

**City of Portland, Maine - Building or Use Permit Application**  
 389 Congress Street, 04101 Tel: (207) 874-8703, Fax: (207) 874-8716

Permit No: 04-0879	Issue Date: JAN 24 2005	171 A028001
Owner Name: Steve Bolton Habitat For Humanity Greater		Owner Address: Po Box 10505 Portland ME 04108
Contractor Name: Habitat for Humanity		Contractor Address: PO Box 10505 Portland ME 04108
Permit Type: Single Family		Zone: R-3

Location of Construction: 50 Malilly Rd	Owner Name: Steve Bolton Habitat For Humanity Greater	Owner Address: Po Box 10505 Portland ME 04108
Business Name:	Contractor Name: Habitat for Humanity	Contractor Address: PO Box 10505 Portland ME 04108
Lessee/Buyer's Name	Phone:	Permit Type: Single Family

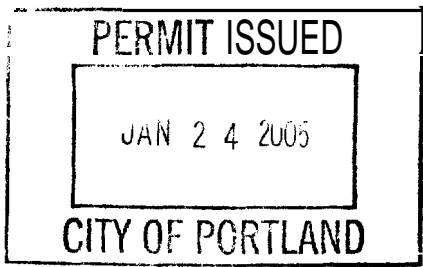
Past Use: Vacant land	Proposed Use: Build 28 x 22 single family home <sup>2</sup> <del>1 1/2</del> story cape
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Permit Fee: \$816.00	Cost of Work: \$80,000.00	CEO District: 4
FIRE DEPT: <input type="checkbox"/> Approved <input type="checkbox"/> Denied	INSPECTION: Use Group: R3 Type: SB IRC-2003	
Signature:	Signature: JMB 1/24/05	
PEDESTRIAN ACTIVITIES DISTRICT (P.A.D.)		
Action: <input type="checkbox"/> Approved	<input type="checkbox"/> Approved w/Conditions	<input type="checkbox"/> Denied
Signature:	Date:	

Proposed Project Description:  
 Build 28 x 22 single family home ~~1 1/2~~ story cape  
 2 story

Permit Taken By: Idobson	Date Applied For: 06/28/2004	<b>Zoning Approval</b>
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Special Zone or Reviews <input checked="" type="checkbox"/> Shoreland <sup>with stream protection</sup> <input type="checkbox"/> Wetland <input type="checkbox"/> Flood Zone <sup>Panel 7 Zone X</sup> <input type="checkbox"/> Subdivision <input checked="" type="checkbox"/> Site Plan <sup>2004-0136</sup> Maj <input type="checkbox"/> Minor <input type="checkbox"/> MM <input checked="" type="checkbox"/> Date: <sup>OK with conditions</sup> 5/10/04	Zoning Appeal <input type="checkbox"/> Variance <input type="checkbox"/> Miscellaneous <input type="checkbox"/> Conditional Use <input type="checkbox"/> Interpretation <input type="checkbox"/> Approved <input type="checkbox"/> Denied Date: 3	Historic Preservation <input checked="" type="checkbox"/> Not in District or Landmark <input type="checkbox"/> Does Not Require Review <input type="checkbox"/> Requires Review <input type="checkbox"/> Approved <input type="checkbox"/> Approved w/Conditions <input type="checkbox"/> Denied Date: 9
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**CERTIFICATION**

I hereby certify that I am the owner of record of the named property, or that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his authorized agent and I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in the application is issued, I certify that the code official's authorized representative shall have the authority to enter all areas covered by such permit at any reasonable hour to enforce the provision of the code(s) applicable to such permit.

SIGNATURE OF APPLICANT	ADDRESS	DATE	PHONE
RESPONSIBLE PERSON IN CHARGE OF WORK. TITLE		DATE	PHONE

**City of Portland, Maine - Building or Use Permit**

389 Congress Street, 04101 Tel: (207) 874-8703, Fax: (207) 874-8716

<b>Permit No:</b> 04-0879	<b>Date Applied For:</b> 06/28/2004	<b>CBL:</b> 171 A028001
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<b>Location of Construction:</b> 55 Malilly Rd	<b>Owner Name:</b> Habitat For Humanity Greater	<b>Owner Address:</b> Po Box 10505	<b>Phone:</b>
<b>Business Name:</b>	<b>Contractor Name:</b> Habitat for Humanity	<b>Contractor Address:</b> PO Box 10505 Portland	<b>Phone</b> (207) 772-2151
<b>Lessee/Buyer's Name</b>	<b>Phone:</b>	<b>Permit Type:</b> Single Family	

Build 28 x 22 single family home 2 story cape

**Dept:** Zoning      **Status:** Approved with Conditions      **Reviewer:** Marge Schmuckal      **Approval Date:** 11/18/2004

**Note:** 7/6/04 I spoke with Bob Greenlaw - the plans are very deficient - no 50' min. Street frontage - no front or side stoops shown on the plan - the structure is shown to be 22' x 38' instead of the requested 22' x 28' - only 1 legal parking space shown - does not delineate the 75' from the HWM  
11/2/04 received new site plans

- 1) Separate permits shall be required for future decks, sheds, pools, and/or garages. Your submittal shows a front stoop and stairs 5'x9' left side stoop and stairs 7'x7' and both stoops and stairs are being approved. NO REAR DECKS are being shown and NO REAR DECKS are being approved.
- 2) This property shall remain a single family dwelling. Any change of use shall require a separate permit application for review and approval.
- 3) This permit is being approved on the basis of plans submitted on 11/2/04. Any deviations shall require a separate approval before starting that work.

**Dept:** Building      **Status:** Approved with Conditions      **Reviewer:** Jeanine Bourke      **Approval Date:** 0112412005

**Note:** 11/29/04 left msg. For Steve B. To call for further info. **Ok to Issue:**   
11/30 Spoke w/Steve B. Added notes to the plans per required review. He will submit deck/stair details.  
Also, need to check w/Marge about new deck location that is not on the most recent plot plan.  
12/8 received the revised plot plan for the relocation of the deck. Left msg for Steve B. For the framing details  
1/24 Steve B. Brought in deck details. **Ok to issue**

- 1) As discussed, hardwired interconnected battery backup smoke detectors shall be installed in all bedrooms, on every level, and in a common area.
- 2) Permit approved based on the plans submitted and reviewed w/owner/contractor, with additional information as agreed on and as noted on plans.

**Dept:** DRC      **Status:** Approved with Conditions      **Reviewer:** Jay Reynolds      **Approval Date:** 11/15/2004**Note:** Revision approved 12-15-04      **Ok to Issue:** 

- 1) All Site Work will conform to the City of Portland ordinance on Shoreland Regulations (Division 26).
- 2) The Development Review Coordinator reserves the right to require additional lot grading or other drainage improvements as necessary due to field conditions.
- 3) A street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8822. (Only excavators licensed by the City of Portland are eligible.)
- 4) A sewer permit is required for your project. Please contact Carol Merritt at 874-8300, ext. 8822. The Wastewater and Drainage section of Public Works must be notified five (5) working days prior to sewer connection to schedule an inspector for your site.
- 5) All damage to sidewalk, curb, street, or public utilities shall be repaired to City of Portland standards prior to issuance of a certificate of occupancy.
- 6) Your new street address is now #55 Malilly Rd., the number must be displayed on the street frontage of your house prior to issuance of a Certificate of Occupancy.

<b>Location of Construction:</b> 55 Malilly Rd	<b>Owner Name:</b> Habitat For Humanity Greater	<b>Owner Address:</b> Po <b>Box</b> 10505	<b>Phone:</b>
<b>Business Name:</b>	<b>Contractor Name:</b> Habitat for Humanity	<b>Contractor Address:</b> PO Box 10505 Portland	<b>Phone</b> (207)772-2151
<b>Lessee/Buyer's Name</b>	<b>Phone:</b>	<b>Permit Type:</b> Single Family	

**Dept:** Planning

**Status:** Not Applicable

**Reviewer:** Jay Reynolds

**Approval Date:** 11/15/2004

**Note:**

**Ok to Issue:**

**Comments:**

11/18/2004-gg: received revised site plan from Jay R. /gg

55 Malilly Rd 171-A-28  
 # 04-0879 Habitat

All Notes  
 Per Steve B. 11/30/09

Soil type/Presumptive Load Value (Table 401.4.1)	Component	Plan Reviewer	Inspection/Date/Findings
<b>STRUCTURAL</b> Footing Dimensions/Depth (Table 403.1.1 & 403.1.1(1), Section 403.1.2)	?	8x20	OK
Foundation Drainage Dampproofing (Section 406)	4" in & out ? Filter, fan		OK
Ventilation (Section 409.1) Crawls Space ONLY	2 OK	? walkout Door	OK
Anchor Bolts/Straps (Section 403.1.4)	?		
Lally Column Type, Spacing and footing sizes (Table 502.3.4(2))	2x6 structural wall on 24" x 12" cont-footing		OK
Built-Up Wood Center Girder Dimension/Type (Table 502.3.4(2))	?	N/A	OK
Sill/Band Joist Type & Dimensions	2x6 PT		OK
First Floor Joist Species Dimensions and Spacing (Table 503.3.1(1) & Table 503.3.2(1j))	2x8		OK
Second Floor Joist Species Dimensions and Spacing Table (503.3.1(1) & Table 503.3.2(1))	<del>2x8</del>		OK

Attic or additional Floor Joist Species Dimensions and Spacing (Table 802.4.2 or 503.3.1(1) & Table 503.3.2(1) )	2x6 ceiling	OK
Roof Rafter; Pitch, Span, Spacing & Dimension (Table 802.3.2(7) )	2x10 16 O.C. 3:12 / 12:12	? 2x8 OK
Sheathing; Floor, Wall and roof (Table 503.2.1(1))	?	OK
Fastener Schedule (Table 602.3(1) & (2) )	!	OK
<b>Private Garage</b> Section 309 and Section 407 1999 BOCA) Living Space ? (Above or beside)	N/A	
Fire separation	N/A	
The raising of doors to living space Door Sill elevation (407.5 BOCA)	?	OK
Egress windows (Section 510)	Asph/Flt	OK
Roof Covering (Chapter 9)	N/A	OK
Safety Glazing (Section 500)	?	OK
Attic Access (BOCA 1211.1)	N/A	OK
Draft Stopping around chimney	N/A	<del>OK</del> N/A

			OK
Type of Heating System			Direct Vent
Stairs			
Number of Stairways	4		
Interior			
Exterior			
Treads and Risers (Section 314)	?		OK per 1/24/05 revised plans
Width			
Headroom			
Guardrails and Handrails (Section 315)			
Smoke Detectors Location and type/Interconnected	?	All Bedrooms Protecting/All levels	interconnected OK
Plan Reviewer Signature			

