



Town of York

186 York Street
York, Maine 03909-1314

Town Manager/
Selectmen
(207)363-1000

Town Clerk/
Tax Collector
(207)363-1003

Finance/
Treasurer
(207)363-1004

Code Enforcement
(207)363-1002

Planning
(207)363-1007

Assessor
(207)363-1005

Police Department
(207)363-1031

Dispatch
(207)363-2557

York Beach Fire
Department
(207)363-1014

York Village Fire
Department
(207)363-1015

Public Works
(207)363-1011

Harbor Master
(207)363-1000

Senior Center/
General Assistance
(207)363-1036

Parks and
Recreation
(207)363-1040

Fax
(207)363-1009
(207)363-1019

www.yorkmaine.org

BOARD OF SELECTMEN'S MEETING AGENDA

6:00/7:00PM MONDAY, OCTOBER 19, 2015
YORK LIBRARY

6:00PM: Executive Session: Pursuant to MRSA Title 1, Section 405.6.C – Real Estate
(Discussion with First Parish Church Board of Assessors)

Call to Order

Opening Ceremonies

A. Minutes

B. Chairman's Report

C. Manager's Report

D. Awards

E. Reports

1. Tim Haskell, Sewer District Superintendent – Update on Coordinated Projects

F. Citizens' Forum – The Citizens' Forum is open to any member of the audience for comments on any matter. All comments should be respectful in tone and should be directed to the Chair. Comments should be brief and to the point. Questions that require extended answers or that cannot be readily answered will be referred to the Town Manager for follow-up. Anyone who wishes to submit a written request for future agenda items can do so on the form available at this meeting or may obtain the form through the Town Manager's Office.

G. Public Hearings

1. Communications Tower at 36 Main Street

H. Endorsements

Business Licenses: Mike Stotts and Jean Dyer DBA: Sea Rose Inn, John and Nancy Stern DBA: Pie in the Sky Bakery, Inc., Donna and Gordon Lewis DBA: Clay Hill Farm, Mary Jane Merritt DBA: The Union Bluff Hotel and Kevin Evans DBA: Thai for You

I. Old Business

1. Discussion and Possible Action: Contracting with York Sewer District for Main Street Work
2. Discussion and Possible Action: Paper Streets
3. Discussion and Possible Action: LED Streetlights
4. Discussion and Possible Action: Communications Tower at 36 Main Street
5. Discussion and Possible Action: MTA Toll Plaza Project

J. New Business

1. Discussion and Possible Action: Special General Referendum Request
2. Special Event Permits
 - a. Festival of Lights Parade
 - b. 14th Annual Graystone Builders Beach Bonfire Benefit
 - c. Great Strides York
3. Pole Location Permits
 - a. US Route One
 - b. Pine Hill Road
 - c. Bay Haven Road

K. Future Agendas

L. Other Business

M. Citizens' Forum

Adjourn



**Notice of Public Hearing
Town of York - Board of Selectmen
Monday, October 19, 2015
7:00 PM
York Public Library**

The York Board of Selectmen will conduct a Public Hearing on **Monday, October 19, 2015** at **7:00PM** regarding the possible replacement of the existing communications tower with a larger 140' tower at the existing Police Station, located at 36 Main Street. Any questions or comments will be welcome at the hearing, and written comments may be submitted in advance to the Town Manager's Office.



REQUEST FOR ACTION BY BOARD OF SELECTMEN

DATE SUBMITTED: October 16, 2015

ACTION

DATE ACTION REQUESTED: October 19, 2015

DISCUSSION ONLY

SUBJECT: Business License Applications

DISCUSSION OF OPTIONS AVAILABLE TO THE BOARD: All appropriate departments have given approval; See "Department Approvals" on page two of the application.

RECOMMENDATION: Approve the Business License(s) attached.

PROPOSED MOTION: I move to approve the following licenses:

- *Kevin Evans DBA: Thai for You for Food Service and Liquor; Located at 647 US Route One*
- *Mary Jane Merritt DBA: The Union Bluff Hotel for Food Service, Liquor, Special Amusement and Coin Operated Amusement; Located at 8 Beach Street*
- *Donna and Gordon Lewis DBA: Clay Hill Farm for Food Service, Liquor and Special Amusement; Located at 220 Clay Hill Road*
- *John and Nancy Stern SBA: Pie in the Sky Bakery, Inc. for Food Service; Located at 1 River Road*
- *Mike Stotts and Jean Dyer DBA: Sea Rose Inn for Bed and Breakfast; Located at 2 Southside Road*

All subject to taxes, fees and inspections being current and compliant with the usual noise stipulations.

PREPARED BY: Melissa M. Avery
Melissa M. Avery, Assistant to the Town Manager

REVIEWED BY: _____

Provide the following information about any relevant State licenses:

STATE LICENSE INFORMATION			
ID Number(s):	18576		
Expiration Date(s):	08/27/2016		
Classification(s):	ServSafe No. 11274131		

Please read the following and sign to complete your application:

I understand that a license is required before operating or conducting any business or activity governed by the Town's Business Licensing Ordinance and that ongoing compliance with the provisions of the Town's Business Licensing Ordinance and other applicable Town codes is required throughout the entire license period.

I understand that this Business License Application must be filled out completely, all fees must be paid, and all necessary department inspections must be completed and passed before the license(s) will be considered by the Board of Selectmen.

Business Owner: *Kevin Egan* Have you ever been convicted of a Felony? YES / NO
Signature

Business Manager: *Dasipom Evans* Have you ever been convicted of a Felony? YES / NO
Signature
 (If either person has a Felony conviction, please attach an explanation of the circumstances)

FOR OFFICE USE ONLY

FEES	Amount	Map - Lot: <u>0091 - 0008-W</u>
Application and First License (\$60)	<u>60.-</u>	Processed By: <u>mmavery</u>
Subsequent Licenses (\$30 each)	<u>30.-</u>	Received Date: <u>8/28/2015</u>
New License Fee (\$50)	<u>-</u>	Amount Received: \$ <u>90.00</u>
License Amendment (\$25)	<u>-</u>	Check # <u>1272</u> or Cash <input type="checkbox"/>
Other: _____		
TOTAL DUE	\$ <u>90.-</u>	LICENSE #: _____ - _____

Department Approvals		Date of Approval	Special Conditions (Attached if Necessary)
Code Enforcement	<u>__ N/A</u>	<u>10/5/2015 O. Davis</u>	YES <input checked="" type="radio"/> NO <input type="radio"/>
Fire	<u>__ N/A</u>	<u>9/28/2015 D. Apper</u>	YES <input checked="" type="radio"/> NO <input type="radio"/>
Police	<u>__ N/A</u>	<u>9/1/2015 L. Hinz</u>	YES <input checked="" type="radio"/> NO <input type="radio"/>
Tax Collector	<u>__ N/A</u>		YES <input type="radio"/> NO <input type="radio"/>
Board of Selectmen			YES <input type="radio"/> NO <input type="radio"/>
_____		_____	
<i>Town Manager for the Board of Selectmen</i>		<i>Date</i>	

THE TOWN OF
YORK, MAINE

186 York Street, York, Maine 03909

BUSINESS LICENSE APPLICATION

NOTE: Business Licenses are not transferable to another person, business or location.

Business Name: The Union Bluff Hotel

Street Address: 8 Beach St

Business Owner: MARYJANE MERRITT Business Manager: Brent Merritt

Mailing Address: 10 Kimball Farm Lane Mailing Address: P.O. Box 1860

York, ME 03909 York Beach, Maine

Phone Number: (207) 363-2277 Phone Number: (207) 363-1333

E-mail Address: mjm@unionbluff.com E-mail Address: brent@unionbluff.com

Please indicate who is to be the Primary Contact with the Town: OWNER or MANAGER

Is the Business Owner same as the prior year? YES NO

Please indicate which Licenses or Local Approvals you seek:

Lodging:

Bed and Breakfast License (C/F)

Innkeeper License (C/F)

Number of Rooms: _____

Food and Beverage:

Food Service License (C/F)

Liquor License (F/P)

Bottle Club License (F/P)

Number of Seats: 220

Entertainment:

Special Amusement License (F/P)

Dance Hall License (F/P)

Bowling Alley License (F)

Coin-Operated Amusement License (P)

Bingo, Beano and Games of Chance

Miscellaneous:

Transient Seller's License

Flea Market License

Junkyard, Auto Graveyard/Recycling License

Other: _____

C – Code Enforcement Inspection Required F – Fire Department Inspection Required P – Police Department Inspection Required

Code Enforcement: (207) 363-1002

Police Department: (207) 363-1031

Village Fire Department: (207) 363-1015

Beach Fire Department: (207) 363-1014

FEES: Each application will incur a \$60 fee, plus \$30 for each license after the first. All NEW applications will have an additional \$50 fee, and all license amendments will have a \$25 fee. All fees are to be paid at time of submittal and shall be non-refundable. Cash or Check only; Please make check payable to Town of York.

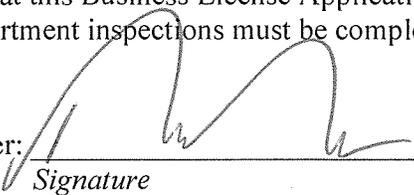
Provide the following information about any relevant State licenses:

STATE LICENSE INFORMATION			
ID Number(s):	4025		
Expiration Date(s):	10/20/15		
Classification(s):	CLASS 1-A		

Please read the following and sign to complete your application:

I understand that a license is required before operating or conducting any business or activity governed by the Town's Business Licensing Ordinance and that ongoing compliance with the provisions of the Town's Business Licensing Ordinance and other applicable Town codes is required throughout the entire license period.

I understand that this Business License Application must be filled out completely, all fees must be paid, and all necessary department inspections must be completed and passed before the license(s) will be considered by the Board of Selectmen.

Business Owner: 
Signature

Have you ever been convicted of a Felony? YES / NO

Business Manager: _____
Signature

Have you ever been convicted of a Felony? YES / NO

(If either person has a Felony conviction, please attach an explanation of the circumstances)

FOR OFFICE USE ONLY

FEES	Amount	Map - Lot: <u>0024 - 0037</u>
Application and First License (\$60)	<u>60.-</u>	Processed By:
Subsequent Licenses (\$30 each)	<u>90.-</u>	Received Date: <u>m. mavery</u>
New License Fee (\$50)	-	Amount Received: \$ <u>150.00</u>
License Amendment (\$25)	-	Check # <u>22102</u> or Cash <input type="checkbox"/>
Other: _____	-	LICENSE #: _____ - _____
TOTAL DUE	\$ <u>150.-</u>	

Department Approvals		Date of Approval	Special Conditions (Attached if Necessary)
Code Enforcement	<u>— N/A</u>	<u>9/17/2015 K. Newell</u>	YES <u>NO</u>
Fire	<u>— N/A</u>		YES NO
Police	<u>— N/A</u>	<u>9/9/2015 O. Davis</u>	YES <u>NO</u>
Tax Collector	<u>— N/A</u>	<u>9/10/2015 MSZENIAWSKI</u>	YES <u>NO</u>
Board of Selectmen _____ <i>Town Manager for the Board of Selectmen</i> _____ <i>Date</i> _____			YES NO

THE TOWN OF

YORK, MAINE

186 York Street, York, Maine 03909

BUSINESS LICENSE APPLICATION

NOTE: Business Licenses are not transferable to another person, business or location.

Business Name: Clay Hill Farm

Street Address: 220 Clay Hill Road

Business Owner: Donna & Gordon Lewis Business Manager: Heather Higgins

Mailing Address: PO Box 1730 Mailing Address: PO Box 2202
Ogunquit ME Ogunquit ME

Phone Number: 207 646 7473 Phone Number: 207 361 2272

E-mail Address: dlewis62@gmail.com E-mail Address: clayhillrestaurant@gmail.com

Please indicate who is to be the Primary Contact with the Town: OWNER or MANAGER

Is the Business Owner same as the prior year? YES NO

Please indicate which Licenses or Local Approvals you seek:

Lodging:

- Bed and Breakfast License (C/F)
- Innkeeper License (C/F)
- Number of Rooms: _____

Food and Beverage:

- Food Service License (C/F)
- Liquor License (F/P)
- Bottle Club License (F/P)
- Number of Seats: 200

Entertainment:

- Special Amusement License (F/P)
- Dance Hall License (F/P)
- Bowling Alley License (F)
- Coin-Operated Amusement License (P)
- Bingo, Beano and Games of Chance

Miscellaneous:

- Transient Seller's License
- Flea Market License
- Junkyard, Auto Graveyard/Recycling License
- Other: _____

C - Code Enforcement Inspection Required F - Fire Department Inspection Required P - Police Department Inspection Required

Code Enforcement: (207) 363-1002

Police Department: (207) 363-1031

Village Fire Department: (207) 363-1015

Beach Fire Department: (207) 363-1014

FEES: Each application will incur a \$60 fee, plus \$30 for each license after the first. All NEW applications will have an additional \$50 fee, and all license amendments will have a \$25 fee. All fees are to be paid at time of submittal and shall be non-refundable. Cash or Check only; Please make check payable to Town of York.

Provide the following information about any relevant State licenses:

STATE LICENSE INFORMATION			
ID Number(s):	5271	5604	10949
Expiration Date(s):	10/31/15	12/28/15	11/17/15
Classification(s):	I	Eating & Catering	Fire Marshal <i>Dancery</i>

Please read the following and sign to complete your application:

I understand that a license is required before operating or conducting any business or activity governed by the Town's Business Licensing Ordinance and that ongoing compliance with the provisions of the Town's Business Licensing Ordinance and other applicable Town codes is required throughout the entire license period.

I understand that this Business License Application must be filled out completely, all fees must be paid, and all necessary department inspections must be completed and passed before the license(s) will be considered by the Board of Selectmen.

Business Owner: *[Signature]* Have you ever been convicted of a Felony? YES / NO NO

Business Manager: *[Signature]* Have you ever been convicted of a Felony? YES / NO NO
 (If either person has a Felony conviction, please attach an explanation of the circumstances)

FOR OFFICE USE ONLY

FEES	Amount	Map - Lot: <u>0099 - 0070</u>
Application and First License (\$60)	<u>60.-</u>	Processed By: <u>mmavery</u>
Subsequent Licenses (\$30 each)	<u>60.-</u>	Received Date: <u>9/2/2015</u>
New License Fee (\$50)	<u>150</u>	Amount Received: \$ <u>120.00</u>
License Amendment (\$25)	<u>-</u>	Check # <u>21578</u> or Cash <input type="checkbox"/>
Other: _____	<u>-</u>	LICENSE #: _____ - _____
TOTAL DUE		

Department Approvals		Date of Approval	Special Conditions (Attached if Necessary)
Code Enforcement	<u>— N/A</u>	<u>9/15/2015 K. Newell</u>	YES <input checked="" type="radio"/> NO
Fire	<u>— N/A</u>	<u>9/2/2015 D. Bridges</u>	YES <input checked="" type="radio"/> NO
Police	<u>— N/A</u>	<u>9/9/2015 O. Davis</u>	YES <input checked="" type="radio"/> NO
Tax Collector	<u>— N/A</u>		YES <input type="radio"/> NO
Board of Selectmen _____ <i>Town Manager for the Board of Selectmen</i> _____ <i>Date</i> _____			YES <input type="radio"/> NO

THE TOWN OF

YORK, MAINE

186 York Street, York, Maine 03909

BUSINESS LICENSE APPLICATION

NOTE: Business Licenses are not transferable to another person, business or location.

Business Name: PIE IN THE SKY BAKERY, INC.
 Street Address: 1 RIVER ROAD, CAPE NEDDICK, ME 03902
 Business Owner: JOHN & NANCY STERN Business Manager: JOHN & NANCY STERN
 Mailing Address: 1 RIVER ROAD Mailing Address: SAME
CAPE NEDDICK, ME 03902 SAME
 Phone Number: 207-363-2656 Phone Number: SAME
 E-mail Address: PIENSKY@MAINE-RR.COM E-mail Address: SAME

Please indicate who is to be the Primary Contact with the Town: OWNER or MANAGER

Is the Business Owner same as the prior year? YES NO

Please indicate which Licenses or Local Approvals you seek:

Lodging:

Bed and Breakfast License (C/F)

Innkeeper License (C/F)

Number of Rooms: _____

Food and Beverage:

Food Service License (C/F)

Liquor License (F/P)

Bottle Club License (F/P)

Number of Seats: _____

Entertainment:

Special Amusement License (F/P)

Dance Hall License (F/P)

Bowling Alley License (F)

Coin-Operated Amusement License (P)

Bingo, Beano and Games of Chance

Miscellaneous:

Transient Seller's License

Flea Market License

Junkyard, Auto Graveyard/Recycling License

Other: _____

C – Code Enforcement Inspection Required F – Fire Department Inspection Required P – Police Department Inspection Required

Code Enforcement: (207) 363-1002

Police Department: (207) 363-1031

Village Fire Department: (207) 363-1015

Beach Fire Department: (207) 363-1014

FEES: Each application will incur a \$60 fee, plus \$30 for each license after the first. All NEW applications will have an additional \$50 fee, and all license amendments will have a \$25 fee. All fees are to be paid at time of submittal and shall be non-refundable. Cash or Check only; Please make check payable to Town of York.

Provide the following information about any relevant State licenses:

STATE LICENSE INFORMATION			
ID Number(s):	1-7723		
Expiration Date(s):	08/31/2016		
Classification(s):	HOME FOOD PROCESSOR		

Please read the following and sign to complete your application:

I understand that a license is required before operating or conducting any business or activity governed by the Town's Business Licensing Ordinance and that ongoing compliance with the provisions of the Town's Business Licensing Ordinance and other applicable Town codes is required throughout the entire license period.

I understand that this Business License Application must be filled out completely, all fees must be paid, and all necessary department inspections must be completed and passed before the license(s) will be considered by the Board of Selectmen.

Business Owner: Nancy Stern Signature Have you ever been convicted of a Felony? YES / NO

Business Manager: Nancy Stern Signature Have you ever been convicted of a Felony? YES / NO

(If either person has a Felony conviction, please attach an explanation of the circumstances)

FOR OFFICE USE ONLY

FEES	Amount	Map - Lot: 0015 - 0012
Application and First License (\$60)	60.-	Processed By: mmavery
Subsequent Licenses (\$30 each)		Received Date: 9/1/2015
New License Fee (\$50)		Amount Received: \$ 60.00
License Amendment (\$25)		Check # 6352 or Cash <input type="checkbox"/>
Other: _____	-	LICENSE #: _____ - _____
TOTAL DUE	\$ 60.-	

Department Approvals		Date of Approval	Special Conditions (Attached if Necessary)
Code Enforcement	— N/A	9/11/2015 K. Newell	YES <input checked="" type="radio"/> NO
Fire	— N/A	9/1/2015 D Bridges	YES <input checked="" type="radio"/> NO
Police	<input checked="" type="checkbox"/> N/A		YES NO
Tax Collector	— N/A	9/1/2015 M. Szeniawski	YES <input checked="" type="radio"/> NO
Board of Selectmen			YES NO
Town Manager for the Board of Selectmen _____		Date _____	

THE TOWN OF

YORK, MAINE

186 York Street, York, Maine 03909

BUSINESS LICENSE APPLICATION

NOTE: Business Licenses are not transferable to another person, business or location.

Business Name: Sea. Rose Inn

Street Address: 2 Southside Road, York, ME 03909

Business Owner: Mike Stotts/Jean Dyer Business Manager: same

Mailing Address: 2 Southside Rd. Mailing Address: same
York, ME 03909

Phone Number: 207-361-4159 Phone Number: same

E-mail Address: dyerjean@gmail.com E-mail Address: same

Please indicate who is to be the Primary Contact with the Town: OWNER or MANAGER

Is the Business Owner same as the prior year? YES NO

Please indicate which Licenses or Local Approvals you seek:

Lodging:

Bed and Breakfast License (C/F)

Innkeeper License (C/F)

Number of Rooms: 3

Food and Beverage:

Food Service License (C/F)

Liquor License (F/P)

Bottle Club License (F/P)

Number of Seats:

Entertainment:

Special Amusement License (F/P)

Dance Hall License (F/P)

Bowling Alley License (F)

Coin-Operated Amusement License (P)

Bingo, Beano and Games of Chance

Miscellaneous:

Transient Seller's License

Flea Market License

Junkyard, Auto Graveyard/Recycling License

Other:

C – Code Enforcement Inspection Required F – Fire Department Inspection Required P – Police Department Inspection Required

Code Enforcement: (207) 363-1002

Police Department: (207) 363-1031

Village Fire Department: (207) 363-1015

Beach Fire Department: (207) 363-1014

FEES: Each application will incur a \$60 fee, plus \$30 for each license after the first. All NEW applications will have an additional \$50 fee, and all license amendments will have a \$25 fee. All fees are to be paid at time of submittal and shall be non-refundable. Cash or Check only; Please make check payable to Town of York.

Provide the following information about any relevant State licenses:

STATE LICENSE INFORMATION			
ID Number(s):	14-096		
Expiration Date(s):	July 31, 2015		
Classification(s):	Bed & Breakfast		

Please read the following and sign to complete your application:

I understand that a license is required before operating or conducting any business or activity governed by the Town's Business Licensing Ordinance and that ongoing compliance with the provisions of the Town's Business Licensing Ordinance and other applicable Town codes is required throughout the entire license period.

I understand that this Business License Application must be filled out completely, all fees must be paid, and all necessary department inspections must be completed and passed before the license(s) will be considered by the Board of Selectmen.

Business Owner: Jean Dye
Signature

Have you ever been convicted of a Felony? YES / NO

Business Manager: N/A
Signature

Have you ever been convicted of a Felony? YES / NO

(If either person has a Felony conviction, please attach an explanation of the circumstances)

FOR OFFICE USE ONLY

FEES		Amount	Map - Lot: <u>0073 - 0009</u>	
Application and First License (\$60)		<u>60.-</u>	Processed By: <u>mmavery</u>	
Subsequent Licenses (\$30 each)		<u>-</u>	Received Date: <u>7/20/2015</u>	
New License Fee (\$50)		<u>-</u>	Amount Received: \$ <u>60.-</u>	
License Amendment (\$25)		<u>-</u>	Check # <u>1305</u> or Cash <input type="checkbox"/>	
Other: <u>renewal</u>		<u>-</u>	LICENSE #: _____ - _____	
TOTAL DUE		\$ <u>60.-</u>		
Department Approvals		Date of Approval		Special Conditions (Attached if Necessary)
Code Enforcement	<u>-</u> N/A			YES NO
Fire	<u>-</u> N/A	<u>7/20/15 D. Appgar</u>		YES <u>NO</u>
Police	<u>X</u> N/A			YES NO
Tax Collector	<u>-</u> N/A	<u>8/28/2015 MSzeniewski</u>		YES <u>NO</u>
Board of Selectmen _____		_____		YES NO
Town Manager for the Board of Selectmen		Date		



REQUEST FOR ACTION BY BOARD OF SELECTMEN

DATE SUBMITTED: October 15, 2015

ACTION

DATE ACTION REQUESTED: October 19, 2015

DISCUSSION ONLY

SUBJECT: Main Street Drainage, Sewer and Road Improvement Project.

DISCUSSION OF OPTIONS AVAILABLE TO THE BOARD:

The Department of Public Works (DPW) with the help of CLD Engineers has been planning, designing and permitting a drainage, sidewalk and roadway improvement project on Main Street for a number of years. Following the success of the coordinated projects on Church Street and Shore Road this spring in York Beach the Public Works Department and the York Sewer District (YSD) have agreed to a similar coordinated project on Main Street. The combined project scope includes the installation of a new sewer force main and a new gravity sewer main to the York Sewer District's treatment facility. The project also includes replacing the existing closed drainage system along with installing a new drainage outlet system on the York Sewer District property at 24 Bay Haven Road. Within the property, 3 manholes and 72ft of 24" perforated pipe will be installed. Water will flow out of the 24" perforated pipe and infiltrate into the stone and sand along the shore; thus providing an outlet for storm water, and significantly reducing the duration of standing water on adjacent properties during storm events. The Town of York anticipates acquiring this property from the York Sewer District in the near future. The existing closed drainage system along Main Street includes drop inlets, catch basins, manholes and pipe outlets at various locations to the east side of Main Street. Most of these structures and pipes are in poor condition and are in need of replacement. The Town of York DPW and the York Sewer District have completed the following efforts over the last few months.

