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January 26, 2022

Arthur Parrott, Chair
Zoning Board of Adjustment
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: 230 Commerce Way, Tax Map 216, Lot 1-5
230 Commerce Way, LLC

Dear Chair Parrott and Board Members:

Enclosed please find supporting materials to accompany the information submitted via the City's on-line permitting system for a Special Exception regarding the proposed veterinary care facility at the above referenced property.

We respectfully request that this matter be placed on the Board's February 15, 2022 agenda. In the meantime, if you have any questions or require additional information do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

Justin L. Pasay
JLP/sac
Enclosures

cc: 230 Commerce Way, LLC
Tighe & Bond

S:\01-99\230 Commerce Way, LLC\Ethos Vet - City of Portsmouth\2022 01 26 ZBA Materials\Submittal Materials\2022 01 26 zba letter.docx

DONAHUE, TUCKER & CIANDELLA, PLLC

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111 Maplewood Avenue, Suite D, Portsmouth, NH 03801

Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253

83 Clinton Street, Concord, NH 03301

SPECIAL EXCEPTION APPLICATION FOR
230 Commerce Way, LLC (the “**Applicant**”)

The Applicant requests a Special Exception pursuant to Section 10.440 (7.50) to permit a veterinary care facility in a two-story, 25,000 sf building proposed to be constructed at 230 Commerce Way (the “**New Building**”), which property is located in the City’s Office Research Zoning District (the “OR District”) and is further identified as City Assessor Map 216, Lot 1-5 (the “**Property**”). To the extent the Applicant obtains the requested Special Exception from the Board of Adjustment (the “**Board**”), it will finalize design of the New Building and proceed to the City’s Technical Advisory Committee (“**TAC**”) and Planning Board for all required reviews, permits and approvals.

A. Introduction

- **Property Description**

The Property is approximately 5.62 acres in size and is improved with an existing 50,000 sf office building and corresponding site improvements, as depicted on Tighe & Bond’s Conceptual Site Plan provided herewith as **Enclosure 1** (the “Existing Office Building”). The Existing Office Building is occupied by several tenants to include Colwen Management, Robert Half Recruiters and Employment Agency, C3 Metrics and Wright-Pierce Environmental Engineering, which keep traditional business hours. The Applicant proposes to construct the New Building in an upland area in the southwestern portion of the Property which exists today as an impervious parking lot.¹ Conceptual renderings of the New Building are provided herewith as **Enclosure 3**.

To the north and east, the Property is abutted by Commerce Way and additional office buildings.² To the east and south, the Property is abutted by Portsmouth Avenue and a distinct lot identified as City Assessor Map 217, Lot 2-1975, which is owned by the Applicant’s sister company, Brora, LLC (the “Brora Property”). As depicted in **Enclosure 1** and **Enclosure 5**, which is the landscaping plan reviewed and approved by the Planning Board in the fall of 2021 pursuant to its Conditional Use Permit jurisdiction, the area of the Brora Property which will be in closest proximity to the New Building is encumbered by considerable wetlands which cannot be developed and will remain natural.³

To the south and west, the Property is abutted by the shopping center located at 1465 Woodbury Avenue which is further identified as City Assessor Map 216, Lot 3 (the “Market Basket Plaza”). To the west, the Property is abutted by a parcel located at 210 Commerce Way which is owned by the Applicant’s sister company, 210 Commerce Way, LLC (the “210 Commerce Way Property”). The 210 Commerce Way Property is improved by a three-story, 50,000 sf office building substantially similar to the Existing Building at 230 Commerce Way.

¹ See Enclosure 1. See also **Enclosure 2**, which is an aerial picture of the Property.

² See Enclosure 4, which includes City Assessor Maps 216 and 217.

³ See Enclosure 5.

- **Proposed Use**

The New Building is proposed to be the relocated home of Port City Veterinary Referral Hospital, which is an Ethos Veterinary Health facility (“Port City”). Currently, Port City operates out of a 15,000 sf facility located at 215 Commerce Way, which is across the street from the Property. Port City has been proudly serving the greater Portsmouth community since 2008 after obtaining a variance from the Board of Adjustment to operate a veterinary hospital.⁴

Port City is a veterinary care facility as defined by the Zoning Ordinance.⁵ By way of brief background, Port City is a state-of-the art veterinary services company providing comprehensive and advanced medical care to animals. The proposed use will continue as it exists today. Specifically, Port City will provide 24 hour, seven days per week emergency services and six-days per week specialty veterinary services as described below. The vast majority of patients treated by Port City are dogs and the remaining contingent consists of cats, primarily, and other small domestic companion pets. No large animals, such as horses, are treated by Port City and there will be no crematory on site, and no sale or commercial boarding of animals in kennels. The only overnight pets at Port City are ICU patients who are under closely supervised veterinary care, and who, generally, are very ill and/or injured.

Port City offers cardiology, diagnostic imaging (MRI, CT, x-ray, fluoroscopy, ultrasound), emergency / critical care, internal medicine, oncology, ophthalmology, surgery and pharmacy services to its patients and embodies Ethos Veterinary Health’s mission and vision of providing unsurpassed veterinary health care for patients and their human companions in a unique and impactful science-focused environment which emphasizes collaboration, evidence-based decision making, and a commitment to the veterinary ethos.

Port City’s proposed relocation is necessitated by the space constraints it is experiencing in its current facility at 215 Commerce Way. To summarize, the demand signal for Port City’s expert veterinary services is high, and their current facility is too small to accommodate because it does not have enough ICU space and operating rooms, among other things. The unfortunate reality under the circumstances, is that Port City frequently has to turn patients away, even those experience emergency medical issues. Port City’s goal is to move into the New Building and be able to greater serve the needs of the Portsmouth area for years to come.

B. Special Exception Request

Veterinary care facilities are permitted by Special Exception from the Board of Adjustment in the OR District. Pursuant to Section 10.232.10 of the Zoning Ordinance, the Board shall grant requests for Special Exception which are in harmony with the general purpose and intent of the Zoning Ordinance and which meet the express standards of Subsection 10.232.20.

⁴ In 2007, the veterinary hospital use was not permitted by Special Exception in the Office Research Zoning District as it is today.

⁵ A “veterinary care facility” is defined as “[a]n establishment for the diagnosis and treatment of animals, which may include animal boarding or animal crematory as accessory uses.” See Zoning Ordinance, Section 10.1530.

