

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

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March 5, 2020

3/9/20

The Honorable Mayor Richard Becksted
Portsmouth City Council
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Request for Release of Paper Street Pursuant to NH RSA 231:51 and
231: 52 - 294 Dennett Street (Tax Map 143, Lot 26)**

Dear Mayor Becksted and Members of the Council:

This office represents Zachary and Kirsten Jenkins, owners of the above referenced property. Please consider this a formal petition for the release to our clients of all right, title and interest the City has in the paper street known as "Ruth Street" to the centerline of where it abuts my clients' property, pursuant to NH RSA 231:51 and 52. Abutting property owners, Craig Steigerwalt and Anne Shiembob (Tax Map 143, Lot 13), are filing a similar request at this time.

By way of background, the Jenkins acquired the above referenced lot in 2016 by deed which references the "unnamed street" that begins on Dennett Street abutting the properties of 294 and 276 Dennett Street. I enclose copies of the Jenkins' deed and the current tax map [Exhibits A & B]. This "unnamed street" refers to the portion of Ruth Street toward the northwest beginning at 38 Thornton Street, which is currently undeveloped.

City of Portsmouth Tax Map 143 shows Ruth Street as extending further past 28 Thornton Street, all the way to Dennett Street and our clients' property. However, this extension of Ruth Street was never constructed and has never been used by the public. In reality, Ruth Street ends where it intersects with Thornton Street next to the property

DANIEL C. HOEFLE	R. PETER TAYLOR	KEVIN M. BAUM	ERICA A. DUMORE
R. TIMOTHY PHOENIX	JOHN AHLGREN	GREGORY D. ROBBINS	OF COUNSEL:
LAWRENCE B. GORMLEY	KIMBERLY J.H. MEMMESHEIMER	MONICA F. KIESER	SAMUEL R. REID
STEPHEN H. ROBERTS	MATTHEW G. STACHOWSKE	SAMUEL HARKINSON	

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of 38 Dennett Street, and the paper street portion now contains a garden, a front lawn, a small shed and a gravel driveway. I enclose copies of the current GoogleMaps aerial photographs of the street in question, as well as photographs taken of this same area [Exhibits C & D].

Ruth Street was dedicated pursuant to a plan recorded at the Rockingham County Registry of Deeds in 1902 as "Plan of Lots of Land Belonging to C.I. Pinkham and J.M. Marden" [Exhibit E]. As the paper street portion of Ruth Street was dedicated to public use over one hundred years ago and has not been opened, built or used for public travel where it abuts the Jenkins' property since that time, it should be released from public servitude pursuant to RSA 231:51, and because it is no longer necessary for public travel, should be released pursuant to RSA 231:52.

Furthermore, the City of Portsmouth no longer has any interest in this portion of Ruth Street. This is because between the years of 1893 and 1969, dedication of a street was automatically terminated after twenty (20) years unless the street was accepted before this time period was over. See RSA 231:51 (1982) (amended 1989). Ruth Street was first dedicated in 1902 when the "Plan of Lots of Land Belonging to C.I. Pinkham and J.M. Marden" was filed with the Rockingham County Registry of Deeds, and the portion abutting our clients' property has never been accepted over one hundred (100) years later.

Acceptance can be either explicit or implicit. Neither occurred in this instance. There is no evidence of substantial public use that would constitute an implicit acceptance, nor was our office able to find any evidence of formal acceptance by a City Council vote in the years of 1902-1922, before the dedication would have been automatically terminated. No sewer, water or gas lines exist under the street, nor has the City ever plowed the gravel driveway which exists on the paper street, either of which are examples of maintenance and thus could have constituted an implicit acceptance (*Catalano v. Town of Windham*, 133 N.H. 504 (1990)). I enclose a map of the sewer, water and gas lines of the surrounding area obtained from the City of Portsmouth, Department of Public Works [Exhibit F].

We believe the non-constructed portion of Ruth Street was never accepted, dedication automatically terminated and reverted to the abutting owners in 1922 and the City no longer has any interest in the paper street. In order to clarify the record to

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create clean title for the abutting owners, we request the City confirm the release of its right, title and interest in and to the non-constructed portion of Ruth Street pursuant to RSA 231:51 and RSA 231:52.

Permitting the physical extension of Ruth Street beyond the existing street would serve no public purpose as there is no remaining room for the development of further lots abutting the proposed street, and all existing lots already have frontage, thus providing direct access from a public street. Extension of this street would only serve to cost the City money and to have a negative effect on the homes along the paper street.

Please do not hesitate to contact me for any additional information or if anything further is needed to complete the requested release. Thank for your time and attention to this request.

