

February 27, 2023

North Yarmouth Planning Board
10 Village Square Road
North Yarmouth, Maine



Re: Updates to Proposed Deacon Hayes Commons, Parsonage/Walnut Hill Roads

Dear Board Members,

The Planning Board has reviewed and approved of the Deacon Hayes project at their September 13, 2022 meeting. Subsequently, an appeal was filed to the Zoning Board of Appeals, which remanded a portion of the approval back to the Planning Board for further evaluation on February 1, 2023.

We have attached the updated plans and provided additional information as determined by the Zoning Board of Appeals (ZBA). The plans are essentially the same as previously approved with the following changes:

1. The former conditions of approval have been removed from the subdivision plan.
2. A Common Open Space and Recreation Land has been identified on the subdivision plan.
3. The word "Amended" has been added to the title block

Also included in the submission package are responses and attachments for the 8 remanded items from the ZBA to be reconsidered in the findings of facts and conclusions.

We hope you will find this additional information satisfactory for a final approval by the Planning Board. Please contact me if you have any questions.

Sincerely yours

Stephen Roberge, PE
for SJR Engineering Inc.



Attachments: February 2023 Planning Board submission materials

February 24, 2023

Town of North Yarmouth
Attn: Planning Board
10 Village Square Road
North Yarmouth, ME 04097

RE: Deacon Hayes Commons Development; Request for Amendment and Response to Order of Remand from Zoning Board of Appeals

Dear Planning Board members:

This letter addresses the remand ordered by the Zoning Board of Appeals (“ZBA”) by its written decision dated February 1, 2023. As the remand order explains, the ZBA has not retained jurisdiction over this application, and the Planning Board may consider any evidence, including new evidence, relevant to the questions in the remand order. The Planning Board is also free to consider any requested amendment to the approved site and subdivision plans. As the Planning Board may recall, 527 LLC submitted a requested amendment to the Planning Board in November of 2022, but the Planning Board voted not to accept it while the appeal was pending. Now that the Board of Appeals has completed its review, 527 LLC asks that the Planning Board consider minor amendments to the site and subdivision plans to depict the wastewater treatment system as approved by Maine DHHS, and to better define the ownership and status of common areas shown on the plan. With this submission, we also include clarified and updated documentation on wastewater, groundwater, the condominium association, affordable housing restrictions.

Remand Issue #1 – Performance Guarantee

Order: The ZBA in finding #1 has held that it “interprets the terms ‘improvements’ and ‘required improvements’ used in the performance guarantee requirement under Section 3.8 as being limited to public infrastructure required by the LUO and not including all Development improvements, such as the proposed dwelling units.” The ZBA requested that, “The Planning Board...state whether it followed Section 3.8 and if it did, whether it relied upon those costs and whether it took into account inflation, provisions for inspections, and provisions for guarantee release.”

Response: 527 did provide to the Planning Board a cost estimate for the water service, catch basin and sidewalks in the amount of \$100,000. With this submission, 527 is including an updated contract with Northeast Building and Development for these improvements in the total amount of \$87,700. The contract provides that “inflation is not calculated as the expected completion date of improvements is within 5 months of the start date of the project and this is a fixed-price contract.” 527 has provided a letter of credit which has already been reviewed by the

February 24, 2023

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Town Attorney, Planning Board, and Select Board, in the amount of \$100,000. This overage would accommodate inflation up to 14% between the time of any default by 527 LLC and the date the Town would make a claim on the letter of credit. The anticipated construction schedule for the improvements listed in the Northeast Building and Development contract is as set forth in its contract.

Proposed finding:

The following finding and condition satisfies the standards of Section 3.8:

1. 527 LLC has submitted a revised irrevocable letter of credit in the amount of \$100,000, which covers the anticipated cost (\$87,700) of public infrastructure including 12 water main taps, 4 inch water main service for fire suppression, catch basin with grate and sidewalks. The offered amount of the guarantee accounts for 14% inflation, which adequately addresses potential cost increases given the short construction schedule. The irrevocable letter of credit meets the standards of Section 3.8 and allows for the letter to be drawn upon by the Town if the developer has not properly completed the stated improvements within the projected construction schedule for the improvements.
2. The developer shall notify the CEO in advance of its start of the project (breaking of ground for improvements), so that the time to complete the improvements may be accurately monitored.
3. The guarantee will not be released unless and until the Planning Board has determined to its satisfaction that the improvements meet or exceed applicable design and construction requirements. If 527 LLC seeks any extension of the construction schedule, it must make such request to the Planning Board and provide an updated performance guarantee based on updated cost of completion of the improvements.

Remand Issue #2: Wastewater

Order: The ZBA in finding #3 requests additional findings “on the sufficiency of the proposed engineered subsurface wastewater disposal system.” It also notes that the Planning Board (1) did not make findings to support a waiver of the requirement of DHHS’ written approval before the final plan [was] submitted and did not explicitly waive this requirement; and (2) did not attach a condition of approval that a building permit shall not issue until such time as DHHS approves the proposed engineered subsurface wastewater disposal system; (3) did not specify which engineered system was to be approved by DHHS; and (4) did not address whether the engineered septic system plan submitted to the Planning Board at the September 13, 2022 meeting had to be submitted at least 7 days in advance.”

Response: 527 encloses with this submission the final subsurface wastewater disposal system plan that was submitted to DHHS, as well as DHHS’ letter of final approval and minimum lot size waiver. Because this approval is now available, the ZBA’s remand order is

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moot. This submission has been submitted with a revised final plan at least 7 days prior to the planned March 14 meeting, therefore Section 5.5.C.3 has been satisfied.

Proposed finding: 527 LLC has presented the final subsurface wastewater disposal plan that was submitted to DHHS, as well as DHHS' approval letter and minimum lot size waiver for the engineered system. The DHHS approval demonstrates that the proposed wastewater system will be sufficient to address the needs of the development. Because the Planning Board now has the DHHS approval in hand and that approval was submitted by the applicant more than 7 days prior to the present meeting, the other issues on remand are now moot.

Remand Issue #3: Yarmouth Water District Approval

Order: The ZBA in finding #4 requests further findings as to (1) whether the Planning Board waived the seven-day rule for submittals to allow submittal of the engineered subsurface wastewater disposal system design at the September 13, 2022 meeting; (2) if so, the basis upon which it granted a waiver; and (3) the findings and Record materials that support Subdivision Conclusion #3 that "the proposed subdivision will not cause an unreasonable burden on an existing [public] water supply."

Response/Proposed finding: 527 encloses with this submission a letter from the Yarmouth Water District indicating its approval of the final subsurface wastewater disposal system plan that was presented to and approved by Maine DHHS. Where this letter is being submitted more than 7 days prior to the meeting, the remand issues are now moot. The letter of approval from the YWD, coupled with the materials submitted by Mark Cenci (also enclosed) demonstrate that, with the conditions already imposed by the original approval, the proposed subdivision will not cause an unreasonable burden on the public water supply.

Remand Issue #4: Groundwater Impact

Order: The ZBA in finding #6 notes that the Planning Board did not make a finding that Mark Cenci's August 26, 2022 Hydrogeologic Assessment met Section 5.12(B)(12) of the LUO or reach a conclusion in the Subdivision conclusions of law, and orders the Planning Board to "conclude whether the application meets the groundwater standard and state whether Mr. Cenci's report supports that conclusion."

Response/Proposed finding: Mr. Cenci's submitted Hydrogeologic Assessment as well as the submissions approved by DHHS for the engineered wastewater disposal system, which will include UV treatment, demonstrate that wastewater will not adversely affect the quality of ground water on site or on adjacent property. The Planning Board has previously found that the water supply for the proposed development will be adequate. The Yarmouth Water District has indicated its opinion that with the conditions already required regarding maintenance of the wastewater disposal system, the development will not adversely affect the quality and quantity of ground water within the Groundwater Protection Overlay District. We are also including with this submission updated Rules for the condominiums that reflect the name of the condominium

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association as incorporated. These Rules contain certain provisions to protect against groundwater contamination that were already approved by the Planning Board.

Remand Issue #5: Final Plan Submission to Planning Board / Yarmouth Water District

Order: The ZBA in finding #7 references the question of whether the final plan (including the final “flipped” wastewater system) was properly presented to the Planning Board at least 7 days prior to the meeting, and whether the final plan was appropriately presented to the Yarmouth Water District in advance of the final meeting. It states that, “it is not clear from the Record whether the Planning Board followed the LUO in this regard, and so the ZBA remands this issue to the Planning Board to address these omissions.”

Response/Proposed finding: The final wastewater disposal system plans have now been appropriately presented to the Yarmouth Water District and the Planning Board, and so the procedural issues referenced in this remand order have been addressed.

Remand Issue #6: Storm water

Order: The ZBA in finding #12 references LUO Section 9.2(H)(4)(a) and notes that Site Plan Finding #12 states that “Drainage flows southwest towards the manmade stormwater pond.” However, the Planning Board did not state whether or how this finding supports a conclusion that each element of Section 9.2(H)(4)(a) has been met. Therefore, the ZBA remands this matter to the Planning Board to address this omission.”

Response/Proposed finding: Stormwater from the parking area cannot be diverted away from the Groundwater Protection Overlay District due to the property’s location entirely within the District. It will be channeled into an existing manmade detention/retention/infiltration pond located within the development, as depicted on the plan. The area between the parking area and the pond is appropriately vegetated and is reserved against future development.

Remand Issue #7: Ownership and Maintenance of Common Open Space and/or Recreation Land

Order: The ZBA indicates that it “has questions about ownership and maintenance of common areas for parking and recreation, whether declarations of covenants and restrictions and homeowners association documents to provide for these common areas and facilities should be provided, what the lots and common areas and facilities are (depending on the form of unit ownership), and whether lot setbacks are met.” The ZBA has remanded the issue of compliance with Section 10.23(D)(2) to the Planning Board for development of findings and determination of compliance with this Section.

Response: During the Planning Board’s initial review, 527 had not yet decided whether it would be selling or releasing the dwelling units and so did not provide definitive information as to the form of ownership of the development common areas. 527 now wishes to make clear that though the developer or its successor may retain some units, a condominium association

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(Deacon Hayes Commons) has been incorporated to own and manage the common areas. A copy of the draft Declaration of Condominium is enclosed. 527 reserves the right to modify the Declaration of Condominium prior to the sale of any unit and therefore suggests a condition that the Town Attorney confirm the legal status of the condominium association, and review and approve the final Declaration and sample unit deed prior to the sale of any unit.

Proposed findings:

1. The Amended Plan depicts four separate buildings with contiguous area around each depicted as a separate defined lot. Each unit will be conveyed with rights to the defined building lot, shared in common with the two other unit owners within the building. All unit owners within the development will have access to the remaining "common area" as depicted on the plan, which includes all areas outside of the defined building lots.
2. The lot area of the four building lots is compliant with footnote #4 of Table 7.2 because the lots will be served by an advanced wastewater treatment system and the applicant has demonstrated that water quality will not be degraded. Setbacks are met for the Village Center district. The Code Enforcement Officer confirmed in a letter submitted to the Planning Board dated June 29, 2022 that the development as outlined on the subdivision plan dated June 28, 2022 is in compliance with the dimensional and performance standards set forth in the LUO. The Amended Site Plan does not materially differ from the June 28, 2022 plan as to dimensions of lots and buildings.
3. The applicant has presented a draft Declaration of Condominium which establishes rights of unit owners to the individual building lot as well as to the other common areas of the plan. The Declaration also provides at Section 9.2(d) that all land denoted as "Common Open Space and Recreation Land" on the Amended Subdivision Plan shall be reserved for open space and recreation purposes to benefit all Unit owners and occupants and their guests. It further provides that structural development shall not be permitted in this area except to serve such open space and recreation purposes. It provides the Town of North Yarmouth as well as unit owners the right to enforce the covenant.
4. The development conforms to Section 10.23 of the LUO as follows:
 - A. The open space area is designed and landscaped to provide for recreational uses without infringing on the privacy of the residential units.
 - B. 1. The land denoted on the Amended Plan as "Common Open Space and Recreation Land" will be permanently reserved as open space via the Declaration of Condominium and deeds referencing the Declaration. The reserved land is 12,752 square feet and is contiguous with other undeveloped common area.

totaling over 75,000 square feet. The open grassy area and inclusion of the manmade pond are of suitable character for open space and recreation uses.

2. Section 10.23 does not address multifamily buildings. It includes a table stating "guidelines for the percentage of total parcel to be reserved for common open space and recreation land." These guidelines base the amount of land to be reserved on the average size of "single family lots." Although this development does not propose single family lots, the four building lots are each under 10,000. Rounding up to the 10,000 square feet listed in the chart, and applying the corresponding 13% minimum parcel reservation, the Common Open Space and Recreation Land shown on the Amended Plan exceeds 13% of the total parcel.

C. N/A

D. The Common Open Space and Recreation Land will be owned by the condominium association, in conformance with subsection D(1)(a).

E. The Condominium Association conforms with Section 11.9 of the LUO. The developer has incorporated the Condominium Association. Each deed of conveyance will reference the Declaration of Condominium, which provides for membership by each lot owner as well as the unit owners' rights in the association and to the common open space and other common areas, and details the Association's obligation to maintain those areas. The Declaration provides that the developer ("Declarant") will convey the common elements to the Association once it has conveyed 75% of the units.

5. As a condition of approval, the Town Attorney shall review and approve any changes to the Declaration of Condominium to ensure consistency with these findings and with the LUO. All unit deeds shall incorporate the Declaration of Condominium by reference.

Remand Issue #8: Affordable Housing

Order: The Planning Board made no findings as to how the designated affordable housing units would continue to be affordable in compliance with Sections 11.2(C)(7) and 11.2(B), and so remands this issue to the Planning Board to address this omission. The Planning Board needs to have reviewed and approved a plan to keep any affordable housing units affordable.

Response: Units # 2,5,7,8,9 and 11 will be designated as affordable housing; however, 527 is not asking for a density bonus due to inclusion of these affordable units. 527 is providing with this submission the affordability covenants that are intended to be incorporated by reference into the deeds for the designated affordable units; these covenants are enforceable by the Town of North Yarmouth.

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Proposed findings:

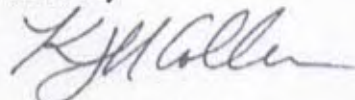
Units # 2,5,7,8,9 and 11 are designated as affordable. Section 11.2(C) Affordable Housing standards are met, as follows:

1. The affordable units will be contained within buildings containing market-rate units and will be of the same design and character.
2. The affordable units contain less than 1,500 square feet each.
3. The affordable units will be constructed concurrently with the remainder of the development.
4. N/A
5. N/A
6. The designated affordable units exceed the standard of 20% of the total number of residential dwelling units in the proposed development.
7. The applicant has submitted covenants to be incorporated into the deeds for the affordable units which limit the sale or rental of those units in accordance with the affordability provisions set forth in subsection 11.2(C)(7) and with the definition of "Affordable Housing" set forth in Section 12 of the LUO, for a period of 25 years.

As a condition of approval, the developer shall submit for review and approval by the Town Attorney and Town Manager any proposed change to the affordable housing covenants for confirmation that the amendment(s) conform to Section 11.2(C) of the LUO and these findings of fact. Prior to issuance of the certificate of occupancy for a designated affordable unit, the developer shall convey the unit to itself or a successor entity with inclusion of the affordability covenants so that they may bind those units prior to any sale or rental thereof.

Thank you for your consideration.

Sincerely



Kristin M. Collins

Remand Issue #1



IRREVOCABLE STANDBY LETTER OF CREDIT

Date Issued: February 23, 2023

Beneficiary: Town of North Yarmouth

10 Village Square Rd

North Yarmouth ME 04097

Amount: \$100,000

Applicant: 527 LLC

865 Oak Hill Rd

North Yarmouth ME 04097

We hereby establish our Irrevocable Standby Letter of Credit in favor of the Town of North Yarmouth, Maine (the "Town"), and authorize the Town to draw on GenX Lending, for the account of 527 LLC, up to an aggregate amount in United States funds of \$100,000.

In accordance with the Town of North Yarmouth Land Use Ordinance Section 3.8, this Irrevocable Letter of Credit is issued in connection with an application for major subdivision approval of Deacon Hayes Commons. Funds have been set aside specifically for the construction of this subdivision and may not be used for any other project or loan. This Irrevocable Letter of Credit is intended to cover the improvements ("Improvements") as listed in a contract with Northeast Building and Development dated February 14, 2023 and attached hereto as Exhibit A.

Payment under this Letter of Credit is available, and GenX Lending shall immediately make payment under this Letter of Credit, upon the Town providing a writing, signed by an authorized representative of the Town, certifying either that payment is due because:

Applicant has failed to complete the proposed Improvements in accordance with the approved plans, and the amount drawn is required to complete the unfinished or unsatisfactory work.

Or because:

Applicant has failed to complete the Improvements within the time required by the construction schedule as approved by the Planning Board, and the amount drawn is required to complete the unfinished work.

At any time while this Letter of Credit is in effect, the Town may draw on it for any amount, up to the full amount, upon the foregoing conditions.

This Standby Letter of Credit sets forth in full the terms of our undertaking which shall not in any way be modified, amended, amplified or limited by reference to any document, instrument, or agreement, whether or not referred to herein.

This Letter of Credit will expire two years from the date issued and shall be deemed automatically extended without amendment for additional periods of one year from the expiration date as originally scheduled or any future expiration date unless at least sixty (60) days prior to any expiration date, we notify beneficiary in writing by certified mail or overnight courier service that we elect not to renew this Letter of Credit for such additional one-year periods.

We agree to pay drafts drawn under and in compliance with the terms of this Letter of Credit that are presented at our GenX, Portland, Maine office together with this Standby Letter of Credit.

Sincerely,

Regards · ·



Mark McClure
Managing Partner
305-507-6777

488 NE 18th Ave, Miami, FL 33132 305-507-6777

www.GenX-Lending.com

NORTHEAST BUILDING

AND DEVELOPMENT

EXHIBIT A

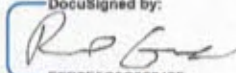
Northeast Building and Development LLC
Ronald Goddard
17 Bucket Ln
Yarmouth, ME 04096
Phone: 207-730-2103

February 14, 2023

Fixed price contract for: 521 Walnut Hill Rd, North Yarmouth, ME 04097

Service	Completion Date	Job Length	Cost
12 Water main taps to curb stop for domestic water	Within 12 months of the start of the project	2-3 days	\$48,000*
4 inch water main service for fire suppression to curb stop	Within 12 months of the start of the project	2-3 days	\$8,000*
Catch basin with grate	Within 12 months of the start of the project	2-3 days	\$5,700*
Side Walks: Walnut Hill and Parsonage Rd	Within 12 months of the start of the project	3-5 days	\$26,000*

*Inflation is not calculated as the expected completion date of improvements is within 5 months of the start date of the project and this is a fixed-priced contract.

DocuSigned by:

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Ron Goddard
Northeast Building and Development

DocuSigned by:

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527, LLC
Laurie Bachelder as Manager

Remand Issue #2

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



Maine Department of Health and Human Services
Maine Center for Disease Control and Prevention
11 State House Station
286 Water Street
Augusta, Maine 04333-0011
Tel; (207) 287-8016; Fax (207) 287-9058
TTY: Dial 711 (Maine Relay)

November 29, 2022

527 LLC
865 Oak Hill Road
North Yarmouth, ME 04097

Subject: Approval, Deacon Hayes Commons Engineered SSWW system

Dear Ms. Laurie Bachelder:

The Division of Environmental and Community Health DECH has completed an after-the fact review of an existing engineered subsurface sewage disposal system to serve a 12-unit housing project. The HHE-200 Form dated September 20, 2022, was prepared by Mark Cenci, L.S.E. The system was designed by SJR Engineering, Inc., with plans signed and stamped by Steve Roberge, P.E.

Hereinafter, the term "design engineer" shall refer collectively to SJR Engineering, Inc., its staff, and its representatives unless otherwise specified; and the term "owner" shall refer collectively to 527 LLC, its staff, and its representatives unless otherwise specified.

Design Flow

The design flow is 3240 gallons per day (gpd), based upon Table 4C of the Maine State Plumbing Code, Subsurface Wastewater Disposal Rules (Rules). The design flow of 3240 gpd is approved with the notation that the suitability of the design flow is the responsibility of the design engineer.

Treatment Tank(s)

According to the design, the sewer connection from each of six units will flow by gravity to a 2000-gallon septic tank then a 3,000-gallon septic tanks. The flows of all twelve units, leaving their respective septic tanks, are distributed into three CEN21 Fuji Clean ATUs.

Disposal Areas

The proposed disposal field is comprised of a single 24-foot by 88-foot cluster of 4-foot by 8-foot concrete chambers. The three ATUs feed the field from three locations on the northeast edge.

Soils

The soils have been identified as 5 B per the Rules by Mark Cenci, S.E. The Maine Geological Survey has mapped the soils as marine regressive deposits (open file# 99-105)

Well Setback

There are no potable water supply wells reported within 300 feet of the proposal. The project is proposed to be supplied with town water.

The proposed system will not result in groundwater mounding sufficient to intrude into separation distance required by Table 4F of the rules, according to the report dated September 19, 2022 by Steve Marcotte, LG.

Site Transmission Analysis

The proposed system design demonstrates that there are sufficient soils down-gradient to prevent the effluent from surfacing within 50 feet of the disposal field, according to the report dated September 19, 2022 by Steve Marcotte, LG.

Interagency Review

This project was reviewed by The Maine Department of Environmental Protection (MDEP) pursuant to the Site Memorandum of Agreement between DHHS and DEP, dated in June 1998. Review of the proposed on-site engineered subsurface wastewater disposal system included: (1) the geology of the project area and vicinity, (2) effects of the project on groundwater and surface water quality, and (3) public and private uses of groundwater and surface water resources in the project area and vicinity. The review found no reason to believe that normal operation of the proposed engineered subsurface wastewater disposal system will result in unreasonable adverse impact on the natural environment or other uses of groundwater and surface water, and provided that the system is properly constructed and maintained.

Miscellaneous

No variance to the Subsurface Wastewater Rules is required.

The design engineer and the Division met and discussed the proposal on August 30, 2022 pursuant to Section 10.2.a of the Rules.

Findings

The system meets the Rules, unless otherwise noted. Therefore, the design is approved with the following conditions and comments:

1. The owner must retain the design engineer to oversee construction. The constructed system may not be used unless all pertinent requirements of the Rules have been met.
2. Construction must not commence until the owner has obtained the necessary plumbing permit from the Local Plumbing Inspector (LPI).
3. The design engineer must provide sufficient supervision to assure that the system is constructed as designed and in accordance with the code and other regulations. Attention must be given to site preparation, fill selection and placement, installation of pipes, mechanical and electrical systems.
4. The design engineer must provide the owner and this office with a brief report on the construction including any unexpected conditions encountered and any changes made from the approved drawings. The LPI must not issue the Certificate of Approval until the LPI has received the aforementioned report from the design engineer.
5. The design engineer must test all systems prior to acceptance by the owner. The testing must determine whether the components were correctly installed and whether they function as designed. This includes confirmation that flow dividing devices or configurations function as intended.
6. The design engineer, with the concurrence of the LPI must determine when the site conditions are suitable for construction.

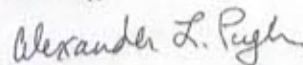
7. Construction must cease whenever the design engineer determines that the site conditions, or workmanship, or materials are unacceptable.
8. The owner and design engineer must inform the LPI of the proposed construction schedule and must also inform the LPI of the progress of construction. They must cooperate fully with the LPI in scheduling any inspections and providing any equipment necessary for the inspection.
9. The design engineer must provide the owner with an Operations and Maintenance Manual containing written recommendations for the operation and maintenance of the system including inspection and pumping schedules and record keeping procedures.
10. The owner must operate the system within the requirements of Rules and the limitations of this design.
11. The owner must inform the LPI and the design engineer of any operational problem and/or malfunction.
12. The Local Plumbing Inspector must inspect the engineered disposal system in accordance with Section 11 Letter I of the Rules. In addition, the property owner must retain the design engineer to inspect the construction of the system. The inspection must be sufficient for the design engineer to determine that the system was installed as designed.
13. The property owner and Fuji Clean must agree on a proper maintenance schedule and an operational monitoring schedule. The Department recommends that this includes laboratory testing for TSS, BOD5 and Total Nitrogen every other year.
14. This approval is only for the rules administered by this office, and it does not consider other federal, state, or local regulations. The owner is responsible for compliance with any other pertinent regulations.
15. By accepting this approval and the associated plumbing permit, the owner agrees to comply fully with the conditions of approval and the Subsurface Wastewater Disposal Rules.

Based upon this approval of the design, the LPI may issue the permit required for an engineered system.

Because installation and owner maintenance have a significant effect on the working order of onsite sewage disposal systems, including their components, the Division makes no representation or guarantee as to the efficiency and/or operation of the system.

Should you have any questions, please feel free to contact me at (207) 287-5695, or by e-mail at alex.l.pugh@maine.gov.

Sincerely,



Alexander L. Pugh
Senior Environmental Hydrogeologist
Division of Environmental and Community Health
Drinking Water Program

ec:

Ben Scipioni, L.P.I. via e-mail
Steve Roberge, P.E. via e-mail
William Noble, MDEP

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



Maine Department of Health and Human Services
Maine Center for Disease Control and Prevention
11 State House Station
286 Water Street
Augusta, Maine 04333-0011
Tel; (207) 287-8016; Fax (207) 287-9058
TTY: Dial 711 (Maine Relay)

November 29, 2022

527 LLC
865 Oak Hill Road
North Yarmouth, ME
04097
Care of Laurie Bachelder

Subject: Approval, Minimum Lot Size Waiver, Deacon Hayes Commons
521 Walnut Hill Rd., No. Yarmouth

Dear Ms. Bachelder:

The Division has reviewed a minimum lot size waiver application for the subject property. The proposal is to install a subsurface wastewater disposal system to serve 12 residential units. This application was submitted in accordance with Title 12 MRSA §4807-B. The lot has approximately 2.24 acres (97,471 square feet) of land, whereas 6.61 acres (287,971 square feet) are required. The lot would be served by a municipal water and onsite sewage disposal.

Pursuant to the language provided in 12 MRSA §4807-B, which is the sole basis for our review, we find that the subsurface wastewater disposal system design prepared by Steve Roberge, P.E. on September 29, 2022, and submitted with the application is not considered to be likely to lower the water quality of, or otherwise pose a threat to, any lake, pond, stream, river or tidal waters, any underground water supply, or to the public health, safety and general welfare.

This approval is based only on the rules administered by this Department. The approval of the septic system for this proposal does not relieve the property owner from compliance with all other state and local requirements for licensing, permitting, system installation and/or use.

Because installation and owner maintenance has a significant effect on the working order of onsite sewage disposal systems, including their components, the Division makes no representation or guarantee as to the efficiency and/or operation of the system.

If you have any questions, please feel free to contact me at (207) 287-5695.


Sincerely,

A handwritten signature in cursive script that reads "Alexander L. Pugh".

Alexander Pugh
Sr. Environmental Hydrogeologist
Subsurface Wastewater Unit
Drinking Water Program
286 Water Street, Augusta, ME 04333

Remand Issue #3

Eric Gagnon
Superintendent

**Yarmouth Water District**
PO Box 419, 181 Sligo Road
Yarmouth, Maine 04096
(207) 846-5821 fax (207) 846-1240
www.YarmouthWaterDistrict.org

Irving C. Felker, Jr.
Chairman, Board of Trustees

February 23, 2022

Laurie Bachelder
527 LLC

Via Email: lbach@maine.rr.com

RE: Deacon Hayes Commons

Dear Laurie,

This letter is in response to your request for the District's comments on the latest plan documents regarding the Deacon Hayes Commons project. This project is located within the Ground Water Protection Overlay Zone within the Town of North Yarmouth; please understand that anything that is leached into the ground at this location may eventually find its way into the Yarmouth Water District's wells.

After reviewing the plan set received via email attachment from Steve Roberge on February 23, 2023, specifically plans titled "Septic System Sections and Details, Sheet 5" dated September 22, 2022, and "Grading and Erosion Control Plan, Sheet 2" dated February 2022 with last revision on February 28, 2023, we have the following comments:

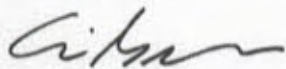
The District is satisfied that the proposed advanced wastewater septic system will provide adequate protection to the aquifer regarding nitrate removal with the understanding that the system will be properly maintained per the manufacturer's recommendations to ensure that the systems are performing as designed.

These comments are in addition to previous items of concern that you addressed and written into lease/homeowner association agreements that you sent via email attachment on August 9, 2022. We assume that these items are still part of those documents. Those items include:

- Using only environmentally friendly deicing products and avoiding the use of salt.
- Ensuring safeguards are in place against petroleum drips and spills and not allowing vehicle repairs onsite.

Thank you for providing the updated documents and addressing our concerns.

Sincerely,



Eric Gagnon
Superintendent

CC: Tim Herrick, Yarmouth Water District Assistant Superintendent
Kristin Collins, Preti Flaherty Attorney

Remand Issue #4



Date: November 2, 2022

To: Kristen Collins, Attorney
Preti Flaherty

RE: Pathogens in groundwater, Deacon Hayes, North Yarmouth

Purpose of Memo:

The purpose of this memo is to summarize site specific information and published literature regarding the occurrence and characteristics of pathogens in groundwater from subsurface wastewater disposal, in order to better understand regulatory issues and the Minimum Lot Size Law. This memo may be shared.

Background:

For reference, the *National Primary Drinking Water Regulations* is attached. Of the many contaminants listed in the *Regulations*, nitrate, Fecal coliform, E coli, Giardia lamblia, Cryptosporidium, Total coliforms and enteric viruses are of concern by the Division of Environmental Health at Deacon Hayes.

Residential wastewater will be disposed into the subsurface in one large disposal area on the site of the Deacon Hayes project. In order to meet the Ordinance of the Town of North Yarmouth regarding nitrogen from septic systems in groundwater, and to satisfy the concerns of the Yarmouth Water District, whose public supply well is downgradient in the same sand and gravel deposit as the site, the design of the septic system incorporates nitrogen removing aerating reactors.

These reactors use air to foster rapid and effective aerobic microbial digestion of the sewage. The nitrogen removing component of the process completes the chemical changes from ammonia to nitrogen gas, which escapes to the atmosphere, thereby protecting groundwater.

The aerobic process differs from common septic system wastewater disposal in that clarified and oxygenated wastewater is disposed into the ground. This wastewater has little nutrient in it compared with anaerobic disposal, which relies on a biomat layer of microorganisms which

forms at the soil interface. The biomat acts as a trickling filter to clean and (somewhat) disinfect the wastewater before it enters the groundwater.

While the nitrogen loading is alleviated by the aeration treatment, concern about pathogenic bacterial and viral persistence from the wastewater disposal and the effects on groundwater remain. Certainly, some die off and predation of these pathogens occurs during the aerobic treatment process, but it is not completely effective.

Bacteria will be present in all human waste treated and disposed on this, and any, site. Viruses and Giardia will only be contributed to the wastewater by infected individuals.

A review of the research literature on viral persistence in groundwater reveals knowledge is increasing but remains incomplete. I first reviewed this literature in 1988, and while there are confirmations of factors known 35 years ago, there are still gaps in understanding the occurrence, pathology and transport of viruses in the subsurface. Much of the work has been on laboratory studies of the effects of water temperature and pH, and the effects on adsorption of pathogens on soil particles, relative to particle size.

There is still an incomplete understanding of the prevalence and health effects of viruses in groundwater. Instances of detection of viruses in household wells in Wisconsin (Borchardt M, Bertz P, Spencer S and Battigelli D, 2003. Incidence of Enteric Viruses in Groundwater from Household Wells in Wisconsin. *Applies Environmental Microbiology*, 2003Feb. 69(2): 1172-1180) are described, but epidemiological certainty of illness or disease transmission from specific source locations remains scarce.

Work has been done to better understand the lengths of times microbes can remain active and presumably infectious, outside the human body. Bacteria are shorter lived than viruses in the subsurface, (if viruses can be described as living) with most bacteria dying between 3 and 15 days. There are instances of bacteria being alive for longer periods, as survival is best described as a log function. To be conservative, 120 days of longevity should be considered, as the Drinking Water regulations require zero bacteria in Public Drinking Water Supplies.

Similarly, viruses being detected, and presumably remaining infectious, is on the order of 120 days.

Hydrogeology of the Site:

At the Deacon Hayes site, the emplacement of piezometers into the ground water and the measurements of the water table has better defined the hydrogeology of the site. An excavator was used to dig small holes to the observable water table at roughly 8 feet below the surface in the gravelly sands typical of the site. The sands were carefully back filled around the well pipes.

The piezometers are 2-inch diameter, threaded well screen sections, 5 feet in length, with solid pipe extended to and above the ground surface. Four pipes were installed, yielding two equilateral triangles in plan view. A laser level was used to equilibrate the well tops with each

other and a water level indicator was used to measure the water table a day after the wells were emplaced.


The direction of ground water flow was confirmed to be southerly and coincident with the flows modeled by the Yarmouth Water District, and not toward Toddy Brook. The hydraulic gradient was measured to be 2%.

This gradient and the assumed hydraulic conductivity of 40 feet per day, confirmed by gradient analysis done for Marcotte's Mounding Study, gives a Seepage Velocity of 3 feet per day. In Other words, the groundwater moves in a southerly direction 3 feet every day. As the Distillio property line is 45 feet away from the septic disposal chambers, each drop of wastewater will reach the Distillio property line in 15 days.

Most bacteria will die off within 15 days, or within the 45 feet separation between the disposal area and the Distillio property line. But if 120 days is taken as the most conservative estimate of viral persistence and stability, it is conceivable that viruses could still be stable 360 feet from the disposal area. In this neighborhood there are no water wells within 360 feet of the proposed disposal area.

It may be instructive to note that a hypothetical septic system designed to dispose of 1450 gallons per day, installed in the same location as the system proposed for the Deacon Hayes project, would also meet the nitrogen limits of the Town of North Yarmouth by using nitrogen removing FujiClean treatment. This hypothetical system would meet the requirements of the Minimum Lot Size Law (66.7 square feet of lot size per gallon of wastewater disposed). The travel times of pathogens and the direction of travel would be the same. However, no review of pathogens or requirements of further treatment of the wastewater would be required, or even envisioned. This is also the case if the full-sized Engineered system that is being proposed were located in the exact same place on a lot that met the 33.3 square foot per gallon criteria of lots served by a Public Water system.

This memo is meant as a supplemental effort to inform you of some of the issues involved. If additional information is needed, or if further documentation of published references is required, please ask.


Mark Cenci, LG # 467



Memo regarding additional hydrogeologic and location data from the Deacon Hayes Site, North Yarmouth

Date: November 29, 2022

Summary:

More accurate location data and an updated, more accurate NO₃-N plume analysis reveals the proposed Engineered System meets the requirements of the Subsurface Wastewater Disposal Rules and the Minimum Lot Size Law.

