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Terry N. Snow, Esq.  
J. Gregory Lestage, Esq.

Telephone: (207) 829-6363  
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July 9, 2002

Penny Littell, Esq.  
Associate Corporation Counsel  
City of Portland  
389 Congress Street  
Portland, ME 04101-3509

COPY

Re: Pennell Avenue

Dear Penny:

This letter follows your letter to my office of April 23, 2002 relating to the above-captioned Pennell Avenue. The lots being addressed are those located on the westerly side of Pennell Avenue, specifically Lots 89, 90, 91, 92 and 93. These lots have been purchased by my clients with the following history:

1. Lot 89 was purchased by Maggie Lane Development from Thomas and Ann Pelosi by deed dated December 19, 2001 and recorded at the Cumberland County Registry of Deeds in Book 17186, Page 357.
2. Lot 90 was purchased by Diversified Properties, Inc. from Dona Hanson by deed dated May 15, 2002 and recorded at said Registry of Deeds in Book 17634, Page 64.
3. Lot 91 was purchased by Construction Aggregate, Inc. from Carolyn F. Doherty by deed dated May 10, 2002 and recorded at said Registry of Deeds in Book 17629, Page 157.
4. Lots 92 and 93 were purchased by Diversified Properties, Inc. from Dona G. Hanson by deed described in Paragraph 2 above.

Penny Littell, Esq.  
Page 2  
July 9, 2002

Diversified Properties, Inc. conveyed the southerly two-thirds of Lot 90 to Maggie Lane Development, and Maggie Lane Development subsequently conveyed said lot to C.G.B. Properties (Dwight Brackett). A building permit has been issued on this lot.

Diversified Properties, Inc. conveyed the northerly one-third of Lot 90 and the southerly one-third portion of Lot 92 to Construction Aggregate, Inc. as a conveyance to abutters with statutory language mandating that the merged parcel must stay as one parcel for a period of five years pursuant to the statute.

Diversified Properties has conveyed or presently will convey Lot 93 with the northerly two-thirds of Lot 92 to C.G.B. Properties (Dwight Brackett) with the same statutory language regarding merged properties. I believe Dwight Brackett may have received a building permit for this parcel.

At all times for purposes of this letter, Burt Wolf and Jim Wolf were the sole members of Maggie Lane Development LLC and shareholders of Diversified Properties, Inc. At all times for purposes of this letter, Ben Grover was the sole shareholder of Construction Aggregate, Inc. Although Diversified Properties, Inc. signed a contract with Joanna D. Reilly, devisee of Lot 91, the contract was assigned to Construction Aggregate, Inc. prior to closing. I previously forwarded to your office the deed from Joanna D. Reilly to Construction Aggregate, Inc. Subsequently, on June 14, 2002, the Cumberland County Probate Judge signed the order establishing title in Joanna D. Reilly, which document was recorded at the Cumberland County Registry of Deeds on June 20, 2002 in Book 17759, Page 344, a copy of which I enclose for your records.

First of all, let me again assure you that the purchases by difference entities were not related to the issue of avoiding subdivision. Neither my client nor myself ever imagined this to be a subdivision issue. This clearly was done to avoid merger and tax reasons for the Wolfs' various entities. To my knowledge, there is no law against avoiding merger. I suspect you have counseled clients in your private practice and that many members of the Planning Board, both attorneys, brokers and others, have counseled potential buyers on the issue of merger. I also suspect that members of the Planning Board may have taken property in names of spouses or spouse to avoid mergers. This has been a common practice and is not a violation of any ordinance or statute. This is merely good planning.

I would therefore ask that you revisit the issue of a subdivision violation relating to Lot 91. If you still believe this violates the subdivision law, then I would ask that you have this matter scheduled at the next available Planning Board meeting for an interpretation.

Penny Littell, Esq.  
Page 3  
July 9, 2002

If you have any questions or comments or need further material or information, please give me a call.

Very truly yours,

Terry N. Snow

TNS/njp  
Enclosure

cc Diversified Properties, Inc., et al  
Construction Aggregate, Inc.

## STATUTORY WARRANTY DEED

DIVERSIFIED PROPERTIES, INC., a Maine corporation with a principal place of business in Portland, in the County of Cumberland and State of Maine

For Consideration Paid, GRANT with WARRANTY COVENANTS TO:

C.G.B. PROPERTIES LLC, a Maine Limited Liability Company with a mailing address of 84 Country Lane, Portland, Maine 04103

A certain lot or parcel of land situated on the easterly sideline of Pennell Avenue in the City of Portland, County of Cumberland and State of Maine, and being Lot 93 as shown on Plan entitled "The Holmsteads", dated September 1921, recorded in Plan Book 14, Page 70.

Also a certain lot or parcel of land situated on the easterly sideline of Pennell Avenue in the City of Portland, County of Cumberland and State of Maine, and being the northerly two-thirds of Lot 92 as shown on Plan entitled "The Holmsteads", dated September 1921, recorded in Plan Book 14, Page 70, bounded and described as follows:

BEGINNING at a point on the easterly sideline of Pennell Avenue, being the northwesterly corner of Lot 92 as shown on said plan; thence along the northerly sideline of Lot 92, being the southerly sideline of Lot 93 as shown on said plan in a northeasterly direction one hundred (100) feet to the easterly sideline of the parcel herein conveyed; thence in a southeasterly direction along the easterly sideline of the parcel herein conveyed thirty (30) feet to a point, which point is the northeasterly corner of the southerly one-third portion of Lot 92 conveyed from Grantor herein to Construction Aggregate, Inc. by deed dated May 15, 2002 and recorded at said Registry of Deeds in Book 17634, Page 64; thence in a southwesterly direction parallel with the first call herein described and maintaining a distance of thirty (30) feet therefrom along the northerly sideline of the said parcel conveyed to Construction Aggregate, Inc. one hundred (100) feet to the easterly sideline of Pennell Avenue; thence in a northwesterly direction along the easterly sideline of Pennell Avenue thirty (30) feet to the point of beginning.

Being a portion of the premises conveyed to the Grantor herein by deed of Dona G. Hanson dated September 19, 2001 and recorded at the Cumberland County Registry of Deeds in Book 16779, Page 98.

That portion of Lot 92 described herein being subject to a storm sewer easement as shown on said Plan and described in a deed to the City of Portland recorded at said Registry of Deeds in Book 2650, Page 308.

This conveyance is SUBJECT to rights and easements granted to Cumberland County Power & Light Company by instrument dated January 18, 1922 and recorded at said Registry of Deeds in Book 1094, Page 75.

EXCEPTING AND RESERVING to the Grantor herein, its successors and assigns, a certain easement lying on the easterly side of Pennell Avenue in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

BEGINNING at a point on the easterly sideline of Pennell Avenue and the southwesterly corner of Lot 93 as shown on a plan of The Holmsteads recorded in the Cumberland County Registry of Deeds in Plan Book 14, Page 70; thence: (1) N 71° 31' 00" E by the southerly line of said Lot 93 a distance of Thirty and 00/100 (30.00) feet to a point; (2) S 17° 15' 00" E a distance of Thirty and 00/100 (30.00) feet to a point; (3) S 71° 31' 00" W a distance of Thirty and 00/100 (30.00) feet to a point and the easterly sideline of said Pennell Avenue; (4) N 17° 15' 00" W by said Pennell Avenue a distance of Thirty and 00/100 (30.00) feet to the point of beginning.

The above-described parcel contains 900 square feet and being a portion of Lot 92 as shown on a plan of The Holmsteads recorded in the Cumberland County Registry of Deeds in Plan Book 14, Page 70.

Bearings are referenced to Magnetic North 1921.

Reference is herein made to a Standard Boundary Survey made for Diversified Properties by Titcomb Associates dated June 30, 2001.

This easement to be for a turnaround of vehicles and conveyed to the City of Portland by deed from Grantor to be recorded at said Registry of Deeds.

This conveyance is made SUBJECT to the current real estate taxes to the City of Portland subject to proration at the closing, which Grantee herein by its acceptance of this deed hereby assumes and agrees to pay.

IN WITNESS WHEREOF, the said DIVERSIFIED PROPERTIES, INC. has caused this instrument to be signed in its corporate name and sealed with its corporate seal by \_\_\_\_\_, its \_\_\_\_\_ thereunto duly authorized this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

DIVERSIFIED PROPERTIES, INC.

\_\_\_\_\_ By: \_\_\_\_\_  
Its

STATE OF MAINE  
CUMBERLAND, SS. \_\_\_\_\_, 2002

Then personally appeared the above-named \_\_\_\_\_, \_\_\_\_\_ of DIVERSIFIED PROPERTIES, INC. as aforesaid and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.

Before me,

\_\_\_\_\_  
Attorney at Law/Notary Public

Corporation Counsel  
Gary C. Wood



**CITY OF PORTLAND**

*Handwritten notes:*  
✓  
2099  
17

Counsel  
A. Lane  
Boynton  
atsiaficas  
ny Littell

April 23, 2002

**Via Fax: 829-4481**

Terry N. Snow, Esquire  
Terry N. Snow, PA  
PO Box 275  
Cumberland Center ME 04021-0275

Post-it <sup>®</sup> Fax Note	7671	Date	4-24	# of pages	2
To	TERRY SNOW, ESQ		From	PENNY LITTELL	
Co./Dept.		Co.			
Phone #		Phone #	874 8980		
Fax #	829 4481		Fax #		

RE: Pennell Avenue

Dear Terry:

The City's position with regard to the development of the "right side" of Pennell Ave (lots 89 through 94 on The Holmstead subdivision plan) hinges on the ownership of the "middle lot," or what is referred to as the "Riley" lot (lot 91). As I understand it, your clients do not own the Riley lot at the present time. I further understand the lot is tied up in probate. As a result, at the present time, there are two lots (lots 89/90 and lots 92/93/94) which are owned by your clients. These two lots are not in contiguous ownership.