- On Friday September 11, 2015 The Town of York Department of Public Works and the York Sewer District through CLD Engineers solicited bids from 12 preapproved contractors for the construction of the combined project.
- On Monday September 14, 2015 The Town of York Department of Public Works, the York Sewer District & CLD Engineers conducted a pre-bid meeting for all interested contractors.
- On Friday September 25, 2015 Separate sealed bids were due in the Town Manager's office by 1:00 PM. No proposals were received for either project.
- On Wednesday October 14, 2015 Tim Haskell and Dean Lessard met with Mark and Keith Stewart of STS construction. STS is in process of installing a private sewer force main on Main Street and have agreed, while working for the York Sewer District, to undertake stormwater drainage installation in this same area to reduce the number of times this road needs to be excavated and closed to travel. As part of this process, the York Sewer District has allowed the drainage piping to be located in the same trench as their lines and this will save a huge amount of

money and time for the Town. Their willingness to allow this is greatly appreciated! Also, by combining with the District's work the cost of an additional mobilization is eliminated. The total savings are in the order of magnitude of \$100,000, and the adverse impacts to traffic and the neighborhood are reduced by the coordinated schedule.

RECOMMENDATION: The Department of Public Works recommends that the Town continue to work cooperatively with the York Sewer District, and that we pay the York Sewer District the amount of \$68,200 for the cost of the drainage work to be completed by STS Construction.

PROPOSED MOTION: I move to approve the Department of Public works to continue to work cooperatively with the York Sewer District to complete the proposed combined project, and to pay the York Sewer District \$68,200 for completion of a portion of the proposed drainage work by STS Construction.

FISCAL IMPACT: \$68,200

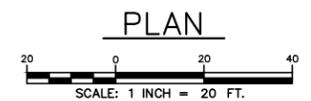
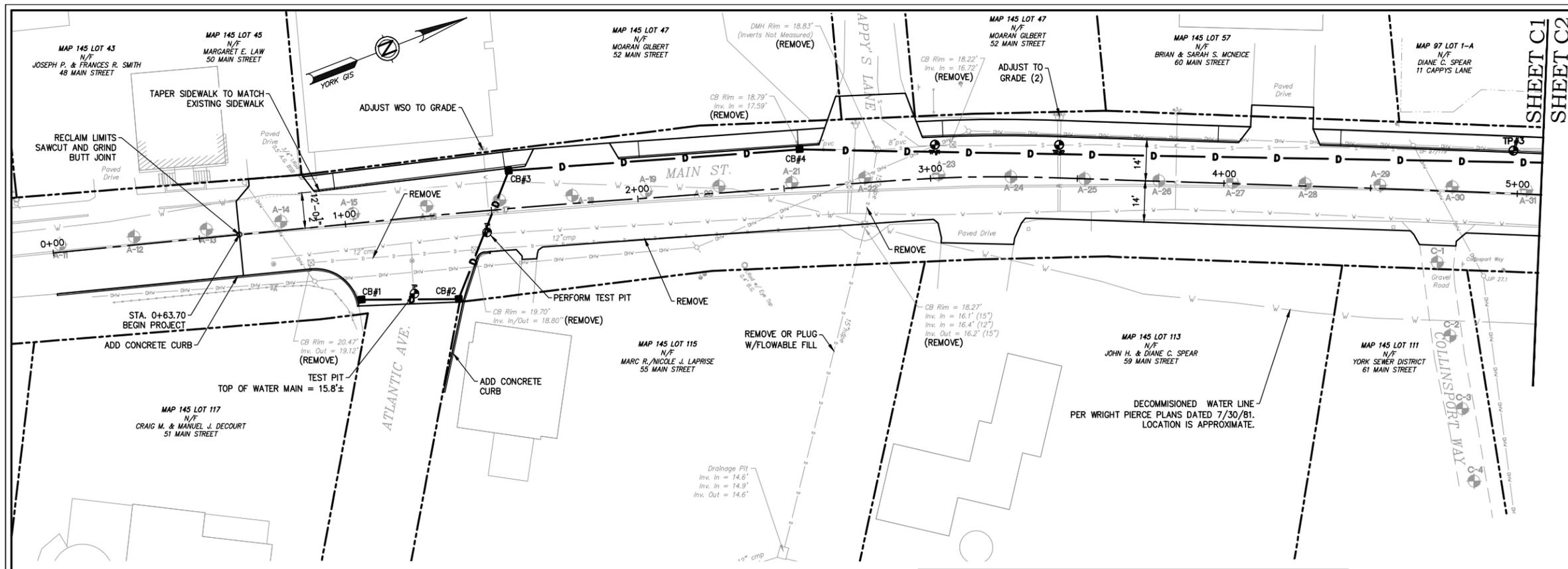
DEPARTMENT LINE ITEM ACCOUNT: 100.0303.9616

BALANCE IN LINE ITEM IF APPROVED: \$167,142

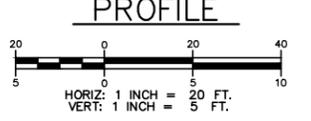
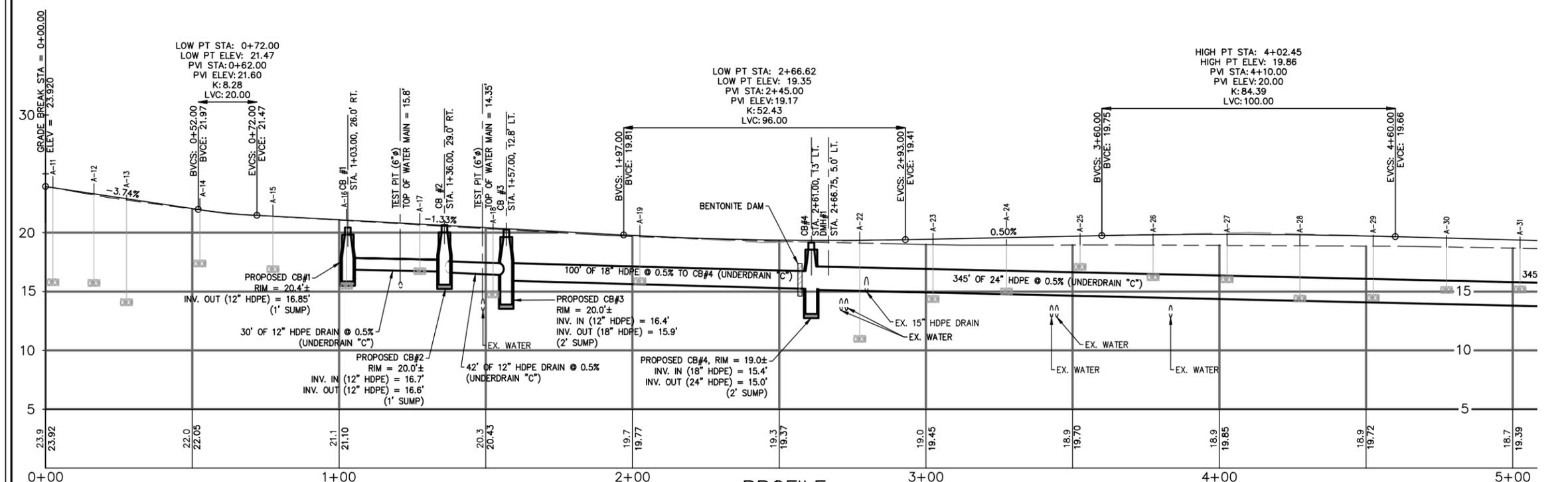
PREPARED BY: Dean Lessard

REVIEWED BY: 

F:\PROJECTS\110146 YORK MAIN ST DRAINAGE\DWG\11-0146 GRP-PAISE.DWG 10/14/2015 10:32 AM



NOTE: NO BLASTING OF LEDGE BETWEEN STA. 2+50 AND 6+75, DUE TO CLOSE PROXIMITY OF EXISTING 16\"/>



NO.	DATE	REVISION	DESIGNED:	CHECKED:	APPROVED:
			JAD/FSD	RAM/JLF	RL
			DAD		

CONSULTING ENGINEERS INC.
 316 U.S. Route 1, Suite D, York, ME 03909
 (207) 363-0669 • Fax: (207) 363-2384
 cde@engineers.com • www.cdeengineers.com
 Maine • New Hampshire • Vermont

CLIENT:
YORK PUBLIC WORKS DEPT.
 186 YORK STREET
 YORK, MAINE 03909
YORK SEWER DISTRICT
 21 BAY HAVEN ROAD
 YORK BEACH, MAINE 03910

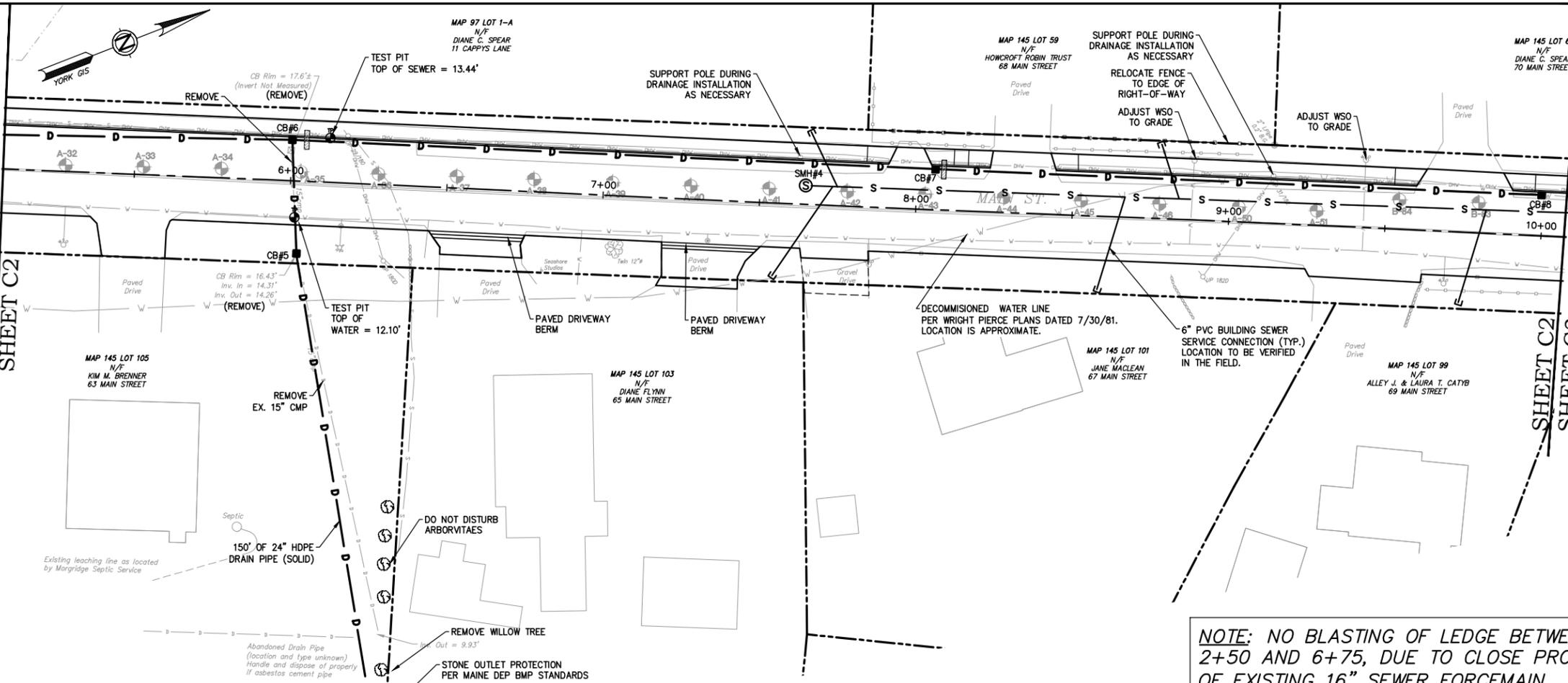
MAIN STREET RECONSTRUCTION
PLAN AND PROFILE
 MAIN STREET
 YORK, MAINE 03909

SCALE: AS NOTED	JOB NO. 11-0146 15-0163
DATE: SEPT. 2015	DWG. 01

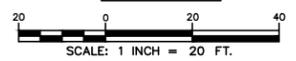


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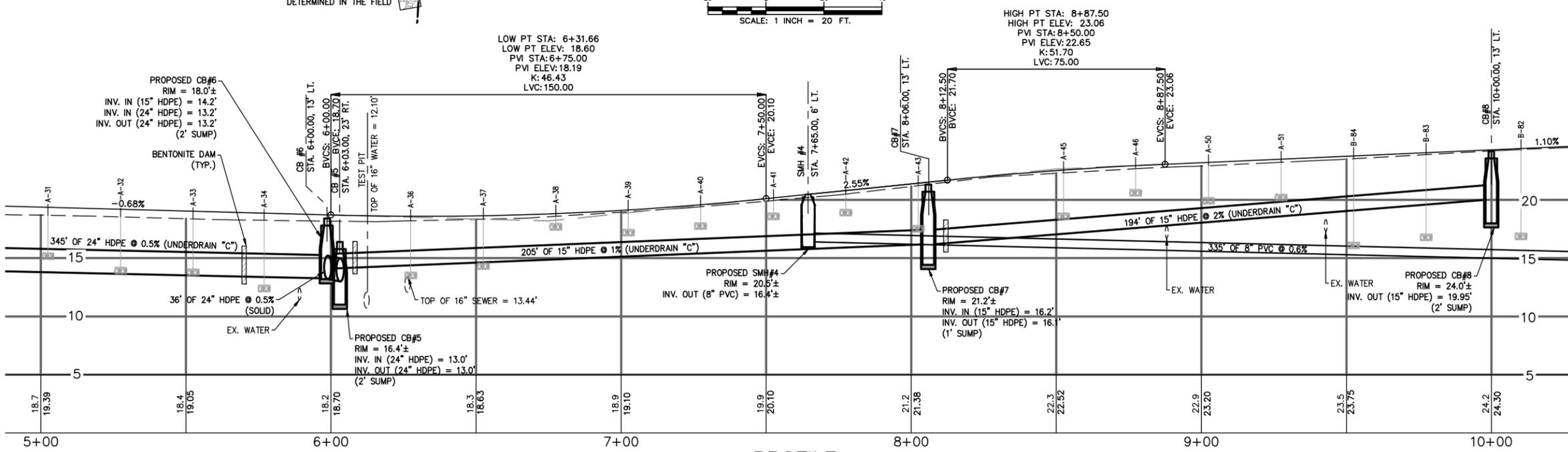
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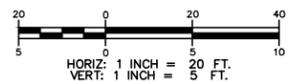
PLAN



NOTE: NO BLASTING OF LEDGE BETWEEN STA. 2+50 AND 6+75, DUE TO CLOSE PROXIMITY OF EXISTING 16" SEWER FORCEMAIN.



PROFILE



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		DAD		



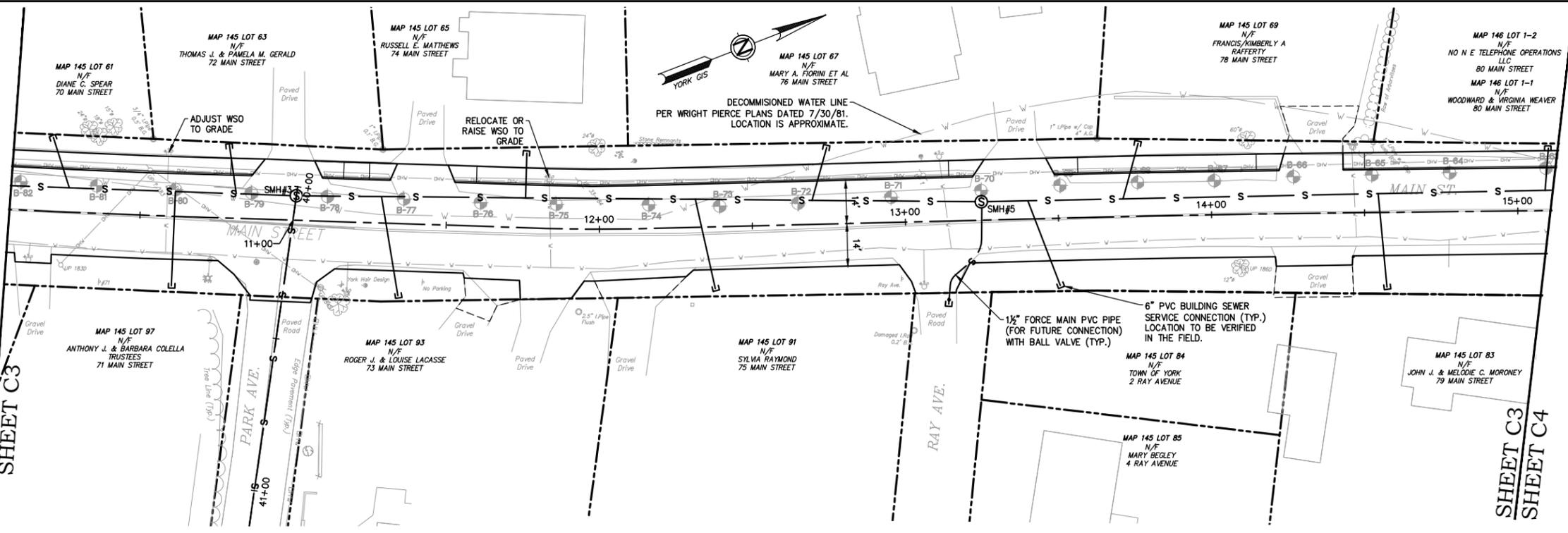
CLIENT:
YORK PUBLIC WORKS DEPT.
186 YORK STREET
YORK, MAINE 03909
YORK SEWER DISTRICT
21 BAY HAVEN ROAD
YORK BEACH, MAINE 03910

**MAIN STREET
RECONSTRUCTION
PLAN AND PROFILE**
MAIN STREET
YORK, MAINE 03909

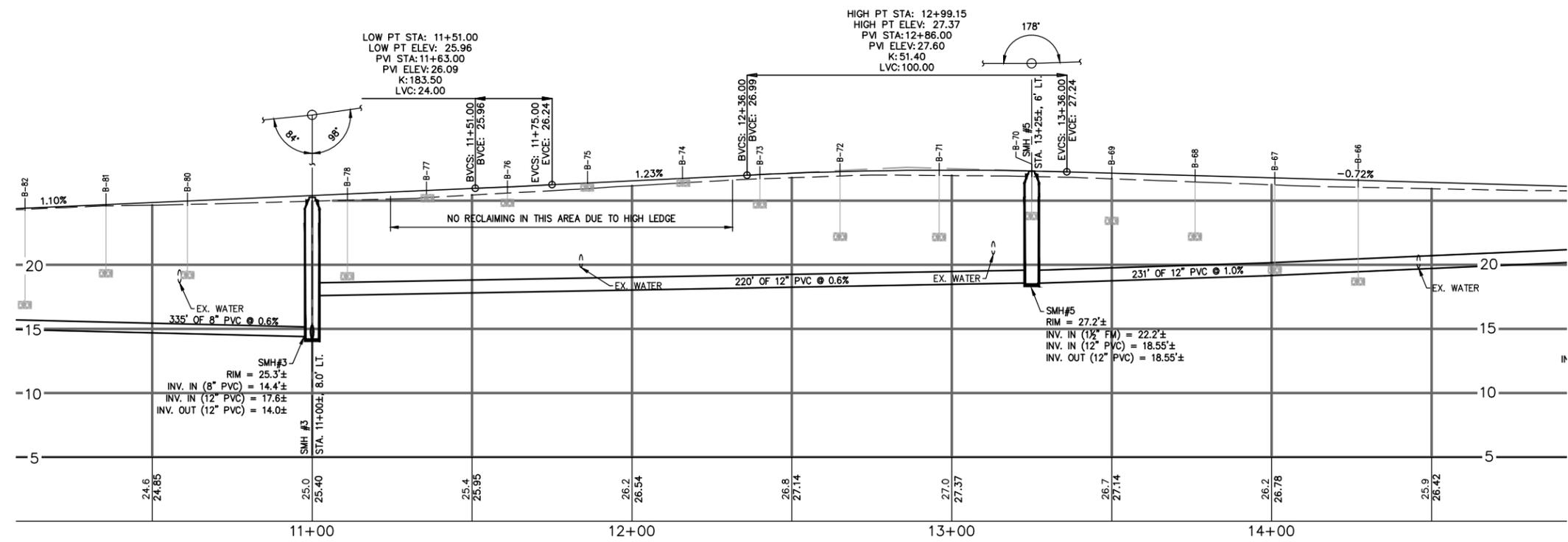
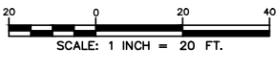
SCALE: AS NOTED	JOB NO. 11-0146 15-0163
DATE: SEPT. 2015	DWG. C2

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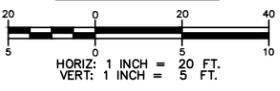
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PLAN



PROFILE



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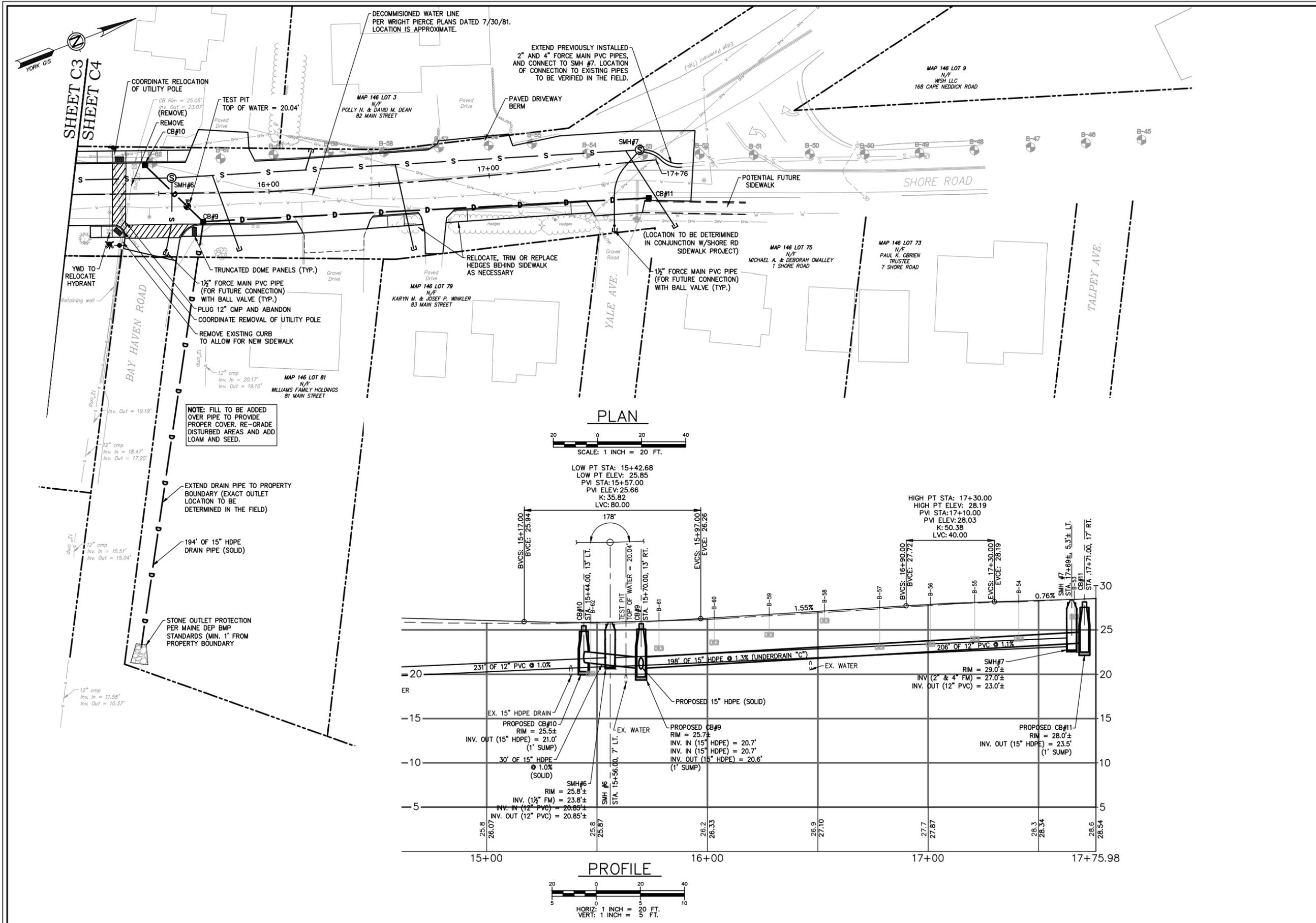
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1	7/17/15	EXTENDED 15" HDPE DOWN BAY HAVEN ROAD	RAM/JLF	RRL
DRAWN:		DAD	JAD/FSD	

CD CONSULTING ENGINEERS
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 cdce@cdengineers.com • www.cdengineers.com
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CLIENT:
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 186 YORK STREET
 YORK, MAINE 03909
YORK SEWER DISTRICT
 21 BAY HAVEN ROAD
 YORK BEACH, MAINE 03910

**MAIN STREET
 RECONSTRUCTION
 PLAN AND PROFILE**
 MAIN STREET
 YORK, MAINE 03909

SCALE:	JOB NO.
AS NOTED	11-0146 15-0163
DATE:	DWG.
SEPT. 2015	C3



NO.	DATE	REVISION	CHECKED:	APPROVED:
1	7/17/15	EXTENDED 15\"/>		
	DRAWN:	DESIGNED:	RAM/JLF	RRL
	DAD	JAD/FSD		

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CLIENT:
 YORK PUBLIC WORKS DEPT.
 186 YORK STREET
 YORK, MAINE 03909
YORK SEWER DISTRICT
 21 BAY HAVEN ROAD
 YORK BEACH, MAINE 03910

PROJECT:
 MAIN STREET
 RECONSTRUCTION
PLAN AND PROFILE
 MAIN STREET
 YORK, MAINE 03909

SCALE:	JOB NO.
AS NOTED	11-0146 15-0163
DATE:	DWG.
SEPT. 2015	C4



REQUEST FOR ACTION BY BOARD OF SELECTMEN

DATE SUBMITTED: October 14, 2015

ACTION

DATE ACTION REQUESTED: October 19, 2015

DISCUSSION ONLY

SUBJECT: Paper Roads

DISCUSSION OF OPTIONS AVAILABLE TO THE BOARD: No Action Necessary.

