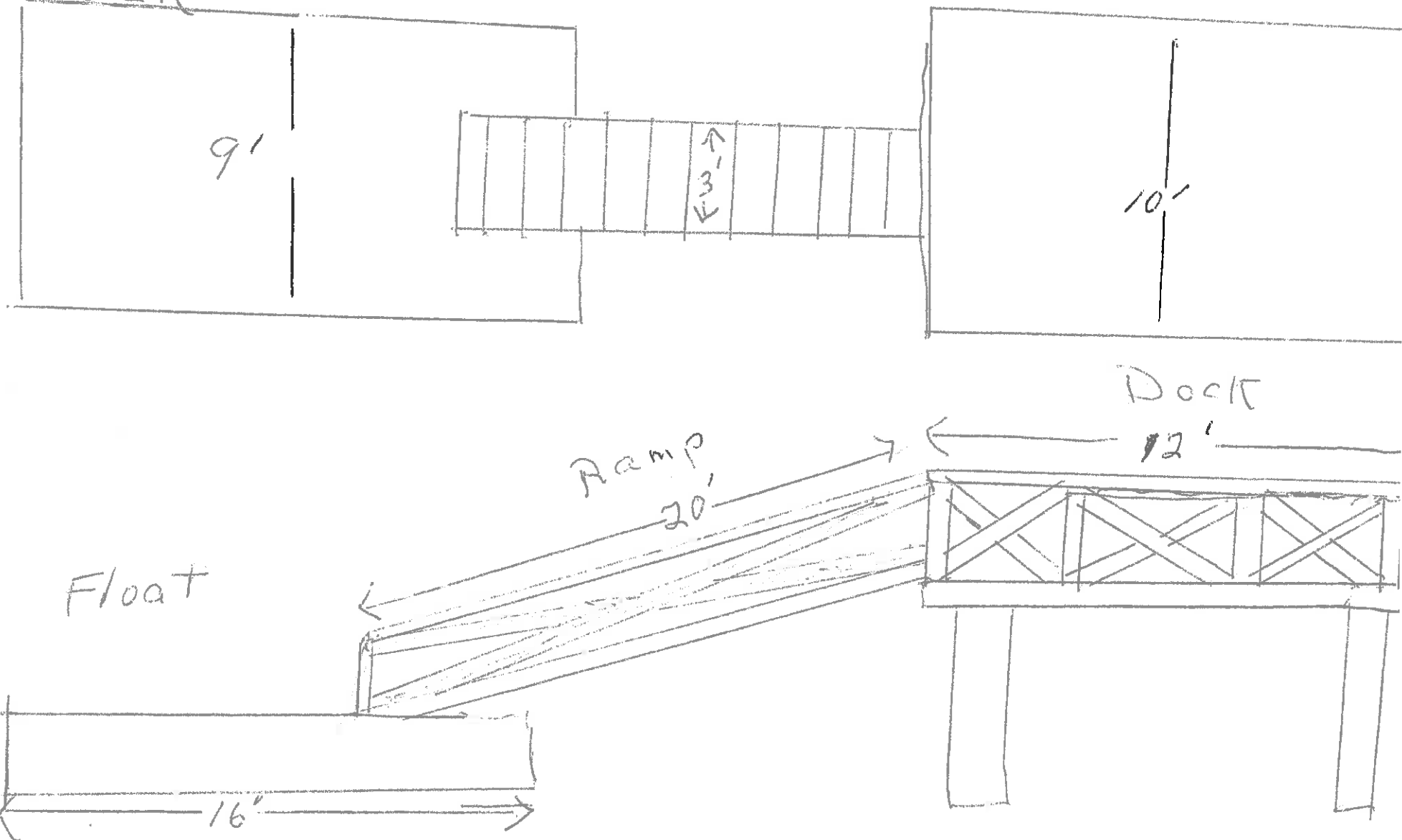
Robert P. Sullivan
City Attorney

RPS/rao

cc: John P. Bohenko, City Manager
Deb Finnigan, Traffic Engineer
Thomas Watson & Kathleen Salisbury
Pat Semprini
Elizabeth A. Fernald Revocable Trust



Jim Fernald
21 Fernald Ct
Portsmouth NH
03801
603-436-8216
DOCK



Background on 27 Thaxter

On two separate occasions between 1933 and 1938 portions of the lot 46 were deeded to abutters. Lot 46 as depicted on the original plan no longer exists. Lot 46 now has dimension of 30' x 86' = 2580 sq. ft. In the Planning Board's April 2019 recommendation to the City Council concerning lot 46 there is an error in their analysis section. The Planning Board's analysis states: "The lots described on these documents from the Registry are also consistent with the dimensions provided in the tax cards provided by the owner in his request to restore the lots to their premerger status." Lot 46 shown on County Records plan (#782) dated August 1933 does NOT match the dimension on the City of Portsmouth tax card.

Records in the Planning Department demonstrate two applications submitted by owners of 27 Thaxter Rd in 2004 and 2001 which describe the entirety of the property at issue as a single lot. It was based upon the applications describing the property as a single lot that variances and building permits were issued allowing for an addition to the house. It can be readily assumed that the Zoning Board of Adjustment would not have granted the variance which allowed this to occur but for the fact that the prior owner presented the entirety of the land as a single tract. Previous requests for lot un-mergers were recommended for denial by the Planning Board and the City Attorney for this very reason.

Given the dimension of Lot 46 (30' x 86' = 2580 sf) a variance would be required to establish any new use on the lot. 27 Thaxter Rd is located in the General Residence SRB zoning district, which requires a minimum lot area of 15,000 sq. ft., with 100 feet of continuous street frontage and 70 feet of lot depth.

The doctrine that landowners' conduct can result in the merger of adjacent lots is well established in New Hampshire. *Town of Seabrook v. Tra-Sea Corp*, 119 N.H. 937 (1979) the court stated that an owner of adjacent non-conforming grandfathered lots may lose that grandfathered status and cause the merger of the non-conforming lots, "by abandoning the property or abolishing individual lot lines." *Robillard v. Hudson* 120 N.H. 477 (1980). The owner had obtained a building permit for a duplex relying on the combined frontage and area of the two contiguous, non-conforming lots. The court held that such conduct "effectively erased the individual lot lines." And resulted in the merger of the two prior non-conforming lots.

There are two cases interpreting RSA 674:39-aa

Town of Newbury v. Landrigan 165 N.H. 236 (2013) the court found a voluntary merger based on a combination of factors:

1. Several deeds in the chain of title had described the property as a single tract with a single metes-and-bounds description.
2. Part of one of the lots had been deeded to an abutter, and hence that lot, as depicted on the original plan, no longer existed.
3. Three surveys had been recorded since the original subdivision, showing no solid lines between the lots.

4. A driveway crossed the purported boundary line between the lots. (e) The current owners admitted they believed at the time of their purchase that they were buying one parcel, and had treated it as such when applying for a building permit.

In *Roberts v. Town of Windham*, 165 N.H. 186 (2013) a landowner's request to restore lots had been denied by the Town of Windham, makes it clear that the governing body's consideration is based on the facts and circumstances of each application. The "voluntariness" of a merger can be based upon:

1. The manner in which the property was conveyed and described by the owners in the chain of title (at the Registry of Deeds); use of a perimeter description rather than that of separate lots, or recording of a plan depicting the lots as merged, is clear evidence of an intention by the owner to merge the lots.
2. The physical characteristics of the lots and how they have been put to use; for example, if a home or other building has been built partially on both lots a voluntary merger can be inferred.
3. Other acts of the owner indicating an intent to merge the lots; but mere past acquiescence to taxation as a single lot does not, standing alone, support a finding of voluntary merger.

TIMELINE
27 THAXTER ROAD
"CHAIN OF TITLE"

- 1917 Lots 44, 45 & 46 were created by the Plan of Westfield Park (Attachment 1)
- 1933 A portion (14' x 30') of lot 46 was deeded to abutter. (Attachment 2)
- 1938 A portion (20' x 100') of lot 46 was deeded to abutter in Lot 47 leaving the dimensions of lot 46 at 30' x 86' (Attachment 3)
- 1972 – 1988 "...between 1972 and 1988... the City involuntarily merged the lots into a single unified lot for tax purposes" (Letter to City Council for Chad Callihan dated February 21, 2019)
- May 25, 2004 Lots 44, 45 & part of 46 (86' x 30', 2,580 sf) (which is now know as 27 Thaxter Rd) was created by the Zoning Board of Adjustment as a single, merged lot **at request of owner** – because lots had previously been merged by City with Lots 42 & 43 (Attachment 4)
- Jan 17, 2011 Lots 44, 45 & part of 46 (86' x 30', 2,580 sf) (27 Thaxter Rd) was represented and shown as a single, merged lot in Existing Site Plan dated January 17, 2011 submitted by the owner to the Zoning Board of Adjustment. (Attachment 5)
- Jan 17, 2011 Lots 44, 45 & part of 46 (86' x 30', 2,580 sf) (27 Thaxter Rd) are enclosed on all four (4) side by single white fence, as shown on Jan. 2011 Existing Site Plan and attached photo. (Attachment 6)

TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Regulation of Subdivision of Land

Section 674:39-aa

674:39-aa Restoration of Involuntarily Merged Lots. –

I. In this section:

(a) "Involuntary merger" and "involuntarily merged" mean lots merged by municipal action for zoning, assessing, or taxation purposes without the consent of the owner.

(b) "Owner" means the person or entity that holds legal title to the lots in question, even if such person or entity did not hold legal title at the time of the involuntary merger.

(c) "Voluntary merger" and "voluntarily merged" mean a merger under RSA 674:39-a, or any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line.

II. Lots or parcels that were involuntarily merged prior to September 18, 2010 by a city, town, county, village district, or any other municipality, shall at the request of the owner, be restored to their premerger status and all zoning and tax maps shall be updated to identify the premerger boundaries of said lots or parcels as recorded at the appropriate registry of deeds, provided:

(a) The request is submitted to the governing body prior to December 31, 2021.

(b) No owner in the chain of title voluntarily merged his or her lots. If any owner in the chain of title voluntarily merged his or her lots, then all subsequent owners shall be estopped from requesting restoration. The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots.

III. All decisions of the governing body may be appealed in accordance with the provisions of RSA 676.

IV. Any municipality may adopt local ordinances, including ordinances enacted prior to the effective date of this section, to restore previously merged properties that are less restrictive than the provisions in paragraph I and II.

V. The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing local land use ordinances.

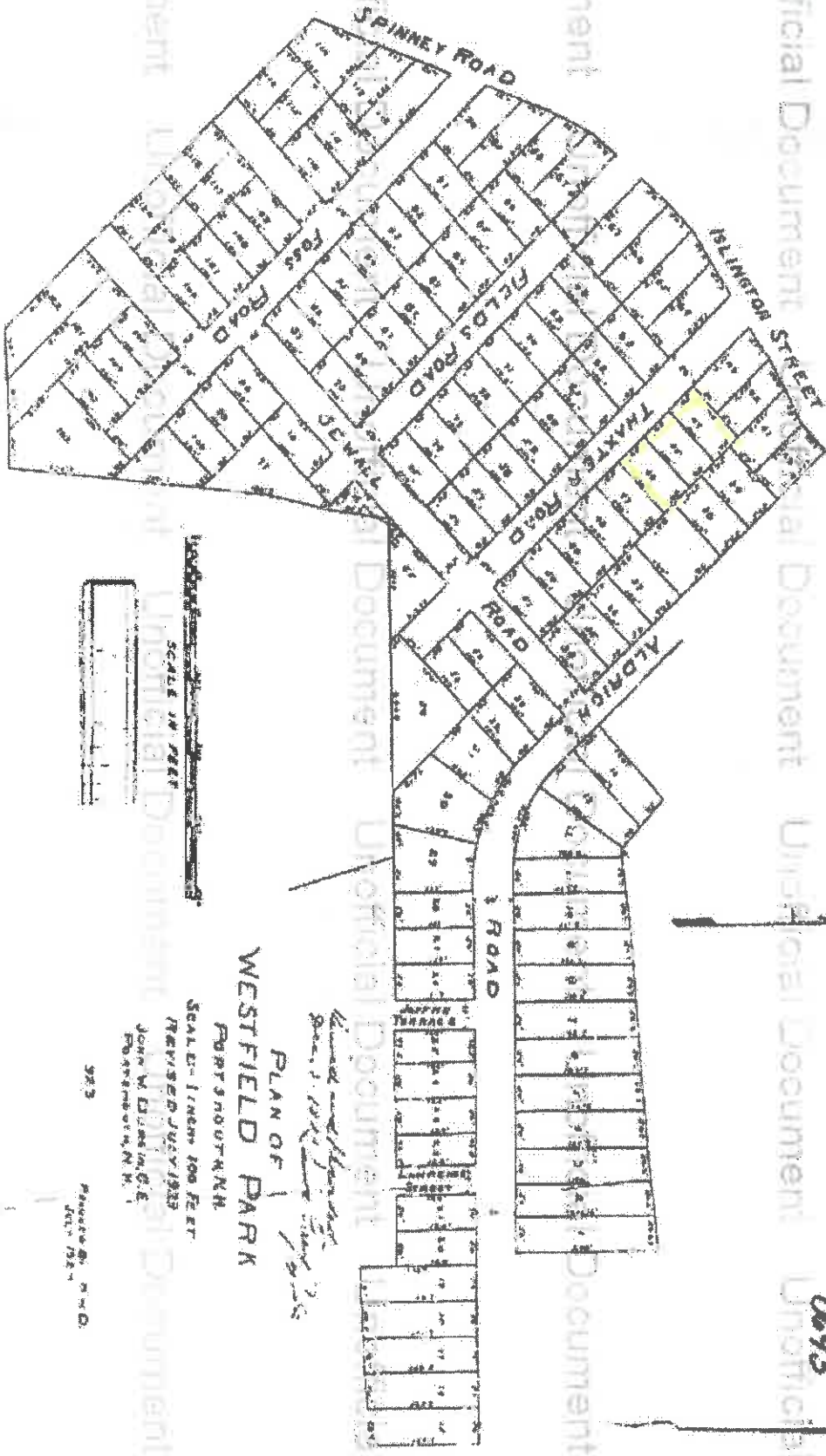
VI. Municipalities shall post a notice informing residents that any involuntarily merged lots may be restored to premerger status upon the owner's request. Such notice shall be posted in a public place no later than January 1, 2012 and shall remain posted through December 31, 2016. Each municipality shall also publish the same or similar notice in its 2011 through 2015 annual reports.

