

PORTLAND MAINE

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Penny Littell - Director of Planning and Development

Ralph Ashmore
68 Winding Way
Peaks Island,
Portland, Maine 04108

Certified Mail 7003 3110 002 6063 6875

Re: Shoreland Zoning Violations CBL 085-T001

November 7, 2008

COPY

Dear Mr. Ashmore:

On February 9, 2007 Chris Hansen hand delivered to you a letter dated February 2, 2007 regarding violations of the City of Portland Land Use Ordinances at 68 Winding Way. The letter requested that you submit a stamped site plan within 60 days showing how you would replace the trees you removed.

On April 9, 2007 a dated letter from Albert Frick Associates indicated that a field review was conducted on April 3, 2007 by Albert Frick. This Letter includes photos of the property and states that the city of Portland regulates control of clearing of vegetation in Shoreland areas and resource protection zones.

On June 5, 2007 a proposed Landscaping Plan was prepared by Albert Frick Associates to mitigate the damages created by the tree removal.

On September 20, 2007 using the proposed landscaping plan prepared by Albert Frick Associates, an agreement was reached. The Landscaping Plan prepared by Albert Frick indicated the placement, species, and diameter of trees. The agreement calls for:

- Four living 2 inch Diameter Evergreen
- Two living 2 inch Diameter Oak trees
(diameter to be measured per industry standards in shoreland zoning)

On October 9, 2008 Code Enforcement Officer Suzanne Hunt met with you on site at 68 Winding Way. At this time the agreed upon four living 2 inch diameter evergreens and the two 2 inch diameter oaks had not been planted.

The planting season has ended for 2008. We are requiring that the agreed upon planting as measured by industry standard be planted by June 1 2009. An inspection coordinated with the City Arborist will be conducted on June 5, 2009. If the agreed upon planting are not in place and living, this case will be immediately referred to corporate counsel for legal action.

Sincerely

Suzanne Hunt
Suzanne Hunt

Code Enforcement Officer, City of Portland

cc Jeff Tarling ✓
Marge Schmuckle
Penny Littell

4/1/09 - Last week Suzanne reminded Ralph that we were following upon this - ON THIS DAY Suzanne also spoke with Jeff Tarling (after site plan review) who will contact Ralph's office assisting

From: Suzanne Hunt
To: Hanson, Chris; Schmuckal, Marge
Date: 4/1/2009 11:39:33 AM
Subject: Re: Reminder on Ralph Ashmore replanting

I have given Ralph a verbal heads up, and today upon Marge's suggestion have asked Jeff Tarling to give Ralph a call re garding re planting agreement with city. smh

Suzanne Hunt Code Enforcement, 874-8707

>>> Marge Schmuckal 3/31/2009 4:30:28 PM >>>

Suzanne,

Didn't you write a letter concerning the shoreland zone violation on Peaks Island and give him a dead line this Spring? We need to follow up on that. What is the date? Can I get a copy of the letter?

Thanks,

Marge



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Suzanne Hunt
Code Enforcement Officer, City of Portland

cc Jeff Tarling
Marge Schmuckle
Penny Littell

From: Marge Schmuckal
To: Chris Hanson; Suzanne Hunt
Date: 3/31/2009 4:30:28 PM
Subject: Reminder on Ralph Ashmore replanting

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Thanks,
Marge



Albert Frick Associates, Inc.

Soil Scientists & Site Evaluators

95A County Road Gorham, Maine 04038
(207) 839-5563 FAX (207) 839-5564

Albert Frick, SS, SE
James Logan, SS, SE
Matthew Logan, SE
Brady Frick, SE
Bryan Jordan, SE
William O'Connor, SE

April 9, 2007

Ralph Ashmore
20 Welch Street
Peaks Island, ME 04108

Re: Ashmore property, 68 Winding Way (Map 085T, Lot 1, IR-1), Septic/Plumbing and Shoreland Protection Zone Issues

Dear Ralph:

I did a field review of the septic/plumbing and wetlands at your parcel on April 3, 2007, at your request. You also provided me copies of letters from Christopher Hanson, Code Enforcement Officer, dated February 2, and March 8, 2007, concerning alleged violation.

