

Corporation Counsel

Gary C. Wood



CITY OF PORTLAND

Associate Counsel

Charles A. Lane
Elizabeth L. Boynton
Donna M. Katsiaficas
Penny Littell

December 9, 1999

C: Joe Gray
Alex Jaegerman
Sarah Hopkins
~~Nile [unclear]~~

via facsimile 822-6303

*66 Milliken St
Durastone Steps*

Andy Slusarski
Maine Department of Environmental Protection
312 Canco Road
Portland, ME 04103

333-K-025

RE: DEP - Slope Stabilization to Prevent Erosion/Wetland Delineation Request

Dear Andy:

Steve Wade, Durastone's attorney, and I are trying to negotiate a consent judgment in the City's litigation against Durastone. One of our mutual goals is to make sure that no work that is done has to be torn up or removed, i.e. neither the City nor Durastone wants to do anything on the site that is going to be a waste of time and money. The only outstanding issue is what steps need to be taken to provide long-term stabilization of the site in terms of erosion. I have attached a copy of a letter from the City's engineer, Steve Bushey, in which he notes that either regrading, top soiling, mulching and seeding or ripping the slope will be necessary to provide long-term stabilization. Either method will involve some disturbance of the soil and material in the fill area and, if loaming and seeding is the preferred alternative, which seems highly likely, a certain area of the slope will have to be reconfigured so that it is steep (see attached map). Before any work is done in this area, we will await clearance from your office (see enclosed draft consent judgment).

Steve Wade has raised the question of whether the work that we are asking Durastone to agree to in order to provide long-term stabilization would violate any wetland laws and to that extent, Durastone is requesting a wetland delineation.

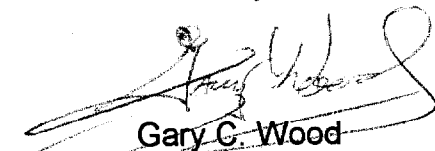
Although your department does not do wetland delineations, the City would appreciate it if you could put a word in with the appropriate DEP office asking them to provide Durastone and the City with an answer about the wetland issues as soon as possible. I would also appreciate it if you could give me some feedback as to where DEP stands with the pollution tests that were conducted on the site, and particularly along the fill slope. I received a letter on December 8 with a copy of correspondence to you and test results from St. Germain and Associates dated November 18, but it was less than Greek to me.

Andy Slusarski
Maine Dept. of Environmental Protection
December 9, 1999
Page 2

Time is of the essence, from our point of view, because we still do not have a signed consent judgment, the court is waiting to hear from us and we all need to bring this matter to closure.

Thank you for your consideration.

Sincerely,

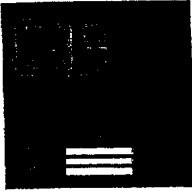


Gary C. Wood
Corporation Counsel

GCW:dlc
Encs.

c: James Dusch, Maine Department of Environmental Protection (via facsimile 287-2814)
Stephen Wade, Esq. (via facsimile 784-3345)

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DeLUCA-HOFFMAN ASSOCIATES, INC.
CONSULTING ENGINEERS

778 MAIN STREET
SUITE 8
SOUTH PORTLAND, MAINE 04106
TEL. 207 775 1121
FAX 207 879 0896

- ROADWAY DESIGN
- ENVIRONMENTAL ENGINEERING
- TRAFFIC STUDIES AND MANAGEMENT
- PERMITTING
- AIRPORT ENGINEERING
- SITE PLANNING
- CONSTRUCTION ADMINISTRATION

November 18, 1999

Mr. Gary Wood
Corporation Counsel Office
City of Portland
389 Congress Street
Portland, Maine 04101

**RE: Durastone – Consent Order
Site Stabilization**

Dear Mr. Wood:

On November 17, 1999, I met Mr. John Hotelling, Durastone's Safety Health Environmental Manager at the Portland Site to review issues related to long term site stabilization. It is my understanding that per Item 3 of the Draft Consent Order (Docket No. CU-POR-99-1034) Durastone is to leave the site in a fully stable condition long term. This generally means that the site's grounds are to be stabilized to prevent erosion and movement of sediments across the site. Mr. Hotelling and I walked the site and discussed the following items:

1. The fill slope off the gravel parking area on the west side of the site must be regraded and stabilized with mulching, fabric and other means of stabilization. Silt fence must also be installed at the toe of slope along the entire fill limits. It is my understanding that this area is of primary concern to the MeDEP due to the type of fill (i.e. concrete rubble etc.) and this area is still under review by the MeDEP.

