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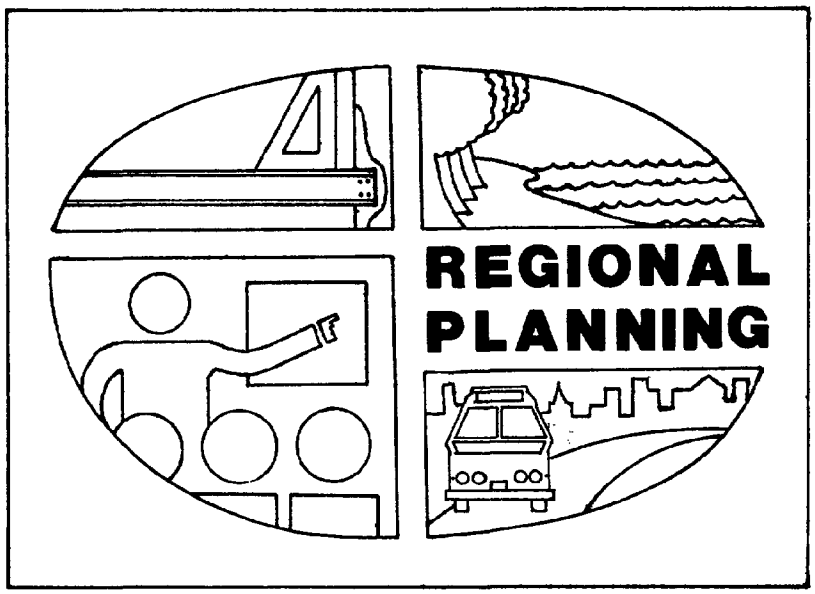

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ROCKINGHAM PLANNING COMMISSION-TOWN OF RYE

PUBLIC SHOREFRONT ACCESS STUDY

August, 1984

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INTRODUCTION

The Coastal Zone Management Act Amendments of 1976 call for studies of public access to the shorefront to be an integral part of coastal planning efforts. Concurrently, public access to coastal waters has been set forth as an objective of New Hampshire's Coastal Resources program.

Public access is an ongoing concern of Rye, New Hampshire. Rye's coastline accounts for eight miles of New Hampshire's eighteen mile coastline. At numerous locations along Rye's shorefront, legal access to the sea is disputed.

For example, in at least two instances, a "public" right-of-way in Rye has been posted with "No Trespassing" signs by the abutting private parties. Were this designation to go unchallenged, these public ways could well become "private." One beachfront property owner claims part of the beach in addition to land under the ocean all the way out to the Isles of Shoals, and even has a deed to "prove" it.

The following material provides a review of past and present efforts addressing access conflicts, and supplements this information with current data and recommendations directed at resolving the disputes. Specifically, the following involves a generic analysis of statutes and case law relating to public rights-of-way and coastal access, extensive research into existing coastal reports[1], town records, deeds, historic maps, and interviews with longtime residents; a detailed analysis of the more troublesome sites; and a list of alternative actions available to Rye Selectmen and the Planning Board. Most importantly, the report provides direction for local officials in assessing the options at their disposal.

---

[1]Source material includes, "A Public Shorefront Access Planning Process for the State of New Hampshire," (1978), "Open Space Standards and Criteria," (1969), and, "Areas of Particular Concern," (1977), published by the Strafford Rockingham Regional Council and the New Hampshire Office of State Planning.

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SITE SELECTION

The first phase of this project entailed the listing of sites where access was thought to be problematic or contested. Locations were solicited in the autumn of 1983 from the Planning Board, Selectmen, Conservation Commission, present and former Building Inspectors, and interested local citizens. The following list was compiled:

1) Alphabet Streets at Jenness Beach.
2) Cable Road Extension.
3) Off Old Beach Road (Tax Map 18, Parcels 213 and 214).
4) Off Old Beach Road (Tax Map 15, next to Parcel 202).
5) A possible right of way approximately 10 buildings south of Pirate's Cove.
6) Wallis Sands across from Harbor Master.
7) Little Harbor at Wentworth Road by golf course.

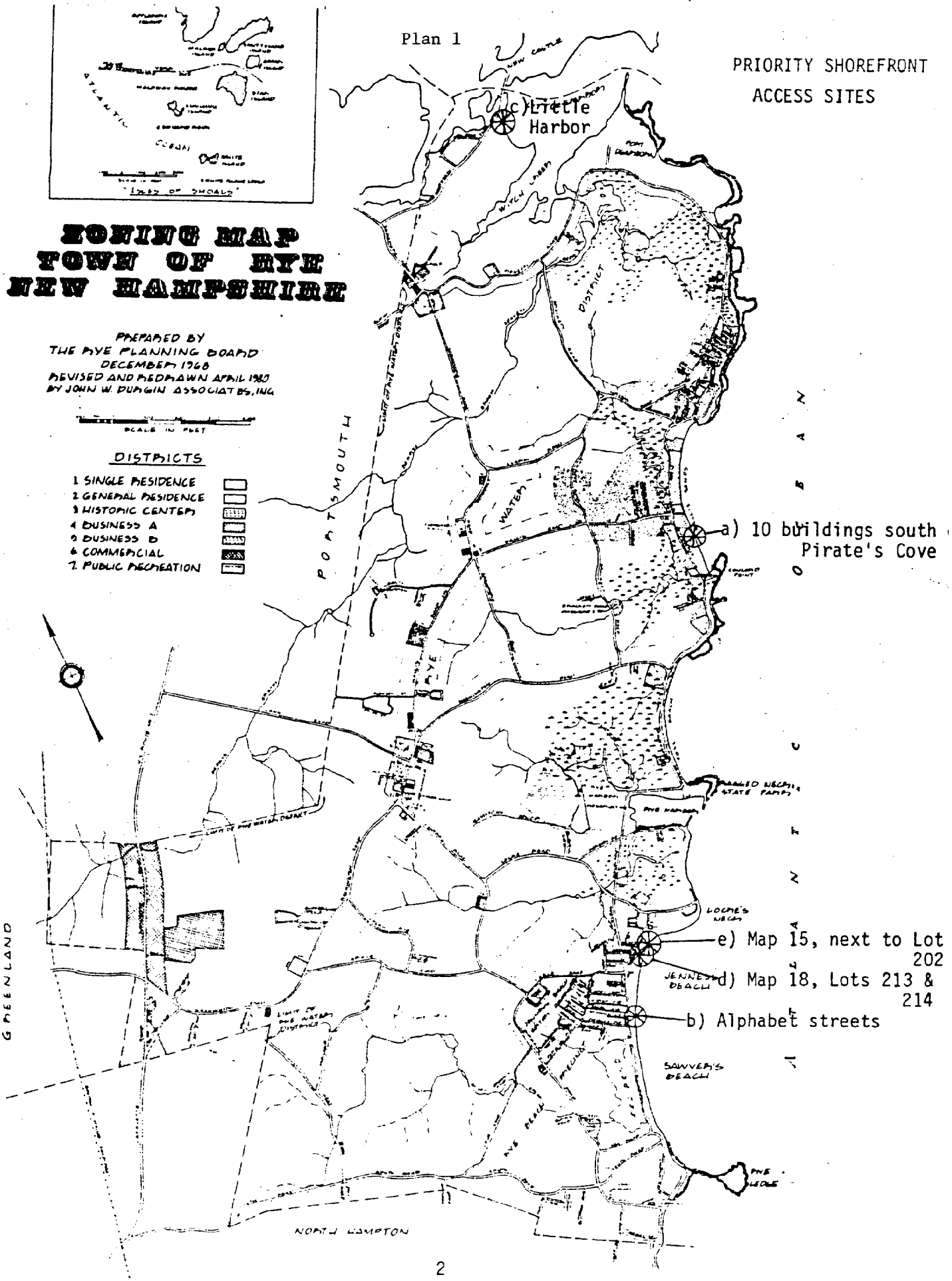
On January 20, 1984, the Rye Selectmen prioritized this list as follows: (Note Selectmen's letter in Attachment 1).

a) A possible right of way approximately 10 buildings south of Pirate's Cove.
b) Alphabet Streets at Jenness Beach.
c) Little Harbor at Wentworth Road by golf course.
d) Off Old Beach Road (Tax Map 18, Parcels 213 and 214).
e) Off Old Beach Road (Tax Map 15, next to Parcel 202).

Sites"A" through"D" were subsequently investigated (see Plan 1 on following page). Upon discovery that Site "E" is currently being litigated by the Jenness Beach Precinct, we decided that further investigation on our part would be redundant and probably extraneous.

Plan 1

PRIORITY SHOREFRONT ACCESS SITES



OVERVIEW OF NEW HAMPSHIRE LAW RELATIVE TO TOWN ROADS AND PUBLIC WAYS

Prior to discussing the methodology used to prepare this report, a quick overview of New Hampshire law relative to streets and highways would be helpful. Note text of selected laws in Attachment 2.

Highways are defined and classified by New Hampshire Statute as follows:

General Definition RSA 229:1:

"Highways are only such as are:

(1) laid out in the mode prescribed therefor by statute, or

(2) roads which have been constructed for public travel over land which has been conveyed to a city or town or to the state by deed of a fee or easement interest, or

(3) roads which have been dedicated to the public use and accepted by the city or town in which such roads are located, or

(4) roads which have been used for public travel, other than travel to and from a toll bridge or ferry, for 20 years prior to January 1, 1968, and shall include the bridges thereon."

Classification: RSA 229:5

Class I, II and III are state highways.

Class IV, V and IV are town (or city) roads.

Class IV: Roads in built-up sections of municipalities over 7,500.

Class V: All other public roads which the town has a duty to maintain.

Class VI: All other existing public ways including highways:

1) discontinued as open highways and made subject to gates and bars;

2) all those not maintained for 5 years or more.

The town retains a public right-of-way on these Class VI roads.

Highway Maintenance: RSA 231:57 - 110

Municipalities have responsibility for maintenance of Class IV and V roads. Class VI roads, by definition, are not maintained and the town is not liable for maintenance or accidents thereon.

Establishment of Town Roads:

There are three ways to establish town roads:

1) By Layout: RSA 231:1 - 33

   Class IV, V and VI highways may be laid out by Selectmen. Following a citizen petition to Selectmen, a Public Hearing is held (minimum 14 day notice) and damages are assessed. Note examples of this procedure in Attachments 41 through 44.

   Many of Rye's roads were laid out in this manner during the 19th century. RSA 231:6 specifically authorizes Selectmen to layout Class V highways to "Public Waters." Layout may be appealed as per RSA 231:34-39.

2) Dedication by property owner: RSA 231:51

   The Town assumes responsibility for maintenance when a street is accepted by Town Meeting Vote. Proposed streets should first be approved by the Planning Board and built to Town standards. If a platted street is not built or used for public travel within 20 years, RSA 231:51 requires that it be "released and discharged from all public servitude" in a manner prescribed by RSA 231:52.

   In Young vs. Prendiville, 112 NH 190 (1972), the New Hampshire Supreme Court found that, despite C Street's implied dedication, "public use was indefinite and at the most suggested an occasional use," and was therefore insufficient to show public acceptance of this street in Rye.

3) Prescription.

Under the legal doctrine of prescription, the public may acquire transit rights over private property by repeated passage over that property over a period of years. Class V roads can no longer be established by prescription. Only roads used by the public for 20 years prior to January 1, 1968, can be established as Class V highways by prescription. Public use must be open, continuous, and without the permission of the landowner, that is, it must be "adverse and hostile"2. Private and even public easements may still be established by prescription, as the January 1, 1968 requirement pertains only to Class V highways.

In Young v. Prendiville, the Superior Court ruled that plaintiffs did not prove adversity and hostility over a 20-year span, thereby rejecting their claims of a prescriptive easement.

The New Hampshire Supreme Court ruled in 1977 that use by the public of a road "looking for a place to swim" though "intermittent and of a slight volume," is sufficient to sustain a finding of establishment by prescription.3

Discontinuing Highways: RSA 231:43

Class IV, V, and VI highways may be discontinued only by vote of the town.4 Discontinuance occurs when an open highway is eliminated outright, or becomes subject to gates and bars, thus creating a Class VI road. In the latter instances, the right of way would continue as a public way.5

Appeal from discontinuance is to Superior Court (RSA 231:48) within 6 months.

In those instances where a highway was established by prescription, discontinuance requires consent of the Superior Court.6

2See Jean v. Arsenault, 85 NH 72 (1931); Williams v. Babcock, 116 NH 819 (1976); and Leo Foundation v. State of New Hampshire, 117 NH 209 (1977)

3See Leo Foundation v. State of New Hampshire, 117 NH 209
4See Marone vs. Hampton 123 NH 729 (1983)
5See Bancroft v. Canterbury, 118 NH 453 (1978)
6See Currier v. Davis, 68 NH 596 (1896)

Once a highway is established, it is presumed to exist until discontinued. Non-use or abandonment by the public for 20 years does not constitute discontinuance.[7]

One cannot acquire a private interest in a highway by adverse possession, as this doctrine may enhance public rights but may never be used against public ways.[8]

---

[7]See Davenhall v. Cameron, 116 NH 695 (1976)
[8]Ibid.

METHODOLOGY

A four-step methodology was selected to analyze beach access -- a review of town records to determine the existence of explicit rights-of-way, a review of past litigation on the matter, interviews with local residents, and a listing of alternative approaches the Town can take to improve beach access.

As has been noted, existing public rights of way have come about by one or more of the following:

1) By expressed grant
2) By reason of layout or dedication on a plan or map
3) By prescriptive use of the general public.

Additionally, private parties such as residents of a particular neighborhood may have acquired rights of passage through adverse use.

To date, litigation involving beach access in Rye has not produced any conclusive evidence relative to expressed grants simply because no comprehensive survey of public records had been undertaken since 1901.9 The first task was to conduct such a survey.

In order to determine conclusively the existence of (or the lack of) grants, layouts, dedications, discontinuances, and easements, the Town Clerk's and Selectmen's records were searched back to the 19th century as were the Planning Board records, Board of Adjustment records, Historical Society archives, tax records, and historical maps dated 1805, 1842, 1851, 1857, 1892, 1900, 1918 and 1938. The titles of the subject properties were also traced at the Rockingham County Registry of Deeds, noting any mention of public or private easements, while ignoring attachments, liens, or technical title defects. An invaluable by-product of this research was the compilation of a comprehensive listing (indexed and cross-referenced) of dedications and discontinuances townwide (see Attachments 9, 10, 11 and 12).