SEPTIC SYSTEM/PLUMBING ALLEGED VIOLATION LETTER FROM CHRISTOPHER HANSON, DATED MARCH 8, 2007

1. Yurt:

The septic system for the Ashmore residence was permitted by the City of Portland in 1999 (see as-built septic design enclosed by William Goodwin, dated April 28, 1999). The septic designed was to serve "three bedrooms, 270 gpd".

Apparently, the City of Portland Code Enforcement is taking issue with the existence of plumbing in the Yurt structure on the property. The *State of Maine Subsurface Wastewater Disposal Rules*, which the City of Portland uses for regulation of septic systems, allows *out-buildings* to be used as workshops, studios, etc., and allows them to be plumbed into the septic system without the need for septic system expansion. If the out-building space is utilized as a bedroom, then the septic system would have to be expanded for the additional bedroom, and would be defined as a *minor expansion*. The addition of a bedroom would require a design to be expanded "*on paper*" to show the ability to enlarge the system by the applicant, should it be needed in the future. (*The Rules do not require the actual septic system to be installed, since every guest bedroom is used differently regarding intensity of use, etc.*)

My analysis of this septic/plumbing issue to resolve this matter would be to have an agreement reached between you and the City of Portland regarding the proper classification of the Yurt (eg. workshop, storage, studio, guest bedroom, etc.) If it was determined to be a workshop, storage or studio space, then no adjustment to the septic field absorption area would be needed. If it was deemed to be a "bedroom", then the septic system design would need to be increased from a 3-bedroom to a 4-bedroom design. Also, an *after-the-fact* internal permit would be needed for the existing plumbing fixture units. The plumbing work is observable to assure Code compliance.

2. Main Ashmore Residence

Apparently, there is an alleged violation regarding the existence of an accessory unit or apartment in the basement or first level of your residence. I did not observe any kitchen appliances located within this space. The presence of utility grade cabinets and a sink in a studio/workshop is permissible and does not violate the septic design flow criteria. I understand that you received a Certificate of Occupancy from the City of Portland indicating that you were in compliance with city regulations and ordinances. It is my understanding that no changes to this space have occurred since that time, therefore the septic system design for the main dwelling appears to be adequate in my opinion.

SHORELAND ZONING CUTTING, ALLEGED VIOLATION LETTER FROM CHRISTOPHER HANSON, DATED FEBRUARY 2, 2007

Alleged Non-Permitted Tree Removal:

I delineated the edge of the wetland in the immediate vicinity of the alleged shoreland zone cutting violation on April 3, 2007. I GPS survey-located the edge of the pond, edge of wetlands, property survey boundary marker of Lloyd Jones (see Lloyd Jones perimeter and topographic survey enclosed). I also located the edge of the cutting and photographed the site from similar views of a pre-cutting photo, which was made available to me (see Photos 1 and 2).

Most of the clearing on this site, and in the subject area, existed prior to June 15, 1992. Most clearing of the site was done for the construction of the Ashmore residence. I personally was on-site during the construction phase of the septic system preparation to review site/soil conditions. The clearing, at that time, allowed for the construction of the building, driveway, septic and surrounding lawn area. However, there was additional clearing done after 2000 in the subject area that is the point of contention.



The City of Portland Ordinance Section 14-449-(c) 3, states that:

Cleared openings legally in existence on June 15, 1992, may be maintained but shall not be enlarged, except as permitted by the Division.

Section 14-449C 1 iii allows for:

Pruning of tree branches on the bottom one-third of the tree.

Section 14-449-C 1 iv. States that:

Where the removal of storm-damaged, diseased, unsafe or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

Within the city ROW (so called 3rd Proposed Street) there is a public walking trail lacking tree coverage along the immediate edge of the pond (see Photo 3). This opening pre-existed the Ashmore building construction and is not on the Ashmore property, since it is a “paper” right-of-way.