Long term stabilization of this area should include regrading to smooth the placed filled, placement of topsoil and/or rip rap along the slope and establishment of permanent vegetation. Unfortunately we are beyond this year's growing season, therefore, in order to satisfy the consent order, rip rap along the fill slope is the only current option, otherwise loaming and seeding will have to wait until next year.

2. The area behind the existing building must be generally cleaned up and any areas which are not left as gravel, temporarily mulched for the winter and then topsoiled, seeded, and mulched next spring.
3. A small area on the north side of the building was apparently cleared to allow the set up of a crane for removal of equipment from the building. This area should be temporarily mulched for the winter and then regraded, topsoiled, seeded and mulched in the spring. I am a little concerned that the existing earth disturbance extends over the property line at this location. I am unaware of any agreements Durastone may have had with the abutting owner – Supervalu Operations, Inc. to complete this earthwork. Again, however, I am not certain if the clearing is beyond the property line or not.

Mr. Gary Wood
November 18, 1999
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I summarized my brief review of site conditions with Mr. Hotelling and recommended that Durastone immediately install silt fence along the toe of all fill slopes and also to place hay mulch over all exposed soils areas, outside of those used as parking and with a gravel or paved surface.

Long term stabilization of the site will primarily consist of the following:

- Regrading and smoothing of the fill slopes on the west side.
- Placement of rip rap along the fill slope or topsoiling, seeding, and mulching the fill slope. Topsoiling support i.e. erosion control fabric will be required in order to avoid sloughing of topsoil down the slope.
- Topsoiling, seeding, and mulching all other site areas which are not currently gravel or paved.

These comments are made without benefit of the current MeDEP review status and any recommendations or requirements the MeDEP may impose on the site. This includes issues related to environmental contamination, erosion, or wetland impacts.

If you have any questions, please call this office.

Sincerely,

DeLUCA-HOFFMAN ASSOCIATES, INC.