Source. 2011, 206:4, eff. July 24, 2011. 2016, 327:2, eff. Aug. 23, 2016.



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St. Paul & Mary

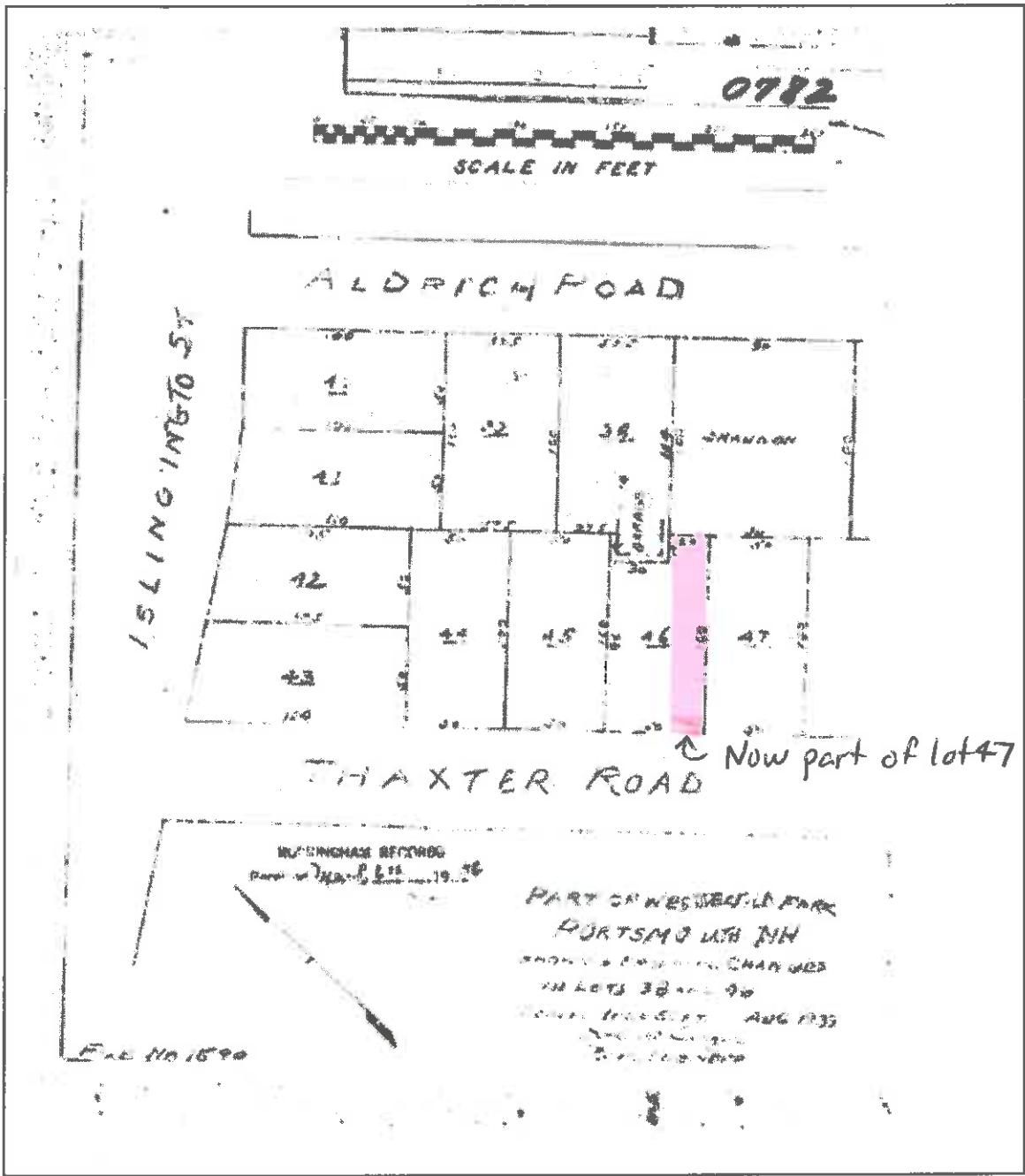


PLAN OF WESTFIELD PARK

PORTSMOUTH, N.H.
 SCALE - 1 INCH = 100 FEET
 REVISED JULY 1932
 JOHN W. EDWARDS, JR.
 PORTSMOUTH, N.H.

523
 PLANNED BY
 JOHN W. EDWARDS, JR.

0643



MEETING TO BE RECONVENED ON APRIL 25, 2019

CITY OF PORTSMOUTH Board of Adjustment Application

APR 25 2004

Department Use Only	Assessor Plan # <u>166</u>	Lot # <u>52 E 39</u>	Date
Zone		Lot area	Fee
			By

Fill in below by printing in ink or typing / Complete all Blanks or indicate "N/A" if not applicable

Owner <u>Orville N. Guptill</u>	Applicant <u>Orville N. Guptill</u>
<u>Revocable Trust</u>	<u>Revocable Trust</u>
<u>27 Thaxter Rd</u>	<u>27 Thaxter Rd</u>
Owner address <u>Portsmouth, NH 03801</u>	Applicant address <u>Portsmouth, NH 03801</u>
Owner phone <u>Robert Guptill & Roy Guptill, Trustees</u>	Applicant phone <u>Robert Guptill & Roy Guptill, Trustees</u>
<u>(207) 439-6735 ext</u>	<u>(207) 439-6735 ext</u>
Owner Fax <u>603-433-1197</u>	Applicant Fax <u>603-433-1197</u>

Lessee _____ Lessee address _____

Lessee phone _____ Lessee Fax _____

Location address of work: 27 Thaxter Rd

Map 166 Lot 52 Former Office Building

Existing use: Map 166 Lot 39 Single Family Residence

Undersigned hereby requests

<input type="checkbox"/> Appeal from an Administrative Decision	Article _____	Section _____
<input type="checkbox"/> Special Exception	Article _____	Section _____
<input checked="" type="checkbox"/> Variance	Article <u>III</u>	Section <u>10-301-A4</u>
	Article <u>III</u>	Section <u>10-302-A</u>

To permit the following:
See Attached Sheet

The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his/her property under the strict terms of the Zoning Ordinance and thus constitutes unnecessary hardship according to Article XIII, Section 10-1302(D):
See Attached Sheet

Only complete applications will be accepted by the deadline date. A complete application shall consist of: a completely filled out application, the application fee and 12 packets each containing: site and building/floor plans (8 1/2" x 11")* and any supporting data, letters or photos. Incomplete applications will not be accepted. The Board may allow evidence to be submitted at the time of the Public Hearing. Applications received after the deadline will be scheduled for the following month. The owner or his/her representative is required to attend the Public Hearing for the above appeal.

*8 1/2" x 11" plans may be used only if 8 1/2" x 11" plan would not be readable.

Charles A. Griffin April 25, 2004

Signature of Owner: Charles A. Griffin, Esquire Date

Attorney

Petitioner's Responsibilities

1. All applications for Variances and Special Exceptions must be submitted to the Code Official prior to the published deadline. Submissions which fail to meet this requirement shall not be considered until the next month's regular meeting. In the case of Appeals from an Administrative Decision, the appeal shall be filed no later than 30 days from the date of the action which is being appealed.
2. A petitioner shall be one of the following:
 - a) The owner of record to the property, or
 - b) The holder of a valid purchase and sales agreement for the purchase of the subject property, or
 - c) The holder of a valid option for the purchase of the subject property.
3. All applications shall be signed by the owner of record to the property.
4. It is the obligation of the Petitioner to submit adequate plans and exhibits in accordance with the terms of the Zoning Ordinance for all applications for Administrative Appeals, Variances and Special Exceptions.
5. Minimum requirements for adequate plans shall include the following:
 - Name of Owner(s)
 - Name of Petitioner(s)
 - Title of petition (i.e. Variance / Special Exception)
 - Abutting street(s)
 - Scale
 - Yard dimensions
 - Lot dimension
 - Dimensions of proposed and existing structures
 - Dimensions of parking spaces
6. The Code Official is authorized by the Board of Adjustment to refuse applications which do not meet these minimum requirements.
7. Public Hearings shall not be scheduled, advertised or held until such time as the "minimum requirements for adequate plans" have been submitted.
8. Any petitioner who submits plans or exhibits deemed inadequate or requiring more detailed information, may be tabled until such time as adequate plans or exhibits are received by the Board.
9. The Board may table any application requiring more information prior to any action being taken.
10. In the case of conversions or renovations to an existing structure, interior floor plans shall be furnished by the petitioner.

Basic Fee Schedule

1. All appeals for a Variance or a Special Exception (no fee required for Administrative Appeals) shall be accompanied by a filing fee as follows:
 - a) Residential Applications (including Home Occupations)

1 - 2 units	\$ 80.00
3 - 4 units	\$110.00
5 - 10 units	\$160.00
11 - 30 units	\$280.00
30 plus units	\$310.00

plus \$35.00 for each additional unit
 - b) Non-Residential Applications
\$180.00 base fee, plus an additional \$5.00 per \$1,000.00 of the cost of the new construction, up to \$600.00 for a total maximum of \$660.00.
 - c) Sign Applications - \$110.00
2. There is also a fee structure which covers all expenses incurred by the City in processing, reviewing and executing applications submitted to the Board of Adjustment for review. The fees imposed by the City in processing these applications will represent all time spent on a proposal during pre-application, application, and post-application stages.
 - a) The pre-application stage shall include but not be limited to all preliminary meetings and research relating to an application prior to formal submission to the Board of Adjustment.
 - b) The application stage shall include but not be limited to:
 - 1) planning staff review
 - 2) engineering review
 - 3) legal review (if required)
 - 4) special studies (if required)
 - 5) other related meetings, correspondence, etc.
 - c) The post-application stage shall include but not be limited to all City staff utilized with respect to the application after approval by the Board of Adjustment.
3. Each Petitioner will be entitled to a total of three (3) hours of principal (non-clerical) staff time as part of the basic application. Once the review process has utilized in excess of three hours of principal staff time, the applicant will be billed at a flat rate per hour or portion thereof based upon the salary and overhead cost of the staff person. The review staff consists of City Engineer, City Water Department, Code Official and other City officials as appropriate.
4. All postage costs for abutter notices and a proportionate share of the advertising of the legal notice shall be paid for by the Petitioner.

Attachment to City of Portsmouth Board of Adjustment Application

Owner/Applicant: Orville N. Guptill Revocable Trust

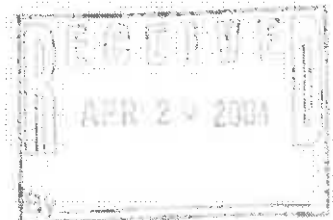
Owner/Applicant Address: 27 Thaxter Rd Portsmouth, NH 03801

"To permit the following":

Separation of contiguous lots in common ownership that do not meet the area requirements of the ordinance into two lots, one with an area of 10,475 square feet where 15,000 square feet is required and the second, with an area of 12,580 square feet where 15,000 square feet is required.