It appears, from comparison of the pre-cut May 6, 2006 photo and April 3, 2007 photo of similar view perspectives, that an approximate 6” dia white birch, a 6”/10” dia maple, and a 6” dia maple were cut.

I understand from talking with you that the white birch was dead, and you were concerned about it falling on the roof of the Yurt. You also stated that the maple had been badly damaged in an ice storm and you elected to cut those selective trees.

Section 14-449-C-1 iv. does allow for removal of “*storm-damaged, diseased, unsafe or dead trees*”, provided “*trees are replanted with native tree species*”.

There are five hemlock trees (4’ height) planted along the City of Portland foot path (see Photos 3 and 4), which complies with the above requirement. Also, additional plantings were done adjacent to the Yurt (see Photo 5).

I reviewed the Maine Department of Environmental map and the DEP does not have this area classified as a *significant wildlife habitat area*. (See enclosed Habitat of Special Significance Mapping). In addition, there is a pre-existing City landfill directly adjacent to this subject area, and there has been significant man-made disturbance to this area from City landfill and possibly military fortification activities.

Maine DEP Natural Resource Protection Act 38 MRSA 480-Q-23 exempts a property owner from DEP NRPA permitting requirements of cutting or clearing of upland vegetation, provided the cutting or clearing is subject to the jurisdiction of a municipality.

The City of Portland 4-449-C-1 clearly regulates *clearing of vegetation in shoreland areas and resource protection zones*, and hence the City of Portland regulations control this activity. I spoke to Michael Morse at the Maine DEP, Shoreland Zoning Division, and he concurred that the issue should be dealt with through the City of Portland Code Enforcement Office directly.

The existing opening (clearing) is 25' wide. Plantings were done with native species (hemlock) to replace the cut trees for the entire width of the opening.

Perimeter Land Survey:

A copy of the perimeter land survey of your property, stamped by licensed Land Surveyor Lloyd Jones, has been enclosed. This document clearly shows that the subject cutting areas are clearly on your *fee simple* land parcel.

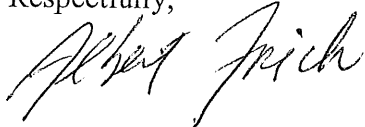
CONCLUSIONS:

It is my recommendation that you, I and Chris Hanson meet on-site, perhaps with the City Arborist, to review both the internal plumbing/septic system/building code components of the issue, as well as the tree cutting issue and attempt to resolve these matters.

It is my opinion that the septic/plumbing components of this alleged problem can be corrected by securing the necessary *after-the-fact* internal plumbing permits, and by addressing the septic system size based upon the agreed upon classification of the subject "spaces" in question. The vegetative clearing issue needs further discussion with the City of Portland Code Enforcement Office, regarding the issues outlined, to bring this to closure.

Please contact me if you have any questions or additional matters for discussion.

Respectfully,



Albert Frick
AF/nd

Enc. Septic Design of 4/28/99
Site Plan/Aerial Overlay
Photographs
Perimeter Land Survey, Lloyd Jones (2' x 3')



Albert Frick Associates, Inc.
Soil Scientists & Site Evaluators

Ralph Ashmore
68 Winding Way
Peaks Island, Portland



**Photo 1: Photo before cutting showing existing view of Pond resource.
May 6, 2006. Photographer: Ralph Ashmore**



**Photo 2: Photo after cutting, showing similar view of Photo1, with 5 hemlock plantings along
City of Portland ROW 3rd Proposed Street.
April 3, 2007. Photographer: Albert Frick**