See Chimney Summary Checklist

Decks

OK revised plan — 1/24/05

1003.1			
ITEM	LETTER	REQUIREMENTS	
		Summary	See Section
Hearth and hearth extension thickness	A	4-inch <b>minimum</b> thickness for hearth. 2-inch <b>minimum</b> thickness for hearth extension.	1003.9.2
Hearth extension (each side of opening)	B	8 inches for fireplace opening less than 6 <b>square</b> feet.	1003.10
Hearth extension (front of opening)	C	12 inches for fireplace opening <b>greater</b> than or <b>equal</b> to 6 square feet.	1003.10
Hearth extension (front of opening)		16 inches for fireplace opening less than 6 <b>square</b> feet.	
Hearth and hearth extension reinforcing	D	Reinforced to carry its own weight and all <b>imposed</b> loads.	1003.9
Firebox dimensions	E	20-inch minimum firebox depth. 12-inch <b>minimum</b> firebox depth for Rumford fireplaces.	1003.11
Thickness of wall of firebox	F	10 inches solid <b>masonry</b> or 8 inches where firebrick <b>lining</b> is used.	1003.5
Distance from top of opening to throat	G	8 inches <b>minimum</b> .	1003.7
Smoke chamber	H	Wall thickness 6 inches lined, 8 inches <b>unlined</b>	1003.8
Dimensions		Not taller than opening width; walls not inclined more than 45 <b>degrees</b> from vertical for prefabricated smoke chamber linings or 30 <b>degrees</b> from vertical for corbeled <b>masonry</b> .	1003.8.1
Chimney vertical reinforcing <sup>a</sup>	I	Four No. 4 full-length bars for chimney up to 40 inches wide. Add two No. 4 bars for each <b>additional</b> 40 inches or fraction of width, or for each <b>additional flue</b> .	1003.3.1
Chimney horizontal reinforcing <sup>a</sup>	J	1/4-inch ties at each 18 inches, and two ties at each bend in vertical steel.	1003.3.2
Fireplace lintel	K	Noncombustible material with 4-inch load-bearing length of each side of opening.	1003.7
Chimney walls with flue lining	L	4-inch-thick solid <b>masonry</b> with liner. 1/2-inch <b>grout</b> or airspace between liner and wall.	1001.7; 1001.9
Effective flue area (based on area of fireplace opening and chimney)	M	See Section 1001.12.	1001.12
Clearances	N	From chimney 2 inches interior, 1 inch exterior.	1001.15
From fireplace		2 inches <b>front</b> , back or sides.	1003.12
Combustible trim or materials		6 inches <b>from</b> opening.	1003.13
Above roof		3 feet <b>above</b> roof penetration, 2 feet above part of structure within 10 feet.	1001.6
Anchorage <sup>a</sup>	O	Strap 3/16 inch by 1 inch.	1003.4
Number		Two.	
Embedment into chimney		12 inches <b>hooked</b> around outer bar with 6-inch extension.	
Fasten to		Four joists.	
Bolts		Two 1/2-inch diameter.	
Footings	P	Thickness 2-inch <b>minimum</b> .	1003.2
Width		6 inches <b>each</b> side of fireplace wall.	

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm, 1 square foot = 0.0929 m<sup>2</sup>, 1 degree = 0.01745 rad.

<sup>a</sup> Required only in Seismic Zones 3 and 4.

Applicant: Habitat for Humanity

Date: 11/18/04

Address: 55 Malley Rd

C-B-L: 171-A-028

CHECK-LIST AGAINST ZONING ORDINANCE

Date - New Development

permit #04-0879

Zone Location - R-3

Interior or corner lot - end of street

Proposed Use/Work - to construct 2 story cape 22'x28' with front stoop 5'x9' and side stoop & stairs 7'x7'

Sevage Disposal - City

Lot Street Frontage - 50' min - 80.29' shown

No rear Decks

Front Yard - 25' min - 25' to front stoop

Rear Yard - 25' min - 29.50' to rear property line

Side Yard - 14' except can reduce one side to No less than 8' if add on to other side 9' & 36' shown - ok

Projections - front stoop 5'x9' & left side stoop & steps 7'x7'

Width of Lot - 75' min - 80.29' shown

Height - 35' MAX - 20.75' scaled to ridge

Lot Area - 6,500 sq ft - 6,600 sq ft

Lot Coverage/Impervious Surface - 25% = 1,650 sq ft max

Area per Family - 6,500 sq ft

Off-street Parking - 2 req - 2 shown on ground

Loading Bays - N/A

Site Plan - minor/minor

Shoreland Zoning/Stream Protection - # 2004-0136

Flood Plains - Panel 7 - Zone X

lot within - but construction is over 75' from HWM.

No Daylight basement

22' x 28' =	616
7 x 7 =	49
5 x 9 =	45
<hr/>	
	710 sq ft



Applicant: Steve Bolton

Date: 7/6/04

Address: END of Mahally Rd

C-B-L: 171-A-028

CHECK-LIST AGAINST ZONING ORDINANCE

Date - New Const

Zone Location - R-3

See revised zoning sheet

Interior or corner lot - and 1st

PLANS shown

Proposed Use/Work -

to construct 22x28' single family - NO GARAGE NO REAR DECK

Sewage Disposal - city

Lot Street Frontage - 50' min - 42' scaled

Front Yard - 25' min - showing 26', but doesn't show frontage

Rear Yard - 25' min - 32' given

Side Yard - 14' min - may reduce one side to 10' less than 8ft if every foot taken off on one side is added on to the other side - 10' x 42' showing

Projections - front stairs - side stairs

Width of Lot - 75' min - 88.50' shown

Height - 25' MAX - 20.75' scaled to ridge

Lot Area - 6,500# 7,254.2# shown

Lot Coverage/ Impervious Surface - 25% MAX = 1,625.55#

Area per Family - 6,500#

Off-street Parking - 2 req - only 1 being shown

Loading Bays - N/A

Site Plan - minor/minor # 2004-0136

Shoreland Zoning/ Stream Protection - needs to show the 75' from HWM

Flood Plains - Panel 7 zone X AE Zone only 20' wide from center of full brook

different

Need to show

Needs to show

22' x 28' = 616#  
(5' x 7') 2 = 70  
686#

7/6/04 -> spoke to Bob Green



# Transmittal Cover Page

## Portland Public Works

From: Camille C. Alden, P.L.S., Surveyor  
Portland Public Works  
55 Portland Street, Portland, Maine 04101  
(207) 874-8839  
calden@portlandmaine.gov

To: Jeannie Bourke  
Code Enforcement

Date: December 3, 2004

### Project Reference: Habitat for Humanity on Malilly Road

We are sending you:

- enclosed
- under separate cover
- available for pick up
- other: \_\_\_\_\_

For Your:

- information per request
- review and comment
- information and use
- other: \_\_\_\_\_

### Number Quantity Description

Number	Quantity	Description
1	3	11X17 Black and White "Site Plan for Proposed Habitat for Humanity Dwelling on Malilly Road", Dated November 4, 2004, Revised Dec. 3, 2004
2		
3		

Remarks: I've changed the location of the deck so that it corresponds with the building drawings sent to you by Habitat. Please tell me this is all we need to get the final O.K. on this project? We here at DPW are ready to have this job finished. I imagine Code Enforcement is ready as well? I'm keeping my fingers crossed!

DEC 8 2004

DISPLAY THIS CARD ON PRINCIPAL FRONTAGE OF WORK  
**CITY OF PORTLAND**

**BUILDING INSPECTION**  
**PERMIT**

Please Read Application And Notes, If Any, Attached

**PERMIT ISSUED**  
JAN 24 2005  
Permit Number: 040879  
**CITY OF PORTLAND**

This is to certify that Habitat For Humanity Greater Portland Habitat for Humanity  
has permission to Build 28 x 22 single family home <sup>two</sup> ~~one~~  
AT 55 Malilly Rd City 171 A028001

provided that the person or persons, firm or corporation accepting this permit shall comply with all of the provisions of the Statutes of Maine and of the Ordinances of the City of Portland regulating the construction, maintenance and use of buildings and structures, and of the application on file in this department.

Apply to Public Works for street line and grade if nature of work requires such information.

Notification of inspection must be given and written permission procured before this building or part thereof is altered or otherwise used-in. NO OTHER NOTICES REQUIRED.

A certificate of occupancy must be procured by owner before this building or part thereof is occupied.

**PERMIT ISSUED**  
JAN 24 2005  
**CITY OF PORTLAND**

OTHER REQUIRED APPROVALS  
Fire Dept. \_\_\_\_\_  
Health Dept. \_\_\_\_\_  
Appeal Board \_\_\_\_\_  
Other \_\_\_\_\_

*Jeanne Bonke* 1/24/05  
Director - Building & Inspection Services

**PENALTY FOR REMOVING THIS CARD**

# BUILDING PERMIT INSPECTION PROCEDURES

Please call 874-8703 or 874-8693 to schedule your inspections as agreed upon

Permits expire in 6 months, if the project is not started or ceases for 6 months.

The Owner or their designee is required to notify the inspections office for the following inspections and provide adequate notice. Notice must be called in 48-72 hours in advance in order to schedule an inspection:

By initializing at each inspection time, you are agreeing that you understand the inspection procedure and additional fees from a "Stop Work Order" and "Stop Work Order Release" will be incurred if the procedure is not followed as stated below.

A Pre-construction Meeting will take place upon receipt of your building permit.

- Footing/Building Location Inspection: Prior to pouring concrete )
- Re-Bar Schedule Inspection: Prior to pouring concrete
- Foundation Inspection: Prior to placing ANY backfill )
- Framing/Rough Plumbing/Electrical: Prior to any insulating or drywalling )
- Final/Certificate of occupancy: Prior to any occupancy of the structure or use. NOTE: There is a \$75.00 fee per inspection at this point.

Certificate of Occupancy is not required for certain projects. Your inspector can advise you if your project requires a Certificate of Occupancy. All projects DO require a final inspection

If any of the inspections do not occur, the project cannot go on to the next phase, REGARDLESS OF THE NOTICE OR CIRCUMSTANCES.

CERIFICATE OF OCCUPANICES MUST BE ISSUED AND PAID FOR, BEFORE THE SPACE MAY BE OCCUPIED

[Signature]  
Signature of Applicant/Designee

1/24/05  
Date

[Signature]  
Signature of Inspections Official

1/24/05  
Date

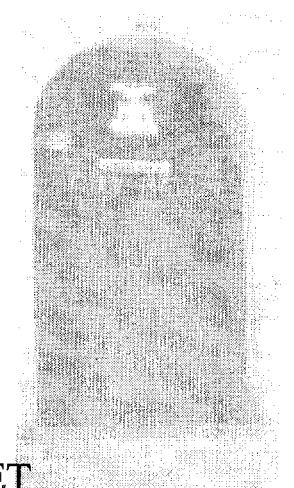
CBL: 171-A-28

Building Permit #: 04-0879

City of Portland  
**INSPECTION SERVICES**

Room 315  
389 Congress Street  
Portland, Maine 04101

Telephone: 207-874-8703 or 207-874-8693  
Facsimile: 207-874-8716



**FACSIMILE TRANSMISSION COVER SHEET**

TO: <u>Camille</u>	FROM: <u>Marge</u>
FAX NUMBER: <u>874-8852</u>	NUMBER OF PAGES, WITH COVER: <u>2</u>
TELEPHONE: _____	RE: <u>Molly Rd</u>
DATE: <u>9/3/04</u>	_____

Comments: I'm sure the scale will be off with this faxing - The original is 11x17 - Marge

From: Marge Schmuckal  
To: Camille Alden  
Date: Fri, Sep 3, 2004 9:40 AM  
Subject: Malilly Rd