9L. B. Parson, History of Rye, Concord: Rumford Printing Co., 1905

As mentioned above, other means by which access rights are acquired include prescriptive use by the general public and/or adverse use by certain private parties. Prescriptive easements may be established by documented public use for a period of 20 years or longer prior to January 1, 1968, to establish highways, no deadline for lesser easements. In 1971-72 litigation involving access at the alphabet streets (Young v. Prendiville, 112 NH 190), the courts found the level of documentation of prescriptive and adverse use to be insufficient. With that in mind, a wide ranging series of interviews were conducted with present and former residents of the areas in question, documenting names, dates, and patterns of land use.

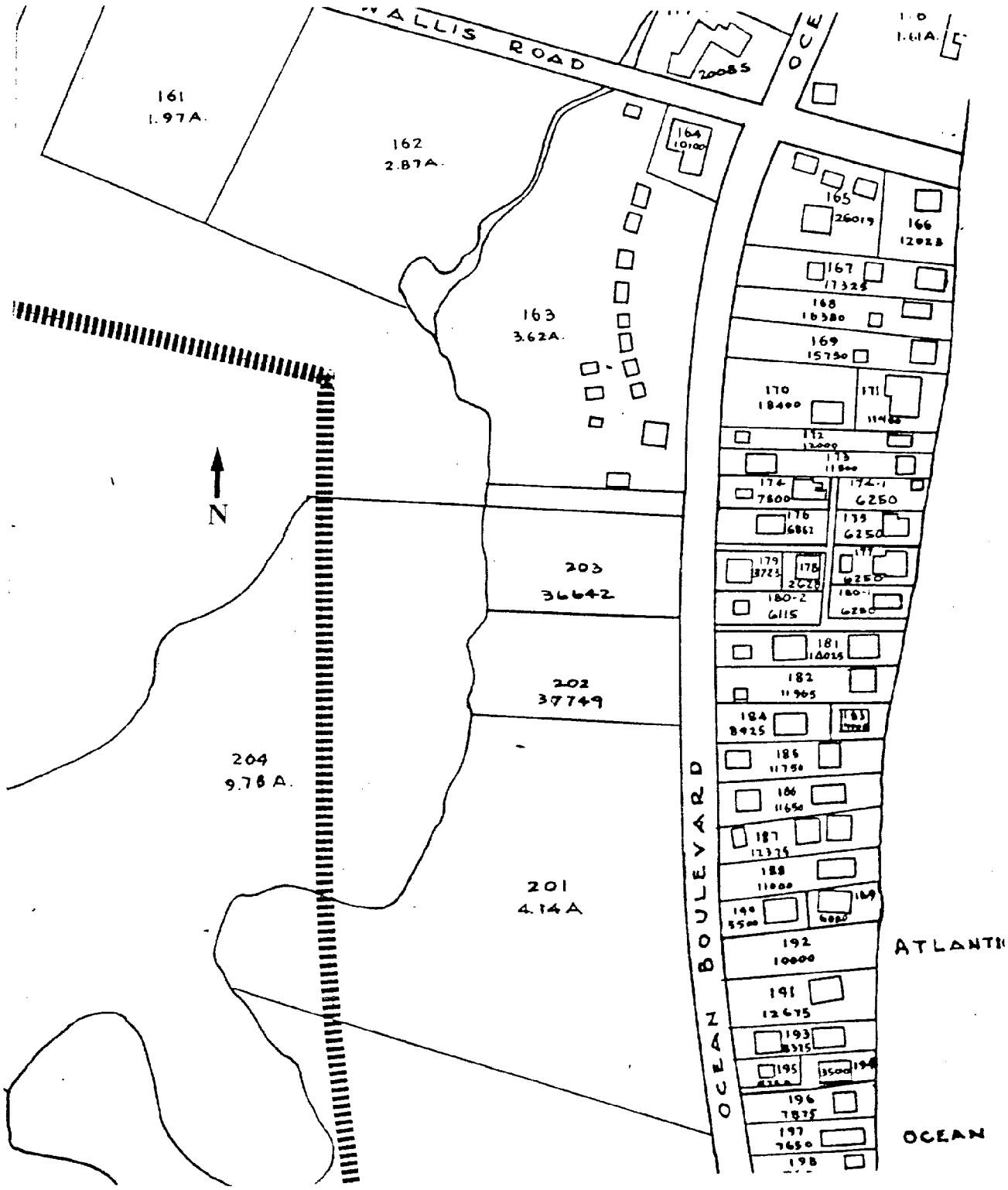
Finally, various alternatives available to the Town which may potentially enhance public access at the selected sites are described. All of the above was then reviewed by legal counsel.

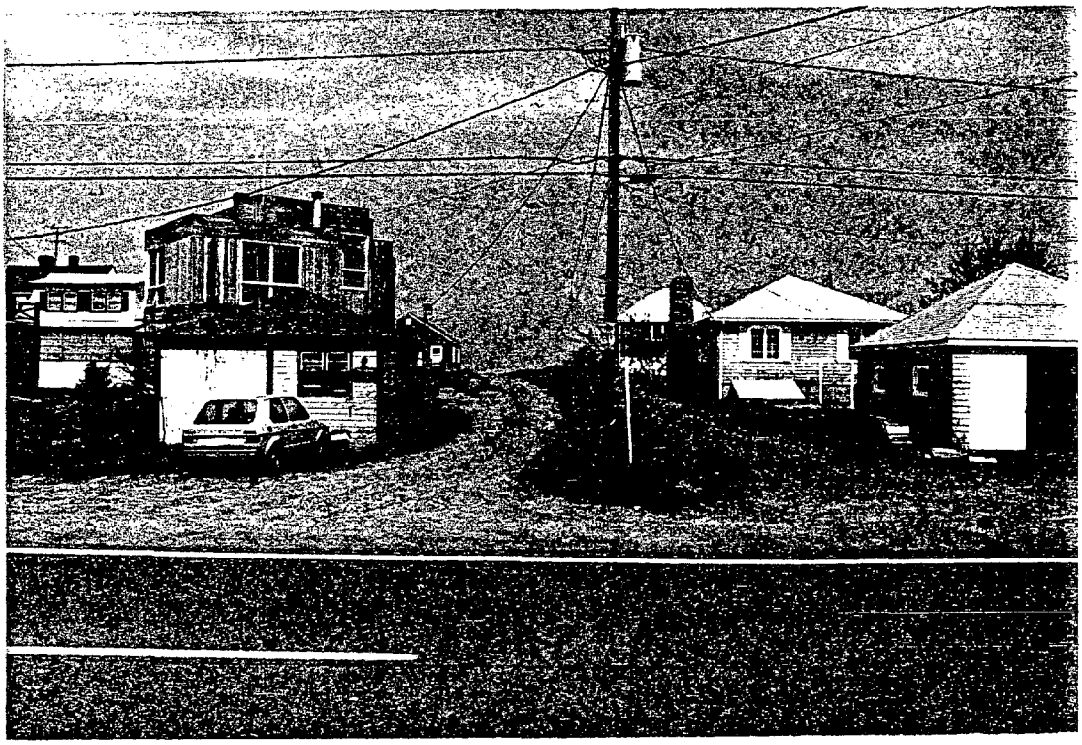
SITE A

Wallis Sands, 1256-1262 Ocean Boulevard

(12 buildings south of Pirate's Cove)

Plan 2



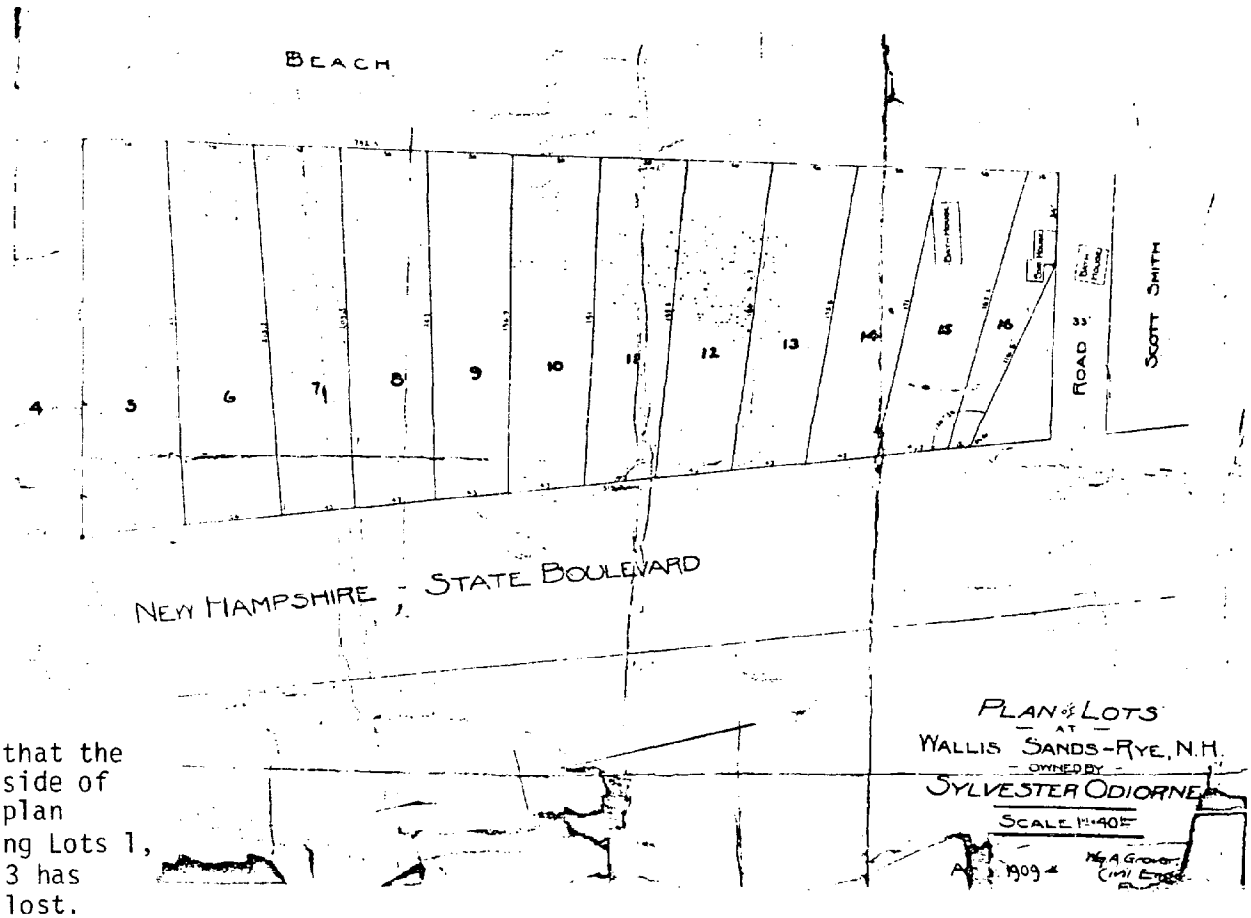


History: The telephone pole in the photograph above marks the approximate northern boundary of a large tract of land conveyed in 1881 from Trueman Odiorne to Sylvester Odiorne (Volume 486, page 40). The deed mentions "Marsh" and "sand hills" but makes no reference to buildings or rights-of-way. Wallis Sands had not yet been developed, nor was there apparently any access by road. This stretch of Ocean Boulevard was constructed in 1902.

In 1909, Sylvester Odiorne platted 16 lots between the boulevard and the beach, each lot being 50 feet wide on the beach side (see Plan 3 below, and Attachment 13). Three years later, Odiorne sold lots #1 and #2, the northerly two lots, to Frank Beebe (Vol. 667, page 222). The deed makes no mention of any easements.

In 1919, Beebe sold Lots #1 and #2 to Frances Stone (Vol. 734, page 56). Frances Stone sold the northerly of the two parcels, Lot #1, to Gertrude and Vivia Stone in 1923 (vol. 780, page 15). The Stones conveyed Lot #1 to Hazel Johnson in 1939 (Vol. 961, page 360), who in turn willed it to the present owners, Harlow and Rita Cole (see Attachment 14). None of these transactions made mention of any easements or passageways. Lot #1 is designated on the Rye Tax Map as Parcel #181 on Sheet #9.

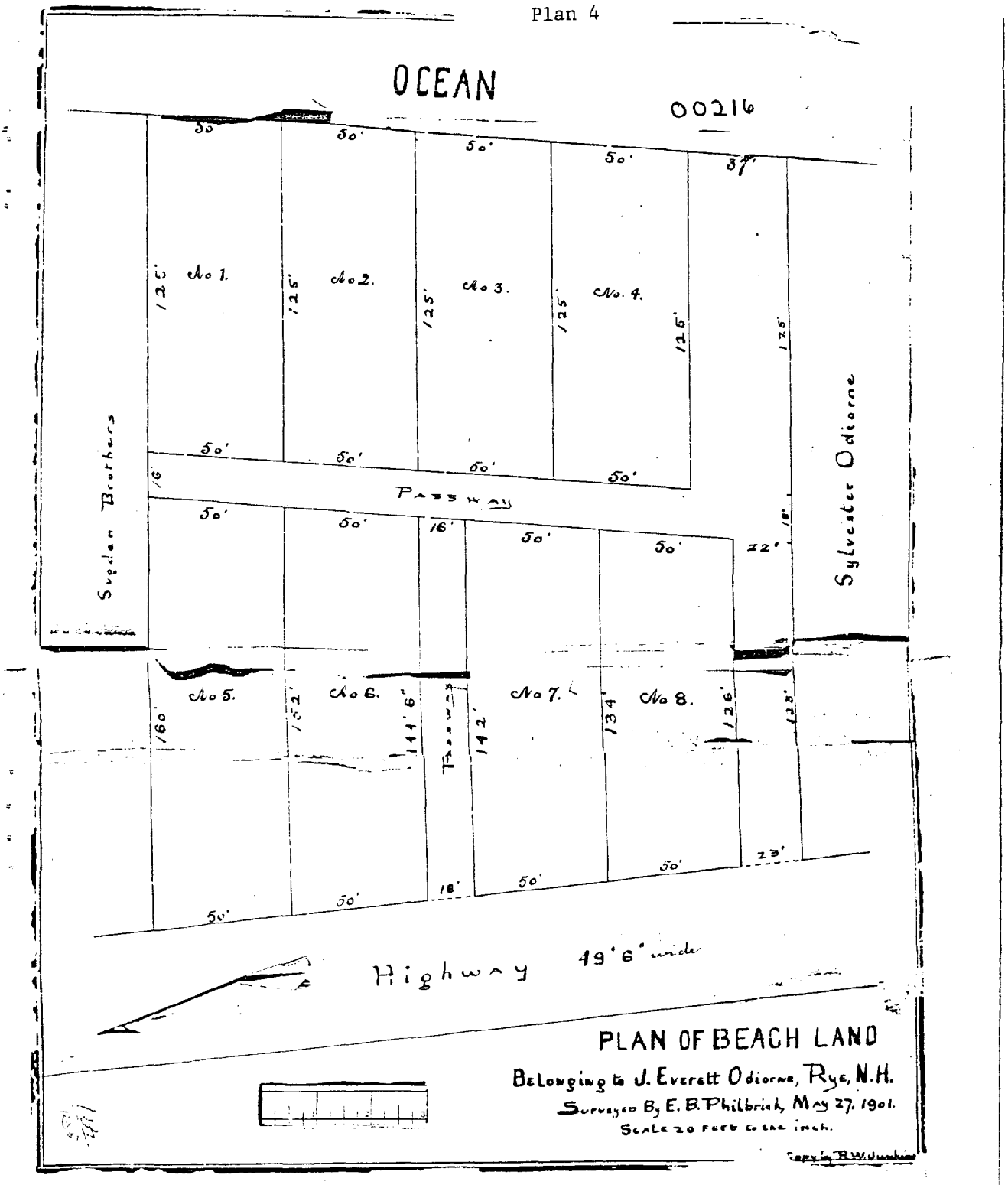
Plan 3



Note that the left side of this plan showing Lots 1, 2, & 3 has been lost.