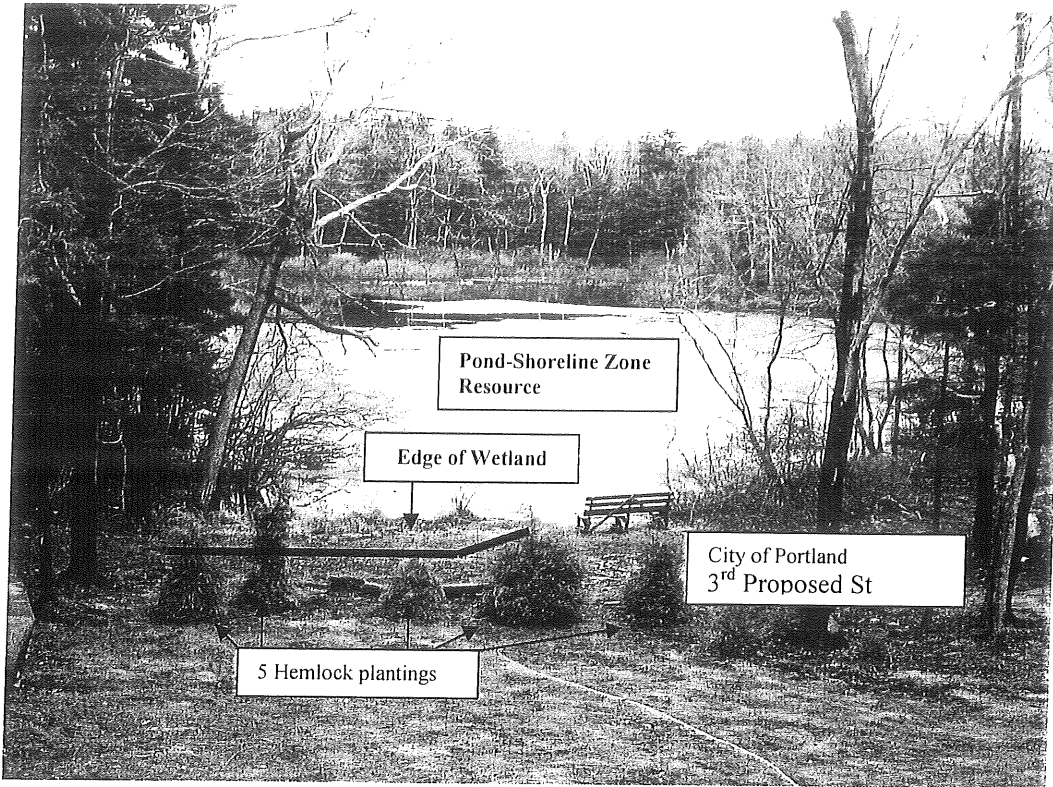


Photo 3: Photo after cutting.

