

BY: EMAIL & HAND DELIVERY

July 16, 2024

City Council
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: Release of Interest in Portion of Longmeadow Lane

Dear Mayor McEachern and City Councilors,

Please accept the following request from Jeannette McMaster, owner of property located at 86 Farm Lane, Tax Map 236, Lot 74, for the City to release any interest it may have in a portion of the paper street now or formerly known as Longmeadow Lane running adjacent to her property. **Exhibit A**. It is my legal opinion that Janet already owns to the centerline of the paper street abutting her property and that the City does not have any interest in that land by virtue of it never expressly or impliedly accepted pursuant to RSA 231:51. Notwithstanding, Janet wishes to remove any doubt concerning her ownership of the land in question and seeks a Release Deed from the City for clarity of title.

The street known as Longmeadow Lane was first shown on a subdivision plan recorded in the Registry of Deeds at Plan #02160 in 1954. **Exhibit B**. Following this, a portion of the street was constructed and paved from Woodlawn Circle to the “Betty’s Dream” property located at 75 Longmeadow Lane, Tax Map 236, Lot 76. *See* **Exhibit A**. The remainder of the street shown on the 1954 Plan was never constructed or paved nor was it utilized for any other municipal purpose. To the contrary, much of it is wooded or consists of yard area for the abutting properties, including the properties at 86 Farm Lane (236-74), 88 Farm Lane (236-75), 200 Spaulding Turnpike (237-56 & 236-73). **Exhibit C**.

My client’s family has owned the property at 86 Farm Lane for several decades and has never witnessed anyone from the public use the paper street for access. Jeannette has personally owned the property since 2013 but has lived for much of her life. **Exhibit D**. The easterly section of the paper street abutting 86 Farm Lane is fenced in and integrated with the McMaster family’s back yard and has been this way for as long as Janet can remember. *See* **Exhibit C**. The same can be said for the westerly section of the paper street abutting 88 Farm Lane, as it applies to that property. The attached photographs depict portions of 86 and 88 Farm Lane from different vantage points. **Exhibit E**.

Jeannette is respectfully requesting that the City formally release any interest it may still have in an approximately 25’ wide portion of the paper street directly abutting 86 Farm Lane to the west. The area of the paper street that she is asking the City to release is depicted on the conceptual plan attached hereto as **Exhibit F**. Please note that the attached plan was created as part

of a concept development plan for Janet's property but is part of any pending land use board application filed with the City.

It is my understanding the City Legal Department has done extensive research pertaining to the paper street. It is important to point out that City Attorney, Robert Sullivan, had previously determined in a written opinion that any rights it had in the paper street had lapsed by operation of law. **Exhibit G**. Given this, it is our hope that the City Council will expedite this request without referring the matter to the Planning Board for an initial review and recommendation.

I appreciate the Council's consideration of this request and would be happy to provide any additional information or answer any questions it has in connection with this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Derek R. Durbin". The signature is fluid and cursive, with the first and last names being more prominent.

Derek R. Durbin, Esq.

Exhibit Table

Exhibit A – Tax Map (GIS)

Exhibit B – Plan 01260 (1954)