Tax Map Parcels #180-1 and #180-2 originate with the Jonathan Everett Odiorne subdivision of 1901 (see Plan 4 below, and Attachment 15). This tract encompasses the present passageway.

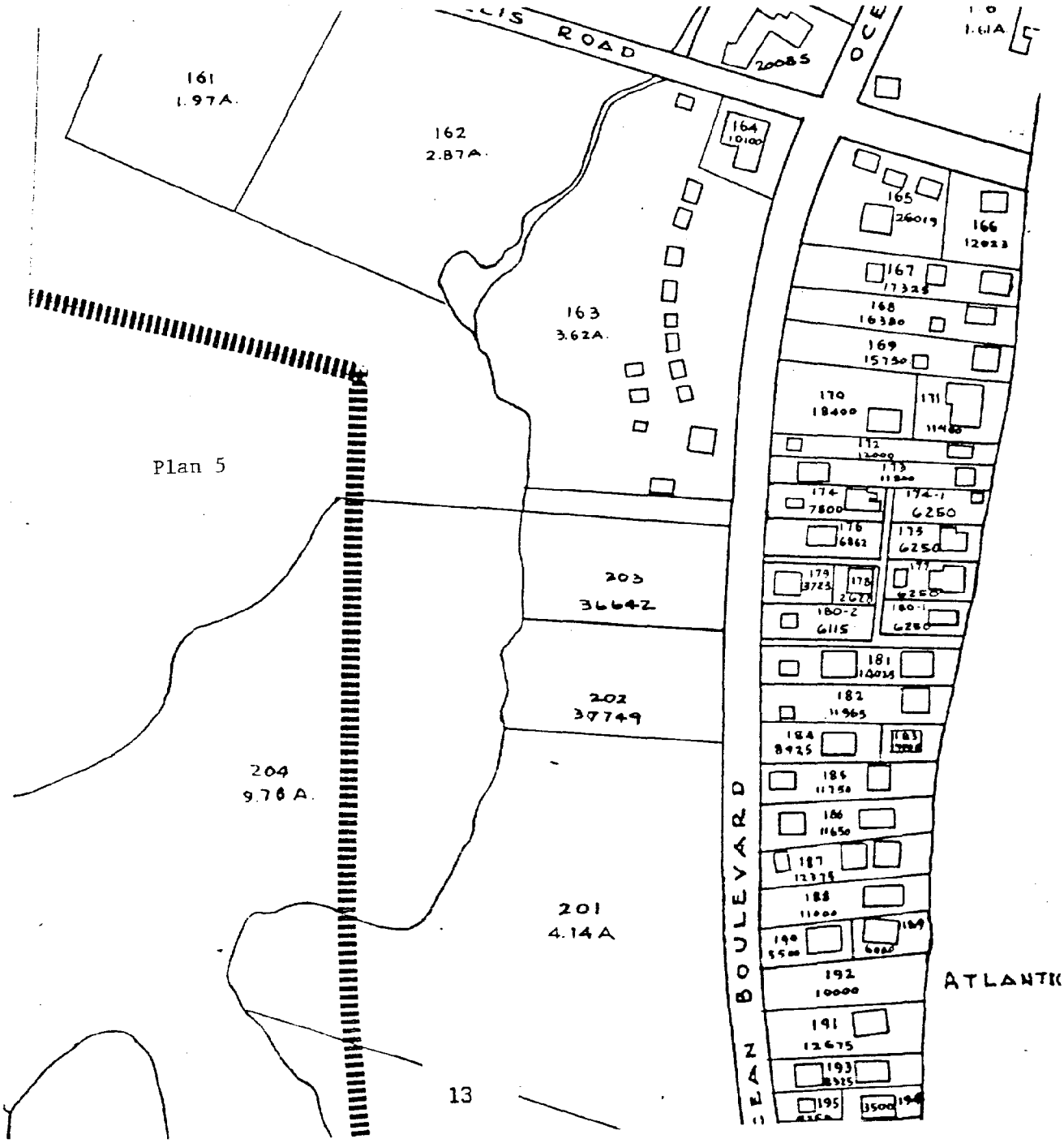
Plan 4



J. Everett Odiorne's Lot #4 corresponds with the present Tax Map Parcel #180-1, while Lot #8 corresponds with Tax Map Parcel #180-2. Note that Odiorne's plan indicates a 16 foot wide north/south "passway," and another running east/west whose width varies between 22 feet, 23 feet, and 37 feet.

J.E. Ordiorne sold Lots 4 and 8 in 1901 to Edward P. Kimball and William F. Thayer, who held both lots in common ownership (deed copy Attachment 16 and see Plan 5 below, Parcels #180-1 and 180-2). This deed also conveyed "the right to use the common passways designated on said (J.E. Ordiorne) plan." Additionally, "said grantees are given the right of way over said grantors' land from the highway to the Ocean, said right of way to be twelve feet wide and adjoining land of Sylvester Ordiorne."

The properties eventually passed to Thayer's daughter, Margaret Sulloway, and to Kimball's daugher-in-law, Maude B. Kimball. In 1926, they sold the property, along with the above mentioned rights to the passways and right of way to Arthur Dedes (Vol. 831, page 162. Note copy in Attachment 17).



Plan 5

Helen Michaud was the sole heir of Arthur Dedes. In 1950, she conveyed Lot #4 (1258 Ocean Boulevard) to the present owners, Paul & Gladys Little (Vol. 1162, page 25). Twenty years later, she conveyed Lot #8 (1256 Ocean Boulevard) to its present owner, Norman Michaud. Both deeds also convey all rights of passage set forth in the Sulloway to Dedes deed.

Interviews

(Conducted by Max Friedman, July 1984)

NAME	ADDRESS	YEARS IN HOME	USE OF RIGHTS OF WAY
Allan Parrish	Concord Point		No Answer
Jacob Abbott	Concord Point		No Answer
S. A. Drinkwater	Concord Point	37	Yes
Henry McFarland	Concord Point	28	Yes
John Morton	Concord Point		No Answer
Sarah Morton	Concord Point		No Answer
Norman Michaud	1256 Ocean Blvd.		No Answer
Gladys Little	1258 Ocean Blvd.		No Answer
O. Shuatte	1260 Ocean Blvd.		No Answer

Findings:

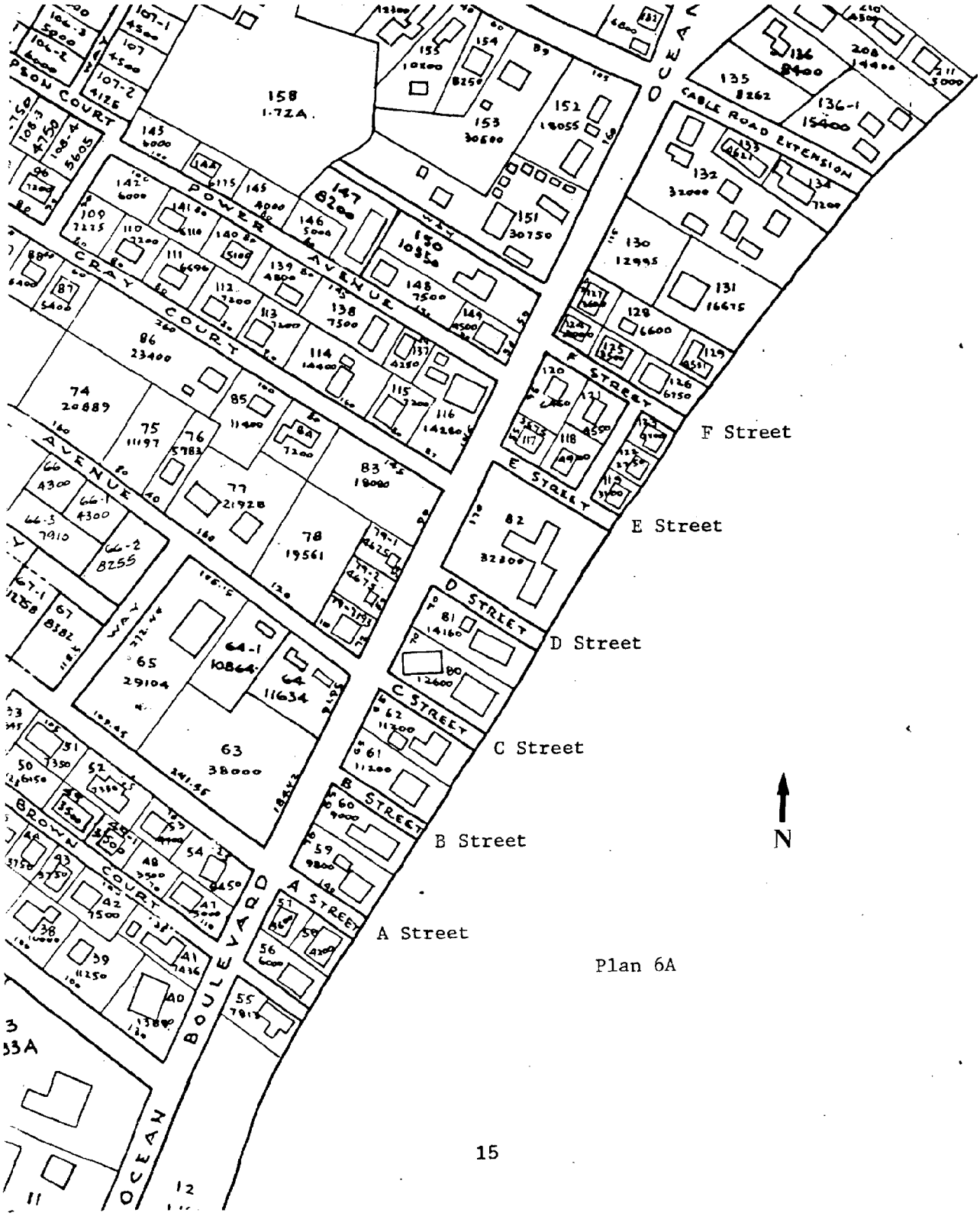
1) Research has unearthed no expressed grant of public rights of passage.

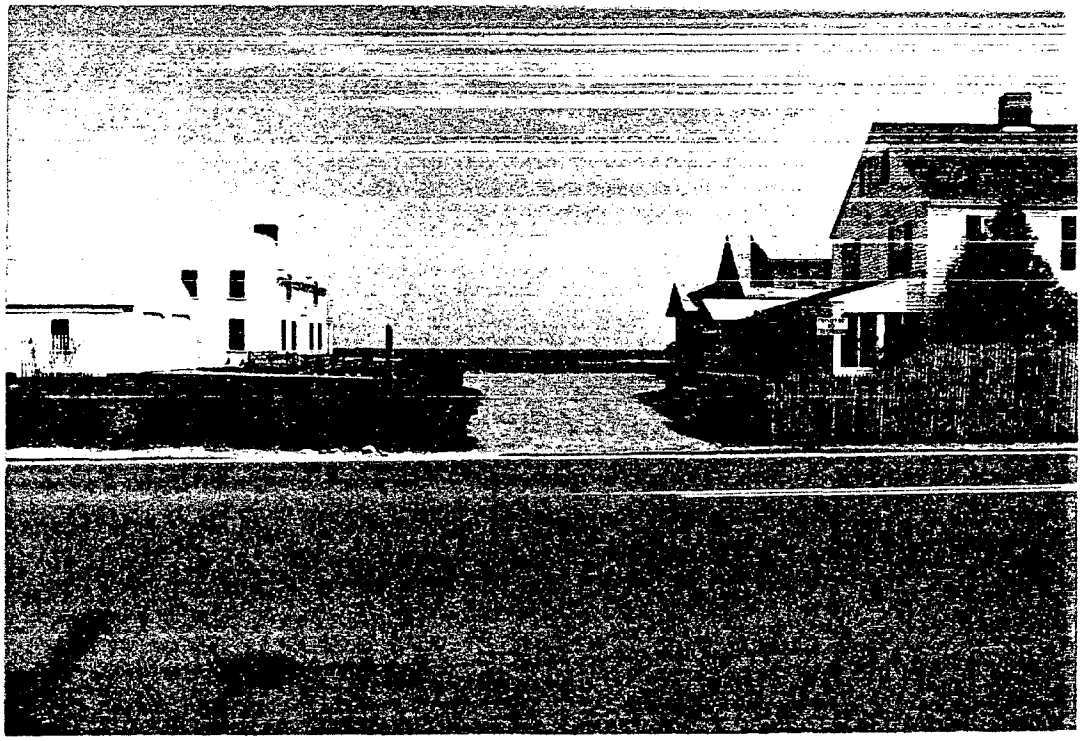
2) The 1901 J. E. Odiorne plan appears to indicate an implied easement by reasons of the platted passageway running 267 feet between Ocean Boulevard and the public beach.

3) Interviews with area residents suggest that a case may be made for public easement by prescription; however, the documentation to date is not overwhelming.

