

AMBIT ENGINEERING, INC. CIVIL ENGINEERS AND LAND SURVEYORS

200 Griffin Road, Unit 3, Portsmouth, NH 03801
Phone (603) 430-9282 Fax 436-2315

30 November, 2021

Mark Avery
Chairman
Madbury Planning Board
13 Town Hall Road
Madbury, NH 03820

**RE: Proposed Housing Expansion for 10 Lee Road, LLC, Tax Map 8 / Lot 9, 10 Lee Road;
Planner Comments**

Dear Chairman Avery:

We are in receipt of the Memorandum from Planner Liz Durfee regarding the above-mentioned site plan submission. In advance of the meeting please pass along the following information:

Statement of Off Site Impact

The project does not have any off-site impact *except those associated with site access*. Attached herewith is a copy of our correspondence with the Town Select Board regarding access to the parcel, and our desire to work with the town to provide safe access to the proposed development.

Madbury Road Sight Distance

Attached is a copy of our plan showing adequate sight distance for the driveway access to Madbury Road. Also please note that the site access permitting is entirely the purview of the New Hampshire Department of Transportation.

Additional Comments

Please find a revised C2 Plan showing a mailbox location, benches and picnic table location, and the snow storage areas.

Please feel free to call if you have any questions or comments.

Sincerely,

John Chagnon

John R. Chagnon, PE, LLS
CC: Design Team

AMBIT ENGINEERING, INC. CIVIL ENGINEERS AND LAND SURVEYORS

200 Griffin Road, Unit 3, Portsmouth, NH 03801
Phone (603) 430-9282 Fax 436-2315

5 January, 2021

Janet Wall, Chair
Town of Madbury Board of Selectmen
13 Town Hall Road
Madbury, NH 03823

RE: Historic Access and Confirmatory Easement at Madbury Corner

Dear Madam Chair and Selectmen:

On behalf of 10 Lee Road, LLC Ambit Engineering hereby submits a proposal for the Madbury Selectman's consideration at your next regularly scheduled meeting. The issue is regarding access rights on Tax Map 8, Lot 26 at the intersection of Lee Road (NH Route 155), Madbury Road, and Town Hall Road. Tax Map 8, Lot 26 is owned (according to the town assessing records) by the Town of Madbury. We represent 10 Lee Road, LLC in the preparation of a Site Plan for the property located at 10 Lee Road, Assessor's Map 8 Lot 9, adjacent to the town property, which is currently before the Madbury Planning Board in Preliminary Site Plan Conceptual format. The property currently has access to Madbury Road via a curb cut, most recently re-constructed by the state when the intersection was straightened and the intersection altered for safety about 1970.

The existing configuration of this area was the subject of discussion by the Planning Board. Currently, and for some time, there is parking on the 10 Lee Road parcel that backs into the town land and uses the curb cut to access Madbury Road. Planning Board members were not aware of any agreements in place regarding this situation. Please find attached a letter detailing our research in to this matter, for your information. In short we believe that 10 Lee Road has access rights to the curb cut as well as the right to continued use of the parking area. The attached "Historic Acquisition Plan" shows the areas which the town acquired title as a part of the NHDOT re-alignment of the intersection of Lee Road (NH Route 155), Madbury Road, and Town Hall Road, which included the access to Madbury Road.

10 Lee Road, LLC, hereby submits, in response to the Planning Board's desire to effect some changes to the current situation on the towns Lot 8 of Tax Map 26, the attached "Confirmatory Access Easement Plan". Specifically, the Planning Board spoke about a desire to eliminate the parking which backs out on to the town lot and seems to be parking for the Town Common, which may lead to confusion and liability issues. Also the Board indicated they would require 10 Lee Road, LLC to find out if there are any existing agreements in place regarding this situation. Although we have not researched this matter in the town records at this time, we would trust that as a part of this request the town clerk would be directed to so ascertain if any agreements exist. In the event an agreement is found then 10 Lee Road, LLC would abide by those terms and conditions; unless other agreements seem practical and can be agreed by all parties. In the absence of such the attached plan titled "Confirmatory Access Easement Plan is an attempt at providing an agreeable solution.

In summation, the existing pavement in front of the apartment buildings was specifically retained when the roadway was realigned, indicating, along with the construction of a new approach on Madbury Road, that this was acknowledged as important for access to the buildings and was deemed necessary to remain.

If you have any questions or require any additional information, please feel free to contact me at any time. We respectfully request that we may be placed on the agenda to discuss this matter with the Selectman; or a Selectman's representative, as you may so desire.

Sincerely,

John Chagnon

John Chagnon, PE
Ambit Engineering, Inc.

