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**MEMORANDUM**

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**To:** Planning Board  
**From:** Juliet T.H. Walker, Planning Director *JTW*  
Jillian Harris, Planner 1  
**Subject:** Addendum to Staff Recommendations for the August 20, 2020 Planning Board Meeting  
**Date:** 8/19/2020

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**VI. PRELIMINARY CONCEPTUAL CONSULTATION**

- B.** The request of the **SB & NA Stokel Trust and Philip Stokel, Owners**, for property located at **83 Peverly Hill Road** for Preliminary Conceptual Consultation for a 60-unit Open Space Planned Unit Development (OSPUD). Said property is shown on Assessor Map 242 Lot 4 and lies within the Single Residence A (SRA) District.



Description

Mr. Stokel has a prospective buyer for this property who is interested in constructing approximately 60 units that would include approximately 4,000 feet of roadway. The prospective buyer is asking for the Planning Board to recognize the original agreement and affirm whether the length of this proposed road is acceptable and in conformity with the original settlement. After consultation with the Planning Director, the City Attorney has advised the buyer's attorney that the best mechanism for this review by the Planning Board would be through preliminary conceptual consultation.

Previous Planning Board Action

On April 30, 2015, the Planning Board considered a request from the City (as described in a memorandum from the City's Legal Department dated March 30, 2015) to approve one element of a settlement in a court case. The case pertained to the taking of a parcel of land in connection with the construction of the Route 33 bridge over the former Hampton Branch railroad line. The property owners had argued that the taking deprived them of a second access to the lot and thereby reduced its development potential. The City disputed this and prevailed in initial appeals. However, in order to avoid the cost of litigation and the potential risk associated with it, the Legal Department negotiated a compromise under which the owners would refrain from further appeals if granted a waiver from the Subdivision Regulations requiring a maximum of 500-foot on the length of a cul-de-sac.

The requested waiver was unusual in two respects. First, it was not attached to any specific development plan, but rather would open up the possibility for the current owners or any future owners to submit a subdivision or PUD plan showing a longer cul-de-sac road than allowed by the Subdivision Rules and Regulations. Thus, the Planning Board did not have a plan to review in connection with the request at that time. Second, the waiver would expire after 10 years if no development plan is submitted within that time period.

On April 30, 2015, the Board voted to waive in its entirety the 500 foot cul-de-sac limitation found in Section VI.3.I of the Subdivision Rules and Regulations for the property located at 83 Peverly Hill Road (Map 242, Lot 4); subject to any owner/applicant otherwise obtaining all other approvals and permits from local land use boards as may be necessary to develop the property. The decision stipulated that the waiver would run with the land and shall be effective for any subdivision application submitted to the Planning Board within ten (10) years of the date of approval of the waiver.

Preliminary Conceptual Consultation

As authorized by NH RSA 676:4,II, the Site Plan Review Regulations require preliminary conceptual consultation for certain proposals, including (1) the construction of 30,000 sq. ft. or more gross floor area, (2) the creation of 20 or more dwelling units, or (3) the construction of more than one principal structure on a lot. Preliminary conceptual consultation precedes review by the Technical Advisory Committee.

Preliminary conceptual consultation is described in the state statute as follows:

*[Preliminary conceptual consultation]... shall be directed at review of the basic concept of the proposal and suggestions which might be of assistance in resolving problems with meeting requirements during final consideration. Such consultation shall not bind either the applicant or the board and statements made by planning board members shall not be the basis for disqualifying said members or invalidating any action taken. The board and the applicant may discuss proposals in conceptual form only and in general terms such as desirability of types of development and proposals under the master plan.*

The preliminary conceptual consultation phase provides the Planning Board with an opportunity to review the outlines of a proposed project before it gets to detailed design (and before the applicant refines the plan as a result of review by the Technical Advisory Committee and public comment at TAC hearings). In order to maximize the value of this phase, Board members are encouraged to engage in dialogue with the proponent to offer suggestions and to raise any concerns so that they may be addressed in a formal application. Preliminary conceptual consultation does not involve a public hearing, and no vote is taken by the Board on the proposal at this stage. Unlike Design Review, completion of Preliminary Conceptual Consultation does not vest the project to the current zoning.

Bea

MAIL TO

BK 5625 P6 1895

RETURN TO:  
City of Portsmouth  
Attn: Legal Department  
1 Jenkins Avenue  
Portsmouth, NH 03801

023801

**Notice of Special Action by the Portsmouth Planning Board**

2015 JUN 12 AM 10:20

For Property Owned by Stella B. Stokel Trustee of the Stella B. Stokel 1993 Trust and Philip J. Stokel, on the south side of Peverly Hill Road, Portsmouth, County of Rockingham, NH. Being that property conveyed to Owners by deed dated November 16, 2009 and recorded in the Rockingham County Registry of Deeds at Book 5066, Page 1603 and by deed dated November 16, 2009 and recorded in the Rockingham County Registry of Deeds at Book 5066, page 1598.