As a threshold matter, and before addressing the specific standards of Subsection 10.232.20 of the Zoning Ordinance, the Applicant's proposed use *will* be in harmony with the general purposes and intent of the Zoning Ordinance which are to promote the health, safety and the general welfare of Portsmouth and its region via regulation of the use of land, the intensity of land use and the impacts on surrounding properties of particular land uses.⁶ In this case, Port City's expanded operation at the New Building will be across the street from its existing location but will be even better-insulated from surrounding properties, which are all office and/or commercial in nature anyways. The New Building will also be insulated by the wetland open space of the Brora Property and will be generally consistent with the character of the area.⁷ As a result, approval of the Applicant's Special Exception Request will facilitate the continued, and expanded, exemplary veterinary services Port City has been providing since 2008 in a manner that promotes the health, safety and general welfare of Portsmouth and its region.

The Applicants proposal also satisfies the express conditions of Subsection 10.232.20 of the Zoning as follows:

1. Standards as provided by this Ordinance for the particular use permitted by special exception. See Zoning Ordinance, Subsection 10.232.21.

The Applicant's proposal meets all standards as provided by the Zoning Ordinance for the particular use of veterinary care facility. Specifically, veterinary care facilities like Port City are permitted by Special Exception pursuant to Section 10.440 (7.50) of the Zoning Ordinance. The only other express standards which appear to apply to such facilities in the Zoning Ordinance are Section 10.832, which requires that all kennels be located within an enclosed building, and Section 10.592, which requires 200 ft minimum distance between any lot with a veterinary hospital **with kennels** and any Residential or Mixed Residential Zoning District or Character District 4-L1. The Zoning Ordinance defines "kennel" as "[a]n establishment in which a primary use is housing dogs, cats, or other household pets, and/or grooming, breeding, boarding, training, or selling of animals."⁸

Here, Port City does not currently have and will not have kennels at the New Building. As described above, Port City does not board dogs and to the extent there are overnight patients, they are patients of the ICU who require close veterinary monitoring and are ill or injured.

As the Applicant's proposed use does not include kennels, and as the use in all other respects complies with the terms of the Zoning Ordinance, the first Special Exception criteria of Subsection 10.232.20 is satisfied.

2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials. See Zoning Ordinance, Subsection 10.232.22.

Port City currently operates at 215 Commerce Way where it less insulated from surrounding properties and uses than what is proposed and where it has posed no hazard to the

⁶ See Zoning Ordinance, Section 10.121.

⁷ See Enclosures 1, 2, 4.

⁸ See Zoning Ordinance, Section 10.1530.

public or adjacent properties for the last 14 years. The New Building will meet all applicable building codes and will undergo TAC and Planning Board review to ensure consistency with other applicable regulations before building permits are issued. On this evidence, Subsection 10.232.22 is satisfied.

- 3. No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials. See Zoning Ordinance, Subsection 10.232.23.**

The New Building and Port City will be sited in a manner which is more insulated from surrounding uses than it is today at 215 Commerce Way. The New Building will be constructed on what is currently impervious parking lot and will be surrounded in closest proximity by the unimproved Brora Property, the existing office buildings at 210 and 230 Commerce Way, and the back of the Market Basket in the Market Basket Plaza. As a result, the essential character of the area will remain the same. Further, the proposed use will not emit odor, smoke, gas, dust, or other pollutant, noise, glare, heat, or vibration and will not store equipment, vehicles, or other materials outdoors. On the contrary, Port City will continue to exist and thrive in the same low-impact and benign manner it has existed at 215 Commerce Way since 2008.

Common sense dictates that the Applicant's use, as proposed, will not detriment surrounding property values and the Applicant is not aware of any evidence to the contrary in the record. On this evidence the Applicant submits that Subsection 10.232.23 is satisfied.

- 4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. See Zoning Ordinance, Subsection 10.232.24.**

The proposed use will not create a traffic safety hazard or substantial increase in the level of traffic congestion in the area, particularly when you consider the nature of the Property, the uses that would be permitted by right in the OR District, and the nature of Commerce Way and Portsmouth Boulevard.

As depicted on **Enclosure 1**, the Conceptual Site Plan, access is proposed to be provided via a curb cut in Portsmouth Boulevard which will facilitate safe ingress and egress to Port City. This access will be subjected to review and scrutiny by TAC and the Planning Board which will ensure compliance with applicable Site Plan Review Regulations regarding traffic impact. Further, the Applicant projects that the proposed use will produce consistent traffic as uses that would otherwise be permitted by right on the Property to include professional and business offices.

The project contemplates reasonable additional development of the large 5.6 acre Property in a manner that will compliment and be consistent with the surrounding nature of Commerce Way and Portsmouth Boulevard. Under the circumstances, the Applicant submits that Subsection 10.232.24 is satisfied.

- 5. No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools. See Zoning Ordinance, Subsection 10.232.25.**