Attachments:
Historic Acquisition Plan
Confirmatory Access Easement Plan

CC: 10 Lee Road, LLC, Derek Durbin, Attorney for Applicants

J:\JOBS3\JN 3100's\3140's\3142\2019 Site Plan\Applications\Town of Madbury\03 Submission 12-30-20\Letter Regarding Confirmatory Easement 01-XX-20.docx

PLAN REFERENCES:

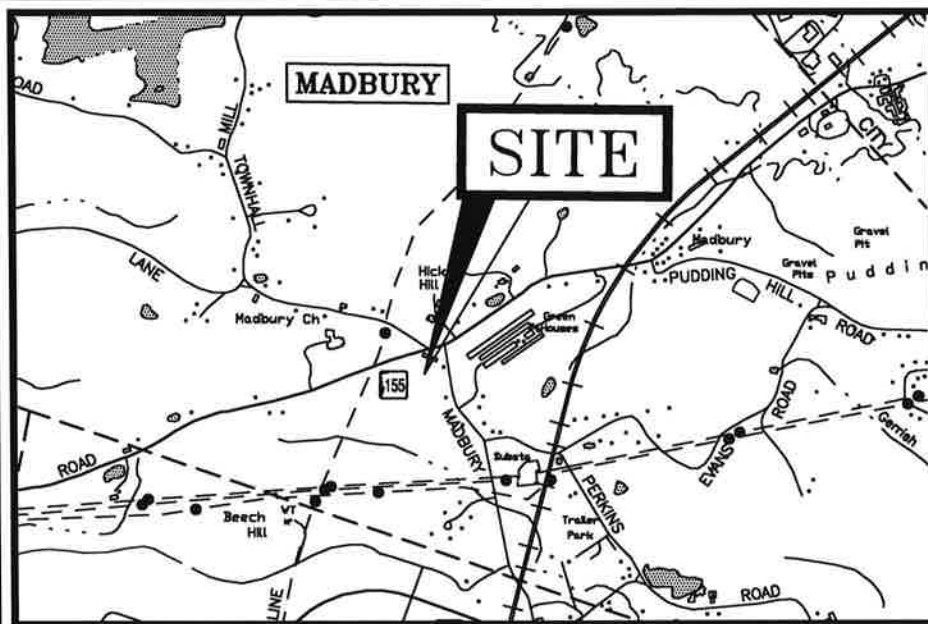
- 1) "PLAN OF LAND FOR DAVID & ROBERT CHASE, MADBURY, N.H., SUBDIVISION PLAN BEECH HILL WOODS" BY KIMBALL CHASE COMPANY, INC., DATED 2/21/83. SCRDP PLAN #24-36.
- 2) "BOUNDARY PLAT, MADBURY, STRAFFORD COUNTY, NEW HAMPSHIRE, FIRST NATIONAL BANK OF PORTSMOUTH" BY GEOMETRES BLUE HILLS, DATED MARCH 17, 1995. SCRDP PLAN #45-64.
- 3) "SUBDIVISION OF LAND, PREPARED FOR CUTTER FAMILY PROPERTIES, LOCATED AT ROUTE 155, MADBURY, NEW HAMPSHIRE" BY ATLANTIC SURVEY COMPANY, DATED 24 JULY, 2000. SCRDP PLAN #59-85.
- 4) "PLAN OF LAND FOR VARISTY DURHAM, LLC, LOCATED AT 10 LEE ROAD, MADBURY, NEW HAMPSHIRE." BY MSC CIVIL ENGINEERS, DATED 20 JANUARY, 2012. SCRDP PLAN #11082



AMBIT ENGINEERING, INC.
 Civil Engineers & Land Surveyors
 800 Griffin Road - Unit 3
 Portsmouth, N.H. 03801-7114
 Tel (603) 430-9282
 Fax (603) 436-2316

NOTES:

- 1) PARCEL IS SHOWN ON THE TOWN OF MADBURY ASSESSOR'S MAP 8 AS LOT 26.
- 2) OWNER OF RECORD:
 TOWN OF MADBURY
 186 MADBURY ROAD
 MADBURY, NH 03823
 1217/367 &
 TOWN COMMON AREA
 (NO REFERENCE FOUND)
- 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 330170320E. EFFECTIVE DATE SEPTEMBER 17, 2015.
- 4) PARCEL AREA:
 21,656± S.F.
 0.4971± ACRES
- 5) PARCEL AREA IS LOCATED IN THE GENERAL RESIDENTIAL AND AGRICULTURAL ZONE.
- 6) THE PURPOSE OF THIS PLAN IS TO SHOW THE LOCATION OF THE BOUNDARIES OF TAX MAP 8 LOT 26 IN THE TOWN OF MADBURY.