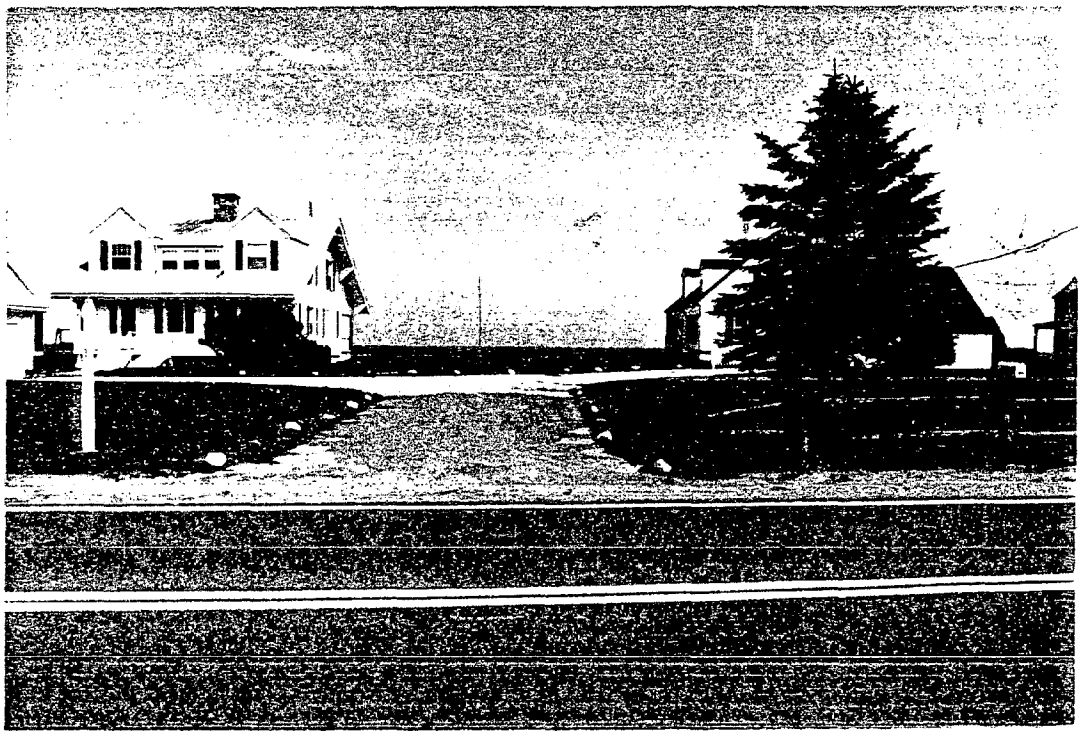
SITE B

Alphabet Streets at Jenness Beach

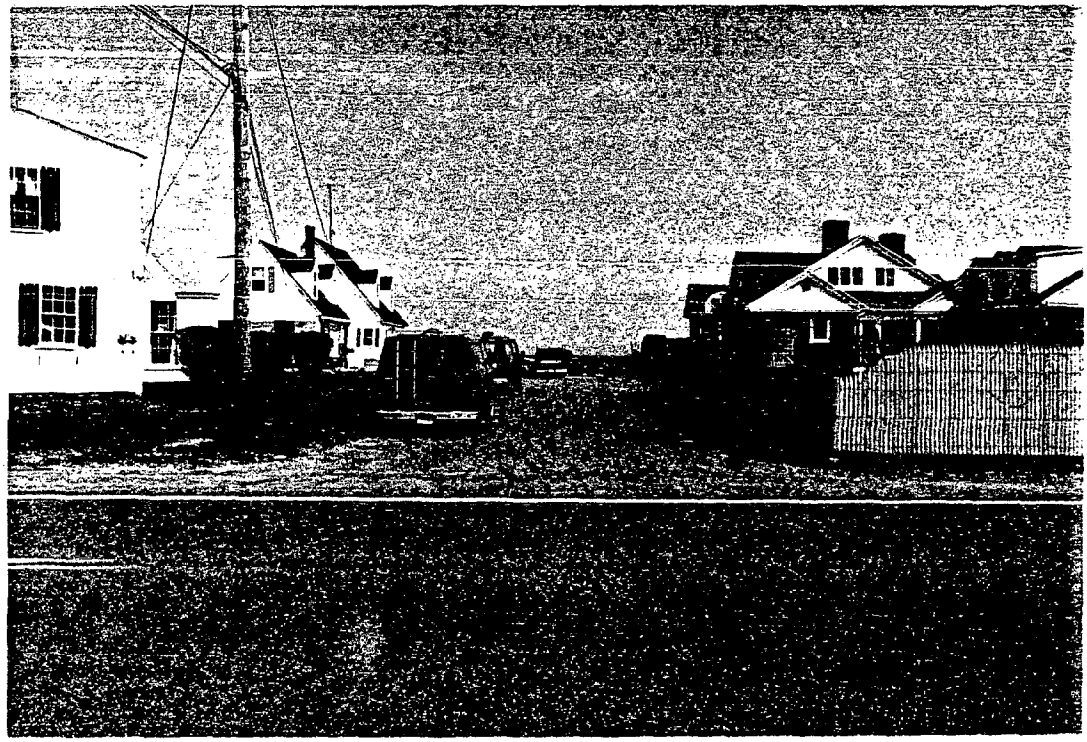




A Street



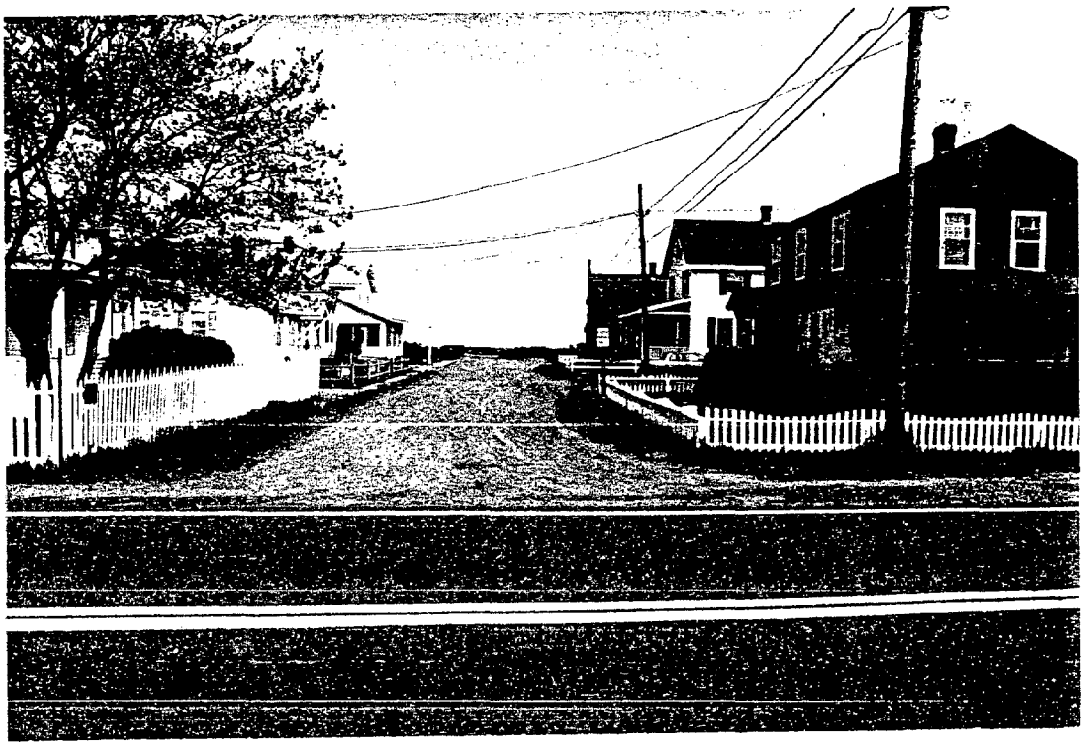
B Street



C Street

D Street

E Street

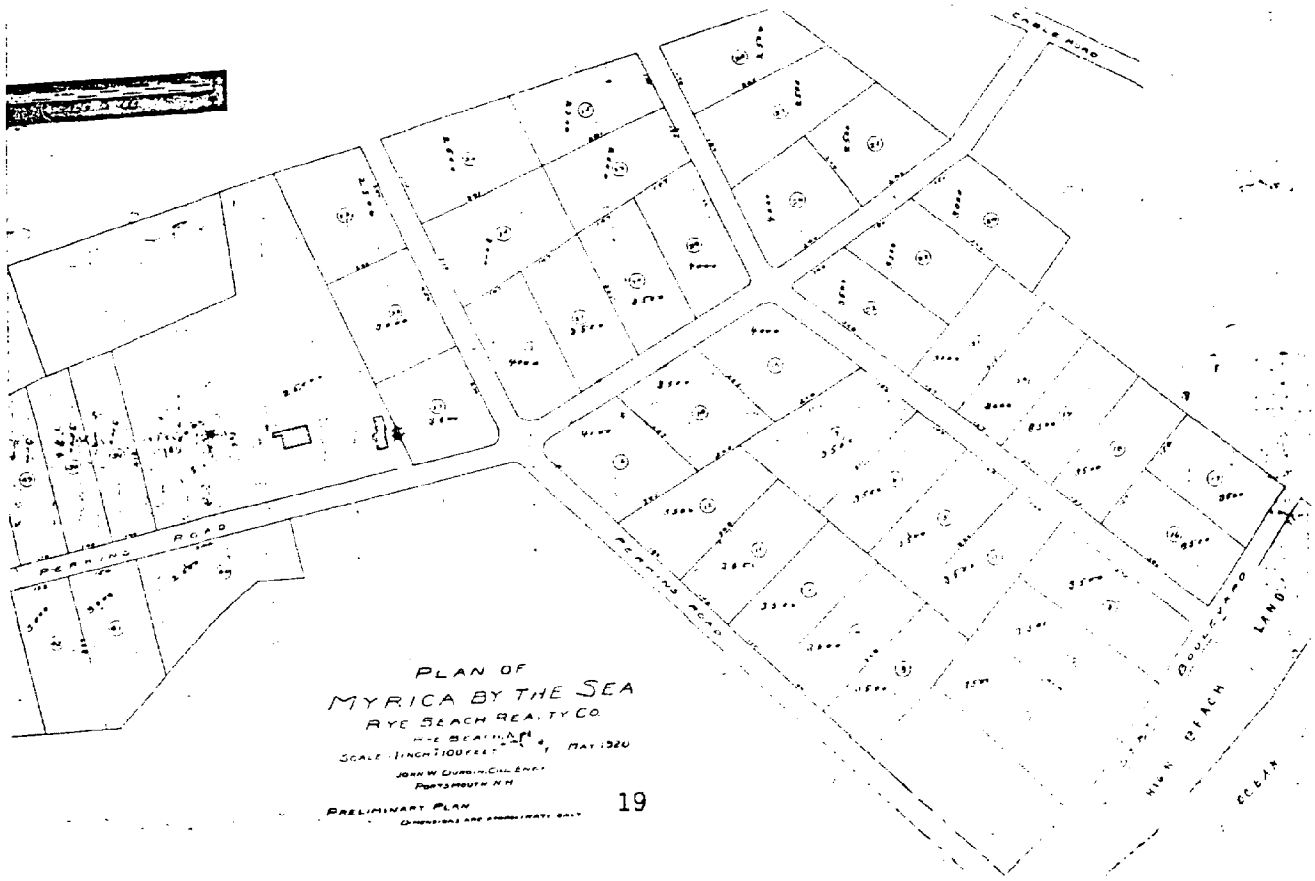


F Street

History: As recently as World War I, the Jenness Beach area was little more than a cow pasture. In 1919, Mathilda Kirkegaard of Bedford, Mass., acquired 72 acres of pasture land from James Perkins and John Brown (Vol. 739, Page 113, Attachment 20). This tract extended from Perkins Road north to approximately the present site of Philbrick's store, and was bounded on the east by the beach and on the west by Central Road. The ambitious development proposed for this tract was dubbed "Myrica-by-the-Sea."

Mathilda Kirkegaard was related to the Brown family of Bedford, Mass. Although taking different corporate names from time to time, this family oversaw the development of this 355-lot development throughout its history. Kirkegaard conveyed the premises in 1920 to the Rye Beach Realty Co., a family corporation (Vol. 739, Page 114, Attachment 21). A plan was drawn by John Durgin indicating 51 lots west of Ocean Boulevard, but nothing east of the Boulevard other than "High Beach Land." (See Plan 6B below and Attachment 22).