Very truly yours,

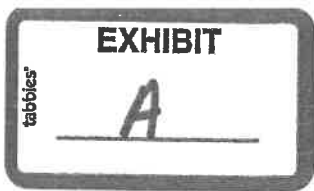


Daniel C. Hoefle

/sch

Enclosures

cc: Zachary & Kirsten Jenkins



BK 5735 PG 0976

Return To: Zachary D. Jenkins and Kirsten M. Janson
294 Dennett St.

Portsmouth, NH 03801

E 31250



WARRANTY DEED

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

2016 Jul 21 PM 01:08

KNOW ALL MEN BY THESE PRESENT: That Josephine Campbell Donovan, Single, of 294 Dennett Street, Portsmouth, NH 03801, for consideration paid grant(s) to Zachary D. Jenkins, Single, and Kirsten M. Janson, Single both of 777 Middle Road Unit #13, Portsmouth, NH 03801, as Joint Tenants with Rights of Survivorship with WARRANTY COVENANTS:

A certain parcel of land with the buildings thereon on the Southerly side of Dennett Street in Portsmouth, Rockingham County, and the State of New Hampshire bounded and described as follows:

BEGINNING On Dennett Street at an unnamed street, formerly land of Moses H. Goodrich and running Southerly on said unnamed street one hundred (100) feet, more or less, to land now or formerly of William J. Colliton; thence turning and running Westerly seventy-three (73) feet, more or less, by land of said Colliton to land now or formerly of Gladys Clark; thence turning and running Northerly by said Clark land one hundred (100) feet, more or less, to Dennett Street; thence turning and running Easterly by Dennett Street fifty-eight (58) feet, more or less, to the point of beginning.

Meaning and intending to describe and convey the same premises conveyed to Josephine Campbell Donovan by virtue of a Quitclaim deed from Josephine Campbell Donovan and Anne Rhodenbaugh Barrett dated 03/12/1993 and recorded at the Rockingham County Registry of Deeds in Book 2975, Page 1861.

I/We, the grantor(s) hereby release all rights of homestead in the above described premises.

Executed this July 18, 2016.

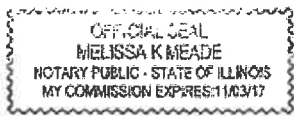
Josephine Campbell Donovan
Josephine Campbell Donovan

State of Illinois
County of Champaign 7/18, 2016

Then personally appeared before me on this 7/18, 2016, the said Josephine Campbell Donovan, by Janet Sylvester, Attorney in Fact and acknowledged the foregoing to be his/her/their voluntary act and deed.

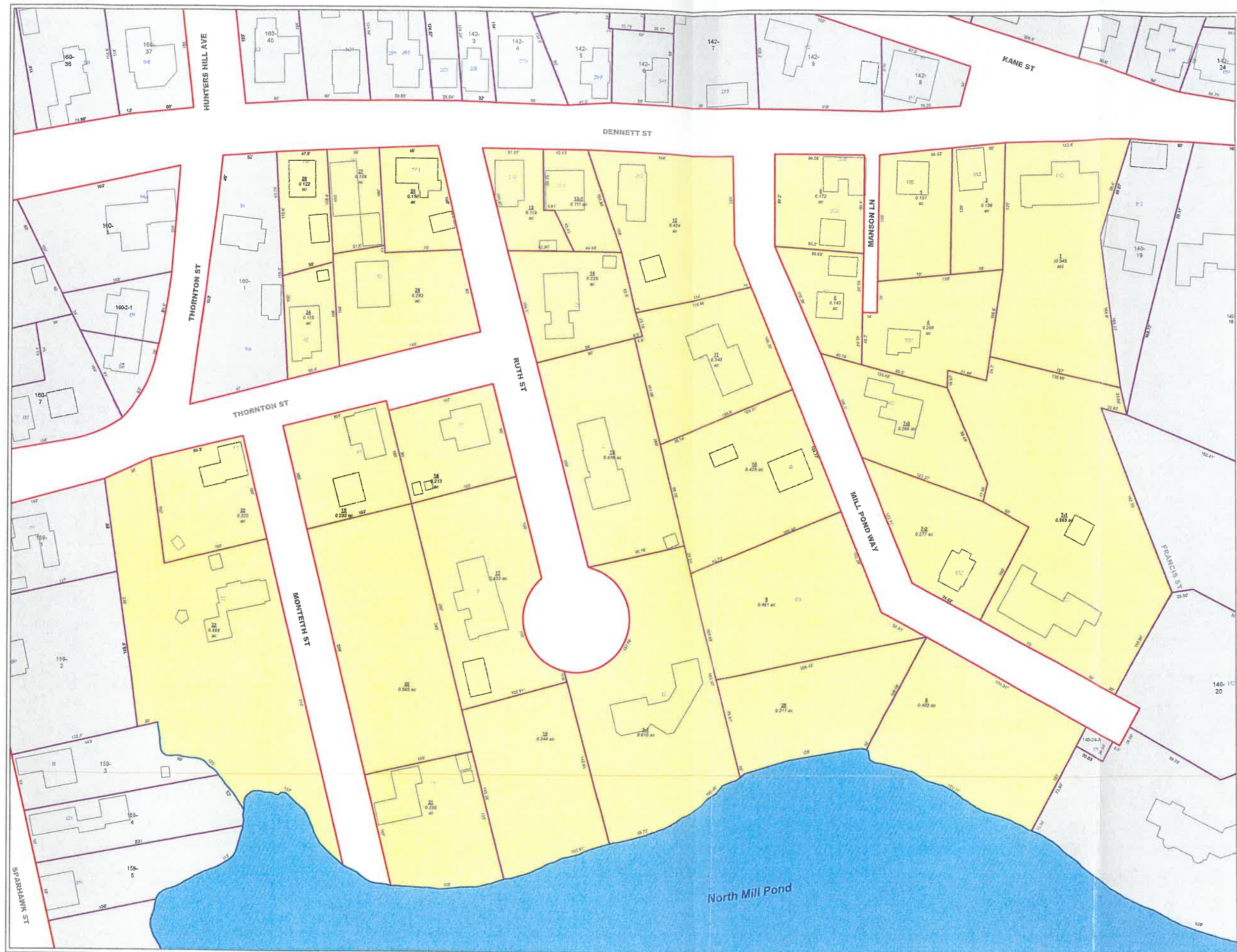
Melissa K Meade
Notary Public/Justice of the Peace
Commission expiration: 11/3/17