LOCATION MAP

SCALE 1"=3000'

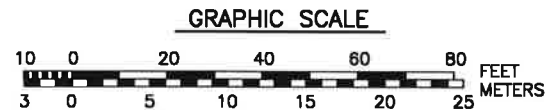
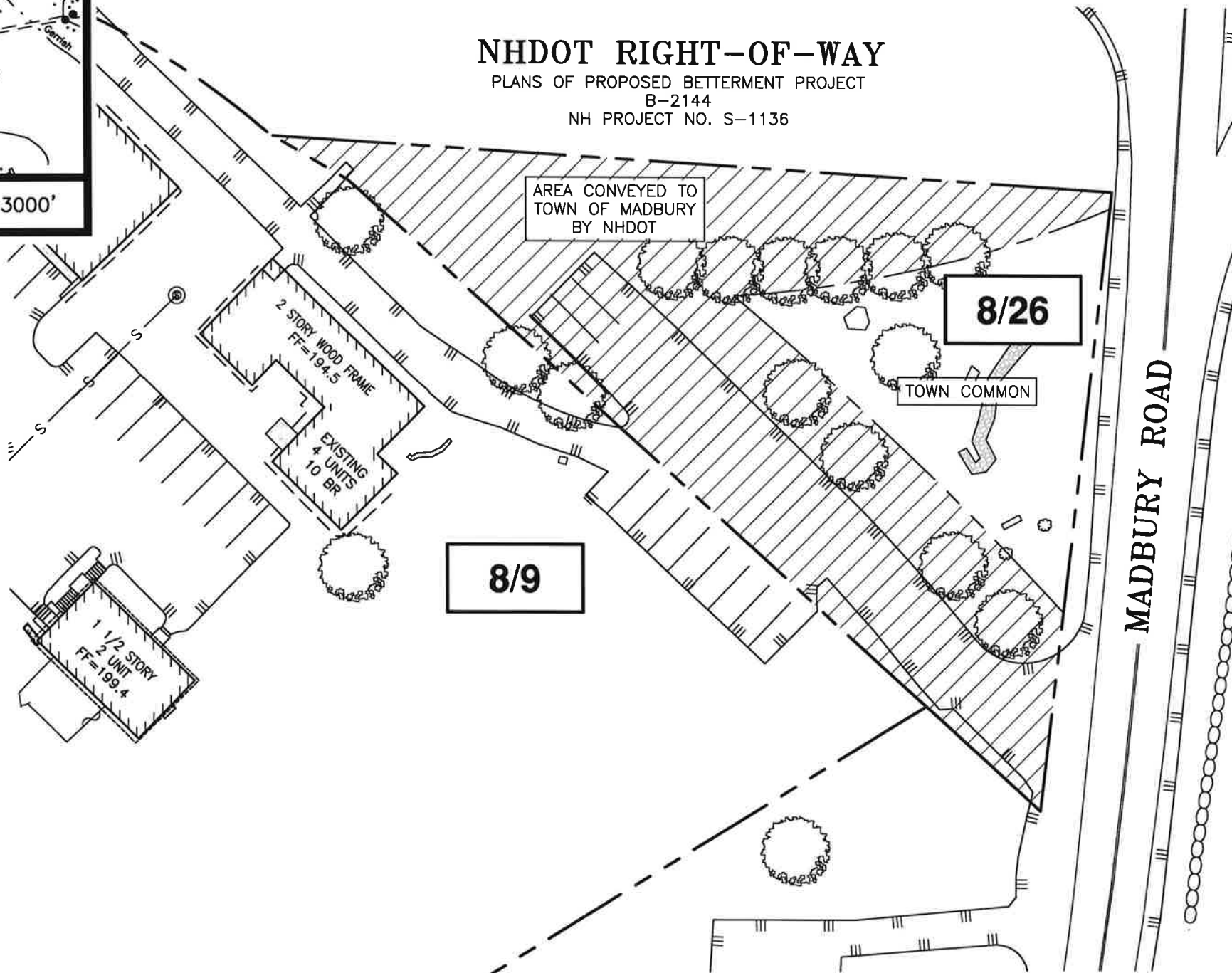
NHDOT RIGHT-OF-WAY

PLANS OF PROPOSED BETTERMENT PROJECT
 B-2144
 NH PROJECT NO. S-1136

LEGEND:

- N/F NOW OR FORMERLY
- RP RECORD OF PROBATE
- RCRD ROCKINGHAM COUNTY
- REGISTRY OF DEEDS
- MAP 11/LOT 21
- IR FND IRON ROD FOUND
- IP FND IRON PIPE FOUND
- IR SET IRON ROD SET
- ⊙ DH FND DRILL HOLE FOUND
- ⊙ DH SET DRILL HOLE SET
- MN SET MAG NAIL SET
- BND w/DH BOUND WITH DRILL HOLE
- PROPERTY LINE
- - - EASEMENT LINE