With the following caveats, these two lots, lot 89/90 (Brackett) and lot 92/93/94 (Hanson), may be built on at this time as stated in my January 31, 2002 letter to you. The caveats are: 1) that lot 90 may not be divided to create the illegal 15 foot lot. (Originally, this strip was intended to be conveyed to the Riley lot but it has not been so conveyed. The Zoning Administrator prohibits the creation of such illegal lots). As a result, as a condition of issuing a building permit for the Brackett lot (lot 89/90), a reconveyance to the Brackett lot or an outright conveyance to the Estate of Riley will need to occur to eliminate the 15 foot strip. 2) the same is true of any 15 foot strip conveyed out from the Hanson lot (lot 92/93/94). It is unclear whether the latter conveyance has been effectuated yet, but any conveyance creating an illegal lot will not be permitted.

Assuming the Riley lot comes into possession of your clients in the future no building permit will be issued for the Riley lot until a) subdivision review is obtained or b) five years has lapsed or c) the issue is otherwise resolved. This is because the City considers the act of checkerboarding lot ownership akin to a strategy to avoid the

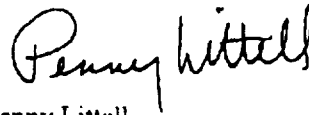
Terry Snow, Esq.  
RE: Pennell Avenue  
April 23, 2002  
Page 2 of 2

objectives of the subdivision ordinance, 30-A MRSA § 4401 thus requiring subdivision review. I recognize you do not agree with the City's position on this point.

In closing, this correspondence in no way waives the City's position with regard to evaluating any other areas in the City proposed for development, including Barclay Ave.

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

Sincerely,



Penny Littell,  
Associate Corporation Counsel

PL:hs

Cc: Nate Smith, Councilor  
Lee Urban, Director of Planning and Economic Development  
Mark Adelson, Director of Housing and Neighborhood Services  
Marge Schmuckal, Zoning Administrator  
Michael Nugent, Manager of Inspections

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**From:** Jay Reynolds  
**To:** "jmw1@maine.rr.com"@Portland.gwgwia  
**Date:** Thu, Jul 11, 2002 12:28 PM  
**Subject:** Re: Building Permit Application

Jim,

I reviewed the site plan, mon. afternoon/tuesday morning for the BP application on lot 5. I also showed it at Wednesday's meeting. Public works is ok with turnaround and storm drain easement. Marge was set with setbacks. I'm set with site (landscaping/layout/Elevations/etc.).

It looks approvable. I told dwight this yesterday.

I HAVE TO CROSS REFERENCE THE OVERALL GRADING PLAN FOR THESE 3 LOTS ON THIS SIDE (THE ONE SUBMITTED WITH THE 14-403 APPLICATION) TO ENSURE COMPADIBILITY.

Right/Title/Interest, and subdivision, will also be looked at prior to signing off.

.....my end of the review and where it's at to date.

Jay

Jay Reynolds  
Development Review Coordinator  
Department of Planning and Urban Development  
City of Portland  
207-874-8632  
jayjr@ci.portland.me.us

>>> Jay Reynolds 07/10 11:05 AM >>>

jim, are you the applicant? or dwight?

i've got some grading questions.....

should i just call doug at GP?

Thanks.

Jay

>>> "James Wolf" <jmw1@maine.rr.com> 07/10 10:57 AM >>>

Mike....Please respond to yesterdays email. In addition, since you deferred to Marge can you ask that she respond as well. All parties waiting for the permit are anxious and we ask that you help us along in getting answers.

Thank you

— Original Message —

From: "James Wolf" <jmw1@maine.rr.com>

To: "Mike Nugent" <MJN@ci.portland.me.us>

Cc: "Jay Reynolds" <JAYJR@ci.portland.me.us>; "Marge Schmuckel" <MES@ci.portland.me.us>; "Mark Adelson" <MBA@ci.portland.me.us>; "Penny Littell" <PL@ci.portland.me.us>; "John N Lufkin" <JNL@ci.portland.me.us>

Sent: Tuesday, July 09, 2002 1:43 PM

Subject: Fw: Building Permit Application

>

> — Original Message —

> From: "James Wolf" <jmw1@maine.rr.com>

> To: "Mike Nugent" <MJN@ci.portland.me.us>

> Sent: Tuesday, July 09, 2002 1:23 PM

> Subject: Re: Building Permit Application

>

>  
>> Who should I contact to get the plan routed to you? Also, who can  
answer  
> my  
>> original question as to when a permit can be expected? Being we are in  
> week  
>> 7 of the review process I cannot imagine an answer to this question is  
>> unreasonable.  
>> — Original Message —  
>> From: "Mike Nugent " <[MJN@ci.portland.me.us](mailto:MJN@ci.portland.me.us)>  
>> To: <[jmw1@maine.rr.com](mailto:jmw1@maine.rr.com)>  
>> Sent: Tuesday, July 09, 2002 12:17 PM  
>> Subject: Re: Building Permit Application  
>>  
>>  
>> no, It has not been routed to me  
>>  
>>>> "James Wolf" <[jmw1@maine.rr.com](mailto:jmw1@maine.rr.com)> 07/09 10:51 AM >>>  
>> Mike.....has your review of the building plans been completed?  
>>  
>>  
>> — Original Message —  
>> From: "Mike Nugent " <[MJN@ci.portland.me.us](mailto:MJN@ci.portland.me.us)>  
>> To: <[jmw1@maine.rr.com](mailto:jmw1@maine.rr.com)>  
>> Cc: <[JAYJR@ci.portland.me.us](mailto:JAYJR@ci.portland.me.us)>; <[jnl@ci.portland.me.us](mailto:jnl@ci.portland.me.us)>;  
>> <[MBA@ci.portland.me.us](mailto:MBA@ci.portland.me.us)>; <[MES@ci.portland.me.us](mailto:MES@ci.portland.me.us)>; <[PL@ci.portland.me.us](mailto:PL@ci.portland.me.us)>  
>> Sent: Tuesday, July 09, 2002 10:46 AM  
>> Subject: Re: Building Permit Application  
>>  
>>  
>> I'll defer to Marge on this.  
>>  
>>>> "James Wolf" <[jmw1@maine.rr.com](mailto:jmw1@maine.rr.com)> 07/09 10:28 AM >>>  
>> Mike  
>>  
>> On May 23, 2002 Dwight Brackett applied for a building permit at lot #5  
>> Pennell Avenue; a property owned by Diversified Properties.  
>>  
>> My understanding is Jay Reynolds approved his end of the permit review  
> some  
>> time ago. Would you please give me some idea when the permit will be  
> ready.  
>> It has been over 6 weeks since the submission was made, thus, my request  
>> should not be considered unreasonable.  
>>  
>> Thank you for your prompt attention to this matter.  
>>  
>>  
>> James Wolf  
>> Diversified Properties, Inc  
>> 1-207-773-4988  
>> Fax 1-207-773-6875  
>>  
>>  
>>  
>>

>>  
>>  
>

From: "James Wolf" <jmw1@maine.rr.com>  
To: "Marge Schmuckal" <MES@ci.portland.me.us>  
Date: Tue, Nov 6, 2001 2:49 PM

Marge

Please call me to discuss your condition that Pennell Ave must be paved prior to any type of CO being given. I believe that the code allows under certain conditions (being unable to have work completed due to valid reasons) that the occupancy permit may be issued as long as the road is "improved to a passable condition". The section is 14-525(k). We fully intend on paving, however, weather does have an impact on whether it is at all possible.

James Wolf  
Diversified Properties, Inc  
1-207-773-4988  
Fax 1-207-773-6875

Final Site Plan -

\$4300

15ft

This is not a site plan then  
take a mmot/mmot

Haskell

take to Site Plan

**From:** Mike Nugent  
**To:** P&U.D.  
**Date:** Tue, Nov 6, 2001 3:00 PM  
**Subject:** Lot "a" Pennell Ave. 14-403 street question

Is this ok to issue. Custom Built Homes asserts that they don't need to construct a road as the City is doing it. Is it ok to give them their permit??

I'm looking for the approval from the Public Works authority that:

1) the applicant has submitted a street improvement plan and ;

2) The proposed street extension meets the street improvement requirements including curbing and drainage. There is also the requirement for a defect bond prior to the release of the performance guarantee.

I cannot issue the permit until this is addressed.