Camille,

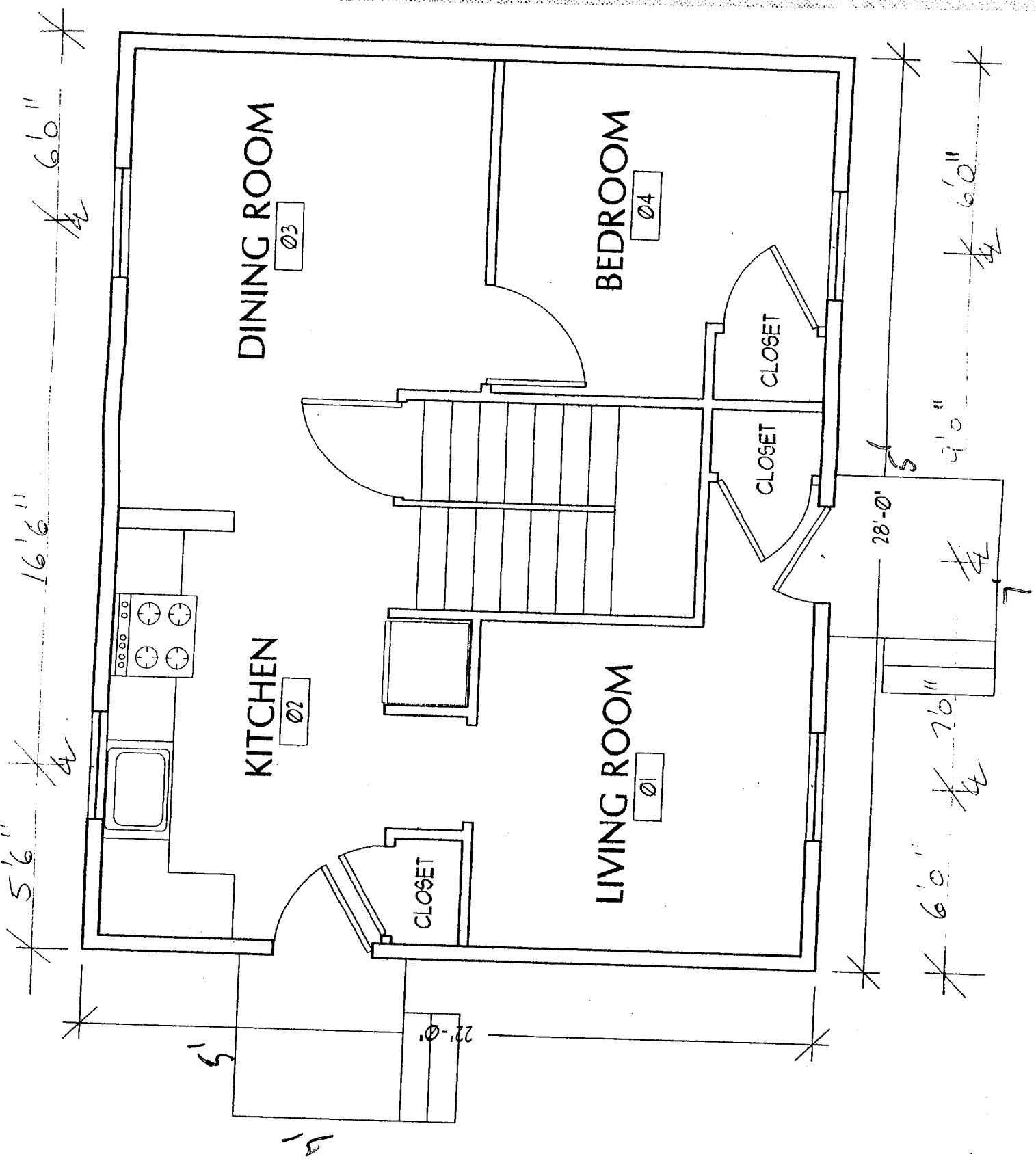
I quickly checked the permit application (that always helps). The size of the structure is 22' x 28' - a 2 story cape. There are two entries 5' x 7' on the front and on the left side. Unenclosed entry ways that are no more than 50 sq. ft and do not extend more than 6' from the building, may extend into any required setback. I can fax you the floor plan if you think that would be helpful to you.

The other requirement is that two parking spaces, 9 x 19, must be provided, but can not be located within the required front yard setback. Parking can be no closer than 5' to any side line. Shoreland zoning also states that parking can not be within 75' of the high water mark.

There are a lot of challenges with this property, as you can see.

I hope this helps you.

Marge



# CITY OF PORTLAND



## Department of Public Works Engineering Section

55 Portland Street  
Portland, ME 04101

☎ (207) 874-8846

fax (207) 874-8852

**Fax Transmittal Cover Page**

**Date: September 2, 2004**

**Send to: Marge Schmuckal**

**Company/Organization: City of Portland, Inspections**

**Fax Number: 874-8716**

**Pages sent (including this cover): 3**

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**From: Camille C. Alden, P.L.S.**

**Telephone: 874-8839**

**Internet Address: calden@portlandmaine.gov**

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**Message:** This sketch is to scale. It is not polished and completed yet, but, it should give you an idea of the configuration. The lot lines will not change, I just need to finish the text. It looks a lot better in color here in the office. Let me know if you need a color copy. Also, let me know if the lot split will pass muster.



N/F  
PHEASANT HILL  
HOMEOWNERS ASSOC.  
14142/85  
TM 171A-A-26  
PB 195, PG 120

FALL BROOK CHANNEL

S 61°03'42" E  
214.76' TOTAL

154.25'

60.45'

24" VIT. SEWER MAIN  
ABANDONED

N 36°18'40" E  
118.63' TOTAL

N/F  
CITY OF PORTLAND  
2961/469  
TM 171-A-29  
7328 S.F.±

S 36°18'40" W  
125.73' TOTAL

N/F  
HABITAT FOR  
HUMANITY/GREATER  
PORTLAND, INC  
TO BE CONVEYED TO  
THE CITY OF PORTLAND  
P/O 8575/316  
P/O TM 171-A-28  
16,262 S.F.±

64" SEWER LINE

TOTAL LENGTH 219.99'  
PROPOSED SEWER  
N 41°04'14" RIGHT-OF-WAY  
61.46'

S 54°21'11" E  
80.00' TOTAL

S 54°21'11" E  
82.21'

44.34'

59.95'

N 54°19'24" W  
82.42' TOTAL

N 54°21'11" W  
80.20' TOTAL

Approx.  
edge of 75' over  
HWM

7  
N/F  
PHILIP A. AND  
KATHRYN MAIETTA  
2534/484  
TM 171-A-27  
LOT 7, PB 51, PG 13

S35°38'48" W 705.00' FROM  
END OF MALILLY TO  
WASHINGTON AVE.

MALILLY ROAD

704.15' FROM END OF  
MALILLY TO WASHINGTON AVE.

THIS  
TURNAROUND  
TO BE MOVED  
TO END OF  
MALILLY  
SEE NOTE 4

N/F  
HABITAT FOR  
HUMANITY/GREATER  
PORTLAND, INC  
LAND TO BE RETAINED  
P/O 8575/316  
P/O TM 171-A-28  
6600 S.F.±

13  
N/F  
JEFFREY M. SCHWARTZ  
14346/13  
TM 171-A-20  
LOT 13, PB 51, PG 13

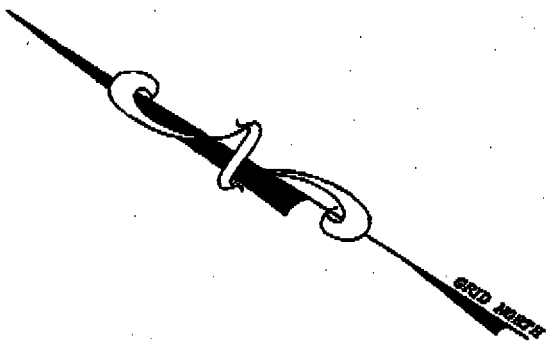
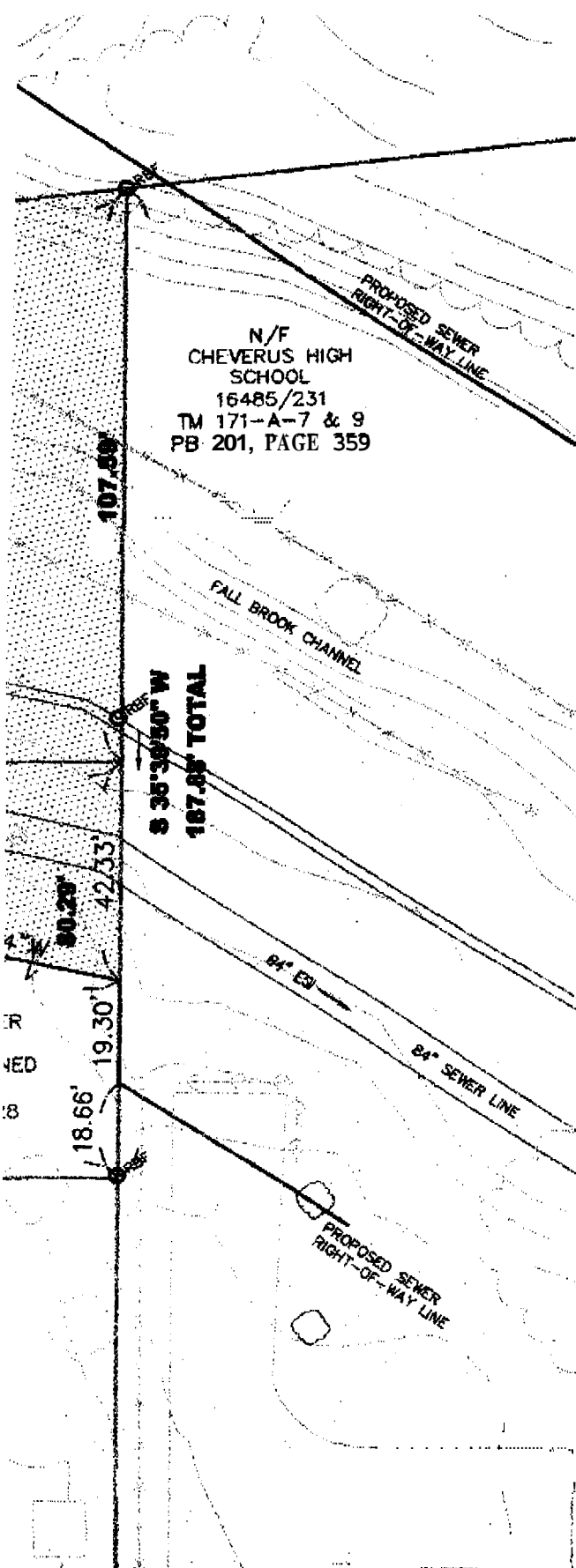
107.50'

42.33'  
18.66'  
19.30'

D  
e

44.13  
30.00  
8.16  
82.29

82 x 22



**NOTES:**

1. THIS IS NOT A BOUNDARY SURVEY. PROPERTY LINES ARE APPROXIMATE AND ARE BASED ON DEEDS AND PLANS OF RECORD FROM THE CUMBERLAND COUNTY REGISTRY OF DEEDS. CITY OF PORTLAND PLANS, STREET ACCEPTANCES AND RECORDS WERE ALSO RELIED UPON.
2. THE SHADED PORTION OF THE PLAN SHOWS THE LANDS WHICH FALL WITHIN THE PROPOSED SEWER AND DRAINAGE RIGHT-OF-WAY.
3. THIS PLAN SHOWS THE CURRENT CONDITIONS OF THE PROPERTY. ABOVE GROUND PHYSICAL FEATURES ARE BASED UPON AN AERIAL SURVEY PERFORMED IN MAY 2004. BELOW GROUND FEATURES ARE BASED UPON RECORD CONSTRUCTION DRAWINGS FOR FALL BROOK CHANNEL IMPROVEMENTS.
4. A TURNAROUND WAS SHOWN ON A PLAN TITLED "LOTS ON MALILLY ROAD". DATED DECEMBER, 1958 AND RECORDED IN PLAN BOOK 51, PAGE 13. THE TURNAROUND WAS NOT ACCEPTED BY M E CITY OF PORTLAND.
5. REFERENCE IS MADE TO A PLAN BEING PREPARED BY THE DEPARTMENT OF PUBLIC WORKS FOR M E PROPOSED FALL BROOK SEWER AND DRAINAGE EASEMENT BETWEEN RAY STREET AND WASHINGTON AVENUE TO BE ON FILE AT THE CITY OF PORTLAND PUBLIC WORKS DEPARTMENT.