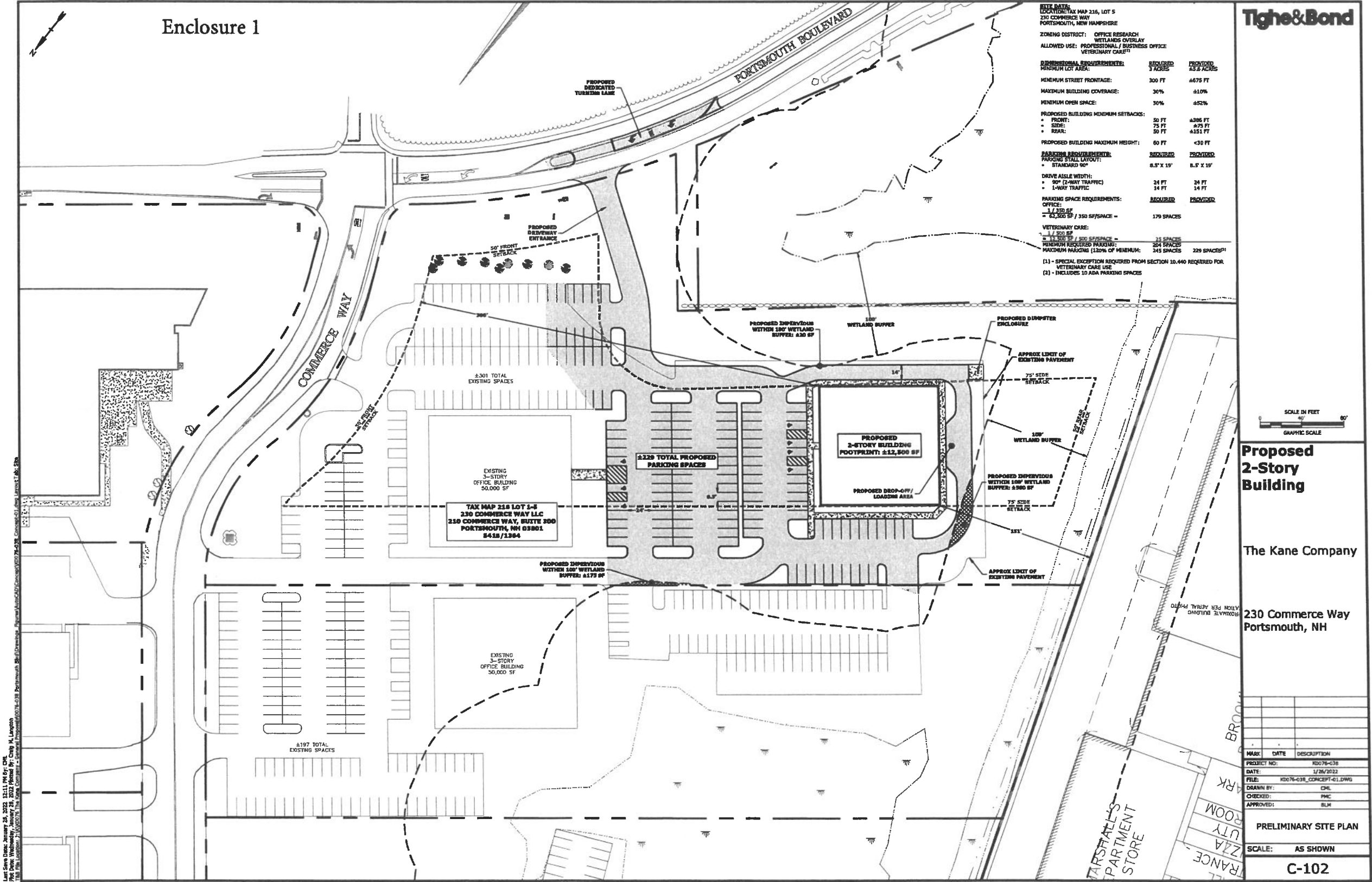
The New Building will be serviced, as the Existing Building is serviced, by public water and sewer and the Property is well situated to accommodate the same. The Applicant does not anticipate excessive demand on municipal services by the proposed Port City veterinary care facility. The Applicant anticipates very little, if any, demand on police and fire protection, and will cause no impact to schools.

- 6. No significant increase of stormwater runoff onto adjacent property or streets. See Zoning Ordinance, Subsection 10.232.26.**

Currently, the existing area of the Property upon which the New Building will be constructed is an impervious parking lot. The stormwater runoff from the parking lot is treated by the drainage design implemented at the Property upon construction of the parking lot in the 1990s. As part of this project, the ultimate design for the New Building will include a stormwater management design proposal that will be reviewed by TAC and the Planning Board to ensure consistency with the City's Site Plan Review Regulations pertaining to same. Accordingly, there will be no significant increase to stormwater runoff onto adjacent property or streets and Subsection 10.232.26 is satisfied.