RECOMMENDATION: No Action Necessary.

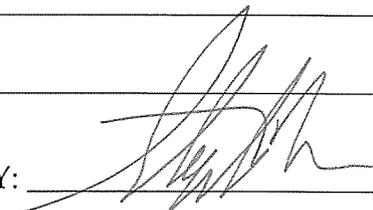
PROPOSED MOTION:

FISCAL IMPACT:

DEPARTMENT LINE ITEM ACCOUNT:

BALANCE IN LINE ITEM IF APPROVED:

PREPARED BY: Rick Mace

REVIEWED BY: 

MEMORANDUM

TO: Steve Burns
FROM: Rick Mace
DATE: October 1, 2015
SUBJ: Paper Roads

The Maine Legislature laid out some boundaries in a statute passed in 1987, MRSA Title 23§3032. Paper streets were divided into two categories, those in subdivisions recorded prior to September 29, 1987, and those after September 29, 1987. We are dealing with the ones prior to 1987.

Back on September 23, 1997 the Board of Selectmen voted to extend the deemed vacation of all paper roads, both unbuilt and unaccepted ways. Before September 29, 2017, the Board of Selectmen will have three options: (1) Do nothing and let the paper streets vacate by operation of law. (2) Vote to extend the deadline on some or all paper streets (or portions thereof) for another 20 years. (3) Ask the legislative body to accept a paper street (or portion thereof) as a town way, a public easement, a utility easement, or a recreational easement.

An inventory was begun in February 2014 of all subdivisions containing paper roads. There are 399 subdivisions on the 1997 list. To date I have reviewed 258 of the subdivisions, the remainder will have to be reviewed at the York County Registry of Deeds. Of the 258 reviewed subdivisions, 213 are developed, 34 are mostly or partially developed, and 3 are undeveloped. The next step will be to continue my research in Alfred to identify the remaining 141 subdivisions. I will then create a list of the actual paper streets that are identified on all 399 subdivisions.

Once the list is complete, a workshop should be scheduled with a representative from the Board of Selectmen, Department of Public Works, York Water District, and the York Sewer District. A recommendation as to which paper streets should be vacated or not should come out of this workshop.

I have included with this memo three legal notes from MMA, copies of relevant Maine statutes, and a memorandum from South Portland's City Counsel to their city departments.

Rick Mace  Logout



Update on Paper Streets

Maine Townsman - August, 1997

The law which governs "paper streets," 23 M.R.S.A § 3032, was amended this year. Now, a paper street subject to § 3032 will be vacated only in the following situations:

Used & Accepted	Not Vacated
Used but Not Accepted	Not Vacated
Constructed and Accepted	Not Vacated
Constructed by not Accepted	Not Vacated
Accepted but Not Used	Not Vacated
Accepted but Not Constructed	Not Vacated
Not Accepted & Not Used	Vacated
Not Accepted & Not Constructed	Vacated

MMA Legal Services has available, upon request, a memo which discusses several of the commonly asked questions about paper streets. . (By J.J.W.)

[Return](#)

This information is intended for general information purposes only and is not meant as legal advice. This information should not take the place of a thorough review of pertinent statutes, consultation with legal counsel, or other specific guidance on the subject.

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Rick Mace



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Maine Municipal Association

Paper Streets I

Maine Townsman - October, 1996

EDITOR'S NOTE: MMA's Legal Services department has received several calls recently about paper streets. In particular, officials are asking about the vacation (termination) of paper streets that will occur by operation of law in September 1997. The following Q & A on paper streets, prepared by MMA Staff Attorney Joe Wathen, will be presented in two installments— this month and next.

Question: What are paper streets and who has rights in them?

Answer: A paper street is a road depicted on a recorded subdivision plan, but which has never been built or accepted as a public way. The road appears on paper only, hence the common name "paper street" (a term the law does not use). Public and private rights of eventual access (The statutes and cases variously refer to the public and private access rights in paper streets as "rights-of-way," "rights to use" or "easements." In this legal note, the phrase "rights of access" is used to encompass all those terms generally) exist in paper streets, but those rights cannot yet be exercised because the road does not exist on the face of the earth.

a) Public rights. The recording of a subdivision plan is generally considered a dedication to the public to accept or use the streets shown on the plan as public ways, see 23 M.R.S.A. § 3031, 23 M.R.S.A. § 3025, and *Harris v. City of South Portland*, 118 Me. 356 (1919) and *Bartlett v. Bangor*, 67 Me. 460 (1878). This is called "incipient" dedication; when the municipality accepts the dedication and builds the road, the public's access rights can finally be exercised.

b) Private rights. All lot-owners in a subdivision generally acquire private rights-of-way over all the roads depicted on the plan, see 23 M.R.S.A. § 3031 and *Callahan v. Ganneston Park Development Corp.*, 245 A.2d 274 (Me. 1968).

Also, keep in mind the difference between access rights (using the surface of the land for ingress and egress) and ownership rights (which includes mineral rights). Ownership issues are discussed in a later question.

Question: Why are paper streets a problem?

Answer: They can become clouds on land titles, which can adversely affect a property's marketability. The Legislature passed laws in the 1980s to provide a mechanism to automatically vacate paper streets on a large scale. Before then, paper street disputes were settled by the courts on a case-by-case basis.

Question: What are the laws on paper streets?

Answer: There are three main statutes:

Search Legal Notes:

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23 M.R.S.A. § 3031 applies to paper streets shown on subdivision plans recorded on or after September 29, 1987 (the effective date of the law). This law creates public and private rights in paper streets. Also, the law provides for the automatic vacation of paper streets 20 years after the date of recording unless the street is either accepted by the municipality (in which case the road is a public way), or unless the street is constructed and utilized as a private right of way. In the latter case, there may be no public easement at all, but only private right-of-way for a limited number of people.

23 M.R.S.A. § 3032 applies to paper streets depicted on subdivision plans recorded before September 29, 1987. This is the law that everybody is hearing about now, because it allows for the automatic vacation of paper streets on September 29, 1997. Keep in mind that this deadline applies only to pre-9-29-87 plans, and not even to all of those. In a nutshell, this law provides that paper streets will be deemed vacated unless constructed or used and accepted as a town, county or state way. On its face, this law does not allow a private right-of-way to be established by use or construction.

The vacation of a paper street will occur on the later of September 29, 1997 (which is ten years after the effective date of the law) or 15 years after the date of recording of the subdivision plan. For example, if a subdivision plan was recorded in 1985, paper streets shown on that plan would not be deemed vacated until sometime in 2000. Paper streets on subdivision plans recorded before October 1982 are subject to vacation on September 29, 1997.

The law does not state expressly that private as well as public rights of access are lost upon vacation of the way. This appears to be the case, however, as § 3032 piggybacks 23 M.R.S.A. § 3027, which along with § 3027-A include the termination of private rights as well as public rights.

23 M.R.S.A. § 3027 provides a method for the municipal officers (Board of Selectmen or Council) to vacate paper streets. This process differs from the automatic vacation laws described above, as it requires a vote by the municipal officers.

23 M.R.S.A. § 3027 (2) also allows for the revocation of a dedication by the developer and the planning board (without involving the municipal officers) if no lots in the subdivision have been sold.

Other laws focus on resolving paper streets title issues. These are 23 M.R.S.A. § 3027-A, 23 M.R.S.A. § 3033-3036 and 33 M.R.S.A. § 460 through 469-A.

Question: What does it mean when a paper street is vacated?

Answer: It means that the public and private rights to eventually use the paper street are terminated. Ownership and use of the strip of land which was formerly a paper street is discussed in a later question.

Question: If paper streets are title defects, doesn't everyone want them vacated?

Answer: Not necessarily. What is a title problem to one person (such as a paper street through the back yard) might be the only possible access to another person's undeveloped rear lots. If the paper street is vacated, the rear lots may become "landlocked," which usually drops their market value.

Question: Isn't landlocking illegal?

Answer: Not always. Various judicial doctrines alleviate the harshness of landlocking, but those doctrines do not apply in all cases. It is still possible for land to become inaccessible by operation of law. See *Frederick v. CWS, Inc*, 573 A.2d 387 (Me. 1990). Someone might challenge the paper street law on the grounds that it results in the "taking" of property interests without fair compensation, but a similar challenge to a somewhat similar law (the abandonment law, 23 M.R.S.A. § 3028) recently failed, see *Lamb v. Town of New Sharon*, 606 A.2d 1042 (Me. 1992).

Question: Can the town stop the statutory vacation of paper streets that will occur on September 29, 1997?

Answer: Yes. The municipality can vote to accept and build the way, see 23 M.R.S.A. § 3032 (1). The law is not clear whether the road must be fully built as of the vacation date, or whether some lesser stage of construction will suffice. In my opinion, a court would not consider a road vacated if the town had made a good faith effort to build the road, even though construction is not complete on September 29, 1997.

Alternatively, the municipal officers can vote to extend the vacation deadline for a period of 20 years (with an additional 20 year extension after that), see 23 M.R.S.A. § 3032(2). This extension can be for all or a portion of the paper street. Notice of the extension (also called an "exception" in the law) must be recorded in the Registry of Deeds before the vacation deadline. The law does not give the municipal officers any authority to order a lesser period of extension, such as ten or 15 years.

Keep in mind that the time extension applies only to the pre-9-29-87 subdivisions. Subdivision recorded on or after that date is governed by 23 M.R.S.A. § 3031; that law does not provide for any extensions. Instead, the road must be accepted by the legislative body (to be a public way), or must be constructed and utilized as a private right-of-way.

The decision to extend the vacation deadline may become quite political. As mentioned above, some people want to get rid of paper streets while others want to retain them. The law does not provide any standards to guide municipal officers in deciding whether to extend the deadline (see later question regarding appeals from these decisions).

Question: If we (municipal officers) vote to extend the deadline on a paper street, can we be sued by people who want the paper street vacated? Or, if we refuse to extend the deadline, can we be sued by someone who asked for the extension? And in either case, could we be held personally liable for damages?

Answer: An aggrieved person who has standing (such as a lot owner) could appeal the municipal officers' decision to Superior Court under Rule 80B, Maine Rules of Civil Procedure. The person who appeals has the burden of proving that the municipal officers' decision was illegal or arbitrary and capricious. That is a difficult burden to meet given the discretionary nature of these decisions.

In terms of monetary liability, the town and individual officials are immune from liability resulting from discretionary or quasi-legislative decisions, see 14 M.R.S.A. § 8104-B and 14 M.R.S.A. § 8111 respectively. You might still get sued, but the plaintiff is unlikely to win.

Question: If our town votes to accept a paper street before it is automatically vacated must we also build the street? If so, when and to what specifications?

Answer: This depends on when the subdivision plan was recorded and the provisions of your local road standards ordinance, if any. A paper street shown on a plan recorded before

September 29, 1987 must be both accepted and constructed or used to avoid statutory vacation (23 M.R.S.A. § 3032). The law does not state whether construction must be complete by that date, or whether a lesser stage of construction will be enough to avoid automatic vacation. Likewise, the law does not establish any road construction standards. However, many municipalities have a local ordinance which regulates the construction of public and private roads.

A paper street shown on a plan recorded on or after September 29, 1987 need only be accepted by the municipality to avoid termination (23 M.R.S.A. § 3031). However, even in this case, road construction to certain standards or within a certain time may be required by local ordinance. For example, the ordinance may require that the road be fully constructed and reviewed by the road commissioner before it can be presented to the legislative body for acceptance as a town way. (By J.J.W.)

Return

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Rick Mace



Logout



Paper Streets II

Maine Townsman - November, 1996

EDITOR'S NOTE. This is Part II of a Legal note prepared by MMA Staff Attorney Joseph Wathen on Paper Streets. Part I appeared in the October issue.

Question: If our town accepts and builds a paper street, are we obligated to maintain it?

Answer: This depends on the legal status of the road which was accepted. If the street was accepted as a "town way," the municipality has a duty to maintain it in a safe and passable condition (see 23 M.R.S.A. § 3021 and § 3651 et seq.), and the town may be liable for defects in the road. It is possible for a municipality to accept a road as a public easement only, which means that the public has access rights but the municipality has no maintenance obligation. Arguably, 23 M.R.S.A. § 3032 (which applies to pre-9-29-87 subdivisions) only allows for the acceptance of a paper street as a town way, while 23 M.R.S.A. 3031 (which applies to post-2-29-87 subdivisions) is broader and allows acceptance of the road for public "use," which could mean simply a public easement. There are no judicial decisions on this point, but you should be aware of the potential costs of accepting a pre-9-29-87 paper street.

Question: Can a subdivision lot-owner preserve his private access rights in a paper street by building the street, even if it is not accepted by the town?

Answer: Once again, this depends on when the subdivision plan was recorded. Private rights in streets shown on a plan recorded on or after September 29, 1997 can be preserved by the lot-owner constructing and using the way within the appropriate time (23 M.R.S.A. § 3031 (2)). However, construction of a private road may also be subject to a local road standards ordinance, and it may be quite expensive to bring the road up to ordinance specifications.

Private rights of access in streets depicted on a subdivision plan recorded on or after September 29, 1997 are recognized by caselaw, but it is not clear how they can be preserved as private rights-of-way under 23 M.R.S.A. § 3032. That law seems to require public acceptance in addition to construction, so even if a private citizen built the road, he could not be assured of acceptance by the municipality. The road-builder in this scenario would most likely argue that he has a common law right to establish a private right-of-way where the paper street is depicted, and that § 3032(1) is inapplicable. Or, he would argue that § 3032 was inartfully drafted and requires public acceptance only when the road is to become a public way.

Question: We have a problem in a pre-1987 subdivision. One lot-owner has been using a paper street for 35 years as access to his back lots, and has created a discernible vehicle path on the ground. Will this use be sufficient to allow him to continue using the way even after 1997?

Answer: There is no simple answer to this question. The person who has created the way would likely argue that he has created a private right of way by prescriptive use, which is not terminated by operation of 23 M.R.S.A. § 3032. A person who wants to prevent the continued

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access will argue that prescriptive rights cannot attach to property which has been dedicated to public use, or that private use alone is insufficient to avoid vacation under 23 M.R.S.A. § 3032. This case should go to court for a final resolution of access rights, but I see no need for the town to get involved in the lawsuit.

Question: Should the Board of Selectmen (or Council) get involved in paper streets disputes, such as title to the land or private rights of access?

Answer: No, unless the municipality itself is seeking to assert or deny use of the way. Most cases will involve the access rights of private citizens, and those disputes should be handled as private civil matters. There is no point in the town's becoming a party to the action unless a substantial public interest is involved.

Question: We have a situation where a landowner built a garage over a paper street, and now the abutter is angry. How should this be handled?

Answer: The Board of Selectmen should refer the parties to private counsel.

23 M.R.S.A. § 3034 governs structures located in proposed, unaccepted ways. That law established time frames in which certain action must be taken to establish one's rights. See also *Bolduc v. Watson*, 639 A.2d 629 (Me. 1994).

Question: If a paper street is vacated, who owns the underlying land?

Answer: This gets confusing because the laws work differently depending on:
a) the date the subdivision plan was recorded, b) whether the developer reserved title (called the "fee simple") to the roads, and c) the actual wording of the deed to a lot.

33 M.R.S.A. § 469-A addresses title to paper streets shown on subdivision plans recorded before September 29, 1987. Unfortunately, this law has a built-in inconsistency. That is, subsection 1 provides that all of the grantor's (developer's) interest in the road—which arguably includes the entire width of the road—is conveyed to the abutter when a lot is purchased. Subsection 6, on the other hand, provides that the abutter is deemed to own to the centerline. I found no cases resolving this particular issue.

This law also provides a method for the developer to reserve title to the paper streets.

Title to paper streets shown on subdivision plans recorded on or after September 29, 1987 is addressed in 23 M.R.S.A. § 3031(2). Under that law, title passes to the abutting owners to the centerline, but only upon termination (vacation) of the private rights in the way. The law does not say who owns the fee interest before the paper street is vacated, although arguably the abutters do, pursuant to 33 M.R.S.A. § 460.

23 M.R.S.A. § 3032 allows the developer to reserve title to the streets, rather than have it pass with the sale of lots.

Another wrinkle in the title area is caused by 23 M.R.S.A. § 3025. That law provides that any dedication of land for highway purposes accepted by the municipality after December 31, 1976 conveys title in fee simple to the municipality unless otherwise specified in the acceptance or dedication. Under this law, if a town accepts a paper street as a public way, and thereafter discontinues it, the town will own the fee simple interest in the land on which the road sat. That strip of land would not revert to the abutters.

Question: How are use and ownership disputes settled with respect to a vacated paper

street?

Answer: The courts have the final say. 23 M.R.S.A. § 3033 provides a process for asserting rights to paper streets shown on a subdivision plan recorded before September 29, 1987. Likewise, 23 M.R.S.A. § 3027-A provides a process to resolve title issues arising from a formal vacation (i.e., vote of the municipal officers). 23 M.R.S.A. § 3031 (applicable to post-9-29-87 plans) does not include a special process to assert and resolve claims, but interested parties could bring a quiet title or declaratory judgment action.

Question: An approved subdivision plan was originally recorded in 1984. It was then amended (with the proper approvals) in 1989. Which law governs the paper streets shown on the plan?

Answer: I would use whichever law applied to the paper streets when they first appeared. For example, if the paper streets were depicted on the original plan recorded in 1984, they are governed for vacation purposes by 23 M.R.S.A. § 3032. If the paper streets did not appear until the amended plan in 1989, then 23 M.R.S.A. § 3031 controls. If there were paper streets on both the original and amended plans, each such street is controlled by the applicable law. (By J.J.W.)

Return

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Title 23: TRANSPORTATION
Part 3: LOCAL HIGHWAY LAW
Chapter 304: ACQUISITION OF PROPERTY FOR HIGHWAY PURPOSES

§3027-A. Recording of vacation orders; rights of action; prior orders

1. Recording of vacation order. A copy of the order of vacation by the municipal officers entered under section 3027 shall be recorded in the registry of deeds where the plan of subdivision is recorded and shall contain an alphabetical listing of the names of the subdivision lot owners and their mortgagees of record whose interests may be affected by the order. The register of deeds shall make a cross-reference to the order of vacation upon or attached to the face of the subdivision plan. The register of deeds shall also index the order under the names of the lot owners whose names appear in the body of the order. Any order of vacation entered prior to the effective date of this section may be recorded by the municipal officers in the same manner and with the same effect set forth in this section.

[1981, c. 683, §3 (NEW) .]

2. Rights of action. All persons are forever barred from maintaining any action at law or in equity to establish, recover, confirm or otherwise enforce any right claimed to or in a proposed or described vacated way by reason of the ownership by the claimant or by a predecessor in title of a lot or parcel of land shown on a recorded subdivision plan, unless, within one year of the date of recordation of the order of vacation, the claimant files in the registry of deeds where the subdivision plan is recorded a statement under oath specifying the nature, basis and extent of the claimed interest in the way. The claim is forever barred unless, within 180 days after the recording of the statement, the claimant or any other person acting on behalf of the claimant commences an action in equity under Title 14, chapter 723, to establish the rights asserted to or in the way. These limitation periods are not tolled or interrupted by any disability, minority, lack of knowledge or absence from this State of any claimant. Upon the trial of an action, the court shall grant judgment for the claimant only if it finds that the claimant has acquired an interest in the proposed way and that the deprivation of rights in the proposed way unreasonably limits access from a public way, a public body of water or common land or facility to the land of the claimant shown on the recorded subdivision plan. Any judgment rendered by the court in the action may, in the discretion of the court, grant the claimant reasonable damages instead of establishment of the claimant's rights.

[RR 2013, c. 2, §34 (COR) .]

3. Prior orders. A person claiming an interest in a proposed unaccepted way vacated under section 3027 prior to the effective date of this section may cause an attested copy of that order to be recorded in the registry of deeds where the subdivision plan describing or showing the way is recorded. That person shall append to the order to be recorded an alphabetical listing of the names of the current subdivision lot owners and their mortgagees of record whose interest in the way may be affected by the order. The register of deeds shall also index the order under the names of the lot owners appearing in the appendix.

Within 20 days of the recording of a prior order, the person causing the order to be recorded shall give notice of his claim to all current owners of lots on the subdivision plan and their mortgagees of record by mailing by the United States Postal Service, postage prepaid, a notice informing them of his claim and advising them that, to preserve any claim adverse to his, they must file a claim and commence an action as required by subsection 2. The notice shall conform in substance to the following form:

NOTICE

On _____, 19____, the municipal officers of _____ (Name of Town or City) entered an order vacating the following (ways) (way) shown upon a subdivision plan (named) (dated) (and) recorded in the _____ Registry of Deeds Book of Plans, Volume _____, Page _____.

(Herein list vacated ways)

The undersigned claims to own the (ways) (way) described above. A copy of the order of the municipal officers was recorded in the Registry of Deeds on _____, 19____, and any person claiming an interest in (these ways) (this way) adverse to the claims of the undersigned must, within one (1) year of the date of the recording of the above order, file a written claim under oath in the Registry of Deeds and must, within one hundred eighty

(180) days thereafter, commence an action in the Superior Court in _____ County in accordance with the Revised Statutes, Title 23, section 3027-A.

[1981, c. 683, §3 (NEW) .]

4. Applicability. This section applies to ways described or shown in recorded subdivision plans proposed before and after the effective date of this section.

[1981, c. 683, §3 (NEW) .]

SECTION HISTORY

1981, c. 683, §3 (NEW). RR 2013, c. 2, §34 (COR).

Title 23: TRANSPORTATION

Part 3: LOCAL HIGHWAY LAW

Chapter 304: ACQUISITION OF PROPERTY FOR HIGHWAY PURPOSES

§3031. Public and private rights in proposed, unaccepted ways in subdivisions

1. Public rights. From the date of recording of a subdivision plan in the registry of deeds, the public acquires rights of incipient dedication to public use of the ways laid out on the plan. If a proposed way laid out in the plan is not accepted by the municipality within 20 years from the date of recording of the plan, the public rights in that way terminate.

[1987, c. 385, §2 (NEW) .]

2. Private rights. A person acquiring title to land shown on a subdivision plan recorded in the registry of deeds acquires a private right-of-way over the ways laid out in the plan. If a proposed, unaccepted way is not constructed within 20 years from the date of recording of the plan, and if the private rights created by the recording of the plan are not constructed and utilized as private rights within that 20-year period, the private rights-of-way in that way terminate.

Unless title has been reserved pursuant to Title 33, section 469-A, when the private rights established by this subsection are terminated as provided in this subsection or by order of vacation by the municipality, the title of the fee interest in the proposed, unaccepted way for which the private rights-of-way have terminated passes to the abutting property owners to the centerline of the way.

[1987, c. 385, §2 (NEW) .]

3. Shorter duration of public and private rights; rights of lesser extent. Notwithstanding subsections 1 and 2, the developer or other person recording a subdivision plan in the registry of deeds may set a shorter duration for the public and private rights established in subsections 1 and 2 than the period provided in those subsections. The developer or other person recording the subdivision plan shall cause the shorter duration to be noted on the face of the subdivision plan.

Pursuant to a subdivision review under Title 30-A, chapter 187, subchapter IV, the municipal reviewing authority may set a shorter duration for the public and private rights established in subsections 1 and 2 than the period provided in those subsections. The municipal reviewing authority shall cause the shorter duration to be noted on the face of the subdivision plan.

Nothing in this section may be construed to prohibit the developer or other person recording a subdivision plan in the registry of deeds from granting rights of lesser extent than those established in subsections 1 and 2. If rights of lesser extent are granted, the person recording the subdivision plan shall cause the extent of those rights to be described on the face of the subdivision plan and in any conveyance of land shown on the plan.

[1995, c. 462, Pt. B, §4 (AMD) .]