**CC:** Anthony Lombardo

Custom Built Homes  
Diversified Properties

11/14/01

Jim Wolf - Terry Snow  
Sarah - ~~Terry Snow~~ - Penny - Marge  
Jay Reynolds -

Haskell St -

**From:** Marge Schmuckal  
**To:** Alex Jaegerman ; Jay Reynolds; Penny Littell ; ...  
**Subject:** Re: pennell ave

Jimmy is stating that he doesn't know the difference between a single family development and a site plan/subdivision development. I told him that there are different rules for both. Certainly how we handle the streets are different. He is "surprised" by those differences. He does want to do more houses on Pennell which would probably push him into a subdivision. I suggested that he wait on this house until he has all his plans for the entire project, and we will review it all at once. In my mind he is using the technique of being "confused". I don't think that it is that confusing. It is the fact that he doesn't want to do what we are requiring right now that is his real issue. I have already put my conditions in writing to him. He wants me to drop the road condition and I told him that I wouldn't do that.

>>> Sarah Hopkins 11/07 2:24 PM >>>

Can we meet Wednesday Nov 14 at 2:00 w/Jimmy to explain the 14-403/Pennell stuff? We don't all have to be there, but perhaps on Monday, we can figure out the explanation for him since he is still unclear. (Marge, is this something we can write or do we need to meet with him? He said that you suggested it.)

Thanks,

-s

**CC:** MARK ADELSON; Mike Nugent

**From:** Mark Adelson  
**To:** "jmw1@maine.rr.com"@Portland.gwgwia  
**Date:** Fri, Dec 14, 2001 12:48 PM  
**Subject:** Re: Fw: Pennell Avenue

This is how the City will handle it. Sometime next week there will be an application process in place for you to drop off your plan for Pennell St. It is called the 14.403 Multi-lot Review. You will make application to the Inspections Office and submit plans similar to the subdivision requirements (9 copies, survey, road profiles, etc), and pay a fee of \$400 plus \$25 for every lot (currently in the code). First, the staff will review the plan determine if it is a 14.403 or a subdivision. If it is determined that it is a 14.403 plan than the review will proceed administratively. If it is a subdivision, we will given you the option of withdrawing the plan, or paying the additional fee and proceeding with the Subdivision process to the Planning Board. Once the 14.403 is approved, you will submit the performance guarantee for the road. The approved 14.403 review will be similar to the subdivision, where you can receive your C of O's prior to completing the street, with the performacen guarantee in place. More information will be forthcoming. Have a nice weekend. Mark A.

>>> "James Wolf" <jmw1@maine.rr.com> 12/14 11:11 AM >>>  
Mark.....I will stay out of this email response chain until I hear from you. Thinking things through would it resolve the multiple lot issue on a road if a minimum of two permits were initially applied for? That would show that more than a single house was being built. Would we than be able to get occupancy permits on that particular 14-403 road with base pavement down. I'll wait to hear from you.

Thank you for the help.

Jim

— Original Message —

From: "Marge Schmuckal" <MES@ci.portland.me.us>  
To: <AWL@ci.portland.me.us>; <JAYJR@ci.portland.me.us>;  
<MJN@ci.portland.me.us>; <jmw1@maine.rr.com>  
Cc: <MBA@ci.portland.me.us>; <PL@ci.portland.me.us>; <SH@ci.portland.me.us>  
Sent: Friday, December 14, 2001 8:56 AM  
Subject: Re: Pennell Avenue

Yes, that is my recollection of the meeting too. I believe that is one of the conditions that I put on the permit also. It still stands.  
Marge

>>> Jay Reynolds 12/14 8:46 AM >>>  
We had a meeting on this, which included attorney's from both sides. The final outcome, as I recall, and after referring to Penny Littell, is that "no occupancy permit (temporary or permanent) shall be issued unless and until said street has been completed to City standards."  
Marge conditioned a Haskell street 14-403 building permit this way, and Pennell falls under the same guidelines.

Nothing has changed since this meeting.

Jim, can you pass this information along?



Jay

>>> Mike Nugent 12/13 10:53 AM >>>

Jay, Glen Gervais is interested in getting the answer to the C/O question before he commences construction.

>>> Anthony Lombardo 12/13 10:00 AM >>>

This does include a portion of the frontage for the Diversified Properties parcel. However, since I don't issue C of O's I can't respond to your second question.

>>> Mike Nugent 12/13 8:50 AM >>>

Does this include the area that is considered the "paper" portion that provides frontage for the James Wolf Lot, and also will we be able to give a C/O to Custom Built homes before the final coat of pavement is there?

>>> Anthony Lombardo 12/13 8:19 AM >>>

Pennell Ave., the section of roadway included in the CIP contract with A.H. Grover, has been completed to satisfaction for this construction season. It was discussed and agreed by both Grover and myself, as representative for Public Works, that this section of the roadway be reconstructed and only surfaced with binder pavement. This section of the street consisted of extremely saturated soils and Public Works would prefer that it be allowed to experience one season of freeze/thaw. As a result, Grover will return in 2002 to finish pave the street.

>>> "James Wolf" <[jmw1@maine.rr.com](mailto:jmw1@maine.rr.com)> 12/11 10:42 AM >>>

Tony

AH Grover has informed me that Pennell Avenue construction is "complete."

Jay has asked that you confirm this for he and Mike. Thank you.

Jim

James Wolf  
Diversified Properties, Inc  
1-207-773-4988  
Fax 1-207-773-6875

CC: ALEX JAEGERMAN; ANTHONY LOMBARDO; Jay Reynolds;...

**From:** Sarah Hopkins  
**To:** ADELSON, MARK ; JAEGERMAN, ALEX ; Jay Reynolds; ...  
**Date:** Fri, Dec 14, 2001 10:00 AM  
**Subject:** 14-403 reviews

We are trying to piece together the required process for application and review of a 14-403 project on Pennell Avenue. We've reviewed a couple of these in the past few years but each one has been a bit different and, therefore, so have the applications and review processes.

From discussions with Jay and Mark and Marge, 14-403 reviews are required where there is no subdivision due to less than 3 lots or buildout of a previously recorded subdivision, but where there is no existing roadway built to City standards.

The requirement of roadway is a zoning requirement (frontage, 14-403) and the review of the construction of the road is performed by Public Works.

I believe that we have been consistent in not granting a CO until the roadway has been completed and approved.

This differs from Subdivision reviews where a PG is posted, and COs may be issued prior to final pavement.

As for application, I believe that 14-403 reviews are covered in the fee schedule: \$400 plus \$25 per lot. As such, it would appear that an applicant would apply in inspections with 9 sets (survey, road profiles, etc.)—same as subdivisions and that we would then review the proposal administratively.

The application for these reviews is very important, I believe, because it creates a file and tracking mechanism in Urban Insight and also initiates the noticing provision.

Please let me know if I've got any of this wrong. If not, we will add it to our (famous, nonexistent) procedures manual.

-sarah

Penny Littell

Cc: Mark Adelson  
Alex Jaegerman  
Sarah Hopkins  
Jay Reynolds  
Michael Nugent  
Marge Schmuckal

January 31, 2002

VIA FACSIMILE

Terry N. Snow, Esquire  
Terry N. Snow, PA  
PO Box 275  
Cumberland Center ME 04021-0275

Dear Terry:

Your clients are proposing to submit building permit applications for two house lots situated on the easterly side of Pennell Ave. The lots at issue are those identified on the original subdivision of this property as lots 89, 90, 92 and 93. These lots are owned (in some corporate configuration) by your clients. Lot 91 currently is owned by an unrelated individual, although, as I understand it, your clients have a purchase and sale agreement/or an option to buy the parcel.

In order to create buildable lots (lots with no less than 75 feet of frontage), your client has conveyed 30 feet of lot 90 to the abutting lot 89, leaving a 15 foot parcel remaining. In addition, it is your intention to divide original parcel 90, retaining 30 feet with parcel 91, (to create a lot with 75 feet of frontage), the remaining 15 feet to be separated out. It is expected that your clients will eventually purchase original lot 91 and add to it the two outstanding 15 foot sections of property to create an additional lot with 75 feet of frontage.

While the City carefully examines such conveyances for subdivision issues, it appears in this case, given the lack of ownership of original lot 91, no subdivision has occurred by the transfer of property to an abuttor.

It is understood, however, that Diversified Properties, in conjunction with the submission of the two building permit applications referenced herein, will be submitting a detailed drainage and erosion control plan for this area so that the City may comprehensively evaluate this area. As you know, this area is very wet and has caused the city many drainage problems in the past. We hope to approve the submitted permit applications with the confidence that they otherwise meet the requirements expected of a "subdivision." This way the City is protected and your clients can confidently sell the lots with the assurance of a high quality project.

The issuance of any certificate of occupancy permits will be conditioned upon the completion of Pennell Ave with final pavement unless the Ordinance is otherwise amended.

Thank you for your patience in this matter while the City worked through the many issues which this project raised.

Sincerely,

April 23, 2002

**Via Fax: 829-4481**

Terry N. Snow, Esquire  
Terry N. Snow, PA  
PO Box 275  
Cumberland Center ME 04021-0275

RE: Pennell Avenue

Dear Terry:

The City's position with regard to the development of the "right side" of Pennell Ave (lots 89 through 94 on The Holmstead subdivision plan) hinges on the ownership of the "middle lot," or what is referred to as the "Riley" lot (lot 91). As I understand it, your clients do not own the Riley lot at the present time. I further understand the lot is tied up in probate. As a result, at the present time, there are two lots (lots 89/90 and lots 92/93/94) which are owned by your clients. These two lots are not in contiguous ownership.