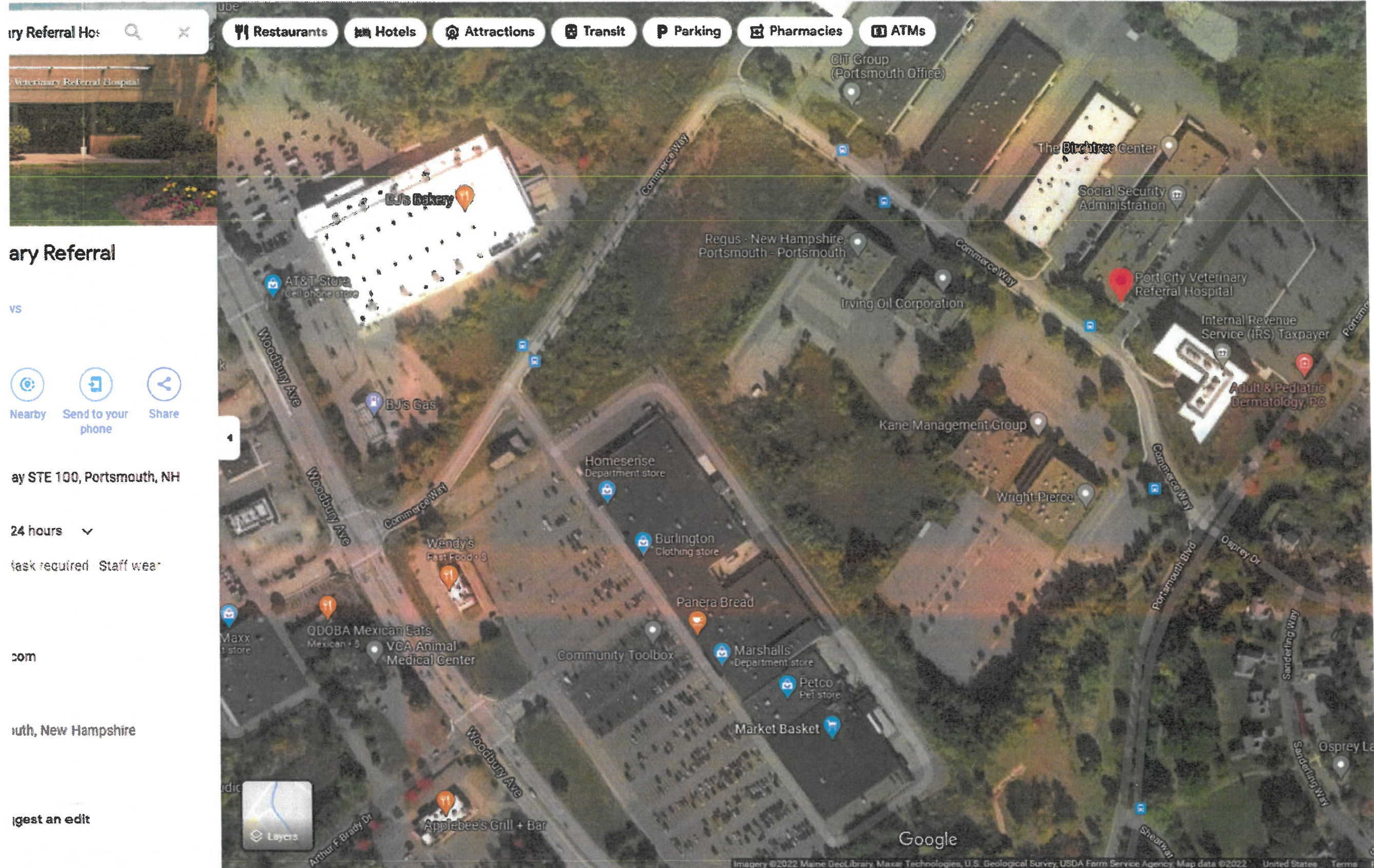
C. Conclusion

The Applicant respectfully submits that Special Exception Criteria found within Section 10.232.20 have been satisfied and that its application should be approved.



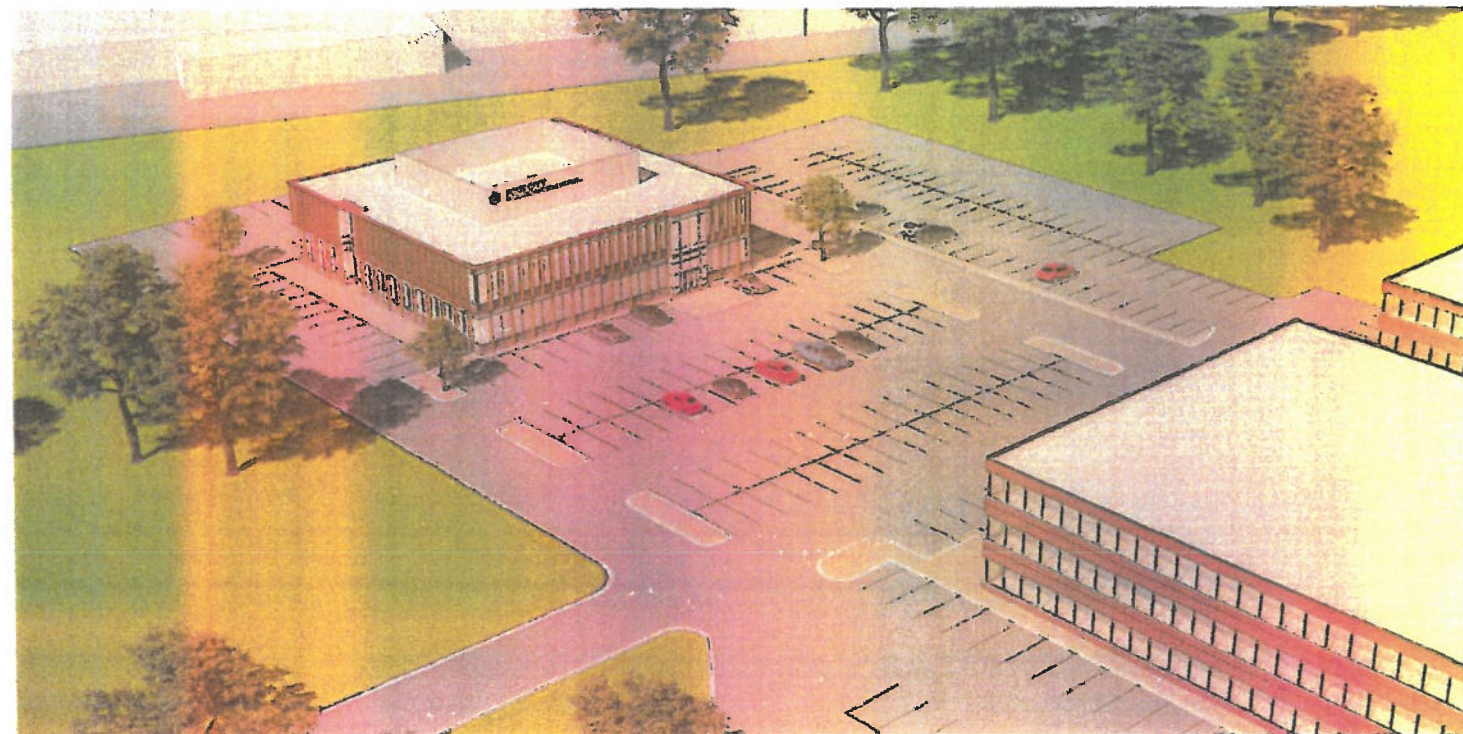
Last Save Date: January 26, 2022, 12:11 PM By: CML
Plot Date: Wednesday, January 26, 2022, Plotted By: CML
Title: The Kane Company - 230 Commerce Way, Portsmouth, NH 03801 - General Proprietorship - 230 Commerce Way, Portsmouth, NH 03801 - 230 Commerce Way, Portsmouth, NH 03801