Background:

A question about the implications of the measured hydraulic gradient from four shallow piezometers on the fate and transport of NO₃-N from a proposed Engineered wastewater disposal system was raised by Alex Pugh. To answer this question a return to the site was made on November 29, 2022, and additional location data of known points shown on the site plan was taken with the same Trimble GEO XH that previously located the piezometers. These additional location data points allowed for a refinement of the groundwater flow direction.

Additionally, the newly determined hydraulic gradient was entered into the SOLUTRANS computer program to determine if the change of that variable from an assumed gradient of 0.5% to a measured 2% would have an effect on the shape and size of the NO₃-N plume.

Results of the Investigation:

The groundwater flow direction is now accurately known and is depicted on the enclosed sketch map. The flow direction is slightly more southerly than assumed. This increases the distance between the disposal chambers and the property line regarding groundwater flow.

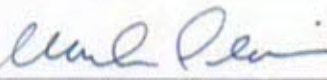
The length of the 5 mg/liter NO₃-N plume is increased from 40 feet in length to 67 feet in length.

The curve of the NO₃-N concentration and the depiction of the plume is attached. Also attached is a site plan at a scale of 1" = 50' with piezometers, equipotential lines, the groundwater flow direction and the 5 mg/liter plume depicted.

Conclusions:

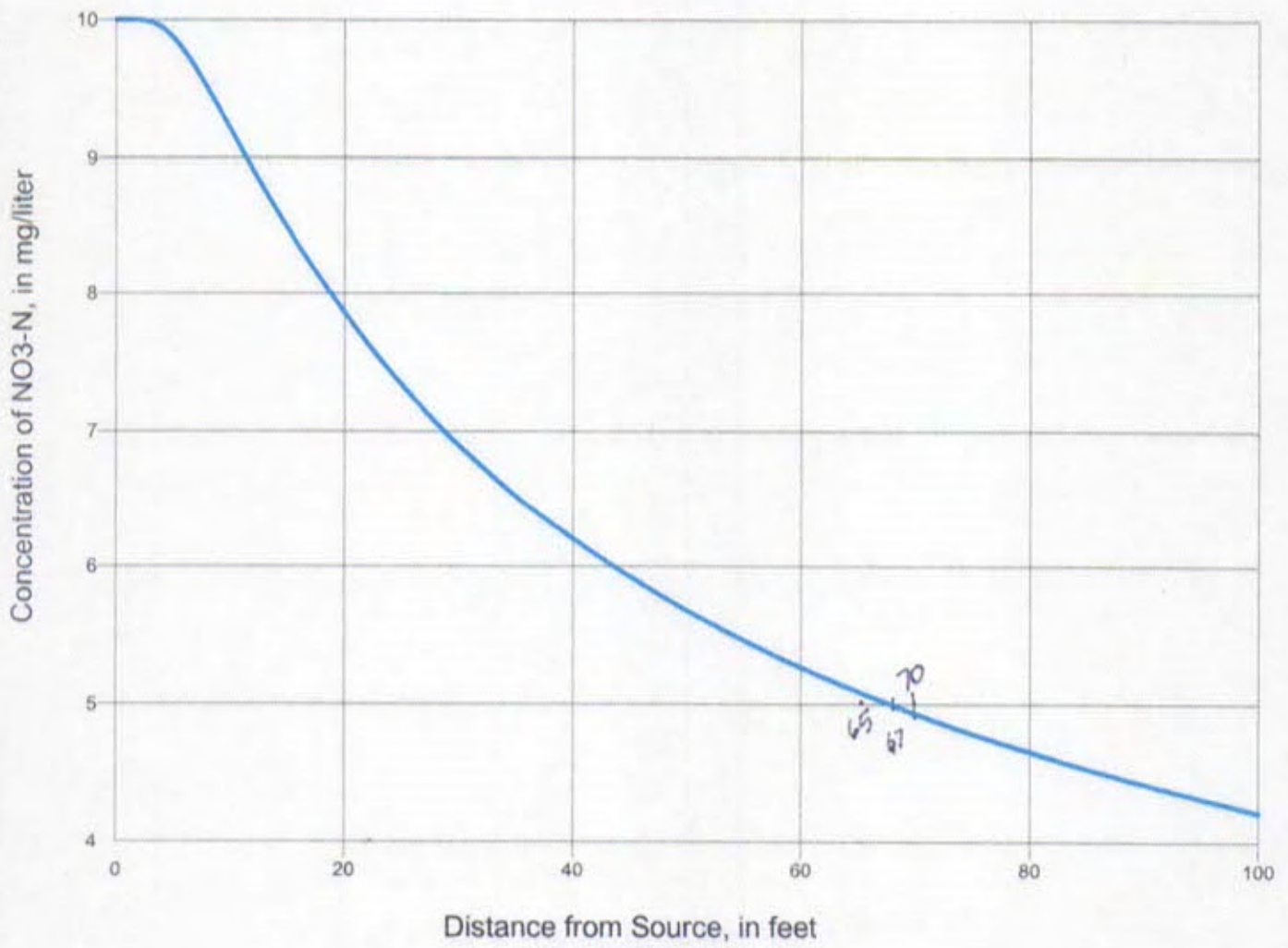
Improved piezometer location information allows for a more accurate depiction and analysis of the groundwater flow direction beneath the property. Entering the measured hydraulic gradient into the SOLUTRANS computer analysis allows for a more accurate depiction of the NO₃-N plume size and shape.

When plotted on the site plan, this increased accuracy reveals the proposed Engineered System meets the requirements of both the Subsurface Wastewater Disposal Rules and the Minimum Lot Size Law regarding groundwater meeting the Primary Drinking Water Standards at the property boundary.



Mark Cenci, LG #467, LSE # 262

NO₃-N vs Distance from Source



1" = 50'

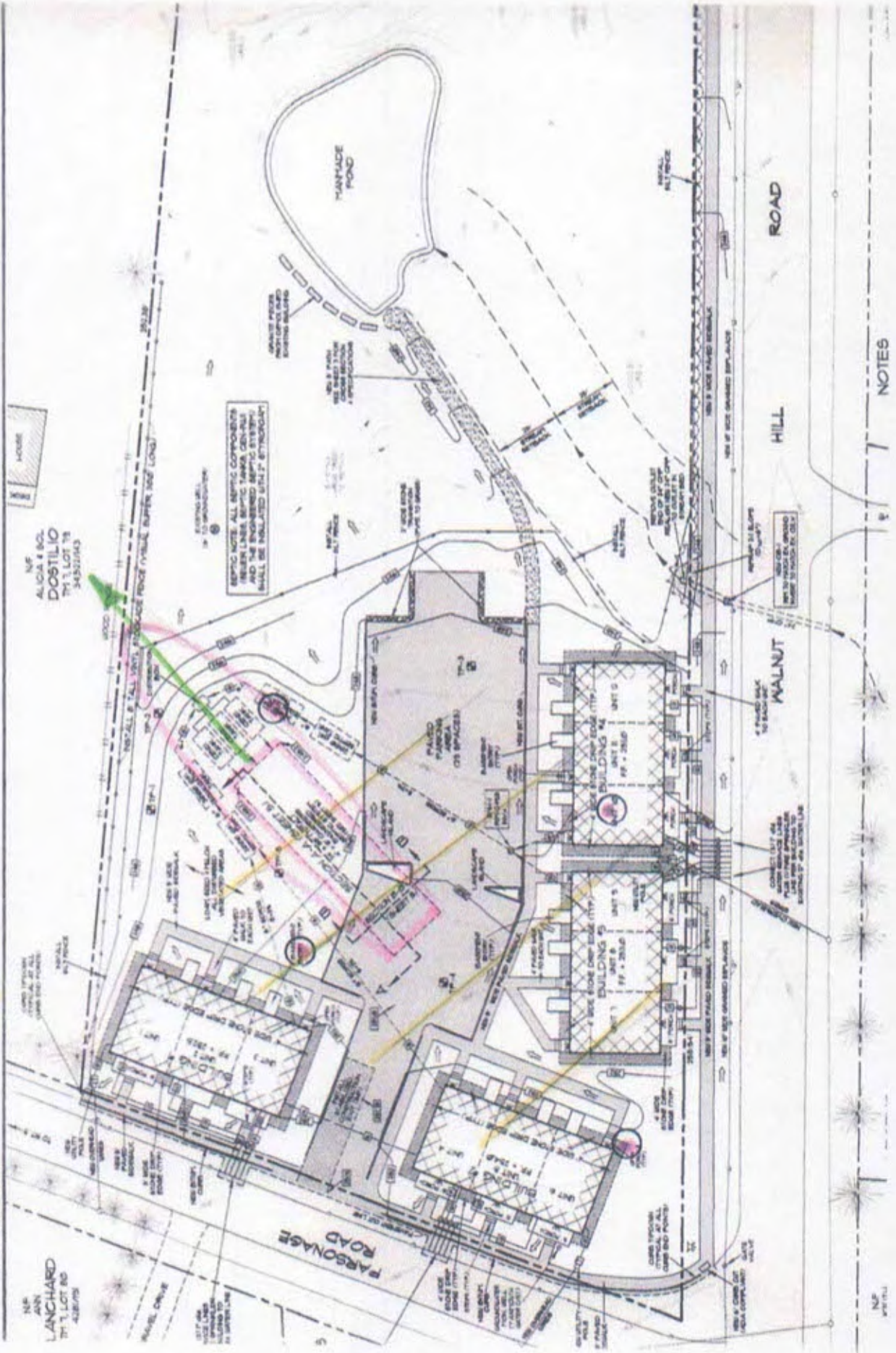
11-29-22
L.A. #467

PIEZOMETER

EQUIPOTENTIAL
LINE

GROUND WATER
FLOW DIRECTION

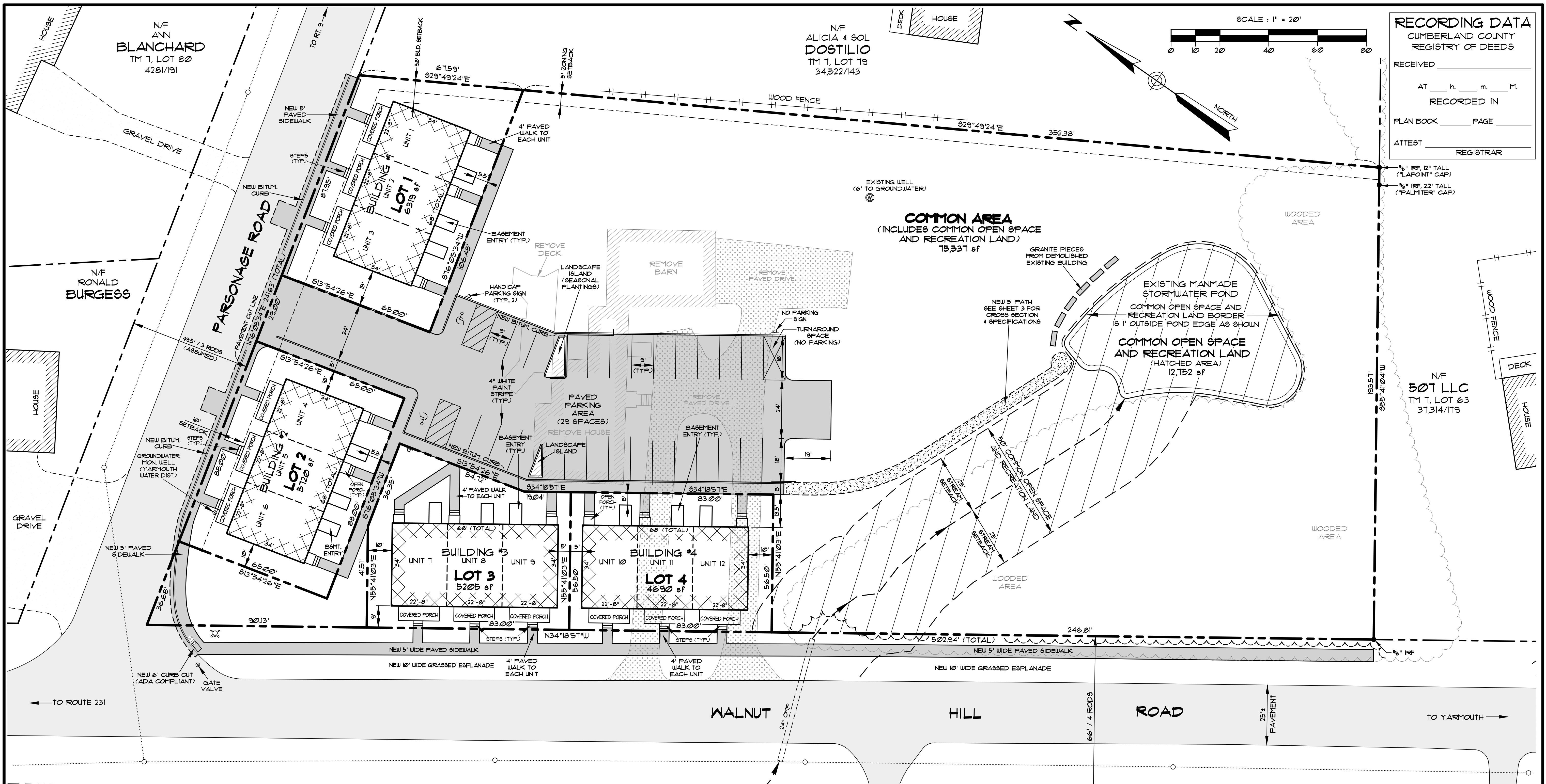
5 mg/l for
NO3-N PLUME



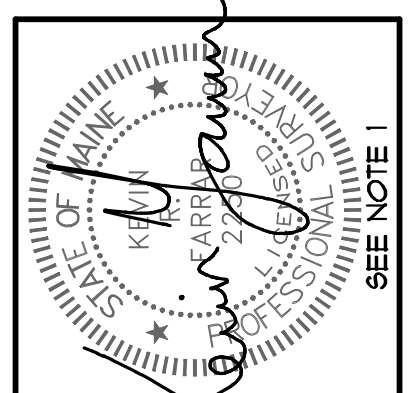
NOTES

NF
4/17/11

Remand Issue #5



RECORDING DATA
 CUMBERLAND COUNTY
 REGISTRY OF DEEDS
 RECEIVED _____
 AT _____ h. _____ m. _____ M.
 RECORDED IN _____
 PLAN BOOK _____ PAGE _____
 ATTEST _____ REGISTRAR



1	5/1/2023	SJR	2-28-2023	SUBMITTAL TO TOWN
2	5/1/2023	SJR	11-25-2022	ADD COMMON OPEN SPACE & RECREATION LAND
3	5/1/2023	SJR	9-26-2022	ADD CONDITIONS OF APPROVAL
4	5/1/2023	SJR	8-27-2022	RELOCATE WALNUT HILL ROAD SIDEWALK
5	5/1/2023	SJR	1-16-2022	ADD STOCKADE FENCE
REV.	BY:	DATE:	CHANGES:	

SJR ENGINEERING, INC.
 16 THURSTON DRIVE
 MONMOUTH MAINE 04259
 (207) 242-6248 tel
 steve@sjreng.com

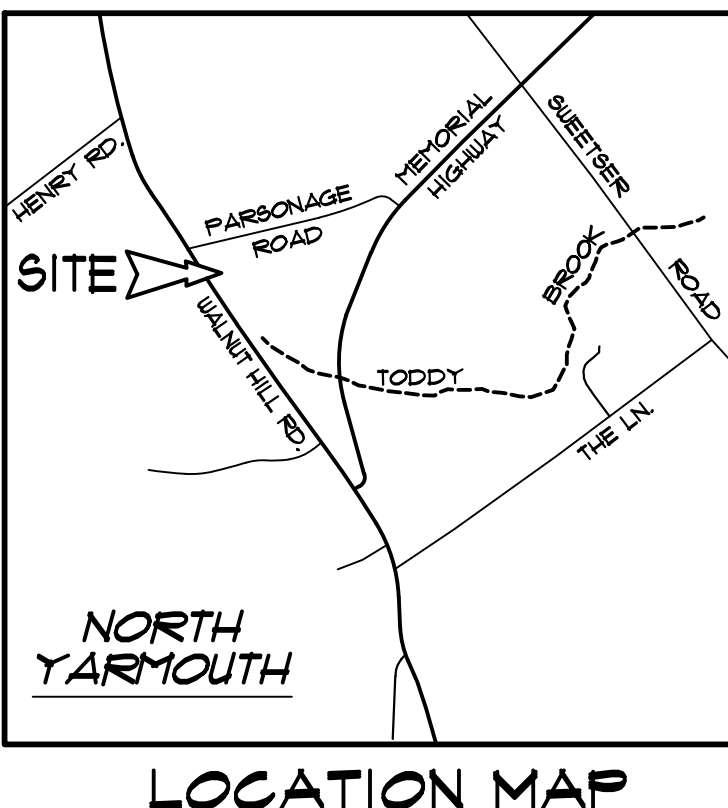
LOT AREAS
 LOT 1 TOTAL = 6319 sf, IMPERVIOUS AREA = 3174 sf (50.2%)
 LOT 2 TOTAL = 5120 sf, IMPERVIOUS AREA = 3301 sf (64.5%)
 LOT 3 TOTAL = 5205 sf, IMPERVIOUS AREA = 3058 sf (58.8%)
 LOT 4 TOTAL = 4690 sf, IMPERVIOUS AREA = 2943 sf (62.8%)
 COMMON AREA = 15531 sf, IMPERVIOUS AREA = 13036 sf (84.0%)

ZONING REQUIREMENTS
VILLAGE CENTER ZONING DISTRICT
 MINIMUM LOT SIZE = 1 ACRE (REDUCED TO UNDER 20,000 sf PER SECTION 7, TABLE 12, SUBSCRIPT 4B OF THE NORTH YARMOUTH LAND USE ORDINANCE)
 STREET FRONTAGE = 10' - 100'
 STRUCTURE SETBACKS
 FRONT = 0' - 20' max.
 SIDE = 25' max., REAR = 5' min.
 MAXIMUM STRUCTURE HEIGHT = 3 STORY, 50' max.

SITE TABULATIONS
 DEVELOPED PARCEL AREA = 91,411 sq. ft. / 2.24 ACRES
EXISTING
 BUILDING = 3,530 sf
 PAVEMENT/PORCHES = 5,340 sf
 IMPERVIOUS AREA = 9,470 sf (9.7%)
 GREEN SPACE = 88,001 sf (90.3%)
PROPOSED
 BUILDINGS/PORCHES/STEPS/BULKHEADS = 11,340 sf
 PAVEMENT/SIDEWALKS = 14,070 sf
 IMPERVIOUS AREA = 25,410 sf (26.1%)
 GREEN SPACE = 72,053 sf (73.9%)
 23 PARKING SPACES (INCLUDES 2 HANDICAP)

LEGEND

---	BOUNDARY LINE (SUBJECT PARCELS)
---	BOUNDARY LINE (OTHER)
N/F	NOW OR FORMERLY
35200/356	BOOK AND PAGE NUMBER
⊕	EXISTING HYDRANT
⊖	EXISTING WATER SHUT OFF
⊙	EXISTING UTILITY POLE WITH OVERHEAD WIRES
○	EXISTING TREE LINE
▨	EXISTING BUILDING (TO BE REMOVED)
▩	EXISTING BUILDING (ABUTTER)
▧	PROPOSED BUILDING
▦	EXISTING PAVEMENT
▤	PROPOSED PAVEMENT
▥	EXISTING PAVEMENT TO BE REMOVED



- NOTES**
- THIS CERTIFICATION IS LIMITED TO THE CREATION OF LOTS 1-4 AND THE COMMON AREA LOCATED WITHIN THE BOUNDARY LINES AS SHOWN ON A PLAN ENTITLED "BOUNDARY AND EXISTING CONDITIONS SURVEY MADE FOR ATLANTIC RESOURCE CONSULTANTS OF PROPERTY OF MAINE CAPITAL MORTGAGE, LLC", DATED MAY 6, 2021, PREPARED BY HORIZONS ENGINEERING. THESE LOTS AND COMMON AREA MEET THE MINIMUM LOT SIZE REQUIREMENTS OF SECTION 7, TABLE 12, SUBSCRIPT 4B OF THE NORTH YARMOUTH LAND USE ORDINANCE. FULL INDEPENDENT DEED RESEARCH WAS NOT PERFORMED AND PROPERTY CORNER MARKERS WERE NOT SET, THEREFORE THIS PLAN DOES NOT FULLY CONFORM TO THE STANDARDS OF PRACTICE OF THE MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS.
 - ALL BOOK AND PAGE NUMBERS REFER TO THE CUMBERLAND COUNTRY REGISTRY OF DEEDS.
 - OWNER OF RECORD - 527 LLC
DEED REFERENCE - BOOK 38201, PAGE 160
TAX MAP T, LOT 62
 - THE LOCATION, DEPTH, SIZE & EXISTENCE OF UNDERGROUND UTILITY LINES, TANKS AND/OR STRUCTURES WAS NOT VERIFIED. CONTRACTOR SHALL CONTACT DIGSAFE/ON-TARGET PRIOR TO EXCAVATION TO CONFIRM THE LOCATION OF ALL PUBLIC & PRIVATE UTILITIES WITHIN THE PROJECT AREA.
 - THE PARCEL IS LOCATED IN THE VILLAGE CENTER ZONING DISTRICT AND THE GROUNDWATER PROTECTION OVERLAY ZONE.
 - THE PARCEL IS NOT LOCATED WITHIN A 100-YEAR FLOOD HAZARD AREA AS SHOWN ON THE FEMA FLOOD INSURANCE RATE MAP, PANEL 230202 0010B, DATED JULY 16, 1991.
 - ON-SITE UTILITY LOCATIONS TO BE DETERMINED BY THE UTILITY AUTHORITY.
 - SEE WETLAND DELINEATION REPORT DATED MAY 26, 2021 AND SEPTIC DESIGN ON H-200 FORM 18 DATED MARCH 9, 2022, BOTH BY MARK CENSI ASSOCIATES.

N/F
 JONATHAN & GINA
LAMARCHE
 TM 7, LOT 40
 35,924/220

APPROVAL
 APPROVED BY THE TOWN OF NORTH YARMOUTH PLANNING BOARD

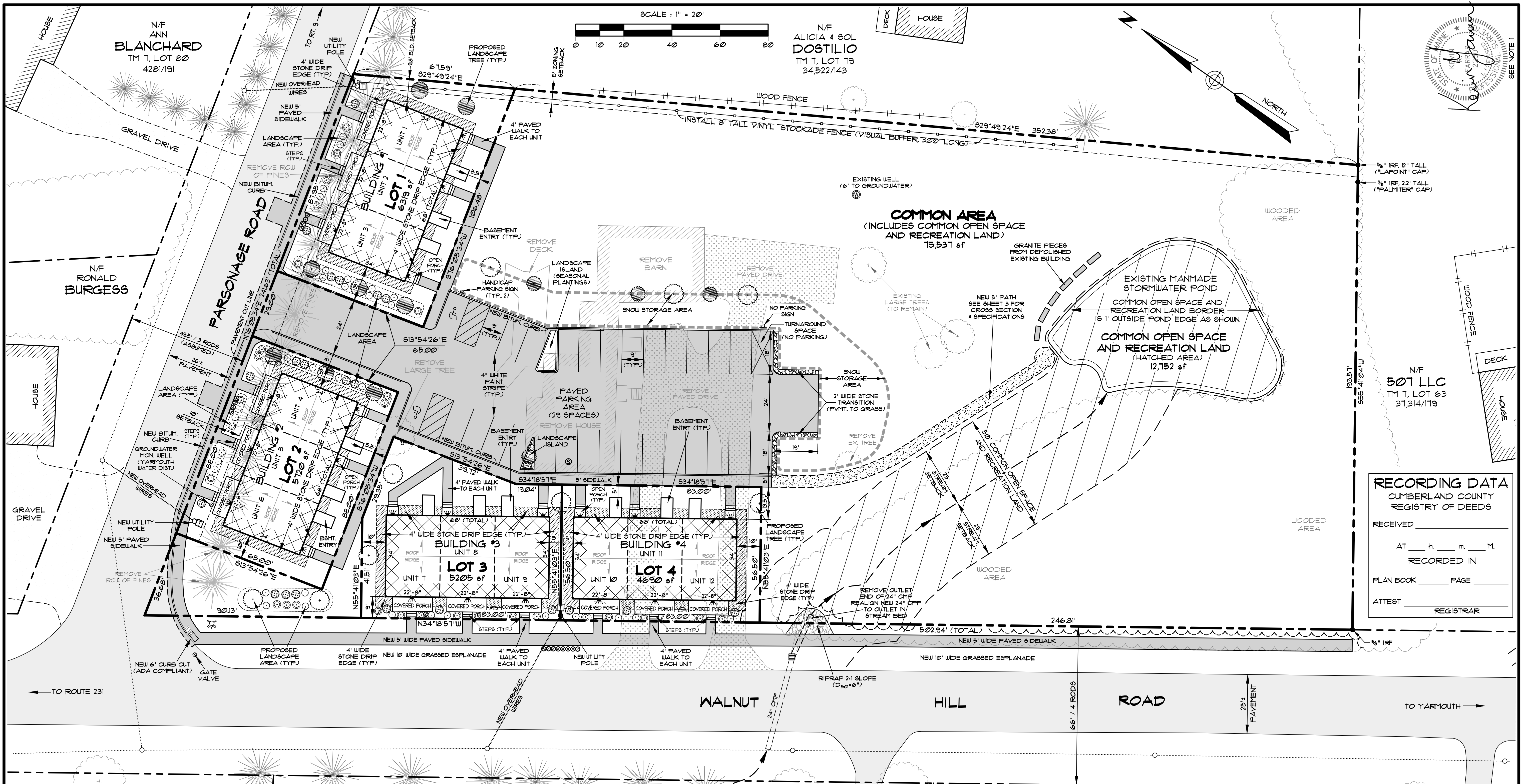
 CHAIRMAN

DATE _____

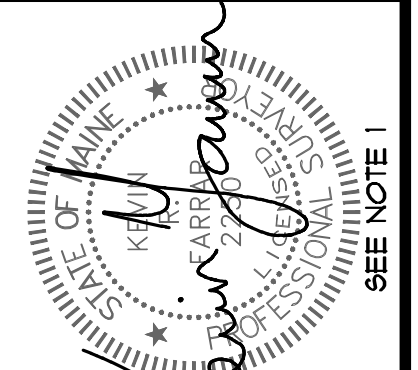
AMENDED SUBDIVISION PLAN
DEACON HAYES COMMONS
 521 WALNUT HILL ROAD - NORTH YARMOUTH MAINE
 OWNER OF RECORD
527 LLC
 865 OAK HILL ROAD - NORTH YARMOUTH, ME

DATE	PROJECT
6-28-2022	2022-12
DRAWN BY	SCALE
SJR	1" = 20'

SHEET SUB-1



N/F ALICIA & SOL DOSTILIO
TM 1, LOT 19
34,522/143



FOR APPROVALS ONLY

RECORDING DATA
CUMBERLAND COUNTY
REGISTRY OF DEEDS

RECEIVED _____
AT _____ h _____ m _____ A.
RECORDED IN _____
PLAN BOOK _____ PAGE _____
ATTEST _____ REGISTRAR

LOT AREAS

LOT 1 TOTAL = 6319 sf, IMPERVIOUS AREA = 3174 sf (50.2%)
LOT 2 TOTAL = 5120 sf, IMPERVIOUS AREA = 3201 sf (62.5%)
LOT 3 TOTAL = 5205 sf, IMPERVIOUS AREA = 3058 sf (58.9%)
LOT 4 TOTAL = 4690 sf, IMPERVIOUS AREA = 2943 sf (62.8%)
COMMON AREA = 15,531 sf, IMPERVIOUS AREA = 13,036 sf (84.0%)

SITE TABULATIONS

DEVELOPED PARCEL AREA = 91,471 sq. ft. / 2.24 ACRES

EXISTING

BUILDING = 3,530 sf
PAVEMENT/PORCHES = 5,940 sf
IMPERVIOUS AREA = 9,470 sf (9.1%)
GREEN SPACE = 88,001 sf (90.3%)

PROPOSED

BUILDINGS/PORCHES/STEPS/BULKHEADS = 11,340 sf
PAVEMENT/SIDEWALKS = 14,078 sf
IMPERVIOUS AREA = 25,418 sf (26.1%)
GREEN SPACE = 12,053 sf (13.9%)

LANDSCAPE LEGEND

	NEW MAPLE
	NEW BIRCH
	LANDSCAPING AREA - MIX OF FOUNTAIN GRASS, HOSTA, DIANTHUS, COSMOS & CORAL HONEYSUCKLE

ZONING REQUIREMENTS
VILLAGE CENTER ZONING DISTRICT

MINIMUM LOT SIZE = 1 ACRE (REDUCED TO UNDER 20,000 sf PER SECTION 1, TABLE 12, SUBSCRIPT 4B OF THE NORTH YARMOUTH LAND USE ORDINANCE)

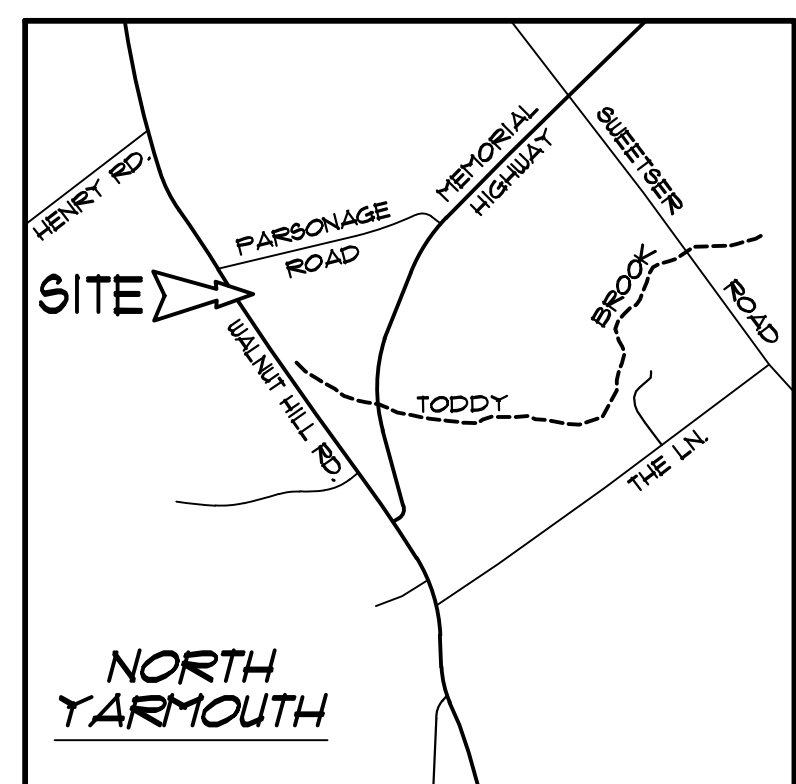
STREET FRONTAGE = 18' - 100'

STRUCTURE SETBACKS -
FRONT = 20'-20' max.
SIDE = 25' max.
REAR = 5' min.

MAXIMUM STRUCTURE HEIGHT = 3 STORY, 50' max.

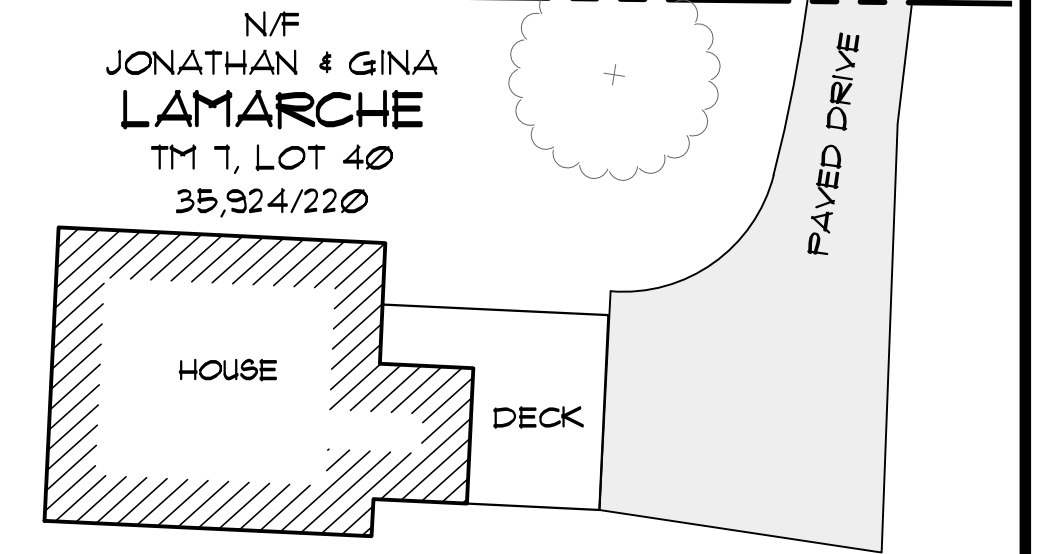
LEGEND

	BOUNDARY LINE (SUBJECT PARCEL)
	BOUNDARY LINE (OTHER)
	NOW OR FORMERLY BOOK AND PAGE NUMBER
	EXISTING HYDRANT
	EXISTING WATER SHUT OFF
	EXISTING UTILITY POLE WITH OVERHEAD WIRES
	PROPOSED CATCH BASIN
	PROPOSED TRANSFORMER PAD
	NEW WALL MOUNTED EXTERIOR LIGHT
	EXISTING TREE LINE (TO REMAIN)
	EXISTING BUILDING (TO BE REMOVED)
	EXISTING BUILDING (ABUTTER)
	PROPOSED BUILDING
	EXISTING PAVEMENT
	PROPOSED PAVEMENT
	EXISTING PAVEMENT TO BE REMOVED



NOTES

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- OWNER OF RECORD - 527 LLC
DEED REFERENCE - BOOK 38202, PAGE 160
TAX MAP 1, LOT 62
- EXISTING CONDITIONS ARE BASED ON A PLAN ENTITLED "WALNUT HILL ROAD DEVELOPMENT - TOWNHOUSES SITE LAYOUT", DATED AUGUST 15, 2021, PREPARED BY ATLANTIC RESOURCE CONSULTANTS.
- THE LOCATION, DEPTH SIZE & EXISTENCE OF UNDERGROUND UTILITY LINES, TANKS AND/OR STRUCTURES WAS NOT VERIFIED. CONTRACTOR SHALL CONTACT DIGSAFE/ON-TARGET PRIOR TO EXCAVATION TO CONFIRM THE LOCATION OF ALL PUBLIC & PRIVATE UTILITIES WITHIN THE PROJECT AREA.
- THE PARCEL IS LOCATED IN THE VILLAGE CENTER ZONING DISTRICT AND THE GROUNDWATER PROTECTION OVERLAY ZONE.
- THE PARCEL IS NOT LOCATED WITHIN A 100-YEAR FLOOD HAZARD AREA AS SHOWN ON THE FEMA FLOOD INSURANCE RATE MAP, PANEL 123020202020B, DATED JULY 16, 1981.
- ON-SITE UTILITY LOCATIONS TO BE DETERMINED BY THE UTILITY AUTHORITY.
- SEE WETLAND DELINEATION REPORT DATED MAY 26, 2021 AND SEPTIC DESIGN ON HIE-200 FOR 19 DATED MARCH 9, 2022, BOTH BY MARK GENSL ASSOCIATES.