1995
 PLAN 45-64
 MAGNETIC
 PER S.C.R.D.



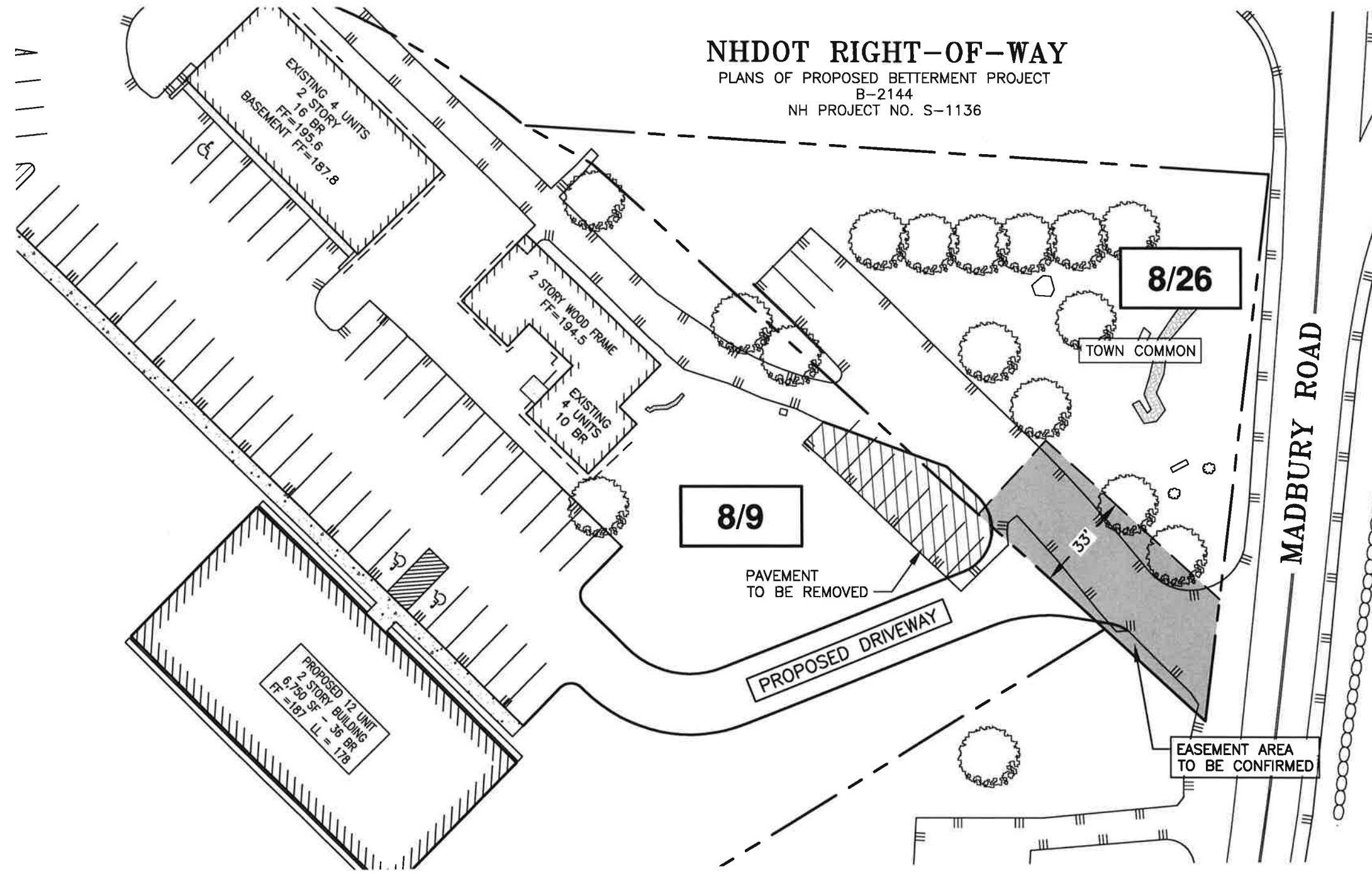
NO.	DESCRIPTION	DATE
0	ISSUED FOR COMMENT	12/30/20

HISTORIC ACQUISITION PLAN
TAX MAP 8 - LOT 26
 LAND OF THE
TOWN OF MADBURY
 PROPERTY LOCATED AT THE
 INTERSECTION OF
 LEE ROAD & MADBURY ROAD
 TOWN OF MADBURY
 COUNTY OF STRAFFORD
 STATE OF NEW HAMPSHIRE

J:\JOB55\JUN 31'00\311401\31142\2019 Site Plan\Plane & Specs\Site\3142 EASEMENT 2020.dwg, HISTORIC ACQUISITION, 12/31/2020 2:05:54 PM

J:\0853\N 3100\3140\3142\2019 Site Plan\Plans & Specs\Site\3142 EASEMENT 2020.dwg, PROPOSED EASEMENT, 12/31/2020 2:16:47 PM