Stephen R. Bushey, P.E.
Senior Engineer

SRB/ajm/JN1352.23/Wood11-18

c: Sarah Hopkins – Senior Planner
Alex Jaegerman – Chief Planner

N75°09'30"E

CONCRETE FENCE AND GATE TO REMAIN

21" RCP INV. = 48.1

1" IPF AB/GND
REPLACE WITH 1" IPF (PANTY) R/S

LAND OF DURASTONE STEPS
12.45 ACRES
SEE PLAN REF. #1
DEED BOOK 10829
PAGE 49
FFE 77.00

LIMITS OF 2:1 REGRADING OF FILL SLOPES
UTIL. POLE TO REMAIN

TRANSFORMER TO REMAIN

SEWER MANHOLE COVERS TO BE RAISED

POND GRADING AND DETAILS SEE SHEET 7

BIT PAVEMENT

SLOPE STABILIZATION REQUIRED ON ALL POND SLOPES

FILL AREA GREATER THAN 2:1 TO BE RESTORED WITH RIFRAP

ART WELL 13624 121

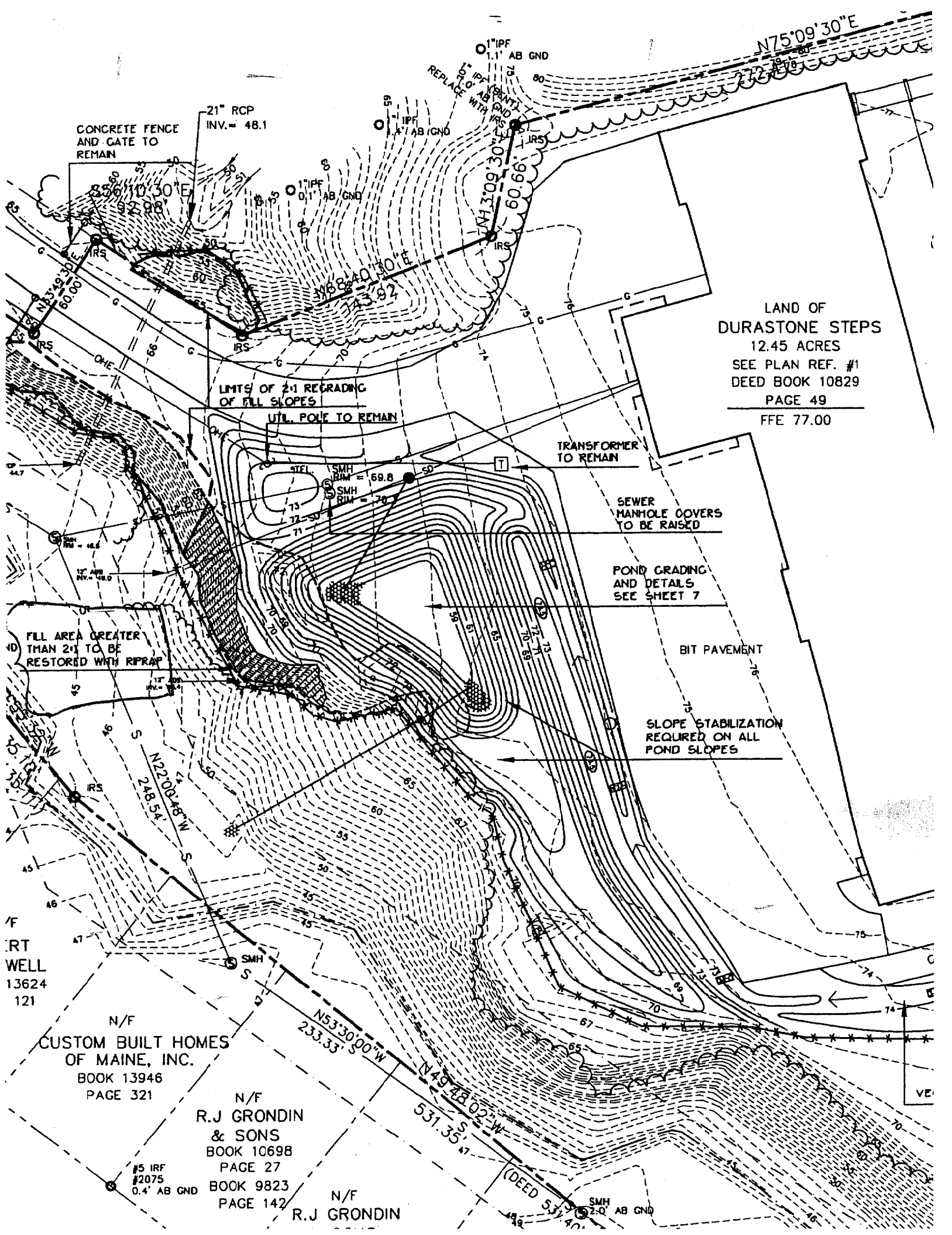
N/F
CUSTOM BUILT HOMES OF MAINE, INC.
BOOK 13946
PAGE 321