"The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his/her property under the strict terms of the Zoning Ordinance and thus constitutes unnecessary hardship according to Article XIII, Section 10-1302(D)":

Lots were created prior to adoption of zoning, were acquired by separate deeds and are separately assessed. Lots have been in contiguous ownership since 1943 and are both zoned SRB. One lot (Map 166, Lot 52) was used as a commercial office but that use has now lapsed. Applicant wishes to be able to sell this lot as a separate residential lot. Size and configuration of each lot, although larger than most in the neighborhood, is such that each cannot comply with the area requirements of the current ordinance.



ORIGINAL DRAWING BY: A. L. L. B. & S. P. O. S. J. C.
 NEW BRITAIN, CONNECTICUT, 1910.
 REVISED TO SHOW: 1910.



PORTSMOUTH
 NEW HAMPSHIRE

201
 166



57 Thaxter Rd



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PORTSMOUTH
NEW HAMPSHIRE

SCALE 1" = 100'

PROPERTY OF THE CITY OF PORTSMOUTH, NEW HAMPSHIRE
REPRODUCED FROM THE 1950 AERIAL PHOTOGRAPHIC SURVEY
DATE OF SURVEY 1950



CITY OF PORTSMOUTH

Community Development Department
(603) 431-2006, ext. 222

Planning Department
(603) 431-2006, ext. 216

PLANNING DEPARTMENT

May 27, 2004

Orville N. Gupta: Revocable Trust
27 Thaxter Road
Portsmouth, NH 03801

Re: Property at 27 Thaxter Road
Assessor Plan 166 Lots 52 & 39

Dear Gentlemen:

The Board of Adjustment, at its meeting of May 25, 2004, and after due Public Hearing, completed its consideration of your application wherein the following was requested: Variances from Article III, Sections 10-301(A)(4) and 10-302(A) to allow the separation of two lots in common ownership with lot 52 having 10,475 sf and lot 39 having 12,580 sf in a district where the minimum lot area is 15,000 sf.

As a result of this consideration, the Board voted to grant your request as advertised and presented with the following stipulations:

- That the curb cut be located on Thaxter Road.
- That there is no intent to stipulate how the house is oriented.

Stating that the requested Variance would not be contrary to the public interest, the Board spoke to the size of the lots, which would be close to the first and second largest lots on the block. They noted that this was the only vacant lot in an otherwise, fully developed neighborhood, and they saw no benefit to leaving it vacant. They felt it would also be in the public interest to demolish an unattractive commercial building on the edge of the lot.

The Board felt that special conditions exist in the fact that there is a vacant unusable building on the lot. The lot is located in an area that is commercial in part, and abuts a residential area with small lots.

For this particular neighborhood, the Board felt that literal enforcement of the Ordinance would result in unnecessary hardship. They saw no advantage to retaining the lots as vacant and

unbuildable; and, stated that no one had spoken in terms of injury to either public or private rights.

They stated that the requested Variance was consistent with the spirit of the Ordinance as it would provide housing in this residentially zoned area. They stated that substantial justice would be done, as there is a good use to which this property could be put. They felt there were no detrimental factors in making its use residential and that justice would be done to the owner in regards to the fact that the two lots have been taxed separately as buildable lots.

They felt that granting the Variance would not diminish the value of surrounding properties and noted a letter from a realtor to that effect.

Prior to the issuance of a building permit, the Building Inspector will need to review and approve construction drawings/sketches. Contact the Inspector at 603-431-2006, ext. 243 between the hours of 8:30 – 10:00 a.m. Applicants should note that other approvals may also be required from other Committees and/or Boards prior to the issuance of a Building Permit.

The minutes and tape recording of the meeting may be reviewed in the Planning Department.

Very truly yours,

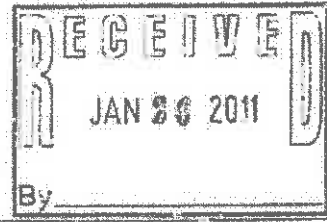


Charles A. Le Blanc, Chairman
Board of Adjustment

CAL/jac

cc: Richard A. Hopley, Building Inspector
Charles A. Griffin, Esq.

CITY OF PORTSMOUTH Board of Adjustment Application



Department Use Only	Assessor Plan # <u>166</u>	Lot # <u>39</u>	Date <u>1-23-11</u>
Zone <u>SRB</u>	Lot area _____	Fee <u>\$ 75.00</u>	By <u>1826 - Jeffrey Jones</u>

Fill in below by printing in ink or typing / Complete all Blanks or indicate "N/A" if not applicable

Owner <u>KIETH & MAUREEN TONG</u>	Applicant <u>SAME</u>
Owner address <u>27 THAXTER RD.</u>	Applicant address <u>SAME</u>
Owner phone <u>(603) 501-9858</u> ext. _____	Applicant phone () <u>SAME</u> ext. _____
Owner Fax <u>N/A</u>	Applicant Fax <u>N/A</u>
Lessee <u>N/A</u>	Lessee address <u>N/A</u>
Lessee phone <u>N/A</u>	Lessee Fax <u>N/A</u>

Location address of work: 27 THAXTER RD.

Existing use: SINGLE FAMILY RESIDENTIAL

Undersigned hereby requests:

	Article	Section
<input type="checkbox"/> Appeal from an Administrative Decision	_____	_____
<input type="checkbox"/> Special Exception	_____	_____
<input checked="" type="checkbox"/> Variance	_____	_____

To permit the following:
ALLOW FOR AN ADDITION TO BE BUILT 6" OVER THE SIDE SETBACK LINE AND AN ENTRY PORCH TO EXTEND 3'-6" OVER THE REAR SETBACK.

The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his/her property under the strict terms of the Zoning Ordinance and thus constitutes unnecessary hardship according to Article XIII, Section 10-1302(D):
PLEASE SEE ATTACHED

Only complete applications will be accepted by the deadline date. A complete application shall consist of: a completely filled out application, the application fee and 12 packets each containing: site and building/floor plans (8 1/2" x 11")* and any supporting data, letters or photos. Incomplete applications will not be accepted. The Board may allow evidence to be submitted at the time of the Public Hearing. Applications received after the deadline will be scheduled for the following month. The owner or his/her representative is required to attend the Public Hearing for the above appeal.

*11" x 17" plans maybe used only if 8 1/2" x 11" plan would not be readable.

Signature of Owner

1/26/2011
Date

more than one drive-through lane is permitted for each 5,000 sf of gross floor area of the principal use that it serves.

After consideration, the Board voted to deny the petition as presented and advertised. All the criteria necessary to grant a variance were not met. No hardship inherent in the land was found and it was determined that the spirit of the Ordinance, which is intended to implement the goals and objectives of the Master Plan, would not be observed.

4) Case # 2-4

Petitioners: Kieth & Maureen Tong

Property: 27 Thaxter Road

Assessor Map 166, Lot 39

Zoning district: Single Residence B

Description: To construct an addition on the rear and right side of the structure.

Requests: Variance from Section 10.321 to allow the expansion of a nonconforming structure.

Variance from Section 10.521 to allow a left side yard of 9' where 10' is required.

Variance from Section 10.521 to allow a rear yard of 26' where 30' is required.

After consideration, the Board voted to grant the petition as presented and advertised for the following reasons:

- There appears to be no public interest that would argue against granting these variances and the immediate abutters have presented their support.
- The spirit of the Ordinance would be observed as, due to the special conditions of the property, there is no way to expand the home without a variance and the relief requested is minimal.
- No evidence was presented to indicate that the value of surrounding properties would be diminished and the project has the support of the neighbors.
- The house is set in an inconvenient location on the lot and, without moving it, using the house to its fullest potential would not be possible without a variance.

5) Case # 2-5

Petitioners: Belcher Market Realty, LLC, , owner, & Donna Kelly, applicant

Property: 23 Ceres Street

Assessor Map 106, Lot 41

Zoning district: Central Business A

Description: To construct a sign projecting over the sidewalk 39" where 27" is allowed.

Request: Variance from Section 10.1253.50 to allow a projecting sign to project more than one-third the width of the sidewalk.

After consideration, the Board voted to grant the petition as presented and advertised for the following reasons:

- It will not be contrary to the public interest to attract passersby to the business.



LAW OFFICES

**BOYNTON WALDRON DOLEAC
WOODMAN & SCOTT, P.A.**

CHARLES B. DOLEAC*†
RALPH R. WOODMAN, JR.
WILLIAM G. SCOTT
FRANCIS X. QUINN, JR.*
CHRISTOPHER E. GRANT*†△
CHRISTINE WOODMAN CASA*
PHILIP L. PETTIS
CHRISTOPHER J. FISCHER
MICHAEL H. DARLING †

82 COURT STREET
PORTSMOUTH, NEW HAMPSHIRE 03801
TELEPHONE (603)436-4010
FAX (603)431-9973

www.boyntonwaldron.com

JEREMY R. WALDRON
(1921-2012)

WYMAN P. BOYNTON
(1908-1997)

* ALSO MEMBER OF MAINE BAR
† ALSO MEMBER OF MASSACHUSETTS BAR
△ ALSO MEMBER OF VERMONT BAR

HAND DELIVERED
December 11, 2019

City of Portsmouth
Attn: Kelli Barnaby, City Clerk
1 Junkins Avenue
Portsmouth, NH 03801

RE: Jennings Memorandum on Remand to City Council

Dear Ms. Barnaby:

Enclosed are an original and five (5) copies of the Jennings Memorandum on Remand to the City Council – which I understand will be reviewed by the City Council Members prior to the December 16, 2017 Remand Hearing.

I am sending copies of this to Attorney Sullivan and Attorney Mulligan by email today.

Please contact me at r.woodmanjr@comcast.net with any questions. (I've got a bad cold and don't expect to go back to work today).

Very truly yours,



Ralph R. Woodman, Jr.

RRW/jcd

Enclosures

Cc: Robert Sullivan, Esquire
Christopher Mulligan, Esquire

**JENNINGS MEMORANDUM
ON
REMAND TO CITY COUNCIL**

Kenneth and Deborah Jennings (owners of the home at 63 Thaxter Road and direct abutters to the property at 27 Thaxter Road) submit this Memorandum on the Remand by the Zoning Board of Adjustment (ZBA) to the City Council.

This Remand, as stated by the Planning Department in its letter of October 28, 2019, was voted by the ZBA in order to allow the Council

"..to **consider new information** that was not originally available."

As you will see, this information was "NEW" because neither Mr. Callihan nor the Planning Department staff had previously made it available to the Council.

THE LAW

Under certain circumstances, RSA 674:39-a allows for the "restoration of involuntarily merged lots."

This "restoration" has restrictions under the statute and is not allowed by the City Council if the owner of the lot – or **any previous owner of the property**

"..voluntarily merged his or her lots."
674:39 a II (b), with

a "voluntary merger" being defined by the statute as "**any overt action or conduct** that indicates an owner regarded said lots as merged such as, but not limited to, abandoning its lot line." RSA 674:39-a II (b).

The statute states that in the event that **anyone** who owned the lots in question **at any time** (being the property now known as 27 Thaxter Road) voluntarily merged them, then

"all subsequent owners shall be estopped from requesting restoration" RSA 674:39-a II (b).

Although there is not a great deal of NH Supreme Court cases on the subject in Roberts v. Windham, 165 NH 186 (2013) the Court said the Town properly considered

"the use of the property in its entirety" p. 193
in determining whether a voluntary merger had occurred.

Also, Newbury v. Landrigan 165 NH 236 (2013) was a case involving "voluntary merger" issues.

In Newbury the Court recognized as a factor (in determining whether "any overt action or conduct" a voluntary merger had occurred) that the owners

"treated the property as a single lot when they applied to the
Town for building permits" at 241

So the issue in this matter is has "any overt action or conduct (occurred) that indicates the owner (of the lots at 27 Thaxter) regarded said lots as merged"?

As you will see, 27 Thaxter Road and Lots 44, 45 and a portion of 46 were **created** as a single lot by the action or conduct of the owners in 2004.

As you will also see, the Newbury case is the same way that earlier owners (Tong and Healy) treated 27 Thaxter Road in 2011.

**HISTORY OF 27 THAXTER ROAD
WHAT LOTS MAKE UP 27 THAXTER ROAD?
(CURRENTLY OWNED BY CHAD CALLIHAN)**

By letter dated February 21, 2019 to the City Council, counsel for Chad Callihan stated that "... between 1972 and 1988... the City involuntarily merged the lots into a single unified lot for tax purposes."

"The lots" which now are called and known as 27 Thaxter Road (Callihan's property) are:

- 44
- 45
- A part of 46 (30 ft. frontage on Thaxter)

all originally shown on an old Plan of Westfield Park (Attached as "A"), with these lots surrounded in green on Attachment A.

In total, these lots today (27 Thaxter Road) contain approximately 12,850 square feet of area and 130 feet of frontage on Thaxter Road.

Chad Callihan now seeks to unmerge a "lot" with only 30 feet of frontage on Thaxter Road and 100 feet deep. This "lot" was formerly known – prior to its merger- as a portion of Lot 46. This is **NOT** the entire original Lot 46, just a portion that is only 30 feet wide.