CITY OF PORTLAND, MAINE PUBLIC WORKS DEPARTMENT ENGINEERING SECTION	DATE APPROVED	CITY ENGINEER
	PLAN OF PROPOSED CONVEYANCES FROM HABITAT FOR HUMANITY TO THE CITY OF PORTLAND, MAINE ON MALILLY ROAD	
LDD PROJECT:	FALL BROOK 2004	AUTOCAD DRAWING:
DRAWN BY:	C. ALDEN	FALL BROOK 2004
CHECKED BY:	W. CLARK	DATE: 9/02/04
		SCALE: 1" = 30'

# CITY OF PORTLAND



## Department of Public Works Engineering Section

55 Portland Street  
Portland, ME 04101

☎ (207) 874-8846

fax (207) 874-8852

Fax Transmittal Cover Page

**Date:** July 21,2004

**Send to:** Marge Shmuckel

**Company/Organization:** City of Portland, Inspections

**Fax Number:** 874-8716

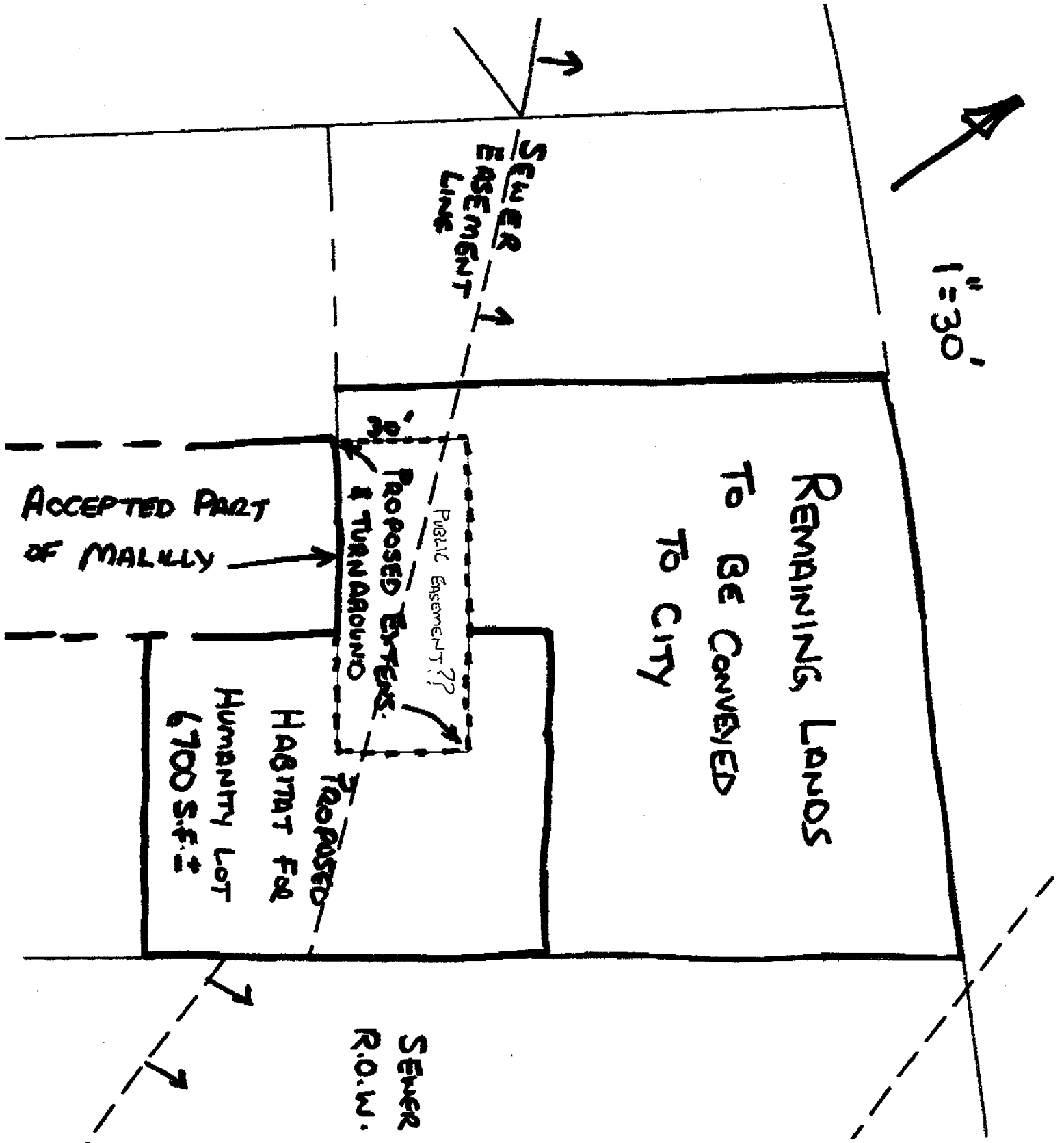
**Pages sent (including this cover):** 2

**From:** Camille C. Alden, P.L.S.

**Telephone:** 874-8839

**Internet Address:** calden@portlandmaine.gov

**Message :** Call if you need more detail or a voice to decipher the linework. I've posed the following question to Penny Littell, but perhaps you know the answer?  
**Can a public easement be used as road frontage? This might be an alternative to accepting a street extension of Malilly.**



C:\Land Projects 3\Fall Brook 2004\dwg\Fall Brook 2004.dwg, 7/21/2004 2:39:18 PM, calden, HP 2500C Series PS3, 1:30

7/22/04  
TO PENNY  
LITTELL

# CITY OF PORTLAND



## Department of Public Works Engineering Section

55 Portland Street  
Portland, ME 04101

4 (207) 874-8846

fax (207) 874-8852

7/22/04  
SECOND FAX  
TO MARGE  
W/ MINOR  
CHANGES

**Fax Transmittal Cover Page**

Date: July 21, 2004

Send to: **Marge Shmuckel**

Company/Organization: City of Portland, Inspections

Fax Number: 874-8716

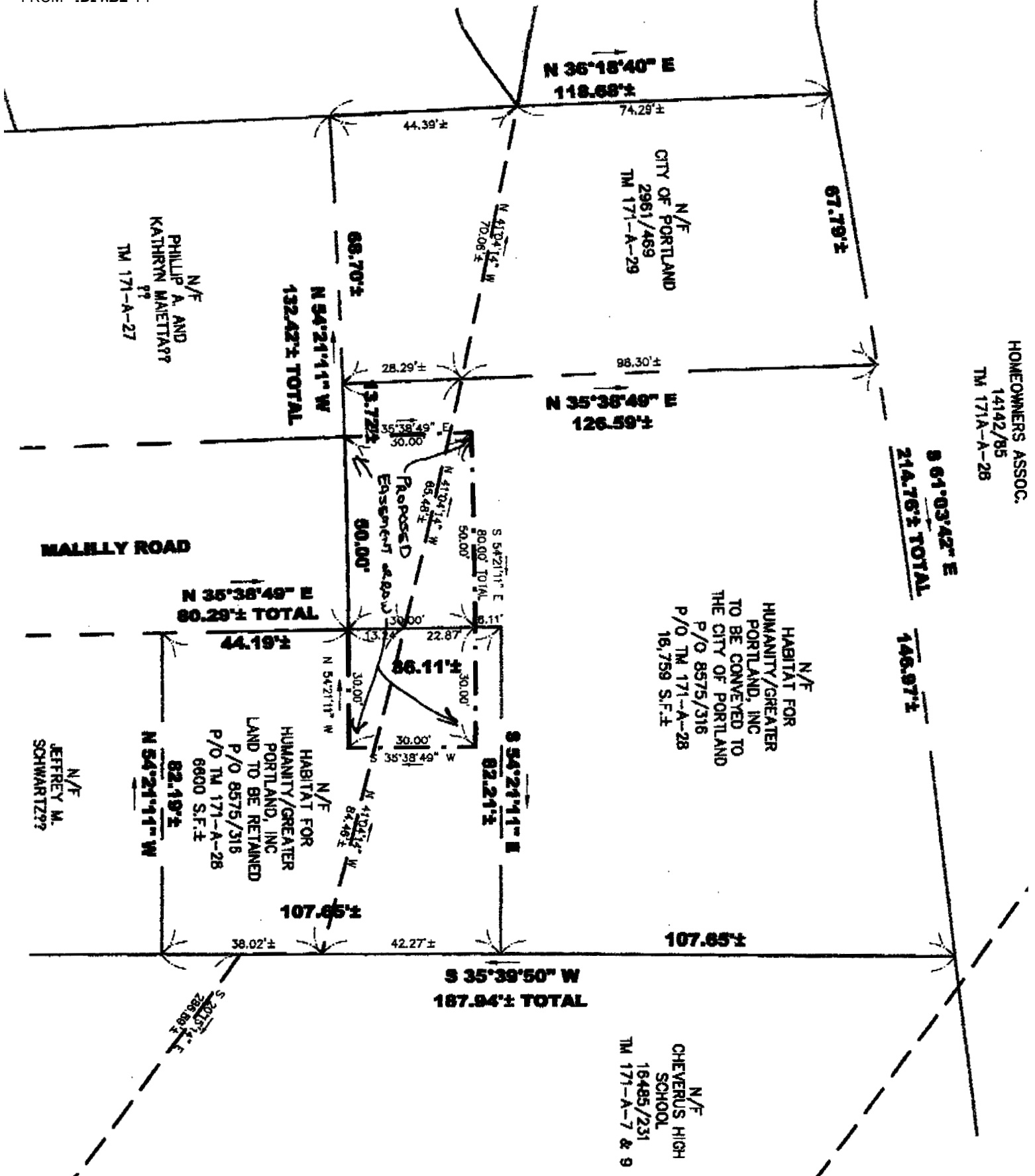
Pages sent (including this cover): 2

From: Camille C. Alden, P.L.S.