Enclosure 2



Enclosure 3

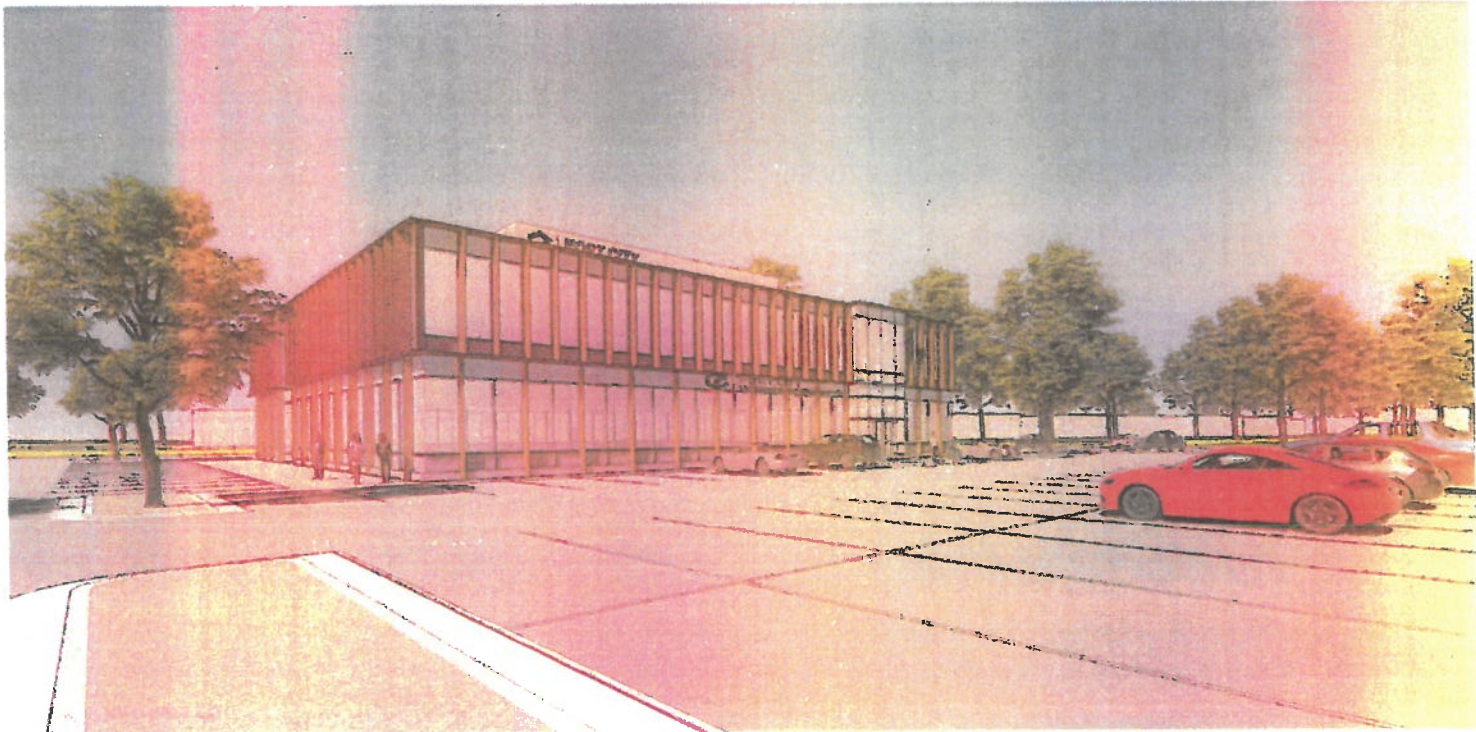
SITE B - PROPOSED
BIRDSEYE VIEW

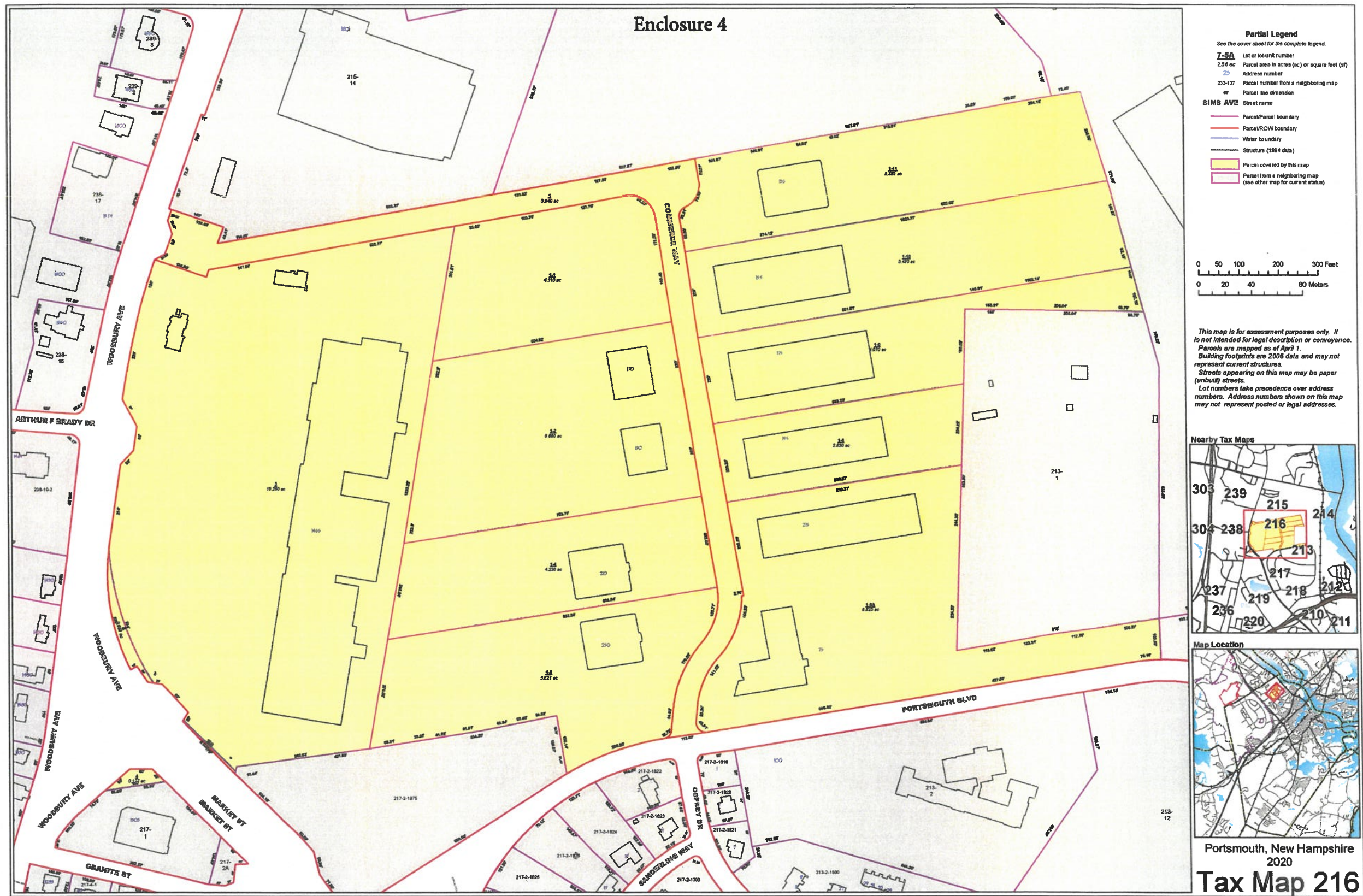


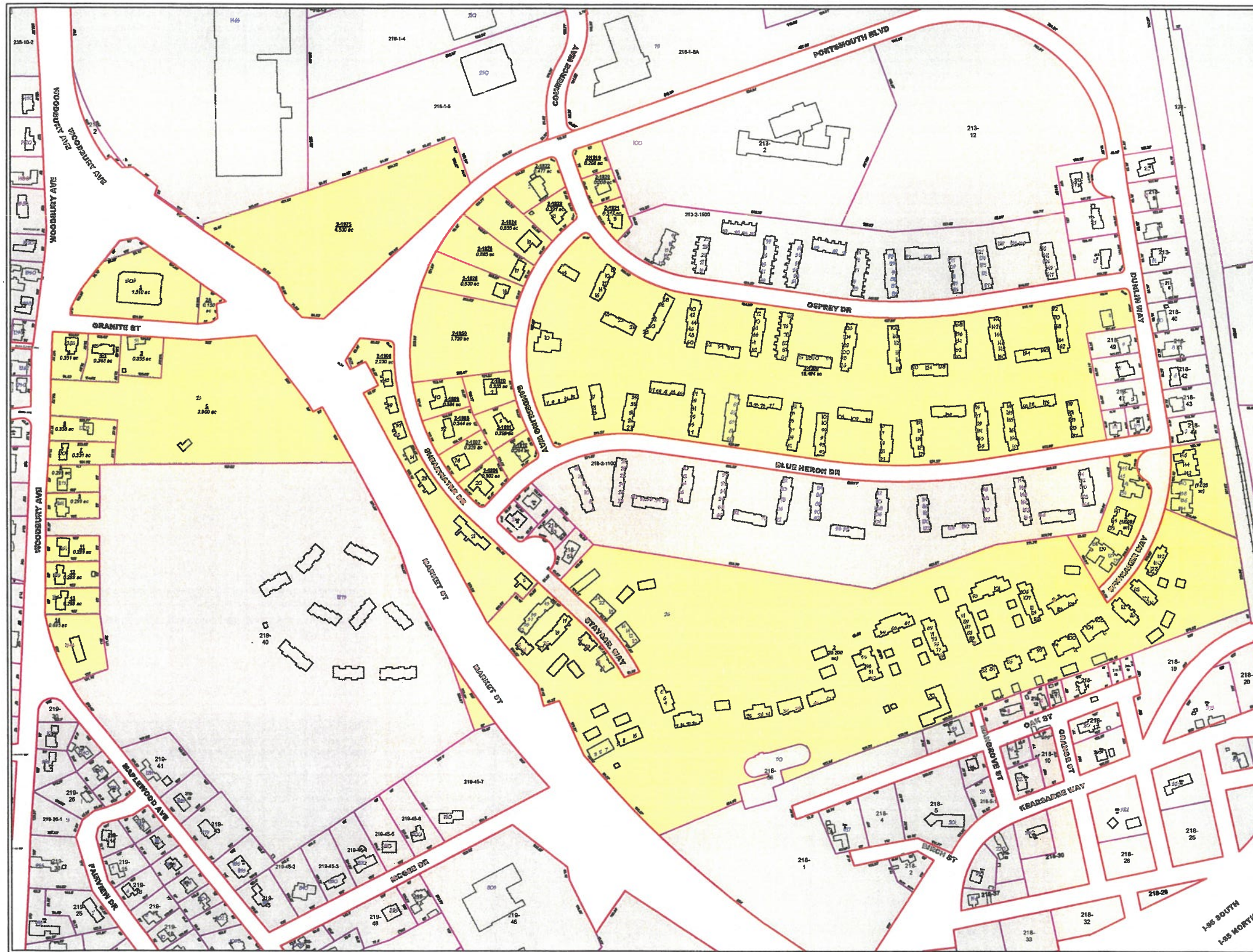
NELSON THE KANE COMPANY \ 215 COMMERCE WAY & 25 PORTSMOUTH BLVD., PORTSMOUTH, NH \ 19 FEBRUARY 2021

14

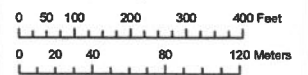
SITE B - PROPOSED
GROUND LEVEL / APPROACH VIEW



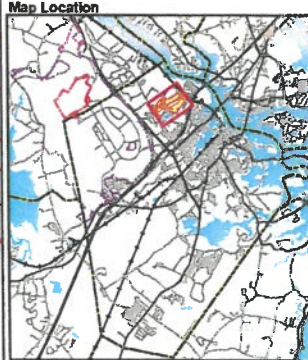
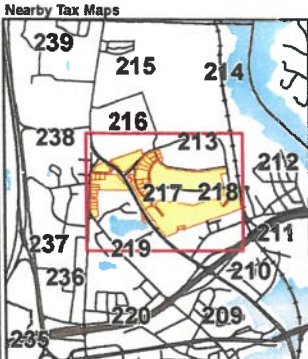