Prior to 2004, four and one-half (4.5) lots on the Plan of Westfield Park, being lots 42, 43, 44, 45 and a portion of Lot 46 had been merged into **one lot** owned by one owner (Guptill). The lots contained the Guptill residence on Thaxter and Portsmouth's famous "False Tooth Building" on Islington street (where Mr. Guptill worked).

These 4.5 lots are all shown surrounded in red on Attachment A as being on both Thaxter Road and Islington Street, which were considered as one lot by the City until 2004.

NEW INFORMATION

When a person takes a careful look at the Registry of Deeds, ZBA historical records and records available at City Hall, they clearly show that owners of 27 Thaxter Road before Chad Callihan took "action or conduct" which shows that they regarded the lots which comprise 27 Thaxter Road (being Lots 44, 45, and a portion of Lot 46) as "merged."

NONE of this information was disclosed by the Applicant or the Planning Department to the City Council, the City Manager, Planning Board, or ZBA.

In summary, these actions or conduct by the previous owners are:

1. In 2004, the owner (Guptill at that time) of lots 42, 43, 44, 45 and a portion of 46 (which were merged together **as one** single lot at the time – this one lot is surrounded in red on Attachment A), petitioned the ZBA for a variance in order to create **two separate lots** to allow the separation of one lot into two lots with one home on each lot and the two separated lots becoming:
 - a. Lot 52, having 10,475 square feet and known as 17 Thaxter Road (previously Lots 42 & 43 – surrounded in black); and
 - b. Lot 39 having 12,580 square feet and known as 27 Thaxter Road (previously Lots 44 & 45 and a portion of Lot 46 surrounded in green).

(See ZBA Agenda attached as Attachment B.)

As a result of the actions of the prior owner (Guptill), Lots 44, 45 and a part of Lot 46 were then merged to become **ONE LOT** (Lot 39 with 12,580 square feet and 130 feet of frontage on Thaxter Road) which is the **exact same property** Chad Callihan owns today which is known as 27 Thaxter Road (surrounded in green).

Lots 42 and 43 were then merged to become a separate single lot (Lot 52) with 10,475 square feet and known today at 17 Thaxter Road (surrounded in black).

IN OTHER WORDS, IT IS CLEAR THAT THE SINGLE LOT KNOWN AS 27 THAXTER ROAD WAS CREATED AS A SINGLE LOT IN 2004 AS A RESULT OF THE ACTIONS OF THE OWNERS AT THAT TIME BEFORE THE ZBA. THE "ACTIONS" OF THE THEN OWNER (GUPTILL) WERE SIMPLE AND STRAIGHTFORWARD, HE ASKED THAT 27 THAXTER ROAD (FORMERLY LOTS 44, 45 AND A PORTION OF LOT 46) BE CREATED AS A **SINGLE LOT**, WITH LOTS 43 AND 44 AS A SECOND SINGLE LOT.

The May 27, 2004 ZBA letter to the then owner (Attachment C) confirmed that the owner's request to allow for the creation of a single lot (formerly Lots 44, 45 and a portion of Lot 46) at 27 Thaxter Road was allowed at the ZBA meeting of May 25, 2004.

2. In 2011, the then owners of 27 Thaxter Road (a single separate lot created in 2004) filed a ZBA Application for a lot-line variance. This was requested by the owners at the time – Tong and Healy.

As part of that application they filed an Existing Site Plan dated January 17, 2011 with the ZBA.

This site plan, filed for the owners, clearly showed the entirety of 27 Thaxter Road as a **SINGLE LOT**.

In addition the owners representing to the City that lots 44, 45 and a portion of lot 46 = 27 Thaxter Road were a **SINGLE LOT**, that "Existing Site Plan" shows a single fence around the perimeter of the single lot. (See existing Site Plan for 27 Thaxter Road attached as Attachment D.) This is the same voluntarily merged single lot surrounded in green on Attachment D as was created and surrounded in green on Attachment A.

This white picket fence around the perimeter of the entirety of 27 Thaxter Road is also shown in pictures which were presented to the ZBA, but not able to be shown here due to "page restriction" for this Memo.

The facts as stated in this Section are all **new information** which had not previously been known to the City Council, Planning Board or ZBA.

If this information had been known, you'd think that the Planning Department staff would have mentioned it in its memo – which it did not.

PRIOR CITY COUNCIL AND PLANNING DEPARTMENT ACTION

The City Council referred Chad Callihan's earlier request to unmerge a portion of 27 Thaxter Road (the small 30 foot x 100 foot area) to the Planning Board.

The Planning Department staff did a memo on the request, but neither the acts by prior owners of 2004 or 2011 are referred to in the report.

The City Council was **not informed** of the 2004 and 2011 actions as stated in the above New Information Section prior to the time of the Council's May 20, 2019 6-3 vote to unmerge the lots.

The City Council was not informed of the actions in 2004 and 2011 by the applicant, the Planning Department or otherwise.

It is possible the Planning Department did not find the minutes of the May 25, 2004 meeting due to them being wrongly filed and therefore missing on the website.

REMAND

In any event, we now know what occurred with 27 Thaxter Road property in 2004 and 2011, including how Lots 44, 45 and a portion of Lot 46 were created as a single lot known as 27 Thaxter Road at the request of the owner in 2004 and thereafter continue to be treated as a single lot by subsequent owners.

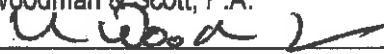
This is the "new information" as referred to in the October 18, 2019 letter from the ZBA.

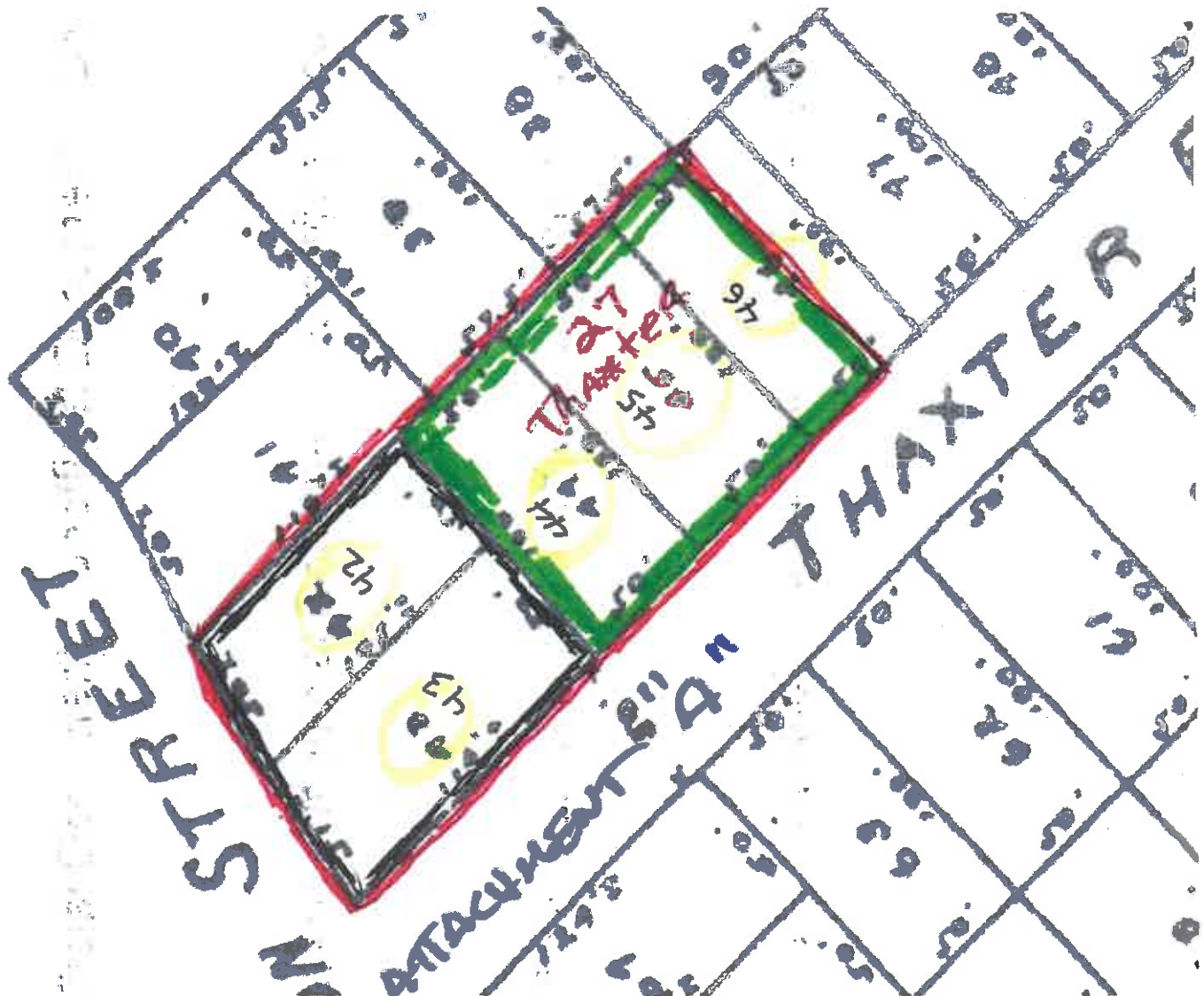
The City Council now has the opportunity to correct its decision on this matter based on facts now known to it, by denying Chad Callihan's request to unmerge his property, which RSA 674-39 a II (B) requires.

Kenneth and Deborah Jennings
By: Boynton, Waldron, Doleac,
Woodman & Scott, P.A.

Dated: December 11, 2019

By:


Ralph R. Woodman, Esquire
82 Court Street • Portsmouth, NH 03801
603.436.4010



ATTACHMENT
B

AGENDA, Board of Adjustment, May 18 & May 25, 2004

THE FOLLOWING PETITIONS WILL BE HEARD ON TUESDAY,
MAY 25, 2004

I. PUBLIC HEARINGS

10) Petition of Orville N. Gupta Revocable Trust, owners, for property located at 27 Thaxter Road wherein Variances from Article III, Sections 10-301(A)(4) and 10-302(A) are requested to allow the property to be in common ownership with lot 52 having 10,475 sf and lot 39 having 12,580 sf where the minimum lot area is 15,000 sf. Said property is shown on Assessor Plan 166 as Lots 52 & 39 and lie within the Single Residence B district. Case # 5-8A



CITY OF PORTSMOUTH

Community Development Department
(603) 431-2006, ext. 232

Planning Department
(603) 431-2006, ext. 216

PLANNING DEPARTMENT

ATTACHMENT
C

May 27, 2004

Orville N. Gupta Revocable Trust
27 Thaxter Road
Portsmouth, NH 03801

Re: Property at 27 Thaxter Road
Assessor Plan 166 Lots 52 & 39

Dear Gentlemen:

The Board of Adjustment, at its meeting of May 25, 2004, and after due Public Hearing, completed its consideration of your application wherein the following was requested: Variances from Article III, Sections 10-301(A)(4) and 10-302(A) to allow the separation of two lots in common ownership with lot 52 having 10,475 sf and lot 39 having 12,580 sf in a district where the minimum lot area is 15,000 sf.

As a result of this consideration, the Board voted to grant your request as advertised and presented with the following stipulations:

- That the curb cut be located on Thaxter Road.
- That there is no intent to stipulate how the house is oriented.

Stating that the requested Variance would not be contrary to the public interest, the Board spoke to the size of the lots, which would be close to the first and second largest lots on the block. They noted that this was the only vacant lot in an otherwise, fully developed neighborhood, and they saw no benefit to leaving it vacant. They felt it would also be in the public interest to demolish an unattractive commercial building on the edge of the lot

The Board felt that special conditions exist in the fact that there is a vacant unusable building on the lot. The lot is located in an area that is commercial in part, and abuts a residential area with small lots.

For this particular neighborhood, the Board felt that literal enforcement of the Ordinance would result in unnecessary hardship. They saw no advantage to retaining the lots as vacant and unbuildable; and, stated that no one had spoken in terms of injury to either public or private rights.

They stated that the requested Variance was consistent with the spirit of the Ordinance as it would provide housing in this residentially zoned area. They stated that substantial justice would be done, as there is a good use to which this property could be put. They felt there were no detrimental factors in making its use residential and that justice would be done to the owner in regards to the fact that the two lots have been taxed separately as buildable lots.

They felt that granting the Variance would not diminish the value of surrounding properties and noted a letter from a realtor to that effect.

Prior to the issuance of a building permit, the Building Inspector will need to review and approve construction drawings/sketches. Contact the Inspector at 603-431-2006, ext. 243 between the hours of 8:30 - 10:00 a.m. Applicants should note that other approvals may also be required from other Committees and/or Boards prior to the issuance of a Building Permit.

The minutes and tape recording of the meeting may be reviewed in the Planning Department.