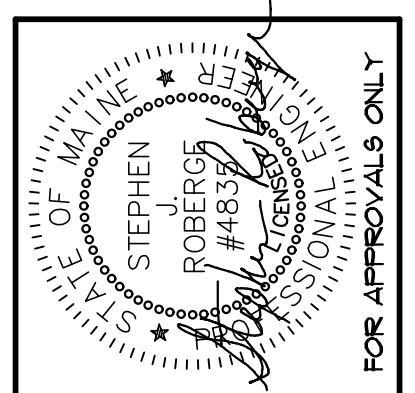
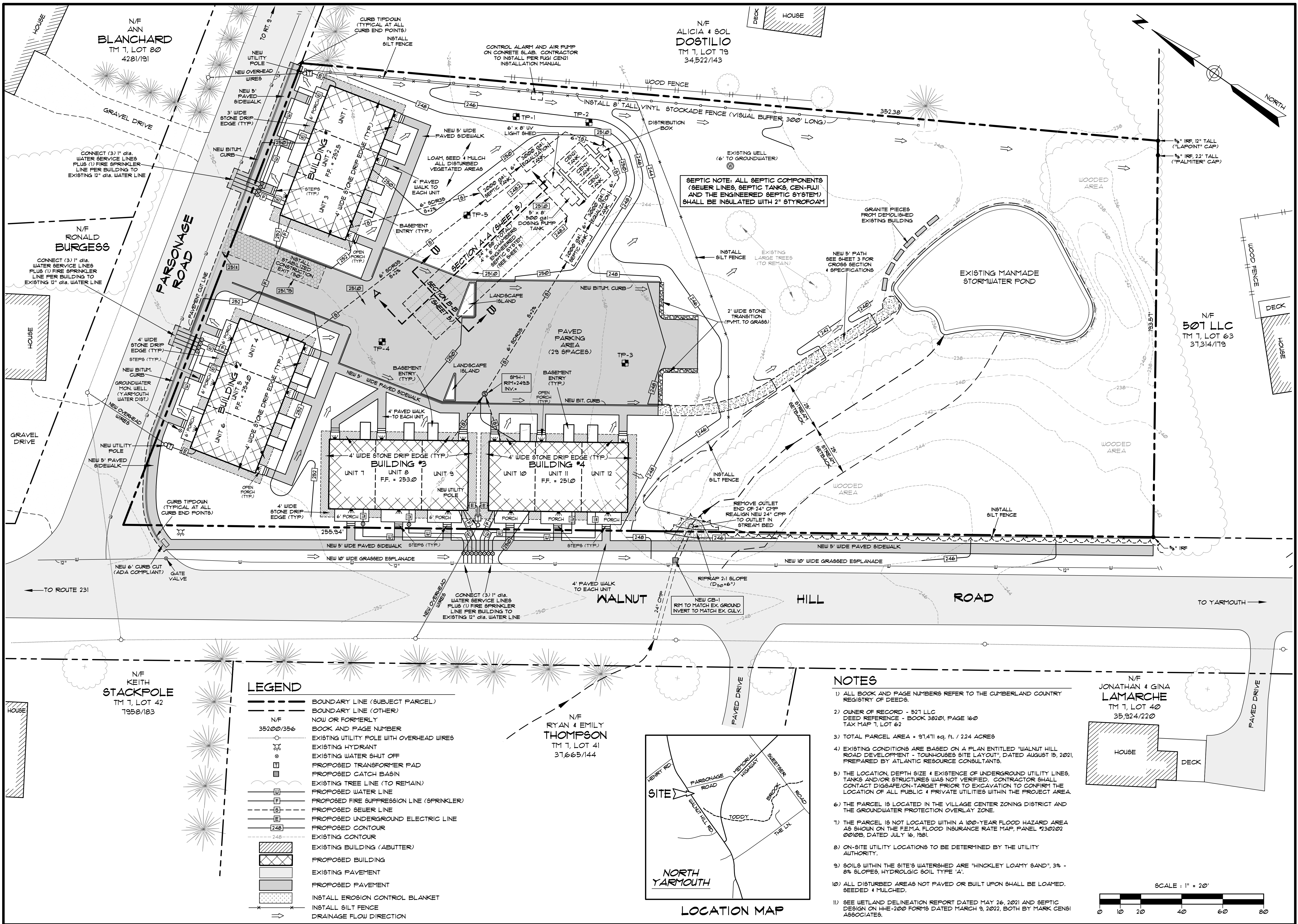
APPROVAL

APPROVED BY THE TOWN OF NORTH YARMOUTH PLANNING BOARD

DATE _____ PROJECT _____
FEB. 2022 2022-12
DRAWN BY _____ SCALE _____
SJR 1" = 20'
DATE _____ CHAIRMAN _____

SJR ENGINEERING, INC.
16 THURSTON DRIVE
MONMOUTH MAINE 04253
(207) 242-6248
steves@sjeing.com

AMENDED SITE & DEMOLITION PLAN
DEACON HAYES COMMONS
527 WALNUT HILL ROAD - NORTH YARMOUTH MAINE
OWNER OF RECORD
527 LLC
865 OAK HILL ROAD - NORTH YARMOUTH, ME



REV.	DATE	BY	DESCRIPTION
14	6-28-2022	SJR	RELOCATE PROpane TANKS, ADD STOCKADE FENCE
9	1-16-2022	SJR	RELOCATE PROpane TANKS, ADD STOCKADE FENCE
10	1-27-2022	SJR	RELOCATE WALNUT HILL RD. SIDEWALK, NEW SEPTIC
11	8-21-2022	SJR	RELOCATE WALNUT HILL RD. SIDEWALK, NEW SEPTIC
12	9-22-2022	SJR	CHANGES TO SEPTIC SYSTEM LAYOUT, ADD TP-5
13	11-18-2022	SJR	ADJUST L.V. SHED, 4 DOSING TANKS TO SEPTIC SYSTEM
14	2-28-2023	SJR	REVISIONS TO TOWN

SJR ENGINEERING, INC.
 16 THURSTON DRIVE
 MONMOUTH, MAINE 04259
 (207) 242-6248
 sjr@sjr-engineering.com

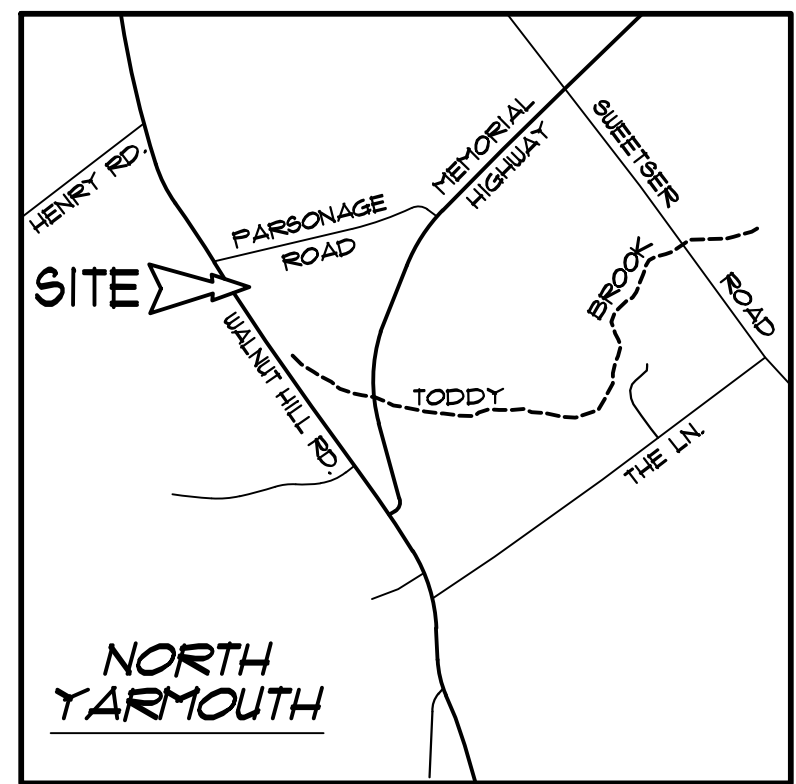
GRADING & EROSION CONTROL PLAN
DEACON HAYES COMMONS
 527 WALNUT HILL ROAD - NORTH YARMOUTH MAINE
 PREPARED FOR
527 LLC
 865 OAK HILL ROAD - NORTH YARMOUTH, ME

DATE	PROJECT
FEB. 2022	2022-12
DRAWN BY	SCALE
SJR	1" = 20'

SHEET 2

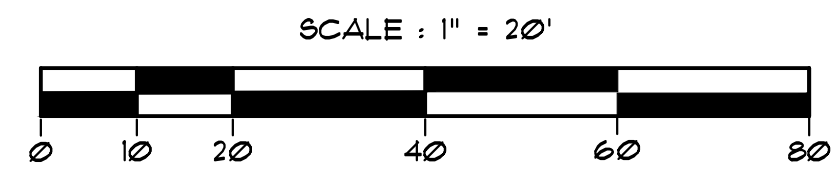
NOTES

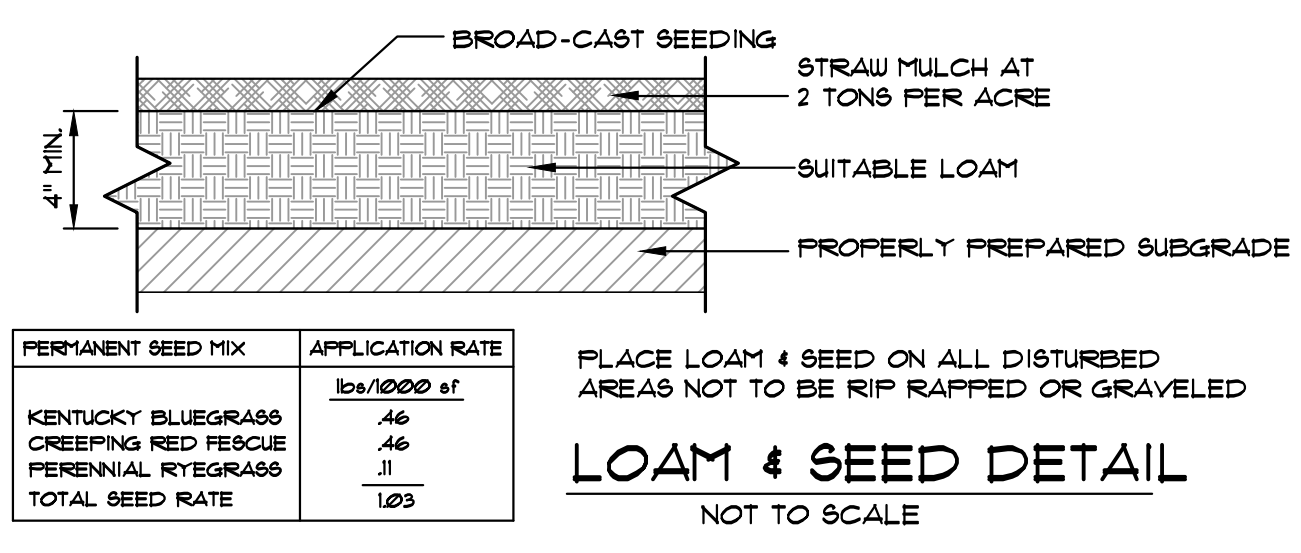
- 1) ALL BOOK AND PAGE NUMBERS REFER TO THE CUMBERLAND COUNTRY REGISTRY OF DEEDS.
- 2) OWNER OF RECORD - 527 LLC
DEED REFERENCE - BOOK 38201, PAGE 160
TAX MAP T, LOT 62
- 3) TOTAL PARCEL AREA = 91,471 sq. ft. / 2.24 ACRES
- 4) EXISTING CONDITIONS ARE BASED ON A PLAN ENTITLED "WALNUT HILL ROAD DEVELOPMENT - TOWNHOUSES SITE LAYOUT", DATED AUGUST 15, 2021, PREPARED BY ATLANTIC RESOURCE CONSULTANTS.
- 5) THE LOCATION, DEPTH SIZE & EXISTENCE OF UNDERGROUND UTILITY LINES, TANKS AND/OR STRUCTURES WAS NOT VERIFIED. CONTRACTOR SHALL CONTACT DIGSAFE/ON-TARGET PRIOR TO EXCAVATION TO CONFIRM THE LOCATION OF ALL PUBLIC & PRIVATE UTILITIES WITHIN THE PROJECT AREA.
- 6) THE PARCEL IS LOCATED IN THE VILLAGE CENTER ZONING DISTRICT AND THE GROUNDWATER PROTECTION OVERLAY ZONE.
- 7) THE PARCEL IS NOT LOCATED WITHIN A 100-YEAR FLOOD HAZARD AREA AS SHOWN ON THE FEMA FLOOD INSURANCE RATE MAP, PANEL 230202 0010B, DATED JULY 16, 1981.
- 8) ON-SITE UTILITY LOCATIONS TO BE DETERMINED BY THE UTILITY AUTHORITY.
- 9) SOILS WITHIN THE SITE'S WATERSHED ARE "HINCKLEY LOAMY SAND", 3% - 8% SLOPES, HYDROLOGIC SOIL TYPE 'A'.
- 10) ALL DISTURBED AREAS NOT PAVED OR BUILT UPON SHALL BE LOAMED, SEEDED & MULCHED.
- 11) SEE WETLAND DELINEATION REPORT DATED MAY 26, 2021 AND SEPTIC DESIGN ON HHE-200 FORMS DATED MARCH 9, 2022, BOTH BY MARK CENSI ASSOCIATES.



LEGEND

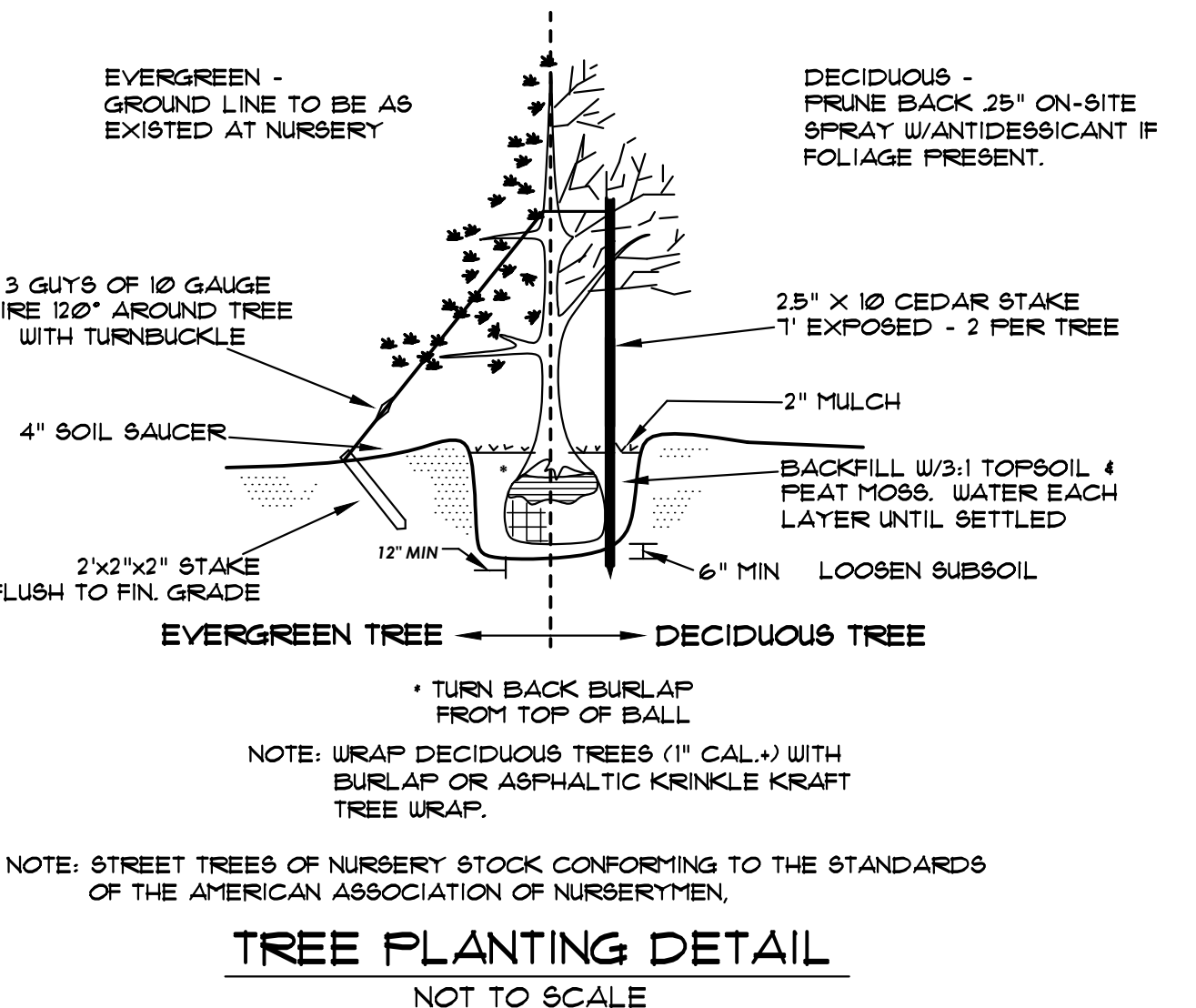
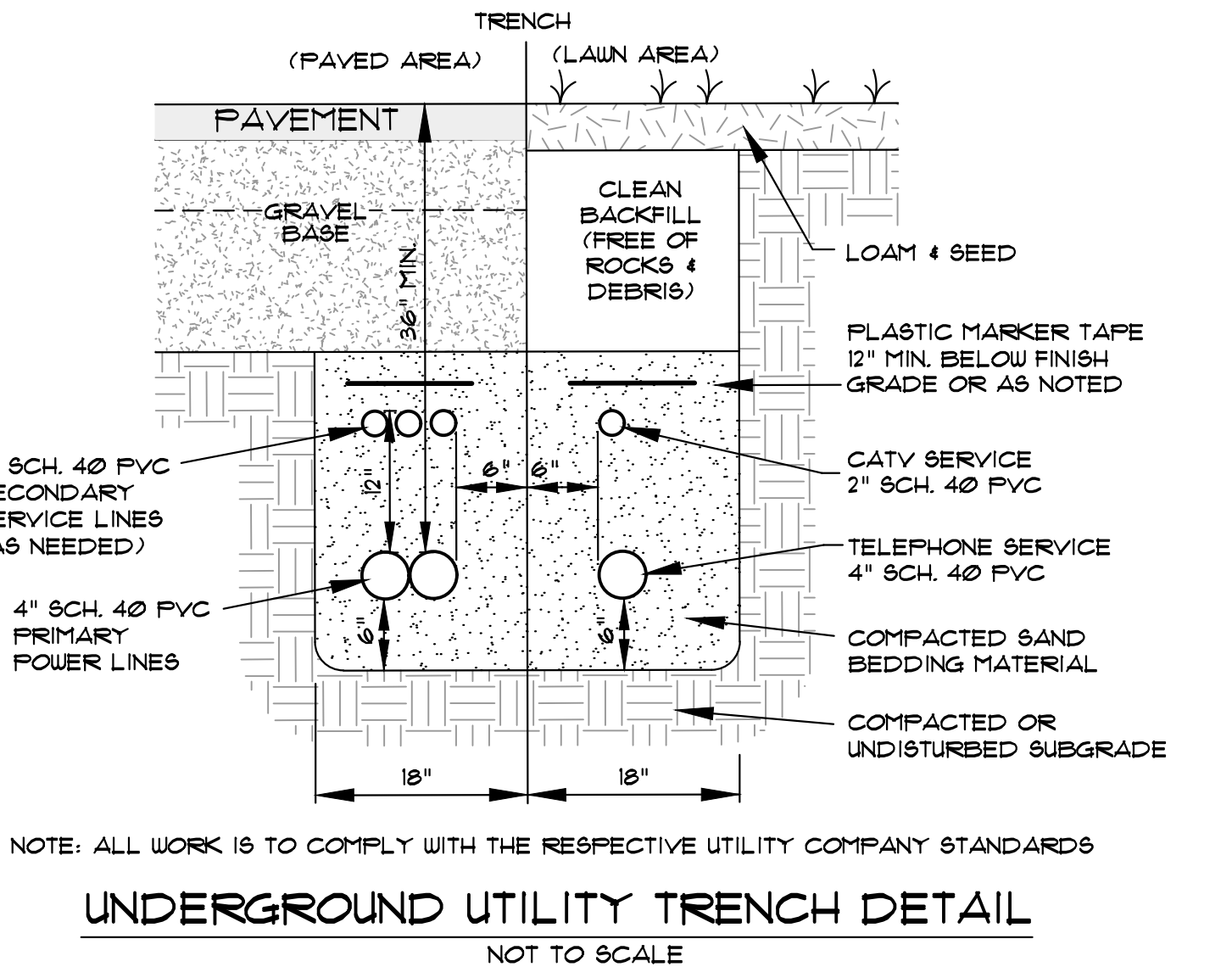
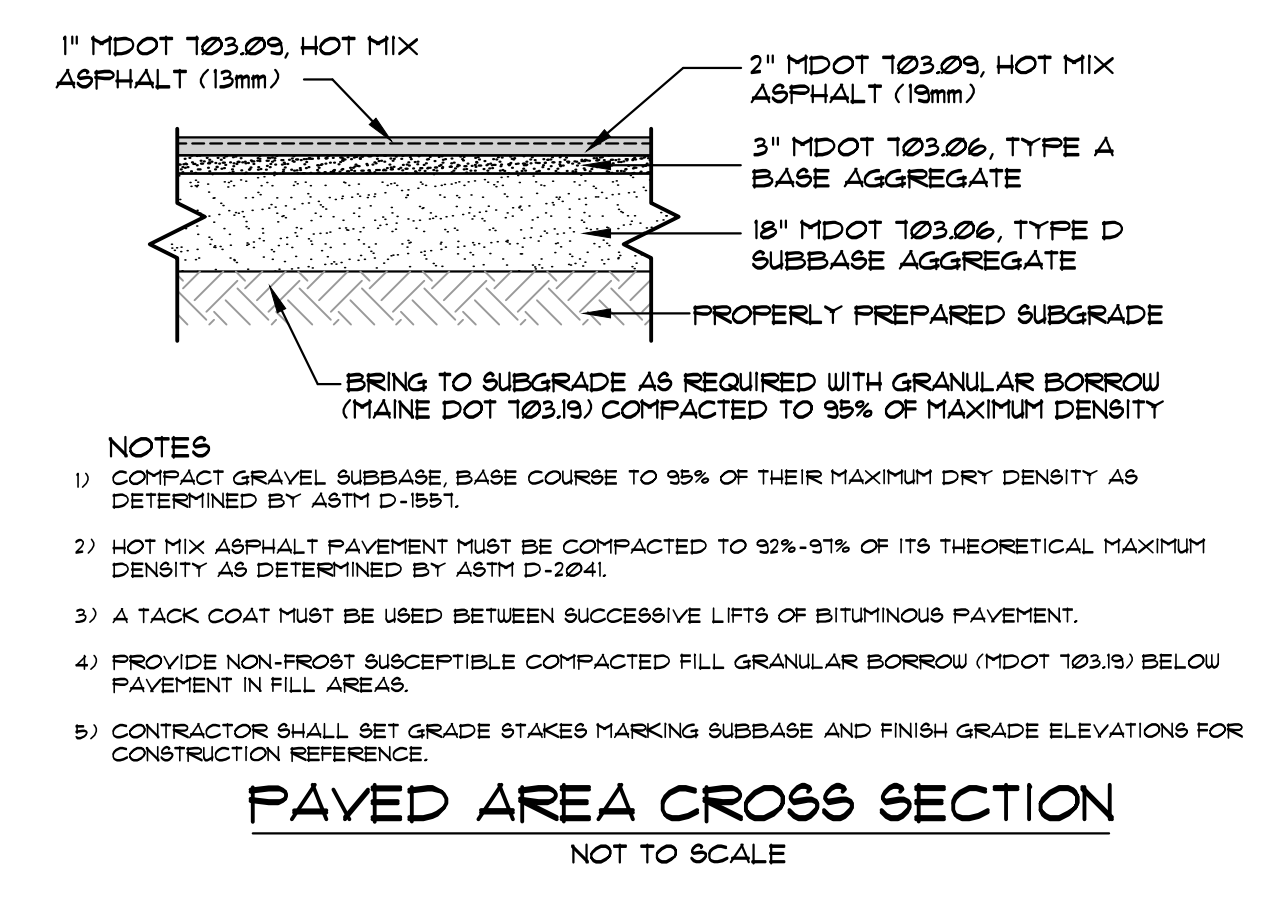
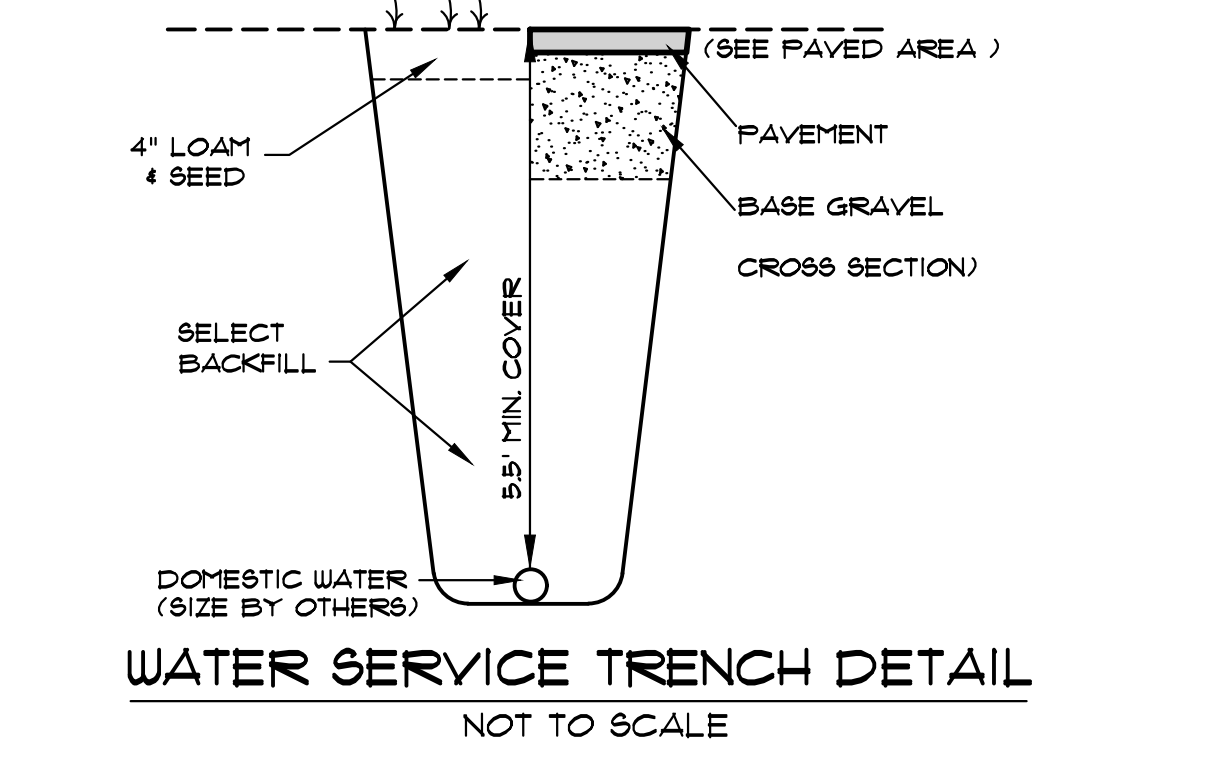
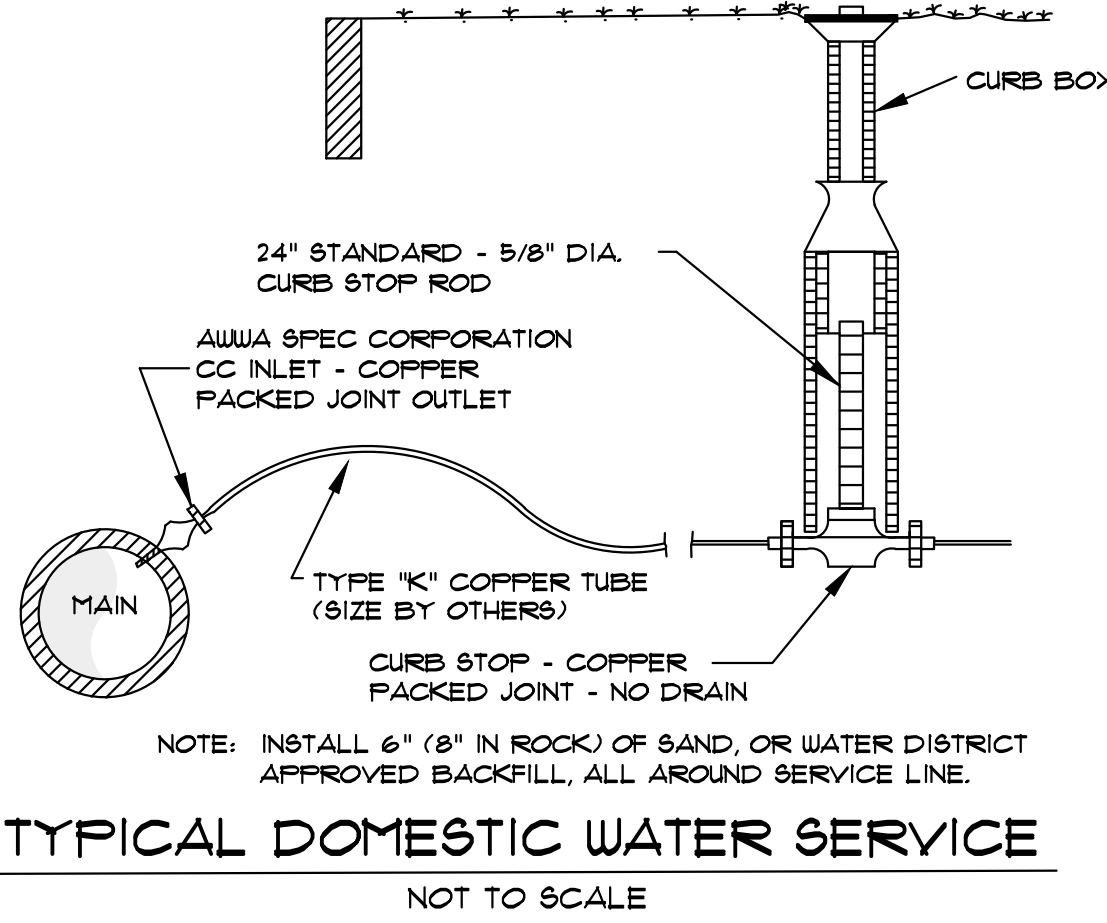
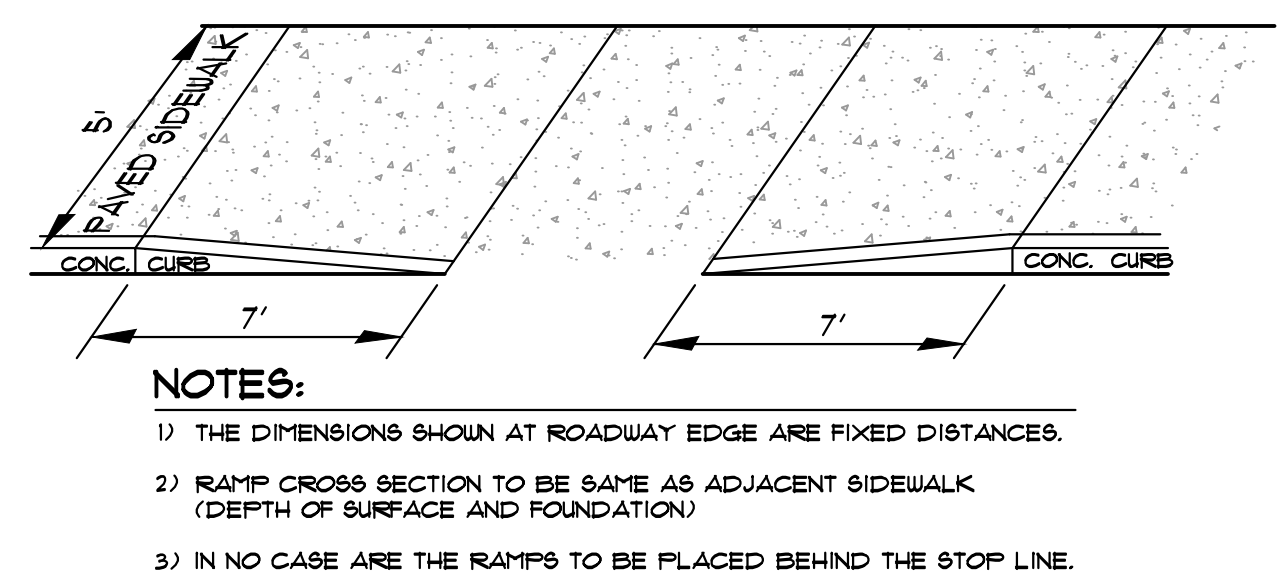
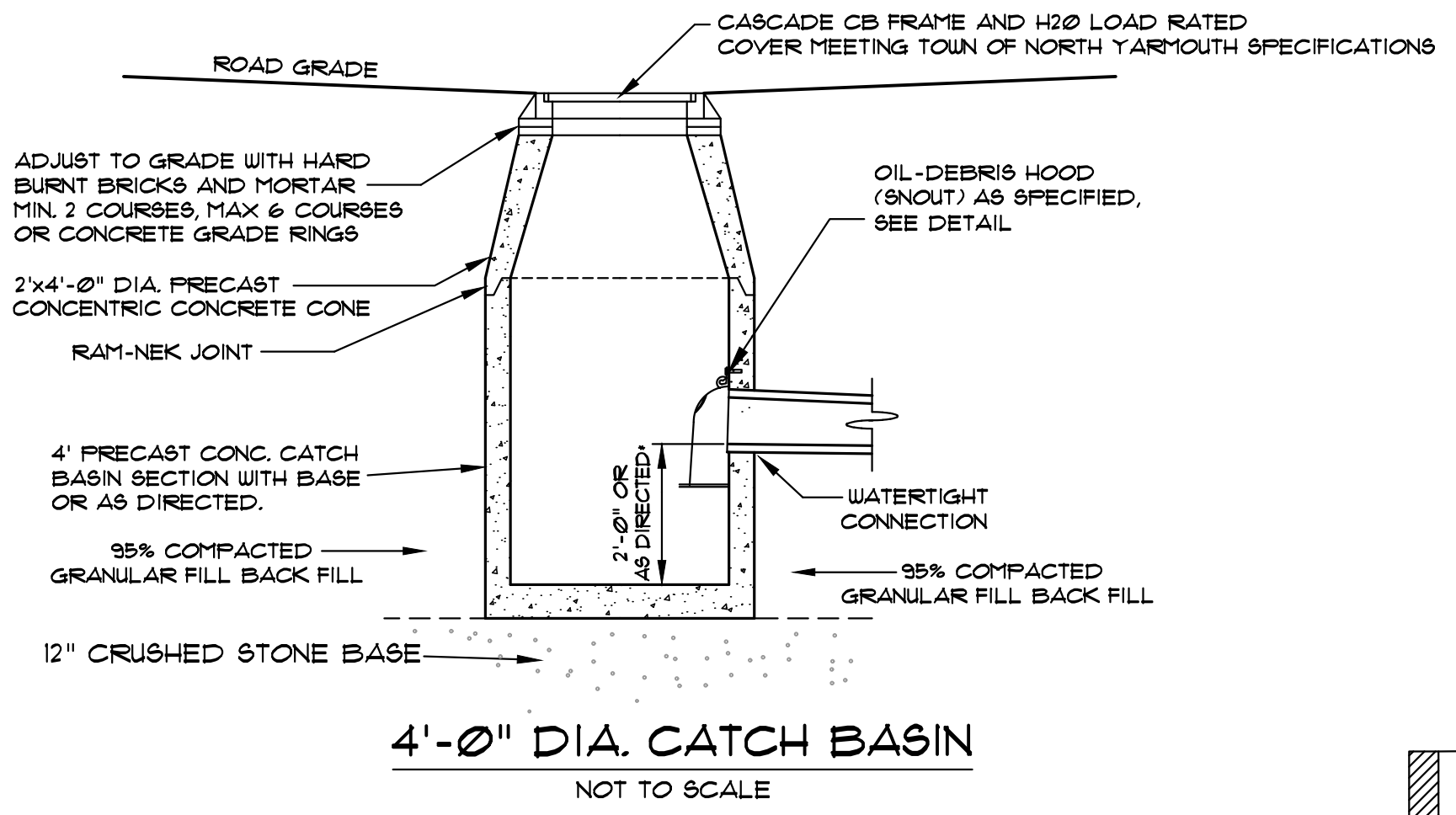
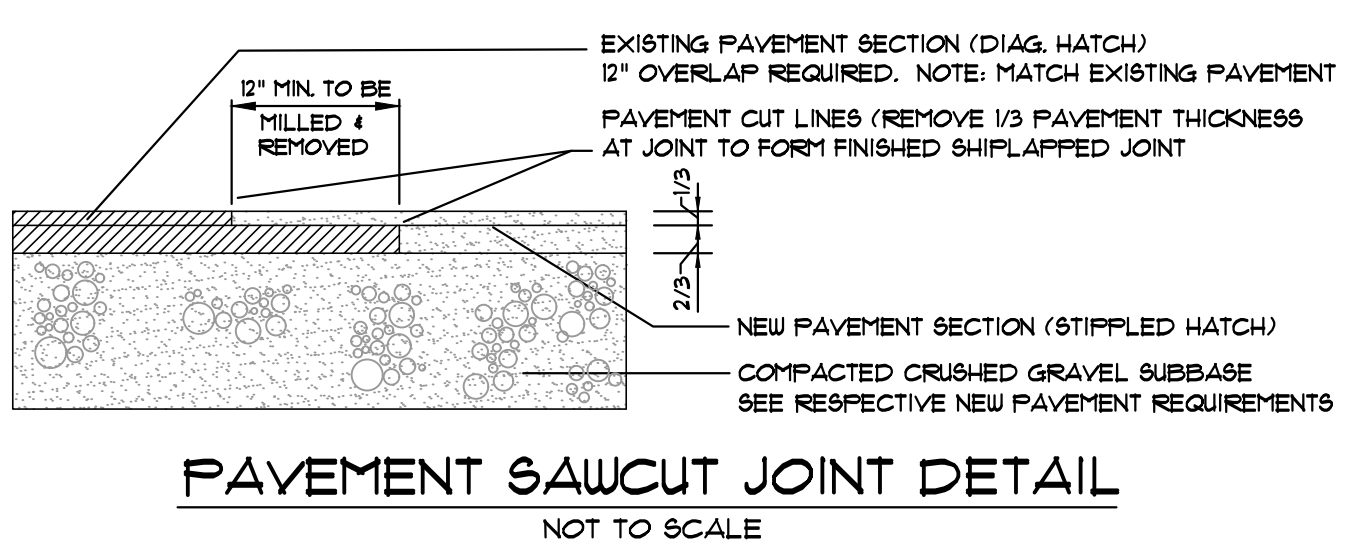
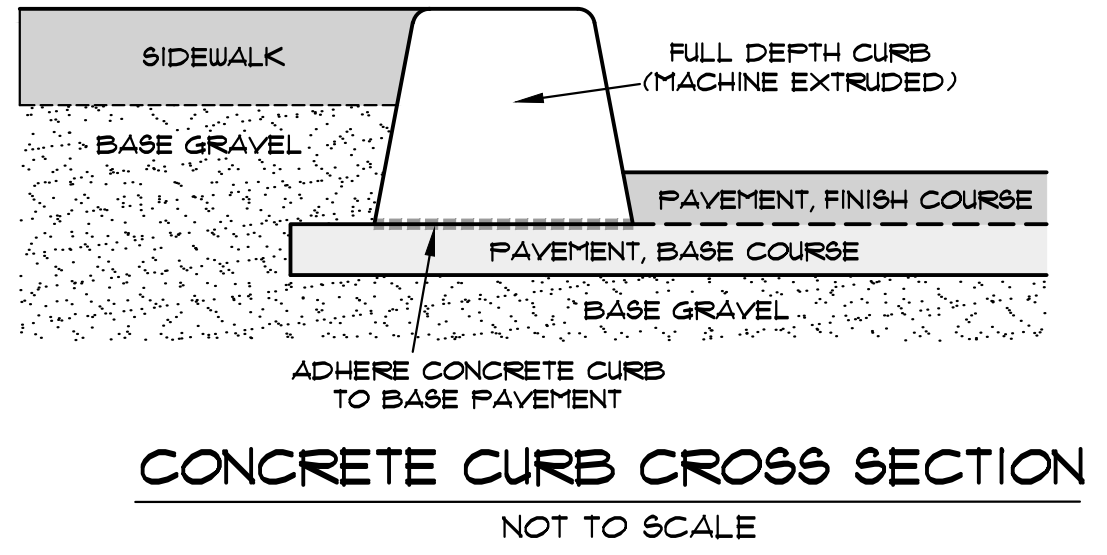
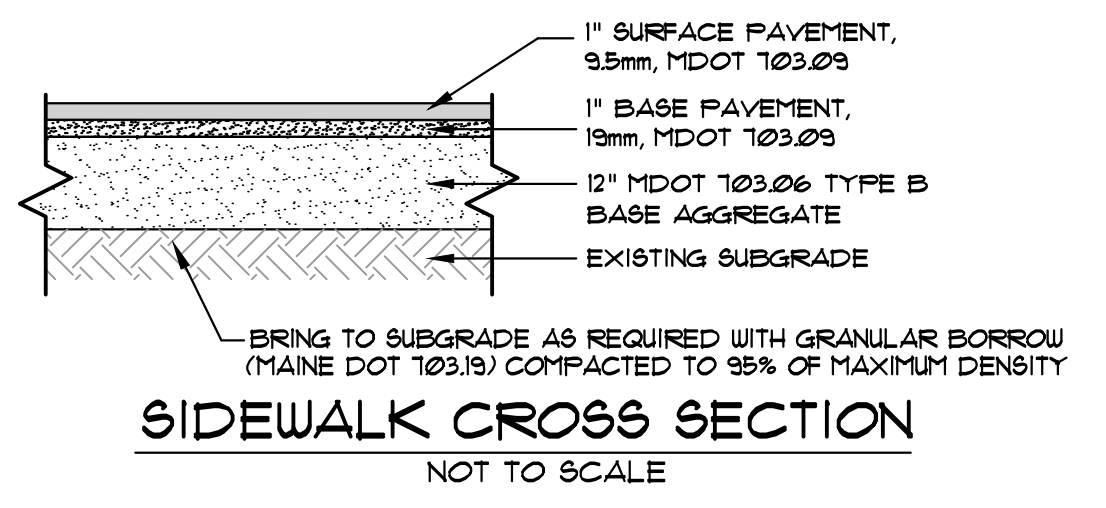
- BOUNDARY LINE (SUBJECT PARCEL)
- BOUNDARY LINE (OTHER)
- N/F 35200/356 BOOK AND PAGE NUMBER
- EXISTING UTILITY POLE WITH OVERHEAD WIRES
- EXISTING HYDRANT
- EXISTING WATER SHUT OFF
- PROPOSED TRANSFORMER PAD
- PROPOSED CATCH BASIN
- EXISTING TREE LINE (TO REMAIN)
- PROPOSED WATER LINE
- PROPOSED FIRE SUPPRESSION LINE (SPRINKLER)
- PROPOSED SEWER LINE
- PROPOSED UNDERGROUND ELECTRIC LINE
- 248 PROPOSED CONTOUR
- 248 EXISTING CONTOUR
- ▨ EXISTING BUILDING (ABUTTER)
- ▨ PROPOSED BUILDING
- ▨ EXISTING PAVEMENT
- ▨ PROPOSED PAVEMENT
- ▨ INSTALL EROSION CONTROL BLANKET
- ▨ INSTALL SILT FENCE
- DRAINAGE FLOW DIRECTION