N/F
R.J. GRONDIN & SONS
BOOK 10698
PAGE 27
BOOK 9823
PAGE 142

N/F
R.J. GRONDIN

#5 IRF #2075 0.4' AB GND

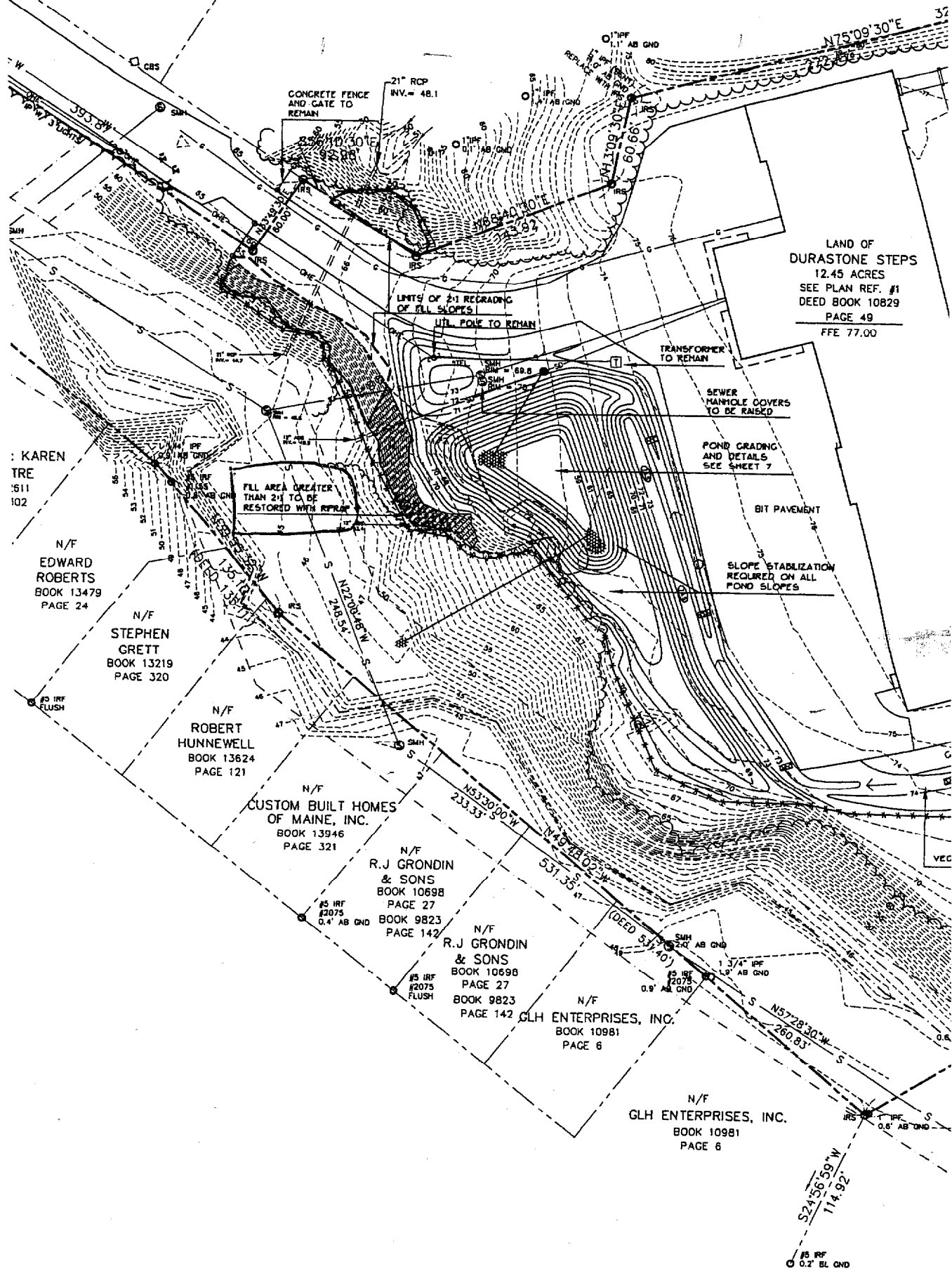
SMH 2.0' AB GND



WETTERAU PORTLAND, INC.
(FORMERLY OF MILLIKEN
TOMLINSON CO.)

BOOK 3952
PAGE 93

NOW
SUPERVALU OPERATIONS, INC.
(FORMERLY WETTERAU PROPERTIES, INC.)
BOOK 11458
PAGE 221



STATE OF MAINE
CUMBERLAND, ss.