With the following caveats, these two lots, lot 89/90 (Brackett) and lot 92/93/94 (Hanson), may be built on at this time as stated in my January 31, 2002 letter to you. The caveats are: 1) that lot 90 may not be divided to create the illegal 15 foot lot. (Originally, this strip was intended to be conveyed to the Riley lot but it has not been so conveyed. The Zoning Administrator prohibits the creation of such illegal lots). As a result, as a condition of issuing a building permit for the Brackett lot (lot 89/90), a reconveyance to the Brackett lot or an outright conveyance to the Estate of Riley will need to occur to eliminate the 15 foot strip. 2) the same is true of any 15 foot strip conveyed out from the Hanson lot (lot 92/93/94). It is unclear whether the latter conveyance has been effectuated yet, but any conveyance creating an illegal lot will not be permitted.

Assuming the Riley lot comes into possession of your clients in the future no building permit will be issued for the Riley lot until a) subdivision review is obtained or b) five years has lapsed or c) the issue is otherwise resolved. This is because the City considers the act of checkerboarding lot ownership akin to a strategy to avoid the objectives of the subdivision ordinance, 30-A MRSA § 4401 thus requiring subdivision review. I recognize you do not agree

Terry Snow, Esq.  
RE: Pennell Avenue  
April 23, 2002  
Page 2 of 2

with the City's position on this point.

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

Sincerely,

Penny Littell,  
Associate Corporation Counsel

PL:hs

Cc: Nate Smith, Councilor  
Lee Urban, Director of Planning and Economic Development  
Mark Adelson, Director of Housing and Neighborhood Services  
Marge Schmuckal, Zoning Administrator  
Michael Nugent, Manager of Inspections

**LAW OFFICE OF TERRY N. SNOW, P.A.**

294 Main Street, P.O. Box 275  
Cumberland, Maine 04021-0275  
E-Mail: TNSnowlaw@aol.com

Terry N. Snow, Esq.  
J. Gregory Lestage, Esq.

Telephone (207) 829-6363  
Facsimile (207) 829-4481

May 16, 2002

Via Fax: 874-8497

Penny Littell, Esq.  
City of Portland  
389 Congress Street  
Portland, ME 04101-3509

Re: Pennell Avenue

Dear Penny:

This letter follows your letter of April 23, 2002.

Enclosed find a deed from Carolyn F. Doherty to Construction Aggregate, Inc. conveying lot 91, which enclosed deed copy contains the recording information, as noted thereon. I also enclose a deed from Diversified Properties, Inc. conveying the 15 foot strips on either side of lot 91, as set forth in your letter of April 23, 2002. In summary, Construction Aggregate, Inc. now owns what it is referred to as "the middle lot", which includes Reilly's interest and the two 15 foot strips.

It is my understanding that the Hanson lot and the Brackett lot, as described in your April 23<sup>rd</sup> 2002 letter, may receive building permits at this time. I further understand and agree that the Reilly lot, being now under the ownership of Construction Aggregate, Inc., may not receive a building permit until subsections a, b or c have been met, as outlined in your said letter of April 23, 2002. Dwight Brackett has been advised that he should withdraw the building permit application on the Reilly lot and upon such occurrence he may receive a building permit for the Brackett lot.

For your information, the principal and sole owner of Construction Aggregate, Inc. is Ben Grover. This was done for business reasons, relating to title, economics and liability and not because of issues with the City of Portland. Notwithstanding the fact that my client or one of his entities did not purchase the Reilly lot, my client and Ben Grover both acknowledge that no building permit will be issued on the Reilly lot until the conditions set forth in your April 23, 2002 letter have been met.

Penny Littell, Esq.

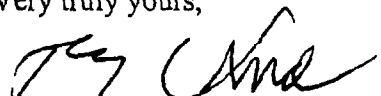
-2-

May 16, 2002

Would you kindly confirm the enclosed as soon as possible, as I am sure you are aware that Dwight Brackett is anxious to honor a current commitment on the Brackett lot.

If you have any questions or comments, please give me a call.

Very truly yours,



Terry N. Snow

TNS:ecm

Enclosures

cc: Jim Wolf, Diversified Properties, Inc., w/o encs.



0038382

BK 17629PG157

**QUITCLAIM DEED WITH COVENANTS**

KNOW ALL PERSONS BY THESE PRESENTS, That I, CAROLYN F. DOHERTY of Walpole, County of Norfolk and Commonwealth of Massachusetts, for consideration paid, grant to CONSTRUCTION AGGREGATE, INC., a Maine corporation with a place of business in Cumberland, County of Cumberland and State of Maine, with Quitclaim Covenant, the premises located in the City of Portland, County of Cumberland and State of Maine, being more particularly described as follows:

A certain parcel of land, with any improvements thereon, located at Pennell Avenue, Portland, Maine, and more particularly described as lot 91 as shown on a plan of "The Holmsteads" made by E.C. Jordan & Co., dated September, 1921, and recorded in the Cumberland County Registry of Deeds in Plan Book 14, Page 70.

Meaning and intending to convey the same premises conveyed to Joseph E.F. Connolly by the Portland Home Building Association, in a deed dated August 26, 1930, and recorded in the Cumberland County Registry of Deeds in Book 1377, Page 27.

The said Joseph E.F. Connolly died intestate on October 2, 1939, and his interest in the above-described premises passed to his widow, Margaret B. Connolly, upon her petition, Cumberland County Probate Court, Docket No. 31378.

The said Margaret B. Connolly died testate in 1947, having devised her interest in the above-described premises to Stephen H. Cady, Jr. by her last will and testament, Cumberland County Probate Court, Docket No. 40076.

The said Stephen H. Cady, Jr. died testate on February 15, 1948, having devised his interest in the above-described premises to Mary Nugent by his last will and testament, Cumberland County Probate Court, Docket No. 41239.

The said Mary Nugent died testate on October 8, 1949, having devised her interest in the above-described premises to James J. Reilly and Joanna D. Reilly by her last will and testament, Cumberland County Probate Court, Docket No. 43207.

The said James J. Reilly died testate on June 22, 1964, having devised his one-half interest in the above-described premises to Joanna D. Reilly by his last will and testament.

The said Joanna D. Reilly died testate on October 22, 1989, having devised her interest in the above-described premises to Carolyn F. Doherty by her last will and testament, Cumberland County Probate Court, Docket No. 2002-571.

BK 17629PG 158

WITNESS my hand and seal this 10 day of May, 2002.

Witness:

Christine Manning

Carolyn F. Doherty  
Carolyn F. Doherty

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF NORFOLK

May 10, 2002

Then personally appeared before me the above named Carolyn F. Doherty and acknowledged the foregoing instrument to be her free act and deed.

Christine Manning  
Notary Public/Attorney at Law  
Print: Christine Manning  
NOTARY PUBLIC  
My Commission expires May 31, 2002

RECEIVED  
RECORDED REGISTRY OF DEEDS  
2002 MAY 14 AM 9:58  
CUMBERLAND COUNTY  
John B. Quinn

MAY 18 02 03:37A  
MAY 15 02 07:50A

0038762 RT7634PG064

STATUTORY WARRANTY DEED

DIVERSIFIED PROPERTIES, INC., a Maine corporation with a principal place of business in Portland, in the County of Cumberland and State of Maine

For Consideration Paid, GRANT with WARRANTY COVENANTS TO:

CONSTRUCTION AGGREGATE, INC., a Maine corporation with a place of business in Cumberland, County of Cumberland and State of Maine, with a mailing address of P.O. Box 307, Cumberland, Maine 04021

A certain lot or parcel of land situated on the easterly-sideline of Pennell Avenue in the City of Portland, County of Cumberland and State of Maine, being the northerly one-third (1/3) of Lot No. 90 as shown on Plan entitled "The Holmsteads", dated September 1921, recorded at the Cumberland County Registry of Deeds in Plan Book 14, Page 70, bounded and described as follows:

MAINE REAL ESTATE TAX PAID

BEGINNING at a point on the easterly sideline of Pennell Avenue, being the southwesterly corner of Lot 91 on said plan; thence along the northerly sideline of Lot 91 in a northeasterly direction one hundred (100) feet to the easterly sideline of the parcel herein conveyed; thence in a southeasterly direction along the easterly sideline of the parcel herein conveyed fifteen (15) feet to a point, said point being at the northerly sideline of land conveyed from Grantor herein to Maggie Lane Development, LLC by deed dated December 19, 2001 and recorded at said Registry of Deeds in Book 17109, Page 296; thence in a southwesterly direction parallel with the first call herein described and maintaining a distance of fifteen (15) feet therefrom along said Maggie Lane Development, LLC land one hundred (100) feet to the easterly sideline of Pennell Avenue; thence in a northwesterly direction along the easterly sideline of Pennell Avenue fifteen (15) feet to the point of beginning.

Being a portion of the premises conveyed to the Grantor herein by deed from Dona G. Hanson dated September 19, 2001 and recorded at the Cumberland County Registry of Deeds in Book 16779, Page 98. Reference is further made to a deed from Frank C. Rodway to Grantor herein dated August 22, 2001 and recorded at said Registry of Deeds in Book 16659, Page 251.

May 16 02 09:38a  
May 15 02 07:50a

SKT7634PG065

This deed is a transfer of land to the owner of land abutting that land herein conveyed; specifically, other land of Grantee herein, being Lot 91 as shown on said plan conveyed to Grantee herein by deed from Carolyn F. Doherty dated May 10, 2002 and recorded at said Registry of Deeds in Book 17629, Page 157.