PLACE LOAM & SEED ON ALL DISTURBED AREAS NOT TO BE RIP RAPPED OR GRAVELED

LOAM & SEED DETAIL
NOT TO SCALE



GENERAL NOTES

- SEE SHEET 1 FOR SITE SPECIFIC NOTES.
- THE CONTRACT WORK TO BE PERFORMED ON THIS PROJECT CONSISTS OF FURNISHING ALL REQUIRED LABOR, MATERIALS, EQUIPMENT, IMPLEMENTS, PARTS AND SUPPLIES NECESSARY FOR OR APPURTENANT TO, THE INSTALLATION OF CONSTRUCTION IMPROVEMENTS IN ACCORDANCE WITH THESE DRAWINGS AND AS FURTHER ELABORATED IN ANY ACCOMPANYING SPECIFICATIONS.
- THE WORK SHALL BE PERFORMED IN A THOROUGH WORKMANLIKE MANNER. ALL CONTRACTORS TO CONFORM TO ALL APPLICABLE OSHA STANDARDS, ANY REFERENCE TO A SPECIFICATION OR DESIGNATION OF THE AMERICAN SOCIETY FOR TESTING MATERIALS, FEDERAL SPECIFICATIONS, OR OTHER STANDARDS, CODES OR ORDERS, REFERS TO THE MOST RECENT OR LATEST SPECIFICATION OR DESIGNATION.
- ALL CONSTRUCTION WITHIN THE TOWN OF NORTH YARMOUTH RIGHT OF WAY SHALL COMPLY WITH CITY PUBLIC WORKS STANDARDS. ALL UTILITY CONSTRUCTION SHALL CONFORM TO RESPECTIVE UTILITY STANDARDS.
- THE OWNER IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS REQUIRED BY THE TOWN OF NORTH YARMOUTH PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL OBTAIN ALL NECESSARY PERMITS FROM THE CITY OF AUGUSTA AND/OR MDOT, REQUIRED TO PERFORM ALL THE WORK (STREET OPENINGS, BUILDING PERMIT, ETC.). THE CONTRACTOR SHALL POST ALL BONDS AS REQUIRED, PAY ALL FEES, PROVIDE PROOF OF INSURANCE AND PROVIDE TRAFFIC CONTROL NECESSARY FOR THIS WORK.
- PRIOR TO CONSTRUCTION, THE SITE CONTRACTOR IS TO INFORM ALL AREA UTILITY COMPANIES AND GOVERNMENTAL AGENCIES OF PLANNED CONSTRUCTION. THE SITE CONTRACTOR IS REQUIRED TO CONTACT DIG-SAFE (811) AT LEAST 3 BUSINESS DAYS PRIOR TO ANY EXCAVATION TO VERIFY ALL UNDERGROUND AND OVERHEAD UTILITY LOCATIONS.
- THE PROJECT DRAWINGS ARE GENERALLY SCHEMATIC AND INDICATE THE POSSIBLE LOCATION OF EXISTING UNDERGROUND UTILITIES. INFORMATION ON EXISTING UTILITIES HAS BEEN COMPILED FROM AVAILABLE INFORMATION INCLUDING UTILITY COMPANY MAPS, MUNICIPAL RECORD MAPS, AND FIELD SURVEY. IT IS NOT GUARANTEED TO BE CORRECT OR COMPLETE. UTILITIES ARE SHOWN TO ALERT THE CONTRACTOR TO THEIR PRESENCE. THE CONTRACTOR IS SOLELY RESPONSIBLE FOR DETERMINING ACTUAL LOCATIONS AND ELEVATIONS OF ALL UTILITIES, INCLUDING SERVICES, WHEN THOSE SERVICES ARE TO BE LEFT IN PLACE. THE CONTRACTOR IS TO PROVIDE ADEQUATE MEANS OF SUPPORT AND PROTECTION DURING THE EXCAVATING AND BACKFILLING OPERATIONS. SHOULD ANY UNCHARTED OR INCORRECTLY CHARTED UTILITIES BE FOUND, THE CONTRACTOR SHALL CONTACT THE DESIGN ENGINEER IMMEDIATELY FOR DIRECTIONS BEFORE PROCEEDING FURTHER WITH THE WORK IN THIS AREA.
- OSHA REGULATIONS MAKE IT UNLAWFUL TO OPERATE CRANES, BOOMS, HOISTS, ETC. WITHIN TEN FEET (10') OF ANY ELECTRIC LINE. IF THE CONTRACTOR MUST OPERATE CLOSER THAN 10', THE CONTRACTOR MUST CONTACT THE POWER COMPANY TO MAKE ARRANGEMENTS FOR PROPER SAFEGUARDS BEFORE ENDOUCHING ON THIS REQUIREMENT.
- IT IS THE CONTRACTOR'S RESPONSIBILITY TO EXAMINE ALL PLANS, APPROVALS, AND DETAILS FOR ADDITIONAL INFORMATION. THE CONTRACTOR SHALL VERIFY ALL THE SITE CONDITIONS IN THE FIELD AND CONTACT THE DESIGN ENGINEER IF THERE ARE ANY DISCREPANCIES REGARDING THE CONSTRUCTION DOCUMENTS AND/OR FIELD CONDITIONS SO THAT AN APPROPRIATE REVISION CAN BE MADE PRIOR TO BIDDING.
- ALTERNATIVE METHODS AND PRODUCTS OTHER THAN THOSE SPECIFIED MAY BE USED IF REVIEWED AND APPROVED IN WRITING BY THE OWNER, DESIGN ENGINEER, AND APPROPRIATE GOVERNMENTAL AGENCY PRIOR TO INSTALLATION.
- THE CONTRACTOR SHALL RESTORE ALL UTILITY STRUCTURES, PIPE, UTILITIES, PAVEMENT, CURBS, SIDEWALKS, AND LANDSCAPED AREAS DISTURBED BY CONSTRUCTION TO AS GOOD AS BEFORE BEING DISTURBED AS DETERMINED BY THE CITY OF AUGUSTA CEO. ANY DAMAGES SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.
- TRAFFIC CONTROL MEASURES SHALL BE UTILIZED IN ACCORDANCE WITH MAINE DOT STANDARDS. THE CONTRACTOR SHALL PROVIDE, MAINTAIN AND PROTECT TRAFFIC CONTROL DEVICES TO THE EXTENT REQUIRED BY LAW FOR THE PROTECTION OF THE PUBLIC CONSISTING OF DRUMS, BARRIERS, SIGNS, LIGHTS, FENCES, AND UNIFORMED TRAFFIC CONTROL PERSONNEL AS REQUIRED OR ORDERED BY THE DESIGN ENGINEER OR CODE ENFORCEMENT PERSONNEL. CONTRACTOR SHALL MAINTAIN ALL TRAFFIC LANES AND PEDESTRIAN WALKWAYS AT ALL TIMES UNLESS WRITTEN APPROVAL IS OBTAINED FROM THE TOWN. PAVEMENT MARKINGS SHALL BE FAST DRYING TYPE IN ACCORDANCE WITH MDOT SPECIFICATIONS. TWELVE INCH (12") WIDE STOP BAR AND FOUR INCH (4") WIDE STRIFES SHALL BE LOCATED AS SHOWN ON THE PLANS.
- THE CONTRACTOR SHALL PROVIDE SHOP DRAWINGS OF ALL PRODUCT, MATERIALS AND PLANT SPECIFICATIONS TO THE OWNER AND DESIGN ENGINEER FOR REVIEW AND APPROVAL PRIOR TO FABRICATION OR DELIVERY TO THE SITE. ALLOW A MINIMUM OF 10 WORKING DAYS FOR REVIEW.
- THE CONTRACTOR SHALL RETAIN AN INDEPENDENT TESTING LABORATORY FOR SOIL AND PAVEMENT MATERIALS AND COMPACTION TESTING AT NO COST TO THE OWNER. RESULTS OF THE TESTING ARE TO BE SUPPLIED TO THE OWNER. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COSTS ASSOCIATED WITH ANY RECONSTRUCTION AND RE-TESTING OF UNSATISFACTORY SOILS.
- ALL EXCAVATION SHALL BE BACKFILLED TO EXISTING GRADE BEFORE THE END OF THE DAY OR ADEQUATELY PROTECTED FROM DANGER TO HUMANS AND ANIMALS.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROVIDING ALL FIELD LAYOUT. THE OWNER WILL PROVIDE A BENCH MARK AT THE CONSTRUCTION SITE FROM WHICH TO BEGIN LAYOUT.
- THE CONTRACTOR SHALL FURNISH ELECTRICAL POWER WATER, AND SANITARY FACILITIES FOR HIS EXCLUSIVE USE AT THE CONSTRUCTION SITE SHOULD THE CONTRACTOR DEEM THIS ESSENTIAL FOR THE PROPER PERFORMANCE OF THE CONTRACT.
- WORK MAY PROGRESS MONDAY THROUGH SATURDAY 7:00 AM TO 7:00 PM. WORK AT OTHER TIMES MAY PROCEED UPON WRITTEN APPROVAL BY THE OWNER AND THE TOWN OF NORTH YARMOUTH. THE CONTRACTOR SHALL BE REQUIRED TO CONFORM WITH ALL RULES AND REGULATIONS SET FORTH IN THE CITY LAND USE ORDINANCE REGULATIONS.
- THE CONTRACTOR SHALL GUARANTEE THE FAITHFUL REMEDY OF ANY DEFECTS DUE TO FAULTY MATERIALS OR WORKMANSHIP AND GUARANTEE PAYMENT FOR ANY RESULTING DAMAGE WHICH SHALL APPEAR WITHIN A PERIOD OF ONE (1) YEAR FROM THE DATE OF SUBSTANTIAL COMPLETION OF THE PROJECT.
- THE CONTRACTOR SHALL PROVIDE AS-BUILT RECORDS OF ALL CONSTRUCTION (INCLUDING UNDERGROUND UTILITIES) TO THE OWNER AT THE END OF CONSTRUCTION.
- A PRE-CONSTRUCTION CONFERENCE WITH THE OWNER, DESIGNERS, TOWN OFFICIALS AND CONTRACTOR SHALL BE REQUIRED BEFORE ANY CONSTRUCTION OCCURS ON THE PROJECT. DURING CONSTRUCTION, THERE SHALL BE WEEKLY PROGRESS MEETINGS WITH THE OWNER (ON SITE OR TELECONFERENCE) UNTIL PROJECT COMPLETION.
- PROPER IMPLEMENTATION AND MAINTENANCE OF EROSION CONTROL MEASURES ARE OF PARAMOUNT IMPORTANCE FOR THIS PROJECT. THE CONTRACTOR IS RESPONSIBLE FOR COMPLYING WITH ALL EROSION CONTROL MEASURES SHOWN ON THE PLANS. ADDITIONAL EROSION CONTROL MEASURES SHALL BE INSTALLED IF DEEMED NECESSARY BY ONSITE INSPECTIONS OF THE OWNER, THEIR REPRESENTATIVES, OR STATE/LOCAL/FEDERAL INSPECTORS AT NO ADDITIONAL COST TO THE OWNER.
- ALL MATERIAL SCHEDULES SHOWN ON THE PLANS ARE FOR GENERAL INFORMATION ONLY. THE CONTRACTOR SHALL PREPARE THEIR OWN MATERIAL SCHEDULES BASED UPON PLAN REVIEW. SCHEDULES SHALL BE VERIFIED IN THE FIELD BY THE CONTRACTOR PRIOR TO ORDERING MATERIALS OR PERFORMING THE WORK. ALL MATERIALS AND CONSTRUCTION METHODS SHALL CONFORM TO MDOT STANDARD SPECIFICATIONS, LATEST REVISION.

GRADING AND DRAINAGE NOTES

- UNLESS OTHERWISE NOTED, STORM DRAIN PIPE SHALL BE IN ACCORDANCE WITH MDOT SPECIFICATIONS SECTION 603 PIPE CULVERTS AND STORM DRAINS. LATEST REVISION WITH THE EXCEPTION THAT THE ONLY ACCEPTABLE TYPES OF PIPE ARE AS FOLLOWS: REINFORCED CONCRETE PIPE, HDPE/SMOOTH INTERIOR CORRUGATED PLASTIC PIPE.
- HDPE/SMOOTH INTERIOR CORRUGATED PLASTIC PIPE (SICP) MAY ONLY BE USED FOR PIPE SIZES 48" DIAMETER AND SMALLER.
- TOPSOIL STRIPPED IN AREAS OF CONSTRUCTION THAT IS SUITABLE FOR REUSE AS LOAM SHALL BE STOCKPILED ON SITE AT A LOCATION TO BE DESIGNATED BY THE CONTRACTOR. UNSUITABLE SOIL SHALL BE SEPARATED, REMOVED, AND DISPOSED OF AT AN APPROVED DISPOSAL LOCATION OFF-SITE.
- ALL EXISTING STRUCTURES, FENCING, TREES, ETC. WITHIN THE CONSTRUCTION AREA, UNLESS OTHERWISE NOTED TO REMAIN, SHALL BE REMOVED AND DISPOSED OFF-SITE. ANY BURNING ON-SITE SHALL BE SUBJECT TO LOCAL ORDINANCES AND PROJECT SPECIFICATIONS.
- THE SITE CONTRACTOR SHALL NOTIFY ALL UTILITY COMPANIES HAVING UNDERGROUND PIPING ON-SITE OR IN THE RIGHT OF WAY PRIOR TO EXCAVATION. THE CONTRACTOR SHALL CONTACT UTILITY LOCATING COMPANY AND LOCATE ALL UTILITIES PRIOR TO GRADING/EXCAVATION START.
- SITE EXCAVATION AND FILL-IN-PLACE TO ESTABLISH THE DESIRED SUB-GRADE SHALL BE SCHEDULED SUCH THAT EROSION CONTROL PRACTICES ARE IN PLACE AND FUNCTIONING DOWN-GRADE OF THE EARTHWORK PRIOR TO THE START OF EARTHMOVING ACTIVITIES.
- BASED ON FEMA MAPPING, NO AREA WITHIN THE SITE BOUNDARIES IS IN THE 100 YEAR FLOOD PLAIN.

LAYOUT NOTES

- ALL SIGNS INDICATED ON THE PLANS ARE TO MEET ALL REQUIREMENTS AND STANDARDS OF THE MDOT AND THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.
- PROPERTY LINE AND RIGHT OF WAY MONUMENTS SHALL NOT BE DISTURBED BY CONSTRUCTION. IF DISTURBED, THEY SHALL BE RESET TO THEIR ORIGINAL LOCATIONS AT THE CONTRACTORS EXPENSE BY A MAINE PROFESSIONAL LAND SURVEYOR.



DATE	PROJECT
FEB. 2022	2022-12
DRAWN BY	SCALE
SJR	N.T.S.

SJR ENGINEERING, INC.
16 THURSTON DRIVE
MONMOUTH, MAINE 04259
(207) 602-1676 tel & fax
steve@sjeeng.com

SJR ENGINEERING

CONSTRUCTION NOTES & DETAILS
DEACON HAYES COMMONS
521 WALNUT HILL ROAD - NORTH YARMOUTH MAINE
PREPARED FOR
527 LLC
865 OAK HILL ROAD - NORTH YARMOUTH, ME

Superhumus
Jay, Maine

PRODUCT INFORMATION:

Unique to the landscape industry, Superhumus is processed from a blend of fine bark, forest organic matter, and a small amount of sand and fine stone. These natural ingredients are washed off of logs in a wood yard water flume in Jay, Maine. Superhumus is weed seed free, screened (<2/8"), approved for Organic Landscaping, and has been used extensively as a container mix, landscape and trail mulch, and in the construction of wetlands, and rain gardens/bioretenion soils.

USE RECOMMENDATIONS:

- Soil amendment:** Mix 10-30% uniformly by volume. Add additional fertilizer as needed.
- Container growing:** Use aged Superhumus for container growing of many ornamentals and in custom blended potting mixes.
- Ornamental Mulch:** Apply an even layer 2-4" deep to achieve weed suppression & natural appearance.
- Trail Mulch:** Provides root protection & soft footing on walking/biking trails.
- Wetland Use:** Weed free and rich in organic matter, Superhumus closely simulates the characteristics of wetland soil. Use 100% or in a soil/Superhumus blend.
- Bioretenion Soil:** Apply Superhumus to meet organic matter specifications of soil filter/rain garden media. Typical applications utilize 20%-30% Superhumus by volume.
- Slope stabilizer:** Apply 3-6" to soil surfaces to effectively stabilize slopes.

ADDITIONAL INFORMATION:

- Feed Stocks:** Forest soil, bark, organic matter, sand & fine stone.
- Classifications:** Available for use in ME, NH, MA, VT, & CT. Approved for Organic growing (MOFGA).
- Services/Support:** Additional analyses and specifications available.

PRODUCT ANALYSES:

pH	6.0
Total Kjeldahl Nitrogen	2.7%
Organic N	2.6%
Total Phosphorus	1.1%
Total Potassium	0.2%
C/N ratio	16:1
Organic Matter	85.0%
Density	+/- 800lbs/cu
Conductivity	4.2 mmhos/cm
Particle size	screened <3/8"

Data based on average or representative analysis. This product is not a commercial fertilizer, and any nutrient data are for informational purposes only.

NATIONAL RECOGNITION:

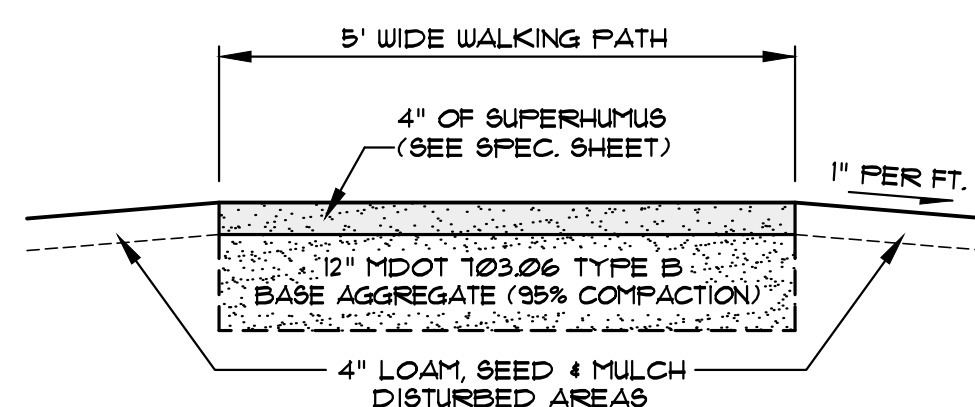
- 2017 Clean Water Award
- 2015 Composting Council
- 2009 Environmental Management System Certification
- 2004 U.S. Composter of Year
- 2001 EPA National Biosolids Exemplary Management Award
- 2000 Maine Governor's Award for Environmental Excellence

Casella Organics, 110 Main Street, Suite 1308, Saco, ME 04072 800-933-6474

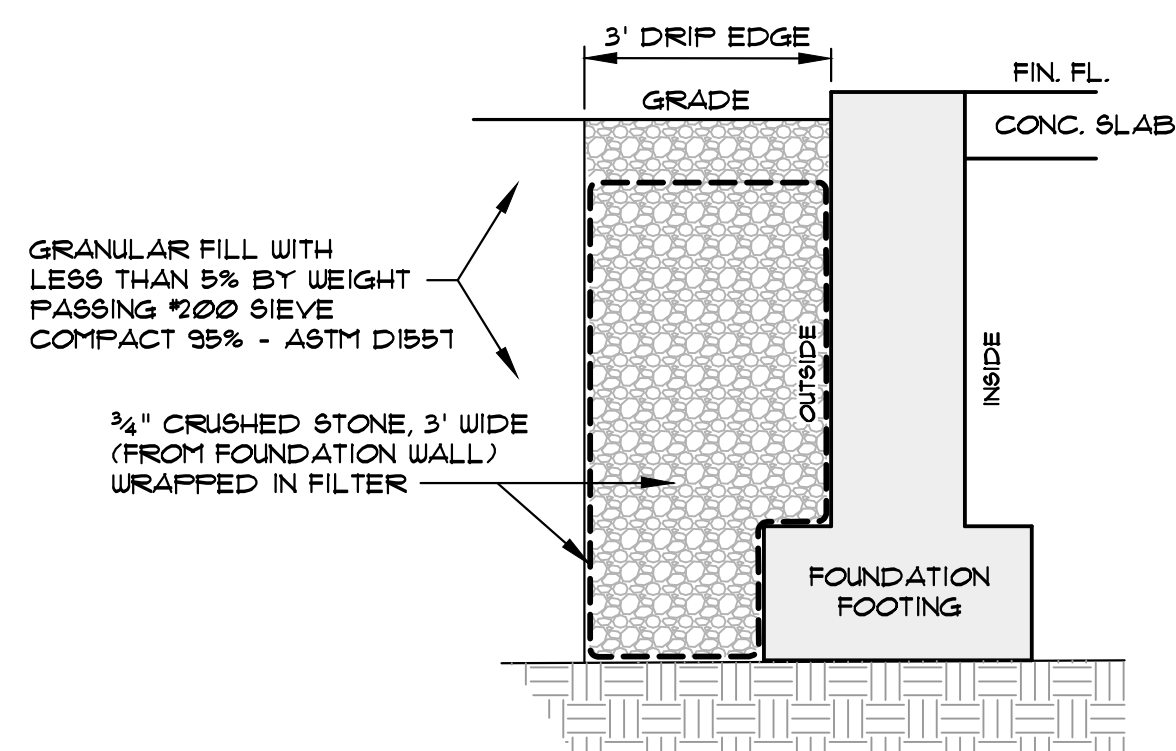
Hermon, ME 800-287-9947 Unity, ME 800-491-3071 Concord, NH 603-228-6482 Clifton Park, NY 518-383-0137 Chateaugay, NY 518-497-6506

Revised: 3/31/18 casellorganics.com/products

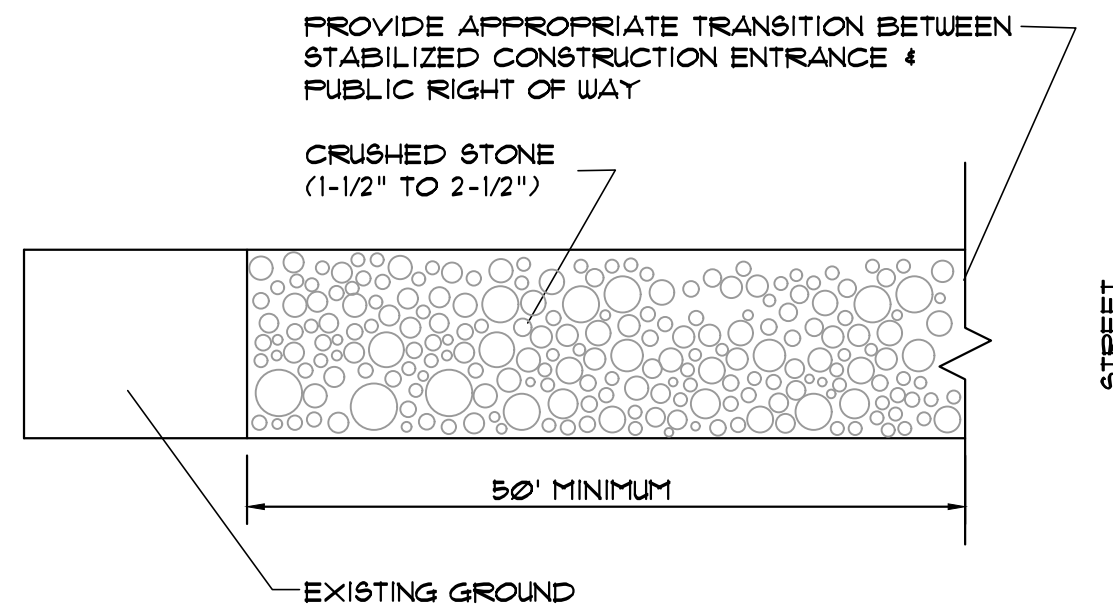
SUPERHUMUS SPECIFICATION SHEET



FOOTPATH AND SIDE SLOPE CROSS SECTION
NOT TO SCALE



FOUNDATION UNDERDRAIN DETAIL
STONE DRIP EDGE
NOT TO SCALE



- STONE SIZE - AASHTO DESIGNATION M 43, SIZE #2 (2 1/2" - 1 1/2") USE CRUSHED STONE
- LENGTH - AS EFFECTIVE BUT NOT LESS THAN 50'
- THICKNESS - NOT LESS THAN 8"
- WIDTH - NOT LESS THAN FULL WIDTH OF ALL POINTS OF INGRESS OR EGRESS
- WASHING - WHEN NECESSARY, WHEELS SHALL BE CLEANED TO REMOVE SEDIMENT PRIOR TO ENTRANCE ONTO PUBLIC RIGHT OF WAY, WHEN WASHING IS REQUIRED, IT SHALL BE DONE ON AN AREA STABILIZED WITH CRUSHED STONE WHICH DRAINS INTO AN APPROVED SEDIMENT TRAP OR SEDIMENT BASIN. ALL SEDIMENT SHALL BE PREVENTED FROM ENTERING ANY STORM DRAIN, DITCH, OR WATERCOURSE THROUGH USE OF SAND BAGS, GRAVEL, BOARDS, OR OTHER APPROVED METHODS.
- MAINTENANCE - THE STABILIZED CONSTRUCTION ENTRANCE SHALL BE MAINTAINED IN A CONDITION WHICH WILL PREVENT TRACKING OR FLOWING OF SEDIMENT ONTO PUBLIC RIGHTS OF WAY. THIS MAY REQUIRE PERIODIC TOP DRESSING WITH ADDITIONAL STONE AS CONDITIONS DEMAND AND REPAIR AND/OR CLEANOUT OF ANY MEASURED USES TO TRAP SEDIMENT. ALL SEDIMENT SPILLED, DROPPED, WASHED, OR TRACKED ONTO PUBLIC RIGHT OF WAYS MUST BE REMOVED IMMEDIATELY.