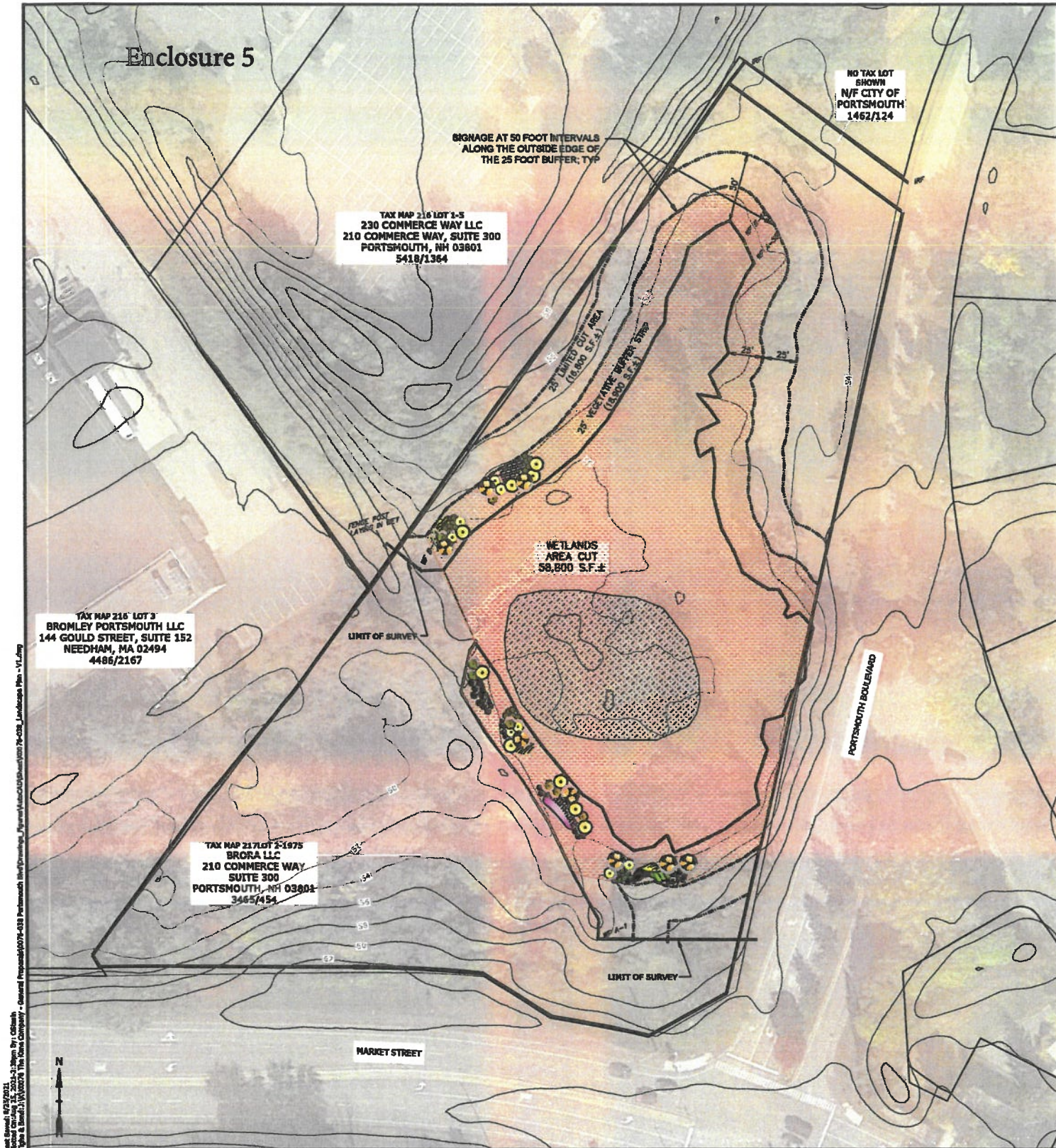
- Partial Legend**
See the cover sheet for the complete legend.
- 7-5A Lot or lot-unit number
 - 2.56 ac Parcel area in acres (ac) or square feet (sf)
 - Address number
 - 233-137 Parcel number from a neighboring map or
 - Parcel line dimension
 - Street name
 - Parcel/Parcel boundary
 - Parcel/ROW boundary
 - 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.



Portsmouth, New Hampshire
2020
Tax Map 217



PLANT SCHEDULE

SHRUBS	CODE	QTY	BOTANICAL NAME	COMMON NAME	SIZE	REMARKS
●	Co Am	8	Cornus amomum	Silly Dogwood	30-36"	
●	Ha Vi	8	Hamelia virginiana	Common Witch Hazel	3-4"	
●	Ir Jd	8	Ilex verticillata 'Jim Dandy'	Jim Dandy Winterberry	30-36"	
●	Ir Re	15	Ilex verticillata 'Red Sprite'	Red Sprite Winterberry	30-36"	
●	Ir Vi	5	Ilex virginica 'Little Henry'	Virginia Sweetspire	18-24"	
●	Li Be	8	Lindera benzoin	Spicebush	18-24"	
●	Rh Vi	8	Rhododendron viscosum	Swamp Azalea	18-24"	
●	Va An	14	Vaccinium angustifolium	Lowbush Blueberry	10-12"	
●	Va Co	16	Vaccinium corymbosum	Highbush Blueberry	18-24"	

GROUND COVERS	CODE	QTY	BOTANICAL NAME	COMMON NAME	SIZE	SPACING	REMARKS
■	as no	18	Aster novae-angliae	New England Aster	1 gal.	36" o.c.	
■	eu fl	43	Eupatorium fistulosum	Joe Pye Weed	1 gal.	36" o.c.	
■	ju ef	20	Juncus effusus	Soft Rush	1 gal.	36" o.c.	
■	os ci	10	Osmunda cinnamomea	Cinnamon Fern	1 gal.	36" o.c.	
■	so va	24	Scirpus validus	Grass Bulrush	1 gal.	36" o.c.	

SEEDING AREAS	DESCRIPTION	QTY	REMARKS
■	New England Eriophorum Control/Restoration Mix For Disturbed Soils and Moist Sites	75,500 SF	Riverbank Wild Rye (Elymus riparius), Creeping Red Fescue (Festuca rubra), Little Bluestem (Schizachyrium scoparium), Big Bluestem (Andropogon gerardii), Switch Grass (Panicum virgatum), Upland Broomrape (Aporosa peruviana), Nodding Bar Marigold (Bidens cernua), Hollow-Stem Joe Pye Weed (Eupatorium fistulosum), New England Aster (Aster novae-angliae), Bluestem (Eupatorium purpureum), Blue Vervain (Verbena hastata), Soft Rush (Juncus effusus), Wood Grass (Scirpus caryophyllus)
■	Application Rate: 35 Bushels / 1350 sq ft		