Melissa K Meade



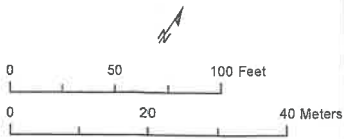
E 31250
ROCKINGHAM COUNTY
REGISTRY OF DEEDS

EXHIBIT
B



See the cover
7-5A Lot
 2.56 ac Parcel area in acres (ac) or square feet (sf)
 25 Address number
 233-137 Parcel number from a neighboring map
 58 Parcel line dimension

SIMS AVE Street name
 Parcel/Parcel boundary
 Parcel/ROW boundary
 Water boundary
 Structure (1994 data)
 Parcel covered by this map
 Parcel from a neighboring map (see other map for current status)



This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.

Nearby Tax Maps



Map Location

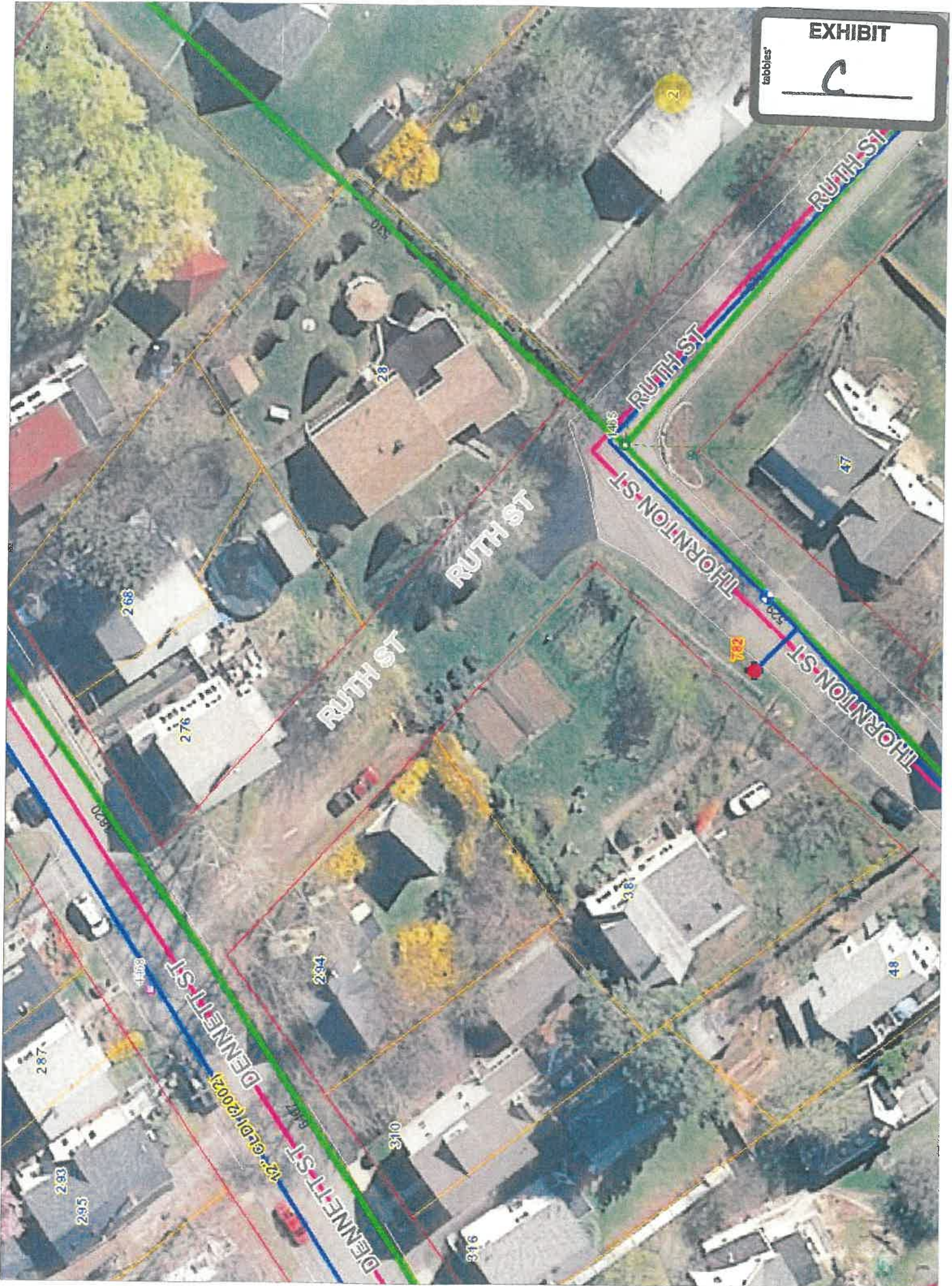


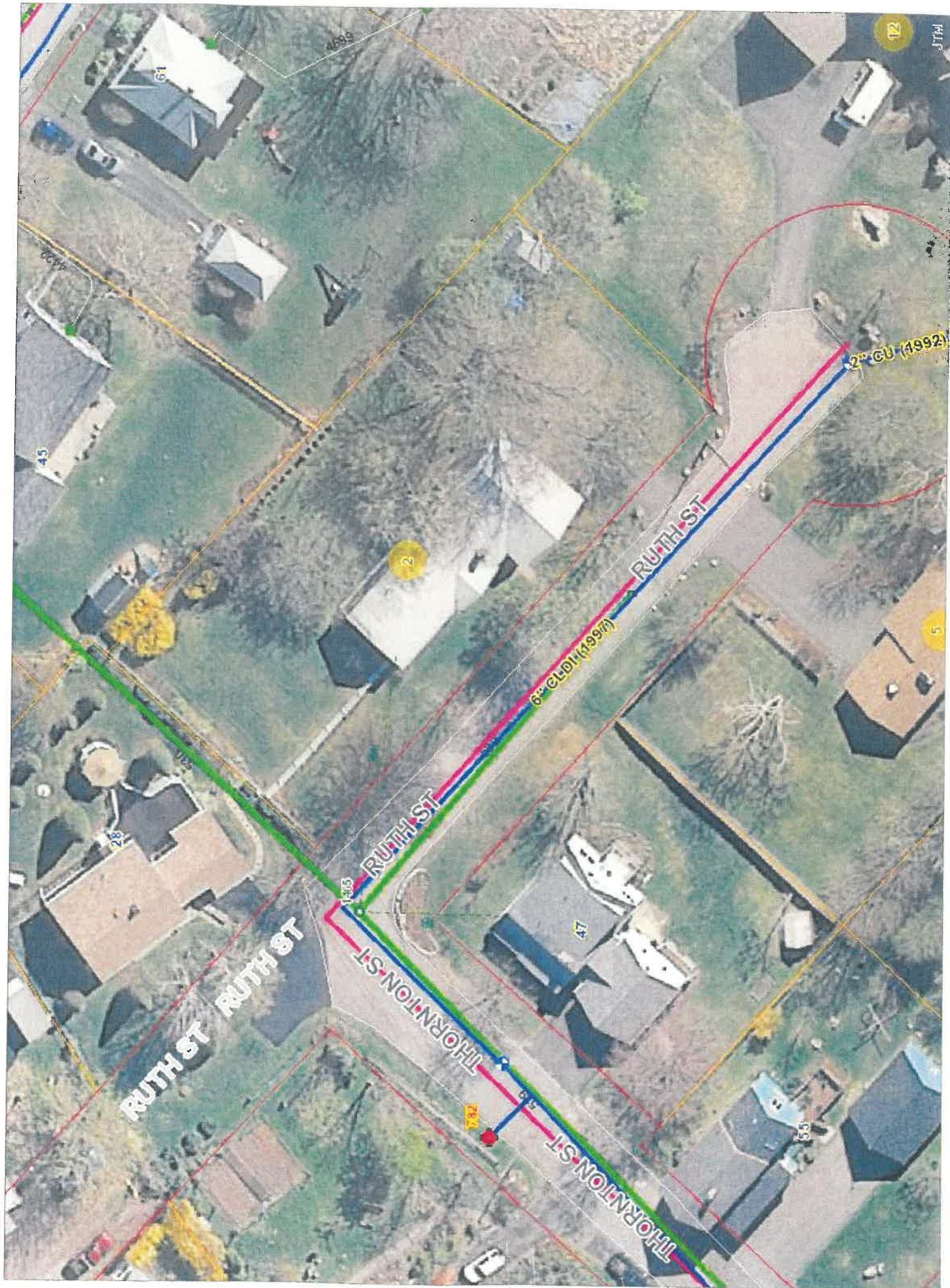
Portsmouth, New Hampshire
2018

Tax Map 143

EXHIBIT

tabbies'





RUTH ST
RUTH ST
RUTH ST

RUTH ST

RUTH ST

THORNTON ST

THORNTON ST

4692

2" CU (1992)

6" CLDI (1997)