Exhibit C – Aerial Imagery

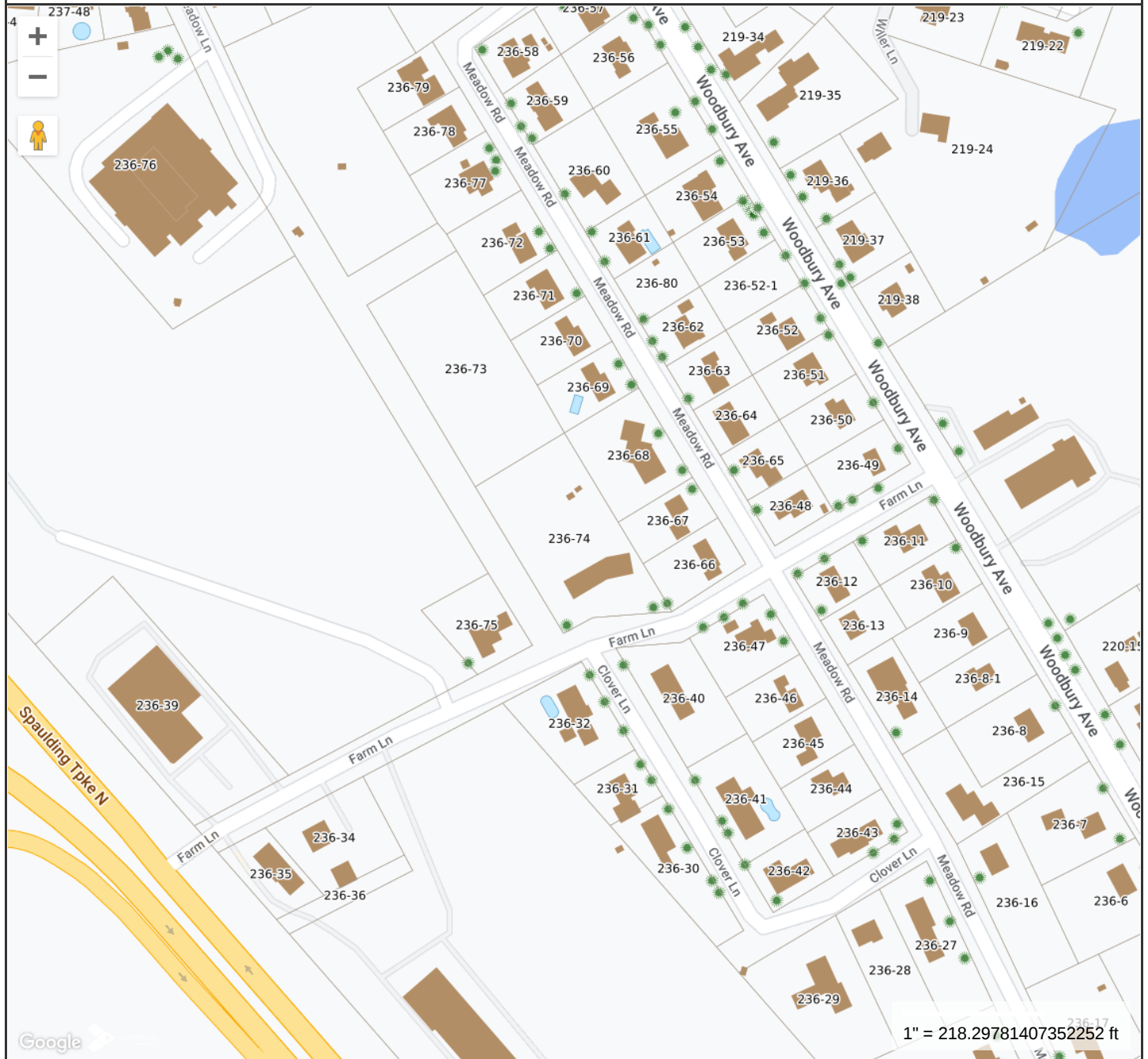
Exhibit D – Deed

Exhibit E – Photographs

Exhibit F- Concept Plan

Exhibit G – Letter from Robert Sullivan, Esq. (1982)