4. Fee interest reserved by owner of subdivision. If the owner of land for which a subdivision is proposed reserves the fee interest in any ways proposed on the subdivision plan, the owner shall place a statement of this reservation in all conveyances by him of land in the subdivision.

[1987, c. 385, §2 (NEW) .]

SECTION HISTORY

1987, c. 385, §2 (NEW). 1995, c. 462, §B4 (AMD).

Title 23: TRANSPORTATION
Part 3: LOCAL HIGHWAY LAW
Chapter 304: ACQUISITION OF PROPERTY FOR HIGHWAY PURPOSES

§3032. Proposed, unaccepted ways deemed vacated

1. Deemed vacation.

[1997, c. 386, §1 (RP) .]

1-A. Deemed vacation. A proposed, unaccepted way or portion of a proposed, unaccepted way laid out on a subdivision plan recorded in the registry of deeds prior to September 29, 1987 is deemed to have been subject to an order of vacation under section 3027 if, by the later of 15 years after the date of the recording of the subdivision plan laying out the way or portion of the way or September 29, 1997, both of the following conditions have been met:

A. The way or portion of the way has not been constructed or used as a way; and [1997, c. 386, §2 (NEW) .]

B. The way or portion of the way has not been accepted as a town, county or state way or highway or as a public, utility or recreational easement. [1997, c. 386, §2 (NEW) .]

A way or portion of a way considered vacated under this subsection is subject to section 3033.

[1997, c. 386, §2 (NEW) .]

2. Extensions. The municipal officers of the affected municipality may except a proposed, unaccepted way or portion of a proposed, unaccepted way described in subsection 1-A from the operation of the time limitations of that subsection by filing, in the registry of deeds where the subdivision plan is recorded, a notice stating that the way or portion of the way is excepted from the operation of subsection 1-A for a period of 20 years from the filing of the notice. To be effective, this exception must be filed prior to the expiration of the time limitations of subsection 1-A. An extension accomplished under this subsection may be extended by the municipal officers for a subsequent 20-year period by the filing of a new notice within the preceding 20-year extension period.

[1997, c. 683, Pt. B, §10 (AMD); 1997, c. 683, Pt. B, §11 (AFF) .]

SECTION HISTORY

1987, c. 385, §2 (NEW). 1997, c. 386, §§1,2 (AMD). 1997, c. 683, §B10 (AMD). 1997, c. 683, §B11 (AFF) .

Title 23: TRANSPORTATION
Part 3: LOCAL HIGHWAY LAW
Chapter 304: ACQUISITION OF PROPERTY FOR HIGHWAY PURPOSES

§3033. Rights of action concerning ways deemed vacated

1. Notice by person claiming ownership. Any person claiming to own a proposed, unaccepted way or portion of a proposed, unaccepted way deemed vacated under section 3032 may record, in the registry of deeds where the subdivision plan, to which the notice set forth in this subsection pertains, is recorded, a conformed copy of the notice set forth in this subsection, with an alphabetical listing of the names of the current record owners of lots on the subdivision plan to which the notice pertains and their mortgagees of record. The person shall give notice of his claim to these current record owners and their mortgagees of record. Within 20 days of recording of the notice, the person shall give this notice by mailing, by the United States postal service, postage prepaid, to the current record owners and mortgagees, a copy of the notice set forth below:

NOTICE

By virtue of the Maine Revised Statutes, Title 23, section 3032, the following proposed, unaccepted ways or portions of proposed, unaccepted ways were deemed by law to have been vacated by the municipal officers of (name of town or city) _____. The ways or portions of ways so vacated are shown on a plan (named) (dated) (and) recorded in the _____ County Registry of Deeds, Book of Plans, Volume _____, Page _____, (Folio #) and are described as follows:

(Herein list vacated ways or portions of ways)

The undersigned claims to own the (way or ways) (portion of way or ways) described above. Any person claiming an interest in (this way or these ways) (a portion of this way or these ways) adverse to the claim of the undersigned, within one year from the date of recording of a copy of this notice in the registry of deeds, must file a written claim, under oath, in the same registry and, within 180 days thereafter, must commence an action in Superior Court in _____ County in accordance with the Maine Revised Statutes, Title 23, section 3033. A copy of this notice was recorded in the registry of deeds on _____, 19__.

[1987, c. 385, §2 (NEW) .]

2. Rights of action by persons receiving notice. All persons receiving a notice under subsection 1, who claim any private right of any kind in the way or portion of a way to which the notice pertains, are forever barred from maintaining any action at law or in equity to establish, recover, confirm or otherwise enforce any right claimed to or in the way or portion of a way by reason of the ownership by the person, or by a predecessor in title, of a lot or parcel of land shown on the recorded subdivision plan to which the notice pertains, unless, within one year from the date of recording of the notice, the person files in the registry of deed where the pertinent subdivision plan is recorded a statement, under oath, specifying the nature, basis and extent of the claimed interest in the way or portion of a way. The claim is forever barred unless, within 180 days of the recording of the statement, the claimant, or a person acting on his behalf, commences an action in equity under Title 14, chapter 723, to establish the rights asserted to or in the way or portion of a way.

The limitation periods in this section are not tolled or interrupted by any disability, minority, lack of knowledge or absence from this State by the claimant.

[1987, c. 385, §2 (NEW) .]

3. Trial of an action. Upon trial of an action initiated under subsection 2, the court shall grant judgment for the claimant only if it finds that:

A. The claimant has acquired an interest in the way or portion of a way; and [1987, c. 385, §2 (NEW).]

B. The deprivation of the claimant's rights in the way or portion of the way unreasonably limits the claimant's access from his land shown on the recorded subdivision plan to:

(1) A public way;

(2) A public body of water; or

(3) Common land or a common facility within the subdivision. [1987, c. 385, §2 (NEW).]

Any judgment rendered by the court in an action under subsection 2, in the discretion of the court, may grant the claimant reasonable damages instead of establishment of the claimant's rights, except that under no circumstances shall a municipality be liable for any damages granted by any judgment rendered by the court under subsection 2.

[1987, c. 385, §2 (NEW) .]

SECTION HISTORY

1987, c. 385, §2 (NEW) .

Title 33: PROPERTY

Chapter 7: CONVEYANCE OF REAL ESTATE

Subchapter 7: TITLE TO ROADS AND WAYS

§460. Conveyance of land abutting a road or way

A conveyance of land which abuts a town or private way, county road, highway or proposed, unaccepted way laid out on a subdivision plan recorded in the registry of deeds shall be deemed to convey all of the grantor's interest in the portion of the road or way which abuts the land, except: [1987, c. 385, §3 (RPR).]

1. Proposed, unaccepted ways. With respect to a proposed, unaccepted way laid out on a subdivision plan recorded in the registry of deeds, those rights provided to owners of other lots in the subdivision by Title 23, section 3031; and

[1987, c. 385, §3 (NEW) .]

2. All roads and ways. With respect to a town or private way, county road or highway, an easement of access necessary to provide ingress and egress to property adjoining the town or private way, county road or highway which shall be preserved, unless the grantor expressly reserves his title to the road or way by a specific reference to the road or way contained in the conveyance.

[1987, c. 385, §3 (NEW) .]

SECTION HISTORY

1973, c. 505, (NEW). 1975, c. 416, (AMD). 1987, c. 385, §3 (RPR).

Title 33: PROPERTY
Chapter 7: CONVEYANCE OF REAL ESTATE
Subchapter 7: TITLE TO ROADS AND WAYS

§469-A. Title to proposed, unaccepted ways

1. Reservation of title. Any conveyance made before September 29, 1987 that conveyed land abutting upon a proposed, unaccepted way laid out on a subdivision plan recorded in the registry of deeds is deemed to have conveyed all of the grantor's interest in the portion of the way that abuts the land conveyed, unless the grantor expressly reserved the grantor's title to the way by a specific reference to this reservation in the conveyance of the land.

[2011, c. 312, §1 (AMD) .]

2. Intent to reserve. Any grantor who, before September 29, 1987, conveyed land abutting a proposed, unaccepted way laid out on a subdivision plan recorded in the registry of deeds with the intent to reserve title to the way, but who did not expressly reserve title to the way as required in subsection 1, or any person who claims title to the way by, through or under the grantor, may preserve the grantor's claim by recording the notice set forth in subsection 3, in the registry of deeds where the pertinent subdivision plan is recorded, within 2 years after September 29, 1987.

[2011, c. 312, §1 (AMD) .]

3. Notice. The notice required under subsection 2 shall contain:

A. An intelligible description of the way or portion of a way in which title is being claimed; [1987, c. 385, §4 (NEW).]

B. The name and address of the person on whose behalf the title is being claimed; [1987, c. 385, §4 (NEW).]

C. A description, including specific reference, by date of recording and the volume and page numbers, to that conveyance, of the recorded instrument in which the person claims title to the way or portion of the way which was intended to be reserved; and [1987, c. 385, §4 (NEW).]

D. A duly verified oath taken by the person claiming title before a person authorized to administer oaths. [1987, c. 385, §4 (NEW).]

[1987, c. 385, §4 (NEW) .]

4. Register's duties. The register of deeds shall enter upon the margin of the recorded conveyance, described in the notice under subsection 3, paragraph C, the volume and page numbers where the notice is recorded.

The register of deeds may charge the same fee for recording the notice that is charged for recording deeds.

[1987, c. 385, §4 (NEW) .]

5. Who may present notice for recording. The notice required under subsection 2 may be presented for recording by the person claiming title or a person acting on his behalf. Disability or lack of knowledge by the person claiming title shall not extend the time limitations related to the recording of the notice.

[1987, c. 385, §4 (NEW) .]

6. Lack of reservation. Any person owning land in this State abutting a proposed, unaccepted way or portion of a proposed, unaccepted way, whose predecessors in title had not reserved title in the way under subsection 1 or 2, is deemed to own to the center line of the way or portion of the way, except for a proposed, unaccepted way under subsection 6-A.

[2011, c. 312, §2 (AMD) .]

6-A. Bounded by other property. A person owning land in a subdivision abutting a proposed, unaccepted way or portion of a proposed, unaccepted way owns the entire width of the portion of the way that abuts the person's land if:

A. The proposed, unaccepted way or portion of the proposed, unaccepted way is part of the subdivision and is laid out on the subdivision plan recorded in the registry of deeds; [2011, c. 312, §3 (NEW).]

B. The person's predecessors in title had not reserved title in the proposed, unaccepted way or portion of the proposed, unaccepted way under subsection 1 or 2; and [2011, c. 312, §3 (NEW).]

C. The proposed, unaccepted way or portion of the proposed, unaccepted way is bounded on the opposite side by land that is not included in the subdivision. [2011, c. 312, §3 (NEW).]

If the land on the opposite side of a proposed, unaccepted way or a portion of a proposed, unaccepted way under this subsection extends beyond the person's land, then the person owns the entire width of that portion of the extension of the proposed, unaccepted way that is not bounded by another owner's land on the person's side of the way.

[2011, c. 312, §3 (NEW) .]

7. Action to establish title. In any action concerning title to a proposed, unaccepted way, the burden of proof concerning the grantor's intent to reserve title shall be on the grantor or those claiming title by, through or under the grantor.

[1987, c. 385, §4 (NEW) .]

8. Construction of laws. Nothing contained in this section may be construed to extend the period for the bringing of an action or for the doing of any other required act under any statute of limitations.

This section shall be liberally construed to affect the legislative purpose of clarifying the title to land underlying proposed, unaccepted ways by eliminating the possibility of ancient claims.

[1987, c. 385, §4 (NEW) .]

SECTION HISTORY

1987, c. 385, §4 (NEW). 2011, c. 312, §§1-3 (AMD).



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LEGAL
DEPARTMENT

MEMORANDUM

TO: Planning Board
Comprehensive Plan Committee
Jerre R. Bryant, City Manager
Arvin Erskine, Director, Public Works
Tex Haeuser, Planning Director
Edward A. Reidman, City Engineer
Patricia Doucette, Code Enforcement Officer
Elizabeth Cumback, Tax Assessor

FROM: Ellen Egan George, ^{EEG} Associate Corporation Counsel

RE: "Paper Streets" - Creation and Extinguishment of Rights;
Implications for Planning, Project Review, City Maintenance

DATE: May 9, 1991

The legal status of so-called "paper streets" and the implications of legislation enacted several years ago are of interest to the Planning Board and Planning staff, as well as citizens of the City. I have addressed this topic orally on several occasions at Planning Board meetings. Several memoranda on the subject have been sent to Engineering and Code Enforcement. The Public Works Director has questions regarding the propriety of City maintenance of unaccepted streets. This memorandum is intended to respond to the Planning Board's request for a summary of the governing legislation, as well as to these other inquiries.

This memorandum is a rather lengthy attempt to explain the provisions of the law, which is somewhat complicated. I have tried to organize the memo in a manner which is helpful. Still, with the mass of material and concepts presented, you may want to turn to pages 3 and 4 for an overview chart form of the workings of the legislation and to the discussion of implications (pages 14-19) before reading the entire text.

The memo is organized into several parts:

I. INTRODUCTION

II. KEY CONCEPTS

III. TITLE TO PAPER STREETS

IV. CREATION OF PUBLIC AND PRIVATE RIGHTS IN STREETS

V. UNDOING PAPER STREETS

VI. IMPLICATIONS FOR FUTURE CITY PLANNING, PROJECT REVIEWS, AND CITY MAINTENANCE OF STREETS

A. Comprehensive Planning Efforts

B. Subdivision Review

C. Project Review

D. Review of Building Permit Applications for Lots Lacking "Frontage"

E. Review of Building Permit Applications for Substandard Lots

F. City Maintenance of Streets

G. Tax Implications

VII. CONCLUSION

Essentially, the legislation enacted in 1987 has implications for the long-range planning and capital improvement plans of the City, as well as for private property rights.

VACATION, DEEMED VACATION, TERMINATION OF RIGHTS IN PROPOSED, UNACCEPTED ("PAPER") STREETS

PUBLIC RIGHTS

PRIVATE RIGHTS

SUBDIVISIONS RECORDED BEFORE SEPTEMBER 29, 1987

Vacation by City (at any time)

City gives up right to accept dedicated street.

Title is deemed to be in owners of abutting property, to center line, unless explicitly reserved by subdivider.

Issue: Private rights of access.

Deemed Vacation occurs on September 29, 1997, or 15 yrs from recording, whichever is later.

City's right to accept dedicated street ends on that date.

Title is deemed to be in owners of abutting property, to center line, unless ownership is explicitly reserved by subdivider.

SUBDIVISIONS RECORDED AFTER SEPTEMBER 28, 1987

Vacation by City (action possible at any time before termination)

City gives up right to accept dedicated street.

Title is deemed to be in owners of abutting property, to center line (unless explicitly reserved by subdivider in deeds). If street not constructed and used as private ROW within 20 years, private ROW is terminated.

Termination occurs automatically 20 years from recording of subdivision (or on earlier date if subdivider or Planning Board so designates on plan).

City's right to accept dedicated street terminates automatically in 20 years (or shorter time).

Title is deemed to be in owners of abutting property, to center line, (unless explicitly reserved by subdivider). If street is not constructed and used as private ROW within 20 years, private right of access is terminated.

IMPLICATIONS OF "PAPER STREETS" FOR CITY

Planning -

City is required to prepare and implement a revised comprehensive plan, with attention to infrastructure, capital improvements by deadline. Streets to be accepted should be identified. Streets accepted by "use" should be identified.

Subdivision Review -

New subdivision plats showing streets will, on recording, dedicate streets to City unless plats state otherwise. Dedication will terminate automatically in 20 years unless shorter period is stated on plat. Private streets should be labelled as such.

Project (Site Plan) Review -

Proposed projects should not include "paper streets" within boundaries of sites proposed for development. "Paper streets" should be vacated formally prior to site plan review.

Building Permits -

Individual lots on "paper streets" do not have necessary "frontage", unless original subdivision plan, recorded prior to Subdivision Ordinance, has since been "endorsed" by Planning Board. If "paper streets" are vacated individually or automatically, lots will have no frontage.

Substandard Lots -

The portion of a "paper street" which is vacated, deemed vacated or terminated is not a "lot of record". Therefore, it cannot be calculated to make a "lot of record" for building purposes.

City Maintenance -

"Paper streets" (constructed or not constructed) are not public streets (either "town ways" or "public easements"). It is unconstitutional to use public funds to plow or maintain nonpublic streets or ways. Opinion of the Justices, 560 A2d. 552 (1989). Streets should be accepted or maintenance discontinued.

I. INTRODUCTION

"Paper streets" are generally understood to mean those proposed streets shown on subdivision plans which, although dedicated to the City, were never developed and/or accepted by the City. (Note: "paper streets" has no legal or official definition anywhere. For purposes of this memorandum a "paper street" is a proposed, unconstructed street shown on a recorded subdivision plan, where at least one lot in the subdivision has been conveyed, and which has not been accepted as a public way. If a proposed constructed street is addressed, the text will be explicit.)

Prior to modern subdivision laws and ordinances, land subdivisions were created by the unilateral action of landowners who platted parcels into building lots or plans showing proposed streets. There was no review or approval of these plans by municipal (or other) officials. All that was needed as a prerequisite for sale of the platted lots was their recording of the subdivision plat in the Registry by the property owner. Before modern subdivision standards were enacted at the state or local level, there was no requirement that the original subdivider actually construct the proposed roads or other public improvements. Thus, the proposed streets were probably often intended as dedications of property to the municipality for its construction. Or, if the subdivider intended initially to construct streets, such plans sometimes failed to materialize.

This memorandum discusses primarily the topic of "paper streets".

II. KEY CONCEPTS

Several key concepts or definitions are necessary for an understanding of the new law and its implications.

Incipient dedication:

A key concept here is the right of incipient dedication. The presumed intent of a subdivider who lays out a street on a recorded plan is that he wants it to become a public way and therefore has dedicated it to the public (the municipality). The dedication is incipient until the municipality accepts the street. Incipient dedication means the municipality has the right to accept the street and the owner/subdivider cannot revoke the dedication. The right of incipient dedication is a public right in the proposed street. See 23 M.R.S.A. §3031(1).

Until recently, incipient dedication has been based solely on the common law (court decisions). In 1987, the Legislature enacted a statutory basis for incipient dedication.

Implied easement:

A second concept which is important is the notion of a proposed street as an implied easement: a property right in the owner of private property created by the laying out of a street on the subdivision plan. The purchase of a lot shown on the subdivision plan receives an implied easement, appurtenant to his lot, to use the street. This implied easement held by individual lot owners, exists independently of the public's right of incipient dedication.

Until the 1987 statutory amendments, the implied easement was based on the promise of the subdivider, as evidenced in recording the plat and selling off lots, that the lot would be benefitted by the streets shown on the plat. Now there is a statutory basis for this implied easement.

Town way or public street:

A town way is defined in the Maine statutes as follows:

- a) An area or strip of land designated and held by a municipality for the passage and use of the general public by motor vehicle;
- b) All town or county ways not discontinued or abandoned before July 29, 1976; and
- c) All state or state aid highways, or both, which shall be classified town ways as of July 1, 1982, or thereafter. . . .

Every member of the public has a right to travel by foot or by vehicle on a town way. Once a municipality establishes a town way, it has a responsibility to keep that way passable if it becomes "blocked or encumbered with snow" unless it is legally closed to winter maintenance, and also to keep the way "in repair so as to be safe and convenient for travelers with motor vehicles". In other words, the municipality has to maintain the road. If the municipality fails to maintain it and personal injury or property damage results, the municipality could be liable for damages. 23 M.R.S.A. §32d, 2953, 3651, 3655.

Private way or public easement:

A private way, or what is now called a public easement, is defined as "an easement held by a municipality for purposes of public access to land or water not otherwise connected to a public way, and includes all rights enjoyed by the public with respect to private ways created by statute prior to July 29, 1976.

A private way or public easement differs from a town way in that the general public has a right of unobstructed access by foot or motor vehicle, but the municipality does not have an obligation to keep the road in repair. The municipality's legislative body may authorize the use of municipal equipment on public easements, if the officials determine that it is in the municipality's best interest in order to provide police and fire protection. The town is generally immune from

liability for damage or injury occurring on a public easement. However, if municipal equipment is used on the easement and an injury results, the municipality could be liable if the injury arises from the negligent use of that equipment. 23 M.R.S.A. §3022, 3105; 17-A M.R.S.A. §505.

Private road:

The third type of road is a privately-owned road. When a way has the status of a privately-owned road, neither the municipality nor the general public has a right to pass over it by foot or by vehicle.

Anyone traveling on a privately-owned road or making repairs to it without the owner's permission would be subject to a suit for damages for trespassing. A municipality has no responsibility and no legal authority to plow or grade a privately-owned road or to keep it in repair. Indeed, using public moneys to maintain a privately-owned road is unconstitutional. Opinion of the Justices, 560 A.2d 552 (Me. 1989).

III. TITLE TO PAPER STREETS

An important question posed by the existence of a paper street is the question of ownership. If the municipality accepts the street, the question is resolved: the town or city becomes the owner. During the time between dedication and acceptance, however, and if there is no acceptance after a period of time, the ownership may be unclear.

It commonly happened in the past that a subdivider would sell off the lots in the subdivision he had created but take no action with respect to the proposed streets shown on the plan. Years later title examiners, property owners and, perhaps, tax collectors, were faced with the question of ownership of this forgotten property which had never really become a functioning street.

A. Public Rights

The exact nature of the public's interest in a proposed street was, and still is, unclear, but it appears to be limited to the right of "incipient dedication". "Incipient dedication" means that the municipality is entitled to accept the dedicated proposed street, at least for a period of time, and that the subdivider cannot revoke his dedication.

1. Prior to September 29, 1987, acceptance of a proposed street by a municipality could be demonstrated by public use or continued municipal maintenance of a proposed street over a 20-year period as well as by a formal vote of acceptance by the municipal legislative body.

2. After September 25, 1987, a municipality will obtain title to a proposed street with a vote of acceptance by the municipal legislative body (City Council in South Portland). Acceptance claimed through 20 years of continued public use does not appear to be possible any longer.

If the subdivider dedicates a lesser legal interest in the proposed street (e.g., a public easement/private way rather than full ownership of the street as a town way) title will not pass to the municipality. Instead, acceptance will mean that the municipality accepts an easement (right of the public to use the street), but will not become the owner of the street.

B. Private Rights: Subdivider and Subdivision Lot Owners

1. Before September 29, 1987, the subdivider's interest in a proposed street was probably a fee simple (outright ownership) interest in the street. Thus, the proposed street was a piece of property that could actually be conveyed to another person by deed or could be inherited. It would remain in that person's possession until (if at all) the municipality accepted the street.

The rights of subdivision lot owners were, if any, implied easements to use the proposed street for access. (See discussion in Section IV below.)

2. After September 28, 1987 - Subdivisions Recorded Before 9/29/87. The statutes create a retroactive presumption that subdividers in the past conveyed all their interests in paper streets to abutters, to the center-line of the street, unless expressly reserved. (There was a 2-year window, until 9/28/89, during which a subdivider could have filed a notice to preserve his claim to the street.) Thus, unless the subdivision plat or the deeds expressly state that the subdivider reserved title to the street in himself, ownership of paper streets has passed to the various abutters by law.

Note that ownership may not entitle the abutters to use the paper street as strictly private property. Ownership might be burdened by so-called "implied easements" held by other lot owners, allowing them to continue passage along the paper street. (See discussion in Section IV.)

3. After September 28, 1987 - Subdivisions Recorded After That Date. The law now provides that when a subdivider conveys land bounded by a proposed street, he also conveys all of his rights in the abutting portion of the proposed street, except for private rights-of-way in favor of other lot owners. (See below.) 33 M.R.S.A. §460; 23 M.R.S.A. §3031(2). Title in the abutters continues only until the proposed street is accepted by the municipality, at which time title passes to

the municipality. In other words, the subdivider's dedication of the street is also binding on the abutting lot owners; they cannot revoke it. If the municipality does not accept the proposed street within 20 years, or any shorter period of time established by the subdivider or the Planning Board, title remains with the abutters.

Although the expressed intent of the 1987 amendments (and the subchapter of Title 33 as a whole) was to clarify title to roads and streets, the legislation leaves some problems. First, the statute should state that the rights created in the public by the dedication continue as title (ownership) goes to abutters. Second, there is no provision in this statute for abutters to take title to the centerline of the abutting portion of the proposed street. This is a significant omission. What can occur is that the owner of Lot A takes title to the entirety of the proposed street abutting Lot A. The owner of Lot B across the street, who purchased at a later date, takes no title to any of the street since all of the subdivider's interest (with exceptions of the easement and incipient right in the public) has been conveyed to the owner of Lot A.

	x x x	
<u>Lot A</u> (1/1/70 Purchase)	x x x	<u>Lot B</u> (3/4/70 Purchase)
	x x x	
Title to the [x x x] portion of the proposed street will pass to the owner of Lot A because Lot A was purchased before Lot B.		