1436

732

55

61

45

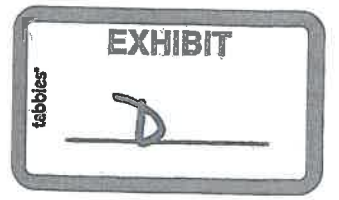
25

47

5



Imagery ©2019 Google, Map data ©2019 United States Terms - Send feedback 20 FT















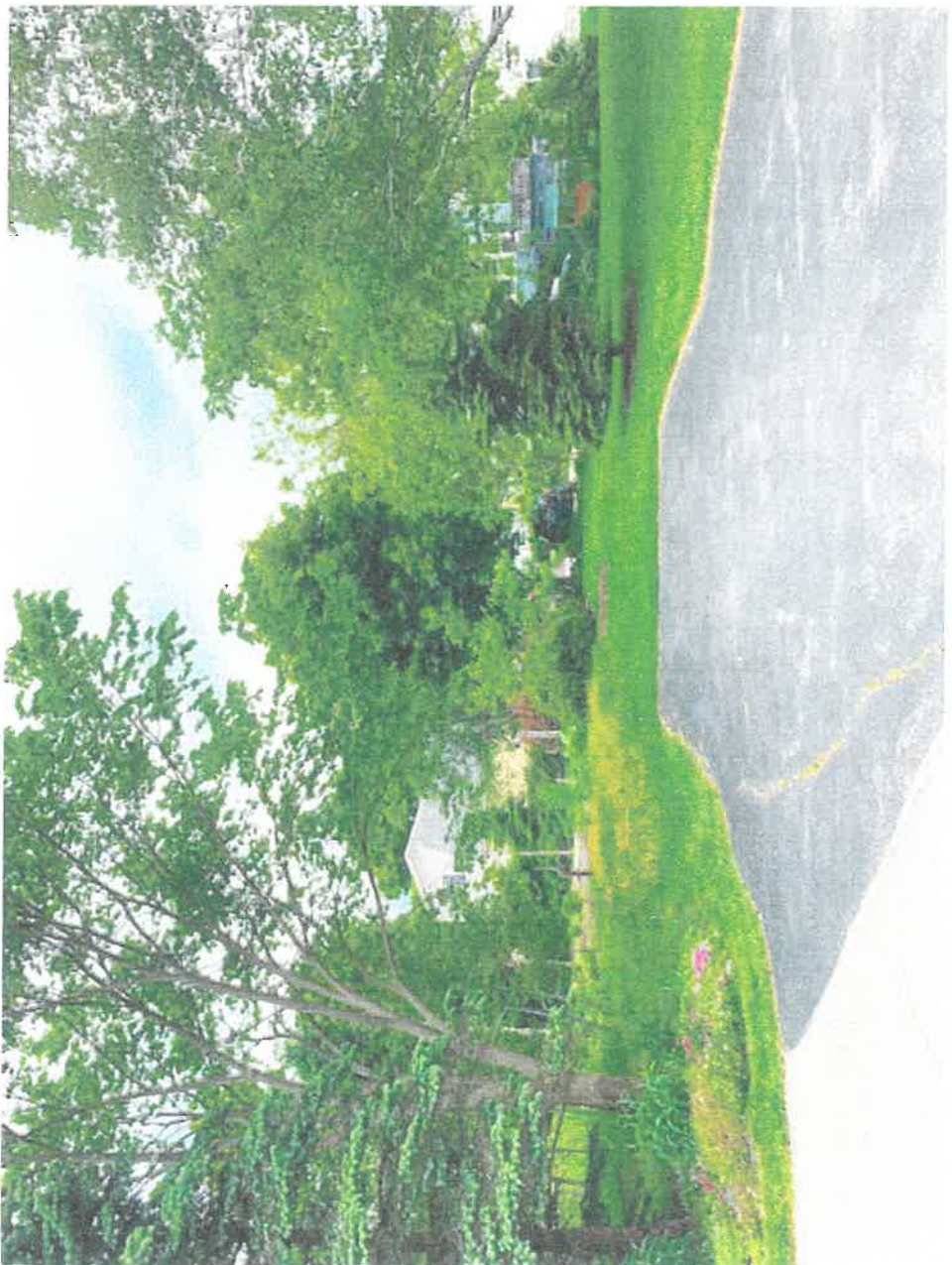
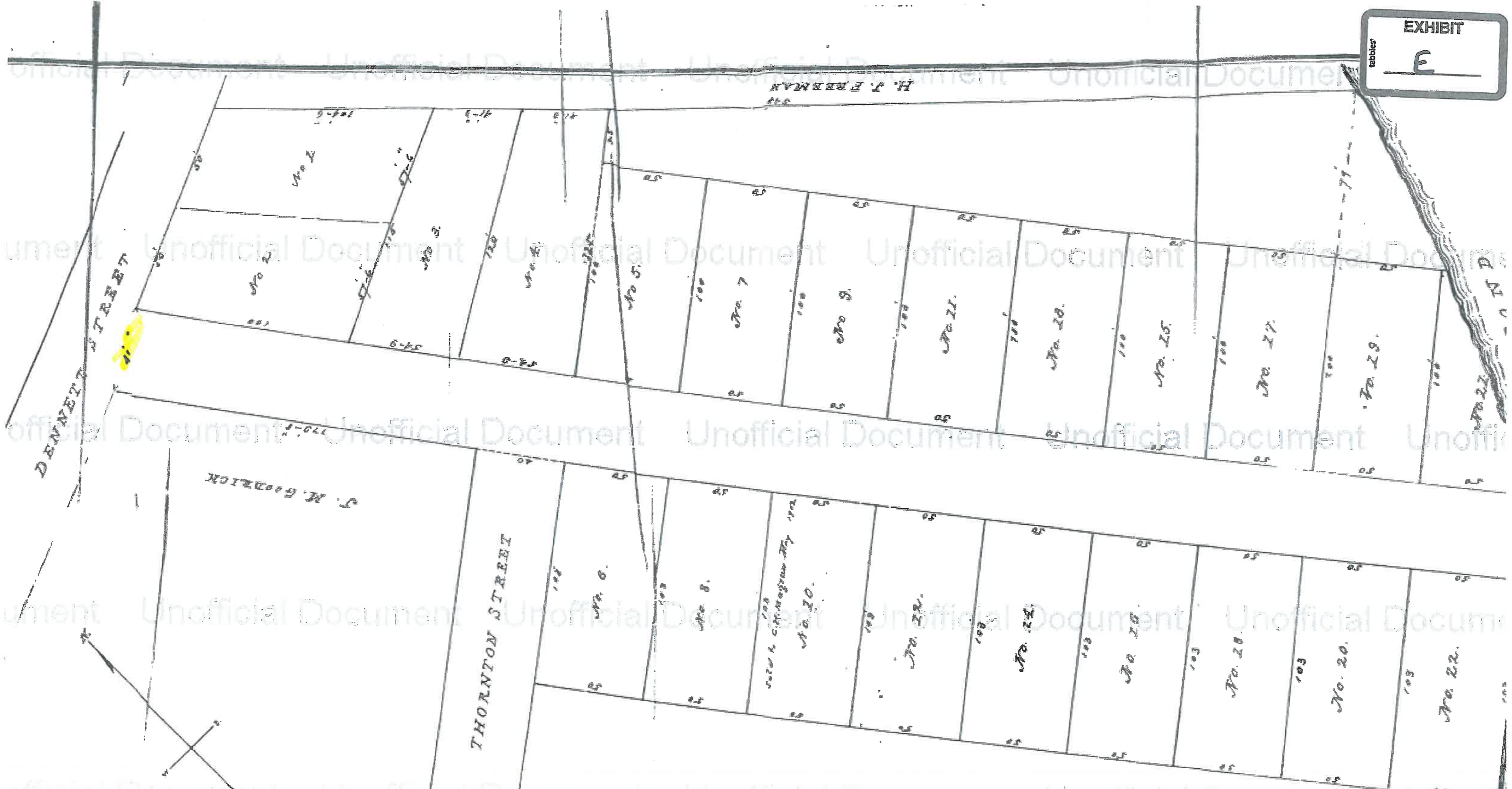
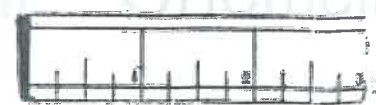