Maine District Court
Ninth District
Division of Southern Cumberland
Docket No. CV-POR-99-1034

CITY OF PORTLAND,)
)
Plaintiff)
)
v.)
)
DURASTONE,)
)
Defendant)

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CONSENT JUDGMENT

This matter having come before this court for hearing on Wednesday, November 10, 1999 pursuant to the City's request for a Preliminary Injunction, and the parties having subsequently consented to the issuance of a consent judgment in this matter, it is hereby ORDERED that:

(1) Durastone shall cease all production operations on its site at 66 Milliken Street on or before 1/15/00;

(2) On or before 1/22/00 Durastone shall either remove or store inside its building all pallets, forms, scrap steel and metal, finished product and waste (not including waste in dumpsters or concrete waste material used as fill on or before May 5, 1999) currently stored outside the building and not bring any new material onto the site for storage outside the building. This paragraph does not apply to the silo and concrete bins with aggregate at the rear of the building, trailers being loaded or unloaded, or dumpsters;

(3) Durastone, at its own expense, will improve the site to a reasonably clean and stable condition in compliance with best management practices for erosion and sedimentation controls, as articulated in a letter dated November 18, 1999 from DeLuca-Hoffman Associates,

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Inc. to City Attorney Gary Wood, which letter is hereby incorporated in this Consent Judgment as Attachment 1.

By 1/22/00, Durastone shall make the following improvements for short-term site stability:

- (a) the installation of a silt fence at the toe of the fill slope off the gravel parking lot on the west side of the site. The silt fence shall be installed along the entire fill limits;
- (b) the area behind the existing building shall be generally cleaned up and any areas which are not left as gravel shall be temporarily mulched for the winter;
- (c) the small area on the north side of the building that was apparently cleared to allow the set-up of a crane for removal of equipment from the building shall be temporarily mulched for the winter.

By 4/30/00, Durastone shall make the following improvements for long-term site stability:

- (a) regrading and smoothing of the fill slopes on the west side of the site;
- (b) placement of rip-rap along the fill slopes on the west side of the site, or, at Durastone's discretion, top soiling, seeding and mulching the fill slopes. If Durastone chooses to top soil, seed and mulch the fill slopes, erosion-control

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fabric must be used to avoid sloughing of top soil down the slopes;

- (c) top soiling, seeding and mulching all other site areas which are not currently gravel or paved

On or before 3/01/00, Durastone shall provide the City with an executed copy of an agreement with a reputable contractor for the work necessary to provide long-term site stabilization as ordered above.

(4) At a minimum, any new purchaser/user at site shall be required to submit a full site plan for complete remediation and improvement of site to site plan and DEP site location development standards and other land use regulations in effect at the time of sale, regardless of any language in any ordinance that exempts the proposed use from such review, and Durastone shall notify any prospective purchaser of this requirement. Durastone will also notify the City in writing within 30 days of closing of the name and address of any new buyer;

(5) Durastone may file, at its discretion, a new application for an Industrial Pretreatment (IPT) permit and the City shall process it immediately;

(6) Durastone will allow City personnel to inspect the property without notice and at any time at the discretion of the City;

(7) Until 1/22/00, Durastone may continue to use the area adjacent to the main office for staging and loading product to ship it off-site as long as the same product does not remain in front of the building for more than three days; and

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(8) To the extent that this Consent Judgment conflicts with any Department of Environmental Protection (DEP) order or requirement, the DEP order or requirement shall control.

(9) Nothing in this Consent Judgment shall be construed to prevent the City from calling the Financial Guarantee Bond procured by Durastone on May 17, 1999 to insure compliance with the City's Compliance Order dated May 10, 1999 for correction of certain zoning and site plan violations and applying such funds as may be procured from the calling of the bond to the requirements contained in that Compliance Order.

Dated: _____

Judge Paul Eggert, Maine District Court

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11.30.99