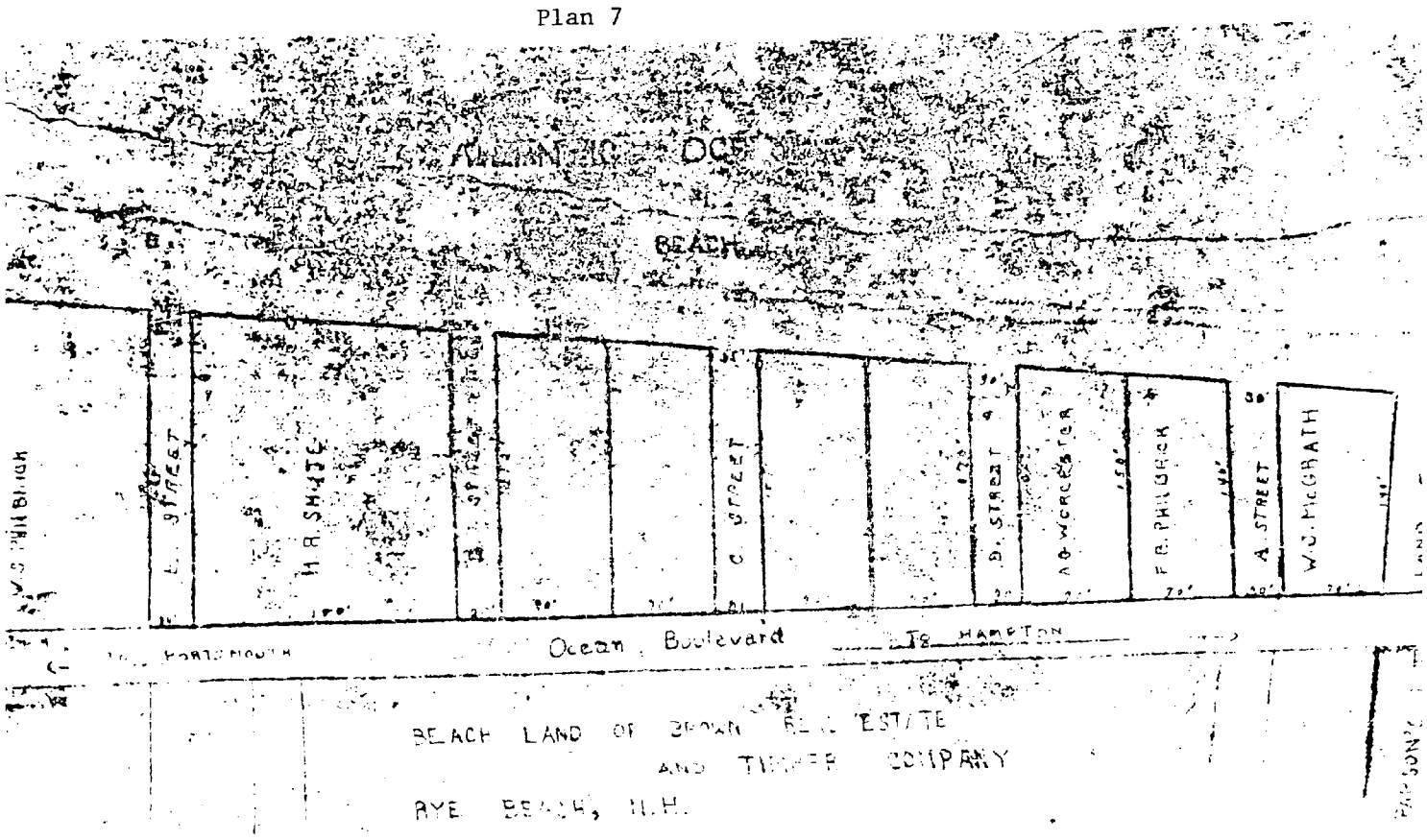
Plan 6B



In July 1921, Rye Beach Realty Co. conveyed the property to another family corporation, the Brown Real Estate and Timber Company (Vol. 757, Page 20). Over the course of the next six years, Brown Real Estate and Timber Company sold twenty lots, most of which were in fairly close proximity to the beach.

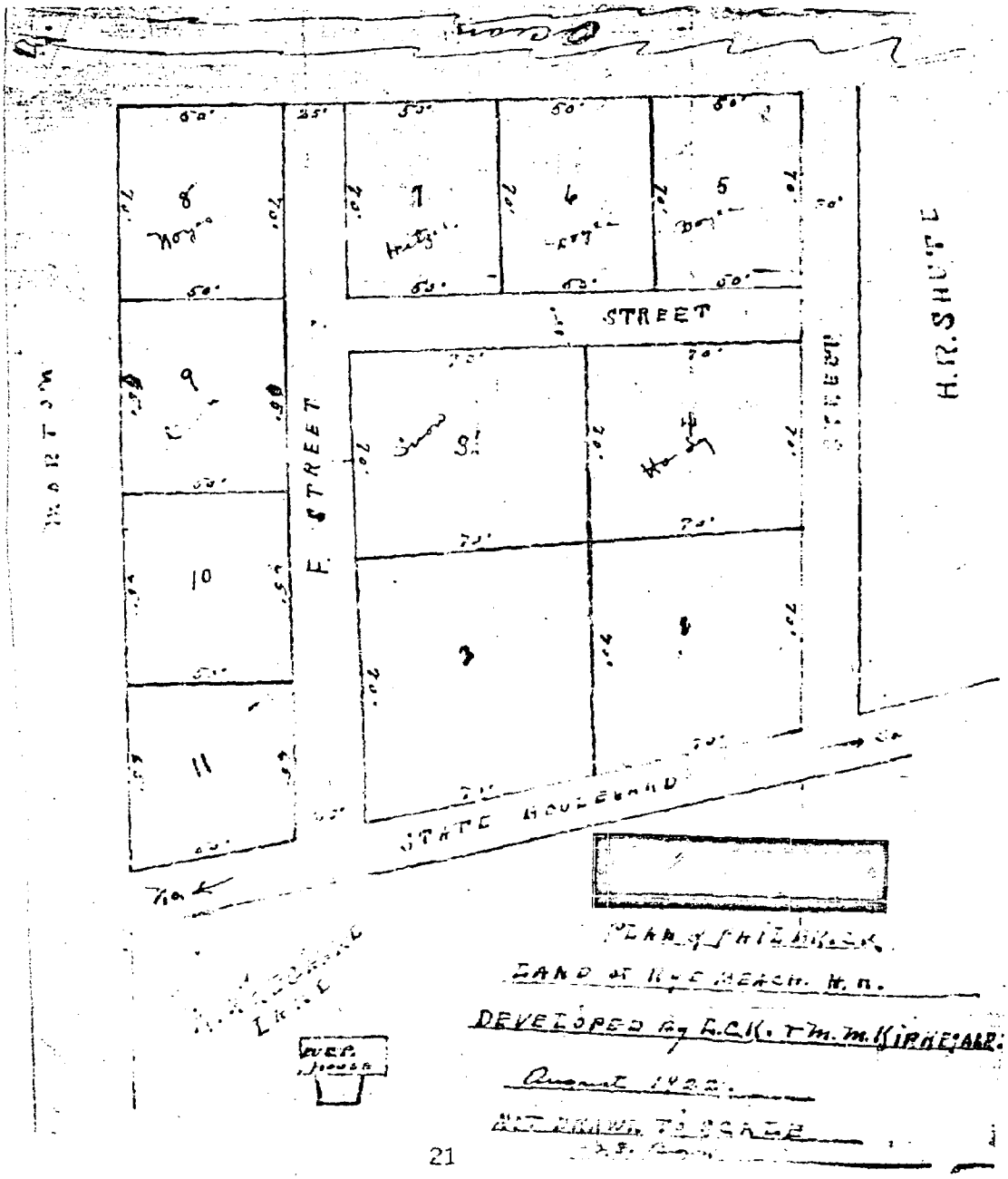
The next plan to be recorded at the Registry is entitled, "Beach Land of Brown Real Estate and Timber Company." (See Plan 7 and Attachment 23.) The plan clearly shows A Street through E Street. Although undated, comparing land sales with owners indicated on the plan dates this plan to the autumn of 1921.

Plan 7

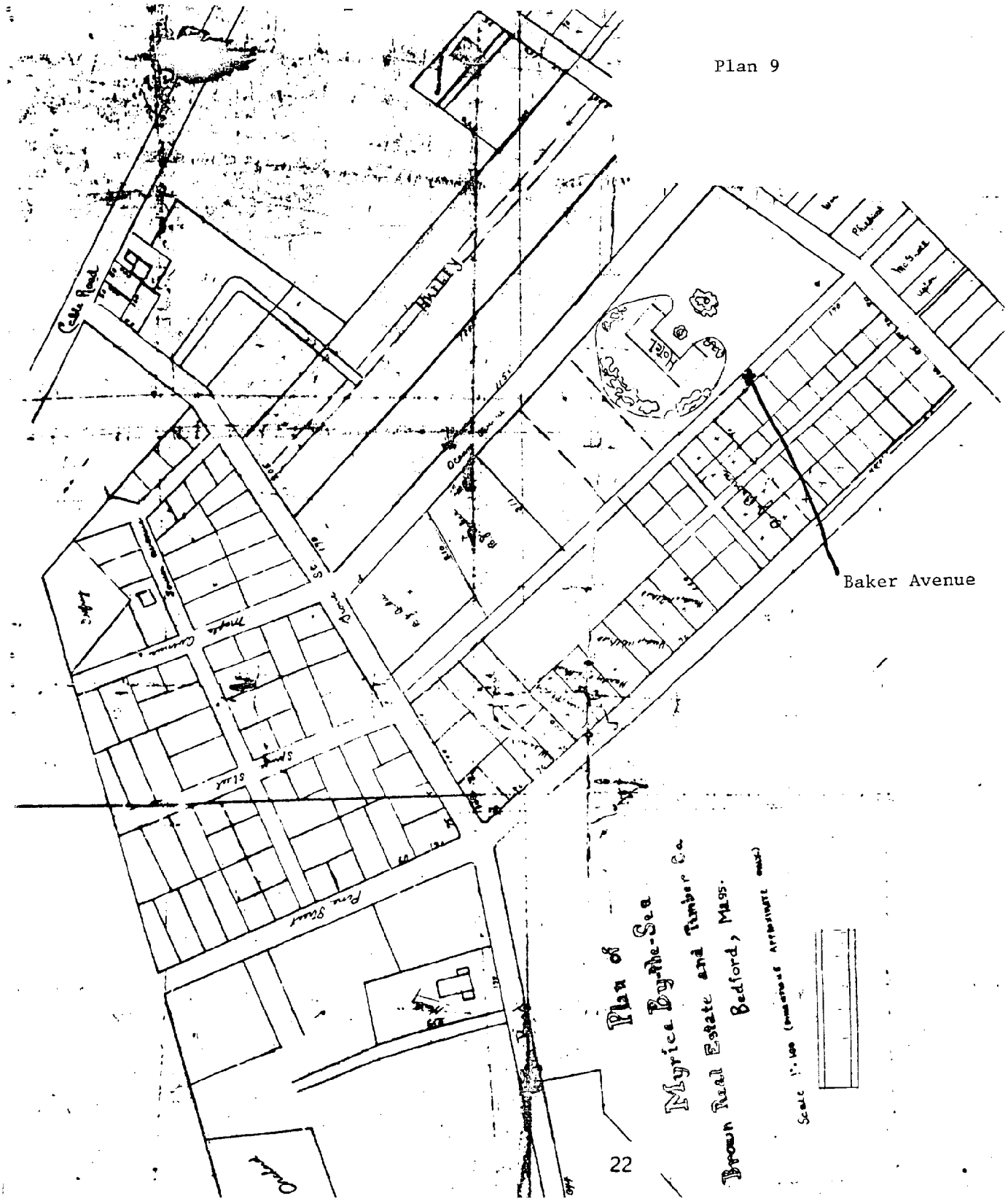


A "Plan of Philbrick Land...Developed by L.C.K. and T.M.M. Kirkegaard" was drawn in August of 1922 (see Plan 8 and Attachment 24). This plan indicates the E Street and F Street area close to its present configuration.

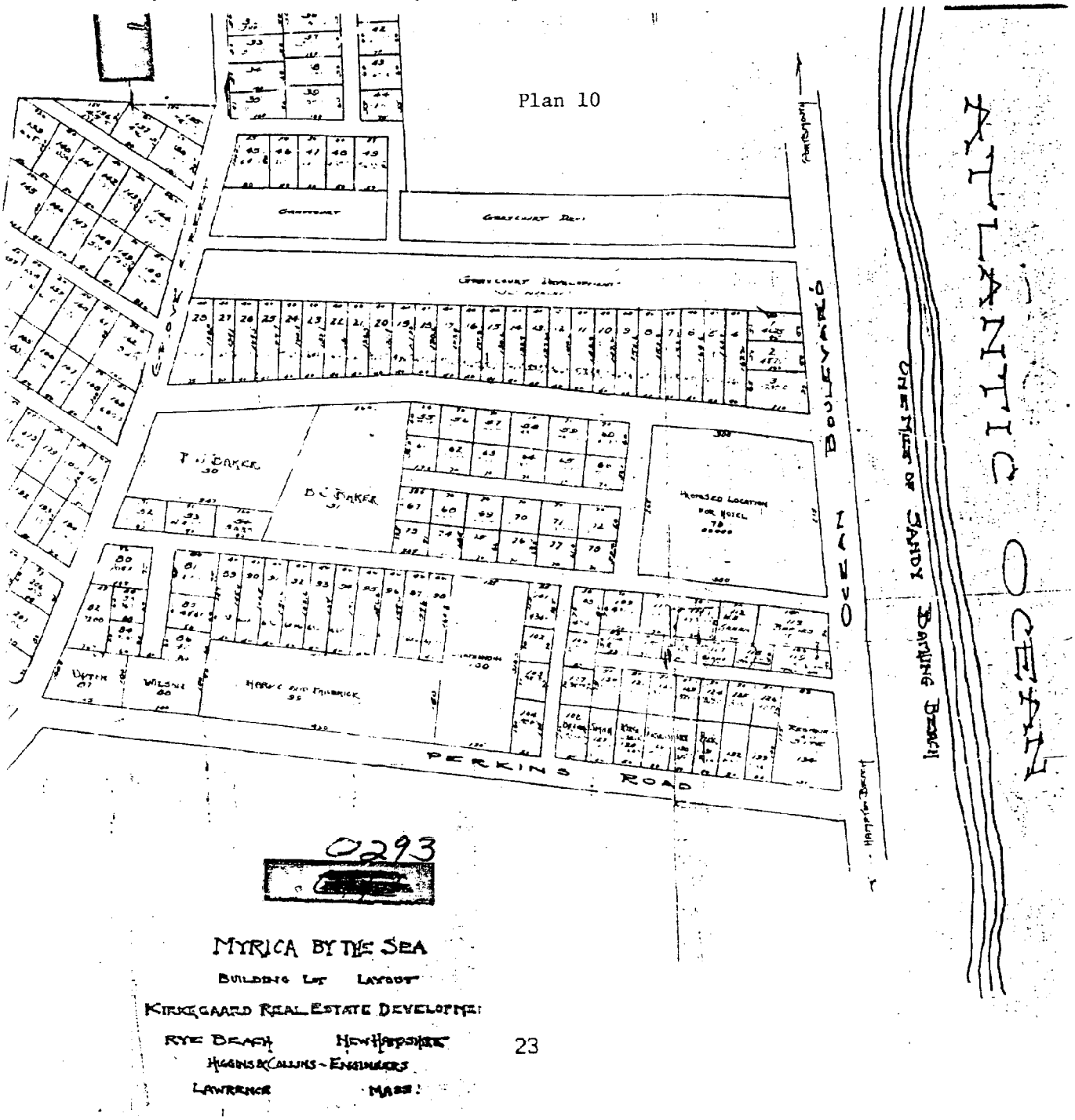
Plan 8



The Philbrick plan was soon followed by an undated. "Plan of Myrica-By-The-Sea," for the Brown Real Estate and Timber Company of Bedford, Mass. (See Plan 9 and Attachment 25.) Deed references to this plan appear as early as August 1924. A comparison of lot sales to the plan dates the plan to January 1923 at the earliest. Note the proposed landscaped hotel where the yellow stucco apartment building now stands. Also note that "A" Street is clearly intended as a continuation of Baker Avenue.