EXHIBIT
E

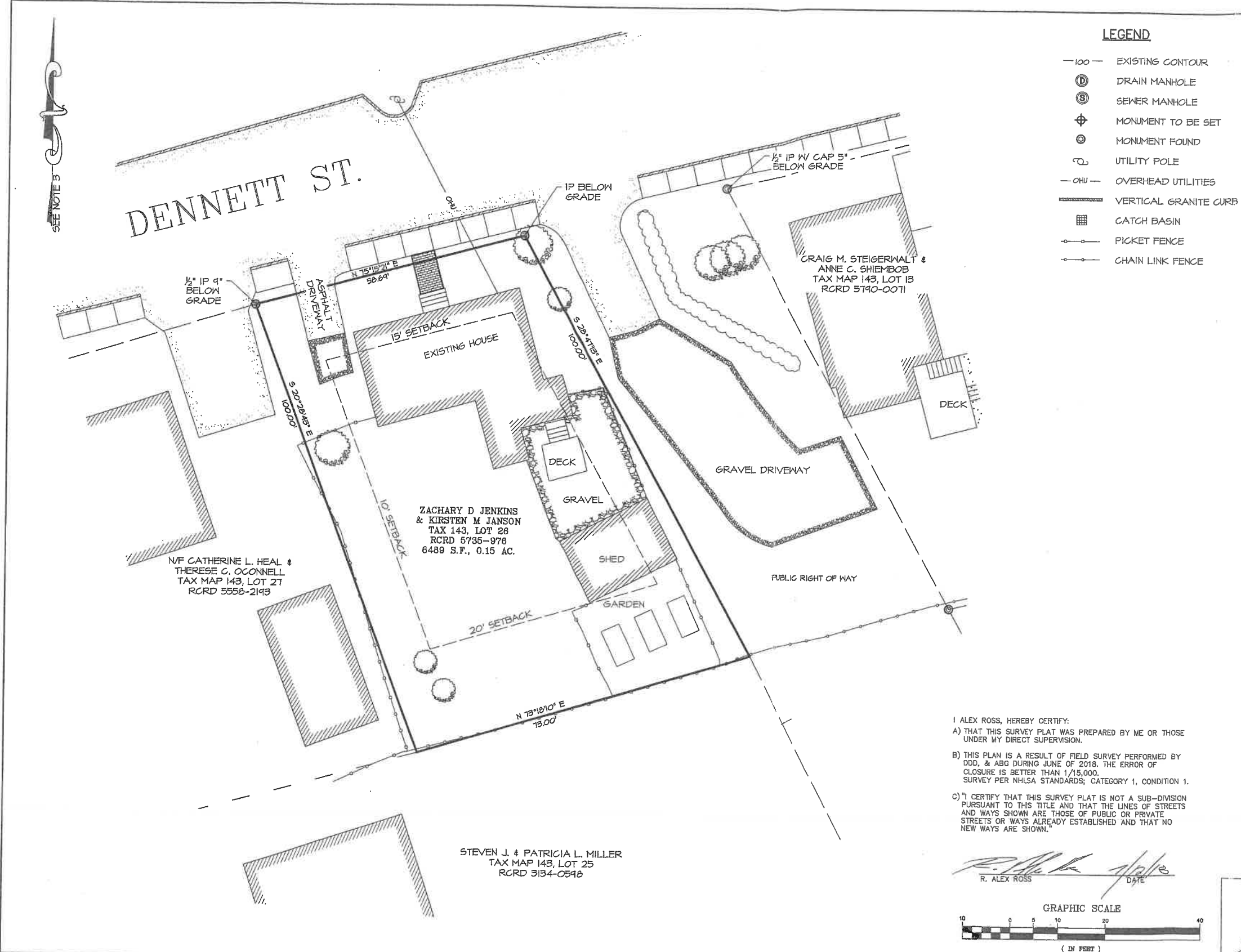


PLAN OF LOTS OF LAND BELONGING TO
C. I. FINKHAM AND J. M. MARDEN
PORTSMOUTH, N. H. MAY, 1902.



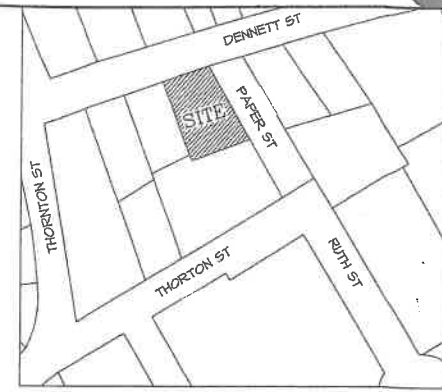
Scale 25 feet to an inch.