Very truly yours,



Charles A. Le Blanc, Chairman
Board of Adjustment

CAL/jac

cc: Richard A. Hopley, Building Inspector
Charles A. Griffin, Esq.



PRESS RELEASE

March 10, 2020

City Department of Public Works Hosts Public Information Meeting On Market Street Pedestrian Bridge

PORTSMOUTH, NH – A Public Information Meeting will take place on March 25, 2020 at 6 p.m. at the Osprey Landing Community Center, 10 Sanderling Way in Portsmouth to discuss plans for the Market Street Pedestrian Bridge at Portsmouth Boulevard.

Last summer, the Department of Public Works completed a detailed engineering inspection of this bridge as part of the City’s bridge maintenance program. The Market Street Pedestrian Bridge was previously identified as a priority candidate for preventative maintenance measures. The purpose of the meeting on March 25th is to gauge public interest in maintaining the bridge versus removing and replacing it with a signalized, “at-grade” pedestrian crossing.

This bridge is among the projects included in the City’s Bridge Capital Improvement Program. All City bridges are inspected by the New Hampshire Department of Transportation (NH-DOT), at a minimum, once every two years. Those determined to need work are prioritized as “red-listed bridges” and are inspected by NH-DOT annually, and closed if deemed unsafe.

The City is currently accepting bids for the Market Street and Kearsarge Way Bridge Repair Project which is anticipated to begin construction this spring. For more information on this project or to provide comments on the Market Street Pedestrian Bridge, contact Ryan Flynn, Construction Project Coordinator, at 603-766-1413 or raflynn@cityofportsmouth.com.

FY 19 CONTRACTS OVER \$10,000.00 See notes

36 purchases/
154 Contracts/
Amendments/
Change Orders

Vendor Name	Notes	Amount	
Dragon Mosquito Control, Inc.	ANNUAL MOSQUITO CONTROL SERVICES	\$77,000.00	Contract
Atlas Pyrovision	JULY 3RD FIREWORKS, CELEBRATING THE 4TH OF JULY	\$ 25,000.00	Contract
HONEYWELL	HVAC SERVICES AGREEMENT 7/1/18 TO 6/30/19 FIRE DEPT	\$ 31,325.00	Contract
HONEYWELL	HVAC SERVICES FOR FY 19: CITY HALL, LIBRARY, DPW, SPINNAKER, INDOOR POOL, PEASE WWTF & PUMPSTATIONS	\$ 161,805.00	Contract
CMA	RFP 05-18 RECYCLING CENTER/TRANSFER STATION DESIGN SERVICES	\$ 196,500.00	Contract
VHB	MS4 ASSISTANCE	\$ 23,900.00	Contract
Wentworth Senior Living	Q1 SENIOR TRANSPORTATION SERVICES 7/1/18 TO 9/30/18	\$ 40,750.00	Contract
Hoyle, Tanner	CAPITAL OUTLAY - BRIDGE MASTER PLAN	\$ 48,924.00	Contract
Harvey Const.	CO#4 CITY HALL FACADE REPLACEMENT AND ADDITION	\$ 22,916.10	Change Order
Hart Plumbing & Heating	INSTALLATION OF NEW BOILER IN CONTROL BUILDING @ PEASE WWTF	\$ 12,000.00	Contract
COAST	PARKING SHUTTLE SERVICES: JULY - SEPT. 3, 2018	\$ 17,459.36	Contract
Southeast Land Trust	OLSON CONSERVATION EASMENT - SELT SERVICES	\$ 33,130.00	Contract
Energy Efficient Investments, Inc.	RFP#25-13 DONDERO SCHOOL PHASE II	\$ 4,980,000.00	Contract
ElephantPlay	DONDERO SCHOOL PLAYGROUND EQUIPMENT: AN1303, LARGE DOME, RINGS, STEPPING STONES, CROSS BARS, ETC., SCHOOL, DONDERO PTA & CH WILL EACH PAY 1/3	\$ 29,092.50	Contract
Harvey Const.	CO#3 CH FACADE REPLACEMENT AND ADDITION, BID 37-17 ADDITIONAL COST FOR REMOVAL OF HAZARDOUS MATERIAL UNCOVERED IN EXISTING EXTERIOR MANSORY CAVITY WALL CONSTRUCTION	\$ 27,382.33	Change Order
Kofile Technologies	PRESERVATION, SCANNING OF MICROFILM AND DIGITAL (PDF) AS WELL AS SHIPPING	\$ 43,345.00	quote/purchase order
Kofile Preservation	RECORDS PRESERVATION PROJECT: 35MM SECURITY FILM, SCAN PDF, SHIPPING & HANDLING	\$ 43,775.00	quote/purchase order
Methuen Construction Co., Inc.	CONTRACT SERVICES: RFP 55-17 FOR PEASE FACILITIES IMPROVEMENTS TO INCLUDE ROOF REPAIRS, INSTALLATION OF NEW DOORS & NEW PIPING	\$ 29,754.00	Contract
Hach	HACH WIMS & CLAROS COLLECT SOFTWARE	\$ 10,030.00	

Maxxam Analytics	13 LABORATORY ANALYSES FOR PFAS, PEASE DEMONSTRATION PROJECT FILTERS FOR HARRISON & SMITH WELLS	\$ 22,750.00	
NRC East Environmental	CO#1 OSPREY LANDING WATER TANK REMEDIATION - BALANCING CHANGE ORDER	\$ 22,543.43	Change Order
Bergeron Protective	18 157LMB GLOBE GXT 3.0 JACKET, 18 157LMB GLOBE JACKETS, 18 H57LMB GLOBE IH HARDNESS READ PANT AGILITY, DARK GOLD & SHIPPING AND HANDLING	\$ 50,111.06	purchase
Consigli Const. Co., Inc.	RFP 26-17 FOUNDRY PLACE GARAGE CO#7	\$ 58,415.80	Change Order
Portsmouth Sign	FOUNDRY PLACE WAYFINDING SIGNS	\$ 14,901.00	Contract
Affinity LED Lighting	OUTDOOR LED LIGHTING CONVERSION	\$ 11,712.00	
Pike Industries	CO#2 2018 ANNUAL PAVING: RESURFACING OF ISLINGTON FROM DOVER ST. TO MAPLEWOOD AVE.	\$ 130,800.00	Change Order
John Lyman & Sons	CO#1 PLEASANT STREET RECONSTRUCTION	\$ 127,860.00	Change Order
John Lyman & Sons	CO#2 PLEASANT STREET RECONSTRUCTION - (ADD ALT#1)	\$ 147,379.00	Change Order
Russell Resources	FOURNIER PRESS LEASE FOR PI WWTF (YEAR 3)	\$ 59,700.00	Contract
Motorola Solutions	10 All Band Portable Radios	\$ 50,550.30	purchase
Power Line Industries	Hydro-Jetter, Trailer Mounted HJ2TA103850	\$ 29,595.00	purchase
SUR Construction	RFP#36-18, Installation of Sewer on Green Street	\$ 271,081.50	Contract
Consigli Const. Co., Inc.	RFP#26-17 Foundry Place CO#8	\$ 60,482.88	Contract
Aulson Company, Inc.	City Hall Roof Repair	\$ 56,150.00	Contract
CAT Milton, Inc.	Refurbish Grader	\$ 23,000.00	purchase
Underwood	PEASE WASTEWATER TREATMENT FACILITY - ANTI-DEGRADATION WATER QUALITY SAMPLING	\$ 183,450.00	Contract
John Lyman & Sons	McDonough Street Project, Phase 4 Hanover Street Area	\$ 1,728,400.00	Contract
Halverson Design Partnership	RFP#61-18 North Mill Pond Trail and Greenway	\$ 74,065.00	Contract
Melanson Heath & Co., PC	FY 19 YEARLY AUDIT	\$ 71,785.00	Contract
Greenwood Emergency Vehicles	REPLACE LEFT AND RIGHT FRAME RAILS WITH NEW GALVANIZED RAILS	\$ 50,855.00	purchase
Gronk Fitness	Bid 14-19 Police Dept. Fitness Equipment	\$ 23,971.45	purchase
Axis Business Solutions	1 MICROSOFT EXCHANGE SERVICER 2016 STANDARD 766.32 LICENSE - 1 PC LOCAL GOVERNMENT - MOLP OPEN LICENSE FOR GOV. ENGLISH PC, 375 MICROSOFT WINDOWS SERVER 2016 LICENSE 1 USER CAL-VOLUME, LOCAL GOV. MICROSOFT OPEN LICENSE FOR GOV. USE - ENGLISH PC	\$ 15,646.50	Contract

Axis Business Solutions	16 MICROSOFT WINDOWS SERVER 2016 STANDARD LICENSES 2 CORE-VOLUME LOCAL GOVERNMENT MICROSOFT OPEN LICENSE FOR GOVERNMENT - ENGLISH PC ,375 MICROSOFT WINDOWS SERVER 2016 STANDARD LICENSES 1 USER CAL - VOLUME LOCAL GOVERNMENT MICROSOFT OPEN	\$ 10,958.00	Contract
Velocity Dynamics DBA Velodyne	VELOBLEND POLYMER SYSTEM	\$ 16,767.00	
MAC Construction	STARK STREET SIDEWALK AND SEWER SEPARATION	\$ 63,900.00	Contract
CMA	MULTI-PURPOSE RECREATION FIELDS-ENGINEERING, DESIGN, PERMITTING - 680 PEVERLY HILL ROAD	\$ 328,000.00	Contract
HP Fairfield	2 SIDEWALK TRACTORS: REPLACE P70 & P71, REBUILT TRACKLESS MT57	\$ 247,900.00	purchase
ByWater Solutions	ANNUAL SUPPORT \$19,400.00 AND ANNUAL HOSTING \$2000.00	\$ 21,400.00	Contract
Calgon Carbon	PEASE WELL CARBON FILTER REPLACEMENT - 40,000 LBS OF VIRGIN F400 GAC	\$ 57,600.00	
Walker Parking	FOUNDRY PLACE GARAGE CONSTRUCTION ADMIN. SERVICES	\$ 259,179.25	Contract
Underwood Engineers	ENGINEERING SERVICES - CONSTRUCTION PHASE ENG. (BIDDING ONLY) ISLINGTON ST. RECONSTRUCTION/PHASE I	\$ 39,800.00	Contract
Outerbanks Enterprise	FIRE STATION II WATERPROOFING	\$ 12,000.00	
Nicom Coatings	Bid 18-19 Pavement Crack Sealing	\$ 47,009.55	Contract
Portsmouth Housing Authority	PUBLIC FACILITIES IMPROVEMENTS - PLAYGROUND IMPROVEMENTS AT GOSLING MEADOWS	\$ 50,000.00	Contract
Portsmouth Housing Authority	PUBLIC FACILITIES IMPROVEMENTS - PLAYGROUND IMPROVEMENTS WAMESIT	\$ 50,000.00	Contract
WHB Concert & Production Services	RFP 15-19 PHS AUDITORIUM SOUND SYSTEM	\$ 100,000.00	Contract
Harvey Const.	CO#6 BID 37-17 CITY HALL FACADE REPLACEMENT AND ADDITION	\$ 24,554.61	Change Order
Harvey Const.	CO#7 BID 37-17 CITY HALL FACADE REPLACEMENT AND ADDITION	\$ 62,446.30	Change Order
Electric Light Company	Middle St. Bike Lanes	\$ 13,252.00	Contract
H.L. Patten Const. Co., Inc.	CO\$5 REPLACE STAIRS AND REARD DECK AT FIRE STATION I	\$ 38,500.00	Change Order
Allied Equipment LLC	SNOQUIP SIDEWALK BLOWER ATTACHMENT TO TRACKLESS TRADE IN INCLUDED (\$2500.00)	\$ 18,382.00	purchase
Motorola Solutions	4 PORTABLE, 3Y ESSENTIAL SERVICE, 4 ASTRO DIGITAL CAI OPERATION, 4 T: IMPACT GREEN HOUSING, 4 RUGGED RADIO, 4 CONVENTIONAL OPERATION, 4 AUDITO ACCESSORY REMOTE SPEAKER, MICROPHONE, IMPRES XE RSM XT CABLE GREEN	\$ 16,050.32	purchase
Axis Business Solutions	22 LG 34CB88-P 34" LED LCD MONITOR - 21:9-3440 X 1440- UW-QHD SPEAKERS- HDMI - DISPLAY PORT - USB)	\$ 12,936.00	