EXHIBIT A



**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 08/24/2023
Data updated 3/9/2022

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

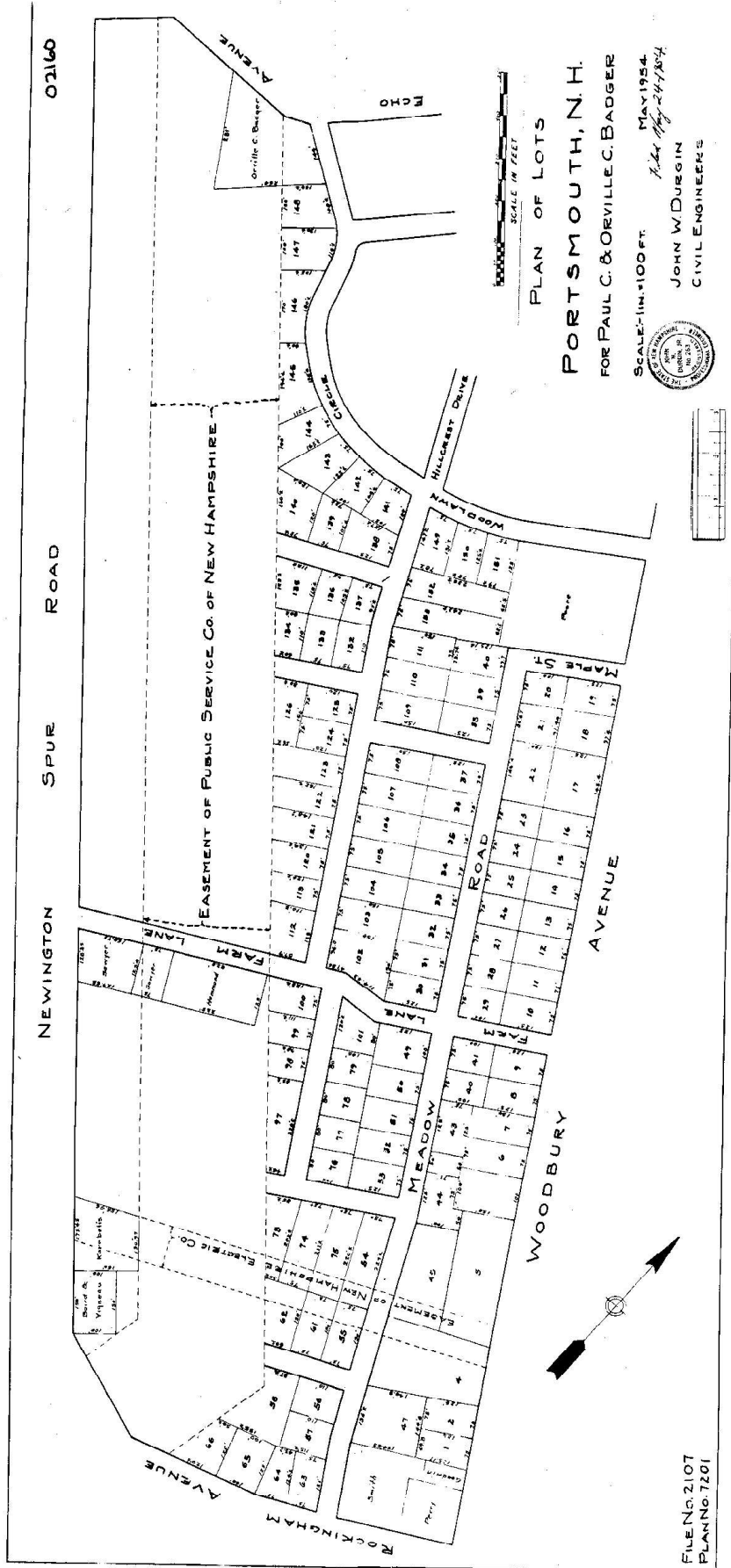
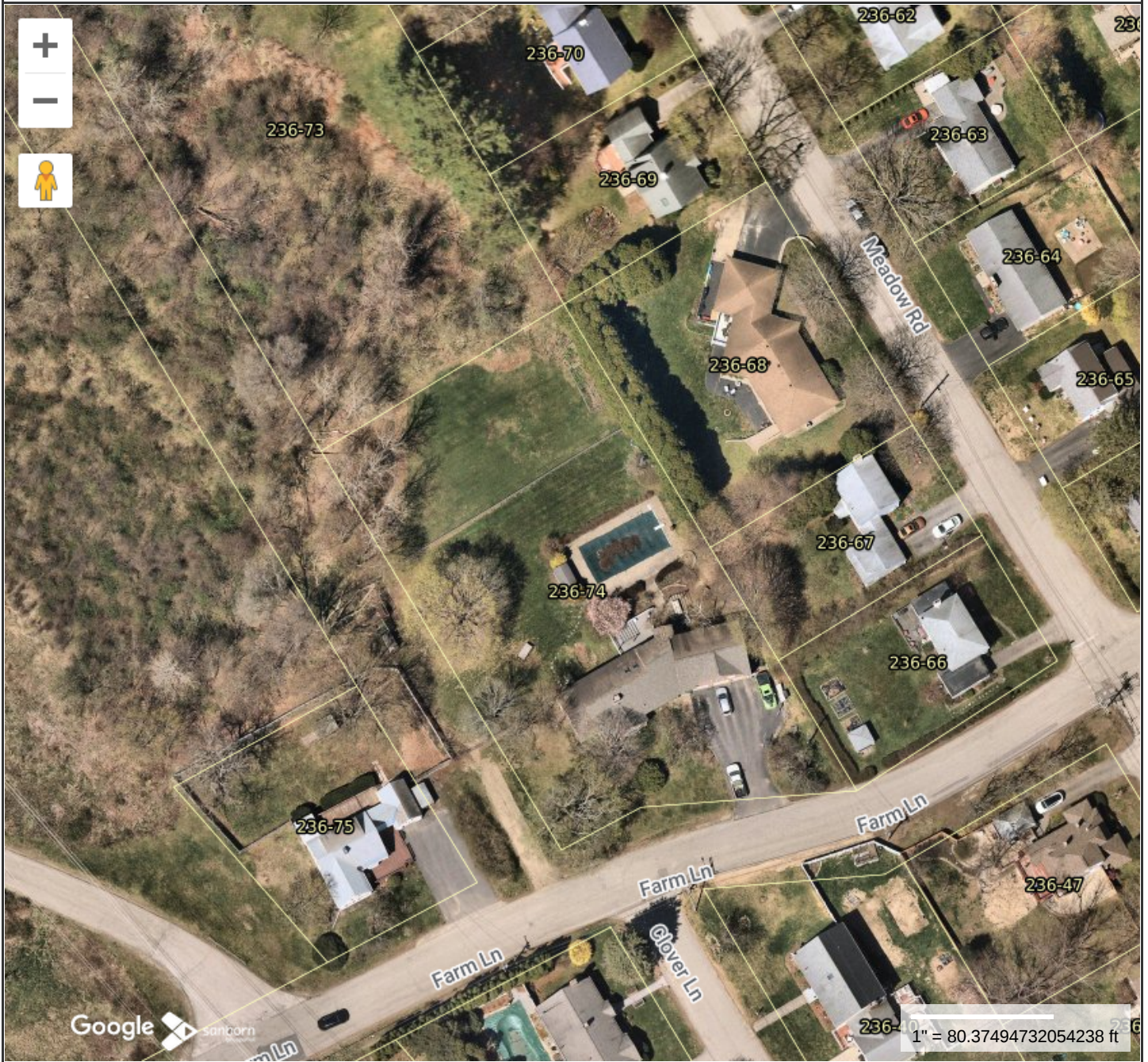