Plan # 00245



LEGEND

- 100- EXISTING CONTOUR
- ⊕ DRAIN MANHOLE
- ⊙ SEWER MANHOLE
- ⊕ MONUMENT TO BE SET
- ⊙ MONUMENT FOUND
- ⊕ UTILITY POLE
- OHU- OVERHEAD UTILITIES
- VERTICAL GRANITE CURB
- ▣ CATCH BASIN
- PICKET FENCE
- CHAIN LINK FENCE



LOCUS PLAN
N.T.S.

NOTES

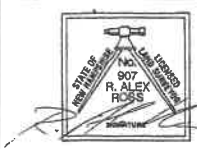
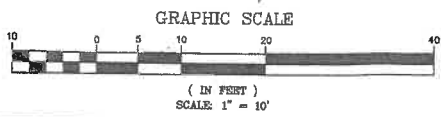
- 1) OWNER OF RECORD:
ZACHARY JENKINS
TAX MAP 143, LOT 26
294 DENNETT STREET
PORTSMOUTH, NH 03801
RCRD: 5735-976
AREA: 6489 SF, 0.15 ACRES
- 2) BASIS OF BEARING HELD FROM PLAN REFERENCE #3.
- 3) PARCEL IS IN GENERAL RESIDENTIAL A ZONE
MINIMUM LOT AREA..... 7500 SF
MIN. LOT AREA PER DWELLING UNIT..... 1500 SF
MINIMUM FRONTAGE..... 100 FT
MINIMUM DEPTH..... 70 FT
SETBACKS:
FRONT..... 15 FT
SIDE..... 10 FT
REAR..... 20 FT
MAXIMUM BUILDING HEIGHT:
SLOPED ROOF..... 35 FT
FLAT ROOF..... 30 FT
MAXIMUM BUILDING COVERAGE..... 25%
MINIMUM OPEN SPACE..... 30%
- 4) THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP #33015C0259E, PANEL 330139, DATED MAY 17, 2005.

REFERENCE PLANS

- 1) "PLAN OF LOTS OF LAND BELONGING TO C.J. PINKHAM AND J.M. MARDEN" DATED MAY, 1902. RCRD 00245
- 2) "BOUNDARY SURVEY FOR STEWGOOD, L.L.C." BY ROSS ENGINEERING, DATED DECEMBER 28, 2016. RCRD D-39925
- 3) "LOT LINE ADJUSTMENT FOR STEWGOOD, L.L.C. & CRAIG M. STEIGERWALT & ANNE C. SHIEMBOB" BY ROSS ENGINEERING, DATED MAY 24, 2017. RCRD D-40257

I ALEX ROSS, HEREBY CERTIFY:
 A) THAT THIS SURVEY PLAT WAS PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION.
 B) THIS PLAN IS A RESULT OF FIELD SURVEY PERFORMED BY DDD, & ABG DURING JUNE OF 2018. THE ERROR OF CLOSURE IS BETTER THAN 1/15,000. SURVEY PER NHLSA STANDARDS; CATEGORY 1, CONDITION 1.
 C) I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUB-DIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN."

R. Alex Ross
R. ALEX ROSS DATE



ISSUE	DATE	FOR REVIEW	DESCRIPTION OF ISSUE
SCALE	1" = 10'		
CHECKED	A.ROSS		
DRAWN	A.B.G. & D.D.D.		
ROSS ENGINEERING Civil/Structural Engineering & Surveying 909 Millington St. Portsmouth, NH 03801 (603) 433-7569			
CLIENT ZACHARY JENKINS 294 DENNETT ST PORTSMOUTH, NH 03801			
TITLE BOUNDARY SURVEY & EXISTING CONDITIONS 294 DENNETT ST PORTSMOUTH, NH 03801 TAX MAP 143, LOT 26			
JOB NUMBER	DWG. NO.	ISSUE	
18-065	1 OF 1	1	

SEE NOTE 3

DENNETT ST.

1/2" IP 4" BELOW GRADE

ASPHALT DRIVEWAY

EXISTING HOUSE

DECK

GRAVEL DRIVEWAY

DECK

PUBLIC RIGHT OF WAY

ZACHARY D JENKINS & KIRSTEN M JANSON
TAX MAP 143, LOT 26
RCRD 5735-976
6489 S.F., 0.15 AC.

N/F CATHERINE L. HEAL & THERESE C. O'CONNELL
TAX MAP 143, LOT 27
RCRD 5558-2193

STEVEN J. & PATRICIA L. MILLER
TAX MAP 143, LOT 25
RCRD 3134-0546