For further Reference Portsmouth Tax Map 242, Block 4, Lot 0

Notice: On April 30, 2015, the Planning Board of the City of Portsmouth voted to waive in its entirety the 500 foot cul-de-sac limitation found in Section VI(3)(1) of the Subdivision Regulations; subject to any owner/applicant otherwise obtaining all other approvals and permits from local land use boards as may be necessary to develop the property. This waiver will run with the land and shall be effective for any subdivision application submitted to the Planning Board within ten (10) years of the date of approval of the waiver.

ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

City of Portsmouth  
By: Suzanne M. Woodland  
Deputy City Attorney

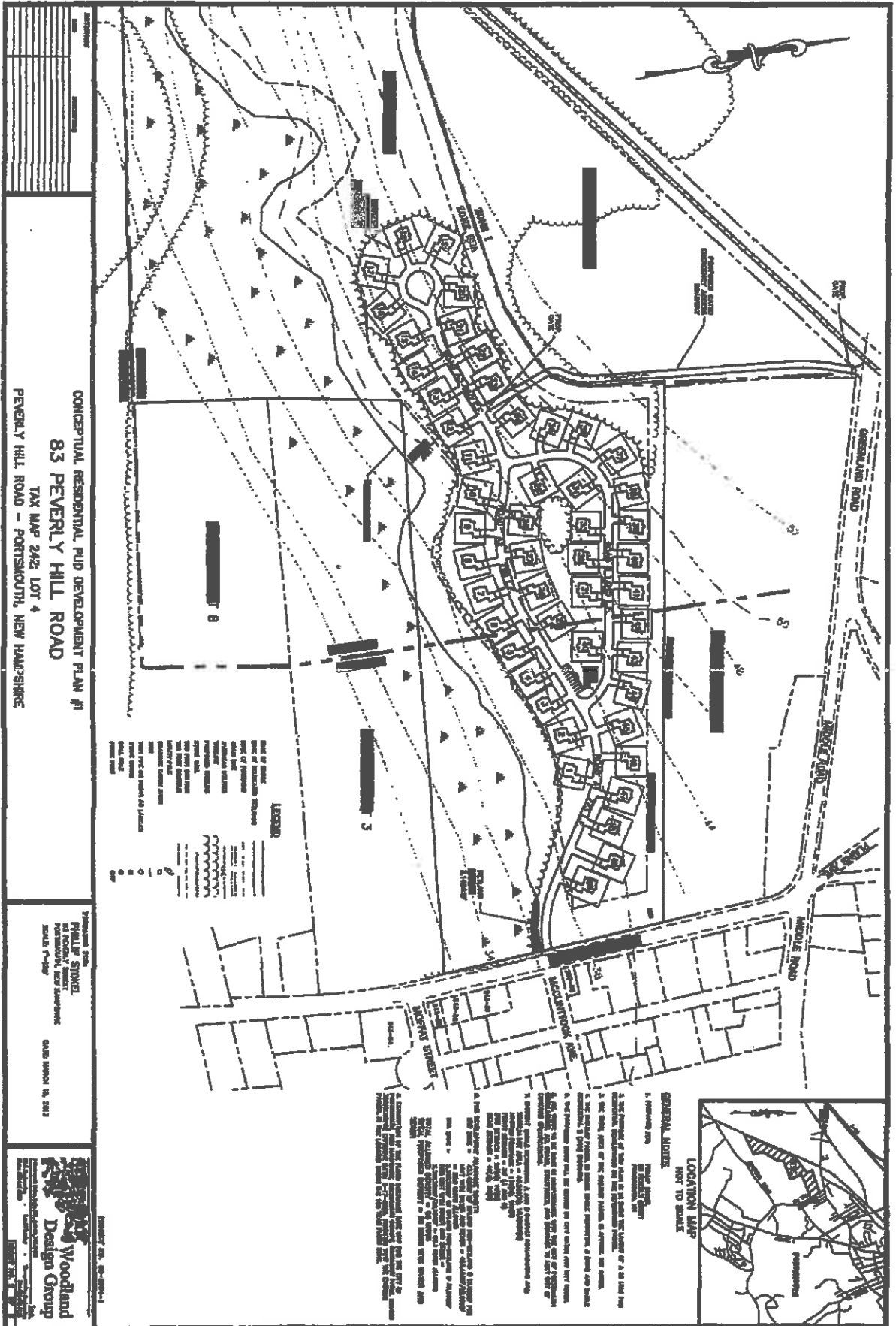
Dated: 6/5/15

STATE OF NEW HAMPSHIRE  
ROCKINGHAM, SS

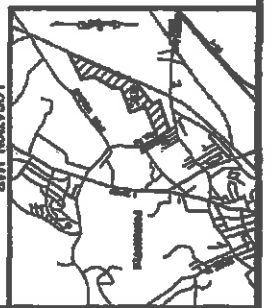
On June 5, 2015, personally appeared Suzanne M. Woodland, who acknowledged herself to be the Deputy City Attorney, of the City of Portsmouth, and that as such Deputy City Attorney, being authorized so to do, executed the foregoing instrument for the purposes therein contained.  
In witness whereof I hereunto set my hand and official seal.