Axis Business Solutions	22 DELL OPTIPLEX 3000 3060 DESKTOP COMPUTER - INTEL CORE I5 (8TH GEN) I5-8500 3 GHZ - 8 GB DDR4 SDRAM - 256 GB SSD - WINDOWS 10 PRO 64-BIT, (ENGLISH./FRENCH/SPANISH) SMALL FORM FACTOR - DVD WRITER DVD+-R/+RW- INTEL UHD GRAPHICS 630 GRAPHICS - ENGLISH KEYBOARD - HDMI - 8 X TOTAL USB PORT(S)	\$ 14,938.00	
Consigli Const. Co., Inc.	RFP 26-17 CO#9 FOUNDRY PLACE GARAGE	\$ 18,173.77	Change Order
Stantec Consulting Services, Inc.	RATE MODEL UPDATE FOR FY 20 BUDGET	\$ 38,344.00	Contract
Weston & Sampson	AMENDMENT NO. 2, ENGINEERING SERVICES AGREEMENT, PEASE WELL TREATMENT DESIGN SERVICES - REDESIGN FOR RESIN FILTERS	\$ 137,920.00	Amendment/CO
EJ Prescott	50 32" ERGO NON-LOCKING WITH CITY OF PORTSMOUTH LOGO	\$ 26,500.00	purchase
Tangram 3DS	RFQ 50-14 3D MASSING-MODEL PROJECT: DOWNTOWN PORTSMOUTH PROFESSIONAL SERVICES	\$ 49,500.00	Contract
Smarking, Inc.	SMARKING LICENSE - 1 YEAR	\$ 16,306.25	Contract
Adams Equipment Inc.	KSB MULTITECH MTC HORIZONTAL RING SECTION PUMP (DAF RECYCLE) & SHIPPING AND HANDLING	\$ 15,040.00	purchase
Weston & Sampson	PEASE GAC - FILTER CHANGEOUT	\$ 18,800.00	Contract
Methuen Const. Co., Inc.	PEASE FACILITIES IMPROVEMENTS: PART OF RFP 55-17 RFP 17-17, TRENCHING, INSTALLING A DUCT BANK WITH NEW CHLORINE LINES AND PAVING	\$ 16,850.00	Contract
Ransom Consulting, Inc.	JONES AVENUE LANDFILL MONITORING 2018-2019 (FOR GROUNDWATER PERMIT GMP-198404087-P-005)	\$ 17,700.00	Contract
Underwood Engineers	PEASE WWTF HYDRAULIC ANALYSIS	\$ 15,500.00	Contract
Irwin Automotive Group	W127 2018 FORD EDGE, FY ROLLING STOCK BUDGET, BID 55-18	\$ 28,929.00	purchase
Coast NDT	FY 19 SENIOR TRANSPORTATION SERVICES (9 MONTHS)	\$ 122,250.00	Contract
Timothy Nichols/AEM, LLC	CO#4 PROFESSIONAL ARCHITECTURE SERVICES: DOBLE REUSE DESIGN WORK - ASBESTO SAMPLING, ABATEMENT PLAN AND MONITORING & TEST,	\$ 40,900.00	Change Order
Ransom Consulting, Inc.	FOUNDRY PLACE PARKING GARAGE CONSTRUCTION ENVIRONMENTAL CONSULTING SERVICES	\$ 44,250.00	Contract
HDR Inc.	PEASE WWTF DO SAG MODEL	\$ 38,000.00	Contract
HDR, Inc.	PEASE WWTF DYE STUDY SIMULATION MODEL	\$ 103,300.00	Contract
Brown & Caldwell	CONCEPTUAL REGIONAL DIGESTER EVALUATION	\$ 49,975.00	Contract
Harvey Construction	CO#8 BID 37-17 CITY HALL REPLACEMENT AND ADDITION	\$ 88,156.28	Change Order

American Parks Company	4 BA6Y 8' ARCH 5" SWING FRAME SAFETY USE ZONE: 60'X32' SAFETY USE INCLUDES 4 SII-AP00024XX FULL BAY PKG WITH SEATS, CHAINS AND HARDWARE FOR DONDERO SCHOOL PLAYGROUND, PROFESSIONAL INSTALLATION: DOES NOT INCLUDE SITE PREP, REMOVAL OR PERMITTING, SHIPPING AND HANDLING	\$ 11,860.65	Contract
CMJ Construction, Inc.	REMOVE AND REPLACEMENT OF DAMAGED/WORN PARTS AT NEW FRANKLIN SCHOOL,. PER GAMETIME QUOTE: 14413, REMOVE AND DISPOSAL OF EXISTING PARTS, INSTALL NEW PARTS	\$ 14,750.00	
Gametime	NEW FRANKLIN DECK REPlacements. SEE HARDCOPY OF PURCHASE ORDER FOR DETAILS	\$ 42,516.98	Contract
Oak Point Associates	RFP 78-18 PEIRCE ISLAND POOL HOUSE & POOL UPGRADES DESIGN SERVICES	\$ 87,000.00	Contract
Weston & Sampson, CMR Inc.	PORTSMOUTH WELL #1 LINER SCREEN INSTALLATION	\$ 29,914.00	Contract
Terra Firma Landscape Architecture	RFP 23-19 PROFESSIONAL DESIGN, LANDSCAPE ARCHITECTURE AND ENGINEERING SERVICES FOR ROCK ST. PARK REHAB	\$ 31,500.00	Contract
Riverside Marine Construction	REPAIRS ON NORTH DOCKS AT PRESCOTT PARK	\$ 37,275.00	Contract
Lavalee Brensinger	CITY HALL NORTH FACADE REPLACEMENT: ADDITIONAL WEEKLY AND MONTHLY SITE VISITS	\$ 50,000.00	Contract
Methuen Const. Co., Inc.	CO#1 BID 38-18 NEWINGTON BOOSTER PUMP STATION UPGRADES	\$ 29,740.14	Change Order
Maxxam Analytics	13 LAB ANALYSES FOR PFAS, PEASE DEMONSTRATION PROJECT FILTERS FOR HARRISON AND SMITH WELLS	\$ 22,750.00	purchase
Organic Disposal	YARD WASTE REMOVAL FROM OUR RECYCLING FACILITY, \$847.00 PER LOAD NOT TO EXCEED 20 LOADS \$16940.00	\$ 16,940.00	purchase
Harvey Construction	CO#9 CITY HALL FACADE REPLACEMENT AND ADDITION; BID 37-17	\$ 42,915.58	Change Order
Emery & Garrett	TEST WELL STUDY	\$ 200,000.00	Contract
MAC Construction	TASK ORDER CONTRACT, PART OF RFP 36-18	\$ 11,815.00	Contract
Wright Pierce	RFP 69-18 SUBAQUEOUS PIPELINE(S) - EVALUATION PHASE DPN#1155	\$ 113,300.00	Contract
Probuilt Designs, LLC	INSTALLATION OF ONE (1) LARGE ROPE DOME ELEPHANT PLAY (ITEM#AN-1303) AT DONDERO ELEMENTARY SCHOOL	\$ 16,500.00	
SUR Construction	GREEN ST. SEWER PROJECT CHANGE ORDER#1	\$ 47,817.00	Change Order
Methuen Const. Co., Inc.	CO#2 NEWINGTON BOOSTER PUMP STATION UPGRADES	\$ 15,522.00	Change Order
AECOM	JOBCAL IMPLEMENTATION	\$ 40,000.00	Contract
Steve Whitman/Resilian Planning & Design	RFP 13-19 OPEN SPACE PLAN	\$ 49,830.00	Contract

Greenwood Emergency Vehicles	E-ONE CUSTOM STAINLESS STEEL BODY PUMPER TRUCK	\$ 549,825.00	purchase
Organic Disposal	YARD WASTE REMOVAL FROM RECYCLING CENTER	\$ 16,940.00	Contract
Methuen Const. Co., Inc.	CO#6 PI WWTF UPGRADE CONSTRUCTION	\$ 292,031.11	Change Order
Allied Equipment LLC	SNOQUIP XX-51 - HEAVY DUTY SIDEWALK BLOWER LESS TRADE-IN \$18980.00	\$ 18,980.00	purchase
Stantec Consulting Services, Inc.	CO#1 Pease WWTF Headworks Const. Phase Engineering Services, RFP 52-14	\$ 19,211.00	Change Order
Oak Point Associates	ELECTRICAL STUDY PROPOSAL, CITY HALL	\$ 26,450.00	Contract
VHB	MS4 ASSISTANCE CO#1	\$ 55,330.00	Change Order
Weston & Sampson	PEASE GRAFTON ROAD DRINKING WATER TREATMENT PLANT UPGRADE, ENGINEERING SERVICES AGREEMENT, CONSTRUCTION PHASE	\$ 1,600,000.00	Contract
Walker Parking	FOUNDRY PLACE ADDITIONAL CONSTRUCTION ADMINISTRATION	\$ 27,500.00	Contract
Walker Parking	FOUNDRY PLACE GARAGE, CONSTRUCTION ADMIN. PILE DRIVING	\$ 39,000.00	Contract
Zagster, Inc.	BIKE SHARE PROGRAM 8 STATIONS @ 9000.00 PER STATION	\$ 72,000.00	Contract
Creative Repairs	FURNISH AND INSTALL NEW DOORS @ SEYBOLT BUILDING	\$ 15,692.00	purchase
Underwood Engineers	PEASE WASTEWATER TREATMENT FACILITY NPDES PERMIT RENEWAL APPLICATION 2019	\$ 25,000.00	Contract
Northeast Traffic Control	BID: 26-19 2 SILENT MESSENGER II MESSAGE BOARDS	\$ 38,900.00	purchase
H.L. Patten Const. Co., Inc.	PRESCOTT PARK PAVILION FLOOR - GRAY QUARRY TILE, KITCHEN AND 2" X 2" KITCHEN BATHROOM ONLY OPTION	\$ 29,940.00	Contract
Kinsmen Corp.	PEASE GRAFTON ROAD DRINKING WATER TREATMENT PLANT UPGRADE, CONSTRUCTION CONTRACT, BID 25-19	\$ 10,343,000.00	Contract
Adobe Business Direct	ADOBE PRODUCT LICENSE	\$ 84,454.96	Contract
Hoyle, Tanner & Assoc., Inc.	PROFESSIONAL SERVICES: KEARSARGE WAY AND MARKET ST. BRIDGES (ENGINEERING EVALUATION & DESIGN)	\$ 166,082.00	Contract
Grappone Ford	2019FORD F150 XL:BID31-19 less trade-in	\$ 28,401.00	purchase
Custom Truck One Source	BID 27-19 TEREX HI RANGER \$180,891.00 LESS TRADE-IN (9000.00) TRADE-IN H051	\$ 171,891.00	purchase
Jamco Excavators	HOOVER/TAFT AREA DRAINAGE	\$ 467,940.00	Contract
Flow Assessment Services, LLC	CSO MONITORING EQUIPMENT: RENTAL CONTRACT 4 SITES/12 MONTH PERIOD	\$ 27,000.00	Contract
Air Quality Experts	ASBESTOS ABATEMENT FORMER DOBLE US ARMY RESERVE CENTER, BID 29-19	\$ 75,398.36	Contract
Vision Government Solutions	REVALUATION CONTRACT: TAX YEAR 2019 2ND YEAR OF 5 YEARS	\$ 65,499.76	Contract
Advanced Paving & Excavation	BID 36-19 SPINNEY ROAD & MIDDLE STREET SIDEWALKS	\$ 469,262.43	Contract
Bay State Water Works Supply, Inc.	BID 42-19 CL-DRILLING TAPPING MACHINE	\$ 47,472.01	purchase
McDevitt Trucks, Inc.	BID 38-19 MAC GRANITE 64FR VACTOR TRUCK LESS TRADE-IN	\$ 474,462.00	purchase