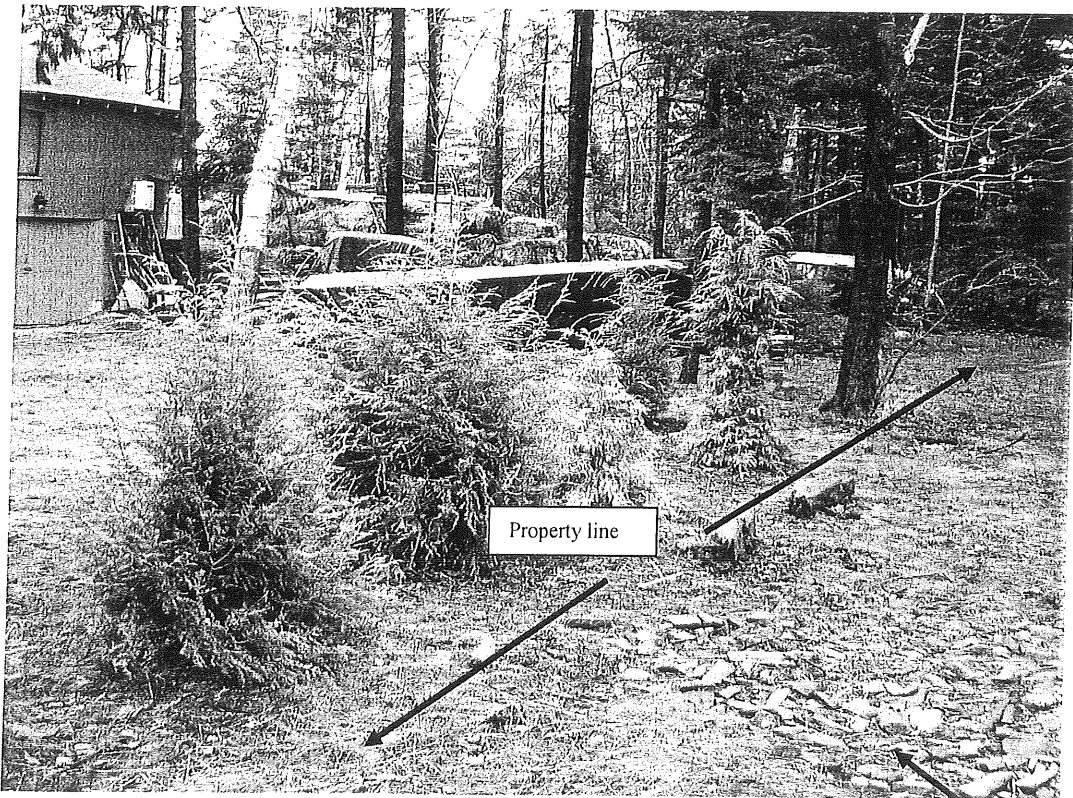


Photo 4: Hemlock Plantings along City of Portland ROW 3rd Proposed St.

City of Portland
foot path



Photo 5: Existing Yurt.



Photo 6: Inside view of Yurt.