EXHIBIT C



Property Information

Property ID 0219-0004-0000
Location 996 MAPLEWOOD AVE
Owner CHINBURG DEVELOPMENT LLC



**MAP FOR REFERENCE ONLY
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Geometry updated 08/24/2023
Data updated 3/9/2022

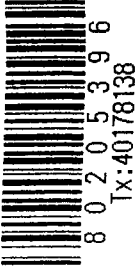
Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

Please return to:
Jeannette MacDonald
86 Farm Lane
Portsmouth NH 03801



19009276 03/20/2019 12:04:14 PM
Book 5987 Page 348 Page 1 of 2
Register of Deeds, Rockingham County

LCHIP	ROA441434	25.00
TRANSFER TAX	RO086606	40.00
RECORDING		14.00
SURCHARGE		2.00



QUITCLAIM DEED

KNOW ALL BY THESE PRESENTS THAT WE, **MICHAEL MACDONALD** and **JEANNETTE MACDONALD**, husband and wife, with a mailing address of 86 Farm Lane, Portsmouth, New Hampshire 03801 for consideration paid, grant to **JEANNETTE MACDONALD** with a mailing address of 86 Farm Lane, Portsmouth, New Hampshire 03801 with QUITCLAIM COVENANTS,

A certain tract or parcel of land with any improvements thereon situate on Farm Lane, so called, in Portsmouth, Rockingham County, New Hampshire, and shown as Map and Lot 236-74, on a plan entitled "Lot Line Revision 86 Farm Lane & 125 Meadow Road" prepared by James Verra and Associates, Inc., and recorded in the Rockingham County Registry of Deeds as Plan #D-34529, to which reference may be made for a more particular description.

Meaning and intending to describe and convey the same premises conveyed by Jeannette MacDonald to Michael MacDonald and Jeannette MacDonald by warranty deed dated September 11, 2013 and recorded with the Rockingham County Registry of Deeds in Book 5479, Page 2548.

This is a non-contractual transfer for estate planning purposes and is exempt pursuant to RSA 78-B:2 IX.

Witness our hands this 15th day of March 2019.

[Handwritten signature of Michael MacDonald]
MICHAEL MACDONALD

[Handwritten signature of Jeannette MacDonald]
JEANNETTE MACDONALD

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

On this 15th day of March 2019, personally appeared before me the within named Michael MacDonald and Jeannette MacDonald, known to me or satisfactorily proven, to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the within deed for the purposes therein contained.

[Handwritten signature of Natalie Ann Jacques]
Natalie Ann Jacques
Notary Public/Justice of the Peace
My commission expires: May 8, 2019
Deal:



EXHIBIT E



Front View from Farm Lane (South Elevation View)



Front View from Farm Lane (South Elevation View)



**View of Rear Yard from South
(showing portion of paper street formerly known as Longmeadow Lane)**



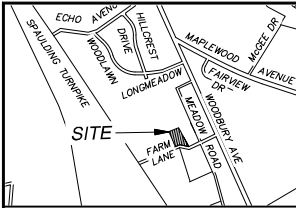
**Alternate View of Rear Yard from South
(showing paper street formerly known as Longmeadow Lane)**