1995
MAGNETIC
PER S.C.R.D.
PLAN 45-64



NHDOT RIGHT-OF-WAY

PLANS OF PROPOSED BETTERMENT PROJECT
B-2144
NH PROJECT NO. S-1136

8/9

8/26

PAVEMENT
TO BE REMOVED

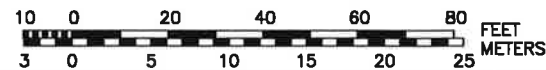
PROPOSED DRIVEWAY

TOWN COMMON

MADBURY ROAD

EASEMENT AREA
TO BE CONFIRMED

GRAPHIC SCALE



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
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Tel (603) 430-9282
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NOTES:

- 1) PARCEL TO BENEFIT IS SHOWN ON THE TOWN OF MADBURY ASSESSOR'S MAP 8 AS LOT 9.
- 2) OWNER OF RECORD:
10 LEE ROAD
1 BAYSIDE ROAD, BOX 4
GREENLAND NH, 03840
4509/36
- 3) EASEMENT AREA IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 330170320E. EFFECTIVE DATE SEPTEMBER 17, 2015.
- 4) EASEMENT AREA:
2,955 S.F.
- 5) EASEMENT AREA IS LOCATED IN THE GENERAL RESIDENTIAL AND AGRICULTURAL ZONE.
- 6) THE PURPOSE OF THIS PLAN IS TO SHOW AN ACCESS EASEMENT CONFIRMING THE RIGHTS OF MAP 8 LOT 26 IN THE DISCONTINUED PORTION OF THE RIGHT-OF-WAY OF TOWN HALL ROAD, WHICH IS OVER TAX MAP 8 LOT 26 IN THE TOWN OF MADBURY.

REVISIONS		
NO.	DESCRIPTION	DATE
0	ISSUED FOR COMMENT	12/30/20

**CONFIRMATORY ACCESS
EASEMENT PLAN
OVER
TAX MAP 8 - LOT 26
LAND OF
TOWN OF MADBURY
FOR BENEFIT OF
10 LEE ROAD, LLC
MADBURY ROAD
TOWN OF MADBURY
COUNTY OF STRAFFORD
STATE OF NEW HAMPSHIRE**

SCALE 1"=40'

DECEMBER 2020

AMBIT ENGINEERING, INC. CIVIL ENGINEERS AND LAND SURVEYORS

200 Griffin Road, Unit 3, Portsmouth, NH 03801
Phone (603) 430-9282 Fax 436-2315

5 January, 2021

Janet Wall, Chair
Town of Madbury Board of Selectmen
13 Town Hall Road
Madbury, NH 03823

RE: Current & Historic Right-of-Ways at Madbury Corner

Dear Madam Chair and Selectmen:

Ambit Engineering submitted a proposed Site Plan for the property located at 10 Lee Road, Assessor's Map 8 Lot 9, shown on Exhibit 1, which is currently before the Madbury Planning Board in Preliminary Site Plan Conceptual format. The property is located at the southwesterly corner of the intersection of Lee Road (NH Route 155), Madbury Road, and Town Hall Road. During a Consultation with the Planning Board on December 16, 2020, the Selectmen's Representative on the Board raised concerns regarding the status of pavement accessing the property from Madbury Road adjacent to the Town Common, which is not located on the Applicant's property. In the following, the historic nature of the roadway in that area, as well as how the intersection came to be as it is today will be outlined for your reference.

Lee Road, or the road leading from Lee Five Corners to Madbury Corner, was not located in its present intersection location prior to 1970. In or about 1970, the road in the vicinity of the intersection was straightened and the intersection altered for safety. Attached is a copy of the right-of-way layout plan prepared by the NH Department of Public Works and Highways at that time, Exhibit 2. The historic configuration of the roads can also be seen on the 1871 Hurd Atlas map of Madbury, a portion of which is shown on the attached Exhibit 3.

Exhibit 2, the highway realignment plan, has been annotated to call attention to various features and notes regarding construction that are important in understanding the situation, the annotations being provided for your ease in reviewing. The blue lines represent the right-of-way lines at the time of the realignment. The green lines represent the edge of the traveled roadway at the time of the realignment. The area outlined with an orange line is the area quitclaimed to the Town by the State of New Hampshire via S.C.R.D. Book 1217 Page 367, dated May 29, 1985, attached as Exhibit 4. The area shaded by NHDOT in orange on the northerly side of Route 155 is the area taken by the State of NH from W.H. Elliot & Sons Co. for the realignment of the road. The magenta line is the proposed centerline of Route 155, which is the current location.