It is not clear whether this result can be avoided. It may be possible to assure that abutters will take only to the centerline of the street by so stating on the subdivision plan and in deeds of conveyance of subdivision lots.

IV. CREATION OF PUBLIC AND PRIVATE RIGHTS IN STREETS

The right to use a proposed street and the ownership of the proposed street must be distinguished. Merely identifying the "owner" of a street does not fully explain the rights of use held by the public or private persons in the street.

A. Public Right of Use

1. Before September 29, 1987. Before the 1987 amendments, an incipient dedication to the public occurred when subdivision lots were sold with reference to a plan showing proposed public streets. Incipient dedication was based on a presumption by the courts that the developer intended to dedicate the proposed streets to the public; this presumption could be rebutted by a disclaimer on the plan that dedication was not intended.
2. After September 28, 1987. The new law explicitly causes an incipient dedication to occur once a subdivision plan showing streets is recorded in the Registry of Deeds. The subdivider can restrict the extent of public rights, but any restriction has to appear on the face of the plan and in any deeds to the lots. My sense of the intent of this provision is that a subdivider can dedicate a public easement rather than a town way, or create only private rights-of-way in a completely private road, so long as appropriate descriptive language appears on the subdivision plan. Thus, a subdivider could, by appropriate dedication, allow public access to the proposed subdivision streets, but not require municipal maintenance of the streets. As a practical matter, this is not likely. Developers and owners probably want a street or way to be all public (ownership and public maintenance) or all private (ownership and private maintenance). Municipal maintenance of a "public easement" is authorized as a legal expenditure of taxpayer moneys, but it is not required. Maintenance of a town way is, however, required once acceptance takes place. Without limiting language, however, the incipient dedication created by recording a subdivision plan is of a town way (public street). See 23 M.R.S.A. § 3031(1), (3).

B. Private Rights

1. Before September 29, 1987. Prior to the 1987 amendments, easements were implied in favor of purchasers who bought lots with reference to a subdivision plan depicting streets. In other words, while the right of a lot owner to use the proposed streets was not explicitly written on the subdivision plan or in the deed, the courts would recognize such rights as implied in the property owner's ownership of a lot. The legal theory was that the purchaser had relied on the subdivider's plan of streets as a promise and an inducement to buy the lot. Thus, even though title to the street probably remained with the subdivider, the lot owners could not be prevented from using the proposed streets within the subdivision; they obtained, in effect, an easement over the street.

However, the recognition of easements by implication is subject to the facts of particular situations; implied easements were not guaranteed with all lot purchases. In any dispute over the right to use a proposed street, the court would consider whether the lot purchaser actually had been

shown a plan by the subdivider and had bought a lot in reliance on the promises embodied in the plan, as well as the extent of that reliance. Any disclaimers on the plan would have to be taken into account. In short, implied easements in favor of lot owners were open to dispute; they were not certainties. Note, also, that the extent of the implied easement was not clear. Some Court cases suggest that lot owners obtained implied easements over only the street or streets giving access to their own particular lots. Others suggest the easement extends to all the other streets within the subdivision.

2. After September 28, 1987. The 1987 amendments provide that the purchaser of land shown on a recorded subdivision also acquires a "private right-of-way" over the roads depicted on the subdivision plan. The purchaser need not have actually seen the plan. See 23 M.R.S.A. §3031(2).

V. UNDOING PAPER STREETS

A. Interest in the Public

Until the municipality accepts a proposed street, the incipient dedication to the public does not ripen into any substantial right. Under the common law (court decisions) and previous statutory scheme, acceptance by a municipality had to occur within a "reasonable" time. Harris v. City of South Portland, 118 Me. 356 (1919) (43 years after dedication without acceptance is too long; the City had lost its right to accept). The passage of time without acceptance may still terminate incipient dedication to the public of paper streets in old subdivisions. This could be confirmed in a court action (declaratory judgement). It is not clear whether the "reasonable time" common law rule still applies or whether the new statutory scheme, set out in the 1987 amendments, is now the only procedure for terminating the public's interest in paper streets.

The new statutory scheme adds to the traditional formal "vacation", a new "deemed vacation" and an "automatic termination" of public rights.

1. Vacation (Subdivisions recorded before and after September 28, 1987. Vacation is a means by which a municipality can formally refuse to accept a proposed unaccepted street, and thus terminate any present and future interest in the street. This procedure can be initiated by the municipal officers or by petition of property owners. Damages will be awarded to any affected parties (usually the abutting lot owners although it could be others). Damages and costs will be paid by the petitioners, if any. 23 M.R.S.A. §3027. (Damages are a recognition that a lot may lose value if the proposed street is not accepted.)

Advance notice to the owners of lots in the subdivision and their mortgagees is necessary. This procedure predates the 1987 amendments and continues to exist.

2. Deemed Vacation (Subdivisions recorded prior to September 19, 1987). The 1987 amendments create the concept of "deemed vacation" applicable to paper streets created by subdivision plans recorded prior to September 29, 1987. A street laid out on a plan recorded before that date will be deemed vacated if it remains unaccepted on the later of

(i) September 29, 1997 or

(ii) 15 years from the date of recording.

Under this procedure, no notice is required to be sent to abutters (the "notice" is the statute itself) and no damages need be paid.

The municipal officers can extend the time period for accepting any particular street by 20 years and can make any number of further 20-year extensions, but they have to do so by affirmative act. The effect of a deemed vacation, like a vacation, is that the municipality gives up its right to accept the dedicated street. It can thereafter acquire it only by purchase, condemnation or as a gift from the owners (the abutters along each portion).

3. Automatic terminations (Subdivisions recorded after September 29, 1987). This procedure applies to the proposed streets laid out in plans recorded on or after September 29, 1987. Under the amendment, the public rights in any proposed unaccepted street created by a plan after this date, if not accepted within 20 years from the recording date, will automatically terminate. Thus, the municipality will not be able to accept the dedication after this 20-year period. As with vacation and deemed vacation, the municipality must buy the street or condemn and pay damages after that date. Or, it may obtain it as a gift from the title-holders. 23 M.R.S.A. §3031(1).

The subdivider or the planning board can establish a period for acceptance shorter than 20 years; if this is done, it must be noted on the recorded subdivision plan. If that time period passes without acceptance, the dedication is automatically terminated.

B. Interests in Private Parties

Under the former law, when a proposed street was vacated, title remained with the subdivider, while lot owners retained whatever implied easements of access they held to use the proposed streets. These easements may have been perpetual. However, the question of title and rights of private use were uncertain enough to be an

impetus to enactment of the 1987 statutes. Not all questions have been resolved.

1. Vacation (Subdivisions recorded before September, 1987). If the subdivider did not explicitly reserve title to the proposed street to himself, title passed (to the centerline) to abutters on each side of the street, leaving the subdivider with neither title nor interest in the proposed street.

It is unclear what rights, if any, the lot owners retain for use of the proposed street after vacation by a municipality. Some commentators have suggested that these implied rights to use the street cease upon vacation. In my view, that issue is not definitively determined in the law and is a matter private parties may have to argue in the proper forum. Every person is barred from maintaining an action to claim rights in the paper street based on ownership of a lot in the subdivision, unless he files a sworn statement within one year and then, within the next 180 days, brings a quiet title action to confirm his claim. The Court will grant judgement for the claimant "only if it finds that the claimant has acquired an interest in the proposed way and that the deprivation of rights in the proposed way unreasonably limits access from a public way, a public body of water or common land or facility to the land of the claimant shown on the recorded subdivision plan". 23 M.R.S.A. §3027-A(2)

The Court can award reasonable damages in lieu of establishing the claimant's rights (i.e., money instead of a right to use the paper street).

2. After Deemed Vacation. Following a deemed vacation (of "paper streets" in a subdivision created prior to September 29, 1987), title also passes to the abutting property owners (to the centerline), unless it was expressly reserved by the subdivider. Any person claiming to own a paper street (or a portion of it) can file a notice of his claim in the Registry and mail a copy to all other affected lot owners (and their mortgagees). After that, the person notified must react as with the notice recorded following a vacation.

3. Following Automatic Termination. If a proposed, unaccepted way in subdivision recorded after September 28, 1987 is not constructed within 20 years from the date of recording of the plan and if the private rights-of-way created by recording the plan are not constructed and utilized as private rights-of-way within the 20-year period, the private rights-of-way within that proposed street terminate automatically.

Unless title has been reserved to the subdivider, when the private rights-of-way are terminated automatically or by vacation by the municipal officers, the title in the paper street passes to the abutting property owners. (Here, however, there is no centerline provision; thus, some property owners will not take title to the half of the street abutting their property.)

If a shorter period of time (less than 20 years) has been established by the subdivider or the planning board and noted on the face of the recorded subdivision plan, the private rights-of-way in the proposed way terminate if the proposed street is not constructed within the established period and if the private rights are not constructed and utilized as private rights within that period of time.

VI. IMPLICATIONS FOR FUTURE CITY PLANNING, PROJECT REVIEWS, CITY MAINTENANCE OF STREETS

The 1987 provisions of the statutes pertaining to automatic termination of the City's incipient dedication rights in future and the deemed vacation of previous dedications have implications for general planning efforts, subdivision reviews, zoning ordinance enforcement, and City road maintenance efforts.

A. Comprehensive Planning Efforts

The fact that the City's interest in paper streets will end with "deemed vacation" in 1997 has implications for the comprehensive planning process mandated by State law. The growth management legislation requires that each municipality undertake a planning process which results in a "local growth management program" being followed and a comprehensive plan or revised comprehensive plan being adopted. 30-A M.R.S.A. §§4323-4327. The inventory and analysis section of the comprehensive plan must assess the existing transportation systems and capital facilities. Also, a capital investment plan for financing public facilities is required.

An inventory of proposed unaccepted streets both constructed and not constructed would appear to be a legitimate part of this comprehensive planning process. The comprehensive plan committee might also assess the paper and other unaccepted streets and make a recommendation, through the plan, as to which ones should be accepted and constructed by the City and which ones should be vacated. If an inventory and assessment are not completed, and a program of acceptance and vacation is not instituted, the "deemed vacation" statutes will, in essence, do the planning for it. If a comprehensive approach to acceptance and vacation is not adopted, requests for street vacation will continue to be handled on a piecemeal basis.

In addition, such an inventory-assessment-planning effort would be an appropriate guide to future capital improvement plans. "Paper streets" which are to be accepted as streets should probably be constructed; this construction will obviously require municipal expenditures.

The recommendations and considerations as to vacation or acceptance of each paper street and other unaccepted streets can turn on a number of factors. For example, which paper streets would be

useful connectors between accepted streets? Or, which paper streets show abutting undeveloped lots, which cannot be built on because they lack "frontage"? How much in the way of capital expenditures will the City expend to construct "paper streets" in the future?

Any inventory of City streets should attempt to categorize all streets according to various criteria, accepted or unaccepted; accepted or arguably accepted by public use or City maintenance for over 20 years; constructed or not constructed.

Note, the City apparently has accepted some unconstructed proposed streets in the past. These streets, then, may not exist in reality, but must be legally maintained for passage. To get rid of such accepted streets, a discontinuance procedure rather than a vacation procedure is needed.

B. Subdivision Review

The 1987 laws have implications for the subdivision application and review process implemented by the Planning Board.

Any streets shown on a subdivision plan recorded after September 27, 1987, are assumed to be dedicated to the City upon recording of the approved plan. Thus, if the streets are to remain private, or if only "public easements" are to be created, the subdivision plan should state this explicitly. The law makes no distinction between residential and non-residential subdivisions. Thus, industrial or commercial subdivision streets should be distinguished on the plan as private streets or private ways (public easements) if that is the intent of the developer. If not, the act of recording will create town ways which must be maintained by the City, even if this was not discussed during the planning process. If a residential condominium project is proposed, the plan should clearly indicate that the street is to be private within the condominium lot, assuming current policy and practice holds. If not, recording will dedicate the streets and the Council will have to vacate any streets if it does not wish to wait 20 years for automatic termination.

The dedication of a public street will terminate 20 years from the date of recording, if not accepted by the City. Since construction is required by the City's ordinances within a two-year period after subdivision approval, with release of performance guarantees to follow soon after, it might be appropriate to consider a "decision-point" for the Council at an earlier time, e.g., 5 years.

Subdividers might be advised or required to place appropriate language in the deeds of conveyance which define lot owners' property rights to the centerline of the street, in the event the street is not accepted by the City within the specified time limit.

C. Project Review

The unknown status of "paper streets" has been raised during the Planning Board's review of several projects during the past several

years. The Board approved a condominium project through which a paper street runs; the street was not vacated and, according to the 1987 law, could still be accepted by the City Council. In another site plan, the applicant proposed to use a "paper street" as an exit drive for employees and customers leaving the site. This plan was approved by the Board. Under the 1987 amendments, a vacation or deemed vacation will probably result in that applicant's owning only one half the paper street. It is questionable what right the applicant will have to continue to use the full width of the "street" as egress from its abutting lot.

Under the present laws, it would appear wise to require the formal vacation of any "paper street" within a subdivision or site plan area, if that "street" is not intended to become a public street. In addition, where "paper streets" are going to be used as private roads, it would also appear wise to require vacation and/or, at the least, an appropriate demonstration of a private right to use the street as proposed (e.g., a court decision, deed language regarding easement rights). This vacation should be completed, as it has been in the past, prior to an application's being heard by the Planning Board for review.

D. Review of Building Permit Applications for Lots Lacking "Frontage"

A number of questions regarding "frontage" have arisen at the Code Enforcement Office in the recent past.

The South Portland Zoning Ordinance requires that each lot have "frontage" of a certain dimension. "Frontage" is defined as:

. . . The dimension between the two (2) sidelines of any lot, measured along the property line that borders upon whatever way serves as legal access to said lot. For determination of the requirements of this chapter, the following ways shall constitute legal access to a Lot:

- (a) A way accepted by or established as belonging to the City of South Portland, Cumberland County, or the State of Maine, provided access is not specifically prohibited.
- (b) A way as shown on an approved subdivision definitive or final plan.
- (c) A private way (unaccepted street) existing prior to the enactment of the Subdivision Control Ordinance by the City of South Portland, which way is shown on a plat recorded in the registry of deeds prior to such enactment and is deemed adequate by the Planning Board as evidenced by said Board's endorsement on the subdivision plan. In the case of a lot situated on a curve of a street or on a corner of two (2) streets, the measurement of frontage may include the entire length of the property line along such street or streets.

An applicant for a building permit whose lot abuts a street formally accepted by vote of the City Council or whose lot is part

of a subdivision approved by the Planning Board can show the "frontage" necessary for building.

If the street abutting a lot has not been formally accepted by the City Council, it might fall within the category of "established as belonging to the City of South Portland" if acceptance can be demonstrated by public usage over a period of at least 20 years. Who or what entity is to "establish" this City ownership is not clear. While an accepted street will be one which has been constructed, note that this alternative definition of "way" does not require that there be an actual constructed street. A "way" shown on a subdivision plan could become a public street by virtue of use, without actual construction, much less construction to City standards. This is an area ripe for disputes.

Also, what the Ordinance describes as a "private way" (unaccepted street) "existing prior to the enactment of the Subdivision Control Ordinance . . . which way is shown on a plat record in the registry of deeds" encompasses so-called "paper streets", i.e., both proposed unconstructed streets and constructed unaccepted streets. To achieve lots with frontage, such streets must be "deemed adequate by the Planning Board as evidenced by said Board's endorsement on the subdivision plan". Exactly what process is envisioned here is uncertain. Moreover, there are no standards for any such "endorsement" long after the fact of subdivision. If the original subdivider or an heir asks the Board for site plan approval of a development, the Board, pursuant to existing Board procedures, could require that a "paper street" be constructed. The typical case, however, would appear to be an individual lot owner who comes forward to Code Enforcement with plans to build abutting a "paper street". How that individual gets to the Planning Board for an "endorsement", and the basis on which an endorsement is to be given or denied, is too vague to be workable.

Immediate "frontage" might be created for lots by a vote of acceptance of the City Council on particular streets, but if the street is unconstructed, this is not a likely decision.

If the Council vacates proposed streets, or deemed vacation takes effect six years from now, the question of required "frontage" is even more confusing. Can the lots still fit under subsection (c) of the definition, if the subdivision plan is "endorsed" by the Planning Board? Or, does lot "frontage" disappear with the vacation or "deemed vacation"? Once the public's right to accept the "paper street" is renounced, such a street might still be burdened with a private right-of-way and could be constructed, and exist, as a privately owned street. The Zoning Ordinance does not take explicit note of that alternative and should probably be amended in light of the new statutory amendments.

E. Review of Building Permit Applications for Substandard Lots

Each zoning district in the City has a specified minimum lot size (or sizes) which governs building on lots.

If a substandard lot which is not otherwise buildable as a grandfathered "lot of record" (or a quasi-grandfathered "lot of record" of 5,000 square feet) abuts a "paper street", it may become a buildable lot. This would occur if the half of the vacated street added to the existing area of the lot together meets the current minimum lot size specified in the zoning ordinance.

If, however, the substandard lot is so small that it does not meet the grandfathered "lot of record" size specified in the ordinance, the vacated portion of a street cannot be added to the lot to achieve this minimum size. For example, if a substandard lot is smaller than 5,000 square feet, and with addition of the portion of the vacated street would be larger than 5,000 square feet, it would still not be a buildable lot. This is because the ordinance requires the 5,000 square foot area to be "lot of record" as defined, or the combination of several abutting "lots of record". The portion of a vacated street which is added to the substandard lot is not in itself a "lot of record" and does not create a "lot of record" when added to a "lot of record".

F. City Maintenance of Streets

Under State law, a municipality maintains "town ways" (publicly-owned streets) and may spend public moneys on private ways (public easements). It is unconstitutional, however, for a municipality to expend public moneys on private roads. Opinion of the Justices, 560 A. 2d. 552 (Me. 1989).

A street is not a town way or public easement until it is accepted. Acceptance may have come about through a formal vote of acceptance or, at least under the former law, through public use for a period of 20 years. The City's Subdivision Ordinance is consistent with State law on this subject: the subdivider is required to plow all subdivision streets until they are accepted by the City or are turned over to a property owners' association. Ord. §24-28(F).

The status of streets in the City can be determined, at least to some degree, from the records kept at the Engineering Department and the official records (City Council minutes) at the City Clerk's office. There is no existing comprehensive listing of streets that I am aware of, although Engineering is now working on an inventory. While streets formally accepted by vote of the Council may be fairly easily identified, those streets which may have been "accepted" through usage may not be so easily identifiable. The records (or memories of employees) of the Public Works Department might be helpful.

An inventory of streets should identify those unaccepted streets which are now being maintained by the City. Immediate City Council acceptance would be advisable to be consistent with the Ordinance and constitutional principles. If the streets are substandard, and the City Council does not wish to accept them because of this, maintenance should be discontinued.

G. Tax Implications

The automatic vacation of "paper streets" in 1997 may also have tax implications. To the extent that existing "lots" lose all possibility of "frontage" and become unbuildable, their market value may substantially decline. Thus, assessments would have to be revised accordingly.

VII. CONCLUSION

I hope it is clear from this memorandum that the 1987 amendments have several important implications for the City. These range from the more mundane issue of street maintenance to the more complicated processes of building permits and project or subdivision reviews.

Planning ahead for the 1997 "vacation date" would appear to be advisable.



REQUEST FOR ACTION BY BOARD OF SELECTMEN

DATE SUBMITTED: October 15, 2015	<input checked="" type="checkbox"/> ACTION
DATE ACTION REQUESTED: October 19, 2015	<input type="checkbox"/> DISCUSSION ONLY
SUBJECT: Street light (SL) upgrade to Light Emitting Diode (LED) technology	

DISCUSSION OF OPTIONS AVAILABLE TO THE BOARD: York hosts about 880 street lights (SLs) and poles owned by CMP, which charges a monthly flat fee per fixture. State law enables municipalities to purchase their SLs from CMP directly or work with contractors to upgrade SLs under a few procurement business models. The Maine PUC is finalizing standards, requirements and fees for municipal SL purchases and upgrades. These regulations should be finalized by May 2016 when the Town would issue an RFP following referendum approval.

The Town can upgrade its SLs with new Light Emitting Diode (LED) technologies that provide better light at 40% to 70% lower energy and maintenance costs and last much longer than current SLs. LEDs can improve public safety with better visibility, decrease light pollution and environmental impacts, and enable programmable controls. The current streetlight budget is \$145,000 annually (FY16), so the potential magnitude of reduced operating costs is about \$50,000 to \$100,000 annually. There is a capital cost to transition to LED lights, and the installed cost is estimated to be in the range of \$500 to \$1,000 per fixture, therefore in the range of \$400,000 to \$900,000.

There are three primary procurement options:

- A direct purchase with Town capital expenditure could provide lower capital cost at potentially higher risk than the other two options. The Town would need to commit sufficient resources to fund and manage the design/build project contractors.
- An Energy Savings Performance Contract (ESPC) would use a contractor such as an Energy Services Company (ESCO) to install LED SLs that the Town would own, with guaranteed operating cost savings. The Town arranges financing and could fund the project via capital expenditure or a bond, or use a “no money down” approach such as a Tax Exempt Lease Purchase or commercial loan. Guaranteed savings create positive cash flow to cover repayment of the installed costs over the project term. After the term the Town keeps all savings and can engage the contractor to provide ongoing maintenance. The contractor marks up installed costs higher than a direct purchase. Open book pricing, savings guarantees, and single-contractor implementation without change orders reduce risk and cost.
- A Power Purchase Agreement (PPA)-type model would have a contractor finance, purchase, install and maintain SLs and provide street lighting to the Town on a no-money-down, fee-for-service basis, such as a lease or via shared savings. The Town would be cash flow positive from

day one, covering payments with guaranteed savings over term, and can purchase the SLs at the end of term. This approach is similar to an ESPC if the Town requires the contractor to provide a savings guarantee and open-book pricing, reducing risk at higher installed cost than a direct purchase.

Under all three procurement models the Town can choose the LEDs it prefers and conduct test installations before buying. Celtic Energy can provide independent third-party quality assurance and contractor implementation oversight in all three models to reduce risk.

The Department of Public Works and the Energy Steering Committee recommends that the Town undertake an ESPC or PPA type approach to reduce risk, simplify implementation and minimize capital expenditure.

RECOMMENDATION: The Energy Steering Committee and the Department of Public Works recommend that the Board vote to undertake a street light (SL) upgrade to LED technology. We recommend the Town issue an RFP, with the support of consultant Celtic Energy, to select a contractor to implement a turnkey SL project that is either an outright purchase or a lease with a purchase at the end of the term; in either case requiring no Town capital expenditure, a performance guarantee, open-book pricing, and spelling out the financing arrangements and costs.

PROPOSED MOTION: I move to direct the Public Works Department to issue an RFP, with the support of consultant Celtic Energy, to select a contractor to implement a turnkey street light (SL) upgrade to LED technology. This project shall be either an outright purchase or a lease with a purchase at the end of the term; in either case requiring no Town capital expenditure, a performance guarantee, open-book pricing, and spelling out the financing arrangements and costs.

FISCAL IMPACT: none at this time because it's just an RFP

DEPARTMENT LINE ITEM ACCOUNT:

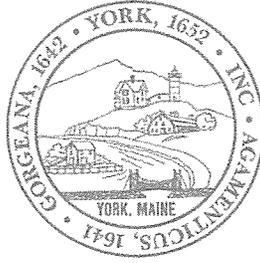
BALANCE IN LINE ITEM IF APPROVED:

PREPARED BY: Dean Lessard

REVIEWED BY: 

York street light (SL) LED upgrade project procurement options overview

Procurement Model	Description	Owns SLs	Maintains SLs	Financing	Implementation	Financing	Pros	Cons
Direct purchase	Town buys & upgrades SLs	Town	Town (via contractor)	Town	Town hires & manages contractor(s)	Town	Town might get better installed cost	Town commits resources to fund & manage project
Performance contract	ESCO installs SLs with guaranteed savings	Town	ESCO or Town	3 rd party or Town, repaid over term from savings	ESCO	3 rd party or Town, repay over term	<ul style="list-style-type: none"> - No capital outlay - Savings guarantee - ESCO manages project - Potential to include building project upgrades 	ESCO marks up costs
PPA-type "lighting as service"	Contractor buys SLs, Town pays for SL use	Contractor, Town can buy SLs at term or extend contract	Contractor	Fee for service or shared savings over term	Contractor	Contractor or 3 rd party, fee for service over term	<ul style="list-style-type: none"> - No capital outlay - Contractor manages project 	Cost structure might be opaque



REQUEST FOR ACTION BY BOARD OF SELECTMEN

DATE SUBMITTED: October 16, 2015

ACTION

DATE ACTION REQUESTED: October 19, 2015

DISCUSSION ONLY

SUBJECT: Verizon Tower Lease

DISCUSSION OF OPTIONS AVAILABLE TO THE BOARD: This proposal is the subject of the public hearing on October 19th, so new information could come forward at that time. All property owners within ¼ mile of the proposed site were notified.