Continental Resources	BID #33-19 SCHOOL DEPT. HYPERCONVERGED INFRASTRUCTURE	\$ 86,770.00	purchase
H.L. Patten Const. Co., Inc.	REPLACE APRON AT FIRE STATION I	\$ 143,830.00	Contract
Harvey Construction Co.	PROFESSIONAL SERVICES: PRE- CONSTRUCTION SERVICES FOR PORTSMOUTH SENIOR ACTIVITY CENTER	\$ 15,000.00	Contract
Hazen & Sawyer	CO#1 ENGINEERING & DESIGN OF BACKWASH TANK & CONTROLS ADDITIONAL DESIGN WORK	\$ 48,700.00	Change Order
Zagster, Inc.	BIKE SHARE PROGRAM: 2 STATIONS @ \$10,000.00 PER STATION, 1 ADD STATION AT FOUNDRY PLACE GARAGE @ 4,000.00	\$ 20,400.00	Contract
Interstate Electric	CO#1 LEARY FIELD AND HIGH SCHOOL SPORTS LIGHTING	\$ 10,505.00	Change Order
Northeast Integration, LLC	UPGRADE THE SCADA SYSTEM @ CORPRATE DRIVE	\$ 15,425.00	Change Order
Lavalee Brensinger	CO#4, CITY HALL NORTH FACADE REPLACEMENT (REIMBURSABLES)	\$ 10,000.00	Change Order
Methuen Const. Co., Inc.	CO#3 Newington Booster Pump Station Upgrades	\$ 34,726.19	Change Order
Methuen Const. Co., Inc.	Newington Booster Pump Station Upgrades	\$ 34,726.00	Contract
Syvinski Excavating & Materials	BID 41-19 ROCK STREET PARK PLAYGROUND	\$ 255,244.20	Contract
McDevitt Trucks, Inc.	BID 39-19 MAC GRANITE 64BR W/REAR LOADER, \$267,150.00, LESS TRADE IN \$4000.00 = \$263,150.00	\$ 263,150.00	purchase
H.L. Patten Const. Co., Inc.	FOUNDRY PLACE GARAGE PARKING ENFORCEMENT STAGING AREA	\$ 46,980.00	Contract
Woodard & Curran	SEWER SYSTEM REHABILITATION CONTRACT NO. 1- DESIGN	\$ 107,000.00	Contract
Methuen Const. Co., Inc.	CO#7 PEIRCE ISLAND WWTF UPGRADE CONSTRUCTION	\$ 169,138.30	Change Order
Underwood Engineers	ISLINGTON STREET CONSTRUCTION ENGINEERING- AMENDMENT #1	\$ 536,300.00	Amendment/CO
AECOM	PI WWTF NPDES PERMIT ASSISTANCE DPW PROJECT 4157	\$ 25,000.00	Contract
Severino Trucking	BID 03-19 ISLINGTON STREET RECONSTRUCTION PROJECT	\$ 6,640,567.00	Contract
Underwood Engineers	AMENDMENT#1 - DESIGN ENGINEERING SERVICES: PORTSMOUTH-DOVER WATER SYSTEM INTERCONNECTION	\$ 18,400.00	Amendment/CO
SUR Construction	BID 37-19 MARKET STREET GATEWAY PHASE 2	\$ 2,614,466.75	Contract
Bethel Assembly of God Connect Community Church	PARKING LOT LEASE AGREEMENT (10 MONTHS) MAY 2019 TO FEB. 2020	\$ 15,000.00	Contract
Tighe & Bond	95 MECHANIC ST. WHARF SEAWALL REPLACEMENT ENGINEERING SERVICES	\$ 59,500.00	Contract
John Lyman & Sons	CO#1 HANOVER STREET AREA	\$ 75,760.00	Change Order
FB Environmental	2019 SAGAMORE CREEK WATER QUALITY SAMPLING PROGRAM	\$ 41,750.00	Contract

University of NH	WATER QUALITY SAMPLING PROGRAM: SAGAMORE CREEK 2019 MONITORING, CONSENT DECREE 2ND MODIFICATION	\$ 10,580.00	Contract
Altus Engineering	AMENDMENT#4 - CONSTRUCTION ENGINEERING SERVICES FOR HANOVER DRIVE/TAFT RD. DRAINAGE UPGRADE PROJECT	\$ 15,500.00	Amendment/CO
Alta Plannign & Design Inc.	ELWYN PARK SIDEWALKS FEASIBILITY STUDY	\$ 20,000.00	Contract
DK Water Resource Consulting, LLC	2019 BELLAMY RESERVOIR ASSESSMENT	\$ 14,120.00	Contract
Harvey Construction	CO#11 CITY HALL FACADE REPLACEMENT AND ADDITION BID 37-17	\$ 12,677.77	Change Order
Horizon Solutions	VFD#2 INTERNAL COMPONENTS/emergency repairs	\$ 18,821.77	Change Order
Coast	PARKING SHUTTLE SERVICES; MAY - JUNE 2019	\$ 20,869.60	Contract
Xylem Dewatering Solutions	EMERGENCY RENTAL: VFD#2 MECHANIC STREET	\$ 16,691.00	Contract
Felix Septic Service	CATCH BASIN CLEANING: NOT TO EXCEED \$30,000.00 extended RFP 34-15 agreement, letter filed in 34-15 contract folder	\$ 30,000.00	Contract
H.L. Patten Const. Co., Inc.	CO#6 RFP 24-17 emergency repair services extension of RFP 24-171520 SQ. FT. CONCRETE REPAIR @ PEIRCE ISLAND POOL EDGING	\$ 58,230.00	Change Order
MAC Construction	WOODBURY AVE. ISLAND REMOVAL: PART OF RFQ 17-17	\$ 35,800.00	Contract
ABB INC.	EMERGENCY MOTOR REPAIR, REMOVAL, INSPECTION AND REWINDING @ MECHANIC STREET PUMP STATION	\$ 85,945.00	Contract
Bay State Water Works Supply, Inc.	BID 42-19 CL- DRILLING TAPPING MACHINE	\$ 49,472.01	Contract
AEM LLC/Timothy Nichols	CONSTRUCTION ADMIN. SERVICES - DOBLE ADAPTIVE REUSE PROJECT	\$ 153,200.00	Contract
H.L.Patten	PEIRCE ISLAND POOL ROOF REPLACEMENT	\$ 18,900.00	Contract
Tasca Ford	BID 47-19: 4 INTERCEPTORS AND WARRANTIES	\$ 143,536.00	Contract
RMUS, LLC, Rocky Mt. Unmanned Systems	BID 48-19 DRONES PROGRAM EQUIPMENT AND TRAINING AS OUTLINED IN BID,	\$ 38,279.01	Contract
Vision Government Solutions	Vision Upgrade Version 8	\$ 29,500.00	Contract
Methuen Const. Co., Inc.	CO#4 NEWINGTON BOOSTER PUMPING STATION UPGRADES	\$ 97,092.61	Change Order
Methuen Const. Co., Inc.	CO#1 PEASE WWTF HEADWORKS PROJECT	\$ 26,966.15	Change Order
Kinsmen Corp.	CO#1 PEASE GRAFTON ROAD DRINKING WATER TREATMENT PLANT UPGRADE	\$ 24,193.00	Change Order
Walker Parking Consultants	FOUNDRY PLACE PARKING GARAGE, ADDITIONAL CONSTRUCTION ADMINISTRATION	\$ 319,825.20	Contract
H.L. Patten Const. Co., Inc.	EMERGENCY REPAIR TO SIDEWALK SLAB @ PRESCOTT PARK	\$ 11,900.00	Contract
Limno Tech	PEASE WWTF DYE DISPERSION STUDY	\$ 127,270.00	Contract

ABB Inc.	EMERGENCY MOTOR REPAIR, REMOVAL, INSPECTION AND REWINDING & REBUILDING VOLUTE @MECHANIC STREET PUMP STATION	\$ 149,525.00	Contract
Piscataqua Landscaping	PEIRCE ISLAND SHORELINE REPAIRS AND PATH RELOCATION	\$ 15,700.00	Contract
Northeast Electrical Distributors	CALIBRATION SOFTWARE & METERING EQUIPMENT	\$ 14,396.00	Contract
Wright Pierce	DESIGN PHASE ENGINEERING SERVICES: HERITAGE AVE. PUMP STATION	\$ 121,800.00	Contract
Transcor	14 CF-33AFHAAVM WIN 10 PRO \$51144.24, 14 LD-DS-PAN-1101 HAVIS DOCKING STATION \$13188., 14 S&H \$249.90	\$ 64,582.14	Contract
Portsmouth Quality Flooring	SHIFT COMMANDER'S OFFICE, STREET SUPERVISOR'S OFFICE, BACK ENTRANCE HALLWAY (FROM PARKING LOT), TRAINING ROOM, FORMER ROLL CALL (TROPHY) ROOM	\$ 10,646.06	Contract
Midwest Tape	HOOPLA DIGITAL SERVICES, ADDITIONAL CONTENT	\$ 15,000.00	Contract
Peniel Environmental Solutions, Inc.	POLICE STATION PLENUM CLEANING	\$ 42,411.00	Contract
Neoscope	SCADA NETWORK ANALYSIS & COMPLETE THE FIREWALL INSTALL AT ALL REMOTE SITES	\$ 14,200.00	Contract
Advanced Excavating	SPINNEY AND MIDDLE STREET SIDEWALKS CO#1	\$ 47,820.24	Change Order
Riverside Marine Construction	EMERGENCY MOBILIZATION: 95 MECHANIC STREET	\$ 30,000.00	Contract
MacMulkin Chevrolet	2020 CHEVROLET EQUINOX (1XX26) AWD 4 DR. LS STATE OF NH BID	\$ 21,917.00	Contract
WB Hunt Co.	AUDIO & VIDEO SYSTEM, DETECTIVE INTERVIEW ROOM (UPGRADE EQUIPMENT AND SOFTWARE) LOBBY INTERVIEW ROOM (ADDITION) CASE CONTROLLER SYSTEM	\$ 32,360.00	

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CM Info Item #3

Vendor Name	Calendar 2019	Service Code	Frequency	In-House?	Notes on Services
A1 ENVIRONMENTAL SERVICES	78,532.50	CS	R	No	Specialized Service - Sludge Hauling - City doesn't haul enough sludge to warrant purchasing appropriate vehicles and carrying operating costs.
BERNSTEIN SHUR SAWYER & NELSON	1,900.00	CS	O	No	Engagement of neutral arbitrator (a lawyer) for Fire Department labor arbitration.
BOURASSA CONSTRUCTION LLC	7,946.00	CS	R	Yes	Snow Removal - Provides equipment and labor as needed.
BRANDON, JON E	5,725.00	CS	O	No	Specialized Service - Application of gold leaf to the Liberty Pole Eagle.
COLLIERS INTERNATIONAL	36,700.00	CS	O	No	Specialized Service - Financial analysis for McIntyre Project
CORNELL CONSULTANTS	22,137.50	CS	O	Maybe	Specialized Service - Commercial Assessment Review - Provides assessment review for several major commercial properties. The Assessing Department recently hired an employee who may be able to assume a portion of the work.
DRAGON MOSQUITO CONTROL	78,720.00	CS	R	No	Specialized Services - State law requires providers to be specially licensed and maintain records of applications. More cost effective to contract out service. RFP #32-18 Contractor monitors and tests mosquitos as well as treats.

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EMERY & GARRETT GROUND WATER	70,175.00	CS	R	No	Specialized Service - Ground water source work involving geotechnical and other expertise.
FELIX SEPTIC SERVICE INC	30,030.00	CS	R	Maybe	Catch Basin Cleaning. DPW staff cleans out catch basins as the workload allows. Contractor is engaged to complete the cleaning as needed. Catch basin cleaning is an EPA regulatory requirement. RFP #34-15
HILLTOP SECURITIES	53,905.00	CS	R	No	Specialized Service - bond issuance - Cannot be handled by municipality.
HONEYWELL	210,805.31	CS	R	Maybe	Specialized Service - optimize air-conditioning and heating systems in the majority of the municipal buildings. Portions of this work may be transferring over time to an in-house employee recently hired who has expertise in this area.
JOHN TURNER CONSULTING INC	35,169.22	CS	R	No	Specialized Service - Multiple Projects - Provides testing/laboratory services for various elements of a construction project (examples: measuring strength of concrete, measure in-place material such as asphalt, test compaction)
MCCANN, ALISA	3,631.25	CS	O	No	Specialized Service - McIntyre Project

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MELANSON HEATH & COMPANY INC	60,500.00	CS	R	No	Specialized Service - statutorily mandated independent auditors.
MUNICIPAL PEST MANAGEMENT SERVICE	102,783.00	CS	R	Maybe	Contracted Service for weed control. The DPW continues to evaluate methods for managing landscaping as well as weed control. If the City were to undertake weed control and spraying, the City would have to acquire vehicles and equipment as well as staff who are certified to apply the chemicals used. RFP #30-18
NEOSCOPE LLC	539,286.92	CS	R	Maybe	Specialized Service - In 2018, the City engaged an IT firm to comprehensively evaluate and begin upgrading the City's information systems with a particular emphasis on security. Calendar 2019 includes capital items associated with upgrades. RFP #44-19
NM CURTIS EARTHWORKS	4,250.00	CS	R	Yes	Snow Removal - Provides equipment and labor as needed. RFP #20-19
OTIS ELEVATOR	15,618.07	CS	R	No	Specialized Service - Elevator Repair and Maintenance. RFP #32-19
PAVIA ASSOCIATES	9,750.00	CS	R	No	Specialized Service - Occupational Health

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PISCATAQUA LANDSCAPING CO. INC	68,661.94	CS	R	Maybe	This contracted service helps offset peak demand in the spring and fall in particular and is responsible for the African Burying Ground Memorial Park care which includes masonry and artistic elements.
POWER UP GENERATOR	42,500.13	CS	R	No	Specialized Service - Maintains and repairs City's many back-up generators.
RANSOM CONSULTING INC.	38,047.20	CS	R	No	Specialized Service - Environmental consulting firm providing sampling, testing, permitting and administrative services on multiple projects.
RENAUD INDUSTRIES LLC	66,979.50	CS	R	Yes	Snow Removal - Provides equipment and labor as needed. RFP #20-19
RESOURCE SYSTEMS GROUP INC	38,727.97	CS	O	No	Specialized Service - Traffic Modeling
REVAK, LAWRENCE JR	27,160.00	CS	R	Yes	Experimented with contracted custodial services for Spinnaker Point Recreation Center. City was dissatisfied with quality and cost. The custodial work has been brought back in-house.
RPF ENVIRONMENTAL INC	12,574.50	CS	R	No	Specialized Service - Air Quality Testing