There are also four areas outlined with a black cloud. These are important items regarding the present questions and concerns. One of the clouded comments is denoting that the existing road surface is to remain. This area is along the front of the existing apartment houses on the Subject Property. Another denotes the area of an existing asphalt parking lot in use by the same apartments, a portion of which is

within the right-of-way which existed prior to the realignment. Another clouded area denotes that a portion of the existing road surface is to be removed and 4" of loam to be placed. The final clouded area is a call out for an approach to be constructed along the westerly side of Madbury Road, the approach connecting to the portion of pavement to be retained.

The importance of these clouded areas is the insight provided by the design elements and the uses intended and acknowledged through the same. The note to retain the existing surface in front of the apartment buildings, coupled with the note to construct an approach along Madbury Road appears to confirm that it was recognized that this pavement was utilized by the residents of the apartments for access to the buildings as well as to Madbury Road. Conversely, the note to remove the surface in the area north of the Town Common alludes that this pavement was no longer necessary and was not needed for access.

Another important item for consideration is the Quitclaim Deed from the State to the Town (Exhibit 4). As you may be aware, a Quitclaim Deed conveys to the grantee any rights the grantor may have in the property described, it does not provide warranty to defend the title against any challenges of the rights of the grantor to convey that property. A key phrase contained in the deed from the State to the Town is that the State is conveying "*Any and all interest The State of New Hampshire has...*". The distinction between a Quitclaim Deed and a Warranty Deed here is important, it is not clear or unambiguous that the State owned or had right to claim the fee title interest in the historic right-of-way which was conveyed to the Town. One other phrase of note within the deed is "*...and being a portion of the old highway easements in old Route 155 and old Town Hall Road Rights-of-way.*"

These above-mentioned phrases are important to consider because roads laid out by the Town or County were very rarely (until recently) taken in fee, but only as an easement for use of the public for travel. Additionally, the discontinuance of a road can not remove access to a property that had previously used the road for access. When a road is discontinued the right-of-way is generally split down the middle of the road by adjacent property owners. This, however, may be a special case due to the Town being the owner of one of the adjacent properties and it is unclear at this time if, when the road was originally laid out, any of the area within the right-of-way was taken from the predecessors in title to the current owners of 10 Lee Road, or if it was only taken from the Common. The concerns over the status of land within the former rights-of way would require additional research to confirm or refute. Please note that the Returns of Layout for the roads have not been located at this time. Those records would assist in this examination by stating to whom damages were paid and may allow a determination if the road was taken in fee or as only an easement.

In summation, the existing pavement in front of the apartment buildings was specifically retained when the roadway was realigned, indicating, along with the construction of a new approach on Madbury Road, that this was acknowledged as important for access to the buildings and was deemed necessary to remain. Additionally, it should be considered if the State had any fee title rights to convey to the Town in 1985. If you have any questions or require any additional information, please feel free to contact me at any time.

We trust that this review of the history of this intersection will be of service as the development team moves forward with the Site Plan Proposal. Please feel free to call me if you have any questions regarding this research.

Sincerely,



Paul Dobberstein, LLS
Ambit Engineering, Inc.

Attachments:

Exhibit 1 (Town of Madbury Assessor's Map 8)