Rachel A. O'Neil  
Justice of the Peace/Notary Public  
My commission expires: 10/17/17





PREPARED BY:  
**WOODLAND DESIGN GROUP**  
 100 MARKET STREET  
 PORTSMOUTH, NH 03801  
 PHONE: 603-888-1111



CITY OF PORTSMOUTH  
LEGAL DEPARTMENT  
MEMORANDUM

DATE: March 30, 2015

TO: RICK TAINTOR, PLANNING DIRECTOR

FROM: ROBERT SULLIVAN, CITY ATTORNEY  
SUZANNE M. WOODLAND, DEPUTY CITY ATTORNEY

RE: STELLA B. STOKEL 1993 TRUSTEE OF THE STELLA B. STOKEL 1993  
TRUST AND PHILIP J. STOKEL V. CITY OF PORTSMOUTH

This memorandum is written to seek Planning Board approval of one element of a settlement in the matter of Stella B. Stokel 1993 Trustee of the Stella B. Stokel 1993 Trust and Philip J. Stokel v. City of Portsmouth, which is scheduled for a jury trial the week of May 11. That settlement agreement is contingent on various approvals including, as more fully described below, the granting of a waiver by the Planning Board of the 500 foot cul-de-sac limitation found in the Subdivision Regulations.

By way of background, as part of the Route 33 Railroad Bridge Replacement project, the City used the eminent domain process to close permanently a little-used farm access right-of-way owned by the Stokel Family Trust. This right-of-way extended from a back portion of the Stokels' 107 acre parcel across land of The Nature Conservancy (now Fish and Game) to Route 33. The Stokels have frontage and an existing driveway on Peverly Hill Road, but claimed the right-of-way had significant value. See attached plan showing the area in question.

The taking occurred in June of 2008 and over the course of the years, the City and the owners of the Stokel parcel have been in negotiations as to the value of the right-of-way and development potential. A settlement agreement contingent upon various approvals has been negotiated and calls for the following relief:

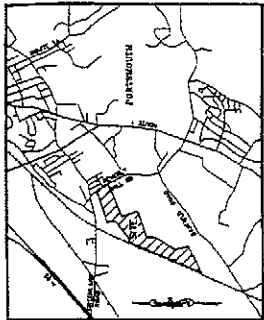
For Map 242, Block 4, Lot 0 that the Planning Board waive in its entirety the 500 foot cul-de-sac limitation found in Section VI(3)(1) of the Subdivision Regulations; subject to any owner/applicant otherwise obtaining all other approvals and permits from local land use boards as may be necessary to develop the property. This waiver will run with the land and shall be effective for any subdivision application submitted to the Planning Board within ten (10) years of the date of approval of the waiver, and will be documented by the Planning Board in a form recordable in the Rockingham County Registry of Deeds.

No subdivision plan or site plan is being submitted as part of this special request for relief and action on the part of the Planning Board. City Attorney Robert Sullivan and/or Deputy City Attorney Suzanne Woodland will appear before the Board to present the request. This requested relief should be noticed as a public hearing.

**PROPOSED MOTION:** For Map 242, Block 4, Lot 0, move that the Planning Board waive in its entirety the 500 foot cul-de-sac limitation found in Section VI(3)(1) of the Subdivision Regulations; subject to any owner/applicant otherwise obtaining all other approvals and permits from local land use boards as may be necessary to develop the property. This waiver will run with the land and shall be effective for any subdivision application submitted to the Planning Board within ten (10) years of the date of approval of the waiver.