The Board has discussed this matter at past meetings. The existing tower is inadequate for current emergency services communications needs. Chief Bridges and Chief Bracy indicated that a tower height of 140' is necessary to eliminate gaps in the current area of coverage.

The proposal is to have Verizon construct, at their cost, a new tower for the Town, and to receive discounted rent on their lease of a portion of the tower until they are fully reimbursed for their costs. Because the Town will own the tower, it is exempt from the Wireless Communications Facilities Ordinance per Section 1.4.F. However, the Board is conducting the public hearing regardless of this exemption.

The Town Attorney has a couple minor issues to clarify with Verizon at this point, but it does not appear there will be any showstoppers.

RECOMMENDATION: I recommend the Board authorize the Town Manager to execute a lease, subject to final review by the Town Attorney and receipt of a design which eliminates not more than 6 parking spaces, for property at 36 Main Street for the construction of a 140' tall lattice communications tower to serve the Town's communications needs and to provide space for possible commercial co-location of wireless communications antennas.

PROPOSED MOTION: I move to direct the Town Manager to execute a lease, subject to final review by the Town Attorney and receipt of a design which eliminates not more than 6 parking spaces, for a portion of the property at 36 Main Street for the construction of a 140' tall lattice communications tower to serve the Town's communications needs and to provide space for possible commercial co-location of wireless communications antennas.

FISCAL IMPACT: revenue from Verizon - \$12,000/year until the tower construction costs are recouped by Verizon, then \$24,000/year thereafter, subject to periodic increases for inflation.

DEPARTMENT LINE ITEM ACCOUNT:

BALANCE IN LINE ITEM IF APPROVED:

Prepared by Stephen H. Burns, Town Manager:

A handwritten signature in black ink, appearing to read "Stephen H. Burns", is written over a horizontal line.

COMMUNICATIONS TOWER LEASE AGREEMENT

This Agreement, effective as of the later of the dates on which it is signed below (the “Effective Date”), is made by and between **The Inhabitants of the Town of York, Maine**, a body corporate and politic, located at York, in the County of York, and State of Maine, whose mailing address is 186 York Street, York, Maine, 03909, hereinafter designated LESSOR, and **Portland Cellular Partnership, d/b/a Verizon Wireless**, a Delaware general partnership with its principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated LESSEE. The LESSOR and LESSEE are at times collectively referred to hereinafter as the “Parties” or individually as a “Party”. The Parties make this Agreement with reference to the following facts, which are incorporated herein and made a part hereof by reference:

A. LESSOR is the owner of a police and public safety complex on a certain parcel of property (the entirety of LESSOR’s property is referred to hereinafter as the “Property”), located at 36 Main Street, York, York County, Maine. The Property is more particularly described in the deed attached to this Agreement as Exhibit A. LESSOR requires a new telecommunications tower at the Property in order to conduct police and other public safety operations and business.

B. LESSEE is a wireless telecommunications carrier that desires to expand and strengthen its coverage and service in the vicinity of the Property.

C. LESSOR and LESSEE have agreed that it would further their respective interests if LESSOR were to permit LESSEE to (i) arrange and initially pay to reconstruct and install a 140’ lattice style communications tower (the “Tower”) to be owned by LESSOR, (ii) lease space on and adjacent to the Tower for LESSEE’s own wireless communications facility, and (iii) be reimbursed for the costs of the Tower through a rent abatement mechanism, all in accordance with the terms and conditions set forth in this Agreement.

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

Construction Phase

The Parties intend for this Agreement to cover both the short term period of LESSEE’s construction of the Tower as well as the long term period during which LESSEE will lease a portion of the Tower, and related rights required for LESSEE’s wireless communications facility. For ease of reference and the convenience of the Parties, the Agreement is divided into two parts: the Construction Phase and the Operational Phase. The Construction Phase shall begin as soon as practicable after the Effective Date of this Agreement and the Operational Phase will begin on the Commencement Date (as defined in Section 3.a. of the Operational Phase portion of this Agreement). During the Construction Phase, the Parties undertake as follows:

a. Design and Engineering. LESSEE shall commission and arrange for the design, engineering, construction, and installation of the Tower, by its approved vendors. The Tower shall be designed and engineered to support, at a minimum, industry-standard (as of the Effective Date) equipment of up to four (4) commercial wireless carriers similar to LESSEE, plus the known, and reasonably foreseeable (as of the Effective Date) equipment requirements of LESSOR, based on TIA/EIA-222-G, ANSI's seventh revision for Steel Antenna Towers and Antenna Supporting Structures.

b. Location. The Tower shall be erected on that area of the Property described or depicted on Exhibit B attached to this Agreement.

c. Approvals. LESSEE shall assist LESSOR with applicable federal antenna structure registration requirements. LESSOR represents and warrants that no state or municipal permits or approvals are required for the Tower, or, alternatively, that LESSOR has or shall promptly procure any and all such permits or approvals as may be required in connection with the Tower. Notwithstanding the forgoing, the Parties agree that they shall cooperate reasonably together to apply for and obtain building permits for the project. Moreover, they agree that there shall be two separate applications and building permits for: (i) the Tower and surrounding compound, including landline telephone, power, and fiber utilities to, and the security fence surrounding, the Tower compound; (ii) LESSEE's ground based equipment shelter and LESSEE's antennas on the Tower.

d. Selection and Use of Third Party Contractors. LESSEE's construction manager shall coordinate activities related to the design, engineering, installation, and construction of the Tower. Where commercially appropriate (as determined by LESSEE), or required by law (as advised by LESSOR), LESSEE, shall utilize a competitive bidding process to select contractors, agents, vendors, or other third parties to complete the project. Since LESSOR is the owner of the Property and will be the owner of the Tower, LESSEE will, to the greatest extent practicable, arrange for all third-party work product – including engineering drawings, plans, specifications, warranties, and the like – to run directly in favor of LESSOR.

e. Diligence Required; Timeframe. The Construction Phase shall be considered completed upon the Commencement Date of the Lease Term (defined below in the Operational Phase section of this Agreement.) During the Construction Phase, LESSEE shall diligently undertake and pursue the tasks assigned to it with regard to the design, engineering, construction, and installation of the Tower so that the Tower is completed and ready for installation of communications equipment and related appurtenances as expeditiously as possible.

f. Ownership. At all times and for all purposes the Tower, and all related materials - including, but not limited to, surveys, plans, engineering specifications, drawings, warranties, and the like - shall be the property of LESSOR and not of LESSEE. LESSEE shall prepare and deliver to LESSOR any and all documents of transfer, title, or the like, as may be required or convenient to document and evidence the forgoing. Accordingly, any lessee of the Tower or the Property shall be a tenant of LESSOR and any rent or payments from such lessees shall be fully payable to LESSOR, rather than LESSEE.

g. Financing for Tower. LESSEE shall, in the first instance, pay for all costs and expenses associated with the design, engineering, permitting, construction, and installation of the Tower, including the compound surrounding the Tower (including the installation of a 10' by 20' Dupont fiberglass equipment shelter having a value of \$20,000.00 to be used and owned by LESSOR¹), related site work, foundation design and installation, utilities to the compound, the security fence surrounding the compound and all ancillary and related work. The total of all such costs and expenses shall be detailed in a final accounting to be prepared by LESSEE and presented to LESSOR, and referred to in this Agreement as the "Project Costs". For the avoidance of doubt, Project Costs shall not include any costs or expenses incurred by LESSEE in connection with the design, engineering, permitting, construction, and installation of the antennas, equipment shelter, and related components that LESSEE shall be permitted to install, maintain, and operate pursuant to Section 1 of the Operational Phase of this Agreement. LESSOR agrees that LESSEE shall be reimbursed for the Project Costs, over time, through a fifty percent (50%) abatement of rental payments due under the Operational Phase of this Agreement beginning with the first rental payment that would be due and continuing until the total abated monthly rental payments, or any portion thereof, equal the Project Costs. LESSOR shall have the option, at any time, of paying to LESSEE the full balance of the Project Costs remaining to be recouped. If LESSEE terminates this Agreement before full reimbursement of the Project Costs, it shall forfeit its right to recover the balance of the Project Costs remaining unreimbursed as of that time.

h. Tower Budget. As soon after the Effective Date as practicable, LESSEE shall prepare and deliver to LESSOR a budget detailing the estimated Project Costs (the "Budget"). The Parties acknowledge that the actual final Project Costs may differ from the Budget, but agree that LESSEE may not make or effect material changes to the Budget or the Project Costs stated therein without prior written notice to LESSOR. Further, the Parties agree that some items set forth in the Budget shall be determined by use of a competitive bidding process, as described above, and that once a winning bidder is selected the Budget shall be modified to insert the amount of the winning bid, and that such insertion shall not be considered a material change to the Budget of the kind that would require notice to LESSOR. LESSEE shall provide periodic summary accountings to LESSOR of actual Project Costs as reasonably requested from LESSOR from time-to-time, and a detailed final accounting at the conclusion of the Construction Phase. Provided that LESSEE complies with all of its obligations under this Section, the final accounting of Project Costs, shall be final and binding, notwithstanding anything to the contrary in the Budget or any modification or amendment thereto.

i. Transition to Operational Phase. As soon as practicable after completion of the Tower, and the compound surrounding the Tower, including the availability of utilities within the compound, LESSEE shall submit its application for a building permit for its shelter and antennas. The date of the issuance of the building permit to LESSEE for its shelter and antennas shall trigger

¹ For the avoidance of doubt, the Parties acknowledge and agree that LESSEE's installation of an equipment shelter for LESSOR means that LESSEE will purchase the shelter, prepare a concrete pad for the shelter, and place the shelter on the pad, all in accordance with this Agreement and the approved plan. Once the shelter is so installed, LESSOR shall be responsible for bringing desired utilities to the shelter, equipping the shelter, etc.

the Commencement Date of the Lease (by the mechanism described in Section 3 below), and the Commencement Date shall mark both the end of the Construction Phase and the beginning of the Operational Phase, at which time the following provisions shall apply:

Operational Phase

1. **PREMISES.** LESSOR hereby leases to LESSEE a portion of that certain space (the "Tower Space") on the LESSOR's Tower located at 36 Main Street, Town of York, York County, State of Maine, as shown on the Tax Maps of the Town of York as Map 23, Lot 19, and being further described in the deed recorded in the York County Registry of Deeds at Book 1310, Page 162, copies of which are attached hereto as Exhibit A (the entirety of LESSOR's property is referred to hereinafter as the "Property"), together with a parcel of land (the "Land Space") sufficient for the installation of LESSEE's equipment building; together with the non-exclusive right ("the Right of Way") for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along a thirty foot (30') wide right-of-way extending from the nearest public right-of-way to the Land Space; and together with any further rights of way (the "Further Rights of Way") over and through the Property between the Land Space and the Tower Space for the installation and maintenance of utility wires, poles, cables, conduits, and pipes. The Tower Space, Land Space, Right of Way and Further Rights of Way, if any, are substantially described in Exhibit B, attached hereto and made a part hereof and are collectively referred to hereinafter as the "Premises".

In the event any public utility or similar service provider is unable to use the Right of Way or Further Rights of Way, the LESSOR hereby agrees to grant an additional right-of-way(s) either to the LESSEE or to the public utility or service provider at no cost to the LESSEE.

LESSOR hereby grants permission to LESSEE to install, maintain and operate the radio communications equipment, antennas, and appurtenances described in Exhibit C attached hereto. LESSEE reserves the right to replace the aforementioned equipment with similar and comparable equipment provided said replacement does not increase tower loading of said Tower.

2. **SURVEY.** LESSOR also hereby grants to LESSEE the right to survey the Property and the Premises, and said survey shall then become Exhibit D which shall be attached hereto and made a part hereof, and shall control in the event of boundary and access discrepancies between it and Exhibit B. Cost for such work shall be borne by the LESSEE.

3. **TERM; RENTAL.**

a. This Agreement shall be effective as of the date of execution by both Parties, provided, however, the initial lease term shall be for five (5) years and shall commence on the Commencement Date (as hereinafter defined) at which time rental payments shall commence and be due at a total annual rental of twenty-four thousand dollars (\$24,000.00), subject to the fifty percent (50%) rent abatement contained in Section (g.) of the Construction Phase above, to be paid in equal monthly installments on the first day of the month, in advance,

to LESSOR or to such other person, firm, or place as LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Paragraph 25 below. The lease term shall commence based upon the date LESSEE is granted a building permit by the governmental agency charged with issuing such permits, for LESSEE's equipment shelter and antennas. In the event the date on which LESSEE is granted a building permit falls between the 1st and 15th of the month, then the lease term shall commence on the 1st of that month, and if such date falls between the 16th and 31st of the month, then the lease term shall commence on the 1st day of the following month (either the "Commencement Date").

b. Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of LESSEE.

c. LESSOR hereby agrees to provide to LESSEE certain documentation (the "Rental Documentation") evidencing LESSOR's interest in, and right to receive payments under, this Agreement, including without limitation: (i) documentation, acceptable to LESSEE in LESSEE's reasonable discretion, evidencing LESSOR's good and sufficient title to and/or interest in the Property and right to receive rental payments and other benefits hereunder; (ii) a complete and fully executed Internal Revenue Service Form W-9, or equivalent, in a form acceptable to LESSEE, for any party to whom rental payments are to be made pursuant to this Agreement; and (iii) other documentation requested by LESSEE in LESSEE's reasonable discretion. From time to time during the Term of this Agreement and within thirty (30) days of a written request from LESSEE, LESSOR agrees to provide updated Rental Documentation in a form reasonably acceptable to LESSEE. The Rental Documentation shall be provided to LESSEE in accordance with the provisions of and at the address given in Paragraph 25. Delivery of Rental Documentation to LESSEE shall be a prerequisite for the payment of any rent by LESSEE and notwithstanding anything to the contrary herein, LESSEE shall have no obligation to make any rental payments until Rental Documentation has been supplied to LESSEE as provided herein.

d. Within fifteen (15) days of obtaining an interest in the Property or this Agreement, any assignee(s), transferee(s) or other successor(s) in interest of LESSOR shall provide to LESSEE Rental Documentation in the manner set forth in the preceding paragraph. From time to time during the Term of this Agreement and within thirty (30) days of a written request from LESSEE, any assignee(s) or transferee(s) of LESSOR agrees to provide updated Rental Documentation in a form reasonably acceptable to LESSEE. Delivery of Rental Documentation to LESSEE by any assignee(s), transferee(s) or other successor(s) in interest of LESSOR shall be a prerequisite for the payment of any rent by LESSEE to such party and notwithstanding anything to the contrary herein, LESSEE shall have no obligation to make any rental payments to any assignee(s), transferee(s) or other successor(s) in interest of LESSOR until Rental Documentation has been supplied to LESSEE as provided herein.

e. Notwithstanding the forgoing, the Parties acknowledge and agree that LESSEE's obligation to pay rent shall be abated until such time as the amount of rent abated equals the final total Project Costs, defined above.

4. EXTENSIONS. This Agreement shall automatically be extended for four (4) additional five (5) year terms unless LESSEE terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least six (6) months prior to the end of the then current term.

5. EXTENSION RENTALS. During the initial term and all subsequent extensions under Paragraph 4 above, or Paragraph 6 below, the annual rental will increase on each yearly anniversary of the Commencement Date in an amount equal to three percent (3.0%) of the previous year's annual rent.

6. ADDITIONAL EXTENSIONS. If at the end of the fourth (4th) five (5) year extension term this Agreement has not been terminated by either Party by giving to the other written notice of an intention to terminate it at least three (3) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms, and conditions for a further term of five (5) years and for five (5) year terms thereafter until terminated by either Party by giving to the other written notice of its intention to so terminate at least three (3) months prior to the end of such term. The initial term and all extensions shall be collectively referred to herein as the "Term".

7. TAXES. LESSEE shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property which LESSOR demonstrates is the result of LESSEE's use of the Premises and/or the installation, maintenance, and operation of the LESSEE's improvements, and any sales tax imposed on the rent (except to the extent that LESSEE is or may become exempt from the payment of sales tax in the jurisdiction in which the Property is located), including any increase in real estate taxes at the Property which LESSOR demonstrates arises from the LESSEE's improvements and/or LESSEE's use of the Premises. LESSOR and LESSEE shall each be responsible for the payment of any taxes, levies, assessments, and other charges imposed including franchise and similar taxes imposed upon the business conducted by LESSOR or LESSEE at the Property. Notwithstanding the foregoing, LESSEE shall not have the obligation to pay any tax, assessment, or charge that LESSEE is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly assessed provided that no lien attaches to the Property. Nothing in this Paragraph shall be construed as making LESSEE liable for any portion of LESSOR's income taxes in connection with any Property or otherwise. Except as set forth in this Paragraph, LESSOR shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property and shall do so prior to the imposition of any lien on the Property.

LESSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which LESSEE is wholly or partly responsible for payment. LESSOR shall reasonably cooperate with LESSEE at LESSEE's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document. In the event that as a result of any appeal or challenge by LESSEE, there is a reduction, credit or repayment received by the LESSOR for any taxes previously paid by LESSEE, LESSOR agrees to promptly reimburse to LESSEE the amount of said reduction, credit or repayment. In the event that LESSEE does not have the standing rights to pursue a good faith

and reasonable dispute of any taxes under this paragraph, LESSOR will pursue such dispute at LESSEE's sole cost and expense upon written request of LESSEE.

8. USE; GOVERNMENTAL APPROVALS. LESSEE shall use the Premises for the purpose of constructing, maintaining, repairing, and operating a communications facility and uses incidental thereto. All improvements, equipment, antennas, and conduits shall be at LESSEE's expense and their installation shall be at the discretion and option of LESSEE. LESSEE shall have the right to replace, repair, add, or otherwise modify its utilities, equipment, antennas and/or conduits, or any portion thereof, and the frequencies over which the equipment operates, whether the equipment, antennas, conduits, or frequencies are specified or not on any exhibit attached hereto, with no increase in rent, during the Term. It is understood and agreed that LESSEE's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests and structural analysis which will permit LESSEE use of the Premises as set forth above. LESSOR shall cooperate with LESSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by LESSEE. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) LESSEE determines that such Governmental Approvals may not be obtained in a timely manner; (iv) LESSEE determines that any soil boring tests or structural analysis is unsatisfactory; (v) LESSEE determines that the Premises is no longer technically or structurally compatible for its use, or (vi) LESSEE, in its sole discretion, determines that the use the Premises is obsolete or unnecessary, LESSEE shall have the right to terminate this Agreement. Notice of LESSEE's exercise of its right to terminate shall be given to LESSOR in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by LESSEE, or upon such later date as designated by LESSEE. All rentals paid to said termination date shall be retained by LESSOR. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties, and indemnities made by each Party to the other hereunder. Otherwise, the LESSEE shall have no further obligations for the payment of rent to LESSOR.

9. INDEMNIFICATION. Subject to Paragraph 10 below, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors, or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents.

10. INSURANCE.

a. The Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the Property, resulting from any fire, or other casualty of the kind covered by standard fire

insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. These waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All such policies of insurance obtained by either Party concerning the Premises or the Property shall waive the insurer's right of subrogation against the other Party.

b. LESSOR and LESSEE each agree that at its own cost and expense, each will maintain commercial general liability insurance with limits not less than \$2,500,000 for injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage or destruction to property in any one occurrence; or \$3,000,000 combined single limit coverage for bodily injury and property damage. LESSOR and LESSEE each agree that it will include the other Party as an additional insured.

11. LIMITATION OF LIABILITY. Except for indemnification pursuant to Paragraphs 9 and 31, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

12. ANNUAL TERMINATION. Notwithstanding anything to the contrary contained herein, provided LESSEE is not in default hereunder beyond applicable notice and cure periods, LESSEE shall have the right to terminate this Agreement upon the annual anniversary of the Commencement Date provided that three (3) months prior notice is given to LESSOR.

13. ACCESS TO TOWER. LESSOR agrees the LESSEE shall have free access to the Tower at all times for the purpose of installing and maintaining the said equipment. LESSOR shall furnish LESSEE with necessary means of access for the purpose of ingress and egress to this site and Tower location. It is agreed, however, that only authorized engineers, employees, or properly authorized contractors of LESSEE or persons under their direct supervision will be permitted to enter said premises.

14. TOWER COMPLIANCE. LESSOR covenants that it will keep the Tower in good repair as required by all Laws (as defined in Paragraph 35 below). The LESSOR shall also comply with all rules and regulations enforced by the Federal Communications Commission with regard to the lighting, marking, and painting of towers. If the LESSOR fails to make such repairs, including maintenance, the LESSEE may make the repairs and the costs thereof shall be payable to the LESSEE by the LESSOR on demand together with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable Laws. If the LESSOR does not make payment to the LESSEE within ten (10) days after such demand, the LESSEE shall have the right to deduct the costs of the repairs from the succeeding monthly rental amounts normally due from the LESSEE to the LESSOR.

No materials may be used in the installation of the antennas or transmission lines that will cause corrosion or rust or deterioration of the Tower structure or its appurtenances.

All antenna(s) on the Tower must be identified by a marking fastened securely to its bracket on the Tower and all transmission lines are to be tagged at the conduit opening where it enters any user's equipment space.

Throughout the Term, LESSOR shall supply to LESSEE copies of all structural analysis reports that are done with respect to the Tower promptly after the completion of the same.

Upon request of the LESSOR, and at the cost and expense of solely LESSEE, LESSEE agrees to relocate its equipment on a temporary basis to another location on the Property, hereinafter referred to as the "Temporary Relocation," for the purpose of LESSOR performing maintenance, repair or similar work at the Property or on the Tower provided:

- a. The Temporary Relocation is similar to LESSEE's existing location in size and is fully compatible for LESSEE's use, in LESSEE's reasonable determination;
- b. LESSOR gives LESSEE at least ninety (90) days written notice prior to requiring LESSEE to relocate;
- c. LESSEE's use at the Premises is not interrupted or diminished during the relocation and LESSEE is allowed, if necessary, in LESSEE's reasonable determination, to place a temporary installation on the Property during any such relocation; and
- d. Upon the completion of any maintenance, repair, or similar work by LESSOR, LESSEE is permitted to return to its original location from the temporary location with all costs for the same being paid by LESSOR.

15. INTERFERENCE. LESSEE agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of LESSOR or other lessees of the Property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event any after-installed LESSEE's equipment causes such interference, and after LESSOR has notified LESSEE in writing of such interference, LESSEE will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at LESSEE's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will LESSOR be entitled to terminate this Agreement or relocate the equipment as long as LESSEE is making a good faith effort to remedy the interference issue. LESSOR agrees that LESSOR and/or any other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of LESSEE. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the

provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

16. REMOVAL AT END OF TERM. LESSEE shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of the Agreement, remove its building(s), antenna(s), equipment, conduits, fixtures, and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. LESSOR agrees and acknowledges that all of the equipment, conduits, fixtures, and personal property of LESSEE shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws. If such time for removal causes LESSEE to remain on the Premises after termination of this Agreement, LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna(s), fixtures and all personal property are completed.

17. HOLDOVER. LESSEE has no right to retain possession of the Premises or any part thereof beyond the expiration of that removal period set forth in Paragraph 16 herein, unless the Parties are negotiating a new lease or lease extension in good faith. In the event that the Parties are not in the process of negotiating a new lease or lease extension in good faith, LESSEE holds over in violation of Paragraph 16 and this Paragraph 17, then the rent then in effect payable from and after the time of the expiration or earlier removal period set forth in Paragraph 16 shall equal to the rent applicable during the month immediately preceding such expiration or earlier termination.

18. RIGHT OF FIRST REFUSAL. If LESSOR elects, during the Term (i) to sell or otherwise transfer all or any portion of the Property, whether separately or as part of a larger parcel of which the Property is a part, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of this Agreement to such third party, LESSEE shall have the right of first refusal to meet any bona fide offer of sale or transfer on the same terms and conditions of such offer. If LESSEE fails to meet such bona fide offer within thirty (30) days after written notice thereof from LESSOR, LESSOR may sell or grant the easement or interest in the Property or portion thereof to such third person in accordance with the terms and conditions of such third party offer. For purposes of this Paragraph, any transfer, bequest, or devise of LESSOR's interest in the Property as a result of the death of LESSOR, whether by will or intestate succession, or any conveyance to LESSOR's family members by direct conveyance or by conveyance to a trust for the benefit of family members shall not be considered a sale of the Property for which LESSEE has any right of first refusal.

19. RIGHTS UPON SALE. Should LESSOR, at any time during the Term decide (i) to sell or transfer all or any part of the Property to a purchaser other than LESSEE, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and

maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize LESSEE's rights hereunder under the terms of this Agreement. To the extent that LESSOR grants to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by LESSEE for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this Agreement to said third party, LESSOR shall not be released from its obligations to LESSEE under this Agreement, and LESSEE shall have the right to look to LESSOR and the third party for the full performance of this Agreement.