RESTORATION PLANTING NOTES

- RESTORATION PLANTINGS TO OCCUR AS DEPICTED. TO PREPARE FOR THE PLANTINGS, MECHANICALLY CUT AND MANUALLY REMOVE EXISTING INVASIVES AS TO NOT DISTURB EXISTING NATIVE VEGETATION TO REMAIN.
- DISTURBED SOILS WILL BE AUGMENTED AS NEEDED WITH A CUSTOM BLENDED SOIL OF ONE PART LOAM, ONE PART ORGANIC COMPOST AND ONE PART CLEAN SAND.
- SEEDING AREAS ARE TO BE COVERED WITH BALT MARSH HAY TO RETAIN SOIL MOISTURE AND PROTECT AGAINST SEED PREDATION BY BIRDS AND SMALL MAMMALS. SEEDING ACTIVITIES WILL BE LIMITED TO WETLAND AND BUFFER AREAS ONLY.
- NATIVE PLANT MATERIAL WILL BE LAID OUT AND INSTALLED BY AN ECOLOGICAL RESTORATION SPECIALIST OR PERSONS TRAINED IN HORTICULTURAL PRACTICES. EXACT PLANT LOCATIONS WILL BE DETERMINED IN THE FIELD BASED ON SITE-SPECIFIC PLANTING CONDITIONS AND MICRO-TOPOGRAPHY. INSTALLATIONS OF PLANTING ARE TO BE COMPLETED BY HAND. PLANTING ACTIVITIES WILL BE LIMITED TO THE BUFFER AREA ONLY.
- LOCATION OF INDIVIDUAL PLANTS IS APPROXIMATE AND SUBJECT TO CHANGE BASED ON SITE SPECIFIC CONDITIONS AT THE TIME OF PLANTING. PLANTING ACTIVITIES WILL BE LIMITED TO BUFFER AREA ONLY.
- INSTALLATIONS OF PLANTING ARE TO BE COMPLETED BY HAND.
- WETLAND PLACARD SIGNAGE TO BE INSTALLED AT 50 FOOT INTERVALS ALONG THE OUTSIDE EDGE OF THE 25 FOOT BUFFER, AS DEPICTED.

OPERATIONS AND MAINTENANCE NOTES

- TWO-YEAR OVERSIGHT PERIOD TO BE OBSERVED.
 - OVERSIGHT AND AFTERCARE TO BE PROVIDED FOR THE FIRST TWO GROWING SEASONS AFTER INSTALLATION. OVERSIGHT ACTIVITIES WILL BE LIMITED TO WETLAND AND BUFFER AREAS ONLY.
 - MONTHLY INSPECTIONS WILL BE CONDUCTED FOR THE FIRST GROWING SEASON AND REMOVAL OF INVASIVE SPECIES WILL BE IMPLEMENTED AS NEEDED DURING THE ESTABLISHED PERIOD, IN ACCORDANCE WITH NOTE 2, BELOW. REMOVAL AND RESTORATION ACTIVITIES WILL BE LIMITED TO THE WETLAND AND BUFFER AREAS.
 - DURING THE OVERSIGHT PERIOD MECHANICALLY CUT AND MANUALLY REMOVE VOLUNTEER INVASIVE SPECIES SHOULD THEY BE OBSERVED WITHIN THE PLANTED AREAS BY AN ECOLOGICAL RESTORATION SPECIALIST OR PERSONS TRAINED IN HORTICULTURAL PRACTICES.
 - INVASIVE PLANT MATERIAL WILL BE CONTROLLED IN ACCORDANCE WITH SECTION 10.1016.23 OF THE CITY'S ZONING ORDINANCE AND AS DETAILED IN NOTE 2, BELOW.
- CONTINUING REMOVAL OF INVASIVE SPECIES IN WETLAND AND WETLAND BUFFER AREA.
 - REMOVAL OF INVASIVE SPECIES IN WETLAND AND WETLAND BUFFER AREA TO OCCUR IN ACCORDANCE WITH THE CITY'S ZONING ORDINANCE.
 - CARE IS TO BE TAKEN IN REMOVING ANY NEW COLONIZING INVASIVE PLANT MATERIAL TO MINIMIZE DISTURBANCE TO ESTABLISHING NATIVE PLANT SPECIES. REMOVAL AND RESTORATION ACTIVITIES WILL BE LIMITED TO THE WETLAND AND BUFFER AREAS.
 - DISPOSAL OF CHIPPED MATERIAL TO OCCUR IN UPLANDS OUTSIDE OF THE WETLAND BUFFER, COMPOSTED AT AN APPROPRIATE FACILITY OR BURIED ON SITE ACCORDING TO ALL APPLICABLE LOCAL, STATE AND FEDERAL RULES AND REGULATIONS.
 - THE USE OF CHEMICAL CONTROL OF VEGETATION IS PROHIBITED IN ALL AREAS OF THE WETLAND AND WETLAND BUFFER IN ACCORDANCE WITH SECTION 10.1016.23 OF THE CITY'S ZONING ORDINANCE.
 - THE USE OF CHEMICAL FERTILIZER IS PROHIBITED IN THE WETLAND BUFFER AND WETLAND. PRACTICES IN ASSOCIATION WITH FERTILIZERS WILL COMPLY WITH SECTION 10.1016.24 OF THE CITY'S ZONING ORDINANCE.
 - THE USE OF PESTICIDE OR HERBICIDE IS PROHIBITED IN THE BUFFER AND WETLAND. PRACTICES IN ASSOCIATION WITH PESTICIDES WILL COMPLY WITH SECTION 10.1016.25 OF THE CITY'S ZONING ORDINANCE.

- ZONING ORDINANCE
 - APPROVAL OF THIS PLAN AND THE APPLICANT'S CONDITIONAL USE PERMIT SATISFIES THE APPLICANT'S NOTICE OBLIGATIONS UNDER SECTION 10.1015 FOR ALL FUTURE INVASIVE SPECIES REMOVAL DURING TWO-YEAR OVERSIGHT PERIOD AND BEYOND.

GENERAL NOTES

- BASE PLAN COMPILED FROM ERIC C. MITCHELL & ASSOC. INC SURVEY DATED DECEMBER 16, 2020 AND 'LOT LINE ADJUSTMENT' PLAN TAX MAP 19-17, LOT 3-1976 SHEARWATER DRIVE / DOVEKOE WAY / MARKET STREET PORTSMOUTH, NH SCALE: 1"=40' DATE: AUG. 1009" PREPARED BY OLD CONSULTING ENGINEERS, MANCHESTER, NH R.C.R.D. PLAN 10-28364.



HALVORSON

landscape studio

20 SHREVEWAY ST., PORTSMOUTH, NH 03801
PH: 603.433.1111 FAX: 603.433.1112
WWW.HALVORSONSTUDIO.COM

CONCEPTUAL USE ONLY NOT FOR CONSTRUCTION

Portsmouth Boulevard

The Kane Company, Inc.

Portsmouth, New Hampshire

MARK	DATE	DESCRIPTION
PROJECT NO:	18076-036	
DATE:	06/04/2021	
FILE:	18076-036_Landscape Plan - V1.dwg	
DRAWN BY:		
CHECKED BY:		
APPROVED BY:		

CONCEPT PLAN

SCALE: 1" = 40'-0"

L1.00