Telephone: 874-8839

Internet Address: calden@portla.ndmaine.gov

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HOMEOWNERS ASSOC.  
14142/85  
TM 171A-A-28

N/F  
HABITAT FOR  
HUMANITY/GREATER  
PORTLAND, INC  
TO BE CONVEYED TO  
THE CITY OF PORTLAND  
P/O TM 171-A-28  
16,759 S.F.±

N/F  
CHEVERUS HIGH  
SCHOOL  
16485/231  
TM 171-A-7 & 9

# CITY OF PORTLAND



## Department of Public Works Engineering Section

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**Pages sent (including this cover): 2**

**From: Camille C. Alden, P.L.S.**

**Telephone: 874-8839**

**Internet Address: calclen@portlandmaine.gov**

**Message : Third sketch.**

*Camille*

City of Portland  
**INSPECTION SERVICES**

Room 315  
389 Congress Street  
Portland, Maine 04101

Telephone: 207-874-8703 or 207-874-8693  
Facsimile: 207-874-8716



**FACSIMILE TRANSMISSION COVER SHEET**

TO: <u>Camille Alden</u>	FROM: <u>Marge Schmeckel</u>
FAX NUMBER: <u>207-874-8852</u>	NUMBER OF PAGES, WITH COVER: <u>3</u>
TELEPHONE: _____	RE: <u>END of Malibly Rd</u>
DATE: <u>7/22/04</u>	_____

Comments:

Camille,  
I've talked with Penny - Can the extension of Malibly Rd look like what I have drawn? (either?)  
Penny SAID both easements & Road extensions have to go to the Council, so these scenarios work? might as well do the Road extension.



city

Z

Extend enough so  
Both lots meet the  
50' Street frontage

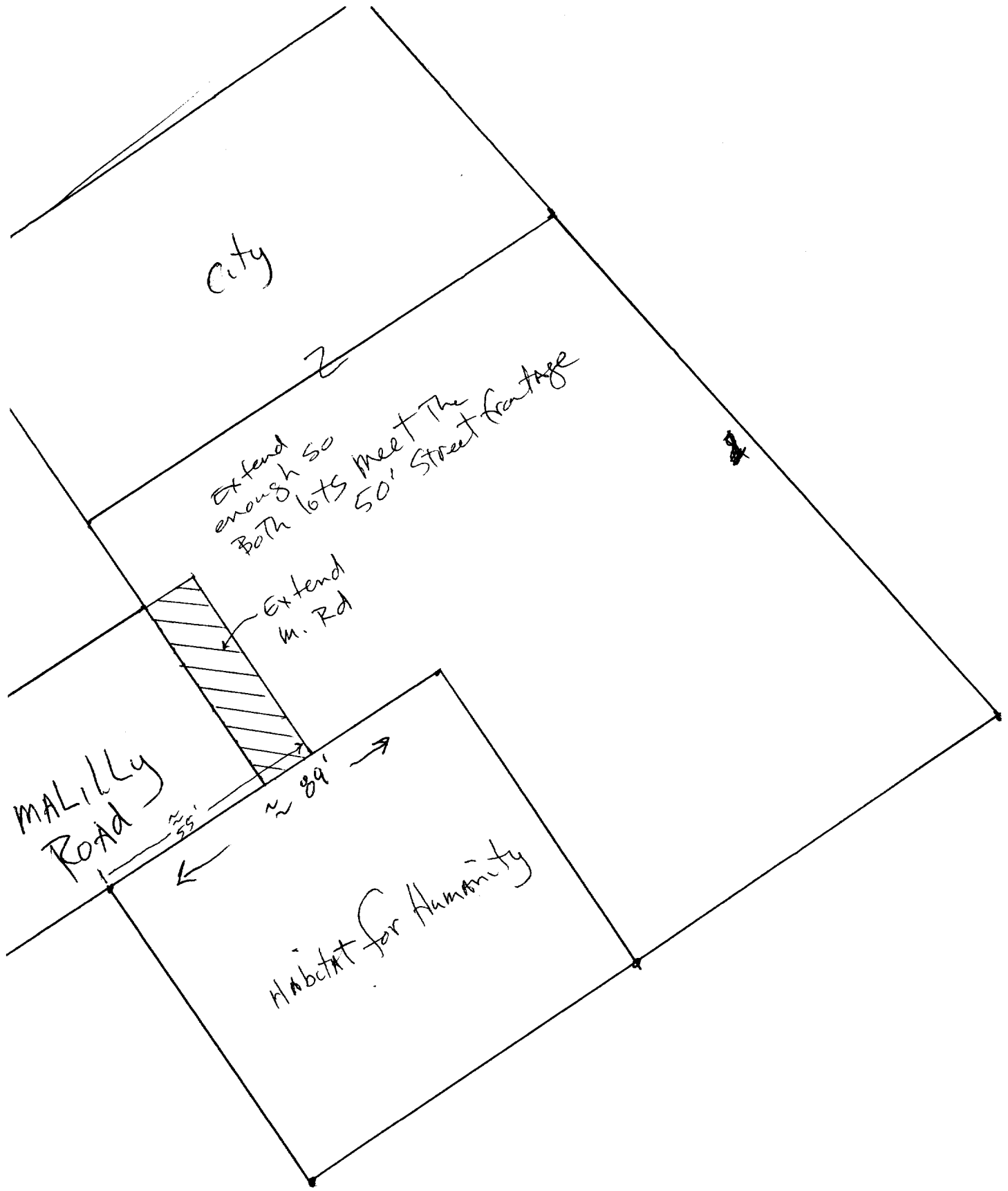
Extend  
M. Rd

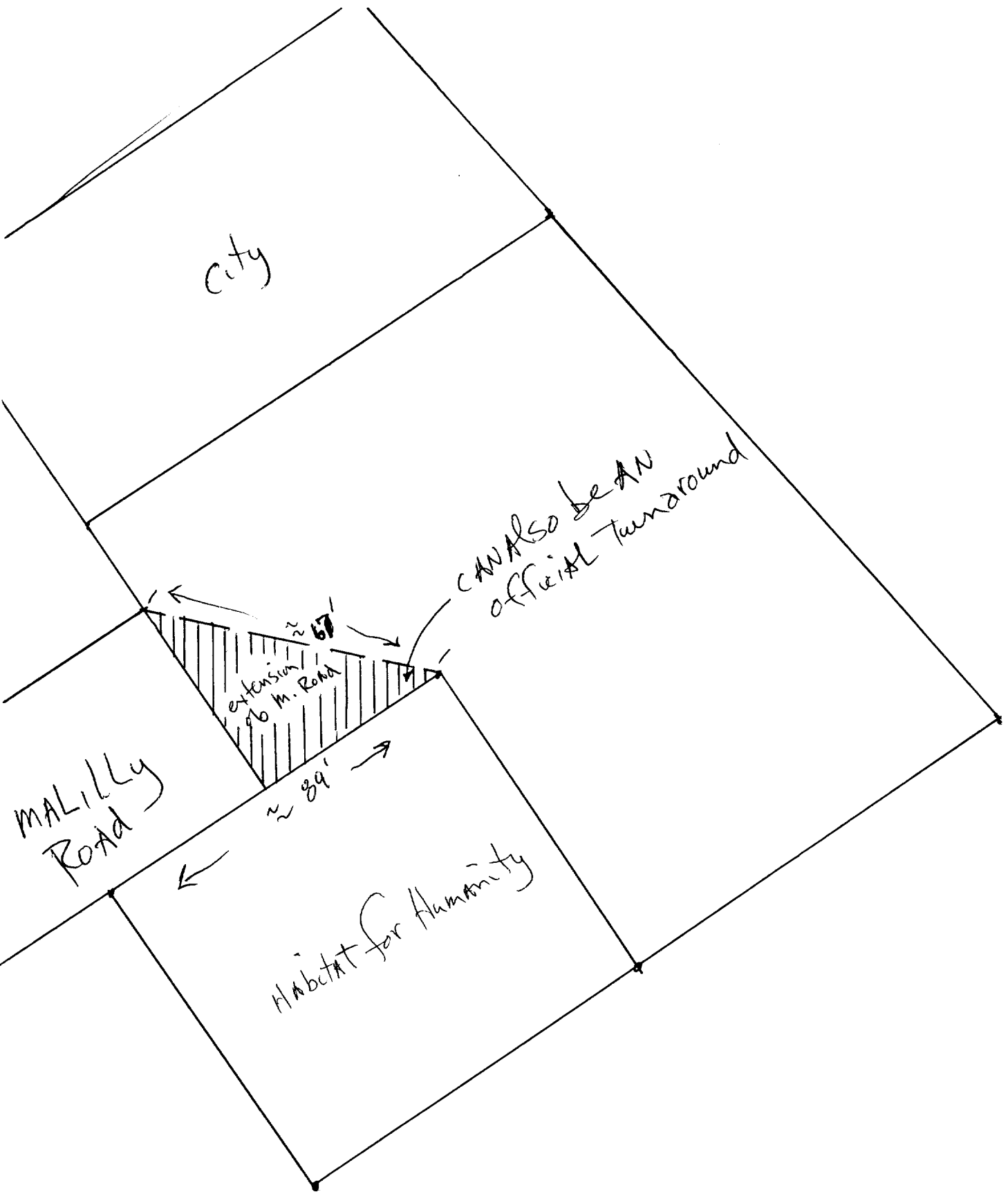
MALILLY  
Road

55'

~ 89'

Habitat for Humanity





city

CAN ALSO BE AN  
OFFICIAL TURNAROUND

extension  
of M. Road

$\approx 67'$

$\approx 89'$

MALILLY  
Road

Habitat for Humanity



**From:** Marge Schmuckal  
**To:** Camille Alden  
**Date:** Fri, Jul 23, 2004 2:32 PM  
**Subject:** Re: RE: Habitat for Humanity

The road does not have to be "accepted" by the City until it has been fully constructed so that the City knows that it was constructed to City standards. However, as part of the permit submittal, we would need to see that the road was going to be constructed up to City standards. AND the road would need to be completed before we could allow occupancy of the home.  
 Or at least that is how I understand the process. Penny?  
 Marge

>>> Camille Alden 07/23 2:07 PM >>>

That helps a lot, Marge. Thank you very much. I was at somewhat of a standstill on this project until I heard back from you. The 30' x 30' easement works a lot better than a 30'x30' right-of-way because of setbacks.

One hopefully final set of questions.

1. Does the Malilly Road extension have to be built BEFORE the HH lot can be accepted by zoning? I'm thinking that a letter of intent from the City, or a plan drawn by the City showing the proposed extension would suffice? I'm thinking of a subdivision approval, it is accepted and approved by planning before any part of the project is constructed. (I'm also thinking of the Willy Audet/Farm Lane project where the houses have all been built and the road hasn't been accepted yet)

>>> Marge Schmuckal 7/23/2004 12:08:54 PM >>>

Camille,

Your scenario would meet the 14-403 street requirements fine. The 30'x30' area that is to be placed on the new Habitat for Humanity lot can be an easement separate from the extended street. That is usually how it is done when reviewing lots at the end of a street. I'm sure Habitat for Humanity would not mind giving the City an easement for a turn around.

Does this help?

Marge

>>> Camille Alden 07/22 2:18 PM >>>

~~Got~~ your fax. Thank you.