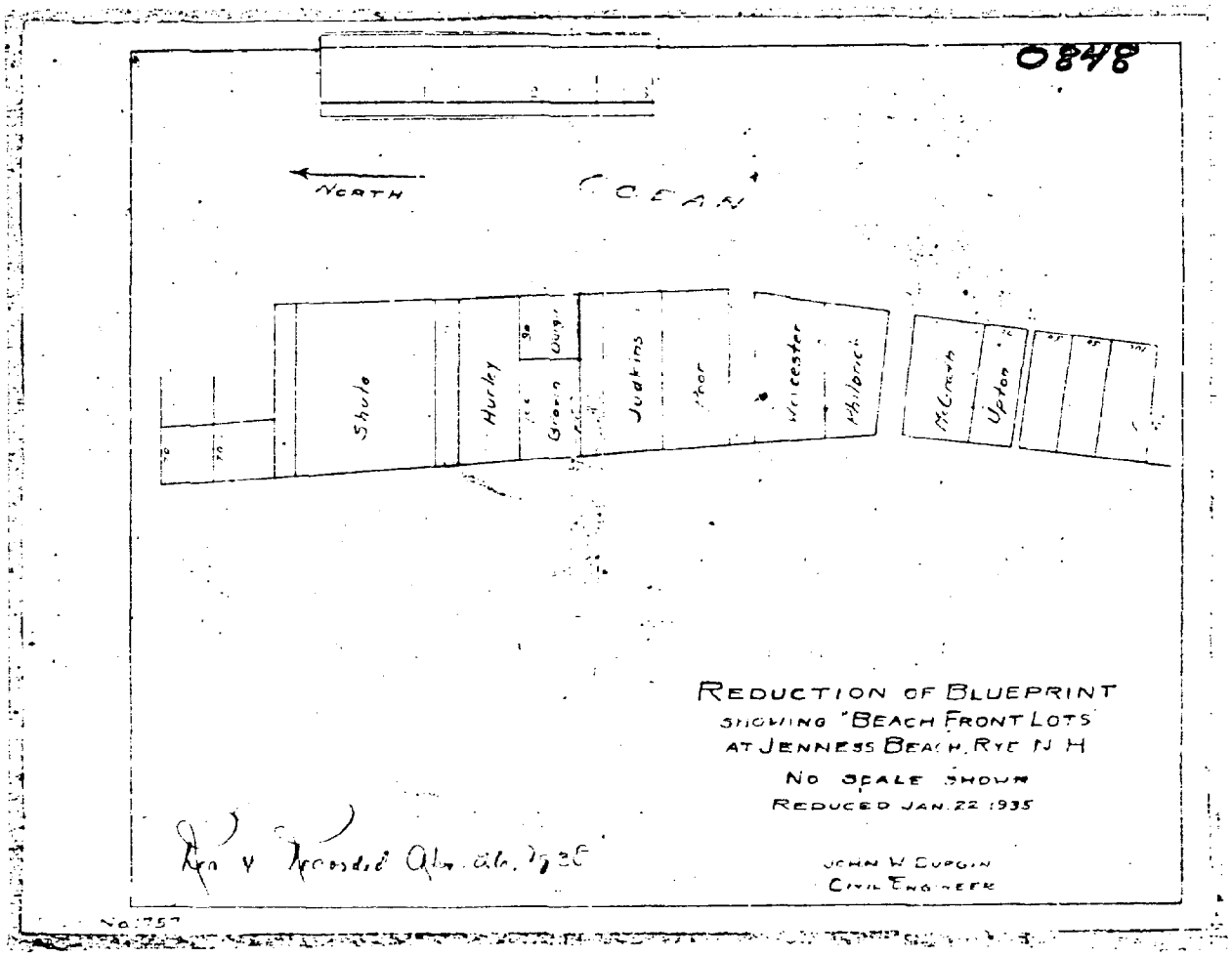


Sometime between 1924 and 1927, the developers began refering to themselves as "Kirkegaard Real Estate Development." The 355-lot Myrica-By-The-Sea plan drawn by Higgin & Collins (portion shown below) was recorded at the Registry in 1926 (see Plan 10 and Attachment 26). For the properties west of Ocean Boulevard, this plan is the basis for nearly all the subsequent deeds as well as the present street configuration. Note that land east of the Boulevard is indicated only as "One Mile of Sandy Bathing Beach."



The only remaining plan of the Alphabet Streets that was recorded at the Registry is entitled, "Beach Front Lots," by John W. Durgin (see Plan 11). The plan indicates that it was "Reduced Jan. 22, 1935," but does not reveal the date of its drawing. Though not labelled as such, A through E Streets are clearly indicated. The lot owners correspond with those of the mid-1920's.

Plan 11



Two additional streets to the beach, "G Street" and "H Street," were reportedly platted between F Street and Cable Road; however, these alleged streets were not located on any plans at the Registry or Town Hall.

Access to the beach via the alphabet streets have long been a bone of contention among area residents, particularly during the last two decades. As shown on the accompanying photographs, abutting property owners have converted much of A, B, C, and D Streets into lawns. Privately constructed seawalls have effectively blocked public access to the beach. In 1964, A Street abutters went so far as to hire an off-duty policeman to prohibit beachgoers from using the street. Angry confrontations ensued.

In 1969, Kirkegaard's heir, Louise K. Brown, offered to deed the alphabet streets to the Town in order to insure public access. Her written offer read as follows:

> May 24, 1969
>
> Dear Mrs. Valkmann,
>
> There are, indeed, rights of way to the beach. They appear on the recorded plan of Rye Beach. As you perhaps know, my mother and father, Mr. & Mrs. John Kirkegaard, and my husband, John F. Brown, owned all the land on both sides of the Boulevard, from Cable Road to Perkins Road, running north to "the sheep pasture" beyond Great Rock Road. Also, from a point opposite entrance to Perkins Road. The first property sold was on the Beach, therefore they reserved access roads to the Beach <u>for the use of those who would have cottages on the north side of the Boulevard</u>.
>
> I will be glad to help you in any way I can. If the Town of Rye will make up deeds of these roads from me to the Town, I will be delighted to give the land to them. It will be pleasant to have the matter settled once and for all. The Town's counsel can find the roads on the map they have on file.
>
> Yours very truly,
>
> Louise K. Brown

In response to Mrs. Brown's offer, a Warrant Article was presented to the 1970 Town Meeting accepting Brown's dedication and appropriating $200 to prepare the deeds. The article was tabled 134-113 on motion of Attorney Douglas Gray.

Alphabet Streets from Beach

Early in 1971, thirty-one residents of Myrica-by-the-Sea west of the Boulevard brought suit against John Prendiville, a C Street abutter, for blocking public access. The Superior Court ruled in favor of Prendiville. The court found no evidence of an expressed grant or implied easements. Inexplicably, the Master ruled the 1926 "One Mile of Sandy Bathing Beach" as the only relevant plan by reason of its basis for deed references. He also ruled that plaintiffs did not produce sufficient evidence to demonstrate prescriptive easements by the public, or adverse possession by neighbors. The decision was upheld the following year by the New Hampshire Supreme Court. (See Attachments 27 and 28.)

Extensive research by the plaintiffs' attorney in the Young/Prendiville case revealed only one lot on the westerly side of the Boulevard whose deed grants the owner a right of way on the easterly side.[10]

In the wake of the adverse ruling by Superior Court, an article was presented at the 1971 Town Meeting instructing the Selectmen "to proceed by eminent domain to acquire title to A, B, C, D, E, and F Streets." The article was laid to rest without a vote when Acting Town Counsel Lindsey Brigham ruled that "the law laid out the proper procedures (for eminent domain) and that this was not it."[11]

10Lot #119 on the 1926 plan; Parcel 47, Sheet 18 on the Tax Map.
11Town Clerk's records of the 1971 Town Meeting.

The following year, an article to raise funds for the acquisition of the alphabet streets failed by a 109-76 vote. Finally in 1973, six different Warrant Articles submitted by Maynard Young, each one proposing the acquisition of an individual alphabet street, passed Town Meeting. This action eventually resulted in the Town's acquisition of one of the alphabet streets, E Street, in the summer of 1973.

In 1974, twenty-eight residents petitioned the Selectmen to lay out a 20-foot wide Class VI Town Road on C Street (note Attachments 41, 42, 43 and 44). Following a Public Hearing in August of that year, the petitioners were denied by the Selectmen on a 2 to 1 vote for the following stated reasons:

> "The Selectmen find no occasion for the layout of a highway in accordance with the petition. After due consideration of the public exigency and convenience, the rights of the affected owners and the necessary expense to the entire town, the Selectmen find that any public good which might arise from the layout of the highway would be limited to a small area of town and the general convenience to the entire town would be minimal at best. It further appears that the cost to the town as a whole which would be incurred by reason of the layout of a highway in the area stated in the petition, would far outweight any benefit which may accrue to the town as a whole should the highway be laid out.
>
> There has not been demonstrated a genuine overall public need for such a highway as petitioned."

Interviews

(Conducted by Max Friendman, July 1984)

NAME	ADDRESS	YEARS IN HOME	USE OF RIGHTS OF WAY
Peter Dahlen	6 Big Rock Road	24	Yes
Randall Crapo	8 Big Rock Road		Not at home
Leon Valley	11 Big Rock Road		Not at home
Gary Nelson	16 Big Rock Road		No Answer
John Squires	31 Big Rock Road	5	Yes
Norman Currier	35 Big Rock Road		No Answer
Rev. George Kilcoyne	45 Big Rock Road		Deceased
R. McNamara	55 Big Rock Road		No Answer
Earl Amazeen	63 Big Rock Road		No Answer
Mark Buckley	63 Big Rock Road		No Answer
Richard Healey	2135 Ocean Blvd.	9	Yes
Eugene Dineen	2136 Ocean Blvd.		No Answer
Robert Poulin	2165 Ocean Blvd.	7	Yes
Geo. Davis	2161 Ocean Blvd.		No Answer

(Interviews continued)

NAME	ADDRESS	YEARS IN HOME	USE OF RIGHTS OF WAY
Richard Gray	2170 Ocean Blvd.		No Answer
Francis Larkin	2170 Ocean Blvd.		No Answer
Malcolm McGregor	2170 Ocean Blvd.		No Answer
George Ryan	2170 Ocean Blvd.		No Answer
Howard Wiley	2170 Ocean Blvd.		No Answer
G. L. Costello	2229 Ocean Blvd.		No Answer
Christos Papoutsy	2234 Ocean Blvd.		No Answer
Richard McInnis	2227 Ocean Blvd.	4	Yes
Tim Terragni	2227 Ocean Blvd.		No Answer
H. D. Kenny	2225 Ocean Blvd.		No Answer
Dan Sullivan	2220 Ocean Blvd.	40	Yes
Ronald Chouinard	4 Gray Court		Deceased
John Randall	4 Gray Court		No Answer
Small World Gift	4 Gray Court		No Answer
Roland Berthel	5 Gray Court	13	Yes
M. Powers	9 Gray Court	60	Yes
Eric Johnson	17 Gray Court	42	Unable to get out
Joseph Kennedy	21 Gray Court	10	Yes
Peter McCue	22 Gray Court		No Answer
Malcolm Flanders	25 Gray Court	2	Yes
D. J. Sullivan	32 Gray Court		No Answer
George Pearson	36 Gray Court		No Answer
John Develange	37 Gray Court	19	Yes
Martin McLaughlin	38 Gray Court		No Answer
David Poliks	39 Gray Court		No Answer
Edward Hogg	40 Gray Court		No Answer
John Lewis, Jr.	44 Gray Court		No Answer
Bernard Niedziela	6 Adler	5	Yes
Peter Carey	8 Adler		Not at home
Robert O'Malley	11 Adler		Phone disconnected
Thomas Thornton	12 Baker Ave.		Not at home
Robert Mara	14 Baker Ave.		Not at home
William Ryan	14 Baker Ave.		Not at home
M. J. Trant	18 Baker Ave.		Not at home
Karl Kristenson	23 Baker Ave.	10	Yes
Robert Wason	29 Baker Ave.		Not at home
Warren Dearden	32 Baker Ave.	19	Yes
Calvin Metcalf	35 Baker Ave.		Not at home
Ric Demarais	41 Baker Ave.		Not at home
S. Thomas	54 Baker Ave.		Not at home
Joseph King	55 Baker Ave.		Not at home
Tom Waechter	62 Baker Ave.		Not at home
V. A. Morrill	80 Baker Ave.		Not at home
Robert Dudley	80 Baker Ave.		Not at home

Present Status: E Street was deeded to the Town in 1973. The fate of F Street has not been determined, but public access does not appear restricted as evidenced by photographs and interviews with area residents. There is no trace of G or H Streets. An underground fuel tank reportedly lies beneath D Street. As mentioned above, access along A, B, C, and D Streets remains blocked, though no taxes have been assessed on these 30' wide lawns.