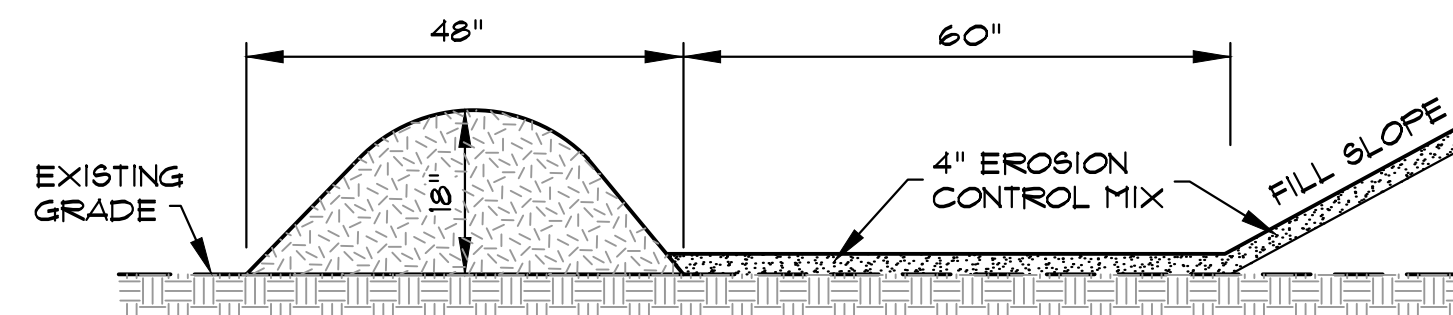
STABILIZED CONSTRUCTION ENTRANCE DETAIL
NOT TO SCALE

THE FILTER BERM SHALL CONSIST OF A WOOD WASTE COMPOST/BARK MULCH MIX OR RECYCLED COMPOSTED BARK FLUME GRIT AND FRAGMENTED WOOD GENERATED FROM WATER FLUME LOG HANDLING SYSTEMS. COMPARABLE COMPOSTED MIXES CAN BE USED UPON WRITTEN APPROVAL OF THE ENGINEER.

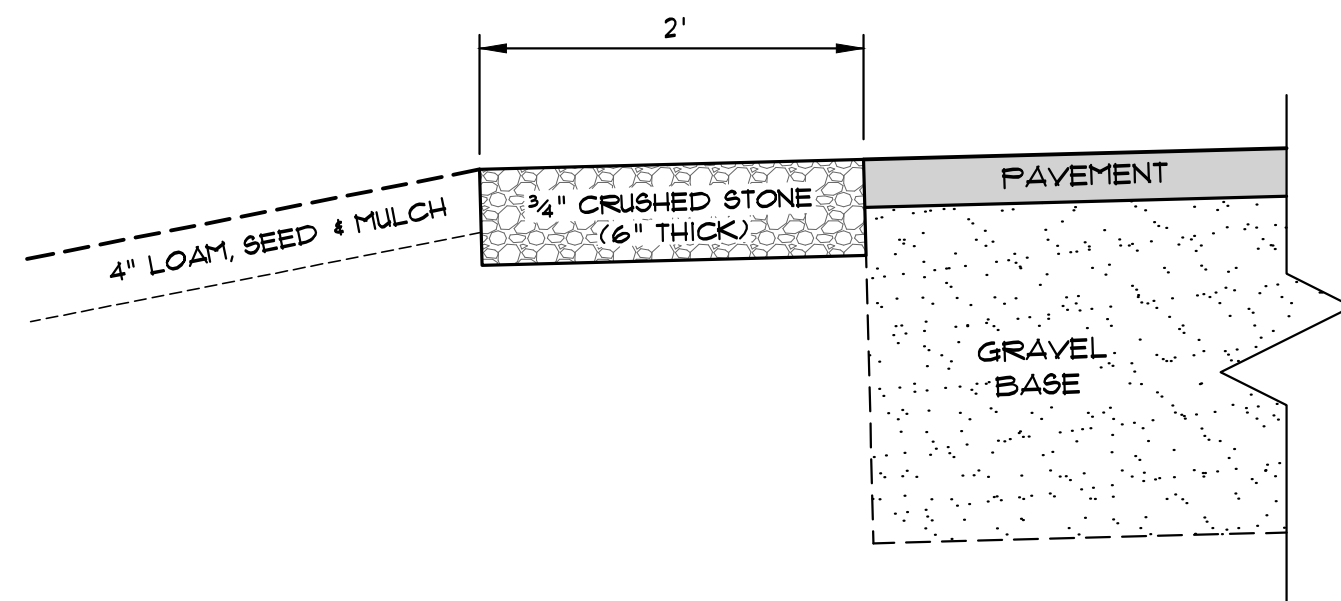
THE MIX SHALL CONFORM TO THE FOLLOWING: pH BETWEEN 5.0-8.0, PARTICLE SIZE - 100% PASSING THROUGH A 6" SCREEN AND 80% RETAINED ON A 3/4" SCREEN, SOLUBLE SALTS CONTENT SHALL BE LESS THAN 4.0 mmhos/cm.

THE COMPOSTED BERM SHALL BE PLACED, UNCOMPACTED, ALONG A RELATIVELY LEVEL CONTOUR.

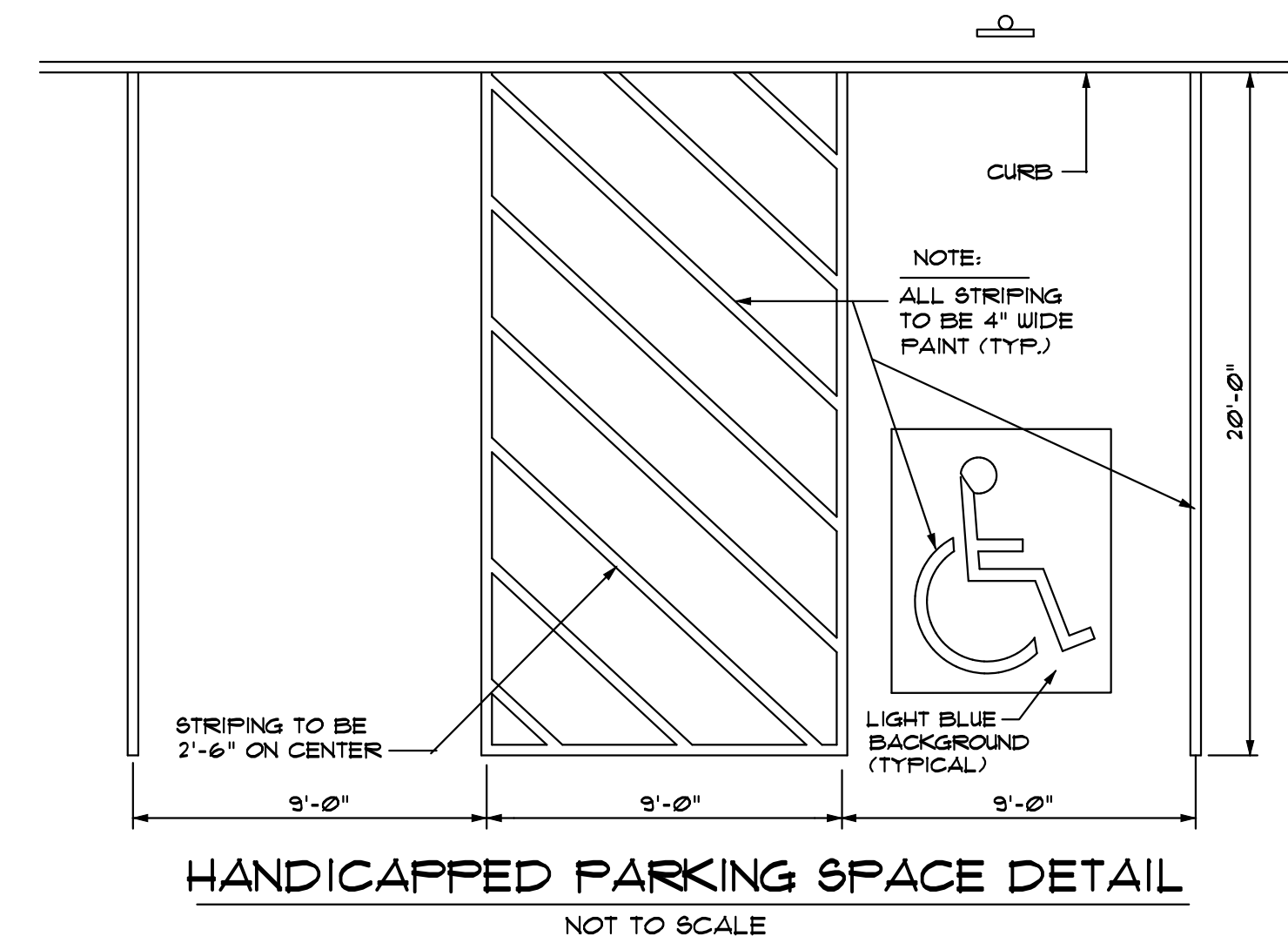
THE BERM MAY BE USED IN COMBINATION WITH SILT FENCE TO IMPROVE SEDIMENT REMOVAL AND PREVENT CLOGGING OF THE BERM BY LARGER SEDIMENT PARTICLES (SILT FENCE PLACED ON THE UPHILL SIDE OF BERM).



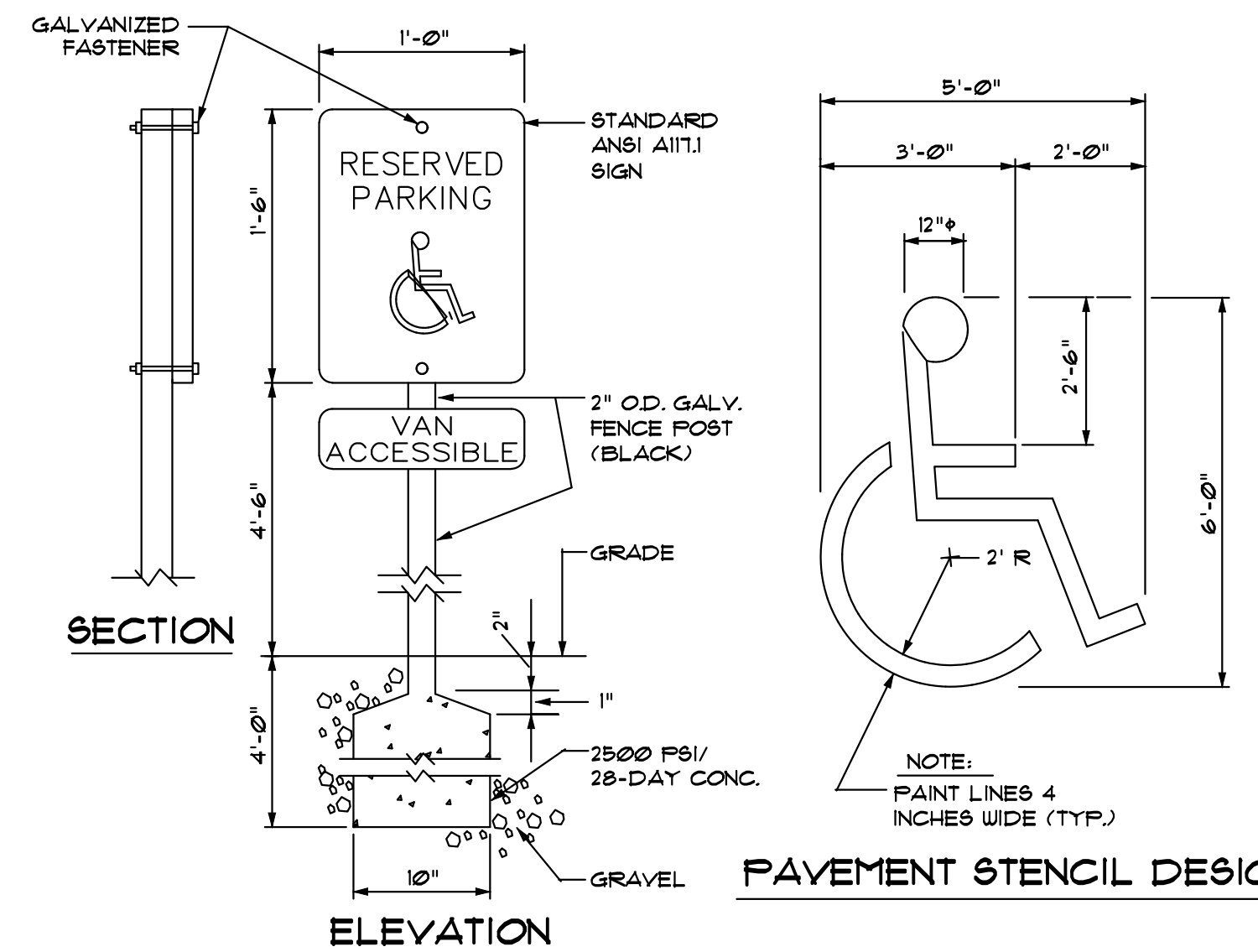
EROSION CONTROL FILTER BERM
NOT TO SCALE



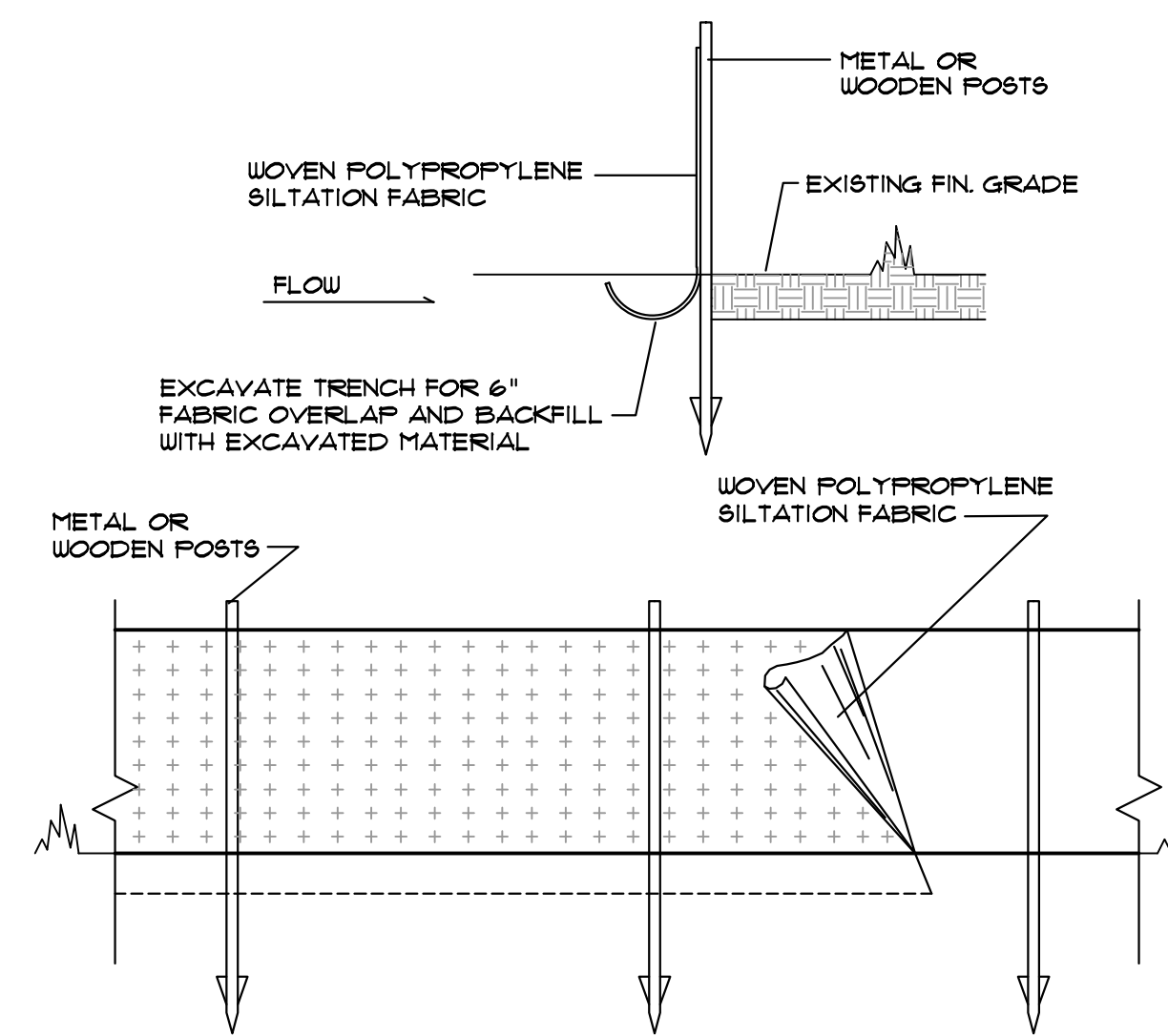
STONE TRANSITION AREA
PAVEMENT TO GRASS
NOT TO SCALE



HANDICAPPED PARKING SPACE DETAIL
NOT TO SCALE



HANDICAP SIGN DETAIL
NOT TO SCALE



- NOTES**
- REFERENCE IS MADE TO THE BEST MANAGEMENT PRACTICE FOR EROSION AND SEDIMENT CONTROL: B-1 SEDIMENT BARRIERS.
 - SILTATION FABRIC WITH INTEGRAL MESH AND POSTS MAY BE USED.
 - EROSION CONTROL FILTER BERM IS AN ACCEPTABLE ALTERNATIVE TO SILT FENCING.

SILT FENCE DETAIL
NOT TO SCALE

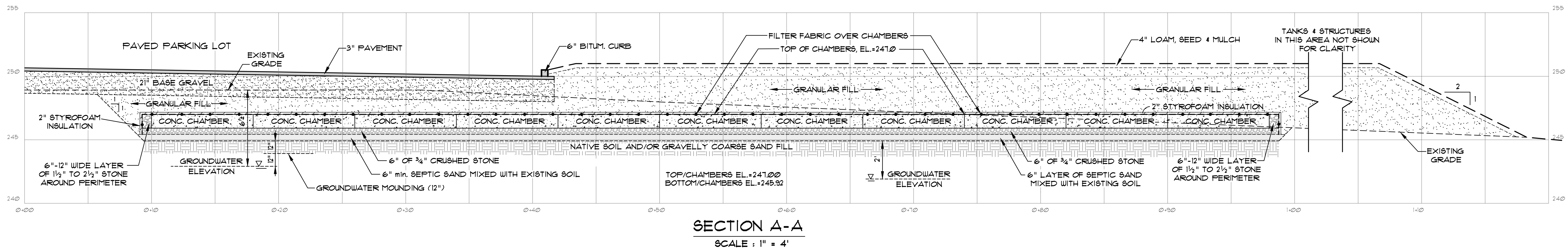


DATE	PROJECT
2-28-2023	SUBMITTAL TO TOWN
4-16-2022	UPDATE PROJECT NAME IN TITLE BLOCK
3-15-2022	UPDATE CLIENT INFO IN TITLE BLOCK
REV. BY: DATE: CHANGES:	
1	
2	
3	

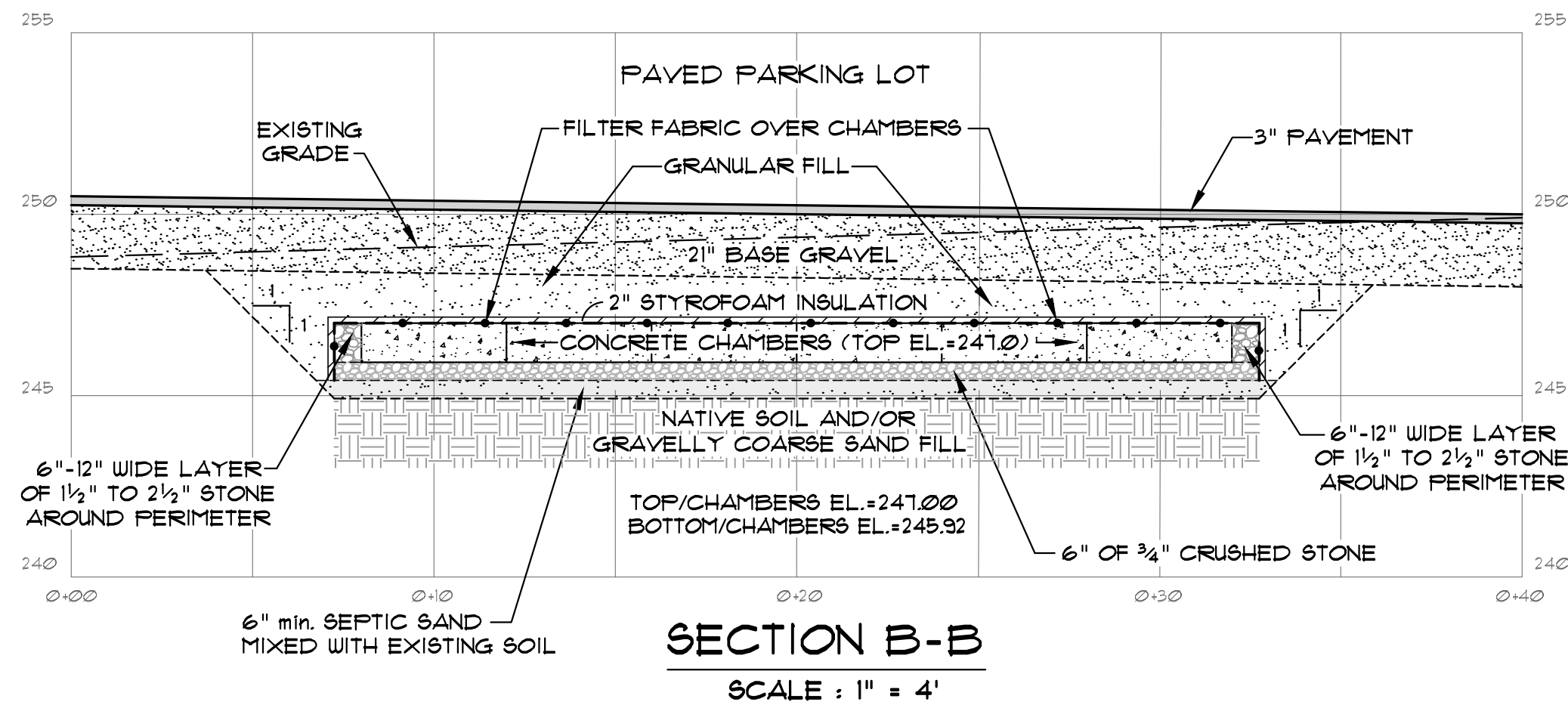
SJR ENGINEERING, INC.
16 THURSTON DRIVE
MONMOUTH, MAINE 04259
(207) 622-1676 tel & fax
steve@sengineering.com

CONSTRUCTION DETAILS
DEACON HAYES COMMONS
521 WALNUT HILL ROAD - NORTH YARMOUTH MAINE
PREPARED FOR
527 LLC
865 OAK HILL ROAD - NORTH YARMOUTH, ME

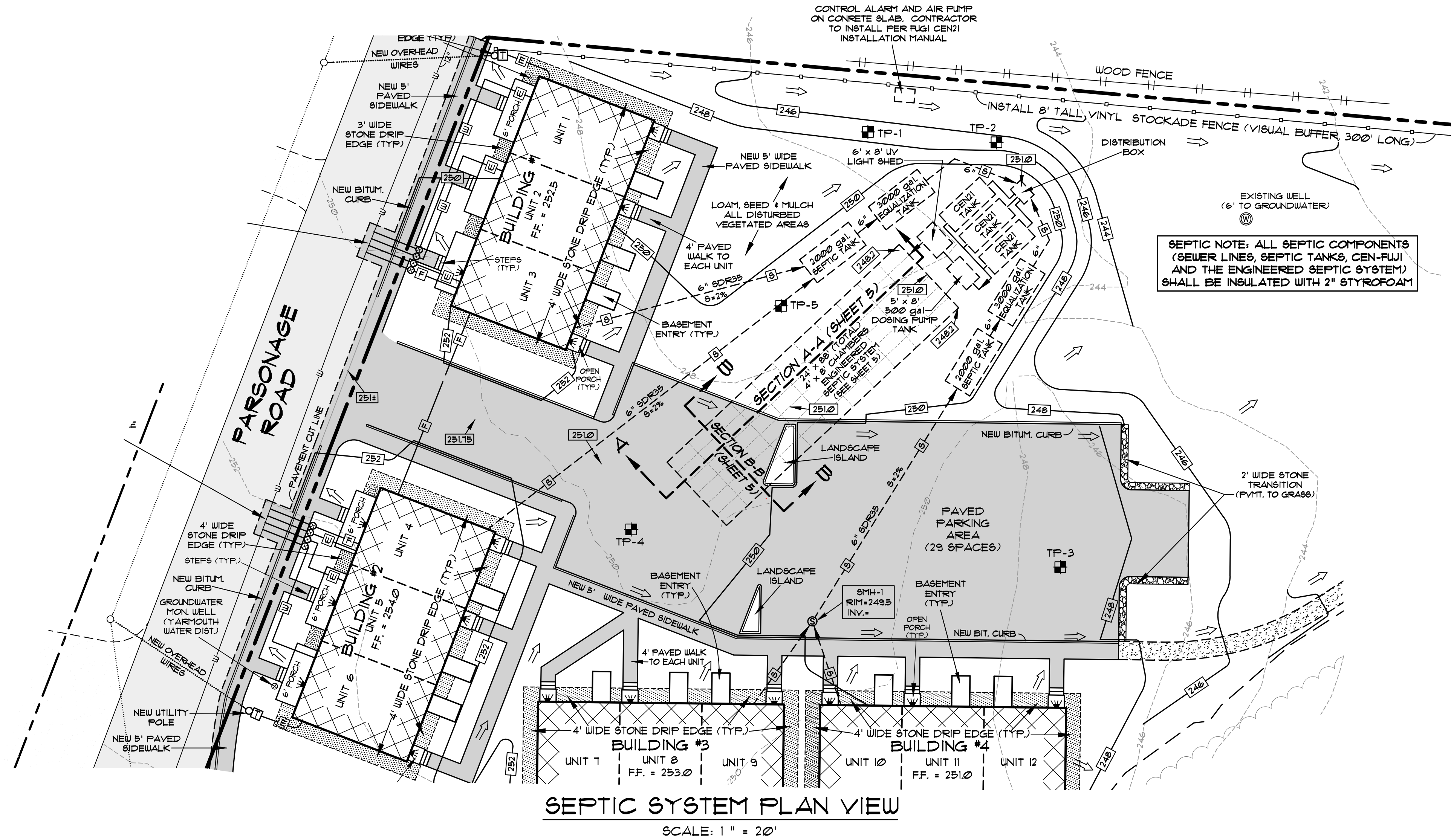
DATE	PROJECT
FEB. 2022	2022-12
DRAWN BY	SCALE
SJR	N.T.S.



SECTION A-A
SCALE: 1" = 4'



SECTION B-B
SCALE: 1" = 4'



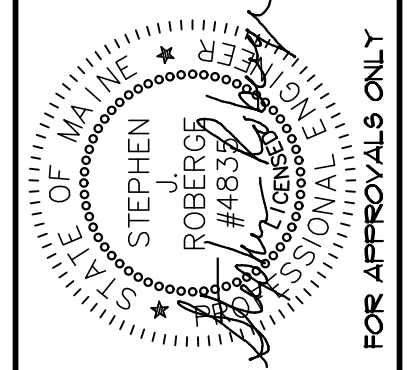
SEPTIC SYSTEM PLAN VIEW
SCALE: 1" = 20'

HOME OWNERS ASSOCIATION REQUIREMENTS

THERE ARE ADDITIONAL REQUIREMENTS IMPOSED ON THE SEWER SYSTEM WITHIN THE DECLARATION OF CONDOMINIUM DOCUMENTS AND HOME OWNERS ASSOCIATION RULES AND REGULATIONS.

ENGINEERED SYSTEM NOTES

- 1) THE SYSTEM HAS BEEN DESIGNED TO ACCEPT RESIDENTIAL WASTES TYPICAL FOR A 3 BEDROOM UNIT. THE DESIGN HAS BEEN REVIEWED BY THE TOWN OF NORTH YARMOUTH PLUMBING INSPECTOR AND HEALTH ENGINEERING DEPARTMENT OF DEP. BOTH REVIEW AGENCIES NEED TO APPROVE THE SYSTEM PRIOR TO CONSTRUCTION.
- 2) IT IS RECOMMENDED THAT LOW FLOW VOLUME TOILETS AND OTHER FLOW REDUCING FIXTURES TO MINIMIZE WATER VOLUME BE UTILIZED TO THE GREATEST EXTENT POSSIBLE. A REDUCTION IN WATER USE WILL USUALLY RESULT IN EXTENDED LIFE OF THE SEPTIC SYSTEM, ALL OTHER THINGS BEING EQUAL.
- 3) IT SHALL BE THE OWNERS RESPONSIBILITY TO LIMIT WATER USAGE AND WASTEWATER GENERATION SO THAT THE SEPTIC SYSTEM DESIGN CAPACITY (DESIGN FLOW STATED ON SEPTIC SYSTEM FORM) IS NOT EXCEEDED ON ANY DAY. ACTIVITIES THAT GENERATE LARGE VOLUMES OF WASTEWATER SHOULD BE SPREAD OUT OVER LONGER PERIODS OF TIME.
- 4) EXCESSIVE USE OF A SEPTIC SYSTEM ON ANY ONE DAY CAN CAUSE THE SYSTEM TO FAIL EVEN THOUGH THE USE, AVERAGED OUT OVER A WEEK OR MONTH IS BELOW DESIGN VOLUME. THE SYSTEM BECOMES STRESSED BECAUSE MORE WATER WILL BE GENERATED THAN THE SOIL CAN ABSORB. ALSO, MORE SOLID PARTICLES WILL LEAVE THE TANK THAN NORMAL. THE FASTER WATER MOVES THROUGH THE TANK, THE LARGER PARTICLES OF SOLID MATERIAL WILL BE CARRIED TO THE DISPOSAL FIELD. THESE PARTICLES ARE THE MAJOR CAUSE OF SYSTEM FAILURE AS THE PARTICLES PLUG UP THE ABILITY OF THE SOIL TO ABSORB WATER.
- 5) DO NOT CONNECT FLOOR OR ROOF DRAINS TO THE SYSTEM. DO NOT DISPOSE OF BACKWASH FROM WATER SOFTENERS OR WATER TREATMENT DEVICES INTO THE SEPTIC SYSTEM. DO NOT USE POWDERED SOAPS OR DETERGENTS AS THEY CONTAIN A SIGNIFICANT AMOUNT OF FILLERS AND EMULSIFIERS WHICH ARE DETRIMENTAL TO THE SEPTIC SYSTEM. FILLERS CAN CLOG UP SOIL PORES AND EMULSIFIERS WILL PREVENT GREASES AND FATS FROM COAGULATING AND RISING TO THE TOP OF THE TANK FOR REMOVAL.
- 6) DO NOT DISPOSE OF ANY HAZARDOUS OR TOXIC SUBSTANCES IN A SEPTIC SYSTEM SUCH AS PAINT THINNER, PAINTS, VARNISHES, PHOTOGRAPHIC SOLUTIONS, PESTICIDES, INSECTICIDES, ORGANIC SOLVENTS, DEGREASERS, OR DRAIN OPENERS. SEPTIC SYSTEMS DEPEND ON LIVING ORGANISMS TO FUNCTION PROPERLY. TOXIC OR HAZARDOUS SUBSTANCES CAN CAUSE THE SYSTEM TO MALFUNCTION AND ARE A THREAT TO POLLUTE SURFACE AND/OR GROUNDWATER SOURCES. THEY ARE ILLEGAL TO DISPOSE OF IN THIS MANNER.
- 7) DO NOT DISPOSE OF ANY INERT OR NON-BIODEGRADABLE MATERIALS IN THE SEPTIC SYSTEM SUCH AS DISPOSABLE DIAPERS, CAT BOX LITTER, COFFEE GROUNDS, CIGARETTE FILTERS, SANITARY NAPKINS, FACIAL TISSUES AND WET STRENGTH PAPER TOWELS. THEY WILL NOT DECOMPOSE AND WILL THEREFORE BUILDUP IN THE SEPTIC TANK QUICKLY. IT IS RECOMMENDED THAT USE OF A NATIONAL SANITATION FOUNDATION PAPER WHICH BREAKS DOWN QUICKLY IS RECOMMENDED.
- 8) DO NOT ADD ANY SEPTIC TANK ADDITIVE OR CLEANER TO THE SEPTIC SYSTEM TO IMPROVE ITS FUNCTION OR PROLONG ITS USEFUL OPERATING LIFE (THIS INCLUDES YEAST, HORSE MANURE, AND COMMERCIAL PRODUCTS SUCH AS RID-X) NO EFFECTIVE PRODUCT OR MATERIAL IS RECOGNIZED BY STATE OR NATIONAL AUTHORITIES. CHEMICAL ADDITIVES ARE PROHIBITED FOR USE IN MAINE.
- 9) MAINTAIN THE SEPTIC SYSTEM BY REGULARLY HAVING THE SEPTIC TANK PUMPED. SOME BIOLOGICAL BREAKDOWN OF SOLIDS OCCURS IN THE SEPTIC TANK BUT THE RATE OF ACCUMULATION ALMOST ALWAYS EXCEEDS THE RATE OF BREAKDOWN. IF YOUR TANK IS NOT PUMPED OFTEN ENOUGH, SOLIDS AND GREASES MAY BUILD UP TO THE POINT WHERE THERE IS INSUFFICIENT STORAGE AND RETENTION TIME FOR WASTEWATER IN THE TANK. THESE SOLIDS CAN THEN LEAVE THE TANK AND END UP IN THE DISPOSAL FIELD RESULTING IN PREMATURE FAILURE.
- 10) NOTE HOW OFTEN YOU HAVE YOUR TANK PUMPED AND WHEN IT WAS LAST PUMPED. THE PUMPER OR INSPECTOR CAN THEN ADVISE YOU HOW OFTEN YOU NEED TO HAVE THE TANK PUMPED BASED ON THE VOLUME OF SOLIDS HE FINDS IN THE TANK PRESENTLY. KEEP IN MIND THAT YOU WILL NEED TO ADJUST YOUR PUMPING FREQUENCY TO COINCIDE WITH CHANGES IN THE WAY THE SYSTEM IS USED. THE MORE THE SYSTEM IS USED, THE MORE FREQUENT THE PUMPING SHOULD OCCUR.
- 11) BE SURE THE PUMPER INSPECTS THE BAFFLES AND FILTERS TO THE SEPTIC TANK. THE BAFFLES ARE RESPONSIBLE FOR KEEPING GREASES AND FATS FROM MOVING TO THE DISPOSAL FIELD. THE SYSTEM HAS BEEN DESIGNED WITH OUTLET FILTERS WITHIN THE TANK. FILTERS TO BE CLEANED PERIODICALLY. THE FILTERS CAN HELP CONTROL THE PASSAGE OF SOLIDS FROM THE TANK TO THE DISPOSAL FIELD WHEN WASTEWATER SURGES OCCUR.
- 12) THE CONCRETE CHAMBER SYSTEM IS DESIGNED FOR H2O LOADING, ALLOWING NORMAL CAR/TRUCK TRAFFIC OVER THE SYSTEM.
- 13) DIVERT ALL SURFACE WATER AWAY FROM THE SEPTIC TANK AND DISPOSAL FIELD. IF THIS IS NOT DONE, ADDITIONAL WATER INFILTRATION TO THE SYSTEM MAY CAUSE YOUR DISPOSAL FIELD TO FAIL.
- 14) IF YOU HAVE ANY QUESTIONS ABOUT THE SYSTEM, PLEASE CALL SJR ENGINEERING (DESIGNER), MARK CENSI (SITE EVALUATOR), OR YOUR LOCAL PLUMBING INSPECTOR FOR ADVICE PERTAINING TO THE RULES AND REGULATIONS OF THE DISPOSAL OF WASTEWATER.