1. The sketches show great solutions, but there is one problem. We need to have a turnaround for the plow trucks, the trash trucks, etc. Our design standards show that the turnaround **has to be a** minimum 30' x 30'.

Right now there is an existing turnaround on the face of the **earth** (albeit gravel). It even shows up on our tax maps. But, legally, The City has no right to use the turnaround since it is on private property and we have no easement or right-of-way.

2. RE whether we should go with a **public easement or a road acceptance**: If we accept the road as a road, it will have to be built to current standards AND we will have to make the HH lot bigger because we'll have to take the r.o.w. out of the lot acreage.

If we accept it as a public easement, we **do NOT** have to build it to current standards, thus, saving the City some money up front. (i.e. no pavement, etc.) and we can include the easement in the lot acreage, **thus**, retaining more land for the City.

3. If we decided to go with a public easement, would it be considered as road frontage? The answer will help Brad Roland decide which route to take.

4. Did the sketch that I sent meet the frontage requirements?

I'll send another sketch. I've been working on the plan today and have added some new info. that might help you. I'll send it in the next 30 minutes.

P.S. You may want to update your FAX sheet at the very bottom. I think our new web address is [www.portlandmaine.gov](http://www.portlandmaine.gov). The old address still works for now, but will eventually be discontinued.

>>> Marge Schmuckal 7/22/2004 10:56:09 AM >>>

Nothing seems to be "black and white" when dealing with ordinances. We will take a look.  
Marge

>>> Camille Alden 07/22 9:55 AM >>>

I am faxing over a few pages from the Municipal Roads Manual (Nov., 1992) that is published by the Maine Municipal Association. Their literature describes a public easement very well. I'll also send a copy of the statute referred to in the Roads Manual.

Penny thought that a Public Easement may be able to be used for road frontage from a legal standpoint, but suggested that code enforcement might have a different view p i n t.

Take a look at the literature and let me know if this alters your decision in any way. Road/street issues never seem to be simple and clear cut. Seems a lot like code enforcement doesn't it? The "gray" areas are tricky.

>>> Marge Schmuckal 7/22/2004 9:20:25 AM >>>

It is my understanding that a "street" is different than a "public easement". Although a street may also have public easement rights, a public easement does not necessarily have street accessibility rights. Is that making sense?

So for this Malilly Rd project, unless it is a Street, which the Zoning Ordinance defines as, "A public way established by or maintained under public authority, or a way dedicated to the use of the public and appearing on the official map of the City", then it would not count as street frontage.

Is this making it any more understandable, or am I missing something?

Marge

>>> Camille Alden 07/22 7:44 AM >>>

Marge,

I realize this is more of a legal question, but, I thought I would pose it to you as well, in the event that you've encountered the question before.

Can a public easement be used as road frontage for the minimum road frontage requirement?

I've posed the same question to Penny Littell, but haven't heard back from her. I asked Jon Giles as well, but like myself, he was unsure of the answer.

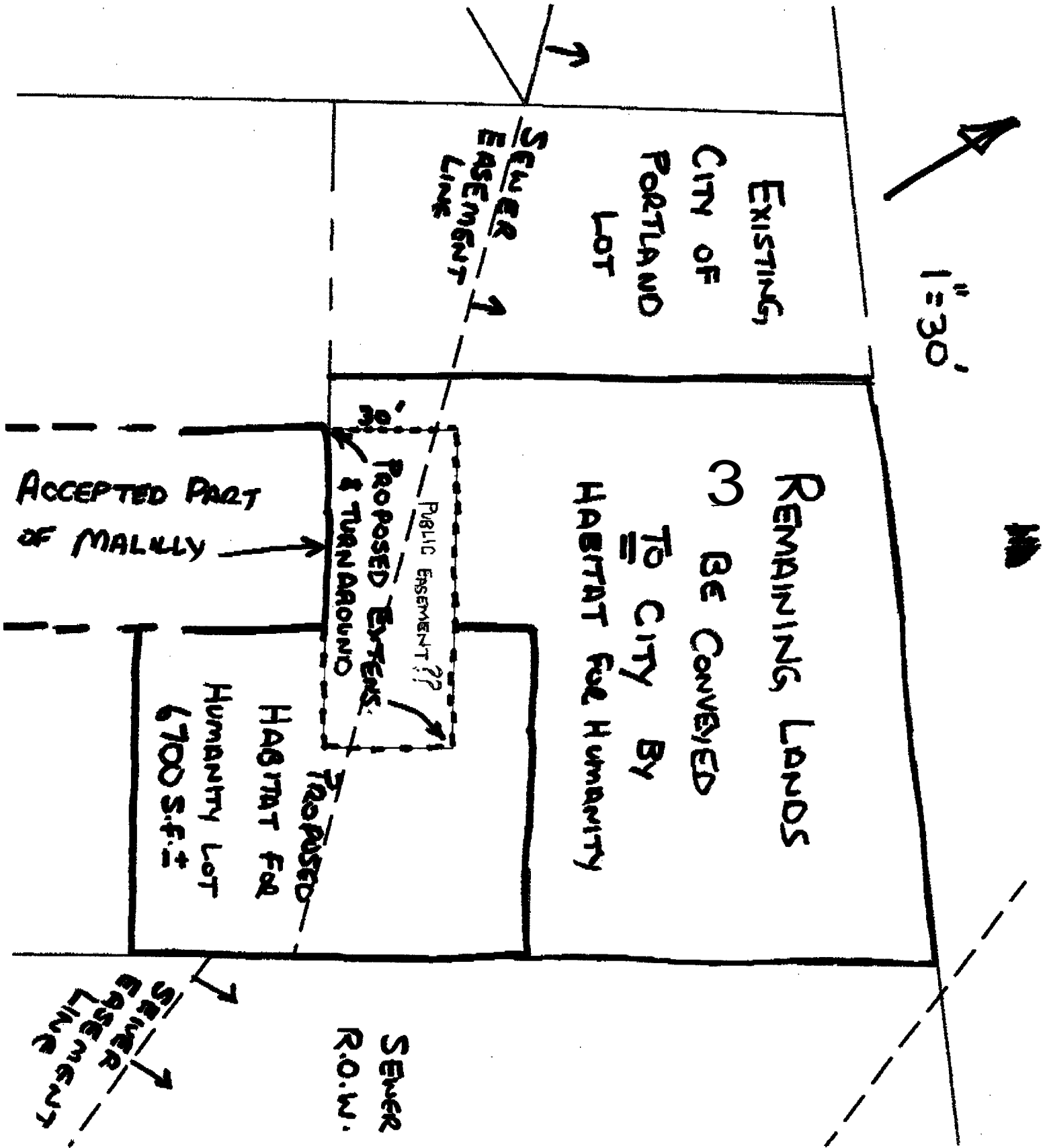
I faxed the Habitat for Humanity sketch to you around 3:15 yesterday. Drop me a note if you didn't receive it and I'll fax it again.

Thanks for all your help!

Camille C. Alden, Project Surveyor  
City of Portland  
Department of Public Works  
55 Portland Street  
Portland, Maine 04101

ph: 207-874-8839  
fax: 207-874-8842  
[email:calden@portlandmaine.gov](mailto:calden@portlandmaine.gov)

**CC:** Bradley Roland; PENNY LITTELL



**From:** Camille Alden  
**To:** Marge Schmuckal  
**Date:** Thu, Jul 22, 2004 7:44 AM  
**Subject:** Habitat for Humanity

Marge,

I realize this is more of a legal question, but, I thought I would pose it to you as well, in the event that you've encountered the question before.

**Can a public easement be used as road frontage for the minimum road frontage requirement?**

I've posed the same question to Penny Littell, but haven't heard back from her. I asked Jon Giles as well, but like myself, he was unsure of the answer.

I faxed the Habitat for Humanity sketch to you around 3:15 yesterday. Drop me a note if you didn't receive it and I'll fax it again.

Thanks for all your help!

Camille C. Alden, Project Surveyor  
City of Portland  
Department of Public Works  
55 Portland Street  
Portland, Maine 04101

ph: 207-874-8839  
fax: 207-874-8842  
email: calden@portlandmaine.gov



Department of Planning & Development  
Lee D. Urban, Director



**CITY OF PORTLAND**

**Division Directors**  
**Mark B. Adelson**  
Housing & Neighborhood Services

Alexander Q. Jaegerman, AICP  
Planning

John N. Lufkin  
Economic Development

July 14, 2004

Steven Bolton  
Habitat for Humanity of Greater Portland  
P.O. Box 10505  
Portland, ME 04104

Dear Mr. Bolton:

RE: Application for Single Family Dwelling, 55 Mallilly Road

Thank you for your application for the single family home at 55 Mallilly Road. Upon review of the site plan, the City has the following comments:

1. This lot has a few obstacles to overcome with regard to layout, easements, etc.:
  - a. It is my understanding that the zoning administrator has already conveyed comments regarding the required street frontage.
  - b. Also, conversations and correspondence has occurred with the City's Engineering Department with regards to the Fall Brook Easement. It is my understanding that the easement was never legally executed. The City will be providing the easement location to your surveyor so that the proper language, location, and recording can be accomplished. Thank you for your help on this item.
  - c.
    - i. If tree clearing and/or soil disturbance is to occur within 75' from the most upland edge of Fall Brook, additional permitting is required by the Maine Department of Environmental Protection (permit by rule).
    - ii. Please provide more detail with regard to Fall Brook's channel as it nears the property.
  - d. Please show the proposed topography/final grading
  - e. The buildout of this lot as shown will result in the loss of a turnaround area for the City. The City requests that this application accommodate the City by providing a turnaround area and easement that is satisfactory to the Public Works Department.

Please feel free to call me at 874-8632 if you have any questions or comments.

Sincerely,

Jay Reynolds

Development Review Coordinator

O:\PLAN\DRC\mallilly55review.doc - 1 -

cc: Sarah Hopkins, Development Review Services Manager  
Eric Labelle, City Engineer  
Bradley Roland, Project Engineer  
Marge Schmuckal, Zoning Administrator

Malilly

# 2004 0130  
04 0879

APR 24 2004 10/1

# All Purpose Building Permit Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

Location/Address of Construction: <u>Malilly Rd.</u>		
Total Square Footage of Proposed Structure <u>1120</u>	Square Footage of Lot <u>6500+</u>	
Tax Assessor's Chart, Block & Lot Chart# <u>171</u> Block# <u>A</u> Lot# <u>28</u>	Owner: <u>Habitat For Humanity OF GREATER PORTLAND</u> <u>P.O. Box 10505, Portland, ME</u>	Telephone: <u>772-2151</u>
Lessee/Buyer's Name (If Applicable) <u>N/A</u>	Applicant name, address & telephone: <u>STEVE BOLTON</u> <u>P.O. Box 10505</u> <u>Portland, ME 04104</u>	Cost Of Work: \$ <u>80,000</u> - ( ) Fee: \$ <u>711.00</u> + <u>75.00</u> <u>816.00</u>
Current use: <u>OPEN LOT - UNIMPROVED</u>		<u>Owes \$300 site Plan</u>
If the location is currently vacant, what was prior use: <u>unimproved</u>		
Approximately how long has it been vacant: _____		
Proposed use: <u>Single Family Dwelling</u>		
Project description: <u>TO CONSTRUCT (1) ONE SFD. 1 1/2 STORY CAR w/ 3 Bedrooms + 1 BATH</u>		
Contractor's name, address & telephone: <u>HABITAT FOR HUMANITY OF GREATER PORTLAND</u> <u>P.O. Box 10505, Portland, ME 04104</u> <u>772-2151</u>		
Who should we contact when the permit is ready: <u>STEVE BOLTON</u>		
Mailing address: <u>P.O. Box 10505</u> <u>Portland, ME 04104</u>		
We will contact you by phone when the permit is ready. You must come in and pick up the permit and review the requirements before starting any work, with a Plan Reviewer. A stop work order will be issued and a \$100.00 fee if any work starts before the permit is picked up. PHONE: <u>772-2151</u>		

IF THE REQUIRED INFORMATION IS NOT INCLUDED IN THE SUBMISSIONS THE PERMIT WILL BE AUTOMATICALLY DENIED AT THE DISCRETION OF THE BUILDING/PLANNING DEPARTMENT, WE MAY REQUIRE ADDITIONAL INFORMATION IN ORDER TO APPROVE THIS PERMIT.