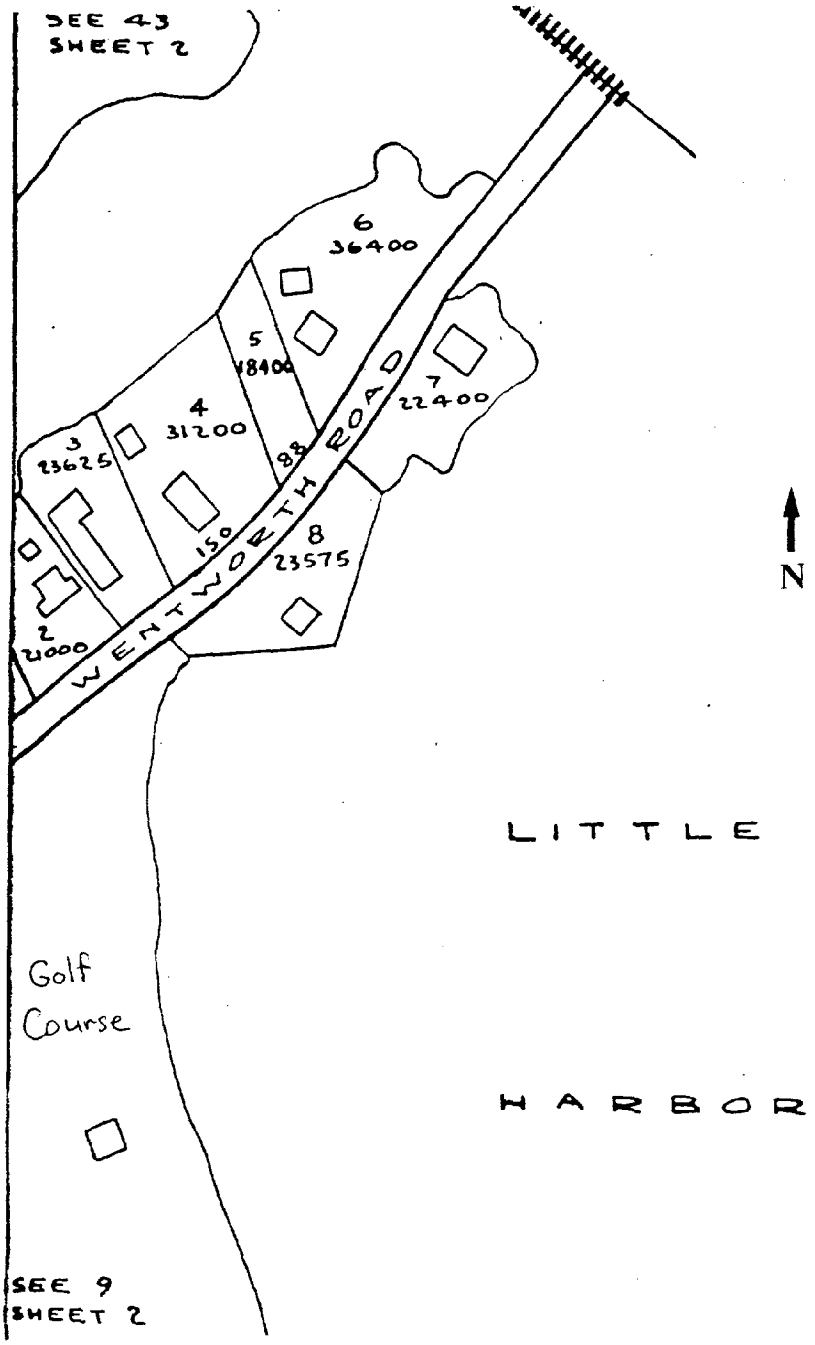
Findings:

1) No expressed grants relative to the alphabet streets have been located.

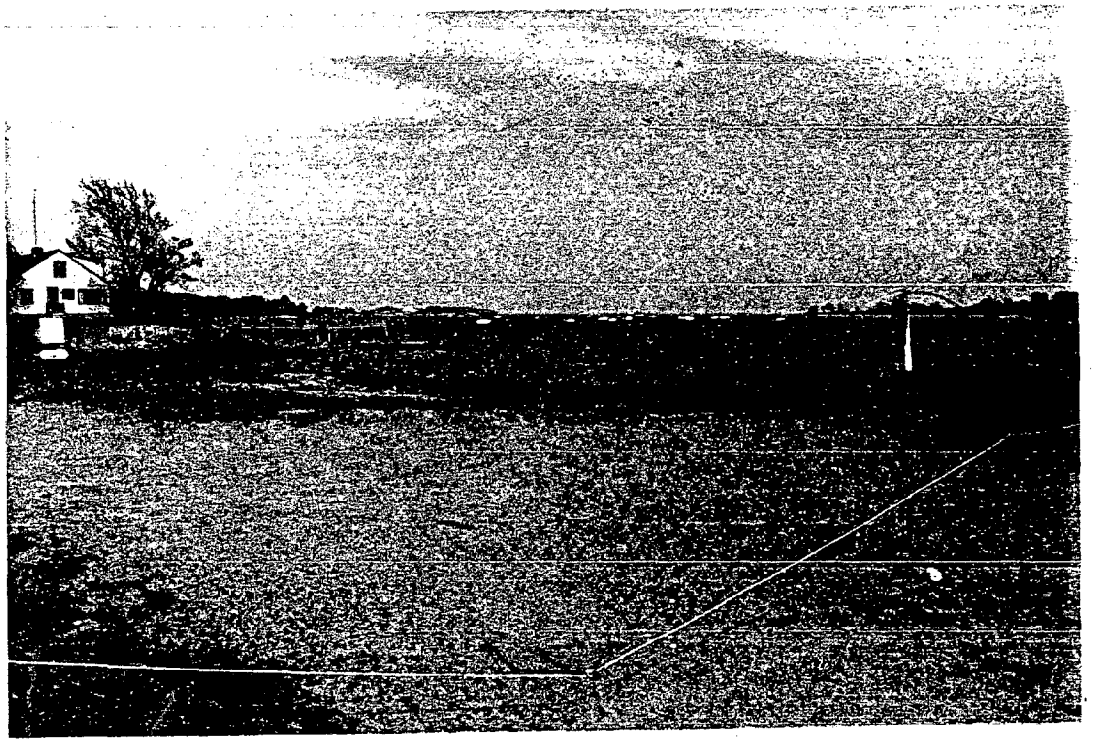
2) Regarding dedications of land for streets, the court's exclusion of plans other than the 1926 plan is questioned. A careful reading of RSA 231:51 (dedications) certainly suggests that some of the beach front plans cited above have more bearing on the matter than the court acknowledged. Perhaps the court was not appraised of the development's full history.

3) Based on court records and our extensive interviews with area residents, we believe a good case could be made on A, B, & D Streets for prescriptive public easements and adverse possession by area residents. In that C Street has already been litigated, it appears unlikely that the court would hear a similar case absent dramatic new evidence. *

SITE C
Little Harbor by Wentworth Road and Golf Course



Looking southerly from disputed access site along shore of Little Harbor.



Looking southeasterly from Wentworth Road across disputed access site.

Looking southeasterly across disputed access site.

History: The access site in question lies at the junction of the Wentworth Golf Course and Waldron's lot, which is designated as Parcel #8 on Tax Sheet #1. The site's lack of vegetative cover sets it clearly apart from the golf course (note photo above).

The present Wentworth Road, along with a bridge to New Castle, was built in 1874. Prior to that time, travelers to New Castle followed the ancient Ferry Road which traversed the present-day golf course, originating at Pioneer Road, and leading to a ferry landing near the present bridge.

The land in question was conveyed in October 1873 from Jedediah Rand to Charles Odiorne (Vol. 442, Page 404). This 4 1/2 acre tract was bounded on the north by the "New Castle Bridge Company" (Wentworth Road), on the east by Little Harbor, and on the west by the old Ferry Road (see Attachment 29). The deed made no mention of easements or other rights.

Seven years later, Charles Odiorne conveyed this tract (now referred to as 5 1/2 acres) to Samuel Odiorne, "together with the beach and water privileges thereunto belonging." (Vol. 476, Page 412. See Attachment 30). We can only speculate as to where these "privileges" originated.

In 1889, Samuel Odiorne subdivided this tract, and conveyed the present Waldron and Smith lots (Parcels #8 and #7 on Tax Sheet #1) to Lucy Richardson of Boston (Vol. 517, Page 275. See Attachment 31). After describing the perimeter of the conveyed parcel, the deed reads as follows:

> "...intending to convey all the land and water rights and privileges not belonging to the public which lies on the southerly side of the following described line, to wit: Beginning at the southerly sideline of said (Wentworth) road at Little Harbor River where it runs under said bridge and following said southerly sideline of said road westerly to the stone steps opposite (across the road from) land of Charles B. Odiorne, which lead from said road down over the bank towards the beach, the distance measuring from the westerly end of said bridge to said steps being about 500'..."

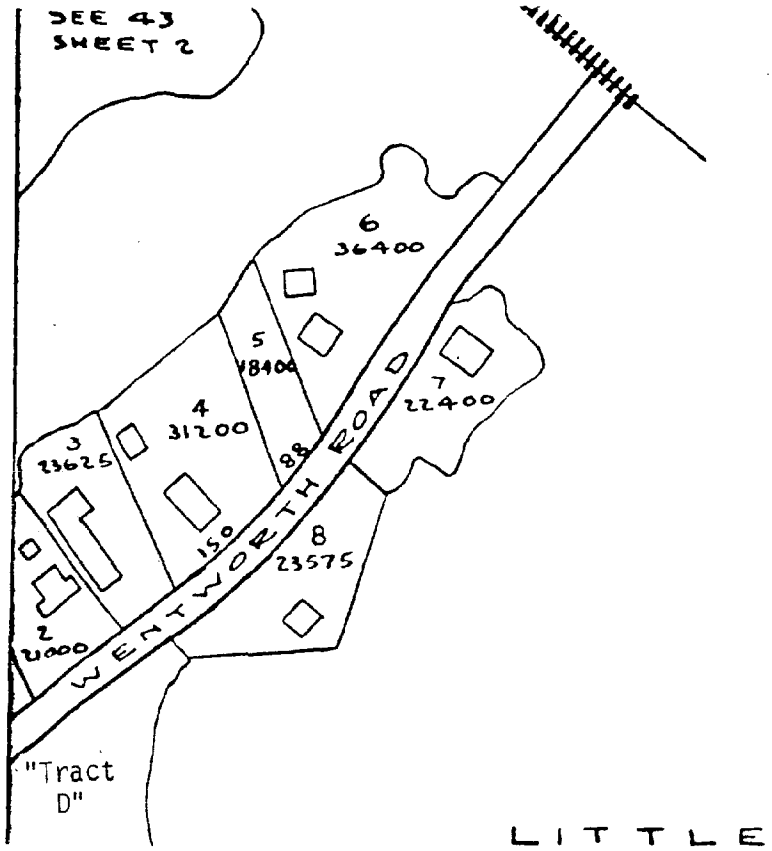
The stone steps are long gone, but they would mark the boundary between the Waldron lot (Parcel #8) and the golf course. Who built the stone steps and for whom they were intended remains unknown. As to the referenced "water rights and privileges," again we can only speculate.

Samuel Odiorne deeded the remainder of this parcel (presently the northeast corner of the golf course) to the Wentworth Hotel Company in 1921. (Vol. 743, Page 390). Though unmistakably the land in question, the golf course segment had now grown to 7 1/2 acres. The 7 1/2 acres probably resulted from a consolidation with other Odiorne land. Four years later, Richardson conveyed her parcel also (the easterly portion of Odiorne's original tract) to the Wentworth Hotel Company (Vol. 795, Page 415. Attachment 32). This deed references the same stone steps and public rights mentioned in her 1889 deed cited above.

The hotel went bankrupt in 1932. The premises were then acquired by Harry Beckwith of Brookline, Mass., (Vol. 886, Page 411) together

> "with the benefit of all existing rights, easements, and restrictions reserved in or imposed by any deed of record, whether the same be specifically referred to in this deed or not."

Six years later, Beckwith conveyed the property to Wentworth Hotel, Inc. (Vol. 1042, Page 397).



Plan 12

Wentworth Hotel Inc. subdivided off the present Waldron lot (see Plan 12 above, Parcel #8, Tax Sheet #1) and sold it to Helen Waldron in 1946 (Vol. 1058, Page 458). The old 7 1/2 acre Odiorne parcel which comprises the northwest corner of the golf course and abuts Waldron, re-emerged in 1964 as "Tract D" in a conveyance from Wentworth Hotel, Inc., to Wentworth Fairways Golf, Inc. (Vol. 1745, Page 419). This deed continued to reference the old steps to the beach (the access study site) as well as the old Ferry Road. Likewise, the same description of Tract D was used when the property was conveyed to Wentworth by-the-Sea Corporation in 1983 (Vol. 2451, Page 1727, Attachment 33). A "No Tresspassing" sign was erected at this site in 1983.

Interviews

(Conducted by Max Friedman, July 1984)

NAME	ADDRESS	YEARS IN HOME	USE OF RIGHTS OF WAY
Frank Walther	3 Wentworth Rd.		No Answer
G. D. Jennings	5 Wentworth Rd.	30	Yes, for worms
Helen Waldron	16 Wentworth Rd.		No Answer
Arthus Schlieper	21 Wentworth Rd.	39	Yes, for worms
Gerald Terpstra	23 Wentworth Rd.	28	Yes, for worms
Edward Clancy	27 Wentworth Rd.		No Answer

Findings:

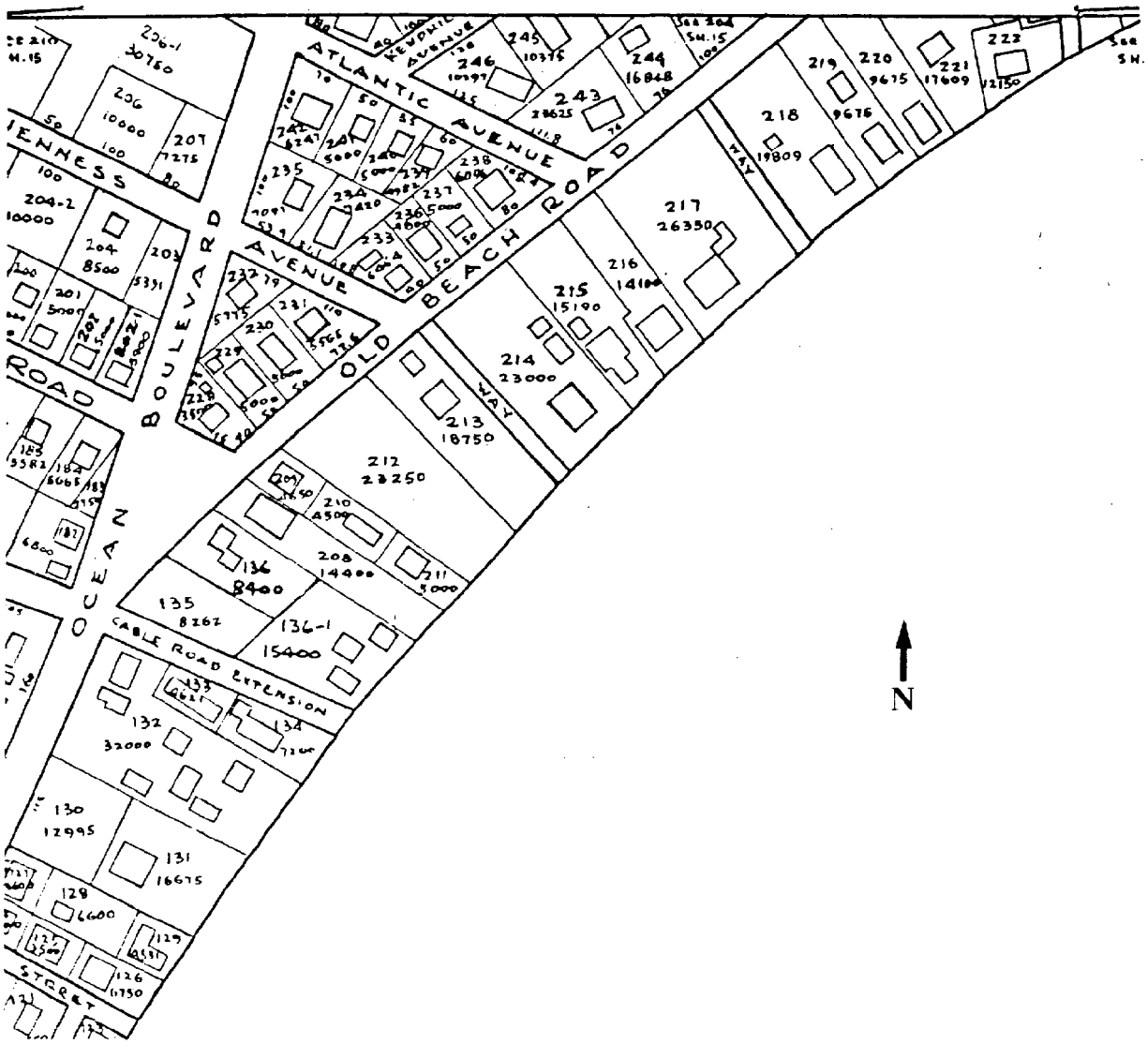
1) Research has uncovered no express grant of public rights of passage; however, someone's "land and water rights and privileges" are clearly referenced in early deeds.