NOTE: PROPERTY INFORMATION
 MAP PLAN BY LLOYD JONES

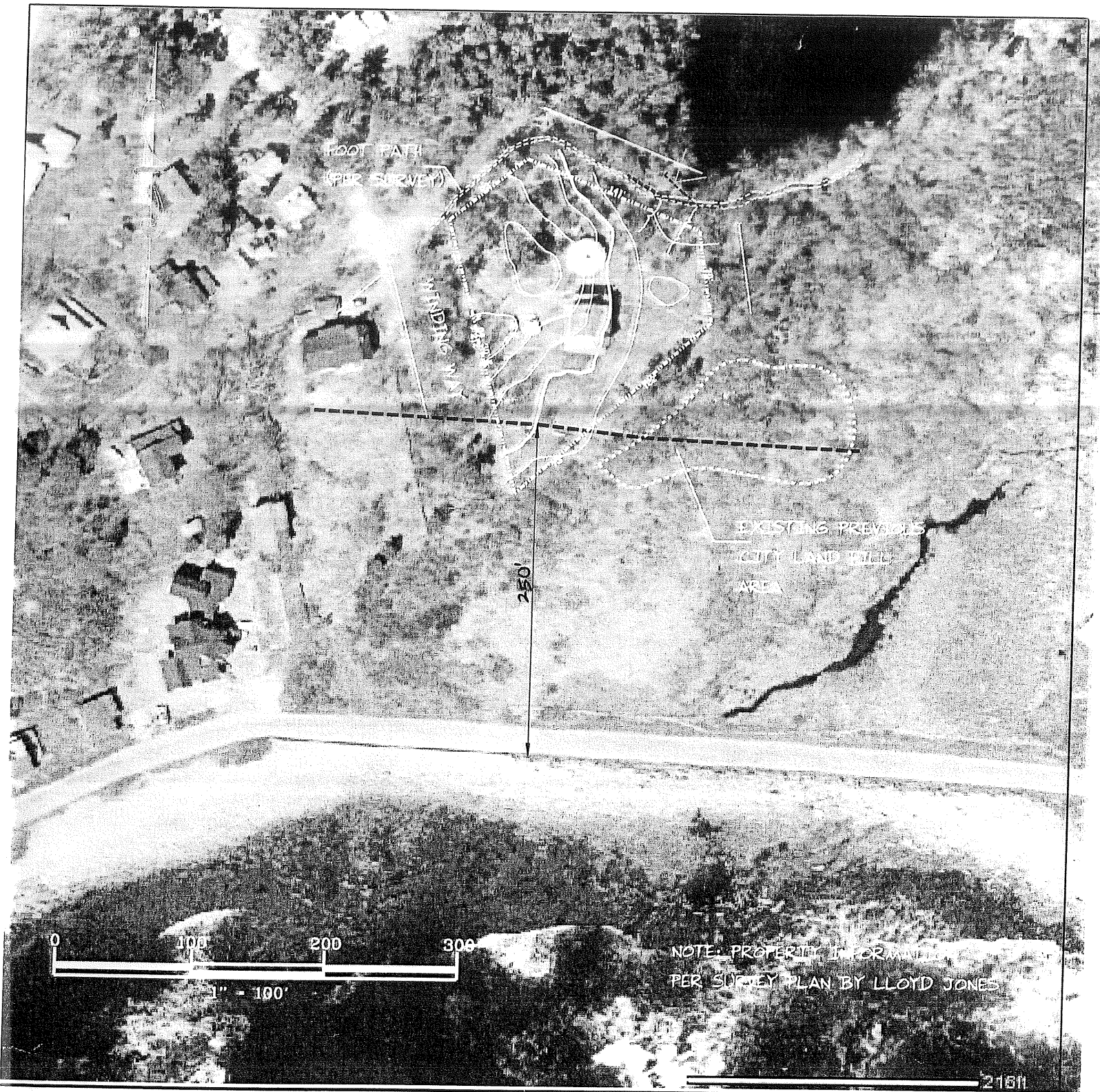


SITE PLAN
 RALPH ASHMORE
 68 WINDING WAY
 MAP OBST, LOT 1
 PEAKS ISLAND
 PORTLAND, MAINE



Albert Frick Associates, Inc.
 Soil Scientists & Site Evaluators
 Gorham, Maine 04038

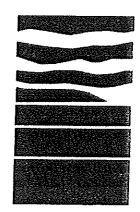
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		Date: 4/6/07	Scale: 1" = 50'