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition if a permit for work described in this application is issued I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

Signature of applicant: <u>Steve Bolton</u>	Date: <u>4/8/04</u>
---	---------------------

**This is NOT a permit, you may not commence ANY work until the permit is issued.**  
If you are in a Historic District you may be subject to additional permitting and fees with the Planning Department on the 4<sup>th</sup> floor of City Hall

CK# 7259

EX 8575 PG 0316

062069

RELEASE DEED

BARRY E. SCOTT and MARY A. SCOTT, of Portland, Cumberland County, Maine, for consideration paid, release to HABITAT FOR HUMANITY/GREATER PORTLAND, INC., a Maine corporation, having its principal place of business in said Portland, the following real estate:

A certain lot or parcel of land situated in the City of Portland, County of Cumberland and State of Maine, being more particularly bounded and described as follows: Beginning at a point in the northwesterly sideline of Malilly Road at the easterly corner of Lot No. 7 as shown on Plan of Malilly Road dated December 1958 and recorded in Cumberland County Registry of Deeds in Plan Book 51, Page 13; thence northwesterly along said Lot No. 7 02.72 feet to land now or formerly of Greeley; thence northeasterly along land of Greeley 116 feet, more or less, to land now or formerly of Kern; thence southeasterly along land now or formerly of Kern 212 feet, more or less, to land now or formerly of Meloon; thence southwesterly along land now or formerly of Meloon 187 feet, more or less to the easterly corner of Lot No. 13 as shown on said plan; thence northwesterly along Lot No. 13, 82 feet to the southeasterly side of Malilly Road; thence northeasterly along Malilly Road to the terminus thereof as described in a deed from Robert D. Carney to the City of Portland dated January 23, 1962 and recorded in Cumberland County Registry of Deeds in Book 2660, Page 275; thence northwesterly along the terminus of Malilly Road 50 feet to the point of beginning.

Said premises are described on the records of the City of Portland tax assessor as Plan 171 - A - 28 End of Malilly Road. 23.359 SF.

Reference is made to deed from City of Portland dated June 26, 1985 and recorded in Cumberland County Registry of Deeds in Book 6871, Page 225.

171 A 02E

838575PG0317

IN WITNESS WHEREOF, we have hereunto set our hands and seals on ~~the day, month and year first above written~~ December 2, 1988.

[Signature]  
Witness

Barry E. Scott  
BARRY E. SCOTT

to both  
Witness

Mary A. Scott  
MARY A. SCOTT

STATE OF MAINE  
YORK, ss.  
CUMMINGS

December 2, 1988

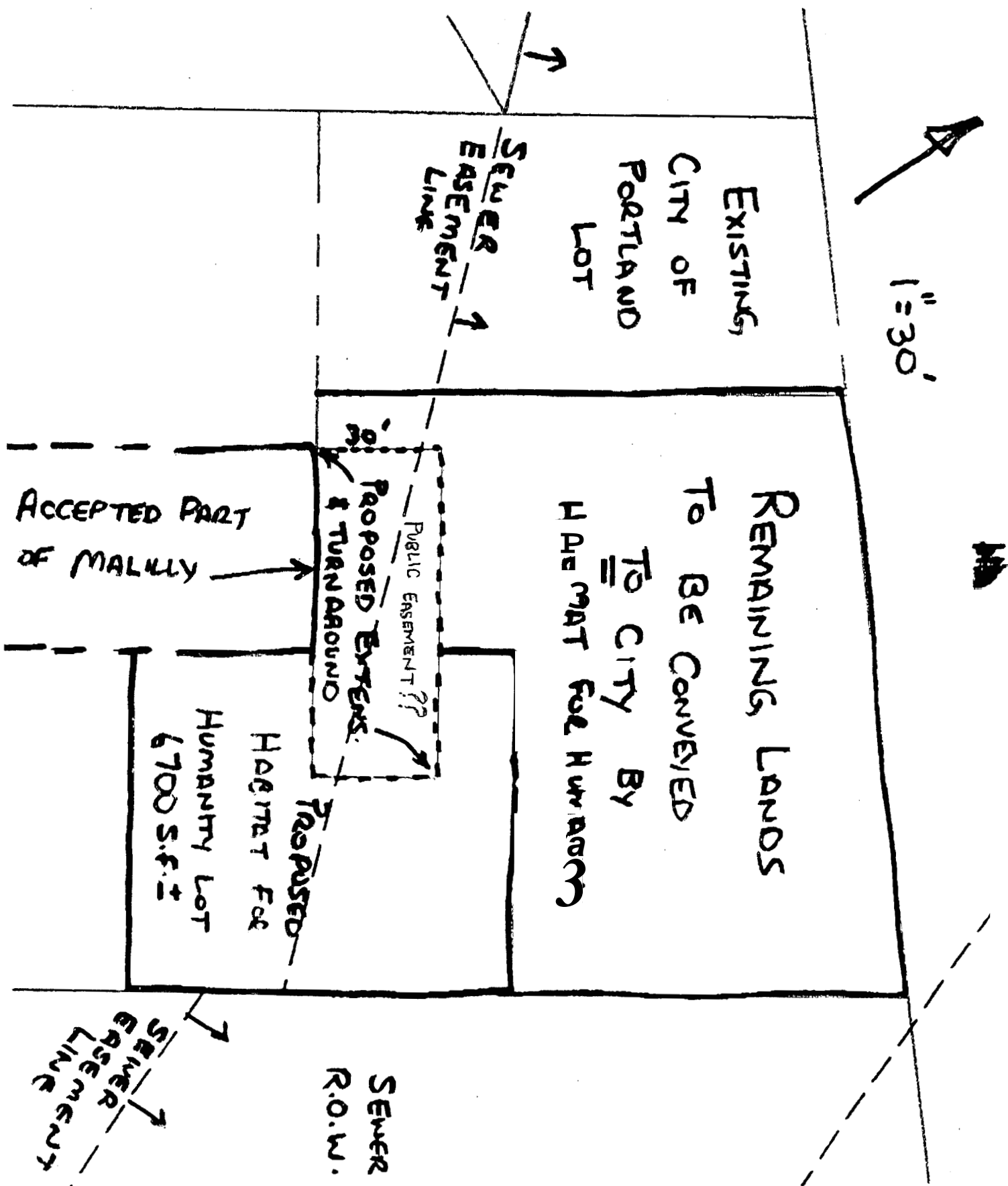
Then personally appeared before me, the above named Barry E. Scott and Mary A. Scott and acknowledged the foregoing instrument to be their free act and deed.

Before me.

[Signature]  
Notary Public  
David J. Jones  
Attorney-at-law

RECEIVED  
RECORDS DEPARTMENT OF REVENUE  
1988 DEC -2 PH 2:04  
CUMBERLAND COUNTY  
James G. Walsh

171 A 028



7/22/04  
TO PENNY  
LITTELL

7/22/04  
SECOND FAX  
TO MARGE  
W/ MINOR  
CHANGES

# CITY OF PORTLAND



## Department of Public Works Engineering Section

55 Portland Street  
Portland, ME 04101

☎ (207) 874-8846 fax (207) 874-8852

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**Internet Address:** calden@portlandmaine.gov

Message : Call if you need more detail or a voice to decipher the linework. I've posed the following question to Penny Littell, but perhaps you know the answer?  
**Can** a public easement be used as road frontage? This might be an alternative to accepting a street extension of Malilly.

*The Law*

within the limits of said way may, by a writing under seal by them signed and acknowledged and recorded in the registry of deeds for the county or registry district in which the land lies, admit to the municipal officers of the town in which said way exists the true bounds or limits of said way and the extent of their wrongful occupancy thereof. Thereafter such persons, and all claiming title under or through them, shall be estopped from asserting any right to the continuance of such buildings or fences within said limits for the full term of 40 years from the date of such deed.

R.S. 1954, c. 96, §103.

**Chapter 304. Acquisition of property for highway purposes.**

**§3021. Definitions**

As used in this chapter, unless the context clearly indicates otherwise, the following words shall have the following meaning.

- 1. **Highway purposes.** "Highway purposes" means use as a town way and those things incidental to the laying out, construction, improvement, maintenance, change of location, alignment and drainage of town ways, including the securing of materials therefor: provision for the health, welfare and safety of the public using town ways; provision for parking places, rest areas and preservation of scenic beauty along town ways.
- 2. **Public easement.** "Public easement" means an easement held by a municipality for purposes of public access to land or water not otherwise connected to a public way, and includes all rights enjoyed by the public with respect to private ways created by statute prior to the effective date of the Act. Private ways created pursuant to §3001 and 3004 prior to the effective date of this Act are public easements.
- 3. **Town way.** "Town way" means:
  - A. An area or strip of land designated and held by a municipality for the passage and use of the general public by motor vehicle;
  - B. All town or county ways not discontinued or abandoned before July 29, 1976 and
  - C. All state or state aid highways, or both, which shall be classified town ways as of July 1, 1982, or thereafter, pursuant to §53.

1975, c. 711, §8

**§3022. Laying out of town ways and public easements.**

The municipal officers may, personally or by agency, lay out, alter or widen town ways. They shall give written notice of their intentions posted at least 7 days in 2 public places in the municipality and in the vicinity of the way and shall in the notice describe the proposed way.

The municipal officers may, upon the petition of any person, lay out, alter or widen a town way.

→ The municipal officers may on petition therefore, personally or by agency, lay out a public easement for any occupant of land or for owners who have cultivated land in the municipality if the land will be connected to a town way or highway after the establishment of the public easement,

After a public easement has been laid out, it may be taken pursuant to §3023. Notwithstanding any other provision of this chapter, public easements laid out under this section shall be limited to rights of access by foot or motor vehicle as defined in Title 29, §1.1975

C-711, §8; 1979, c. 127, §153 ET. APRIL 23, 1979



# CITY OF PORTLAND



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---

**From:** Camille C. Alden, P.L.S.

**Telephone:** 874-8839

**Internet Address:** calden@portlandmaine.gov

---

**Message :** I've described the attached faxes in an email sent a minute or *two* ago.

**CHAPTER 5**

**NOTES:**

**Road Maintenance and Repair**

This Chapter discusses the municipality's road maintenance and repair obligations. Several topics are covered, including summer and winter maintenance, State-aid roads, brush cutting, and bidding and contracting practices. Related topics are discussed in other Chapters: mad control and protection is the Subject of Chapter 6, and liability for improper maintenance/repair is covered in Chapter 7.