20. QUIET ENJOYMENT. LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises.

21. TITLE. LESSOR represents and warrants to LESSEE as of the Effective Date of this Agreement, and covenants during the Term that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LESSOR further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting LESSOR's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by LESSEE as set forth above.

22. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon either LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

23. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the Laws of the State of Maine.

24. ASSIGNMENT. This Agreement may be sold, assigned or transferred by the LESSEE without any approval or consent of the LESSOR to the LESSEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the LESSOR, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of LESSEE shall constitute an assignment hereunder.

25. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: Town of York
186 York Street
York, Maine 03909

LESSEE: Cellco Partnership
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

26. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

27. SUBORDINATION AND NON-DISTURBANCE. LESSOR shall obtain not later than fifteen (15) days following the execution of this Agreement, a Non-Disturbance Agreement, as defined below, from its existing mortgagee(s), ground lessors and master lessors, if any, of the Property. At LESSOR's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") by LESSOR which from time to time may encumber all or part of the Property or right-of-way; provided, however, as a condition precedent to LESSEE being required to subordinate its interest in this Agreement to any future Mortgage covering the Property, LESSOR shall obtain for LESSEE's benefit a non-disturbance and attornment agreement for LESSEE's benefit in the form reasonably satisfactory to LESSEE, and containing the terms described below (the "Non-Disturbance Agreement"), and shall recognize LESSEE's right to remain in occupancy of and have access to the Premises as long as LESSEE is not in default of this Agreement beyond applicable notice and cure periods. The Non-Disturbance Agreement shall include the encumbering party's ("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the Property, Lender or such successor-in-interest or Purchaser will (1) honor all of the terms of the Agreement, (2) fulfill LESSOR's obligations under the Agreement, and (3) promptly cure all of the then-existing LESSOR defaults under the Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, LESSEE will execute an agreement for Lender's benefit in which

LESSEE (1) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the Property and (3) agrees to accept a cure by Lender of any of LESSOR's defaults, provided such cure is completed within the deadline applicable to LESSOR. In the event LESSOR defaults in the payment and/or other performance of any mortgage or other real property interest encumbering the Property, LESSEE, may, at its sole option and without obligation, cure or correct LESSOR's default and upon doing so, LESSEE shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and LESSEE shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct such defaults.

28. RECORDING. LESSOR agrees to execute a Memorandum of this Agreement which LESSEE may record with the appropriate recording officer. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either the Term or rent payments.

29. DEFAULT.

a. In the event there is a breach by LESSEE with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, LESSOR shall give LESSEE written notice of such breach. After receipt of such written notice, LESSEE shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided LESSEE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSOR may not maintain any action or effect any remedies for default against LESSEE unless and until LESSEE has failed to cure the breach within the time periods provided in this Paragraph.

b. In the event there is a breach by LESSOR with respect to any of the provisions of this Agreement or its obligations under it, LESSEE shall give LESSOR written notice of such breach. After receipt of such written notice, LESSOR shall have thirty (30) days in which to cure any such breach, provided LESSOR shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSOR commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSEE may not maintain any action or effect any remedies for default against LESSOR unless and until LESSOR has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if LESSOR fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by LESSOR if the failure to perform such an obligation interferes with LESSEE's ability to conduct its business on the Property; provided, however, that if the nature of LESSOR's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

30. REMEDIES. Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Premises are located; provided, however, LESSOR shall use reasonable efforts to mitigate its damages in connection with a default by LESSEE. If LESSEE so performs any of LESSOR's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by LESSEE shall immediately be owing by LESSOR to LESSEE, and LESSOR shall pay to LESSEE upon demand the full undisputed amount thereof with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable Laws. Notwithstanding the foregoing, if LESSOR does not pay LESSEE the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due from LESSOR, LESSEE may offset the full undisputed amount, including all accrued interest, due against all fees due and owing to LESSOR until the full undisputed amount, including all accrued interest, is fully reimbursed to LESSEE.

31. ENVIRONMENTAL.

a. LESSOR will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Property, unless such conditions or concerns are caused by the specific activities of LESSEE in the Premises.

b. LESSOR shall hold LESSEE harmless and indemnify LESSEE from and assume all duties, responsibility and liability at LESSOR's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such non-compliance results from conditions caused by LESSEE; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Property or activities conducted thereon, unless such environmental conditions are caused by LESSEE.

32. CASUALTY. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, then LESSEE may, at any time following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation at the Premises, terminate this Agreement upon fifteen (15) days prior written notice to LESSOR. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LESSEE's use of the Premises is impaired.

33. CONDEMNATION. In the event of any condemnation of all or any portion of the Property, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If as a result of a partial condemnation of the Premises or Property, LESSEE, in LESSEE's sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, LESSEE may, at LESSEE's option, to be exercised in writing within fifteen (15) days after LESSOR shall have given LESSEE written notice of such taking (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession) terminate this Agreement as of the date the condemning authority takes such possession. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the equipment, conduits, fixtures, its relocation costs and its damages and losses (but not for the loss of its leasehold interest). Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement. If LESSEE does not terminate this Agreement in accordance with the foregoing, this Agreement shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable area of the Premises taken bears to the total rentable area of the Premises. In the event that this Agreement is not terminated by reason of such condemnation, LESSOR shall promptly repair any damage to the Premises caused by such condemning authority.

34. SUBMISSION OF AGREEMENT/PARTIAL INVALIDITY/AUTHORITY. The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's

behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

35. APPLICABLE LAWS. During the Term, LESSOR shall maintain the Property in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws"). LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with (a) all Laws relating solely to LESSEE's specific and unique nature of use of the Premises (other than general office use); and (b) all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises.

36. SURVIVAL. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

37. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

38. PRIOR AGREEMENT TERMINATED. LESSOR and LESSEE agree that this Agreement replaces the agreement between them dated May 21, 2013.

(Signature page follows)

IN WITNESS WHEREOF, the Parties hereto have signed below on the dates indicated, to be effective as set forth in the opening paragraph of this Agreement.

LESSOR:

THE INHABITANTS OF
THE TOWN OF YORK

By: _____
Name: _____
Title: _____
Dated: _____

LESSEE:

**Portland Cellular Partnership
d/b/a Verizon Wireless**

By: Cellco Partnership
Its General Partner

By: _____
Name: David R. Heverling
Title: Area Vice President Network
Dated: _____

The following Exhibits are attached hereto and incorporated by reference:

- “A” LESSOR’s Deed to Property
- “B” Sketch of Premises within Property and location of the Tower
- “C” Permitted LESSEE Equipment
- “D” Survey (LESSEE’s option)

Exhibit "A"

(LESSOR's Deed to Property)

Exhibit "B"

(Sketch of Premises within Property and location of the Tower)

Exhibit "C"

(Permitted LESSEE Equipment)



REQUEST FOR ACTION BY BOARD OF SELECTMEN

DATE SUBMITTED: October 16, 2015	<input checked="" type="checkbox"/> ACTION
DATE ACTION REQUESTED: October 19, 2015	<input type="checkbox"/> DISCUSSION ONLY
SUBJECT: MTA Toll Plaza Project	

DISCUSSION OF OPTIONS AVAILABLE TO THE BOARD: It appears that the MTA Board will decide in November which toll plaza site to pursue through the environmental permitting process. All indications are that it will be the site at Mile 8.8, not at the location of the existing toll plaza. A past Board of Selectmen took the position that it is acceptable to forgo all electronic tolling (AET) as long as the toll plaza remains at the current location, but the Board opposed alternative locations. It is likely this proposal will not be AET and will be at a different location.

Think Again is looking for the Town to take a lead role in opposing a move to the site at Mile 8.8. It seems the appropriate manner to exercise the Town's position is to engage in the environmental permitting process. There is \$4,919 remaining from an original \$15,000 dedicated to pay for studies of the MTA's work. Daryl Flemming has been the Town's consultant and it would be appropriate at this time to re-engage with Mr. Flemming to have him complete his work once the MTA releases its documents and their Board makes its decision.

Think Again has approximately \$13,000 in funds which they are willing to make available to hire an attorney to represent the Town's position in the permit review process. To the extent more money is required for legal representation, a request could be made to the voters at the May Budget Referendum or the Board could ask Think Again to raise additional funds.

The questions before the Board, however, ^{are} is whether or not they would like the Town to take a lead role in this process, are we willing to accept money from Think Again to hire legal representation, and would we ask the voters if any more Town money is requested.

RECOMMENDATION: I recommend the Board take the lead role in representing the local position, accept the funds from Think Again to hire legal counsel for the permitting process, and to not put more public money into this process unless approved by the voters.

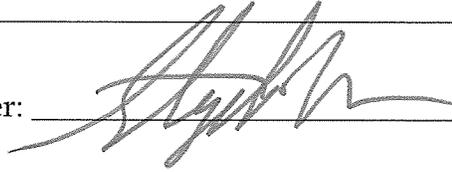
PROPOSED MOTION: I move to have the Town take the lead role in representing the local position, accept the funds from Think Again to hire legal counsel for the permitting process, and to not put more public money into this process unless approved by the voters.

FISCAL IMPACT: not to exceed the remaining \$4,919

DEPARTMENT LINE ITEM ACCOUNT: legal, carried from prior years

BALANCE IN LINE ITEM IF APPROVED: \$0

Prepared by Stephen H. Burns, Town Manager:

A handwritten signature in black ink, appearing to read "Stephen H. Burns", written over a horizontal line.



REQUEST FOR ACTION BY BOARD OF SELECTMEN

DATE SUBMITTED: October 16, 2015

ACTION

DATE ACTION REQUESTED: October 19, 2015

DISCUSSION ONLY

SUBJECT: Special General Referendum

DISCUSSION OF OPTIONS AVAILABLE TO THE BOARD: Please see the attached request from Dwight Bardwell, Chair of the York School Committee, to conduct a Special General Referendum on Tuesday, January 26, 2016. The reason for this request is to allow the voters the opportunity to amend the height limits of the Zoning Ordinance as these are problematic for the design of the new York High School auditorium.

The schedule, as proposed by the School Department's attorney, isn't quite right and will need to be adjusted. I also caution the Board about his citations of the Town Charter as those are not correct, either. In his letter he refers to Section 20.A.4 when in fact he should be citing Section 21. I believe his suggested date is workable, though the 120 day separation from the General Referendum is completely wrong (because that is held each November, not each May). A more careful reading of Sections 2 and 20 indicate the Board of Selectmen have great flexibility in scheduling a Special General Referendum.

At a subsequent meeting I believe it would be appropriate for the Board to decide whether or not there is other business that could or should be brought before the voters in January if we're going to hold this Special General.

One word of concern that I will share following a discussion with Mary-Anne Szeniewski, our Town Clerk. She is skeptical about receiving funds from another entity to conduct an election. Though clearly offered in good faith in this case, it could also lead to the impression that people can have an election any time they want to pay the cost – a perceptions that someone can buy an election. Mary-Anne suggested that the Elections budget cover the cost, and at the end of the year if there is a deficit then the Board would need to address this from contingency.

RECOMMENDATION: I recommend the Board approve the request of the School Committee.

PROPOSED MOTION: I move to direct the Town Clerk and Town Manager to prepare and conduct a Special General Referendum on January 26, 2016 as requested by the York School Department.

FISCAL IMPACT: not certain at this time

DEPARTMENT LINE ITEM ACCOUNT:

BALANCE IN LINE ITEM IF APPROVED:

PREPARED BY: Stephen H. Burns, Town Manager:

A handwritten signature in black ink, appearing to read "Stephen H. Burns", is written over a horizontal line.



YORK SCHOOL DEPARTMENT
OFFICE OF THE
SUPERINTENDENT OF SCHOOLS

October 8, 2015

Robert Palmer, Chair
York Board of Selectmen

Peter Smith, Chair
York Planning Board

Town of York
186 York Street
York, ME 03909

RE: Proposed York Community Auditorium/Request for Special Town Referendum to Approve Amendment to York Zoning Ordinance to Increase Height Limitation in the GEN-3 District

Dear Chairman Palmer and Members of the Town of York Board of Selectmen, and Chairman Smith and Members of the York Planning Board:

I am writing on behalf of the Town of York School Committee and the Town of York School Building Committee to request that the Town of York undertake the necessary procedures to amend the Zoning Ordinance of the Town of York to increase the height limit for public school buildings in the General Development 3 district from 35' to 50'.

This amendment to the York Zoning Ordinance is necessary in order for the York School Department to construct the York Community Auditorium addition to the York High School that was approved by the voters of the Town of York on May 16, 2015.

The reason for this request is that the current design of the proposed auditorium as prepared by Harriman Associates exceeds the current 35' height limitation in the GEN 3 District in two respects: 1) the proposed house seating area as designed by Harriman Associates will be 38' above grade; and 2) the proposed "fly gallery" to accommodate the curtain and changing panels for the performance stage will be 44' 4" above grade.

The building committee has explored the possibility of redesigning the proposed performing arts center to come within the current 35' height limitation and has concluded that this is not feasible for three reasons:

1. Reducing the height of the mechanical space within the fly gallery will compromise the function that it serves and will make it impossible to build a state of the art performing arts facility;
2. Redesign of the house seating area will compromise the integrity of the design and delay the construction of the project; and
3. Any such redesign and delay will risk significantly increasing the costs of the community auditorium project.

We are mindful of the fact that there will be some additional expense associated with conducting public hearings and a special town referendum in order to amend the York Zoning Ordinance. Thankfully, Harriman Associates has offered to reimburse the Town for those costs. This offer has been made by Harriman Associates in order to keep the project on schedule and to avoid unnecessary delays occasioned by our collective failure to understand that under the York Zoning Ordinance, the York Board of Appeals does not have authority to grant variances from, or otherwise waive, the 35' height requirement in the GEN-3 District.

Based on a review of the York Zoning Ordinance by the attorney for the York School Department and his discussion with the Town's planning staff, we believe that the most appropriate wording for the proposed amendment may be to amend Section 5.2.2 of the York Zoning Ordinance by adding a new footnote "v" to the 35' Maximum Building Structure Height in the GEN-3 District to read as follows:

"v. Building height for a principal municipal building shall not exceed 50 feet. This standard shall supersede more restrictive building height limits imposed by the base zone, as allowed by Section 21.2."

The definition of "municipal building" in Article Two of the York Zoning Ordinance includes a public school building and the proposed footnote would track the language of Section 10-E-3 that was adopted by the Town to allow an exception to the 35' height limit in the York Village Overlay District for the new municipal office building that was proposed at that time. An alternative approach might be to amend Section 5.1.5 entitled "Height and Setback Exceptions."

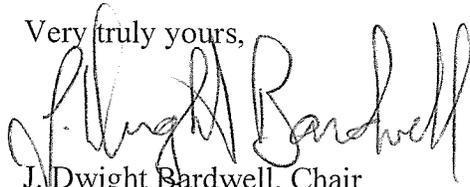
I am submitting this request to initiate an amendment to the Zoning Ordinance to both the York Board of Selectmen and the York Planning Board simultaneously because time is of the essence in making this proposed change. Harriman Associates has completed the design development phase of the project and is currently preparing the construction documents required to put the project out to bid. We had been hoping to obtain final construction bids for the project in January and to issue bonds for the project shortly thereafter.

Robert Palmer, Board of Selectmen
Peter Smith, Planning Board
October 8, 2015
Page 3 of 3

For this reason, we respectfully request that the Planning Board schedule a public hearing on the proposed zoning amendment as soon as possible and that the Board of Selectmen call a special referendum vote of the Town as soon as possible after that in order to act on the proposed amendment.

Thank you all for your prompt consideration of this request. We are planning to attend the meeting of the Planning Board on October 22nd, and the meeting of the Select Board on October 19th to provide additional information and answer any questions concerning this request.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Dwight Bardwell". The signature is written in a cursive style with a large, prominent initial "J".

J. Dwight Bardwell, Chair
Yprk School Committee



YEARS OF SERVICE TO OUR CLIENTS AND COMMUNITIES

Richard A. Spencer
Admitted in ME, NH

207.253.0506 Direct
rspencer@dwmlaw.com

84 Marginal Way, Suite 600
Portland, ME 04101-2480
207.772.1941 Main
207.772.3627 Fax

October 7, 2015

Jim Amoroso, Finance Director
York School Department
469 U. S. Route One
York, ME 03909

RE: Suggested Schedule for Zoning Ordinance Amendment

Dear Jim:

You have requested that I prepare a suggested schedule for adoption of the proposed amendment to the Town of York Zoning Ordinance to increase the height limit for municipal buildings (which includes school buildings) in the GEN 3 District from 35' to 50'.

I. Introduction

In preparing this suggested schedule, I have attempted to create a timeline for the Planning Board that complies with the requirements of Section 20.1 of the York Zoning Ordinance and Title 30-A, Section 4352(4) of the Maine Statutes and a timeline for the Board of Selectmen that complies with Section 20.A.4 of the York Charter.

I have assumed for purposes of this schedule that any notices required to be published in a newspaper of general circulation in the Town of York will be published in the York Weekly which has a publication date on Wednesday of each week. I have also assumed that the Planning Board will want to conduct its required hearing and other legally required actions at its regular meetings conducted on the second and fourth Thursday of each month; and that the Board of Selectmen will want to conduct its public hearing, and take all other legally required actions, at its regularly scheduled meetings on the second and fourth Monday of each month.

Based on these assumptions, I have developed the suggested schedule set forth in the next section of this letter. This schedule could be accelerated to some degree if the Planning Board and/or the Board of Selectmen voted to expedite the adoption of this amendment by calling special meetings for that purpose, or, alternatively if the Board of Selectmen were willing to

October 7, 2015

Page 2

introduce the amendment and begin the Selectmen's hearing and referendum process before the Planning Board has completed its review of the proposed amendment.

II. Suggested Schedule

The suggested schedule that I have developed based on the foregoing assumptions is as follows:

Suggested Schedule for Zoning Ordinance Amendment

1. Thursday, October 22nd – Planning Board votes to conduct a public hearing on November 12th on the proposed ordinance amendment.
2. Tuesday, October 27th – Notice of November 12th Planning Board hearing posted in municipal office.
3. Wednesday, October 28th – First publication of notice of November 12 Planning Board hearing published in York Weekly (at least 12 days before hearing).
4. Wednesday, November 4 – Second publication of notice of November 12th Planning Board hearing published in York Weekly (at least 7 days before hearing).
5. Thursday, November 12th – Planning Board conducts public hearing on proposed amendment and, after the hearing is closed, votes to adopt a recommendation on the proposed amendment.
6. Monday, November 23rd – Selectman introduces proposed ordinance amendment in writing in the form required for adoption at the meeting of Board of Selectmen. Town Clerk makes copies available to each member of the Board of Selectmen and the Town Manager, makes copies available to the public at the Town Clerk's office. Board votes to conduct public hearing on the proposed ordinance amendment on Monday December 14th.
7. Wednesday, December 2nd – Town Clerk has published a Notice of Board of Selectmen's December 14th public hearing in York Weekly
8. Monday, December 14th – Board of Selectmen conducts public hearing on the proposed ordinance amendment, votes to find that there is a compelling reason not to wait until the General Referendum, votes to conduct a special referendum on the amendment on Tuesday, January 26th; and signs the warrant or notice of election for the referendum.
9. Thursday, December 15th – Town Clerk posts the warrant or notice of election in one or more public and conspicuous locations.
10. Wednesday, December 23rd – Town Manager publishes notice of the date of the special referendum in York Weekly.

11. Thursday, December 24th – Town makes absentee ballots available to voters for January 26th referendum (at least 30 days prior to referendum vote).
12. Tuesday, January 26th – Town conducts special referendum on proposed ordinance amendment.

III. Legal Basis for Suggested Planning Board Schedule

Section 20.1 of the Town of York Zoning Ordinance provides as follows:

20.1 This Ordinance may be amended by a majority of a regular or special meeting of the Town of York legally named, called and conducted, provided that the procedures of Title 30-A M.R.S.A., Section 3002 and 4352 are followed.

Under Section 4352(1) the public shall be given an adequate opportunity to be heard in the preparation of a zoning ordinance. Section 4352(9) provides that:

Before . . . amending an existing zoning ordinance . . . the municipal reviewing authority (i.e., the Planning Board) must post and publish notice of the public hearing required under subsection 1 in accordance with the following provisions:

- A. The notice must be posted in the municipal office at least 13 days before the public hearing;
- b. The notice must be published at least 2 times in a newspaper that complies with Title 1, section 601 and that has general circulation in the municipality. The date of the first publication must be at least 12 days before the public hearing and the date of the 2nd publication must be at least 7 days before the hearing.

IV. Legal Basis for Suggested Board of Selectmen Schedule

Under Section 20.A.4 of the Town of York Home Rule Charter the Board of Selectmen may call a special general referendum in accordance with the following procedures:

1. An ordinance may be introduced by any member of the Board of Selectmen at any regular or special meeting of the Board.
2. Following the introduction of an ordinance, the Town Clerk shall provide a copy of the proposed ordinance to each Selectmen and the Town Manager, shall make a reasonable number of copies available in the office of the Town Clerk, and shall publish in one or more newspapers of general circulation in the Town a notice setting out the time and place of the public herein thereon.
3. After the public hearing, the Town Clerk shall provide a copy of the ordinance (with amendments, if any) to the Town Manager, who in turn shall publish in one or more newspapers of general circulation in the Town, a notice that a vote on the proposed ordinance

October 7, 2015

Page 4

shall be held. The notice shall show the date of the referendum, as determined by the Selectmen, which shall be no less than 40 days from the date of the public hearing.

V. Importance of Scheduling Public Hearing Prior to Referendum More than 120 Days Before Regular Town General Referendum

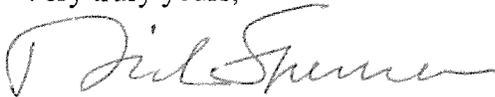
The public hearing conducted by the Board of Selectmen must be conducted at least 120 days prior to the Town of York's General Referendum which is generally held in mid to late May. Otherwise, the referendum on the proposed ordinance amendment will be required by Section 20.A.4 of the Charter to be voted on at the General Referendum in May. Section 20.A.4 of the York Charter provides as follows:

If the Town's General Referendum is not scheduled to be held within 120 days of the date of the public hearing, the Board of Selectmen may provide for a Special General Referendum, provided that the Board of Selectmen has determined that there is a compelling reason not to wait until the general referendum.

Under this provision, the public hearing conducted by the Board of Selectmen (Step 8 on the suggested schedule) must be held prior to mid-January and, in any case, at least 120 days prior to the Town's general referendum in May. If this deadline is not met, the community auditorium project will be delayed for an additional four months because the referendum vote on the ordinance amendment will have to be conducted in May at the Town's General Referendum.

If you have any questions about the suggested schedule or the other matters discussed in this letter, please do not hesitate to give me a call.

Very truly yours,



Richard A. Spencer

RAS/kmr

ARTICLE II: TOWN MEETINGS

Section 1: THE LEGISLATIVE BODY

- A. The Legislative Body of the Town shall be a Town Meeting consisting of the registered voters of the Town who are qualified to vote in state and local elections. All votes cast in all Town Meetings shall be by a printed Secret Ballot.

Section 2: TOWN MEETING REFERENDA ELECTIONS

(For the purpose of this article and Charter, the words referenda and referendum refer to Town Meetings and should be considered one and the same.)

- A. Each year there shall be two scheduled town meeting referenda, one called the Budget Referendum and one called the General Referendum. Additionally, the Board of Selectmen may call one Special Budget Referendum, if necessary, for the reasons and in a manner as hereinafter defined, and may call Special General Referenda as necessary and as permitted under this article.
- B. The Budget Referendum shall be held no earlier than forty-five (45) days before and no later than thirty (30) days before the start of the municipal fiscal year for which the budget shall be adopted. The General Referendum shall be held within six (6) months after the annual Budget Referendum. The Special Budget Referendum shall be held within seventy (70) days after the Budget Referendum except when authorized by the Board of Selectmen in conformance with this article, Section 20.A.4.
- C. The matters to be voted upon at the Budget Referendum are those relating to budgetary matters as specified in this Charter, and the election of Town officials as hereinafter defined.
- D. All other matters submitted to the voters of the Town under this Charter or the laws of the State of Maine are to be voted on at the General Referendum, except those matters, which are specifically scheduled by the United States Government and/or the State of Maine.
- E. The Board of Selectmen in accordance with the provisions of this Charter shall set the dates for all referenda.

2. Provide for a fine or establish a rule or regulation by which a fine is imposed;
3. Convey or lease or authorize the conveyance or lease of any land/s of the Town, except that property acquired for nonpayment of taxes;
4. Adopt, with or without amendment, ordinances proposed under the initiative power.