NOTE: PROPERTY INFORMATION IS BASED ON PER SURVEY PLAN BY LLOYD JONES

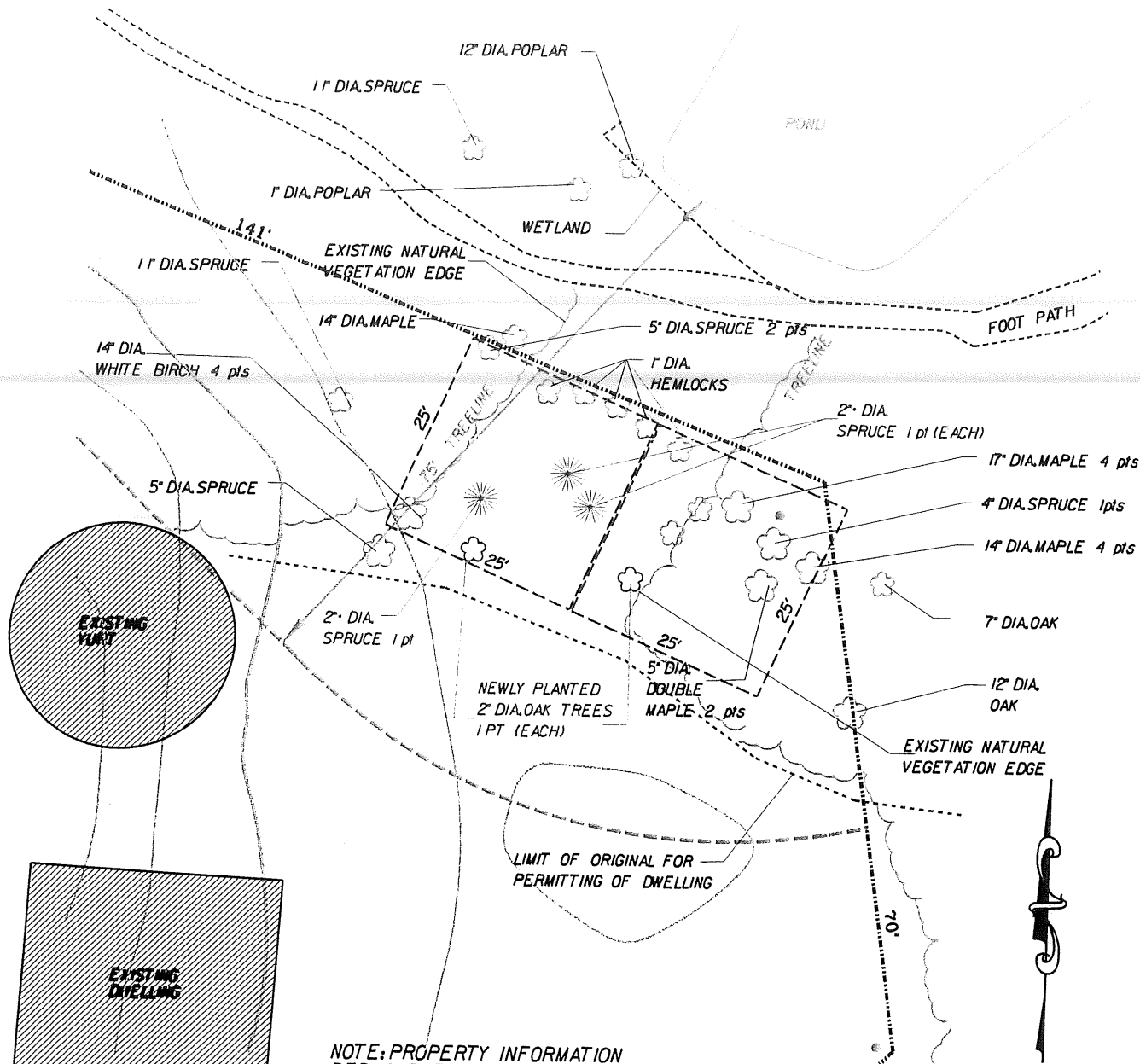
21511

SITE PLAN
RALPH ASHMORE
68 WINDING WAY
MAP 085T, LOT 1
PEAKS ISLAND
PORTLAND, MAINE



Albert Frick Associates, Inc.
Soil Scientists & Site Evaluators
Gorham, Maine 04038

Re:	Revision Description	Drawn By: B.O.	Checked By: A.F.
		Date: 4/6/07	Scale: 1" = 100'



NOTE: PROPERTY INFORMATION
PER SURVEY PLAN BY LLOYD JONES

NOTE: POINT SCORE ALLOCATION BASED ON
CITY OF PORTLAND (SEE 14-446 c.l.a J1)