View of Rear Yard from West

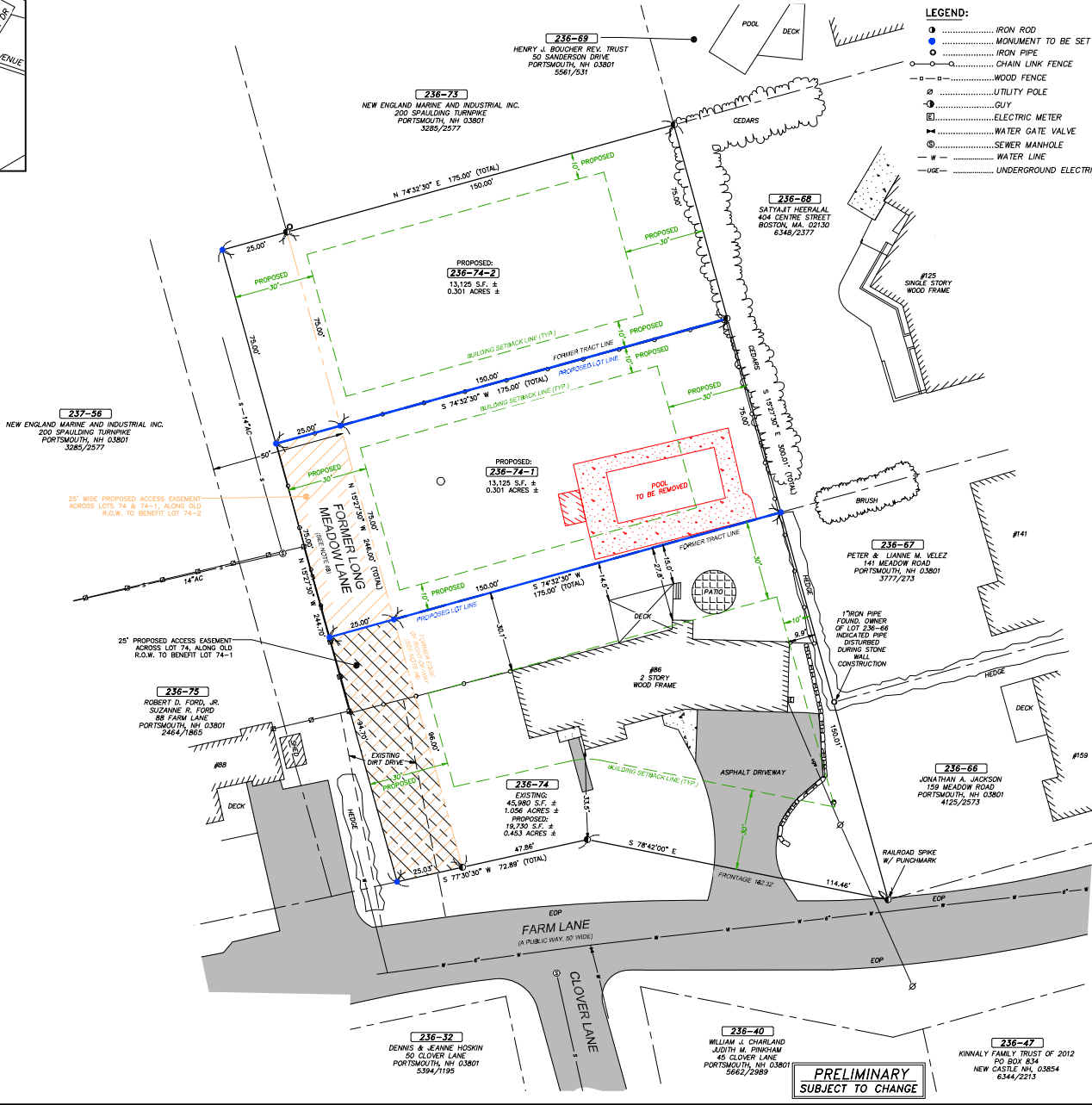


EXHIBIT F



LOCUS
(N.T.S.)

PER REFERENCE PLAN #1



- LEGEND:**
- IRON ROD
 - MOVEMENT TO BE SET
 - IRON PIPE
 - CHAIN LINK FENCE
 - — — — — WOOD FENCE
 - UTILITY POLE
 - GUY
 - ELECTRIC METER
 - WATER GATE VALVE
 - SEWER MANHOLE
 - — — — — WATER LINE
 - — — — — UNDERGROUND ELECTRIC