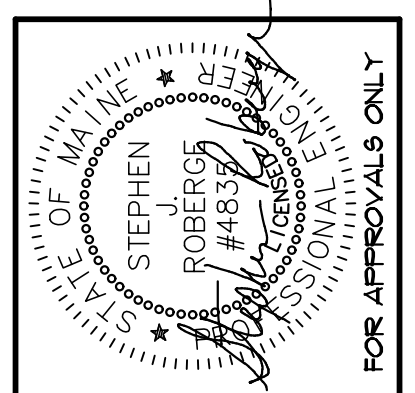
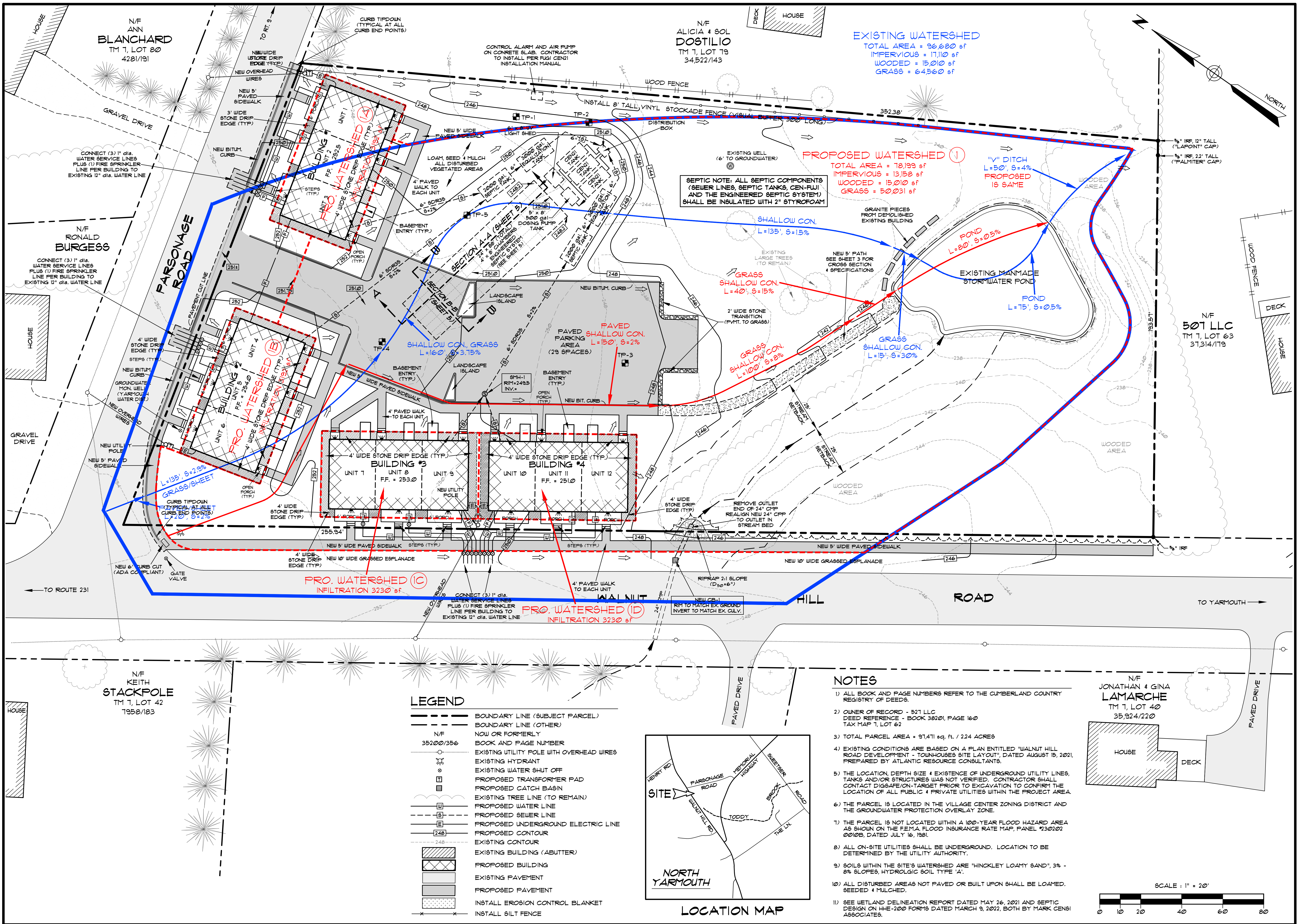


DATE	PROJECT
2-28-2023	9-22-2022
BY: SJR	SCALE
BY: SJR	1" = 20'
REVISIONS	
1	ADD UV SHED & DOSING TANK TO SEPTIC SYSTEM
2	DATE: 11-18-2022
	CHANGES:

SJR ENGINEERING, INC.
16 THURSTON DRIVE
MONMOUTH, MAINE 04259
(207) 242-6248
sje@sjeengineering.com

SEPTIC SYSTEM SECTIONS AND DETAILS
DEACON HAYES COMMONS
521 WALNUT HILL ROAD - NORTH YARMOUTH MAINE
PREPARED FOR
527 LLC
865 OAK HILL ROAD - NORTH YARMOUTH, ME

DATE	PROJECT
9-22-2022	2022-12
DRAWN BY	SCALE
SJR	1" = 20'



FOR APPROVALS ONLY	
DATE:	5-14-2022
BY:	SJR
PROJECT:	RECONFIGURE BUILDINGS, REDO AREAS
CHANGES:	

SJR ENGINEERING, INC.
 16 THURSTON DRIVE
 MONMOUTH, MAINE 04259
 (207) 242-6248 tel
 sjr@sjr-engineering.com

WATERSHED PLAN
DEACON HAYES COMMONS
 527 WALNUT HILL ROAD - NORTH YARMOUTH MAINE
 PREPARED FOR
527 LLC
 865 OAK HILL ROAD - NORTH YARMOUTH, ME

DATE	PROJECT
4-18-2022	2022-12
DRAWN BY	SCALE
SJR	1" = 20'

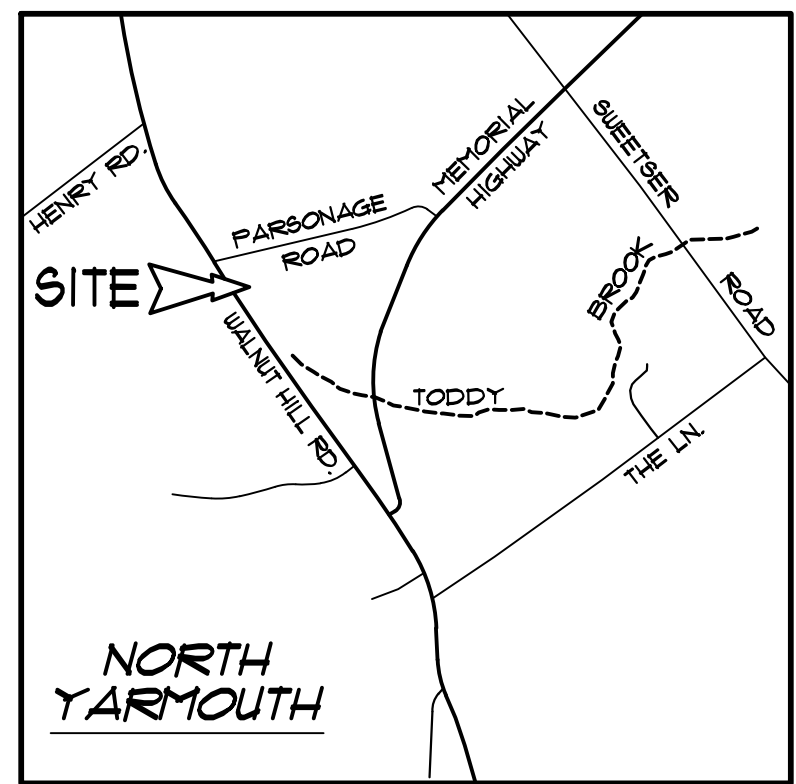
SHEET W6-1

NOTES

- 1) ALL BOOK AND PAGE NUMBERS REFER TO THE CUMBERLAND COUNTRY REGISTRY OF DEEDS.
- 2) OWNER OF RECORD - 527 LLC
 DEED REFERENCE - BOOK 38201, PAGE 160
 TAX MAP 7, LOT 62
- 3) TOTAL PARCEL AREA = 91,411 sq. ft. / 2.24 ACRES
- 4) EXISTING CONDITIONS ARE BASED ON A PLAN ENTITLED "WALNUT HILL ROAD DEVELOPMENT - TOWNHOUSES SITE LAYOUT", DATED AUGUST 15, 2021, PREPARED BY ATLANTIC RESOURCE CONSULTANTS.
- 5) THE LOCATION, DEPTH SIZE & EXISTENCE OF UNDERGROUND UTILITY LINES, TANKS AND/OR STRUCTURES WAS NOT VERIFIED. CONTRACTOR SHALL CONTACT DIGSAFE/ON-TARGET PRIOR TO EXCAVATION TO CONFIRM THE LOCATION OF ALL PUBLIC & PRIVATE UTILITIES WITHIN THE PROJECT AREA.
- 6) THE PARCEL IS LOCATED IN THE VILLAGE CENTER ZONING DISTRICT AND THE GROUNDWATER PROTECTION OVERLAY ZONE.
- 7) THE PARCEL IS NOT LOCATED WITHIN A 100-YEAR FLOOD HAZARD AREA AS SHOWN ON THE FEMA FLOOD INSURANCE RATE MAP, PANEL 230202 0010B, DATED JULY 16, 1981.
- 8) ALL ON-SITE UTILITIES SHALL BE UNDERGROUND. LOCATION TO BE DETERMINED BY THE UTILITY AUTHORITY.
- 9) SOILS WITHIN THE SITE'S WATERSHED ARE "HINCKLEY LOAMY SAND", 3% - 8% SLOPES, HYDROLOGIC SOIL TYPE 'A'.
- 10) ALL DISTURBED AREAS NOT PAVED OR BUILT UPON SHALL BE LOAMED, SEEDED & MULCHED.
- 11) SEE WETLAND DELINEATION REPORT DATED MAY 26, 2021 AND SEPTIC DESIGN ON HHE-200 FORM 16 DATED MARCH 9, 2022, BOTH BY MARK CENSI ASSOCIATES.

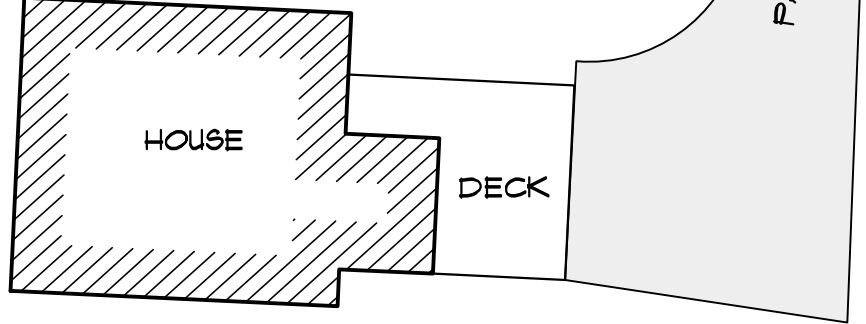
LEGEND

- BOUNDARY LINE (SUBJECT PARCEL)
- BOUNDARY LINE (OTHER)
- N/F 35200/356 BOOK AND PAGE NUMBER
- EXISTING UTILITY POLE WITH OVERHEAD WIRES
- EXISTING HYDRANT
- EXISTING WATER SHUT OFF
- PROPOSED TRANSFORMER PAD
- PROPOSED CATCH BASIN
- EXISTING TREE LINE (TO REMAIN)
- PROPOSED WATER LINE
- PROPOSED SEWER LINE
- PROPOSED UNDERGROUND ELECTRIC LINE
- PROPOSED CONTOUR
- EXISTING CONTOUR
- EXISTING BUILDING (ABUTTER)
- PROPOSED BUILDING
- EXISTING PAVEMENT
- PROPOSED PAVEMENT
- INSTALL EROSION CONTROL BLANKET
- INSTALL SILT FENCE

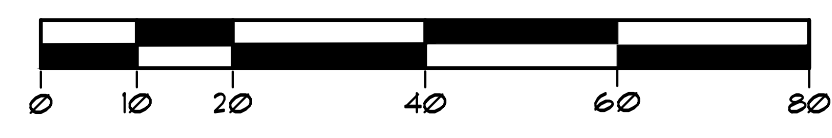


LOCATION MAP

N/F JONATHAN & GINA LAMARCHE
 TM 7, LOT 40
 35,924/220



SCALE: 1" = 20'



Remand Issue #6

No attachment has been provided as the response in the Kristin Collins narrative addressee this item.

Remand Issue #7



TOWN OF NORTH YARMOUTH

The Town Where Others Began.

June 29, 2022

North Yarmouth Planning Board
10 Village Square Rd
North Yarmouth, ME 04097

Subject: Deacon Hayes Commons Major Subdivision

To whom it concerns,

I have reviewed the Deacon Hayes development in conformance with the Town of North Yarmouth Land Use Ordinance as written and adopted. After a thorough review, I find the proposed development outlined on subdivision plan dated June 28, 2022 is in compliance with our dimensional and performance standards set forth in the current Land Use Ordinance.

The four (4) buildings will be placed on individual lots being supported by one (1) large open space lot containing the parking, utilities, and common area etc.

Sincerely,

Ryan Keith
North Yarmouth Code Enforcement Officer

DOMESTIC
NONPROFIT CORPORATION

STATE OF MAINE

ARTICLES OF INCORPORATION

File No. 20230168ND Pages 3
Fee Paid \$ 40
DCN 2222973610122 ARTI
FILED
10/21/2022

Julie L. Flynn

Deputy Secretary of State

A True Copy When Attested By Signature

Julie L. Flynn
Deputy Secretary of State

Pursuant to 13-B MRSA §403, the undersigned incorporator(s) execute(s) and deliver(s) the following Articles of Incorporation:

FIRST: The name of the corporation is Deacon Hayes Commons

SECOND: ("X" one box only. Attach additional page(s) if necessary.)

- The corporation is organized as a public benefit corporation for the following purpose or purposes:
- The corporation is organized as a mutual benefit corporation for all purposes permitted under Title 13-B or, if not for all such purposes, then for the following purpose or purposes:

THIRD: The Registered Agent is a: (select either a Commercial or Noncommercial Registered Agent)

Commercial Registered Agent CRA Public Number: _____

(name of commercial registered agent)

Noncommercial Registered Agent
Laurie Bachelder
(name of noncommercial registered agent)

865 Oak Hill Rd North Yarmouth ME 04097
(physical location, not P.O. Box - street, city, state and zip code)

(mailing address if different from above)

FOURTH: Pursuant to 5 MRSA §108.3, the new commercial registered agent as listed above has consented to serve as the registered agent for this nonprofit corporation.

FIFTH: The number of directors (not less than 3) constituting the initial board of directors of the corporation, if the number has been designated or if the initial directors have been chosen, is _____.

The minimum number of directors (not less than 3) shall be 3 and the maximum number of directors shall be 7.

SIXTH: Members: ("X" one box only.)

There shall be no members.

There shall be one or more classes of members and the information required by 13-B MRSA §402 is attached.

SEVENTH: (Optional) (Check if this article is to apply.)

No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

EIGHTH: (Optional) (Check if this article is to apply.)

Other provisions of these articles including provisions for the regulation of the internal affairs of the corporation, distribution of assets on dissolution or final liquidation and the requirements of the Internal Revenue Code section 501(c) are set out in Exhibit _____ attached hereto and made a part hereof.

Incorporators

Dated 10/18/2022

Laurie Bachelder
(signature)

Street 865 Oak Hill Rd
(address)

Laurie Bachelder
(type or print name)

North Yarmouth ME 04097
(city, state and zip code)

(signature)

Street _____
(address)

(type or print name)

(city, state and zip code)

(signature)

Street _____
(address)

(type or print name)

(city, state and zip code)

For Corporate Incorporators*

Name of Corporate Incorporator _____

By _____
(signature of officer)

Street _____
(principal business location)

(type or print name and capacity)

(city, state and zip code)

Name of Corporate Incorporator _____

By _____
(signature of officer)

Street _____
(principal business location)

(type or print name and capacity)

(city, state and zip code)

***Articles are to be executed as follows:**

If a corporation is an incorporator (13-B MRSA §401), the name of the corporation should be typed or printed and signed on its behalf by an officer of the corporation. The articles of incorporation must be accompanied by a certificate of an appropriate officer of the corporation, not the person signing the articles, certifying that the person executing the articles on behalf of the corporation was duly authorized to do so.

Please remit your payment made payable to the Maine Secretary of State.

Submit completed form to:

Secretary of State
Division of Corporations, UCC and Commissions
101 State House Station
Augusta, ME 04333-0101
Telephone Inquiries: (207) 624-7752 Email Inquiries: CEC.Corporations@Maine.gov

**Declaration of Condominium
for
Deacon Hayes Commons**

THIS DECLARATION OF CONDOMINIUM is made as of this ____ day of _____, 2023, by 527, LLC, a Maine limited liability company having a place of business in North Yarmouth, Maine (the "Declarant").

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Declarant hereby takes the following actions:

ARTICLE I

Submission of the Premises

Section 1.1 Description of Land Declarant hereby submits the Premises to the provisions of the Act. The Premises are subject to and shall have the benefit of all easements, rights of way and matters affecting title of record on date hereof, including without limitation any described on Schedule A attached hereto.

Section 1.2 Creation of Units The Condominium shall consist of seven (12) Units, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,11, and 12.

ARTICLE II

Unit Boundaries

Section 2.1 Location and Dimensions of Units The location and dimensions of the Units within the Condominium are depicted on the Plans.

Section 2.2 Units and Common Elements Depicted on the Plans The location of Unit boundaries within the building and the approximate Unit dimensions are shown on the Plans. Each Unit shall have appurtenant to it an undivided tenant-in-common interest in and to all Common Elements within the Condominium in the percentages set forth on Schedule B attached hereto, as Schedule B may be amended from time to time.

Section 2.3 Unit Boundaries The boundaries of each Unit are as follows:

(a) Upper and Lower (Horizontal) Boundaries: The upper and lower boundaries of each Unit shall be the following boundaries extended to an intersection with the vertical (perimeter) boundaries:

- (i) Upper Boundary: The horizontal plane of the lower side of the gypsum board or other finished ceiling material.
- (ii) Lower Boundary: The horizontal plane of the top surface of the subfloor.

(b) Vertical (Perimeter) Boundaries: The vertical boundaries of each Unit shall be the vertical plane at the inside of the structural brick exterior walls and the inside surface of the gypsum board or other wall materials bounding the Unit extended to intersections with each other and with the upper and lower boundaries. Boundary lines shall also be the interior surface of doors, windows and storm windows and their frames, sills and thresholds.

Section 2.4 Maintenance Responsibilities Notwithstanding the ownership of the various portions of the Common Elements and the Units by virtue of the foregoing boundary description, the provisions of this Declaration shall govern the division of maintenance and repair responsibilities between the Unit owners and the Association.

Section 2.5 Relocation of Unit Boundaries and Subdivision of Units Relocation of boundaries between Units is permitted subject to compliance with the provisions in Section 1602-112 of the Act. The subdivision of Units is not permitted except as set forth in Section 4.5 below.

ARTICLE III

Common Elements & Limited Common Elements

Section 3.1 Common and Limited Common Elements

(a) The locations of the Limited Common Elements to which each Unit has or Units have exclusive use, in addition to the Limited Common Elements described in Section 1602-108 of the Act, are as follows:

- i. The foundation, structure, exterior siding, windows, roof, and other building elements, and the outdoor yard areas and grounds surrounding Units 1-12, inclusive.

- ii. Heating, ventilation and air conditioning and water heating equipment, fixtures, ducts, pipes and other improvements serving a single unit are Limited Common Elements allocated to such unit served.

(b) Each Unit is served by common public water and septic systems, the fees and charges for which shall be common expenses. All sewer and water system components are Common Elements of the Condominium. Separate services are provided for electricity, telephone, natural gas, and cable television and telecommunications, and the meters, equipment and fixtures relating thereto shall be Limited Common Elements allocated to the Unit(s) served.

(c) Except as indicated otherwise on the Plans, the land, with the benefit of and subject to all easements, covenants, agreements, and restrictions of record as of the date hereof, all exterior elements, including without limitation, the entryways, the parking lot and parking spaces, entry steps and landings, doors, windows and storm windows and their frames, sills and thresholds, roofs, floor joists and pilings, foundation, ceiling joists, rafters, and siding, all attic space, and all other parts of the Premises necessary or convenient to its existence, maintenance and safety or normally in common use, except as otherwise expressly provided in this Declaration, are Common Elements of the Condominium. Some portions of the Common Elements are allocated to the exclusive use of a Unit owner or Units owners as Limited Common Elements as provided in subsection (a) above.

ARTICLE IV

Easements; Development Rights; Special Declarant Rights

Section 4.1 Easements In addition to the easements created by Section 1602-114 of the Act, the following easements are hereby granted or reserved, as the context requires:

- (a) Easement for Lateral & Subjacent Support Each Unit and Common Element shall have an easement for lateral and subjacent support from every other Unit and Common Element.

Section 4.2. Declarant Control Period The Declarant Control Period shall be the period of time commencing as of the date of recording of the first deed from the Declarant to a purchaser of a Unit in the Condominium until the earlier to occur of the following dates: the date seven (7) years after the date of recording of the first Unit deed or sixty (60) days

after the date upon which Declarant has conveyed seventy-five percent (75%) of the units that Declarant is allowed to create under this Declaration.

Section 4.4. Common Element Association & Board Access The Declarant reserves in favor of the Association and its Board, officers, agents, employees, and the managing agent (if any), and every other person authorized by the Board the irrevocable right and easement to have access to each Unit as may be necessary for the inspection, maintenance, repair, or replacement of any of the Common Elements therein or accessible therefrom or the making of any addition or improvements thereto; or the making of repairs as are reasonably necessary for safety purposes or to prevent damage to any other Unit or Units or the Common Elements; or the abating of any violation of law, orders, rules or regulations of the Association or of any governmental authorities having jurisdiction thereof. In case of an emergency, such right of entry shall be immediate, whether or not the Unit owner or Occupant is present at the time. In the event of an emergency, the Board may, in its sole discretion, bar access to any portion of the Condominium, including access to the Units by Unit owners or Occupants (as hereinafter defined).

Section 4.5 Development Rights. The Declarant reserves for the benefit of itself and its successors and assigns, the following development rights:

- (a) to create additional Units up to a total of twelve (12) Units.

The real estate subject to the development rights is the Premises and any land Declarant may add to the Premises by amendment to this Declaration. The development rights herein reserved may be exercised with respect to different portions of the Premises at different times as Declarant, in its sole discretion, may determine. No assurances are hereby made with respect to the order in which the portions of the Premises subject to the development rights hereof will be subjected to the exercise of such development rights. If any such development right is exercised in some portion of the Premises, such development right need not be exercised in all or any other portion of the Premises. The Declarant agrees that improvements constructed by Declarant in the exercise of its development rights will be generally compatible with the architectural style and quality of construction of other improvements in the Condominium. The development rights must be exercised within twenty (20) years from the date of recording of this Declaration in the Registry of Deeds provided that the Declarant Control Period as permitted by Section 1603-103(d) of the Act, and as reserved in Section 4.2 above, shall terminate in accordance with the provisions thereof. For purposes of this Section, development rights

shall be deemed to be exercised at such time as this Declaration is amended to reflect the exercise of development rights and the amendment is recorded in the Registry, if such exercise requires an amendment to this Declaration.

Section 4.6 Special Declarant Rights. In addition to the Declarant Control Period as set forth in Section 4.2 above, the Declarant reserves, in favor of itself and any successor declarant, the following Special Declarant Rights with respect to the Condominium until the construction of Units, Common Elements and Limited Common Elements are complete and the marketing and sale of all Units are complete:

A. To locate and relocate in the Premises, even though not depicted on the Plans, and grant and reserve easements for the installation, maintenance, repair, replacement and inspection of utility lines, wires, pipes, conduits and facilities servicing the Premises including but not limited to water, sewer, electric, telephone, cable television and other communications, natural gas, and security system and transformers, meters and other equipment related thereto, provided that no such easement shall be effective until duly recorded in the registry of deeds, that no such easements may be granted through Units sold by Declarant to third parties without such Owner's consent, which consent shall not be unreasonably withheld, conditioned or delayed, and that the Common Elements and Limited Common Elements promptly shall be restored upon installation and repair of such utility lines;

B. To connect with and make use of utility lines, wires, pipes and conduits located on the Premises for construction and sales purposes, provided that the Declarant shall be responsible for the cost of services so used;

C. To use the Common Elements for ingress and egress, for the alteration, repair and construction of Units, Common Elements and Limited Common Elements, including without limitation the movement and temporary storage of construction materials and equipment and ingress and egress by construction workers, along with the materials, tools and equipment used by such workers, and to generate noise and dust in connection with Declarant's construction activities, which noise and dust shall be deemed not to be a nuisance; and

D. To use the Common Elements and Limited Common Elements for the ingress and egress for itself, its officers, employees, agents, contractors and subcontractors and for prospective purchasers of Units; to use any Units owned or leased by the Declarant as models, management offices, sales offices for its project or customer service offices and to relocate the same from time to time within the Premises; to maintain on both the interior and exterior of the Premises such advertising and marketing

signs as may comply with applicable governmental regulations, which may be placed in any location on the Premises and may be relocated or removed, all at the sole discretion of the Declarant.

ARTICLE V

Condominium Instruments During Declarant Control Period; Required Consent

Section 5.1. Amendments Except for any amendment as set forth in Section 4.5 in the exercise of Declarant Rights, any amendment to this Declaration requires approval from at least sixty-seven percent (67%) of the allocated interests of Unit owners as set forth in Article XVI hereof, except that during the Declarant Control Period, no amendment that eliminates or modifies rights reserved to the Declarant shall be effective unless Declarant approves such amendment in writing. No amendment of the Declaration may be made without the prior written approval of the required percentage of Eligible Mortgage Holders where such approval is required by this Declaration or by the Act.

ARTICLE VI

Fraction of Common Element Interests, Voting Rights, and Common Expense Liabilities

Section 6.1 Allocated Interests; Voting Rights The fraction of undivided interest in the Common Elements, voting rights and common expense liabilities appertaining to each Unit is set forth at Schedule B attached hereto and incorporated herein by reference. Such undivided interests are an approximately equal (with rounding to equal 100%) prorata allocation based on the number of Units, which is the methodology that shall be used to reallocate the undivided interests in the event that the Development Rights as set forth in Section 4.5 hereof are exercised. Except in connection with the exercise of a Development Right, no fraction of undivided interest allocated to any Unit shall be altered except upon the unanimous vote of all Unit owners and the required percentage of Eligible Mortgage Holders.

ARTICLE VII

Encroachments

Section 7.1. Encroachments If any portion of the Common Elements, or any other Unit, encroaches at any time upon any Unit or upon any portion of the Common Elements, as a

result of minor variations of the actual improvements from those shown on the Plans, settling of the building, alteration or repair to the Common Elements made pursuant to the exercise of Development Rights or by or with the consent of the Board, repair or restoration of a Unit or the building after damage by fire or other casualty or as a result of condemnation or other eminent domain proceedings, an easement shall exist for the encroachment and for its maintenance so long as the building stands.

ARTICLE VIII

Eminent Domain

Section 8.1. Payment of Eminent Domain Award If a Unit is acquired by eminent domain, or if a part of a Unit is acquired by eminent domain leaving the Unit owner with a remnant that may not practically or lawfully be used for any purpose permitted by this Declaration, any award therefor shall be paid to the Unit owner as compensation for his or her Unit and its allocated interest, whether or not any allocated interest is acquired. Upon condemnation acquisition, unless the decree otherwise provides, that Unit's entire allocated interest, votes in the Association, and common expense liability shall be re-allocated to the remaining Units in proportion to the respective interests, votes and liabilities of those Units before the taking, and the Association shall promptly prepare, execute and record an amendment to this Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this subsection shall be thereafter a Common Element.

Section 8.2. Effect on Allocated Interests Except as provided in subsection 8.1 hereinabove, if part of a Unit is acquired by eminent domain, any award therefor shall be paid to the Unit owner as compensation for the reduction in value of that Unit and that Unit's allocation of Common Element interest and Common Expense liability shall remain unchanged.

Section 8.3. Condemnation of Common Elements If a part of the Common Elements is acquired by eminent domain, the Association shall represent the Unit owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority and the award shall be paid to the Association for the use and benefit of the Unit owners and their mortgagees as their interests may appear. The Association shall divide any portion of the award not used for any restoration or repair of the remaining Common Elements among the Unit owners in proportion to their respective allocated interest before the taking, but the portion of the award attributable to the acquisition of a Limited Common Element must be equally divided among the owners of

the Units to which that Limited Common Element was allocated at the time of acquisition.

Section 8.4. Priority Nothing in this Declaration or the Bylaws, rules or regulations of the Association shall be deemed to give the Unit owner or any other party priority over any rights of a first mortgagee of a Unit pursuant to its mortgage documents in the case of a distribution to such Unit owner of condemnation awards for the taking of Units and/or Common Elements.

ARTICLE IX

Restrictions on Use & Occupancy; Services

Section 9.1. Compliance with Bylaws and Use and Occupancy Restrictions Each Unit owner shall comply strictly with the Bylaws and with the rules and regulations adopted by the Board, with the covenants, conditions and restrictions set forth in this Declaration and with the Act. Failure to so comply shall be grounds for an action to recover damages or for injunctive relief or both maintainable by the Board on behalf of the Association or by an aggrieved Unit owner. An aggrieved Unit owner shall have a right of action against the Association for failure to comply with or to enforce this Declaration, the Bylaws, any rules and regulations duly adopted or any requirements imposed by the Act.

Section 9.2. Use Restrictions and Association Services

- (a) Units 1 through 12, and any Units created pursuant to Development Rights, shall be used only for residential purposes, except that such restriction shall not prohibit the use of Units as home offices provided that such use complies with applicable zoning or land-use ordinances

- (b) No Unit owner: (i) shall permit or suffer anything to be done or kept upon the Condominium which will materially increase the rate of insurance on the Condominium or on the contents thereof; (ii) shall obstruct or interfere with the rights of Unit owners or Occupants or annoy them by unreasonable noise or otherwise; (iii) shall commit or permit any nuisance or commit or suffer any immoral or illegal act to be performed anywhere in or upon the Condominium; and/or (iv) shall cause or permit any noxious odors to emanate from any portion of the Condominium.

- (c) The Association shall be responsible for providing the following services, in addition to others provided in this Declaration, the expenditures for which shall be a Common Expense: the provision of water and sewer service to the Units; snow plowing and snow removal from sidewalks and the parking area; landscaping and grounds keeping; septic service; sprinkler systems.
- (i) No salt can be used for winter maintenance and only environmentally friendly deicing products can be used.
 - (ii) The advanced wastewater treatment system must have annual effluent testing for Nitrates and results forwarded to the Yarmouth Water District and the North Yarmouth Codes Enforcement Officer promptly.
 - (iii) The District be used as a resource for all items that involve source water protection and be notified of any spills and issues with the advanced wastewater treatment systems.
 - (iv) Each of the septic systems shall be maintained in good working order at all times, and have all permits, licenses, and approvals under applicable codes, statutes, and regulations.
 - (v) The septic tank shall be pumped by a certified septage servicing operator per the manufacturers requirements.
 - (vi) The private sewage system shall be visually inspected by a certified septage servicing operator, inspector or licensed master plumber per the manufacturers requirements.
 - (vii) The HOA shall furnish Yarmouth Water District and the Town of North Yarmouth, a copy of any inspection report verifying the condition of the tank, whether wastewater or effluent is ponding on the ground surface and the date of pumping. Reports shall be signed by properly licensed individuals.
 - (viii) The HOA/or owner will adhere to any other recommendations per the warranty and recommendations provided by the septic manufacturer.
 - (ix) The HOA/or owner is responsible for ensuring that access opening covers (manhole covers) remain locked or secured to prevent unauthorized access to the tanks.
 - (x) HOA members must immediately report; to the HOA/or owner, any leaky toilets or faucets; and any other circumstances that may suggest issues with the septic.
 - (xi) he HOA/or owner will have the advanced wastewater treatment tested with an annual effluent testing for Nitrates and results forwarded to the Yarmouth Water District and the North Yarmouth Codes Enforcement Officer promptly.

- (xii) Restoration, repair and maintenance work (changing oil, radiator fluid, etc.) of vehicles is prohibited, except for emergency repairs to move vehicles to a repair facility. Owners of cars which drip oil onto streets, driveways, alleys, roads or common area parking spaces will be required to remove the cars and reimburse the Association for the repair and cleanup of areas affected by leaking oil.

- (d) All land denoted as "Common Open Space and Recreation Land" on the plan entitled Amended Subdivision Plan, Deacon Hayes Commons and recorded in the Cumberland County Registry of Deeds at Book ____, Page ____ shall be reserved for open space and recreation purposes to benefit all Unit owners and occupants and their guests. Structural development shall not be permitted in this area except to serve such open space and recreation purposes. The Town of North Yarmouth shall have the right in common with each Unit owner to enforce this covenant and restriction.