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SEACOAST COMPUTER INC	106,705.00	CS	R	No	Specialized Service - Programming and data mitigation/testing services - the City uses several historical software applications unique to the City.
TANTER, FREDERICK S	5,534.66	CS	O	Maybe	To implement recommendations from Master Planning in a timely fashion, land use and zoning ordinance updates are contracted out.
TRAUB, STEPHEN G.	6,580.00	CS	R	No	Specialized Service - Re-evaluation services including providing expert opinion in litigation matter.
AECM, LLC	88,223.00	DSG	P	No	Doble Center - Required development of stamped plans and drawings, as well as bid documents for substantial renovation. 2019 also included Construction Administration services.
FOUND DESIGN	6,410.00	DSG	O	No	Specialized Service - Wayfinding signage. RFP #50-19
HALVERSON DESIGN PARTNERSHIP	57,175.37	DSG	P	No	North Mill Pond Park. Design
LAVALLEE BRENSINGER PROFESS ASSOC	23,767.82	DSG	P	No	Municipal Complex - Architectural and Design Services

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WALKER CONSULTANTS INC	444,124.26	DSG	P	No	Foundry Garage - Construction Administration Services
AECOM TECHNICAL SERVICES, INC	1,732,108.69	ENG	P	No	Pierce Island WWTF - Design of state-of-the-art treatment facility (complex, large, and required multiple engineering disciplines and operations subspecialties). The 2019 work was for Construction Administration services. AECOM was selected as the design firm pursuant to RFP 24-13.
ALTUS ENGINEERING INC	30,918.75	ENG	P	No	Chestnut Street streetscape improvements, Hoover/Taft drainage, and Newington Booster Station septic - Design and Construction Administration services for several civil engineering projects.
CMA ENGINEERS	411,666.52	ENG	P	No	Campus Drive, Athletic Fields, Consent Decree Stormwater Project , - Significant engineering effort requires stamped plans and drawings for bidding and construction.

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GREENMAN-PEDERSEN, INC.	289,620.43	ENG	P	No	Maplewood Avenue Reconstruction (Construction Administration); Andrew Jarvis intersection (Construction Administration); Middle Street Bike Lanes (Consultation)
HALEY & ALDRICH	1,240.00	ENG	R	No	Specialized Service - Geotechnical Evaluation of Portsmouth Middle School Building Movement readings.
HAZEN AND SAWYER	12,328.04	ENG	O	No	Post-Construction CSO monitoring.
HOYLE TANNER & ASSOCIATES INC	199,285.25	ENG	P	No	Bridge Master Plan; Kearsarge Bridge - Bridge design is a subspecialty of engineering and could not be done in-house.
MARC R BATCHELDER DBA SEAPORT ENGINEERING	73,155.00	ENG	P	Maybe	Pleasant Street Reconstruction, McDonough Street, Phase 4 - Design and Construction Administration Services.
MCFARLAND-JOHNSON INC	51,812.65	ENG	P	No	Peverly Hill Road Improvements - Roadway and drainage design effort.
SEBAGO TECHNICS INC	106,782.13	ENG	P	No	Maplewood Complete Streets - Contract Administration

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Document 2

CM Info Item #3

Vendor Name	Calendar 2019	Service Code	Frequency	In-House?	Notes on Services
STANTEC CONSULTING SERVICES, INC	748,773.46	ENG	P	No	Newington Booster Station, Pease WWTF Headworks, Rate Model Update. Design and Construction Administration Services. The City's long-term rate model consultant, David Hyder, is also employed by Stantec.
TIGHE AND BOND INC	76,154.03	ENG	P	No	Seawalls, Long Meadow Road. Design Services.
UNDERWOOD ENGINEERS INC	425,557.54	ENG	P	No	Pease WWTF, Goose Bay Drive Sewer, Islington Street Sewer, Corporate Drive Drainage, Breakfast Hill Road Waterline evaluation. Design, Construction Administration, and Consulting Services on a variety of projects.
VANASSE HANGEN BRUSTLIN INC	79,429.22	ENG	P	No	Firm assists with Stormwater Permit MS4 Compliance. Roadway Management.
WESTON AND SAMPSON ENGINEERS INC	691,181.72	ENG	P	No	Prescott Park Master Planning (RFQ #22-19), Grafton (Pease) Water Treatment Plant upgrade.
WESTON AND SAMPSON SERVICES INC	13,292.09	ENG	P	No	Leary Field Improvements
WOODARD AND CURRAN INC	213,184.15	ENG	P	No	Lafayette Road Pump Station and Phase 3 In-flow Evaluation.

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Vendor Name	Calendar 2019	Service Code	Frequency	In-House?	Notes on Services
WRIGHT-PIERCE ENGINEERS	299,995.49	ENG		No	Heritage Avenue Pump Station, Pump Station Master Plan, Sagamore Avenue Sewer Extension Project, DOT Bridge Projects. Design, Construction Administration and Consulting on a variety of wastewater-related projects.
DRUMMOND WOODSON	21,202.20	LGL	R	No	Legal services for multi-million dollar tax abatement appeal involving Service Credit Union property.
GALLAGHER CALLAHAN AND GARTRELL PC	12,292.50	LGL	O	No	Boyle Litigation
HALL AND ASSOCIATES PLLC	37,499.72	LGL	O	No	Great Bay Municipal Coalition/Water Quality and NPDES permitting issues. Engagement ended.
HINKLEY, ALLEN & SNYD	58,800.00	LGL	O	No	McIntyre Project
JACKSON LEWIS PC	66,280.00	LGL	R	No	Employment and labor law lawyer/labor negotiation.
LAW OFFICE OF MARK P HODGDON	15,725.00	LGL	O	No	Boyle Litigation - condemnation counsel. Minor condemnation actions can and have been handled in-house.
LOCKE, LORD LLP	29,000.00	LGL	R	No	Bond Counsel. Cannot be handled by municipality.

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MCLANE MIDDLETON PROF	339,692.82	LGL	O	No	Boyle litigation - appeals to NH Supreme Court
ORR & RENO, PA	3,956.00	LGL	O	Maybe	Legal review and advice on utility agreements and assist with draft of new agreement for wholesale water.
PIERCE ATWOOD	12,925.70	LGL	O	No	Pease and Pierce Island NPDES permitting issues
UPTON AND HATFIELD LLP	111,449.11	LGL	O	No	Handles tax abatement cases involving multi-million dollar appeals such as those involving Schiller Station and Liberty Mutual.
AMBIT ENGINEERING INC	6,800.00	SUR	R	No	The City has intermittent needs for survey work, such as to define easements for public works projects. The City does not have enough survey work to justify hiring a licensed surveyor on staff and purchasing the specialized equipment required. The City looks for and achieves cost savings if the surveyor has already done work on abutting property.

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DOUCET SURVEY	11,312.94	SUR	R	No	The City has intermittent needs for survey work, such as to define easements for public works projects. The City does not have enough survey work to justify hiring a licensed surveyor on staff and purchasing the specialized equipment required. The City looks for and achieves cost savings if the surveyor has already done work on abutting property.

8,584,157.27

Definitions / Terms:

Construction Administration

Construction Administration requires the design team to respond to RFIs (technical questions about the design); review shop drawings and other contractor submittals; assist with regulatory compliance; inspect workmanship; and assist with public outreach/property owner impacts. Typically the firm that prepared the design documents for bidding and construction provides the construction administration services so that the design team is vested in the success of the project, can less easily escape liability for errors, and move efficiently to ensure contractor performance to specification

Design Services (Architectural, Engineering, and Landscaping/site civil efforts)

It is in the City's interest to contract out these project-related services. Many designs require multiple design professionals across a range of disciplines. Design plans developed for construction (building, road, sewer, water plant) should be stamped by the design professional. This means the firm takes ownership of the design - that it will work. Designers are required to maintain professional liability coverage.

Snow Removal

Snow removal needs vary year-to-year. To meet public expectations, the snow removal services supplement City forces for load out of snow from the downtown areas. Without such services, load outs and clean-up could not be accomplished as quickly and snow would remain downtown for extended periods.

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Bid/RFP/RFQ	Date	Project Title	Due Date & Time	Award
Number				
01-20	5/2/2019	Annual Fuel	7/9/19 @ 1:00 p.m.	Haffner's/Santa Buckley
02-20	5/14/2019	Annual Chemical Bid	8/20/19 @ 2:00 pm	Various
03-20	6/28/2019	Sale of Surplus Water Meters (GovDeals)	8/6/19 @ 11:00 p.m.	Sold to : Terry Traynor, Pontiac MI \$9875.00, water meters picked up on 8/12/19
4-20		not used		
05-20/rebid	7/17/2019	Wayfinding Signs, Phase 3	08/28/19 @ 2:00 p.m.	Allied Signage Corp.
06-20	7/25/2019	Duralife Lockers for Indoor Pool	9/12/19 @ 2:00 p.m.	New England Partition & Installation
07-20	8/7/2019	Replace Ports. High School Athletic Track	9/6/19 @ 11:00 a.m.	Cape and Island Corp.
08-20	8/21/2019	Grapple Truck (H133)	9/16/2019	Custom Truck One Source
09-20	9/23/2019	Sale of Surplus Equipment (DPW)	11/13/2019	VARIOUS TOTAL MONEY RECEIVED: \$15,333.76
10-20 RFQ	9/26/2019	Market Sq. Master Plan	11/12/2019	IBI Group
11-20	9/26/2019	Fire Dept. Generator	11/20/19 @ 2:00 p.m.	The Generator Connection \$121,100.00
12-20	9/30/2019	Central Fire Station Renovations		
13-20	10/4/2019	Pease WWTF Primary Clarifiers Replacements		
14-20	11/6/2019	Madbury Backwash Tank and Pump Station	02/26/20 @ 2:00 p.m	
15-20	10/28/2019	Water Department Stock Inventory	2:00 p.m. Jan. 9, 2020	Various vendors
16-20	10/28/2019	Sewer Department Stock Inventory	2:30 p.m. Jan. 9, 2020	Various vendors
17-20RFQ	11/6/2019	Prequalifications ADA Accessible Bathrooms	11/22/19 @ 12:00 p.m.	qualified: Bonnett,Page & Stone, Martini Norther & Charters Brothers
17-20Bid	12/5/2019	Discover Portsmouth ADA Accessible Bathrooms	12/19/19 3:30 p.m.	Bonnette, Page & Stone, \$191,773.00
18-20	11/18/2019	Police Dept. SUV (used)	12/30/19 @ 2:00 p.m.	all bids rejected see file
19-20	11/18/2019	Police Dept. SUV Interceptors (new) 4	12/19/19 @ 2:30 p.m.	
20-20RFP	11/25/2019	Flagging Services	3/10/20 @ 2:00 p.m.	
21-20RFP	12/4/2019	Biosolids Hauling (formerly Sludge Hauling)	1/29/20 @ 2:00 p.m.	
22-20	12/10/2019	Maplewood Ave. Signals Upgrades Project	2/13/20 @ 2:00 pm.	Electric Light Company, Inc.
23-20	12/17/2019	HVAC Upgrade at City Hall		
24-20	1/6/2020	Pavement Markings	2/25/20 @ 2:00 p.m.	
25-20	1/28/2020	Planning Department/Shelving System		
26-20	2/5/2020	Sales of Surplus Fire Alarm Truck	2/28/20 @ 11:00 p.m.	

Bid/RFP/RFQ Number	Date	Project Title	Due Date & Time	Award
27-20	2/5/2020	Market St. and Kearsarge Way Bridge Repairs	03/24/20 @ 2:00 p.m.	
28-20	2/5/2020	95 Mechanic Street Wharf and Seawall Recon.		
29-20	2/5/2020	2020 Paving and Roadwork	3/10/20 @ 2:30 p.m.	
30-20RFP	2/14/2020	Organic Fertilizer RFP		
31-20RFQ	2/14/2020	Micro-mobility Management Services	3/26/20 @ 2:00 p.m.	
32-20RFP	2/20/2020	Forestry Services		
33-20RFP	2/21/2020	Athletic training services		
34-20	2/24/2020	Crack Sealing		
35-20	2/26/2020	Sale of Surplus Generator	3/17/20 @ 11:00 p.m.	
36-20	2/27/2020	Banfield Road Project		
		NOTE: Contracts, CO's etc., are now listed on a separate sheet		
		Bid/RFP numbers assigned but not advertised		
		Bid/RFP Advertised		
		RFPs/Bids received/waiting for awards		
		Awarded but still waiting on contracts/PO's etc.		
		Process complete/contract signed, letters out, etc.		