- NOTES:**
- OWNER OF RECORD: JEANNETTE MACDONALD A/K/A JEANNETTE MCMASTER
ADDRESS: 86 FARM LANE, PORTSMOUTH, NH 03801
DEED REFERENCE: BK: 5987 PG: 348
TAX SHEET / LOT: 236/74
 - ZONED: SINGLE RESIDENCE B (SRB)
MIN. LOT AREA: 15,000 S.F. FRONT YARD SETBACK: 30'
FRONTAGE: 100' SIDE SETBACK: 10'
BUILDING COVERAGE: 20% REAR SETBACK: 30'
MINIMUM OPEN SPACE: 40% LOT DEPTH: 100'
 - THE INTENT OF THIS PLAN IS TO SHOW THE A PROPOSED 3 LOT SUBDIVISION ON THE SUBJECT PARCEL TO CREATE 2 NEW BUILDING LOTS FOR THE PURPOSE OF OBTAINING ZONING VARIANCES TO ALLOW FOR NO FRONTAGE, REDUCED LOT AREA, AND REDUCED SETBACKS. THIS OFFICE HAS NOT UPDATED THE SURVEY, AND IS BASED ON THE PRIOR PLAN OF RECORD BY THIS OFFICE. SEE REFERENCE PLAN #1. SHOULD A VARIANCE BE GRANTED, AN UP-TO-DATE SURVEY WOULD BE PERFORMED PRIOR TO PLANNING BOARD SUBMISSION, AND THE PLAN SUBMITTED FOLLOWING SAID SURVEY MAY BE SUBJECT TO CHANGE.
 - THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES ETC.) AND INFORMATION COMPILED FROM PLANS OF RECORD, AND PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG-SAFE @ 1-888-DIG-SAFE.
 - HORIZONTAL DATUM: BASED ON REFERENCE PLAN #1.
 - THE PLAN IS BASED UPON REFERENCE PLAN #1, AND UPDATED FIELD SURVEY HAS NOT BEEN PERFORMED.
 - THE PARCEL SHOWN HEREON LIES WITHIN ZONE X (AREA OF MINIMAL FLOOD HAZARD) AS IDENTIFIED ON FLOOD INSURANCE RATE MAP, ROCKINGHAM COUNTY, NEW HAMPSHIRE, MAP NUMBER 330500260F, EFFECTIVE DATE 1/29/2021 BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.
 - NOTE #5 ON REFERENCE PLAN #1 STATES "UNDER RSA 231:51 & 52, THE RIGHT OF WAY KNOWN AS LONGMEADOW LANE HAS BEEN EXTINGUISHED, LOTS ADJACENT TO SAID STREET MAY HAVE PRIVATE RIGHT OF WAY WITHIN SAID STREET."

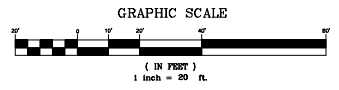
A LETTER FROM CITY ATTORNEY ROBERT P. SULLIVAN DATED OCTOBER 7, 1982 WAS ON FILE WITH THIS OFFICE EXPRESSING THE OPINION OF THE CITY ATTORNEY, THAT THE TARRIED PORTION OF LONGMEADOW ROAD HAS NOT BEEN ACCEPTED AS A PUBLIC STREET, AND THAT THE DIRT PORTION OF LONGMEADOW ROAD HAS NOT BEEN SUBJECT TO ACCEPTANCE. "RSA 231:51 COMES INTO OPERATION AND THE DIRT PORTION OF LONGMEADOW ROAD IS THIS DISCHARGED FROM PUBLIC SERVITUDE BECAUSE TWENTY YEARS HAVE PASSED SINCE ITS DEDICATION WITHOUT IT BEING OPEN, BUILT OR USED FOR PUBLIC TRAVEL."

THIS OFFICE HAS NOT FOUND A DEED, OR QUITE TITLE ACTION CONVEYING TITLE TO OF THE PAPER STREET TO MACDONALD/MCMMASTER OR ANY PREDECESSOR IN TITLE AT THIS TIME. THE PRESUMPTION WOULD BE THAT THE TITLE WOULD REVERT TO THE HIGHWAY'S ARBITERS AND THAT TITLE WOULD EXTEND TO THE CENTERLINE OF THE PAPER STREET. WHILE THE CITY MAY HAVE ACKNOWLEDGE THE PUBLIC RIGHTS TO LONGMEADOW ROAD HAVE BEEN EXTINGUISHED, PRIVATE RIGHTS, RECORDED OR UNRECORDED MAY EXIST.

9. ANY INTEREST IN THE FORMER LONG MEADOW LANE IS INTENDED TO BELONG TO LOTS 74, 74-1 & 74-2 RESPECTIVELY. A CROSS EASEMENT IS PROPOSED ALONG SAID LANE TO BENEFIT THE 2 LOTS NOT FRONTING ON FARM LANE FOR ACCESS.

REFERENCE PLANS

- LOT LINE REVISION, 86 FARM LANE & 125 MEADOW ROAD, ASSESSOR'S PARCELS: 236-74 & 236-66, PORTSMOUTH, NEW HAMPSHIRE, OWNERS: JEANNETTE MACDONALD & WILLIAM A. & CLARIS A. LACEY. LAST REVISED JANUARY 17, 2007 AND PREPARED BY THIS OFFICE. RCRD PLAN #0-34529.
- "LAND IN PORTSMOUTH, N.H. PAUL C. & ORVILLE BADGER TO SAMUEL A. & LUDLIE E. MCMASTER," DATED NOVEMBER 1951, AND PREPARED BY JOHN W. DURGIN C.E. NOT RECORDED, AND ON FILE WITH THIS OFFICE. PG: 2107, EN: 1-25.
- "PLAN OF LOTS, PORTSMOUTH, N.H. FOR PAUL C. & ORVILLE C. BADGER," FILED MAY 24, 1954, AND PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS. RCRD PLAN #02160.