**Legal Obligation to Maintain and Repair Roads**

A municipality's obligation to maintain and repair a road varies depending on the type of road: town way, public easement, or privately-owned road. These are addressed separately below.

**Town ways.** 23 MRSA § 3651 requires that town ways be kept open and in repair so as to be safe and convenient for travelers with motor vehicles. Additionally, if a town way is "blocked or encumbered" with snow, 23 MRSA § 3201 requires that it be opened and made passable within a reasonable time. See also *Quelette v. Miller*, 153 A. 341, 134 Me. 162 (1936), and *Rogers v. Newport*, 62 Me. 101 (1873). The process for closing roads to winter maintenance is discussed later in this Chapter.

**Public easements.** The voters of a town may authorize the selectmen to use town equipment to maintain and repair public easements [23 MRSA § 3105]. The voters can determine the level of maintenance the town will provide, as there is no requirement that public easements be kept "safe and passable" on a year-round basis. The voters can designate that some public easements (or portions thereof) be maintained at public expense, while others are not. In short, municipalities have broad discretion in deciding how to care for public easements.

Municipal officials are often asked whether private citizens can repair and maintain public ways at their own expense, and what rights and liabilities this involves. There is no statute on point. The case law is sparse, but overall it implies that private individuals have no right to repair or reconstruct either town ways or public easements. See, for example, *Lamb v. Euclid Ambler Associates*, 563 A.2d 365 (Me, 1989); and *Hunt v. Rich*, 38 Me. 195 (1854); and see *Harris v. Larrabee*, 109 Me. 373 (1912).

The municipality assumes no liability in the event that private repairs are improperly done and cause injury. The person who made the repairs (or contracted for them) may be personally liable, however. We recommend that municipal officials discourage this practice by pointing out the potential liability and the fact that a person does not obtain any particular right or privilege by maintaining a public easement at his or her private expense. As a practical matter, most people are unwilling to spend their own money maintaining a road that everyone can use without charge or restriction.

**Privately-owned roads.** The Maine Supreme Court has stated that public funds or equipment may not be used to maintain or plow privately-owned roads, see *Opinion of the Justices*, 560 A. 2d 552 (Me. 1989). This is true even if the public is not prevented by signs or gates from using the road. The Court's reasoning was that the "implied consent of access" is transitory at best, and one or more of the road's owners could at any time restrict access. For example, the town might make substantial repairs to a private camp road open to

MARGE



NOTES:

Most town ways are Created by **some** action of the municipality, such as dedication and acceptance, purchase and acceptance, eminent domain, or prescriptive use. These methods of creating roads are discussed in detail in Chapter 2.

Some town ways m e into existence by operation of 23 MRSA § 3021(3)(B). That provision transformed county ways into town ways and effectively took the counties out of the road business. It applies only to those county roads which had not been abandoned or discontinued before July 29, 1976, so it is important to look at the history of any such road before deciding whether to maintain it.

Town ways may also be created by state classification pursuant to 23 MRSA § 3021(3), which cites 23 MRSA § 53. These provisions allow MDOT, through a rule-making procedure, to reclassify state and state aid highways as town ways.

A municipality has equal maintenance obligations and liability exposure for all town ways, regardless of how a particular town way was created. A municipality's obligation to maintain state and state aid highways is discussed in Chapter 5.

**Public Easement:** A public easement is defined in 23 MRSA § 3021 as "an easement held by a municipality for purposes of public access to land of water not otherwise connected to a public way, and includes all rights enjoyed by the public with respect to private ways created by statute" prior to July 29, 1976. Do not confuse the term "public easement" with "easement interest", which is a type of legal title to property (see the first section of this Chapter).

Public easements were called "private ways" until 1976. This term should not be confused with "private roads" or "privately-owned roads", which are discussed further below.

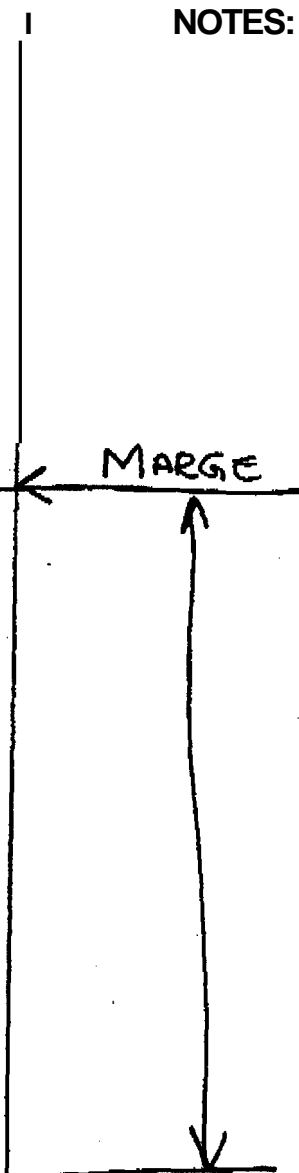
A public easement differs from a town way in that the general public has a right of unobstructed access by motor vehicle or foot [23 MRSA § 3022 and 17-A MRSA § 505], but the municipality does not have the obligation to maintain or repair a public easement. A municipality's legislative body may authorize the repair and maintenance of public easements, but it is not required to do so [23 MRSA § 3105]. Although 23 MRSA § 3105 refers to the "town meeting", it should be read to include city council actions as well [23 MRSA § 2]. When a municipality does maintain public easements, it is not required to maintain them at the same level or degree of maintenance as town ways. Since the decision to maintain is discretionary, the level of maintenance is likewise up to the legislative body. The municipality is not liable for defects in or lack of repair to public easements [23 MRSA § § 3651, 3655], but may be liable for injuries caused by negligent operation of vehicles or equipment on such roads [14 MRSA § 8104-A(1)]. Liability is discussed in Chapter 8.

**Privately-Owned Road:** A privately-owned road, commonly called a "private road", is a road over which neither the municipality nor the general public has the right to pass by vehicle or on foot. Anyone using or repairing a private road without the owner's permission is subject to an action by the owner for trespass [14 MRSA § 7552; Hatch v. Donnell, 74 Me. 163 (1882)].

In general, a municipality has no legal right to spend public funds to repair, maintain or plow privately-owned roads [Opinion of the Justices, 580 A.2d 552 (Me. 1999)]. In emergency cases, such as a house fire in the winter, it is legal to send a snowplow down a privately-owned road so that the fire truck can get in, but the owner is responsible for ensuring that the road is sufficiently maintained to allow the plow to get through. This and other issues, such as school bus and mail access, are discussed in Chapter 5.

**Other References To Roads**

Statutes and local ordinances may use different terminology than is used in MRSA § 3021 to describe a road. For example, the term "public way" used in the criminal statutes [particularly 17-A MRSA § 505] includes town ways and public easements, and also includes roads to which the public has access as invitees or licensees, such as the access roads and parking lot of a shopping

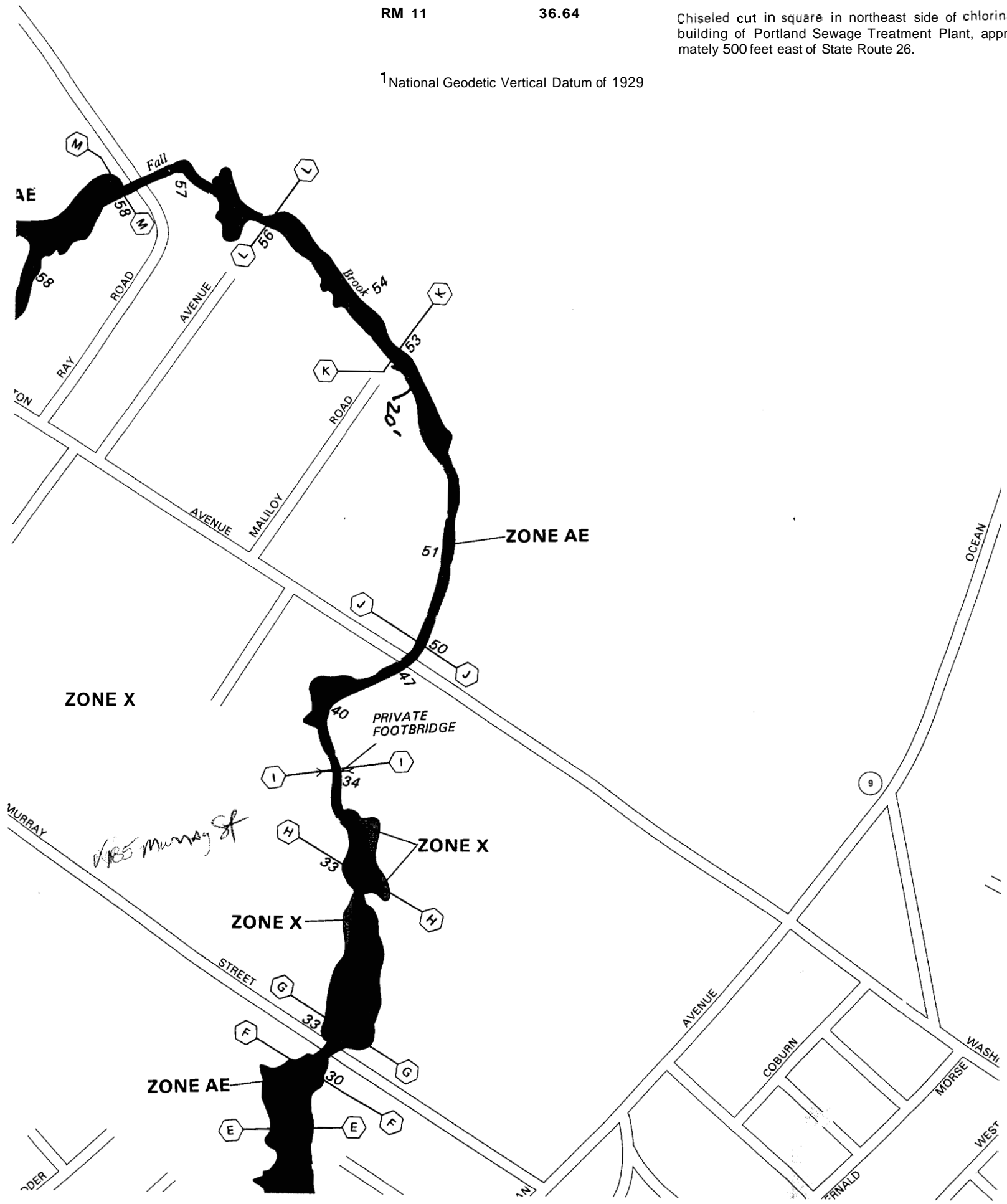


southbound lane of Washington Avenue, approx  
0.93 foot west of edge of curbing and at south er  
Tuckeys Bridge, 1.0 foot east of concrete suppor  
guardrail at north end of bridge over Marginal  
Northbound.

RM 11

36.64

<sup>1</sup>National Geodetic Vertical Datum of 1929



Chiseled cut in square in northeast side of chlorina  
building of Portland Sewage Treatment Plant, appro  
mately 500 feet east of State Route 26.