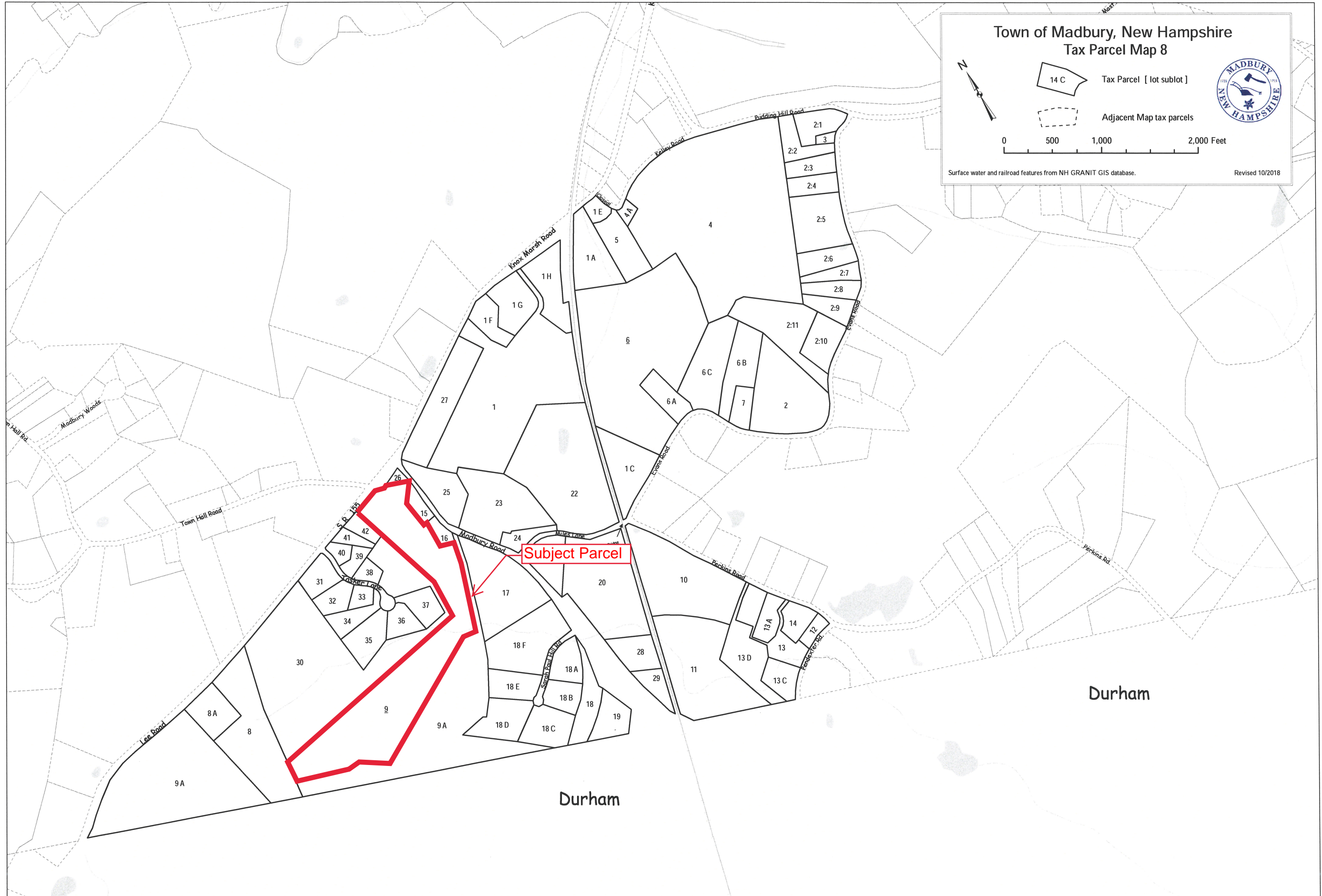
Exhibit 2 (NH Dept. of Public Works and Highways realignment plan-1970)

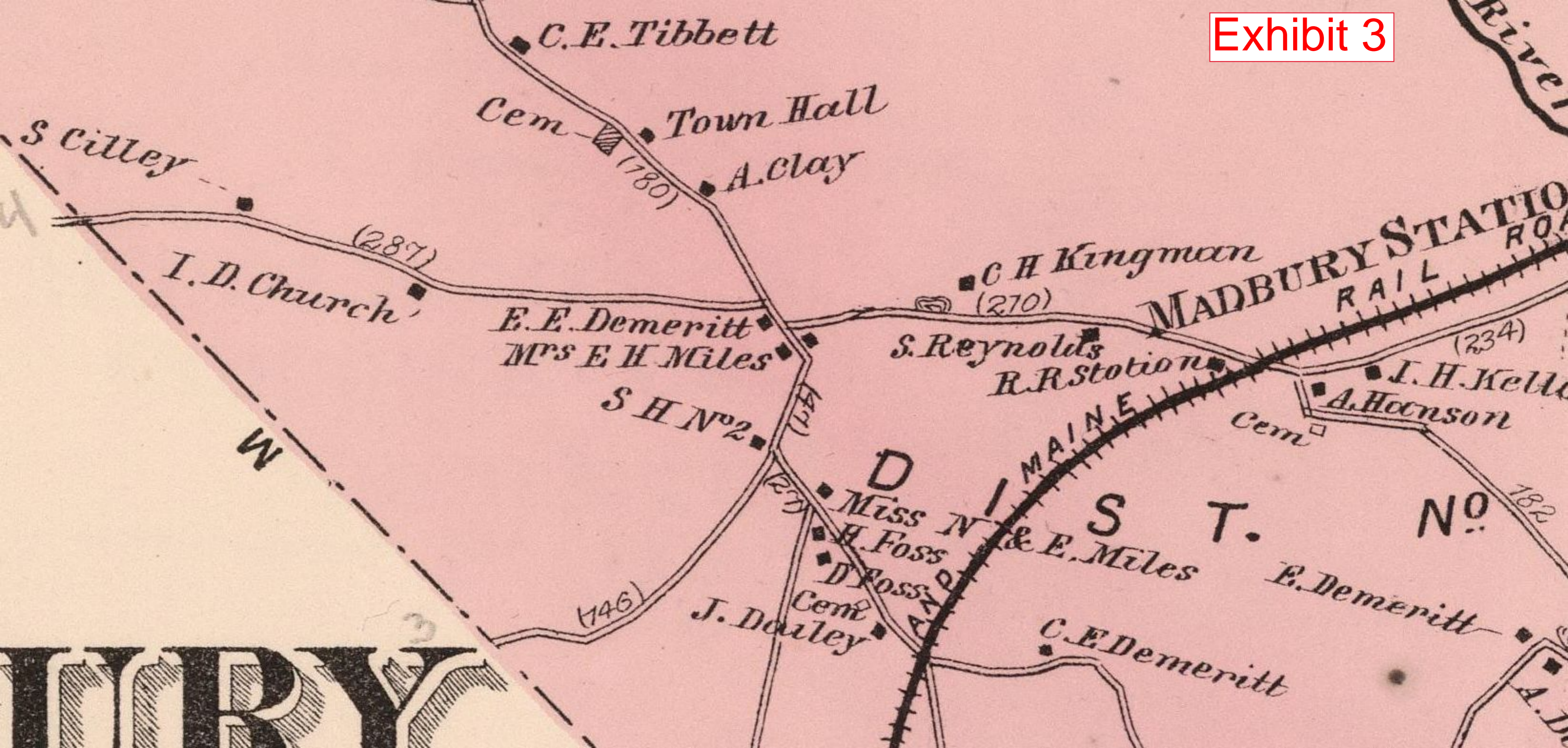
Exhibit 3 (Portion of 1871 Hurd Atlas)