- (e) All other land denoted as Common Area on the plan entitled Amended Subdivision Plan, Deacon Hayes Commons and recorded in the Cumberland County Registry of Deeds at Book ____, Page ____ shall be reserved for the common use and benefit of all Unit owners and occupants and shall not be developed unless (1) the Town of North Yarmouth has approved such amendment to the approved plan in accordance with local ordinances then in effect; and (2) any Association formed pursuant to Article XII has consented to such development.

- (f) No Unit owner or his or her family, guests, tenants, invitees, employees, agents or contractors (together, "Occupant" or "Occupants") shall place or store any personal property or other items on the Common Elements of the Condominium, except to the extent allowed by decision of the Board. All Unit owners shall also take appropriate care not to leave rubbish, debris, or waste on any portion of the Common Elements at any time. No Unit owner shall hang or install political or promotional signs in or on the windows of his or her Unit or on the Common Elements or Limited Common Elements.

- (g) The keeping, boarding and/or raising of animals, laboratory animals, livestock, poultry or reptiles of any kind, regardless of number, shall be and is prohibited within any Unit or upon the Common Elements, except that the keeping of dogs, cats, caged birds, or aquarium fish is permitted subject to regulation by the Board. All pets and animals shall be kept so

as to not be bothersome or offensive to the Unit owners or Occupants, and pets and animals shall not be permitted on the Common Elements, except being restrained and under the immediate supervision of a responsible person. The Unit owner is responsible for the cleanup of the pet's excrement and for the cost to repair any damage to the Common Elements or another Unit caused by the pet. . The Board shall have the power to further regulate pets and animals under the rules and regulations of the Association as promulgated or amended from time to time, including without limitation the express power to establish additional behavior requirements and to expel any offending pets and animals from the Premises. Notwithstanding the foregoing, dogs that qualify as service animals shall not be prohibited from the Premises.

- (h) No Unit owner shall play or permit to be played any musical instrument or operate or permit to be operated a stereo system, television, or other electronic or mechanical, sound-producing machinery, appliance or device inside or outside his/her Unit between the hours of 10:00 p.m. and 8:00 a.m. if such playing or operation shall disturb or annoy the Unit owner or Occupants of any other Unit.
- (i) Unit owners and Occupants shall not park vehicles in the parking spaces such that the vehicles block the access lanes for the parking lot.

Section 9.3. Rules & Regulations Reasonable rules and regulations, not in conflict with the provisions of this Declaration, for the general welfare of Unit owners and Occupants concerning the use and enjoyment of the Common Elements or the occupancy of Units, may be promulgated from time to time by the Board. Copies of any rules and regulations adopted and any amendments thereto promptly shall be provided to the Unit owners by the Board. The Board shall consistently and uniformly enforce the rules and regulations.

Section 9.4. Waste Disposal Trash, garbage, and other waste generated by or in a Unit shall be disposed of in trash receptacles.

Section 9.5. Electrical Wiring No Unit owner or Occupant shall overload the electrical wiring in the building or operate any machinery, appliances, accessories or equipment in such a manner as to cause, in the reasonable judgment of the Board, any unreasonable disturbance, annoyance or risk, or make any alterations, repairs or modifications to or

connections with the electrical or plumbing systems that involves hard wiring or plumbing into such systems, without the prior written consent of the Board.

Section 9.6. Structural Changes No Unit owner or Occupant shall make structural alteration to or within the Unit or any changes to the Common Elements without the written approval of the Board. Non-structural alterations are permitted so long as they are made within the Unit and so long as such alterations do not unreasonably disturb other Unit owners or Occupants and are performed in compliance with any rules and regulations imposed by the Board.

Section 9.7. Restriction Against Changes to Exterior Appearance No Unit owner shall make changes in exterior of the Unit, other than replacement of window glass in compliance with all applicable rules, regulations or codes, without the approval of the Board.

ARTICLE X

Common Expenses

Section 10.1. Common Expenses Except as expressly provided in this Declaration or the Act, each Unit owner shall pay to the Association, or its authorized representative, his or her proportionate share of the budgeted expenses of maintenance, repair, replacement, administration and operation of the Common Elements; management of the Condominium; sprinkler systems, insurance premiums, sewer and water charges; and maintenance of adequate working capital and capital repair and replacement reserves, which expenses are hereinafter referred to collectively as "common expenses." Such proportionate share shall be in the same ratio as said Unit owner's percentage of ownership in the common elements, as indicated on Schedule B attached hereto, as Schedule B may be amended from time to time. Each Unit owner shall also pay to the Association, or its authorized representative, his or her share of the budgeted expenses of maintenance, repair, and replacement of all of the Limited Common Elements associated with his or her Unit, which payments may be assessed by the Board in a lump sum or in monthly installments.

Section 10.2. Failure to Pay Common Expenses or Charges In the event of the failure of a Unit owner to pay common expenses when due, the amount thereof together with a late fee equal to five percent (5.0%) of the amount due and default interest at 18% per annum or at such other fees or rates established by the Board, costs and reasonable attorney's fees incurred in collection (whether or not an action is commenced) shall constitute a lien on the Unit, as provided by the Act, which lien may be foreclosed in like manner as a

mortgage on real estate. The recordation of this Declaration constitutes record notice of the lien. The lien for unpaid common expenses, however, shall be subordinate to the lien of the recorded first mortgage on Unit, and the foreclosure of such mortgage, sale or transfer pursuant to foreclosure or transfer to mortgagee in lieu of foreclosure shall extinguish the subordinate lien for common expenses. Such foreclosure shall not release the delinquent Unit owner from personal liability to the Association for unpaid common expenses.

In addition to the foregoing, the Association shall have the power to separately charge a Unit and the owner thereof for services rendered to that Unit, and interest and costs of collection in connection with service charges, and for fines assessed against a Unit owner for violation of this Declaration, the Bylaws and the rules and regulations of the Association. Such charges and fines shall be a lien on the Unit with the same status as a lien for common expense assessments under the Act and this Declaration, which lien for service charges may be foreclosed in like manner as a mortgage on real estate. The recordation of this Declaration constitutes record notice of the lien.

Service charges shall include without limitation:

(a) If a Unit owner requests the Association or its agent to perform repair and maintenance work on the Unit other than required of the Association by this Declaration, or the Unit owner or Occupants damage the Common Elements or fail to perform maintenance and repair work required by this Declaration and the Association performs such work, the expense thereof as determined by the Board may be assessed to the Unit owner as a service charge.

(b) Fees, if any, which may be established by the Board for the use and maintenance of the utility services and equipment. The expense of charges for water and sewer services and of equipment maintenance and repair and reasonable reserve allowances may also be calculated by the Board in its discretion and assessed in a lump sum or monthly installments as a service charge to each Unit. At the election of the Board, the expense of capital improvements, major repairs or renovations to the water and sewer lines may be assessed either as a common expense or as a service charge.

(c) Insurance premiums on permanent improvements to Units installed by Unit owners and insured by the request of the Unit owner with the Association's hazard insurance carrier.

(d) Any increase in fire and other casualty insurance premiums paid by the Association resulting from the activities of Unit owner or Occupants or improvements made by a Unit owner to its Unit.

Multiple owners of a Unit shall each be jointly and severally liable with one another for all unpaid common expense assessments, service charges, interest, penalties and costs of collection during their period of Unit ownership up to the time of the grant or conveyance. A grantee shall not be prevented from exercising any right to recover from the grantor such amounts paid by grantee for those common expenses assessments, service charges, etc. arising prior to the conveyance. A grantee or proposed purchaser under a purchase and sale contract for a Unit may obtain, upon request and the payment of such reasonable fee as may be established from time to time by the Board, a statement from the Association setting forth the amount of unpaid common expense assessments and service charges, interest, penalties and costs of collection against the Unit as of the date of such statement and containing such other information required by the Act. The grantee shall not be liable for, and the Unit conveyed shall not be subject to a lien for any unpaid amounts due from the grantor before the statement date in excess of the amount set forth in the statement. All regular and special assessments and service charges assessed against a Unit shall be paid without any offset or deduction whatsoever.

Section 10.3 Reserves. The Board may maintain capital repair and replacement reserves for repairs and replacement of those Common Elements which must be replaced on a periodic basis. Any capital replacement reserve shall be funded by reserve contributions that are included in the annual operating budget. The existence of such capital replacement reserve shall not preclude the levy by the Board of a special assessment for the cost of necessary repairs or replacements that exceed the balance of then existing reserves. The Board also shall maintain working capital reserve equal to at least two months' assessments for each existing Unit, which initially shall be partially funded by the payment of two month's assessments by the initial purchasers of Units from Declarant, which payment shall be made by such purchasers to the Association at closing and which payment shall not be credited against regular monthly assessments payable on the Units.

Section 10.4. Access to Common Elements Upon Default Any Unit owner in default in the payment of any amount due the Association or in violation of any provisions of the Act, this Declaration, the Bylaws or the rules and regulations of the Association, which violation continues for ten (10) days after notice thereof by the Association to the Unit Owner, may be prohibited by the Board from voting on Association or Condominium matters and may be prohibited from the use and enjoyment of any and all of the Common Elements not essential to access the Unit, in addition to all other remedies available to the Board.

ARTICLE XI

Maintenance

Section 11.1. Maintenance Each Unit owner shall furnish and be responsible for, at his or her own expense, all the maintenance, repairs and replacements within his or her own Unit; provided, however, such maintenance, repair and replacements as may be required for the supply of water and sewer for the Unit, shall be furnished by the Association as part of the common expenses. Maintenance, repairs and replacements of the electrical or mechanical appliances (including all heating, ventilation and air-conditioning systems) which may be located outside of but serving exclusively the Unit shall be the responsibility of the Association but the cost thereof shall be paid by the Unit owner as a limited common element expense assessment. If due to the negligent act or omission of a Unit owner or of Occupants, damage shall be caused to the Common Elements or to a Unit or Units owned by others, and maintenance, repairs or replacements shall be required which are not covered by insurance and which would otherwise be a common expense, then such Unit owner shall pay for such damage and the maintenance, repairs and replacements, as may be determined by the Board, as a service charge.

Section 11.2. Maintenance of Limited Common Elements The Association shall furnish and be responsible for all the maintenance, repairs and replacements of Limited Common Elements, the cost of such maintenance, repairs and replacements to be paid as a common expense by the Unit(s) to which such Limited Common Elements are allocated.

Section 11.3. Repairs to the Common Elements The Association is responsible for maintenance, repair and replacement of the Common Elements. Each Unit owner shall afford to the Association and the other Unit owners, and to their agents, contractors or employees, access through his or her Unit reasonably necessary for those purposes. If damage is inflicted on the Common Elements or any Unit through which access is taken, the Unit owner responsible for the damage, or the Association if it is responsible, is liable for the prompt repair thereof. If a Unit owner or Occupant causes damage to the Common Elements or another Unit, whether or not the Unit owner or Occupant is negligent in the cause of such damage, the Unit owner shall be responsible for the cost of repairing such damage.

Section 11.4 Property Management Contracts. Any management contract, employment contract and any contract entered into by Declarant which may become binding on the Association shall provide that such contract or lease may be terminated by either party without cause and without payment of a termination fee on not more than ninety (90) days' written notice, the term of any such contract shall not exceed three years, and the Association may terminate said agreement for cause upon thirty (30) days' written notice without payment of a termination fee.

ARTICLE XII

Association of Unit Owners

Section 12.1. The Association & Executive Board.

(a) Prior to the date of this Declaration and the recording hereof, Deacon Hayes Commons (the "Association"), a non-profit and non-stock corporation was duly incorporated under the laws of the State of Maine. The Association shall be the governing body for the Condominium and all of the Unit owners with respect to the operation, administration, maintenance, repair and replacement of the Premises as provided by the Act, this Declaration, in the Bylaws of the Association. The Bylaws may be amended from time to time as provided therein and such amendments need not meet the requirements for amendment to this Declaration and shall not be deemed to be amendments to this Declaration.

(b) The Executive Board (the "Board") shall be composed of three (3) directors. During the Declarant Control Period, the directors of the Board may be appointed, removed and replaced from time to time by the Declarant without the necessity of obtaining resignations. Upon the expiration of the Declarant Control Period, Board shall be composed of five (5) directors, who shall be appointed by vote of the Unit owners.

(c) The Board shall possess all of the duties and powers granted to the Board by the Act, and in addition shall have the specific requirement of yearly preparation and approval of an Association budget for operating and maintenance expenditures and capital improvements. The proposed budget approved by the Board shall be adopted unless rejected by the vote of at least two-thirds in interest of the Unit owners. The Board shall have the power and authority to assess common expenses benefitting fewer than all of the Units to the Units benefitted. The Board and Association also shall have the power and authority to borrow money for purposes of capital repairs and replacements to the Condominium and to pledge the future income of the association as collateral for the loan.

Section 12.2. Membership in the Association Each Unit owner and/or owners shall be a member of the Association. Membership shall be appurtenant to a Unit, and the transfer of title to a Unit automatically shall transfer the membership appurtenant to that Unit to the transferee(s). The grant of an interest in a Unit by mortgage or other lien, however, shall not transfer membership until foreclosure or sale in lieu of foreclosure.

Section 12.3. Covenants Running with the Land The provisions of this Declaration and the rights and obligations established thereby shall be deemed to be covenants running with the land, so long as the Premises remain subject to the provisions of the Act, and shall inure to the benefit of and be binding upon each and all of the Unit owners and their respective heirs, representatives, successors, assigns, purchasers, lessees, grantees and mortgagees.

Section 12.4. Delivery of Condominium Documents The Association shall make available to Unit owners and Eligible Mortgage Holders current copies of the Declaration, Bylaws and rules and regulations governing the Condominium, and other books, records and financial statements of the Association, all as required by the Act. This requirement may be satisfied by making the documents available for inspection upon request during normal business hours or under other reasonable circumstances.

ARTICLE XIII

Separate Taxation and Utilities

Section 13.1. Separate Taxation It is understood that real estate taxes are to be separately taxed to each Unit owner for his or her Unit and his or her corresponding percentage of ownership in the Common Elements, as provided in the Act. In the event that for any year such taxes are not separately taxed to each Unit owner, but are taxed on the Premises as a whole or greater than single Units, then each Unit Owner shall pay his or her proportionate share thereof in accordance with his or her respective percentage allocated interest in the Common Elements.

Section 13.2. Utilities Each Unit owner shall pay for his or her own telephone, telecommunications, electricity, natural gas, and other utilities which are separately metered or billed to each user by the respective utility company. Utilities which are not separately metered or billed to Units shall be treated as part of the common expenses.

ARTICLE XIV

Insurance and Related Matters

Section 14.1. Insurance (a) The Association shall obtain and maintain in effect a broad "special form" insurance policy covering direct physical loss to the Premises with extended coverage, vandalism, malicious mischief, windstorm, debris removal, cost of demolition and water damage endorsements, issued by an insurance company authorized to do business in the State of Maine (which company shall also meet the ratings

requirements of the Federal National Mortgage Association), insuring as a single entity the entire Premises including the Common Elements, the Limited common Elements, the Units as originally constructed by Declarant, and the fixtures, supplies and common personal property belonging to the Association, *excepting* the land, foundations, excavations, and other similar items customarily excluded from property insurance policies and also *excepting* furniture, furnishings or other personal property supplied or installed by Unit Owners. The policy shall cover the interests of and name as insureds the Association, the Board, and all Unit Owners and their mortgagees as their insurable interests may appear.

Such blanket or master insurance policy shall be in an amount equal to one hundred percent (100%) of the then current replacement cost of the insured Premises (exclusive of the land, excavations, foundations and other similar items customarily excluded from such coverage), without deduction for depreciation, together with coverage for the payment of common expenses with respect to damaged Units during the period of reconstruction. Such insurance policy may, at the option of the Board, contain such deductible as the Board shall deem appropriate but not to exceed the lesser of \$10,000 or one (1) percent of the policy's face amount. Unless otherwise established by the Board from time to time, a Unit owner shall pay the expense of repair of damage to his Unit, or any other Unit(s) damaged by the Unit owner's negligence or breach of this Declaration notwithstanding that the Association's insurance shall be primary, in the amount not covered by the insurance (e.g., the deductible). Such casualty insurance policy shall also include the following provisions:

- (1) The following endorsements or their equivalent: (a) "no control," meaning that coverage shall not be prejudiced by any act or neglect of any Occupant or Unit owner or their agents, when such act or neglect is not within the control of the insured, or the Unit owners collectively, nor by any failure of the insured, or the Unit owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or the Unit owners collectively, have no control; (b) "Construction Code Endorsement" or "increased cost of construction," (c) "agreed amount" or elimination of co-insurance clause; and (d) "inflation guard," when it can be obtained;
- (2) That any "no other insurance" clause shall expressly exclude individual Unit owners' policies from its operation, so that the property damage policy purchased by the Board shall be deemed primary coverage and any individual Unit owners' property damage policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board

hereunder provide for or be brought into contribution with property insurance purchased by individual Unit owners or their mortgagees; and

- (3) The recognition of any Insurance Trust Agreement whereby the Board may designate in writing an Insurance Trustee to hold any insurance proceeds in trust for disbursement, as provided under the Act.

The policies shall require the insurer to notify in writing the Board and each Eligible Mortgage Holder named in the mortgagee clause at least twenty (20) days before it cancels or substantially changes the Premises' coverage.

(b) The Board shall obtain comprehensive public liability insurance in such amounts as it shall deem desirable, insuring each Unit owner and the Association, the Board and managing agent, if any, from liability in connection with the Common Elements. Such policy shall provide coverage of at least \$1,000,000.00 for bodily injury and Premises damage for any single occurrence resulting from the operation, maintenance or use of the Common Elements, and coverage for any legal liability resulting from lawsuits related to employment contracts in which the Association is a party. Such policy shall provide for at least twenty (20) days written notice to the Board and to each Eligible Mortgage Holder before the insurer can cancel or substantially modify the insurance coverage. Also, the Board shall have authority to purchase insurance to indemnify the Board and Officers for losses in managing the Association's affairs.

(c) The premiums for all the aforementioned insurance coverage shall be a common expense. Each Unit owner, at his or her own cost, shall be responsible for his or her own insurance on the contents of his or her own Unit and his or her additions and improvement thereto and decorations, floor coverings, wall coverings, appliances, furnishings, personal property therein and stored elsewhere on the Premises, and his or her personal liability to the extent not covered by the liability insurance provided by the Association. The Association will not maintain insurance on the personal property of Unit owners, no matter where located on the Condominium. AS SUCH, UNIT OWNERS ARE STRONGLY ENCOURAGED TO OBTAIN AND MAINTAIN ADEQUATE INSURANCE ON THEIR PERSONAL PROPERTY.

ARTICLE XV

Mortgagee Provisions

Section 15.1. Eligible Mortgage Holders Any holder of record of a recorded first Mortgage encumbering a Unit in the Condominium which has delivered written notice to the Association by prepaid United States Mail, return receipt requested, or by delivery in hand securing a receipt therefor, stating the name and address of the said holder of the Mortgage, the name and address of the Owner of the Unit encumbered by such Mortgage, the identifying number of such Unit, and containing a statement that such Mortgage is a recorded first Mortgage shall become an Eligible Mortgage Holder for purposes of this Declaration.

Section 15.2. Notices of Default to Eligible Mortgage Holders The Board, when giving notice to a Unit owner of a default in paying common expense assessments or other violation of the provisions of this Declaration, the Bylaws or rules and regulations, may send a copy of such notice to each Eligible Mortgage Holder.

Section 15.3. Additional Eligible Mortgage Holder and Mortgagee Rights Notwithstanding anything to the contrary elsewhere contained in this Declaration or Bylaws, the following provisions shall govern in the case of Eligible Mortgage Holder rights:

- (a) Any Eligible Mortgage Holder will, upon request, be entitled to inspect the books and records of the Association during normal business hours.
- (b) No provision of this Declaration or of the Bylaws shall be deemed or construed to give a Unit owner, or any other party, priority over any rights of first mortgagees of Units pursuant to their mortgages in the case of a distribution to the Unit owners of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.
- (c) A first mortgagee of a Unit who requests to the Board in writing shall be entitled to prompt written notification from the Board of (i) any default by the Unit owner in the performance of such Unit owner's obligations under this Declaration and/or the Bylaws, which is not cured within thirty (30) days; (ii) any event of substantial destruction to, or condemnation or governmental taking of, such Unit or any portion of the Common Elements appurtenant thereto; (iii) any lapse or modification of insurance coverage; (iv) any proposed action of which an eligible mortgage holder is entitled to notice under Section 1602-119(b) of the Act.
- (d) Any first mortgagee of a Unit who obtains title to the Unit pursuant to the remedies provided in the mortgage, or through foreclosure of the mortgage, or

through deed in lieu of foreclosure, shall take the Unit free of any claims for unpaid assessments or charges against such Unit which accrue prior to the acquisition of title to such Unit by the mortgagee, but the foregoing shall not preclude the Association from collecting such deficiency in operating expenses from Unit owners in the future, whether by regular or special assessment or for liability for assessments after foreclosure or deed in lieu of foreclosure.

ARTICLE XVI

Method of Amending Declaration

Section 16.1. Amendments Except to the extent expressly permitted in this Declaration, or required by the Act, this Declaration may be amended by a vote or by written approval of the Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and written approval from the required percentage of Eligible Mortgage Holders.

Section 16.2. Unanimous Votes Required Regardless of any amendment hereto or revision of the Act that may provide otherwise, and except for amendments made in the exercise of Development Rights, unanimous consent of all Unit owners and the written approval of the required percentage of Eligible Mortgage Holders shall be required for any amendment that would:

- (a) Seek to terminate the legal status of the Premises as a condominium for reasons other than substantial destruction or condemnation of the Premises;
- (b) Change the pro rata interest, common expenses payment obligations or other obligations or voting rights of any Unit;
- (c) Abandon, partition, subdivide, encumber, sell or transfer the Common Elements. The granting of easements for public utilities or for other purposes consistent with the intended use of the Common Elements by the Condominium shall not be deemed a transfer within the meaning of this clause;
- (d) Use hazard insurance proceeds from losses to the Premises (whether to Units or to Common Elements) for other than repair, replacement or

reconstruction of such improvements, except as provided by this Declaration or the Act in case of substantial destruction of the Condominium.

Section 16.3. Special Amendments. Notwithstanding the foregoing, this Declaration may also be amended by special amendment as follows: The Declarant, without the consent of any Unit owner or mortgagee, may execute and record, as long as it owns any Units or holds any Special Declarant Rights, amendments in order to (i) correct any errors and/or omissions in this Declaration, provided no such correcting amendment shall materially and adversely affect the rights of any Unit owner or mortgagee; or (ii) to make this Declaration comply with the provisions of the Maine Condominium Act, any other law, code, permit or approval, or the requirements or guidelines of the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other insurer or guarantor of Unit Mortgages.

ARTICLE XVII

Removal from the Condominium Act

Section 17.1 Termination of the Condominium. The submission of the Property to the Act herein shall not be terminated unless (i) in compliance with Section 1602-118 of the Act, and (ii) the required percentage of the Eligible Mortgage Holders, shall agree to such revocation or removal of the Property from the provisions of the Act, their agreement to be established by written instrument duly recorded.

Section 17.2 Ownership upon Termination. Upon removal of the Property from the Act, the Unit owners shall hold the Property and any proceeds thereof as tenants in common in accordance with the Act, with any mortgages or liens affecting a Unit to attach in order of priority against the resulting common ownership interest. Removal of the Property from the Act shall not bar the subsequent re-submission of the Property to the Act.

ARTICLE XVIII

Miscellaneous

Section 18.1. Remedies All rights, remedies, and privileges granted to the Declarant, the Association or a Unit owner pursuant to the terms of this Declaration, the Bylaws, and the rules and regulations shall be deemed to be cumulative to any other right or remedy under said documents or afforded by law or equity.

Section 18.2 Conflict. In the event of any conflict or discrepancy between this Declaration, the Bylaws and the Plans, this Declaration shall govern. If any provision of this Declaration, the Bylaws or the rules and regulations be in conflict with any applicable laws, including the Act, then such laws shall control and such invalid provision shall be of no force and effect, but the validity of the remainder of this Declaration, the Bylaws and rules and regulations shall not be affected thereby and shall remain in full force and effect as if such invalid provision had not been included. A provision in this Declaration which is permissible under the Act shall not be considered to be inconsistent with the Act.

Section 18.3 Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration or the intent of any provisions hereof.

Section 18.4 Context. The use of the singular number in this Declaration shall be deemed to include the plural, the plural the singular, and the use of any one gender shall be deemed applicable to all genders.

Section 18.5 No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches that may occur or the duration of such breach.

Section 18.6 Invalidity. If any term, covenant, provision, phrase or other element of this Declaration, the Bylaws, or the rules and regulations of the Association is held to be invalid or unenforceable for any reason whatsoever, such holdings shall not affect, alter, modify, or impair in any manner, any other term, covenant or provision, phrase or other element of such documents.

Section 18.7 Dispute Resolution. Except as provided in this Declaration, the Association and/or any aggrieved Unit owner shall have a right of action against any other Unit owner who fails to comply with this Declaration, the Bylaws, the rules and regulations issued by the Association or a decision of the Association.

Section 18.8 Notice. Any notice required or given pursuant to this Declaration to the Association or to any Unit owner may be delivered to any Association director or officer or to such Unit owner respectively either by sending it to the Unit or the Registered Agent for the Association by first-class United States mail, postage prepaid, or by delivering it to the Unit by hand, or as otherwise permitted by the Bylaws.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, 527, LLC, as Declarant, has caused this Declaration to be executed and sealed by its duly authorized Manager as of _____, 2023.

WITNESS

527, LLC

By:

Its duly authorized Manager

State of Maine
Cumberland County

_____, 2021

Then personally appeared before me the above-named _____, a Manager of 527, LLC as aforesaid, and acknowledged the foregoing to be his free act and deed in said capacity and the free act and deed of said company.

Attorney at Law/Notary Public

SCHEDULE A

A certain lot or parcel of land with the buildings thereon, situated on the easterly side of Route 115 in the Town of North Yarmouth, County of Cumberland and State of Maine bounded and described as follows:

Beginning at the intersection of the easterly sideline of said Route 115 and the southerly sideline of Parsonage Road:

Thence South $86^{\circ} 40' 55''$ East along said Parsonage Road 441.63 feet to an iron pipe and land of Carol A. Dubay et al;

Thence South $08^{\circ} 31' 40''$ East along said land of Dubya 352.87 feet to an iron pipe:

Thence South $72^{\circ} 54' 35''$ West along said remaining land of the Grantors herein 71.37 feet to land now or formerly of Stephen K. Libby:

Thence continuing South $72^{\circ} 54' 35''$ West along said land of Libby 290.00 feet to Route 115;

Thence North $17^{\circ} 05' 25''$ West along said Route 115 a distance of 502.94 feet to the point of beginning.

All bearings are magnetic of the year 1988 based on a survey by Owen Haskell Inc.

Together with a right of way in common with others 50 feet in width along the easterly side of the premises herein conveyed and the westerly boundary of the property now or formerly of Carol Dubay; said right of way shall be for pedestrian and vehicular ingress and egress and for all utility purposes above and beneath the ground.

SCHEDULE B

Allocation of undivided interest in the Common Elements,
voting rights and common expense liabilities appertaining to each Unit.

Unit 1	8.33%
Unit 2	8.33%
Unit 3	8.33%
Unit 4	8.33%
Unit 5	8.33%
Unit 6	8.33%
Unit 7	8.33%
Unit 8	8.33%
Unit 9	8.33%
Unit 10	8.33%
Unit 11	8.33%
Unit 12	8.33%

Project: Deakon Hayes

Date: _____

Sheet: _____ of _____

ENGINEERING
BACKUP SHEET



SJR ENGINEERING
16 Thurston Drive
Monmouth, Maine 04259
Tel: (207) 242-6248

Subject: OPEN SPACE CALC'S

Job #: _____

SECTION 10-23 RECREATION + OPEN SPACE

GUIDELINES! AVERAGE LOT LESS THAN 10,000 SF REQUIRES 13%
OF TOTAL PARCEL TO BE RESERVED FOR RECREATION + OPEN SPACE

$$97471 \text{ SF} \times 0.13 = 12,671 \text{ SF OR MORE TO BE RESERVED}$$

(SEE SUBDIVISION PLAN FOR AREA)

Remand Issue #8

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is entered into by and between the **TOWN OF NORTH YARMOUTH**, a public body corporate and politic with offices at 10 Village Square Road, North Yarmouth, Maine 04097 (the "Town") and **527, LLC**, a Maine limited liability company with a mailing address of 865 Oak Hill Road (the "Developer").

RECITALS

WHEREAS, the Developer owns certain property situated on Walnut Hill Road in North Yarmouth, Maine, comprised of 2.24 acres, as more particularly described in that certain deed to Developer dated May 11, 2021 and recorded in the Cumberland County Registry of Deeds in Book 38201, Page 160 (the "Property").

WHEREAS, Town's Planning Board on September 13, 2022 approved a site plan for the Property which provides for a residential development consisting of four (4) buildings containing a total of twelve (12) units ("the Development");

WHEREAS, Developer has represented to the Town that certain units within the Development will be maintained as "affordable housing" in accordance with the definitions and other requirements pertaining to the same, as set forth in the Town of North Yarmouth Land Use Ordinance; and

WHEREAS, Developer hereby executes, delivers and records this Declaration to impose and memorialize covenants to assure the affordability of designated units within the Development for the requisite 25-year period as required by the Town of North Yarmouth Land Use Ordinance;

NOW THEREFORE, in consideration of the foregoing and the covenants set forth herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer and Town agrees as follows:

1. **Term.** This Declaration shall take effect on the date that it is recorded in the Cumberland County Registry of Deeds (the "Effective Date"). The affordability covenants and restrictions set forth herein shall be applicable to a particular unit for a period of twenty-five years beginning on the date of issuance of a Certificate of Occupancy for the unit by the Town of North Yarmouth (the "Term").

2. **Enforceability of Covenants.** The covenants and restrictions of Developer set forth herein are intended to be and shall be covenants that run with the Development and any individual units sold or transferred within the Development, and violations thereof may be enforced by the Town. The covenants set forth herein shall survive a sale, transfer or other disposition of the Development by Developer, including pursuant to a foreclosure or transfer of title in lieu of foreclosure; provided, however that such covenants shall cease to apply to the Development in the event of non-voluntary compliance due to substantial destruction (even if compensated by insurance), a change in law, whether Federal, state or local, or any action of a governmental agency that otherwise prevents enforcement of or compliance with the covenants.

3. **Covenants.** The Developer hereby covenants and represents to the Town as follows:

- a. The Development shall be comprised of the buildings situated on the Property of the site plan set entitled "Site & Demolition Plan – Deacon Hayes Commons," dated February 2022 and prepared by SJR Engineering, as approved by the Town on September 13, 2022, each containing three (3) units of rental housing and together containing a total of twelve (12) housing units.
- b. During the Term for a respective unit within the Development, that unit shall be rented or sold for occupancy by buyers with low or moderate incomes . For the purposes of these restrictions, "low or moderate income" shall mean household income which is less than one hundred fifty percent (150%) of the median family income for the Portland Statistical Area as established by the Maine State Planning Office or the Greater Portland Council of Governments. Units shall be further subject to the following restrictions on sale or rental:
 - i. Units to be sold shall be occupied by the owner and offered for sale only at a price that is reasonably anticipated to result in monthly housing costs (including mortgage principal and interest payments, mortgage insurance costs, homeowners' insurance costs, and real estate taxes) that do not exceed twenty-eight percent (28%) of the household's gross monthly income. Determination of mortgage amounts and payments are to be based on down payment rates and interest rates generally available to households in this target group. Any building or occupancy permit to be issued by the Town for units designated as "affordable housing" pursuant to the Town of North Yarmouth Land Use Ordinance shall be expressly conditioned upon compliance with this Declaration of Covenants. Any deed for a unit within the Development to be sold or transferred within the Term shall be expressly bound by reference to this Declaration of Covenants.
 - ii. Units to be rented by the Developer or its successor(s) shall be rented at a rate, that does not exceed twenty-eight percent (28%) of the household's gross monthly income." During the Term the Developer or its successor(s) shall maintain records to document compliance with these affordability covenants and shall make said records available to the Town of North Yarmouth upon request.
- c. The Town shall consult with the Portland Housing Authority in determining whether the sale or rental of any unit within the Development is in compliance with these affordability restrictions.
- d. During the Term, no unit shall be expanded to contain more than 1,500 square feet of living space.

4. **Modification.** This Declaration may be amended or modified, in whole or in part, only by written agreement of the Developer and the Town.

5. **Severability.** The validity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.

6. **Successors and Assigns.** This Declaration shall be binding upon and inure to the benefit of Developer's respective successors and assigns and to the successors and assigns of the grantee of any unit bound by this Declaration.

7. **Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Maine.

[Signature Page Follows]

IN WITNESS WHEREOF, this Declaration has been duly executed by the Developer and the Town as of the date set forth in the notary blocks below, but it is effective as of _____, 2022.

TOWN OF NORTH YARMOUTH

By: _____
Name: Diane Barnes
Its: Town Manager

527, LLC, a Maine limited liability company

By: _____
Name: Laurie Bachelder
Its: Managing Member

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

On this ___ day of _____, 2022, personally appeared the above named Diane Barnes, Town Manager of the Town of North Yarmouth, and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of the Town of North Yarmouth.

Before me,

Notary Public/ME Attorney at Law
Print Name: _____
Commission expires: _____

STATE OF _____
COUNTY OF _____, ss.

On this ___ day of _____, 2022, personally appeared the above named Laurie Bachelder, Managing Member of 527, LLC, a Maine limited liability company, and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said corporation.

Before me,

Notary Public/ME Attorney at Law
Print Name: _____
Commission expires: _____

Zoning Board of Appeals Decision

**Town of North Yarmouth
Zoning Board of Appeals**

Notice of Decision and Findings of Fact and Conclusions of Law

**Appeal by Sol and Alicia Dostilio of Planning Board Subdivision and
Site Plan Approval of Deacon Hayes Commons**

Appellants: Sol and Alicia Dostilio, 15 Parsonage Rd., North Yarmouth

Subject Property: 521 Walnut Hill Road, North Yarmouth (Tax Map 7, Lot 62), owner – 527 LLC (Laurie Bachelder) (the “Property”)

Appeal Description: Appeal (the “Appeal”) from the Planning Board’s September 13, 2022 decision (the “Decision”) to grant Subdivision and Site Plan approval to 527 LLC ‘s (“Applicant”) application for Deacon Hayes Commons (the “Development”)

Procedural Background

On November 28, 2022, the North Yarmouth Zoning Board of Appeals (“ZBA”) met to hear this Appeal. Present were: ZBA Chair Paul Napolitano, Secretary Kevin Robinson, Members Thaddeus Day, Norman Smith, and Jim Briggs, and Alternate Member Mike Mallory.