Subject to the provisions of Title 30-A, M.R.S.A. §4401.4.D-6, the within Grantee may not make a subsequent transfer of the premises within five (5) years from the date hereof without complying with the provisions of said statute.

Also, a certain lot or parcel of land situated on the easterly sideline of Pennell Avenue in the City of Portland, County of Cumberland and State of Maine, being the southerly one-third (1/3) of Lot No. 92 as shown on Plan entitled "The Holmsteads", dated September 1921, recorded at the Cumberland County Registry of Deeds in Plan Book 14, Page 70, bounded and described as follows:

BEGINNING at a point on the easterly sideline of Pennell Avenue, being the northwesterly corner of Lot 91 on said plan; thence along the northerly sideline of Lot 91 in a northeasterly direction one hundred (100) feet to the easterly sideline of the parcel herein conveyed; thence in a northwesterly direction along the easterly sideline of the parcel herein conveyed fifteen (15) feet to a point; thence in a southwesterly direction parallel with the first call herein described and maintaining a distance of fifteen (15) feet therefrom one hundred (100) feet to the easterly sideline of Pennell Avenue; thence in a southeasterly direction along the easterly sideline of Pennell Avenue fifteen (15) feet to the point of beginning.

Being a portion of the premises conveyed to the Grantor herein by deed from Dona G. Hanson dated September 19, 2001 and recorded at the Cumberland County Registry of Deeds in Book 16779, Page 98.

This deed is a transfer of land to the owner of land abutting that land herein conveyed; specifically, other land of Grantee herein, being Lot 91 as shown on said plan conveyed to Grantee herein by deed from Carolyn F. Doherty dated May 10, 2002 and recorded at said Registry of Deeds in Book 17629, Page 157.

Subject to the provisions of Title 30-A, M.R.S.A. §4401.4.D-6, the within Grantee may not make a subsequent transfer of the premises within five (5) years from the date hereof without complying with the provisions of said statute.

BK 7634 PG 066

This conveyance is SUBJECT to rights and easements granted to Cumberland County Power & Light Company by instrument dated January 18, 1922 and recorded at the Cumberland County Registry of Deeds in Book 1094, Page 75.

This conveyance is made SUBJECT to the current real estate taxes to the City of Portland subject to proration at the closing, which the Grantee herein by its acceptance of this deed hereby assumes and agrees to pay.

IN WITNESS WHEREOF, said DIVERSIFIED PROPERTIES, INC. has caused this instrument to be signed in its corporate name and sealed with its corporate seal by James Wolf, its President thereunto duly authorized this 15<sup>th</sup> day of May, 2002.

DIVERSIFIED PROPERTIES, INC.

Debra V Dowd

By: [Signature]  
its President

STATE OF MAINE  
CUMBERLAND, SS.

May 15, 2002

Then personally appeared the above-named James Wolf of DIVERSIFIED PROPERTIES, INC. as aforesaid and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.