REV. NO.	DATE	DESCRIPTION	APPRD

ZONING BOARD OF ADJUSTMENT EXHIBIT
86 FARM LANE
PORTSMOUTH, NEW HAMPSHIRE
TAX MAP 236 LOT 74
PREPARED FOR & LAND OF:
JEANNETTE MACDONALD A/K/A JEANNETTE MCMASTER

	DATE:	05/29/2024
	JOB NO.:	23-2113
SCALE:	1" = 20'	
DWG. NAME:	23-2113SUB	
PLAN NO.:	23-2113SUB	
SHEET:	VI SUB	

PRELIMINARY
SUBJECT TO CHANGE

101 SHATTUCK WAY, SUITE A, NEWINGTON, N.H., 03801-7876 603-436-3557



EXHIBIT G

COPY

City of Portsmouth, New Hampshire 03801

CITY HALL . . . 126 DANIEL STREET

Legal Department
603-431-2000
Ext. 203 / 204

October 7, 1982

MEMO #82-11

TO: NORMAN AXLER, PLANNING DIRECTOR

FROM: ROBERT P. SULLIVAN, CITY ATTORNEY

RE: BETTY'S DREAM

You have referred to me three questions concerning the above project which I answer as follows:

I. The first question is: Is the Betty's Dream project subject to local zoning regulations? In answer to this first question the applicable facts are contained in a letter to you from Housing Consultant Robert J. Obenland dated September 13, 1982, copy of which has been supplied to me, and a letter from Susan Avery, Planning Director for the New Hampshire Developmental Disabilities Council to Attorney Gerald Taube, a copy of which was received by me on September 24, 1982. These documents indicate that Betty's Dream is a non-profit corporation which proposes to construct a housing project in Portsmouth for the purpose of housing persons with developmental disabilities in accordance with a State plan to provide such services.

As you are aware, within the last two years, the Supreme Court of New Hampshire has decided two cases; Region 10 Client Management, Inc. c. Town of Hampstead, 120 N.H. 885 (1980) and Northern New Hampshire Mental Health Housing, Inc. v. Town of Conway at 121 N.H. 811 (1981), the effect of which cases is to emasculate local zoning control over land use which effectuates a State purpose. In those two cases, local zoning ordinances were specifically overridden to allow for housing of developmentally-impaired individuals and for mentally ill individuals. The Betty's Dream application is not precisely analogous to either Region 10 Client Management application or the Northern New Hampshire Mental Health Housing, Inc. application. However, it is very similar in most material aspects. The housing for developmentally-impaired people

proposed by Betty's Dream is being done under contract with a State agency, New Hampshire Developmental Disabilities Council, pursuant to carrying out a State plan which New Hampshire has become obligated to adopt as a result of the acceptance of federal money for this purpose. As I read the two cited cases, I note that they are written in extremely broad fashion. I note, for example, that in the Northern New Hampshire Mental Health Housing, Inc. case, although the town proved numerous distinctions between the housing for the mentally ill which was proposed for Conway, and the earlier proposal that the Supreme Court had upheld in the Town of Hampstead (Region 10), the Supreme Court summarily dismissed each such distinction. It becomes quite clear in reading the language of the Northern New Hampshire case that the Supreme Court considers the concept embodied in Region 10 to be a broad restriction on local zoning control over land use. A very logical extension of these cases goes beyond housing for any type of disabled person or any type of handicapped person and goes, in fact, to any State purpose whatsoever. On the basis of the foregoing, it is my opinion that the Zoning Ordinance of the City of Portsmouth simply does not apply to Betty's Dream project.

II. The second question which I have been asked concerning the Betty's Dream project is whether or not so-called Longmeadow Road, which is the 100 foot long tarred access point to the New England Fishing Gear property is a "street" within the meaning of Section 10-302 of the Zoning Ordinance such as the frontage requirements of the Subdivision Regulations would be met and further, whether or not the said Longmeadow Road "shall have been accepted or opened, or otherwise received the legal status of a public street" such that the City can grant a building permit under the provisions of RSA 36:26. The definition of "street" in the Zoning Ordinance is quite broad and it is plain that if Longmeadow Road meets the definition of a "public street" as contemplated by RSA 36:26, then perforce, it is a street in terms of the Zoning Ordinance. Therefore, it is only necessary to analyze the RSA 36:26 question alone. This statute requires that Longmeadow Road be a "public street". The statute has been interpreted such that the term "public street" means "streets and highways as defined in RSA 231:1. Blevens v. City of Manchester, 103 N.H. 285 (1961). By recodification of the highway laws, this statute is now identified as RSA 229:1. The applicable portion of this law reads as follows:

"...roads which have been dedicated to the public use and accepted by the city or town in which such roads are located or, roads which have been used as such for public travel other than travel to and from a toll bridge or ferry for twenty years prior to 1968..."