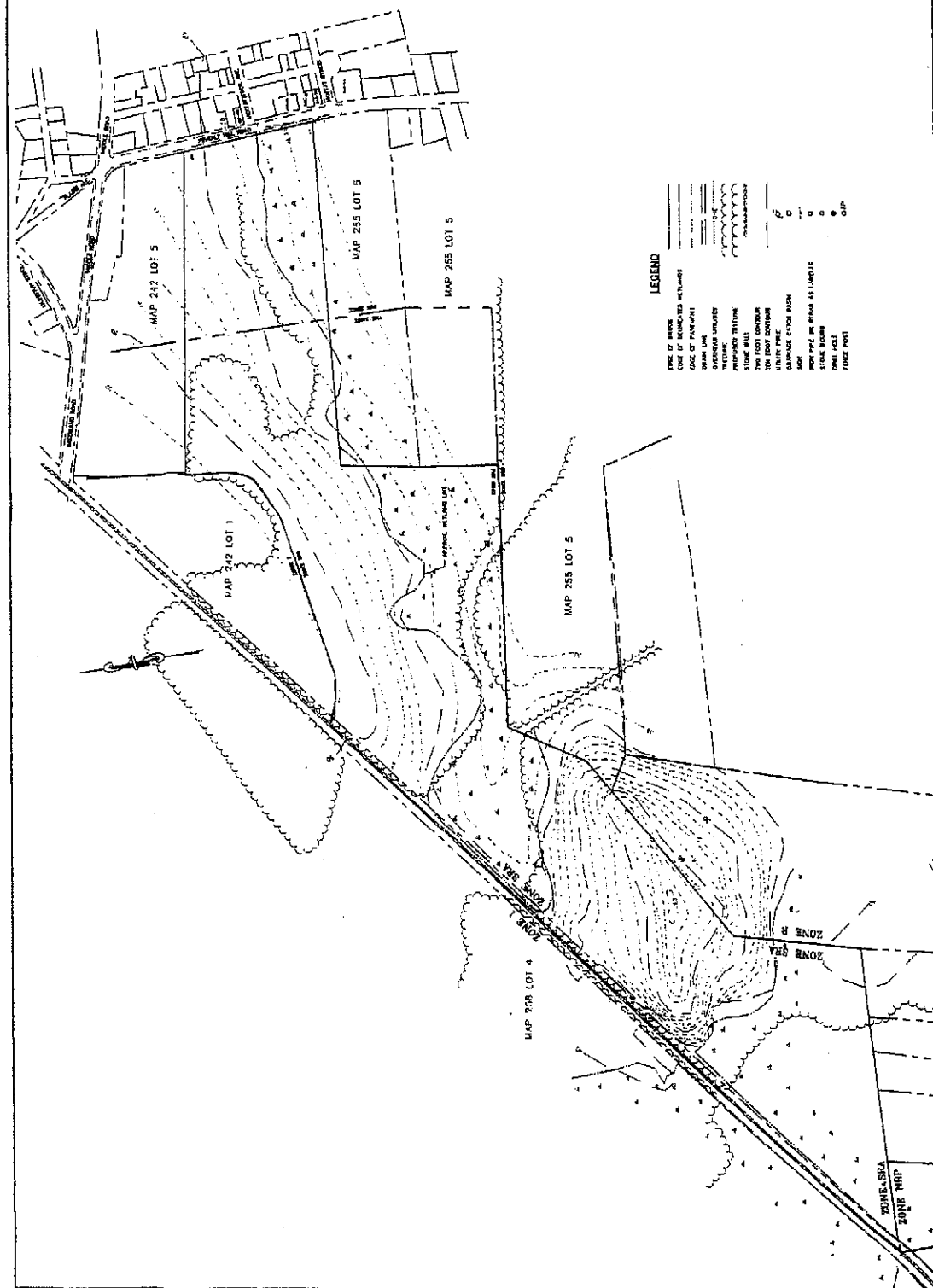
attachment

cc: Peter H. Rice, P.E., Director of Public Works



**GENERAL NOTES**

1. PREPARED FOR: PHILLIP STOKEL  
83 PEVERLY STREET  
PORTSMOUTH, NH
2. THE PURPOSE OF THIS PLAN IS TO SHOW THE EXISTING AND PROPOSED CONDITIONS OF A 15 FOOT R/W. A 15 FOOT R/W IS SHOWN IN THIS PLAN AND IS TO BE MAINTAINED THROUGHOUT THE PROJECT.
3. THE 150' R/W OF THE SUBJECT PARCEL IS APPROX. 103' ALONG THE STREET FRONT AND IS BOUND BY PEVERLY HILL ROAD AND SWINE SRA.
4. THE SUBJECT PARCEL IS ZONED UNDER RESIDENTIAL, A (R4) AND SHALL BE USED AS SUCH.



PROJECT NO. DS-0001-1

**Woodland Design Group**

1000 North Main Street  
Portsmouth, NH 03801  
Tel: (603) 888-8888  
Fax: (603) 888-8889

SHEET NO. 1 OF 5

PREPARED FOR:  
PHILLIP STOKEL  
83 PEVERLY STREET  
PORTSMOUTH, NEW HAMPSHIRE

DATE: JULY 10, 2008

SCALE: 1" = 250'

PRELIMINARY EXISTING CONDITIONS PLAN PREPARED FOR:

**83 PEVERLY HILL ROAD LLC**

TAX MAP 242; LOT 4

PEVERLY HILL ROAD - PORTSMOUTH, NEW HAMPSHIRE

REVISIONS	
NO.	DESCRIPTION