Section 20: SPECIAL REFERENDA

- A. In addition to the Budget Referendum, the Special Budget Referendum authorized under Article II, Section 14(F) of this Charter, and the General Referendum, the Board of Selectmen may call any number of Special General Referenda or Special Budget Referenda said board feels are in the best interest of the Town, provided that:
 1. All restrictions of this Charter and state law are met;
 2. No proposed Town Budget is voted upon at any Special General Referendum called under this section;
 3. Calling of a Special General Referendum shall not obviate the requirement for a General Referendum, and
 4. Except as authorized under Article II, Section 14(F) of this Charter, the Board of Selectmen may call a Special Budget Referendum only in accordance with the following procedure:
 - a) A Special Budget Referendum may be called only upon an affirmative vote by at least a two-thirds (2/3) majority of the Board of Selectmen, except that a Special Budget Referendum for a school construction project that has received concept approval from the State Board of Education requires approval only by a simple majority of the Board of Selectmen. The subject matter of any Special Budget Referendum called under this provision shall be limited to two categories: 1) items which, if not acted upon before the annual Budget Referendum, will result in a significant loss to the town, such as, but not limited to, the capital purchase of land, buildings or substantial equipment or facilities, for which the Board of Selectmen has reason to believe will no longer be available to the Town, the acceptance of gifts, grants, etc. from the State of Maine or some other entity, and school construction projects that receive concept approval from the State Board of Education and the appropriation, if necessary, of

matching funds for said grants, gifts, other funds, etc.; and 2) items which, because of accident or natural catastrophe, may require the appropriation of funds for expenditures to protect the public health, safety, and welfare, such as, but not limited to disaster relief, or the replacement of public safety apparatus(es) or facilities."

- b) The Board of Selectmen shall refer items for the Special Budget Referendum to the Budget Committee, and upon receipt of said referral from the Board of Selectmen, the Budget Committee shall schedule a single public hearing to be held within ten (10) days for the purpose of receiving comments from the public and Town officers concerning the subject matter of the Special Budget Referendum.
- c) At the conclusion of the public hearing, the Budget Committee shall vote either to approve the subject matter of the Special Budget Referendum as submitted by the Board of Selectmen; to approve the subject matter of the Special Budget Referendum with amendments, except that the amount submitted to the voters in a Special Budget Referendum for a school construction project that has received concept approval from the State Board of Education may not be amended; or to disapprove the subject matter of the Special Budget Referendum.
- d) If the Budget Committee votes to disapprove the subject matter of the Special Budget Referendum, the Selectmen shall take no further action with respect to that Special Budget Referendum, except that with respect to referendum articles for school construction projects that have received concept approval from the State Board of Education, a Special Budget Referendum shall be called as provided in subparagraph e) of this section.
- e) If the Budget Committee votes to approve the subject matter of the Special Budget Referendum, either as submitted or with amendments, the Board of Selectmen shall call a Special Budget Referendum on the approved subject matter of the Special Budget Referendum to be held no sooner than forty (40) days, and no later than seventy (70) days, after the vote of the Budget Committee.

Section 21: ORDINANCES IN GENERAL

- A. FORM: Every proposed ordinance shall be introduced in writing and in the form required for final adoption. No ordinance shall contain more than one subject, which shall be clearly expressed in its title. The enacting clause shall be "the Town hereby ordains...". Any ordinance which repeals or amends an

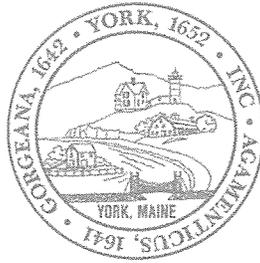
existing ordinance or part of the town code shall set out in full the ordinance, sections or subsections to be repealed or amended, and shall indicate matters to be omitted by enclosing them in brackets or by strikeout type and shall indicate new matter(s) by underscoring or by italics.

- B. PROCEDURE: An ordinance may be introduced by any member of the Board of Selectmen at any regular or special meeting of the Selectmen. The Town Clerk shall provide a copy to each Selectman and the Town Manager and shall make a reasonable number of copies available in the office of the Town Clerk, and shall publish in one or more newspapers of general circulation in the town a notice setting out the time and place for a public hearing thereon, which may be adjourned from time to time. All persons interested shall have an opportunity to be heard at the meeting.
- C. After the public hearing, the Town Clerk shall provide a copy of the ordinance (with amendments, if any) to the Town Manager, who in turn shall publish, in one or more newspapers of general circulation in the Town, a notice that a vote on a proposed or referred ordinance shall be held.

The notice shall show the date of the Referendum, as determined by the Board of Selectmen. The date shall be no less than forty (40) days and no more than one (1) year from the date of the public hearing on the ordinance. If the General Referendum meeting is not scheduled to be held within 120 days of the date of the public hearing, the Board of Selectmen may provide for a Special General Referendum, provided the Board of Selectmen has determined there is a compelling reason not to wait until the General Referendum, and further provided the Board of Selectmen shall make every effort to schedule the Special General Referendum on the same date that another election/referendum has been scheduled.

Section 22: PETITION FOR ENACTMENT OF ORDINANCES

- A. Voters of the Town may at any time propose the enactment of any lawful ordinance by filing, with the Town Clerk, a petition stating the complete text of such ordinance and signed by registered voters of the Town numbering not less than one hundred (100) voters of the Town. The Board of Selectmen shall call a public hearing in the manner prescribed in Article II, Section 21.B and shall within forty-five (45) days after said public hearing call a Special General Referendum for the purpose of submitting to a vote the question of adopting such ordinance.
- B. Such ordinance shall take effect upon the enactment of the ordinance/s by the voters of the Town, provided a majority of those voting thereon shall have voted in the affirmative.



REQUEST FOR ACTION BY BOARD OF SELECTMEN

DATE SUBMITTED: October 16, 2015

ACTION

DATE ACTION REQUESTED: October 19, 2015

DISCUSSION ONLY

SUBJECT: Special Event Permit Applications

DISCUSSION OF OPTIONS AVAILABLE TO THE BOARD: All appropriate departments have been notified and have given approval.

Options available to the Board: 1) Approve/Deny all Special Event Permit Applications listed below in one motion. 2) Approve/Deny Special Event Permit Applications in separate motions

1. Festival of Lights – December 5, 2015
2. 14th Annual Graystone Builders Beach Bonfire Benefit – September 3, 2016
3. Great Strides York – May 22, 2016

RECOMMENDATION: Approve all Special Event Permit Applications in one motion.

PROPOSED MOTION: I move to approve the following Special Event Permit applications subject to all, if any, conditions given by Department Heads:

Festival of Lights – December 5, 2015

14th Annual Graystone Builders Beach Bonfire Benefit – September 3, 2016

Great Strides York – May 22, 2016

FISCAL IMPACT: N/A

DEPARTMENT LINE ITEM ACCOUNT: N/A

BALANCE IN LINE ITEM IF APPROVED: N/A

PREPARED BY: Melinda M. Tracy

REVIEWED BY: [Signature]



Town of York, Maine Special Event Permit Application

This application for a special event permit is hereby presented to the York Town Manager, 186 York Street, York, ME 03909.

Date: 10/1/15

Name of Event: Festival of Lights Parade

Type of Event: Lighted Parade of Floats and Walkers

Organization Name: Festival of Lights Committee Phone #: 363-1040

Organization Address: 186 York St City York State: ME Zip: 03909

Applicant Name: York Parks & Rec Dept Phone #: 363-1040

Applicant Address: Same City: _____ State: _____ Zip: _____

Contact Name for Day of Event: Robin Cagger / Lynzi Raditti Contact Phone # 207 752-1685 / 808 780-4215

Date of Event: December 5th Day of Week: Saturday

Starting Time: 3:00 Staging / 4:30 Start Ending Time: 5:30 pm

Assembly Area: Axholme Road and Moulton Lane

Dispersal Area: Village Elementary School and beyond

Event Route: Axholme Rd, York St., through York Village to Village Elementary, Organug Rd and or Rt. One

Approximate Number of Persons Attending (If more than 500, Insurance coverage needed)
500+

Describe number of bands, vehicles, signs, floats, or other articles carried or displayed along with method of participation (walking, bicycles, motorcycles etc):

Lighted parade with floats, walkers, bands & businesses

Describe how group is organized and supervised to insure order: Parks & Rec Staff with York PD

Purpose of the Event: Community Holiday Celebration

The above information is true to the best of my knowledge and belief.

Signature of Applicant: [Signature] - for Festival of Lights Committee



Town of York, Maine Special Event Permit Application

This application for a special event permit is hereby presented to the York Town Manager, 186 York Street, York, ME 03909.

Name of Event: Graystone Builders Date: 9-30-15
14th Annual Beach Bonfire Benefit
Type of Event: Fundraiser
Organization Name: York Food Pantry Phone #: _____
Organization Address: Woodbridge Rd City York State: ME Zip: 03909
Applicant Name: Graystone Builders Phone #: 207-752-0062
Applicant Address: 764 US Rt 1 City: York State: ME Zip: 03909
Suite 11
Contact Name for Day of Event: Walter Woods Contact Phone # 207-752-0062
Date of Event: Sept. 3, 2016 Day of Week: Saturday
Starting Time: 5:00 PM Ending Time: 10:00 PM
Assembly Area: Long Sands Beach - bath house area
Dispersal Area: " "
Event Route: None

Approximate Number of Persons Attending (If more than 500, Insurance coverage needed)

650

Describe number of bands, vehicles, signs, floats, or other articles carried or displayed along with method of participation (walking, bicycles, motorcycles etc):

1 live band, cookout grills, tables

Describe how group is organized and supervised to insure order: Experienced

group of volunteers, YBFD overseeing bonfire

Purpose of the Event: Fundraiser for York Food Pantry

The above information is true to the best of my knowledge and belief.

Signature of Applicant: [Signature]



Town of York, Maine Special Event Permit Application

This application for a special event permit is hereby presented to the York Town Manager, 186 York Street, York, ME 03909.

Date: 7/28/2015

Name of Event: Great Strides York

Type of Event: Fundraising and Awareness walk for cystic fibrosis

Organization Name: Cystic Fibrosis Foundation Phone #: 603-598-8191

Organization Address: 114 Perimeter Road City Manchester State: NH Zip: 03063

Applicant Name: Lisa O'Connor Phone #: 603-598-8191 ext. 404

Applicant Address: SAME AS ABOVE City: _____ State: _____ Zip: _____

Contact Name for Day of Event: Lisa O'Connor Contact Phone # 603-490-6405

Date of Event: May 22, 2016 Day of Week: Sunday

Starting Time: 9:00 AM Ending Time: 1:00 PM

Assembly Area: York High School Gymnasium and outside parking area for outside setup

Dispersal Area: Same as above

Event Route: Please see route page included in packet

Approximate Number of Persons Attending (If more than 500, Insurance coverage needed)
450

Describe number of bands, vehicles, signs, floats, or other articles carried or displayed along with method of participation (walking, bicycles, motorcycles etc):

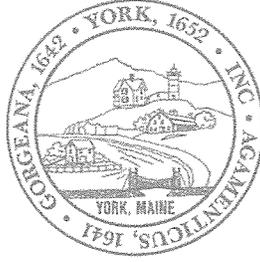
Participants will follow the route marked by arrows and volunteers will serve as crossing guards

Describe how group is organized and supervised to insure order: Committee members and volunteers set up arrows along route. Participants begin walking at 10 AM.

Purpose of the Event: The purpose of the event is to raise awareness and support the cystic fibrosis foundation

The above information is true to the best of my knowledge and belief.

Signature of Applicant: *Lisa O'Connor*



REQUEST FOR ACTION BY BOARD OF SELECTMEN

DATE SUBMITTED: October 16, 2015

ACTION

DATE ACTION REQUESTED: October 19, 2015

DISCUSSION ONLY

SUBJECT: Pole Location Permit

DISCUSSION OF OPTIONS AVAILABLE TO THE BOARD: The permit request has been reviewed by Director of Public Works Dean Lessard and an onsite inspection has been completed; Mr. Lessard recommend approval of the permit requested by Central Maine Power.

RECOMMENDATION: Approve the Pole Location Permit

PROPOSED MOTION: I move to approve the Pole Location Permit for 1 pole on US Route One, in a southerly direction, 112 feet from Pole #290.

FISCAL IMPACT: N/A

DEPARTMENT LINE ITEM ACCOUNT: N/A

BALANCE IN LINE ITEM IF APPROVED: N/A

PREPARED BY:

Melissa M. Avery

REVIEWED BY:

[Signature]

Melissa M. Avery, Assistant to the Town Manager

Form 4503

Notification: 10300117063

Work Order: 801000044245

LOCATION PERMIT

Upon the Application of Center Maine Power Company and Northern New England Telephone Operations LLC ME ,
 dated 09/02/2015 , asking for permission, in accordance with law, to construct and
 maintain poles, buried cables, conduits, and transformers, together with attached facilities and appurtenances
 over, under, along or across certain highways and public roads in the location described in said application.
 permission is hereby given to construct, reconstruct, maintain and relocate in substantially the same location,
 said facilities and appurtenances in the City / Town of York
 approximately located as follows:

1. Starting Point: 290
2. Road (State & CMP): U.S. Route 1/State Road
3. Direction: Southerly
4. Distance: 112' feet
5. Number of Poles: 1

Facilities shall consist of wood poles and appurtenances with a minimum of wire and cable not less than 18 feet over the public highway and/or buried cables or conduit and appurtenances placed a minimum depth of 36 inches under pavement and 30 inches elsewhere, all in a manner conforming to the National Electric Safety Code.

By: _____

By: _____

By: _____

By: _____

By: _____

Municipal Officers

Office of the _____

Received and Recorded in Book _____, Page _____

Attest: _____

Clerk

Form 4501

Notification: 10300117063

Work Order: 80100044245

CENTRAL MAINE POWER COMPANY
APPLICATION FOR POLE LOCATION OR UNDERGROUND LOCATION

In the City/Town of: York, Maine

To the: City
 Town
 County of: York, Maine

- Central Maine Power hereby applies for permission to:
 - Construct and maintain poles together with attached facilities and appurtenances upon, along or across certain streets and highways in said City/Town as described below.
 - Construct and maintain buried cables, conduits, manholes and handholes, together with wire and cables, transformers, cutouts, and other equipment therein, under, along, and across certain streets and highways in said City/Town as described below.

Central Maine Power Company and Northern New England Telephone Operations LLC ME jointly apply for permission to construct and maintain poles together with attached facilities and appurtenances upon, along or across certain streets and highways in said City/Town as described below.

1. Starting Point: 290
2. Road (State & CMP): U.S. Route 1/State Road
3. Direction: Southerly
4. Distance: 112' feet
5. Number of Poles: 1

- Overhead wires shall have a minimum clearance of 18 feet over the public highway and be constructed to conform with the requirements of the National Electric Safety Code.
- Buried cable facilities shall be placed at a minimum depth of 36 inches under pavement and 30 inches elsewhere and be constructed to conform with the requirements of the National Electric Safety Code.

Any person, firm, or corporation to be adversely affected by this proposed location shall file a written objection with the State Department of Transportation, City, Town or County stating the cause of said objection within fourteen (14) days after the publication of this notice or ninety (90) days after installation of facilities without publication.

Public Notice of this application has been given by publishing the text of the same Not Published

In: _____
On: _____

CENTRAL MAINE POWER COMPANY

Northern New England Telephone Operations LLC ME

By: Elaine Titherington Date: 09/02/2015

By: *Jim McLean* Date: 9/3/2015
JIM McLEAN

Melissa M. Avery

From: Dean Lessard
Sent: Tuesday, October 13, 2015 10:23 AM
To: Melissa M. Avery
Subject: RE: Pole Location Permits

Hi Missy
I've reviewed the attached pole permits. DPW recommends approval.

Thanks
Dean

Dean A. Lessard, P.E. | *Director of Public Works*
Town of York, Maine
186 York Street | York, Maine 03909
Phone: (207) 363-1010, Ext. 6201
Fax: (207) 363-1012
E-Mail: dlessard@yorkmaine.org
Online: www.yorkmaine.org

Follow us!
Facebook: www.facebook.com/YorkMainePublicWorks

From: Melissa M. Avery
Sent: Tuesday, September 08, 2015 9:09 AM
To: Dean Lessard <dlessard@yorkmaine.org>
Subject: Pole Location Permits

Hi Dean

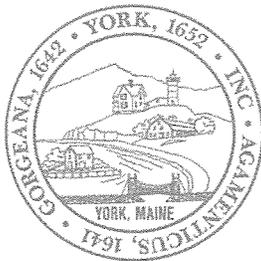
Attached are Pole Location Permits from CMP for:
Route One
Pine Hill Road
Bay Haven

Let me know when you have a chance to look at them! Thank you!
Missy

Melissa M. Avery
Assistant to the Town Manager

Town of York, Maine
186 York Street, York, ME 03909
Phone: (207) 363-1000 | Fax: (207) 363-1019

Please consider the environment before printing this email.



REQUEST FOR ACTION BY BOARD OF SELECTMEN

DATE SUBMITTED: October 16, 2015

ACTION

DATE ACTION REQUESTED: October 19, 2015

DISCUSSION ONLY

SUBJECT: Pole Location Permit

DISCUSSION OF OPTIONS AVAILABLE TO THE BOARD: The permit request has been reviewed by Director of Public Works Dean Lessard and an onsite inspection has been completed; Mr. Lessard recommend approval of the permit requested by Central Maine Power.

RECOMMENDATION: Approve the Pole Location Permit

PROPOSED MOTION: I move to approve the Pole Location Permit for 2 poles on Pine Hill Road, in a northerly and southerly direction, 108 feet from Pole #34.

FISCAL IMPACT: N/A

DEPARTMENT LINE ITEM ACCOUNT: N/A

BALANCE IN LINE ITEM IF APPROVED: N/A

PREPARED BY: Melina M. Avery REVIEWED BY: _____

Melissa M. Avery, Assistant to the Town Manager

Form 4503

Notification: 10300122225

Work Order: 801000049559

LOCATION PERMIT

Upon the Application of Center Maine Power Company and Northern New England Telephone Operations LLC ME . dated 07/07/2015 . asking for permission, in accordance with law, to construct and maintain poles, buried cables, conduits, and transformers, together with attached facilities and appurtenances over, under, along or across certain highways and public roads in the location described in said application, permission is hereby given to construct, reconstruct, maintain and relocate in substantially the same location, said facilities and appurtenances in the City / Town of York

approximately located as follows:

- 1. Starting Point: 34
2. Road (State & CMP): Pine Hill Road
3. Direction: Northeasterly & southerly
4. Distance: 108' feet
5. Number of Poles: 2

Facilities shall consist of wood poles and appurtenances with a minimum of wire and cable not less than 18 feet over the public highway and/or buried cables or conduit and appurtenances placed a minimum depth of 36 inches under pavement and 30 inches elsewhere, all in a manner conforming to the National Electric Safety Code.

By: _____

By: _____

By: _____

By: _____

By: _____

Municipal Officers

Office of the _____

Received and Recorded in Book _____ Page _____

Attest: _____

Clerk

Form 4501

Notification: 10300122215

Work Order: 801000049559

CENTRAL MAINE POWER COMPANY
APPLICATION FOR POLE LOCATION OR UNDERGROUND LOCATION

In the City/Town of: York, Maine

To the: City
 Town
 County of: York, Maine

- Central Maine Power hereby applies for permission to:
 - Construct and maintain poles together with attached facilities and appurtenances upon, along or across certain streets and highways in said City/Town as described below.
 - Construct and maintain buried cables, conduits, manholes and handholes, together with wire and cables, transformers, cutouts, and other equipment therein, under, along, and across certain streets and highways in said City/Town as described below.

Central Maine Power Company and Northern New England Telephone Operations LLC ME jointly apply for permission to construct and maintain poles together with attached facilities and appurtenances upon, along or across certain streets and highways in said City/Town as described below.

1. Starting Point: 34
2. Road (State & CMP): Pine Hill Road
3. Direction: Northeastly & southerly
4. Distance: 108' feet
5. Number of Poles: 2

- Overhead wires shall have a minimum clearance of 18 feet over the public highway and be constructed to conform with the requirements of the National Electric Safety Code.
- Buried cable facilities shall be placed at a minimum depth of 36 inches under pavement and 30 inches elsewhere and be constructed to conform with the requirements of the National Electric Safety Code.

Any person, firm, or corporation to be adversely affected by this proposed location shall file a written objection with the State Department of Transportation, City, Town or County stating the cause of said objection within fourteen (14) days after the publication of this notice or ninety (90) days after installation of facilities without publication.

Public Notice of this application has been given by publishing the text of the same Not Published

In: _____

On: _____

CENTRAL MAINE POWER COMPANY

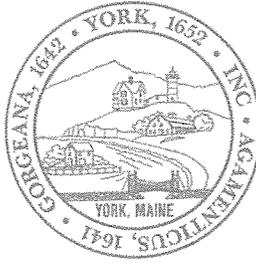
Northern New England Telephone Operations LLC ME

By: Elaine Titherington

Date: 07/07/2015

By: *Jessica Theriault* Date: 7/14/2015

JESSICA THERIAULT



REQUEST FOR ACTION BY BOARD OF SELECTMEN

DATE SUBMITTED: October 16, 2015	<input checked="" type="checkbox"/> ACTION
DATE ACTION REQUESTED: October 19, 2015	<input type="checkbox"/> DISCUSSION ONLY
SUBJECT: Pole Location Permit	

DISCUSSION OF OPTIONS AVAILABLE TO THE BOARD: The permit request has been reviewed by Director of Public Works Dean Lessard and an onsite inspection has been completed; Mr. Lessard recommend approval of the permit requested by Central Maine Power.

RECOMMENDATION: Approve the Pole Location Permit

PROPOSED MOTION: I move to approve the Pole Location Permit for 1 pole on Bay Haven Road, in a southerly direction, 50 feet from Pole #4.

FISCAL IMPACT: N/A

DEPARTMENT LINE ITEM ACCOUNT: N/A

BALANCE IN LINE ITEM IF APPROVED: N/A

PREPARED BY: Melissa M. Avery

REVIEWED BY: [Signature]

Melissa M. Avery, Assistant to the Town Manager

Form 4503

Notification: 10100250582

Work Order: 801000046304

LOCATION PERMIT

Upon the Application of Center Maine Power Company and Northern New England Telephone Operations LLC ME ,
 dated 06/12/2015 , asking for permission, in accordance with law, to construct and
 maintain poles, buried cables, conduits, and transformers, together with attached facilities and appurtenances
 over, under, along or across certain highways and public roads in the location described in said application,
 permission is hereby given to construct, reconstruct, maintain and relocate in substantially the same location,
 said facilities and appurtenances in the City / Town of York
 approximately located as follows:

1. Starting Point: 4
2. Road (State & CMP): Bay Haven Road
3. Direction: Southerly
4. Distance: 50' feet
5. Number of Poles: 1

Facilities shall consist of wood poles and appurtenances with a minimum of wire and cable not less than 18 feet over the public highway and/or buried cables or conduit and appurtenances placed a minimum depth of 36 inches under pavement and 30 inches elsewhere, all in a manner conforming to the National Electric Safety Code.

By: _____

By: _____

By: _____

By: _____

By: _____

Municipal Officers

Office of the _____

Received and Recorded in Book _____, Page _____

Attest: _____

Clerk

Form 4501

Notification: 10100250582

Work Order: 801000046304

CENTRAL MAINE POWER COMPANY
APPLICATION FOR POLE LOCATION OR UNDERGROUND LOCATION

In the City/Town of: York, Maine

To the: City
 Town
 County of: York, Maine

- Central Maine Power hereby applies for permission to:
 - Construct and maintain poles together with attached facilities and appurtenances upon, along or across certain streets and highways in said City/Town as described below.
 - Construct and maintain buried cables, conduits, manholes and handholes, together with wire and cables, transformers, cutouts, and other equipment therein, under, along, and across certain streets and highways in said City/Town as described below.

Central Maine Power Company and Northern New England Telephone Operations LLC ME jointly apply for permission to construct and maintain poles together with attached facilities and appurtenances upon, along or across certain streets and highways in said City/Town as described below.

1. Starting Point: 4
2. Road (State & CMP): Bay Haven Road
3. Direction: Southerly
4. Distance: 50' feet
5. Number of Poles: 1

- Overhead wires shall have a minimum clearance of 18 feet over the public highway and be constructed to conform with the requirements of the National Electric Safety Code.
- Buried cable facilities shall be placed at a minimum depth of 36 inches under pavement and 30 inches elsewhere and be constructed to conform with the requirements of the National Electric Safety Code.

Any person, firm, or corporation to be adversely affected by this proposed location shall file a written objection with the State Department of Transportation, City, Town or County stating the cause of said objection within fourteen (14) days after the publication of this notice or ninety (90) days after installation of facilities without publication.

Public Notice of this application has been given by publishing the text of the same Not Published

In: _____
On: _____

CENTRAL MAINE POWER COMPANY

Northern New England Telephone Operations LLC ME

By: Elaine Titherington Date: 06/12/2015

By: *Jessica Therault* Date: 6/24/2015
JESSICA THERAULT