At the beginning of the meeting, Attorney Kristin Collins submitted a November 28, 2022 letter requesting recusal of Chair Napolitano, Secretary Robinson and Alternate Member Mallory. The ZBA proceeded to address the questions of ZBA member conflict of interest and bias; Chair Napolitano recused himself; Secretary Robinson and Alternate Member Mallory disclosed what they had said and written regarding the Development, and the other members of the ZBA voted to allow them to participate. As ZBA Secretary, Mr. Robinson became Acting Chair under the Bylaws and promoted Alternate Member Mallory to full Member status for this Appeal. The ZBA then heard from: Attorney Keith Richard for Appellants and Attorney Kristin Collins for Applicant and from members of the public before closing the public hearing, beginning its deliberations, and continuing the meeting to a date to be determined.

On December 14, 2022, the ZBA met to hear this continued Appeal; present were: ZBA Acting Chair Kevin Robinson, Members Thaddeus Day, Norman Smith, and Jim Briggs, and Mike Mallory. At the request of Atty. Richard and the agreement of Atty. Collins, the appeal was continued to Jan. 18, 2023, when ZBA Acting Chair Thaddeus Day (chairing the meeting in the absence of Sec. Robinson and by unanimous majority vote by the ZBA members in attendance) and Members Norman Smith, Jim Briggs, and Mike Mallory met to take additional argument and deliberate. At the conclusion of the Jan. 18, 2023 meeting, the ZBA continued the matter for preparation of a draft Notice of Decision and a vote on that draft and the appeal. On Feb. 1, 2023, the ZBA met to review the draft Notice of Decision and to vote on its determinations on the issues raised, to vote on the appeal, and to adopt the Notice of Decision.

Standard of Review

Article VI, Sections 6.3(5)(b) and (6) of the Town's Land Use Ordinance ("LUO") require the following when the ZBA reviews Planning Board decisions:

- 5.b.** When the ZBA hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The ZBA may only review the record of the proceedings before the Planning Board. The ZBA shall not receive or consider any evidence which was not presented to the Planning Board, but the ZBA may receive and consider written or oral arguments. If the ZBA determines that the record of the Planning Board proceedings are inadequate, the ZBA may remand the matter to the Planning Board for additional fact finding.
- 6. Decision by Zoning Board of Appeals (ZBA):**
- a. Quorum:** A majority of the full voting membership of the ZBA shall constitute a quorum for the purpose of deciding an appeal.
 - b. Burden of Proof:** The person filing the appeal shall have the burden of proof.
 - c. Action on Appeal:** Following the public hearing on an appeal, the ZBA may affirm, affirm with conditions, or reverse the decision of the CEO or Planning Board. The ZBA may reverse the decision, or failure to act, of the CEO or Planning Board only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this Ordinance. When errors of administrative procedures or interpretations are found, the case shall be remanded back to the CEO or the Planning Board for correction.
 - d. Time Frame:** The ZBA shall decide all administrative appeals and variance appeals within 35 days after the close of the hearing, and shall issue a written decision on all appeals.
 - e. Statement of Findings:** The ZBA shall state the reasons and basis for its decision, including a statement of the facts found and conclusions reached by the Board. The ZBA shall cause written notice of its decision to be mailed or hand-delivered to the applicant, and to the Department of Environmental Protection for appeals applicable to the Resource Protection and Residential Shoreland Districts, within 7 days of the Board's decision. Copies of written decisions of the ZBA shall be given to the Planning Board, Code Enforcement Officer, and the Select Board.

Determination

As to the fifteen arguments made by Appellant, the ZBA determines as follows.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On the basis of the record of the Planning Board proceedings transmitted to the ZBA (the "Record"), the ZBA finds and concludes as follows.

I. Findings of Fact

1. Applicant 527 LLC submitted a subdivision and site plan application for Deacon Hayes Commons (the “Development”), a 12-unit residential development to be located on a 2.24-acre parcel owned by it, located at 521 Walnut Hill Road, North Yarmouth (Tax Map 7, Lot 62) – the “Property.” The Property is more particularly described by a deed recorded in the Cumberland County Registry of Deeds in Book 38201, Page 160 (527 LLC) and in Book 37314, Page 179 (507 LLC).
2. The Development also includes a parking lot containing 29 parking spaces and a Common Area of 75,537 square feet in area.
3. The Planning Board voted to approve the subdivision and site plan application for the Development on September 13, 2022 and adopted its written decision on October 25, 2022.
4. Appellants Sol and Alicia Dostilio are abutters to the proposed Development; they own and reside on property located at 15 Parsonage Road that is adjacent to the Applicants’ Property at 521 Walnut Hill Road.
5. Appellants filed their Appeal from the Planning Board Decision on September 19, 2022 (the “Decision”).

II. Conclusions of Law

A. Jurisdiction. The ZBA has jurisdiction over administrative appeals from Planning Board decisions under Article VI, Sections 6.2 and 6.3 of the LUO. This Appeal is such an administrative appeal from the Planning Board’s subdivision and site plan decisions, and so the ZBA concludes that it has jurisdiction over the Appeal.

B. Timeliness. Appellants filed their appeal with the Town on September 19, 2022, within 30 days from the date of the September 13, 2022 Planning Board Decision which is memorialized in the written decision of the Planning Board adopted on October 25, 2022, and so the appeal is timely.

C. Standing. Appellants Sol and Alicia Dostilio, 15 Parsonage Rd., allege that they have standing to bring this Appeal because: 1) they are abutters to the Property; 2) they will be injured by the proposed development due to potential loss of light, view and rural character of the neighborhood as a result of the Amendment Application; and 3) they appeared before the Planning Board and spoke in opposition to the Development. The ZBA finds that all three claims are supported by the Planning Board Record and concludes that the Appellants have standing to bring this Appeal.

D. Merits. The ZBA addresses each of Appellants’ arguments as follows:

1. LUO Section 3.8B. Appellants argue that the Applicant must provide a performance guarantee as set out in Section 3.8 for Site Plans (under Section 4.4 E.3.g.9) and for Subdivisions (under Section 5.7A.9.) for the total cost of all improvements, including the dwellings, and that the \$100,000 performance guarantee amount set by the Planning Board “only covered a small portion of the construction costs,” violates the LUO, and places the Appellants at risk if the Development is not completed. Applicant responds that the performance guarantee is intended to cover the cost of required improvements -- not the cost of the entire Development, and that requiring a performance guarantee and setting its amount are within the Planning Board’s discretion.

The ZBA observes that the LUO does not define “improvements” or “required improvements” – the terms used by Section 3.8 and other LUO provisions to describe what is secured by a performance guarantee. However, from the context of Section 3.8, and particularly Section 3.8 K., “Improvements Guaranteed” (and also Section 5.10 regarding “Inspection of Required Improvements”), it appears that the intent of the performance guarantee is to secure the construction and installation of required improvements that are in the nature of public infrastructure (“Performance guarantees shall be tendered for all improvements required to meet the standards of this Ordinance, including, but not limited to, improvements for the construction of the streets, storm water management facilities, public sewage collection or disposal facilities, public water systems, and erosion and sedimentation control measures.”)

Therefore, the ZBA interprets the terms “improvements” and “required improvements” as used in Section 3.8, which requires the developer to post a performance guarantee, as being limited to public infrastructure required by the LUO, and not including all Development improvements, such as the proposed dwelling units.

However, the Planning Board simply attached a condition of approval in the Decision requiring the Applicant to submit a \$100,000 irrevocable letter of credit prior to the issuance of a building permit without making a finding that the letter of credit is in an “amount adequate to cover the total construction costs of all required improvements, taking into account the time-span of the construction schedule and the inflation rate for construction costs” as provided in Section 3.8 C, or explaining the basis for such a finding, if implicit in the attachment of the condition. The Record contains, with the Deacon Hayes Commons Final Application Materials dated July 25, 2022, under the heading “Financial Data Construction Costs,” an undated Proposal for the Development prepared by Northeast Building and Development LLC which lists several items and their cost: water services (\$48,000 for taps and \$8,000 for water main service to curb stop), a catch basin (\$7,500), and sidewalks on Walnut Hill Road (\$26,000). The ZBA cannot tell from the Planning Board Decision whether the Planning Board reviewed the amount of the Performance Guarantee under Section 3.8 and if it did, whether it relied upon those costs and whether it took into account inflation, provisions for inspection, and provisions for guarantee release. The Planning Board’s Findings of Fact are inadequate in this regard, and so the ZBA remands this issue to the Planning Board to state whether it followed LUO Section 3.8 for performance guarantees (under Section 4.4 E.3.g.9 for site plans) and for Subdivision performance guarantees in establishing a \$100,000 irrevocable letter of credit for the Development and to provide the basis for that amount.

2. LUO Section 4.4E.2.e. Appellants argue that the Planning Board failed to uphold sideline setbacks, and that the Applicant therefore did not file a complete application. After discussion before the ZBA, Appellants withdrew this argument.

3. LUO Section 5.7 A.3.c. This subsection provides:

...

3. Other Approvals: Prior to submittal of the final plan application, the following approvals shall be obtained in writing, where applicable:

c. Maine Department of Human Services, if an engineered subsurface wastewater disposal system(s) or advanced waste water treatment system is to be utilized.

Appellants argue that under this section, the Applicant was required to submit the engineered septic system plan to the Planning Board at least 7 days in advance (under Section 5.5 C. 3) of the September 13, 2022 meeting at which it was submitted and at which the Planning Board voted to approve the application, or else the application was incomplete. Appellants argue that the failure to timely submit the final subdivision plan with the “flipped” septic system component locations (which was submitted to the Planning Board at the September 13, 2022 meeting) deprived them of the ability to review and respond with their concerns about a material change to the plans, and that review by DHHS could require final subdivision and site plan changes. Applicant responds that it submitted plans for an engineered septic system after the final subdivision and site plan had been submitted, that the Planning Board thereby waived the submission requirement under Sections 5.11 (A) and (C), and that Planning Board condition of approval 3 requires the landowner or home owners’ association to submit to the Code Enforcement Office a maintenance agreement with Fuji Clean for the engineered subsurface wastewater disposal system. Appellants also argue that Section 5.7 A.3.c. requires DHHS’ written approval before the final plan is submitted, which did not occur here, and that the Planning Board findings show it neither granted a waiver from this filing requirement nor made the “written findings of fact that there are special circumstances of a particular parcel proposed to be subdivided” to justify a waiver under Section 5.11. Applicant replies that the waiver is implicit and there is nothing to be gained by remanding the application to the Planning Board on this point because it is DHHS, not the Planning Board, that has the approval authority for this engineered septic system.

The ZBA determines that the Planning Board Findings of Fact/Decision are inadequate to permit it to determine whether there is substantial evidence in the Record to support Subdivision Conclusion #6 that “The proposed subdivision, with conditions added by the Planning Board, will provide for adequate solid and sewage waste disposal,” and so the ZBA remands this decision to the Planning Board for additional findings of fact on the sufficiency of the proposed engineered subsurface wastewater disposal system. Also, while the Record does demonstrate that the Applicant submitted a set of final plans, last revised August 27, 2022, with its August 30, 2022 submittal to the Planning Board, and that one of these plans describes an engineered system, the ZBA cannot tell whether the Planning Board followed the LUO because: 1) it did not make findings to support a waiver of the requirement of DHHS’ written approval before the final plan is submitted and did not explicitly waive this requirement, 2) it did not attach a condition of approval that a building permit shall not issue until such time as DHHS approves the proposed

engineered subsurface wastewater disposal system, 3) did not specify which engineered system was to be approved by DHHS, and 4) it did not address whether the engineered septic system plan submitted to the Planning Board at the September 13, 2022 meeting had to be submitted at least 7 days in advance, or if this was waived. Therefore, the ZBA remands this application to the Planning Board to address these omissions.

4. LUO Section 5.4 A. Under this section:

If any portion of the subdivision is located within the Groundwater Protection Overlay District, or is to be served by the public water supply, the applicant shall submit complete preliminary and final plans, as submitted to the Planning Board, to the Yarmouth Water District, and obtain written comments from the Yarmouth Water District regarding the subdivision's impact on the public water supply, and/or the District's agreement to provide public water service to the development, if applicable. The Yarmouth Water District's input shall be advisory.

Appellants argue that the Planning Board failed to follow or uphold the LUO because the Yarmouth Water District did not receive updated engineered subsurface wastewater disposal system plans until the Planning Board meeting on September 13, 2022, so that the District did not have the opportunity to submit written comments to the Planning Board. The Applicant responds that: 1) it provided the preliminary and final plans to the District as required by the Ordinance, 2) the District provided written comments on those preliminary and final plans (September 8 email from Eric Gagnon to the Planning Board) as required, 3) the LUO does not require written comments to the Planning Board on the engineered subsurface wastewater disposal system design, and 4) the District provided oral comments to the Planning Board that its opinion on the engineered subsurface wastewater disposal system design was not changed by the design submitted at the September 13, 2022 meeting.

The ZBA concludes that the Findings of Fact and the Record are inadequate to show whether the Planning Board followed the LUO and so remands the Decision to the Planning Board for further findings as to: 1) whether it waived the seven-day rule for submittals to allow submittal of the engineered subsurface wastewater disposal system design at the September 13, 2022 meeting; 2) if so, the basis upon which it granted a waiver; and 3) the findings and Record materials that support Subdivision Conclusion #3 that the that "The proposed subdivision will not cause an unreasonable burden on an existing [public] water supply."

5. LUO Section 5.6(B)(4)(b) and (d). These subsections require submission of evidence of right, title or interest in the property that is the subject of the application:

4. Application Requirements: The application for approval of a Minor Subdivision shall include the following information. The Planning Board may require additional information to be submitted, where it finds necessary in order to determine whether the criteria of Title 30-A M.R.S. §4404 or Section 5.12 Subdivision Review Criteria, are met.

a. ...

b. Verification of right, title, or interest in the property.

c. ...

d. A copy of the most recently recorded deed for the parcel. A copy of all deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property.

Appellants assert that Applicant submitted “a without a clear title, and in fact the deed included the Dostilio property. This means neither the applicant nor the code enforcement office read the deed to ensure it was up to date,” thus failing to meet LUO requirements.

Applicant acknowledges that “the deed submitted with the application (which is in fact the deed on record) describes more land than should have been included in the parcel,” and states that “All that was necessary for the developer to meet the submission requirements of Section 5.6(B)(4)(b) and (d) was “a copy of the most recently recorded deed for the parcel.” Applicant further states that “As the Town’s attorney and Planning Board noted during the September 13th meeting, the Appellants have not questioned that the deed correctly includes the land which is the subject of the Development; therefore, established right, title and interest as needed for the application.” Counsel for Appellants and Applicant agree that 527LLC owns the Property and that the deed submitted includes all of the property shown within the boundaries of the proposed Development.

In *Tomasino v Town of Casco*, 2020 ME 96, 237 A.3d 175, the Maine Supreme Judicial Court reviewed the state of the law as to what is required to show right, title and interest in property sufficient to apply for permits. The Law Court stated “In sum, our decisions in *Walsh [v. City of Brewer]*, 315 A.2d 200, 205 (Me. 1974), *Murray [v. Inhabitants of the Town of Lincolnville]*, 462 A.2d 40, 41, 43 (Me. 1983), and *Southridge Corp [v. Board of Environmental Protection]*, 655 A.2d 345, 347-48 (Me. 1995) involved the question of whether the applicants had sufficient connections to the title to the properties to seek municipal or agency permits on those properties, and in each case, there was no question but that the title owner of the property, once its identity was established, would be able to make use of the property as permitted according to applicable ordinances and statutes. *Southridge Corp.*, 655 A.2d at 348; *Murray*, 462 A.2d at 43; *Walsh*, 315 A.2d at 205, 207-08.” Based on this and because the Applicant held and submitted a copy of record title to the Property necessary for the location of the Development, the ZBA concludes that the Applicant met the requirements of Section 5.6(B)(4)(b) and (d) and that the Planning Board complied with the LUO.

6. LUO Section 5.12 B(12) provides that:

B. **Review Criteria:** The Planning Board shall consider the following criteria and, before granting approval, must determine that:

12. **Groundwater:** The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water on site or on

adjacent properties, and in particular the quality and quantity of ground water within the Groundwater Protection Overlay District;

Appellant argues that the Planning Board had no indication from the Maine Department of Health and Human Services that the septic design for the Project met health and safety guidelines, no groundwater studies were submitted, and so the lack of evidence to support the Planning Board's decision on this standard puts the Dostilios and others who rely on public water and the aquifer at risk.

Applicant counters that the Planning Board Record contains sufficient information and discussion to support the Board's findings in this regard; in particular, Mark Cenci's Hydrogeologic Assessment placing the disposal area 45 feet from the property line, his updated septic system engineered subsystem plans provided to the Board before the September 13th meeting, and Yarmouth Water District's comments at the September 13th meeting on the engineered system.

The ZBA determines that there is substantial evidence in Mark Cenci's August 26, 2022 Hydrogeologic Assessment to support a finding that the Applicant has met the groundwater standard in Section 5.12B(12) of the LUO. However, while the Planning Board noted Mr. Cenci's report in Site Plan Finding #2, "Utilities," it did not make a finding that the report met Section 5.12B(12) of the LUO or reach a conclusion in the Subdivision conclusions of law, even though groundwater impact is a standard in Section 5.11 of the LUO and in the State subdivision law (30-A M.R.S. § 4404(12)). The Planning Board should conclude whether the application meets the groundwater standard and state whether Mr. Cenci's report supports that conclusion, and so the ZBA remands the matter to the Planning Board to address these omissions.

7. LUO Section 5.7 B. provides:

B. Submissions: The final plan shall consist of one or more maps or drawings drawn to a scale of not more than 100 feet to the inch. Plans for subdivisions containing more than one hundred (100) acres may be drawn at a scale of not more than two hundred (200) feet to the inch provided all necessary detail can easily be read. Plans shall be no larger than twenty-four (24) by thirty-six (36) inches in size, and shall have a margin of two (2) inches outside of the borderline on the left side for binding and a one-inch margin outside the border along the remaining sides. Space shall be reserved on the plan for endorsement by the Planning Board. The final plan submission shall consist of one reproducible, stable-based transparency to be recorded at the Cumberland County Registry of Deeds, and a paper copy for review by the Planning Board. Following approval of the Final Plan by the Planning Board, the applicant shall submit a copy of the Final Plan as recorded at the Cumberland County Registry of Deeds, to include all recording information and Planning Board signatures.

In addition, the applicant shall submit eight (8) copies of the final plan reduced to a size of eleven (11) by seventeen (17) inches, and all accompanying information. A copy of the final plan(s) and all accompanying information shall be provided to each Planning Board member no less than (seven) 7 days prior to the meeting. If any portion of the subdivision

is located within the Groundwater Protection Overlay District a reduced copy of the final plan and all accompanying information shall also be provided to the Yarmouth Water District.

Appellants assert that the Planning Board erred by accepting plans submitted by the applicant at the September 13, 2022 meeting despite the 7-day submission deadline; that the Applicant did not submit a full and complete application and yet received final approval; and that the plans submitted at that meeting included a new septic design, including a “flipping” of the system.

Applicant responds that Section 5.7 B. requires the final site plan to be submitted at least seven days prior to the meeting and that this was done (see updated site and subdivision plans submitted by SJR Engineering with memo of August 30, 2022); that the engineered system plan was submitted two weeks prior to September 13 (see septic system plans submitted by SJR Engineering with memo of August 30, 2022), and that only minor changes to the engineered system were proposed; and that the revised plan showing the “flipping” of the system submitted to the Planning Board on September 13, 2022 was shared with Yarmouth Water District, which did not have any concerns so long as conditions regarding ongoing monitoring and maintenance were met, which conditions the Board attached to the approval.

The ZBA determines that it is not clear from the Record whether the Planning Board followed the LUO in this regard, and so the ZBA remands this issue to the Planning Board to address these omissions. Was there a waiver of the 7-day submission requirement? If so, are there findings to support the waiver? Did Yarmouth Water District provide its written comments to the Planning Board?

8. LUO Section 5.8(C) provides:

C. At the time the Planning Board grants final plan approval, it may permit the plan to be divided into two or more sections subject to any conditions the Planning Board deems necessary in order to ensure the orderly development of the Plan. ... If the superintendent of schools indicates that there is less than 20 percent excess classroom capacity existing in the school(s) which will serve the subdivision, considering previously approved but not built subdivisions, the Planning Board shall require the plan to be divided into sections to prevent classroom overcrowding. If the expansion, addition or purchase of the needed facilities is included in the town's capital improvements program, the time period of the phasing shall be no longer than the time period contained in the capital improvements program for the expansion, addition or purchase.

In its Decision, the Planning Board attached Condition of Approval 5, which reads:

5. Consistent with Sec. 5.8(C) of the Land Use Ordinance, the units shall be built in two phases to prevent classroom overcrowding, so that the building permits for the second half of the units shall not be issued until the calendar year following the building permits that have been issued for the first six units, subject to the Town's current building cap ordinance.

Appellants argue that the Applicant failed to submit any information to support the Planning Board's attachment of this condition of approval. In support of its position that phasing is required, Attorney Richard sent an August 8, 2022 letter by email to the Planning Board attaching a July 29, 2022 email from School District Superintendent Jeff Porter stating that the schools have "We currently do not have any excess capacity." Applicant responds that while it did not submit the email from Superintendent Porter in question and that it had received a different communication from the Superintendent indicating no concerns about handling students from the Development, the Planning Board could consider that information, which supports the Planning Board's attachment of a condition of approval under Sec. 5.8(C) requiring phasing over a two-year period.

The ZBA determines that there is substantial evidence in the Record in the form of Superintendent Porter's email to the Appellants that the schools have "no excess capacity whatsoever" to support a finding under Section 5.8(C) that the school(s) that will serve the Development have less than 20% excess capacity and to therefore attach condition of approval 5 to the Decision, calling for the units to be built in two phases. That the Appellants and not the Applicant submitted this evidence is irrelevant to the analysis – the email is in the Record and supports the Planning Board's Condition of Approval 5 (although it would have been helpful to the ZBA's review if the Planning Board had cited those emails in support of its condition of approval).

9. LUO Section 10.34(B) states:

B. General Requirements: Proposals subject to development review shall be accompanied by plans and information making provision for off-street parking. Such plans shall attempt to balance the provision of adequate parking for the project under review while minimizing the development of visible paved areas. Parking areas must be constructed to protect the natural environment and visual character of the community, improve pedestrian safety and accessibility, and promote the quality of life in developed areas.

Appellants argue that the Planning Board, by approving the Development parking lot design, failed to enforce this standard, since it is "unprecedented in town and in no way resembles the visual character of abutting residential properties." Appellants further state that the use of one large lot instead of breaking the lot into separate parking areas for each townhouse fails to minimize "the development of visible parking areas." Applicant counters that this standard does not require the parking area to be fully screened from all sides, and observes that the parking area is screened on the northeast side by an 8-foot tall stockade fence and by a wooded area to the southeast side, and that the landscaping plan further minimizes views of the parking area, all supporting the Planning Board's exercise of its discretion to determine that the parking area meets this standard.

The ZBA determines that the plans submitted August 30, 2022 – particularly the Site and Demolition Plan -- show that the parking area will be screened by an 8-foot tall stockade fence, by the Development's buildings, by a wooded area to the southeast side, and by plantings shown

on the landscaping plan, and constitute substantial evidence to support the Planning Board's finding that these together minimize views of the parking area in compliance with this standard.

10. LUO Section 10.34 C (2) and (4) provide:

C. Parking Layout and Design: Off-street parking must conform to the following standards:

1. ...
2. Parking areas with more than two (2) parking spaces must be arranged so that it is not necessary for vehicles to back into the public road. In no instance shall off-street parking be designed so that vehicles back out into Routes 115, 9, 231 or North Road.
3. ...
4. All plans for parking areas shall include a landscaping plan which adequately screens parking lots, and that provides interruptions of parking spaces.

Appellants argue that because the Planning Board did not force the Applicant to change its parking lot design, the parking was not and could not be adequately designed, and that this situation was made worse by septic design changes that removed previously agreed upon visual barriers, including trees. Appellants also assert that the two landscaped islands shown on the Site and Demolition Plans are inadequate interruptions. Applicant responds it provided screening and a landscape plan that minimizes views of the parking lot as required by the LUO; the subdivision and site plans also show landscaped islands in the parking lot that interrupt the area.

The ZBA notes that STR Engineering's August 30, 2022 memo states that previously proposed landscaping was moved away from the proposed engineered septic disposal system. Comparison of the August 27, 2022 and September 10, 2022 Site and Demolition plans show that the "flipping" of the septic system components in the latter plan did not change the septic system footprint and did not impact the landscaping plan or result in removal of trees. The Planning Board in Site Plan Finding # 8 made findings about the stockade screening abutting properties and "the new trees and shrubs shown on the site plan between the units and surrounding the parking area." The ZBA also observes that the landscaped islands mark the changes in parking direction for the spaces within the parking lot. Therefore, although the Planning Board could have better linked its factual findings in Site Plan Findings #s 8, 14 and 16 to Site Plan Conclusion # 15, there is substantial evidence in the Record to support the Planning Board Decision's conclusion that "Parking areas will be constructed to protect the natural environment and visual area of the community, improve pedestrian safety and accessibility and promote the quality of life in developed areas." and to demonstrate compliance with the standards in Section 10.34 C (2) and (4).

11. LUO Section 10.14 B.(2)(b) and (c) provide:

B. Standards:

...

2. Buffers and Screening:

a. ...

b. Buffering must be designed to provide a year-round visual screen in order to minimize adverse impacts. It may consist of fencing, evergreens, berms, rocks, boulders, mounds, or a combination thereof.

c. Landscaping around and within parking lots shades hot surfaces and visually “softens” the hard surface look of parking areas. Parking areas must be designed and landscaped to create a pedestrian-friendly environment. A landscaped border must be created around parking lots. Any parking lot containing ten (10) or more parking spaces must include one or more landscaped islands within the interior of the lot. There must be at least one (1) island for every twenty (20) spaces. Landscaping must screen the parking area from adjacent residential uses and from the street. Sight vision, safety and appearance should be considered in determining landscaping plans.

Appellants assert that the Planning Board failed to uphold this standard because the Applicant has failed to show the type of visual screening it intends to place around the lot and has only shown two interruptions in the lot that are not islands, but peninsulas. Applicant responds that the stockade fence and buildings provide opaque year-round screening and that the substantial wooded area at the southeast corner and landscape plan provide screening that minimize views of the parking area. The subdivision and site plans also show landscaped islands in the parking lot that interrupt the parking area.

The ZBA determines that there is substantial evidence in the Record to support its Site Plan Conclusion # 15 and Decision and to comply with the letter, if not the spirit, of Section 10.14B (2)(b) and (c). The parking lot is proposed for 29 spaces, and accordingly, two islands are provided. These islands, though small, are interruptions that serve to separate angled from perpendicular parking spaces. As previously discussed, the Planning Board found that the stockade fence, buildings, and landscaping will provide visual screening. ZBA Member Briggs, however, believes that these landscaped islands are insufficient to meet the LUO requirements.

12. LUO Section 9.2 H.(4)(a) states:

H. Best Management Practices:

4. Road Maintenance, Parking Areas and Storm Water:

a. Storm water from frequently used parking lots (e.g., for commercial establishments, and workplaces) shall be diverted away from the Groundwater Protection Overlay District, if possible, and shall not be channeled into bodies of

water. Filter strips and vegetated areas shall be installed and maintained wherever possible.

Appellants assert that the Planning Board has failed to enforce the LUO because the parking lot will be frequently used and storm water from it should be diverted away from the Groundwater Protection Overlay District (GPOD) and shall not be channeled into the pond on the Site that has not been used before for such a purpose. Applicant states that the Development's location within the GPOD makes it impossible to divert the stormwater from that District, and so the stormwater is properly channeled into a manmade pond to be used for stormwater retention and infiltration.

The ZBA observes that Site Plan Finding # 12 states that "Drainage flows southwest towards the manmade stormwater pond." However, the Planning Board did not state whether or how this finding supports a conclusion that each element of Section 9.2 H.(4)(a) has been met. Therefore, the ZBA remands this matter to the Planning Board to address this omission.

13. LUO Section 10.23 D.(2) states:

D. Ownership and Maintenance of Common Open Space and/or Recreation Land:

1. All common open space and/or recreation land, facilities and property shall be owned by:
 - a. The owners of the lots or dwelling units by means of a lot owners' association;
 - b. An association which has as its principal purpose the conservation or preservation of land in essentially its natural condition; or
 - c. The town.
2. Further subdivision of the common open space and/or recreation land and its use for other than non-commercial recreation, agriculture, forestry and/or conservation purposes, except for easements for underground utilities and subsurface wastewater disposal systems, shall be prohibited. Structures and buildings accessory to non-commercial recreational or conservation uses may be erected on the common land. When open space is to be owned by an entity other than the town, there shall be a conservation easement deeded to the town prohibiting future development.

Appellants argue that the Planning Board failed to enforce this LUO requirement by not requiring the Applicant to provide a deeded conservation easement prohibiting future development. Applicant states that the Development proposal does not include any common recreational open space and recreational land, that nothing in the LUO requires the establishment of permanently protected conservation land, and that the subdivision and site plan limit areas for

future development. Subdivision Finding # 7 states that “The development will not include land for recreation or open space development.”

At the hearing, Applicant stated that this is not an open space subdivision (under Section 11.3 of the LUO) and that this is what the Planning Board was trying to say through Subdivision Finding # 7; some recreation area is proposed. The ZBA has questions about ownership and maintenance of common areas for parking and recreation, whether declarations of covenants and restrictions and homeowners association documents to provide for these common areas and facilities should be provided, what the lots and common areas and facilities are (depending upon the form of unit ownership), and whether lot setbacks are met. For these reasons, the ZBA remands the issue of compliance with Section 10.23 D.(2) to the Planning Board for development of findings and determination of compliance with this Section.

14. Section 11.2 C.(7) provides:

7. Long-Term Affordability Required for All Affordable Housing: Long-term affordability must be assured for a period no less than twenty-five (25) years through deed restrictions or some other recorded instrument acceptable to the Town Attorney. The developer of affordable housing shall include provisions for preserving affordability, which shall be reviewed by the town attorney prior to Select Board and Planning Board review of the proposed long-term affordability agreement. A third party that has the expertise and resources to undertake and continue the task of assuring the long-term affordability of the housing may administer the affordability program. The following standards shall be applied to affordable owner occupied and rental housing:

- a. **Owner Occupied Residences:** When the affordable housing includes units to be sold as residences, the developer shall use legal mechanisms such as, but not limited to, restrictive covenants, ground leases, or "soft" mortgages to ensure that the residences are owner-occupied and that the initial and subsequent sales prices are affordable to target groups for a minimum of twenty-five (25) years. Preserving long-term affordability may mean restrictions on resale to qualified buyers, if available, granting a right of first refusal to the town, or the town's designee. Additional restrictions limiting the owner's ability to improve the property and/or to recoup some part of the costs of the improvements at resale are also to be considered.
- b. **Rental Units:** When an affordable housing includes rental units, provisions shall be made to ensure that the rental price of units remains affordable to the target groups for a minimum of twenty five (25) years.

Appellants argue that the Planning Board failed to establish provisions for assurance of affordability prior to granting final subdivision approval and did not enforce the requirement of providing deed restrictions. Applicant argues that the application materials demonstrate that the affordable units will be deed-restricted to ensure continued affordability, that the LUO does not require provision and review of deed restrictions prior to final approval, and that a proposed

Declaration of Covenants has been provided to the Town Attorney for review as to this requirement with the building permit application.

The ZBA understands that the Development includes some affordable housing units, whether as owned or rental units, but that the Planning Board made no findings as to how these units would continue to be affordable in compliance with Sections 11.2 C. 7 and 11.2 B., and so remands this issue to the Planning Board to address this omission. The Planning Board needs to have reviewed and approved a plan to keep any affordable housing units affordable.

15. Section 11.9 B.(1)(a,d,e) provide:

B. Standards and Requirements:

1. If any of the open space, recreational or other facilities are to be reserved by the individual residential unit owners as common open space or facilities, each unit owner shall own a fractional interest in the common open space or facilities, and the developer shall be required prior to final subdivision plan approval to incorporate a homeowners' association consisting of the individual unit owners, which incorporation must comply with the following:
 - a. Proposed covenants shall be placed in each deed from the developer to the individual unit owner, which deed covenants shall require mandatory membership in the homeowners' association, and shall set forth the unit owners' rights, interests, privileges and obligations in the association and in the common open space and/or facilities, including homeowners association's responsibility and obligation to maintain and/or monitor the common open space and/or any facilities.
 - b.
 - c.
 - d. All such proposed deed covenants and other legal documents pertaining to the common open space and/or facilities shall be reviewed by the Town Attorney, and, if approved by the Planning Board, shall be recorded in the Cumberland County Registry of Deeds, and included or referred to in the deed to each unit.
 - e. All legal documents required under this subsection must be submitted with the final subdivision plan application.

Appellants argue that the Planning Board failed to require deed covenants to require mandatory membership in a homeowners' association (HOA) and to set forth unit owners' rights, interests, privileges and obligations, including maintenance, monitoring, and financing obligations of the HOA. Appellants also argue that the Planning Board failed to obtain Town Attorney review of the deed covenants and other legal documents regarding the common land and facilities, and failed to require submittal of these documents prior to granting final subdivision. Applicant responds that Development does not propose common open space or facilities so that these provisions are not applicable, that condominium documents provided to the Planning Board

establish joint ownership of common elements, such as the wastewater and water systems, parking lot and sidewalks, and that the LUO does not require provision and review of these documents prior to final approval.

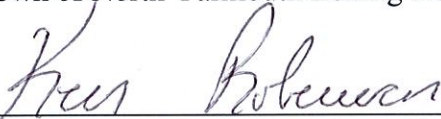
For the same reasons cited in issue 13 above, the ZBA remands the issue of compliance with 11.9 B.(1)(a,d,e) to the Planning Board for clarification.

IV. Decision

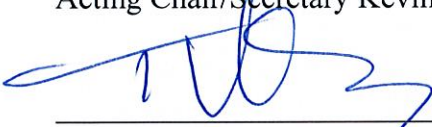
On February 1, 2023, the Zoning Board of Appeals voted 5 to 0 to: 1) act on the appeal by remanding the Planning Board's Decision to the Planning Board for the Planning Board to conduct a public hearing, take additional information and evidence, consider Decision amendments to address the issues noted above, and issue a new decision with findings of fact and conclusions of law, which new decision may affirm or reverse the Decision; 2) pass jurisdiction of and over the application to the Planning Board so that it may act on the remand as well as on any amendment that may be sought by Applicant; and 3) adopt this Notice of Decision and Findings of Fact and Conclusions of Law.

Dated: February 1, 2023

By the Town of North Yarmouth Zoning Board of Appeals:



Acting Chair/Secretary Kevin Robinson



Thaddeus Day



Norman Smith



Jim Briggs



Mike Mallory