Before me,

[Signature]  
Attorney at Law/Notary Public

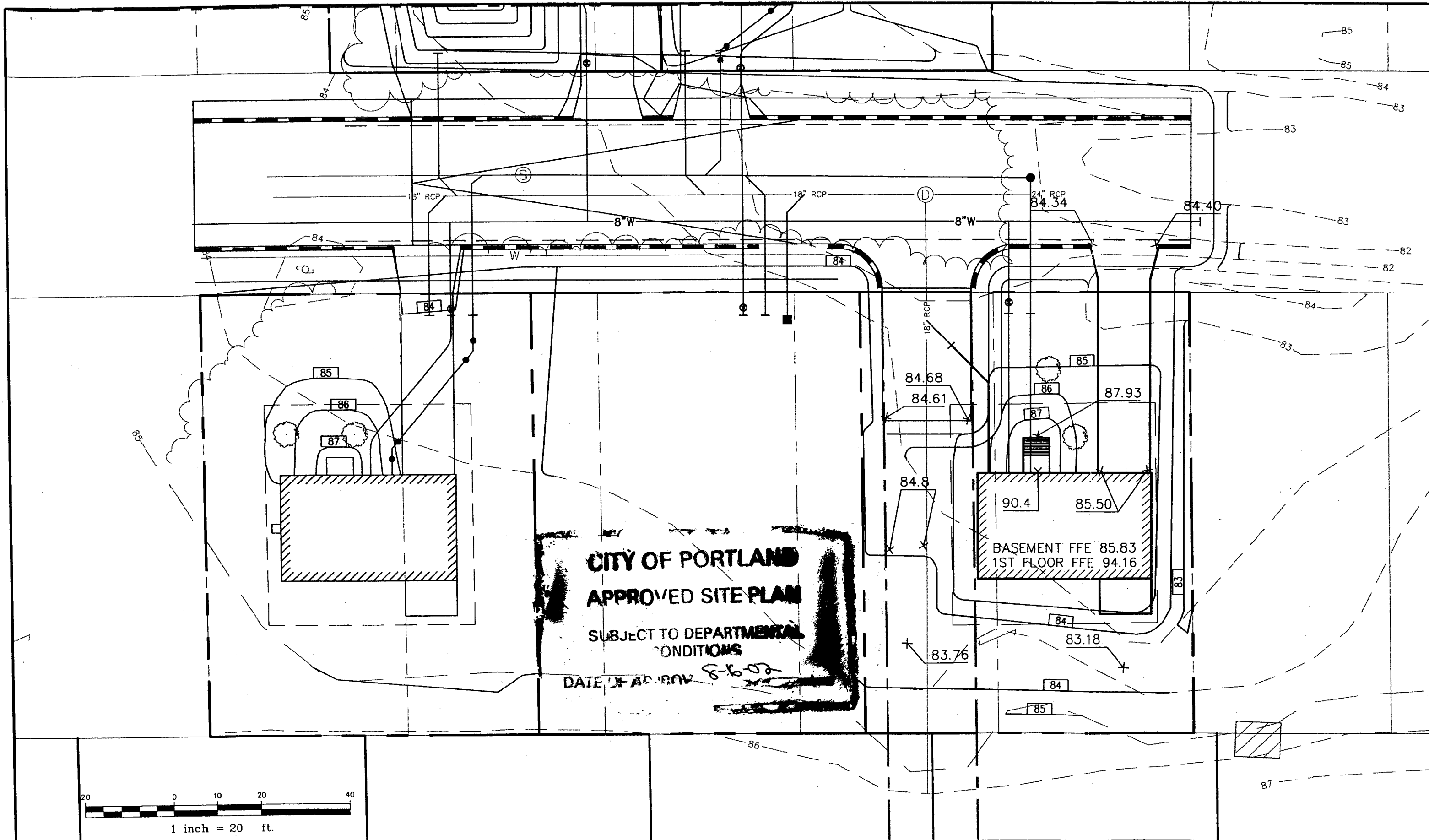
RECEIVED  
RECORDED REGISTRY OF DEEDS

2002 MAY 15 AM 11:06

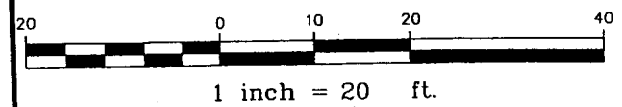
CUMBERLAND COUNTY

John B O'Brien

DEBRA V. DOWD  
NOTARY PUBLIC, MAINE  
MY COMMISSION EXPIRES OCTOBER 7, 2003



**CITY OF PORTLAND**  
**APPROVED SITE PLAN**  
 SUBJECT TO DEPARTMENTAL  
 CONDITIONS  
 DATE 8-6-02



Rev.	Date	Revision

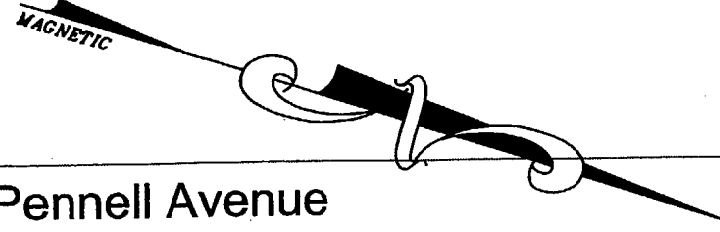
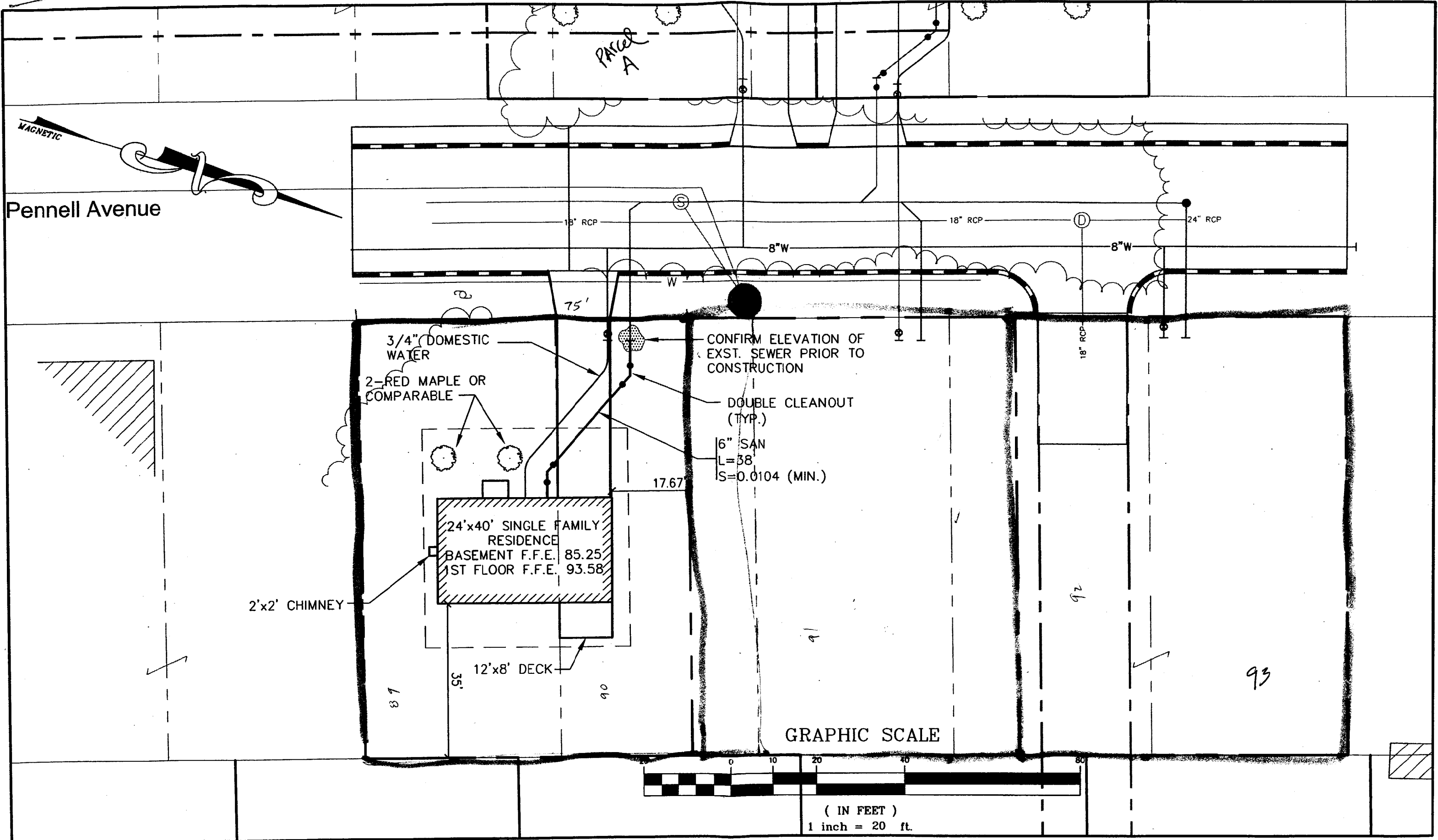
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Draft: SGB	Job No.: 482.5
Checked: AMP	Scale: 1"=20'
File Name: 482_5-sp-without-middle-lot	

**Gorrill-Palmer Consulting Engineers, Inc.**  
*Traffic and Civil Engineering Services*

PO Box 1237  
 15 Shaker Road  
 Gray, ME 04039  
 207-657-6910  
 FAX: 207-657-6912  
 E-Mail: mailbox@gorrillpalmer.com

Drawing Name:	<b>Grading and Drainage Plan</b>
Project:	<b>PENNELL AVENUE - LOT 3 &amp; 5</b>

Figure No.  
**2**



Pennell Avenue

Parcel A

3/4" DOMESTIC WATER

2-RED MAPLE OR COMPARABLE

24'x40' SINGLE FAMILY RESIDENCE  
 BASEMENT F.F.E. 85.25  
 1ST FLOOR F.F.E. 93.58

2'x2' CHIMNEY

12'x8' DECK

CONFIRM ELEVATION OF EXST. SEWER PRIOR TO CONSTRUCTION

DOUBLE CLEANOUT (TYP.)

6" SAN  
 L=38  
 S=0.0104 (MIN.)

17.67

75'

18" RCP

8"W

24" RCP

18" RCP

8"W

91

92

93

GRAPHIC SCALE



( IN FEET )  
 1 inch = 20 ft.

Rev.	Date	Revision

Design: DER	Date: FEB 2002
Draft: CAH	Job No.: 482.3
Checked: AMP	Scale: 1"=20'
File Name: 384_3-SP	

**GP** Gorrill-Palmer Consulting Engineers, Inc.  
 Traffic and Civil Engineering Services

P.O. Box 1237  
 26 Main Street  
 Gray, ME 04039

207-657-6910  
 FAX: 207-657-6912  
 E-Mail: gpce@maine.rr.com

Drawing Name: **Site Layout and Utility Plan**

Project: **PENNELL AVENUE - LOT 3**

Figure No.  
**2**


## SPACE AND BULK REQUIREMENTS - R-3 ZONE

MINIMUM LOT SIZE:	6,500 S.F.
MINIMUM FRONTAGE:	50 FT.
MINIMUM SETBACKS:	
FRONT YARD	25 FT.
REAR YARD	25 FT.
SIDE YARD*	
1 STORY	8 FT.
1 1/2 STORY	8 FT.
2 STORY	14 FT.
2 1/2 STORY	16 FT.
MINIMUM LOT WIDTH:	
OTHER USES:	75 FT.

\* THE WIDTH OF ONE (1) SIDE YARD MAY BE REDUCED ONE (1) FOOT FOR EVERY FOOT THAT THE OTHER SIDE YARD IS CORRESPONDINGLY INCREASED, BUT NO SIDE YARD SHALL BE LESS THAN EIGHT (8) FEET IN WIDTH.

THE SIDE YARDS SHOWN ON THE FOLLOWING FIGURES ARE BASED UPON A 2 1/2 STORY STRUCTURE AND MAY BE INCREASED OR DECREASED DEPENDING UPON THE NUMBER OF STORIES.

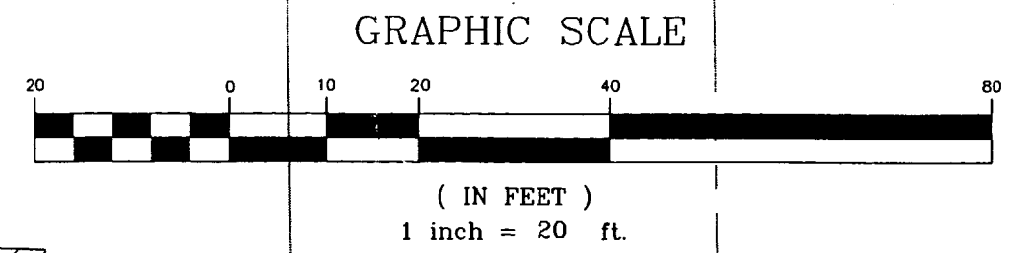
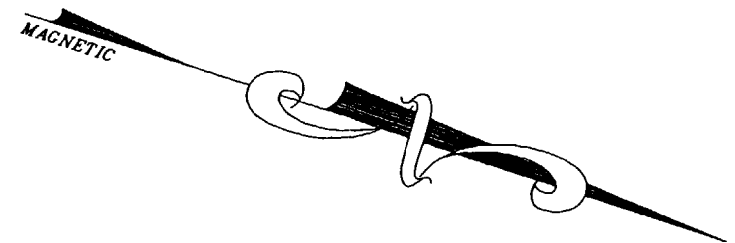
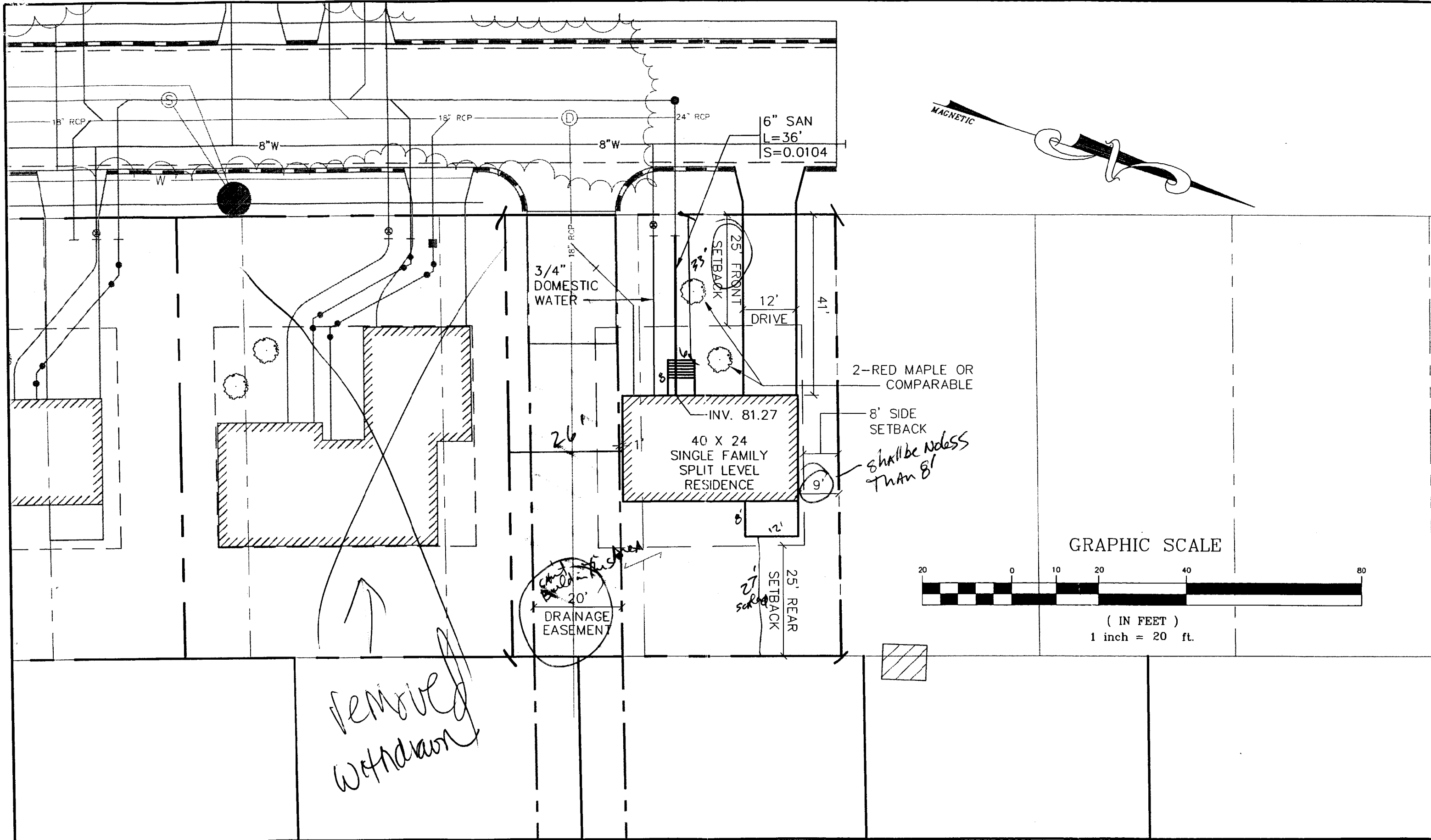
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 <b>GP</b> Traffic and Civil Engineering Services
PO Box 1237, 15 Shaker Road Gray, ME 04039 207-657-6910