To satisfy the provisions of RSA 36:26, Longmeadow Road must come within this provision. In the case of Betty's Dream, Inc. and Longmeadow Road it appears that the twenty year provision is not met. However, the entirety of Longmeadow Road from Woodlawn Circle through to Farm Lane was apparently dedicated to the City of Portsmouth for public use by the recording in 1954 of a plan identified as "Plan of Lots, Portsmouth, N.H. for Paul C. and Orville Badger, John W. Durgin, Civil Engineers", which plan was recorded in the Rockingham County Registry of Deeds in Plat Book 66 at page 15 and the subsequent sale of at least two lots from that plan. This recording constitutes a dedication of the street property pursuant to RSA 231:51. RSA 229:1 would then require that the property underlying the road be accepted in some fashion or another by the municipality in order for the public servitude to arise. On this question of acceptance I have examined City records to determine whether or not there was ever a formal acceptance by the City Council of Longmeadow Road, and I find that no such formal acceptance has ever occurred. However, the statutory provisions and the case law allow that dedication of a road to public servitude may be accepted by implication as well as by express act of the City. See Stevens v. Nashua, 46 N.H. 192 (1865). On the question of such acceptance I discussed the matter with Keith Noyes of the City Engineering Department and with a long-time resident of Woodlawn Circle residing in the area of Longmeadow Road. I am informed by both of these people that at least since 1958 the tarred portion of Longmeadow Road has been at all times utilized as a public highway by citizens of the City. Mr. Noyes states that to the best of his investigation the City has treated approximately the first 100 feet of Longmeadow Road from Woodlawn Circle as being a public highway from that time to the present. Snow plowing, for example, has been done for that time. The 100 feet roughly corresponds to that portion of Longmeadow Road which is now tarred. On the basis of the foregoing, I am of the opinion that the RSA 36:26 requirement that Longmeadow Road be a public street before a building permit could be issued for Betty's Dream has been met and that perforce, that portion of Longmeadow Road is also a street within the meaning of our local Zoning Ordinance such that frontage requirements are satisfied.

III. The third question which I have been asked is a request to determine the status of the non-tarred portion of Longmeadow Road as indicated on the 1954 plan. This is a far more open question than that answer under II. To begin with, it is quite clear that whatever dedication occurred as a result of the recording of the 1954 plan and the sale of lots thereon, occurred not only to the tarred portion of Longmeadow Road, but to the entire Longmeadow Road going through from Woodlawn Circle to Farm Lane. As I noted earlier, no portion of Longmeadow Road was at any time expressly accepted by the municipality. Therefore, whether or not an acceptance has ever occurred of the dirt portions of Longmeadow Road is a question of fact to be determined basically by an answer to the question of whether or not such dirt portion was "built or used for public travel within twenty years from such dedication", RSA 231:51. I am informed

by Mr. Noyes that Public Works does not consider the dirt portion of Longmeadow Road to have been accepted by the municipality; it is not maintained or plowed by the City. However, I understand that on numerous occasions since 1958, various individuals have been observed using the dirt portion of Longmeadow Road for one purpose or another. The use of this dirt portion of the road could be sufficient to maintain some form of servitude less than acceptance of the dirt portion as a public highway. I believe that the case which governs the answer to this question is Young v. Prenderville, 112 N.H. 190. This case stands for the proposition that indefinite and occasional public use of such a paper street as the dirt portion of Longmeadow Road after its dedication is insufficient to constitute public acceptance of the street. It seems, therefore, that whereas the municipality and the public-at-large has treated the tarred portion of Longmeadow Road as having been accepted virtually since its dedication, neither the municipality nor the public-at-large have made the same use of the dirt portion of Longmeadow Road.

Therefore, it is my opinion as indicated in II herein that while the tarred portion of Longmeadow Road has been accepted and is thus a public street within the meaning of RSA 36:26 and a public highway generally, the dirt portion of Longmeadow Road has not been subject to acceptance. This being true, RSA 231:51 comes into operation and the dirt portion of Longmeadow Road is thus discharged from public servitude because twenty years have passed since its dedication without it being open, built, or used for public travel.

I note for the benefit of those individuals who live in the area of Longmeadow Road, however, that simply because Longmeadow Road does not rise to the level of a public street or highway does not mean that individuals who have been using that property for some particular purpose for sufficient length of time, do not have some interest to continue such use of the property. This, however is a question to be decided between those individuals and the current owner of the property underlying the dedicated portion of Longmeadow Road. It is not subject matter in which the City should be involved.



Robert P. Sullivan,
City Attorney

RPS:bh