Exhibit 4 (SCRD Book 1217 Page 367)

CC: 10 Lee Road, LLC, Derek Durbin, Attorney for Applicants

J:\JOBS\JUN 3100's\3140's\3142\2019 Site Plan\Applications\Town of Madbury\03 Submission 12-30-20\Letter Regarding ROW 123020.docx





8/26

KNOW ALL MEN BY THESE PRESENTS,

THAT, The State of New Hampshire by John P. Chandler, Commissioner of Public Works and Highways, pursuant to vote of the Governor and Council on February 23, 1985, and in accordance with the provisions of New Hampshire Revised Statutes Annotated, Chapter 228:31, for considerations received from The Town of Madbury,, to it in hand before the delivery hereof, by the Town of Madbury, a municipal corporation, of Strafford County, State of New Hampshire, has remised, released and forever Quitclaimed, and by these presents does remise, release and forever quitclaim unto the said Town of Madbury:

Any and all interest The State of New Hampshire has in a portion of old Route 155 and a portion of old Town Hall Road, in the Town of Madbury, County of Strafford, State of New Hampshire, bounded and described as follows:

Being any and all interest The State of New Hampshire has or may have in the old Route 155 and the old Town Hall Road as shown on a plan of Madbury B-2144 - S-1136 on file in the records of the New Hampshire Department of Public Works and Highways, said interests being situated Southerly of an extension of a line measured seventy-five (75') feet Southerly of and directly opposite Station 91 + 00, Route 155, as now traveled, and a point seventy-five (75') feet Southerly of and directly opposite Station 92 + 59.79, said line extending to a point in the Westerly Sideline of Madbury Road, as now traveled; bounded on the North by the above-described line; bounded on the East by the Westerly Sideline of Madbury Road, as now traveled; and bounded on the South and West by land now or formerly of Jesse Gangwer.

Containing fourteen thousand six hundred twenty-five (14,625) square feet, more or less, and being a portion of the old highway easements in old Route 155 and old Town Hall Road Rights-of-way.

EXCEPTION and RESERVING from the above conveyance any and all easements of record.

TO HAVE AND TO HOLD the said premises, with all the privileges and appurtenances thereunto belonging to the said Grantee and it and its successors and assigns forever.

IN WITNESS WHEREOF The State of New Hampshire has caused its name to be set and its seal to be hereunto affixed by John P. Chandler, Commissioner of Public Works and Highways duly authorized this 29th day of May in the year of our Lord, 1985.

Signed, sealed and delivered in the presence of:

THE STATE OF NEW HAMPSHIRE

Joyce E. Whitney

By: John P. Chandler
Commissioner
Public Works and Highways

STATE OF NEW HAMPSHIRE, Merrimack SS.

On this 29th day of May, 1985, before me, Joyce E. Whitney, the undersigned officer, personally appeared John P. Chandler, who acknowledged himself to be the Commissioner of Public Works and Highways, and that he, as such Commissioner, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of The State of New Hampshire by himself as Commissioner of Public Works and Highways.

IN WITNESS WHEREOF I have hereunto set my hand and seal.

Joyce E. Whitney
Notary Public

My commission expires 3/8/88.

REGISTER OF DEEDS
STRAFFORD COUNTY

1986 MAR 28 AM 11:11

STRAFFORD COUNTY
REGISTER

004746

BK 1217 PG 0367

AMBIT ENGINEERING, INC
 200 Griffin Rd
 Unit 3
 Portsmouth, NH 03801

1"=60' @ 11x17

MADBURY ROAD