Drawing Name:	<b>Space &amp; Bulk Requirements</b>
Project:	<b>PENNELL AVENUE, PORTLAND</b>

Figure No.	<b>1</b>
------------	----------





*remove  
withdraw*

*shall be no less  
than 8'*

*20'*  
DRAINAGE  
EASEMENT

Rev.	Date	Revision

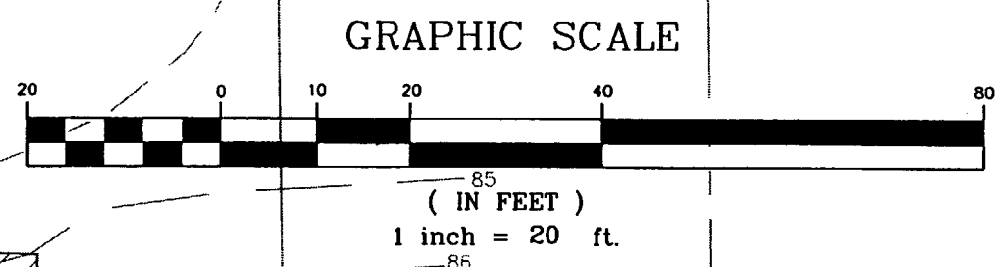
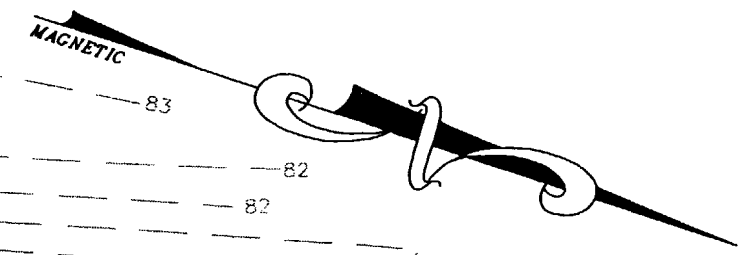
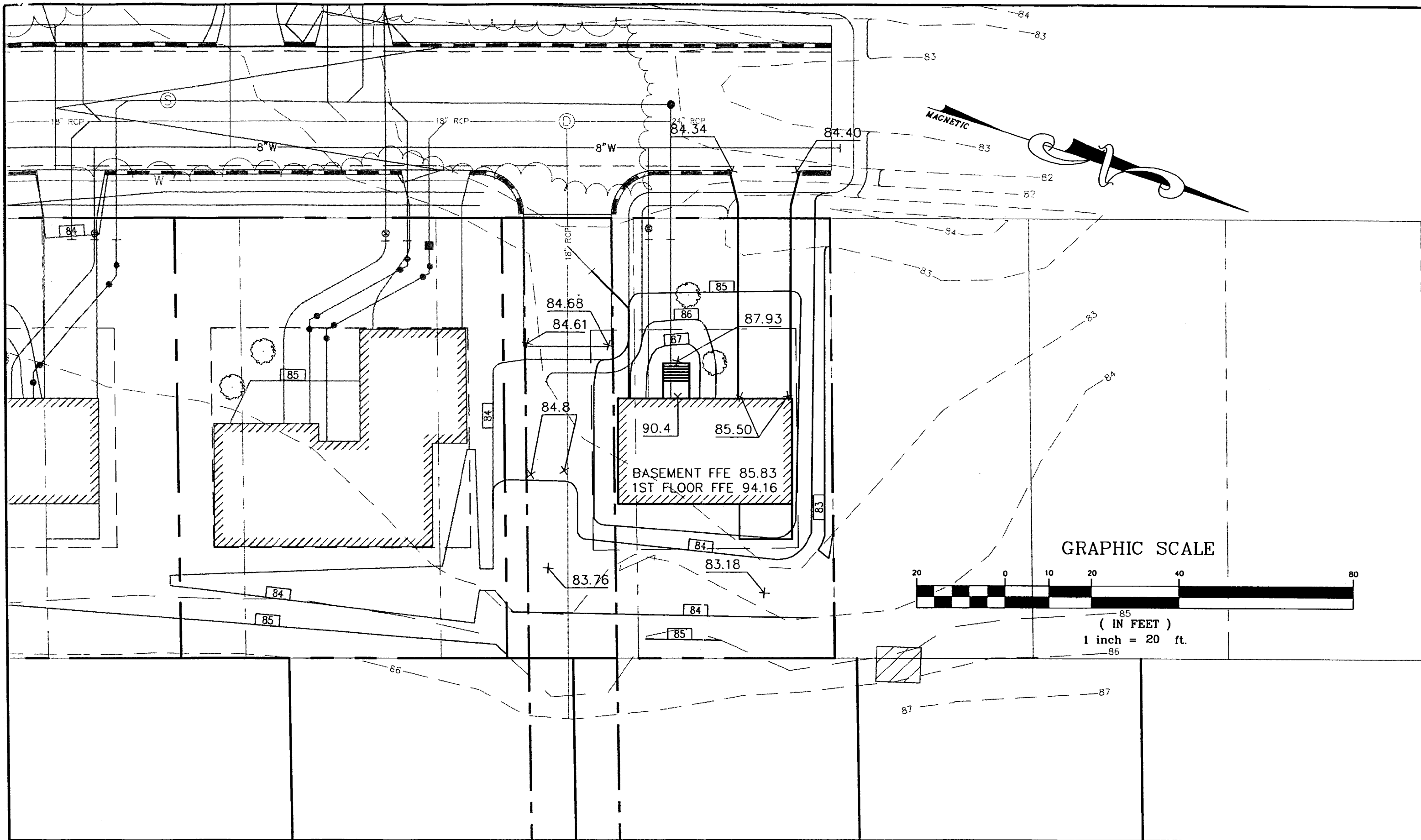
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**GP** Gorrill-Palmer Consulting Engineers, Inc.  
 Traffic and Civil Engineering Services

PO Box 1237  
 15 Shaker Road  
 Gray, ME 04039  
 207-657-6910  
 FAX: 207-657-6912  
 E-Mail: gpcei@maine.rr.com

Drawing Name:	SITE LAYOUT and UTILITY PLAN
Project:	PENNELL AVENUE - LOT 5

Figure No.  
**2**



Rev.	Date	Revision

Design: DER	Date: MAY 2002
Draft: SGB	Job No.: 482.5
Checked: AMP	Scale: 1"=20'
File Name: 482_5-sp.dwg	