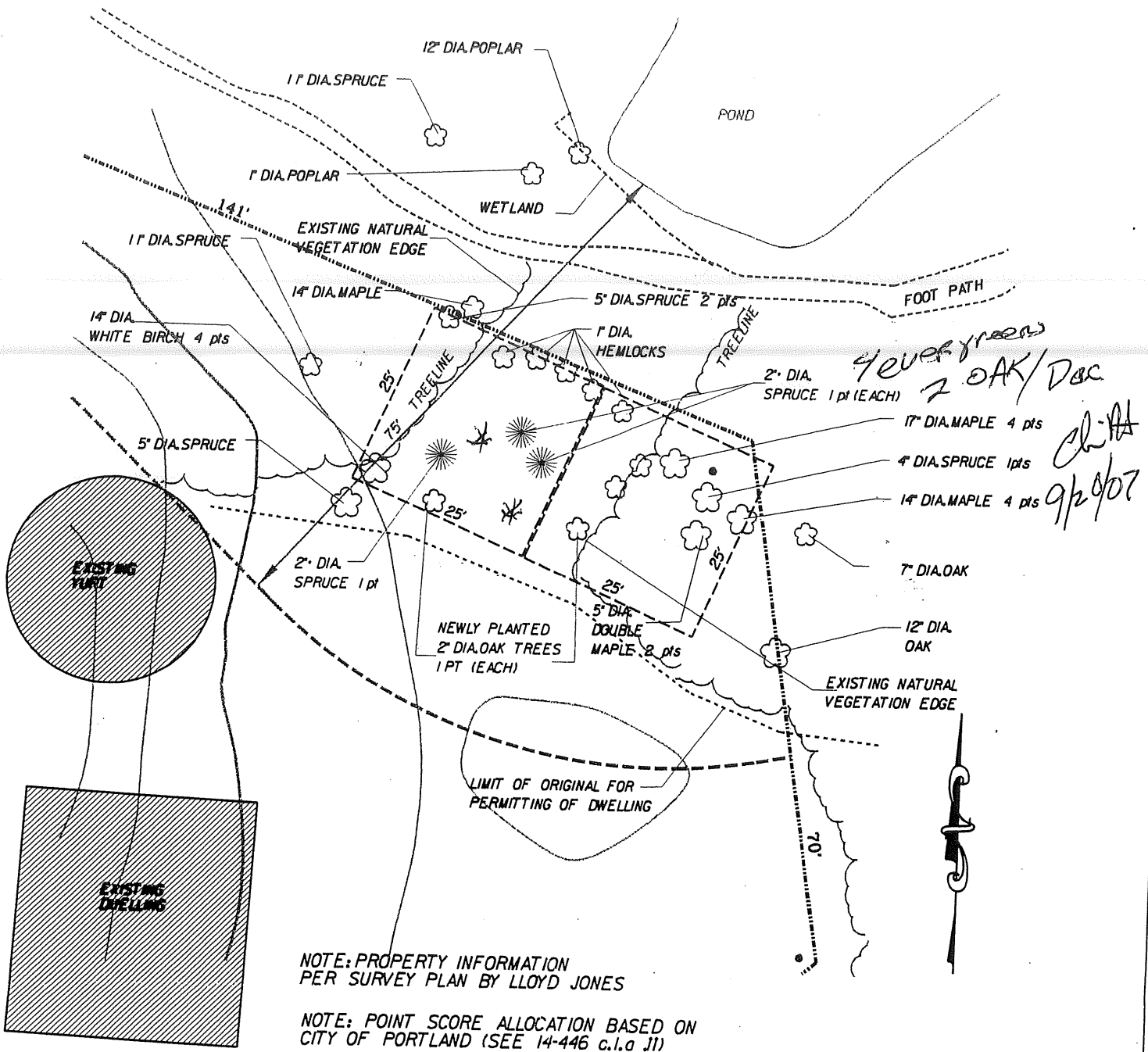
PROPOSED LANDSCAPING PLAN
RALPH ASHMORE
68 WINDING WAY
MAP OBST, LOT 1
PEAKS ISLAND PORTLAND



Albert Frick Associates, Inc.
Soil Scientists & Site Evaluators
Gorham, Maine 04038

Re:	Revision Description

Drawn By: BF.	Checked By: AF.
Date: 6/5/07	Scale: 1" = 30'



PROPOSED LANDSCAPING PLAN
 RALPH ASHMORE
 68 WINDING WAY
 MAP 085T, LOT 1
 PEAKS ISLAND PORTLAND



Albert Frick Associates, Inc.
 Soil Scientists & Site Evaluators
 Gorham, Maine 04038

Date:	Revision Description

Drawn By: B.F.
 Date: 6/5/07

Checked By: A.F.
 Scale: 1" = 30'

Land of