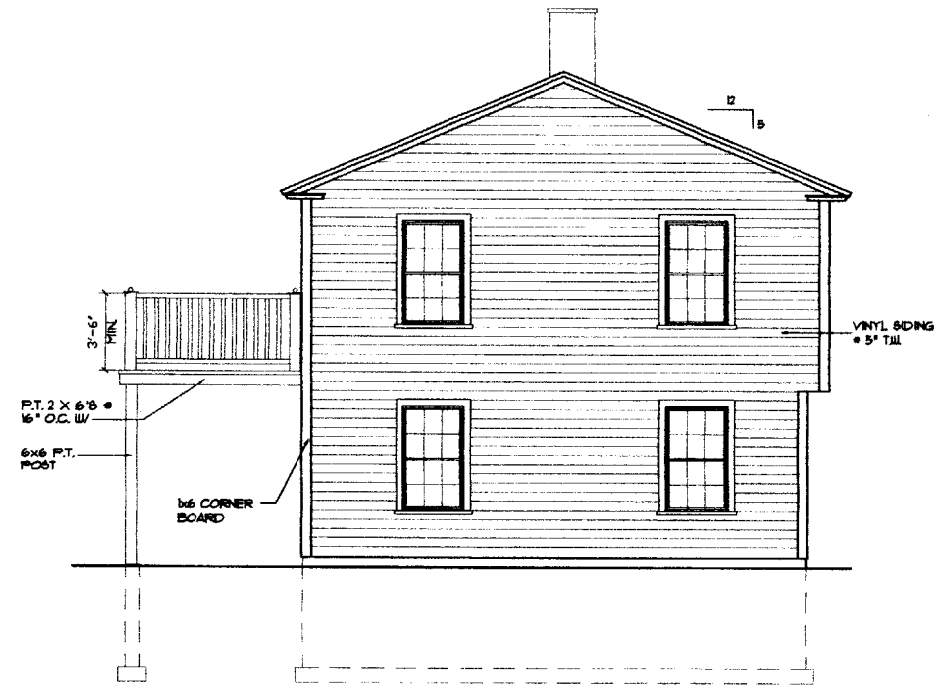
**GP** Gorrill-Palmer Consulting Engineers, Inc.  
 Traffic and Civil Engineering Services

PO Box 1237  
 15 Shaker Road  
 Gray, ME 04039

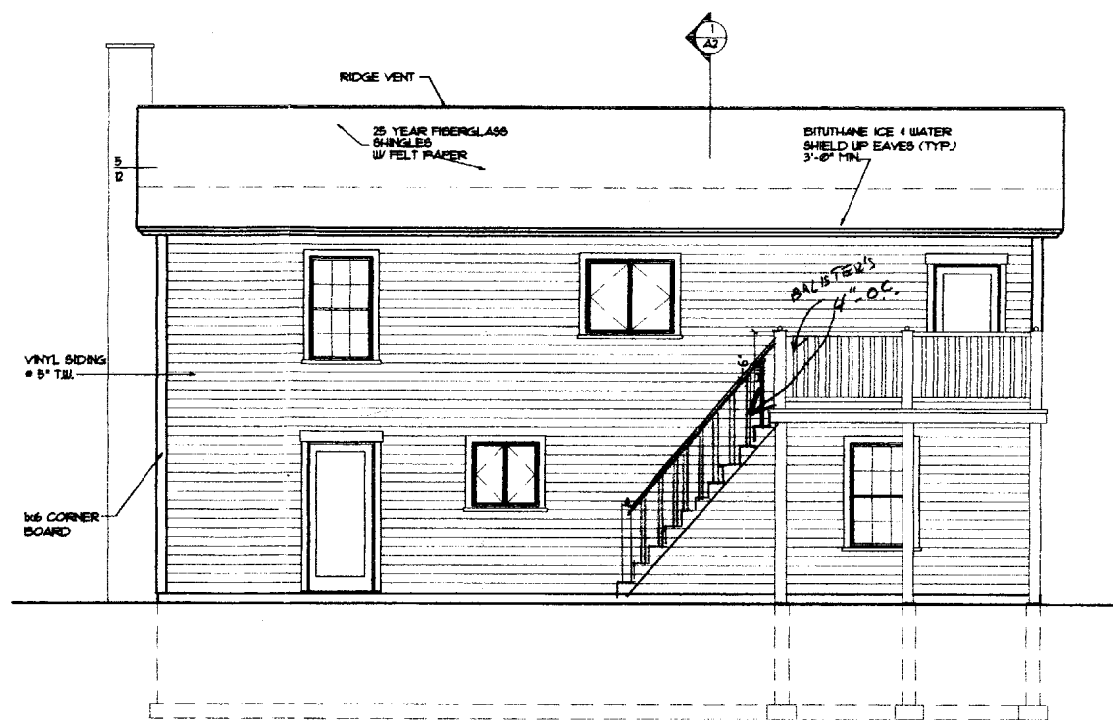
207-657-6910  
 FAX: 207-657-6912  
 E-Mail: gpcei@maine.rr.com

Drawing Name:	GRADING AND DRAINAGE PLAN
Project:	PENNELL AVENUE - LOT 5

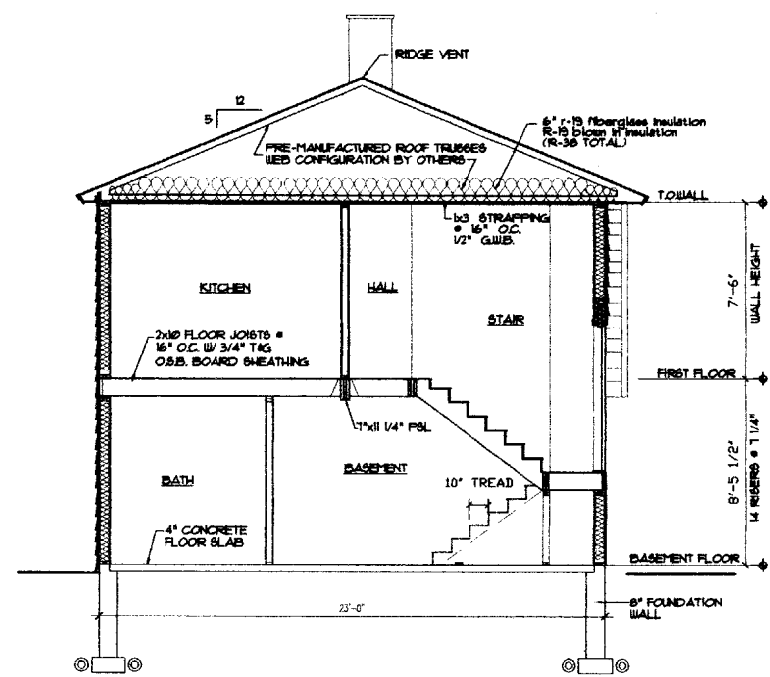
Figure No.  
**3**



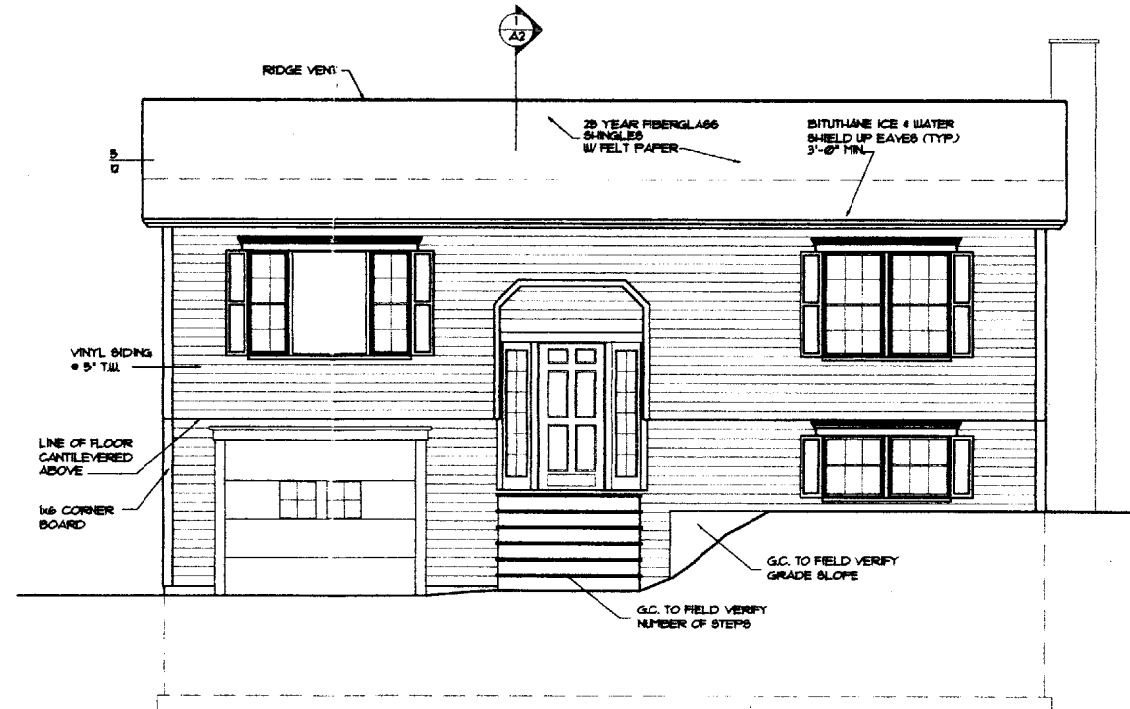
**LEFT SIDE ELEVATION**  
 (RIGHT SIDE ELEVATION SIMILAR) SCALE: 1/4" = 1' - 0"



**REAR ELEVATION**  
 SCALE: 1/4" = 1' - 0"



**SECTION THRU HOUSE**  
 SCALE: 1/4" = 1' - 0"



**FRONT ELEVATION**  
 SCALE: 1/4" = 1' - 0"

**REVISIONS**

#	DATE	DESCRIPTION

DATE:	02/08/02
PROJECT #	-
DRAWN BY:	DLF
CHECKED BY:	-
DRAWING SCALE	-

SHEET TITLE  
 ELEVATIONS SECTION

A-2