2) No plan or map to indicate any implied easements or other public rights was located.

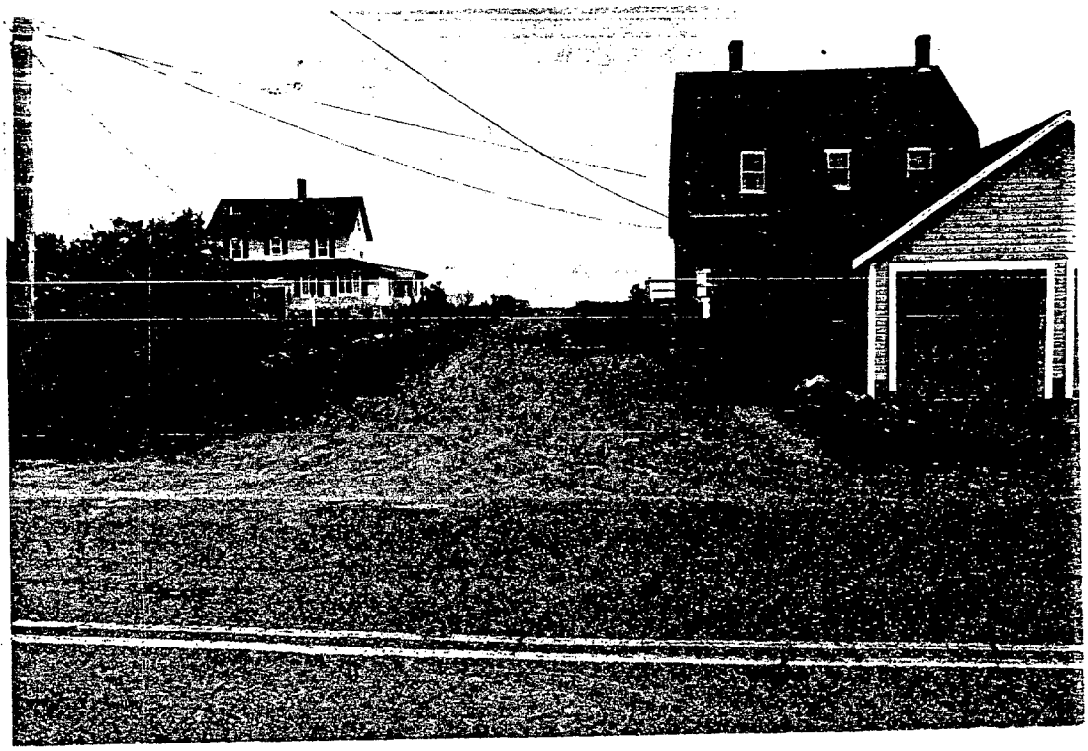
3) Interviews suggest that the public has acquired a prescriptive use at this site by virtue of uninterrupted use for hundreds of years, primarily in search of shellfish and worms along the sides of Little Harbor.

SITE D

Old Beach Road at the foot of Jenness Avenue

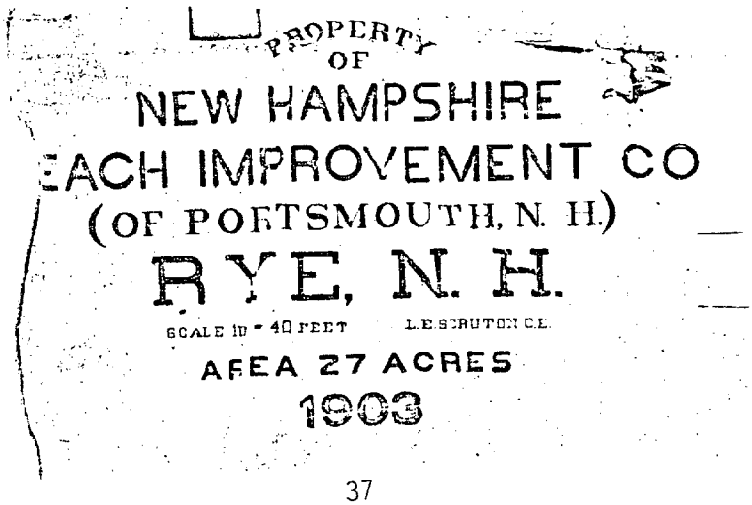


Plan 13



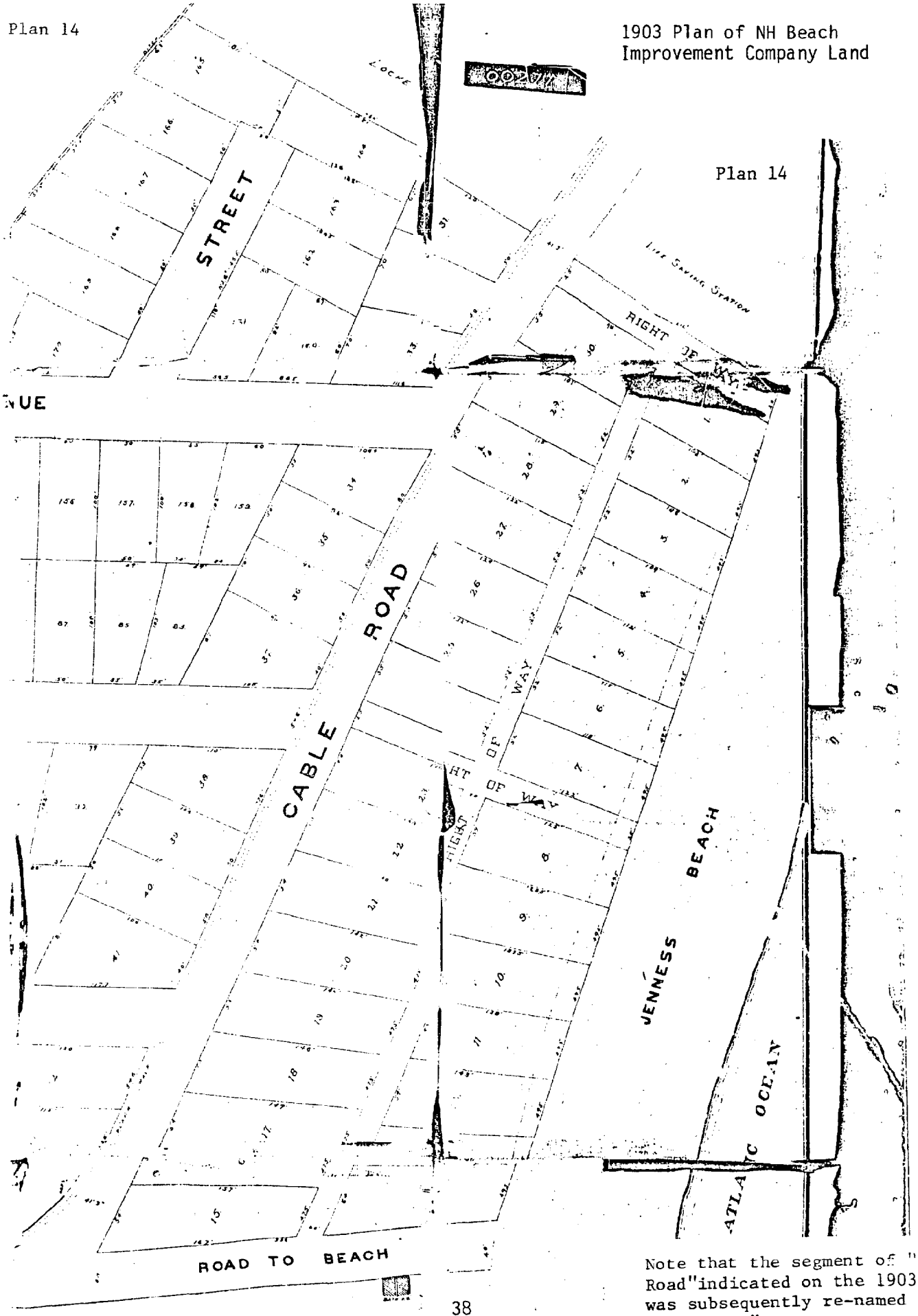
Looking east from Old Beach Road

History: In 1901, A. E. Turner of Boston conveyed an uninhabited 27 acres of "woodland and pasture" to Fred Towle, Harry Yeaton and Charles Trafton, all of Portsmouth (Vol. 584, Page 126). This tract was bounded on the south by Cable Road, on the east by Jenness Beach, and extended as far north as the old Life Saving Station (56 Old Beach Road; Parcel 218 on Tax Sheet 18); and westerly to the terminus of Jenness Avenue. Four months later, Arthur Heffenger of Portsmouth acquired a one-fourth share in the property (Vol. 584, Page 406). These four individuals subsequently subdivided the tract into 171 lots and platted Atlantic Avenue, Jenness Avenue and Ocean Avenue (Breakers Road) among others, in a 1903 plan entitled, "Property of NH Beach Improvement Company." (See Plan 14 and Attachment 35.)



Plan 14

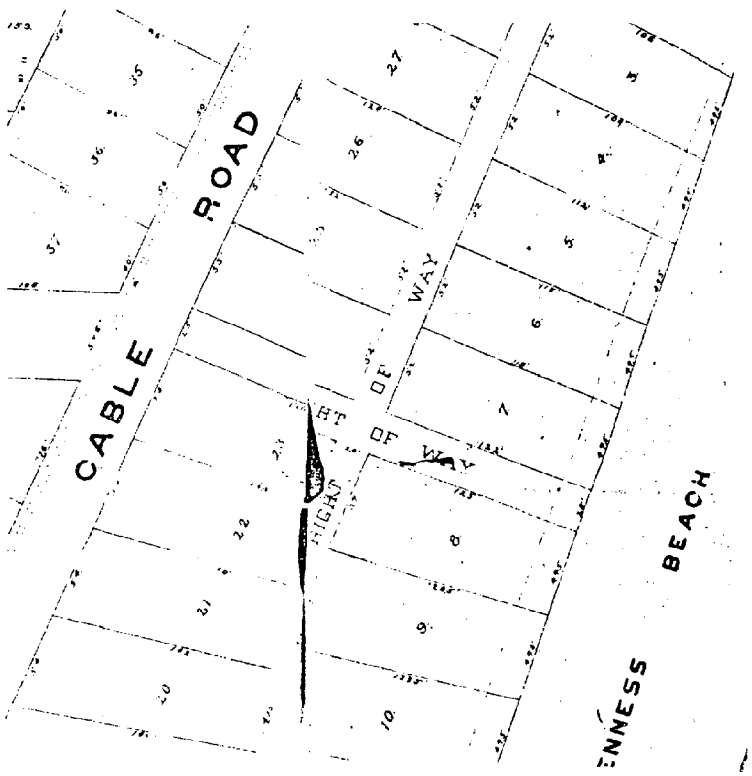
1903 Plan of NH Beach Improvement Company Land



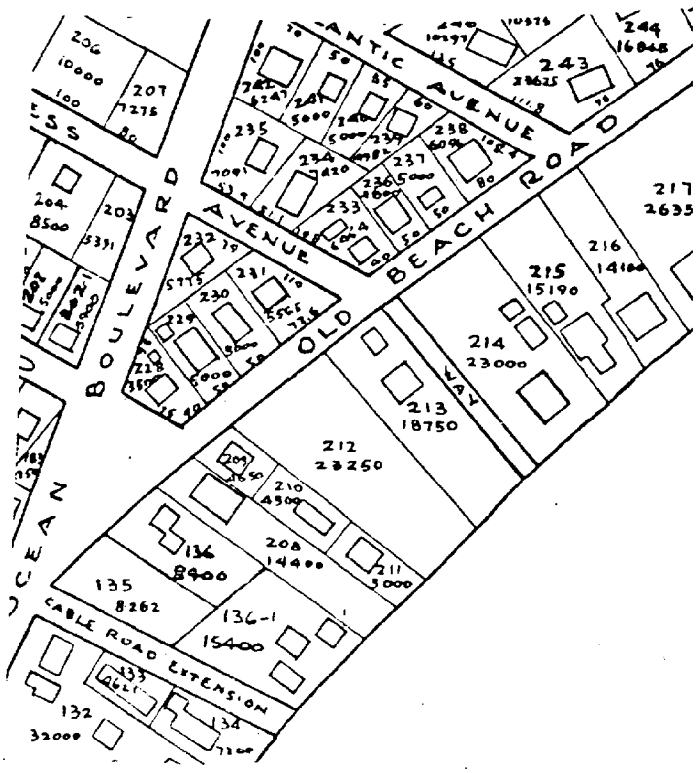
Note that the segment of "Cab Road" indicated on the 1903 pl was subsequently re-named "Ol Beach Road".

The access site in question is indicated on this plan as a "Right of Way" at the foot of the present Jenness Avenue (see Plan 14). The plan's lot numbers 6, 7, 24, and 25 correspond with the Tax Map's Parcel #214, while the plan's lot numbers 8 and 23, and a portion of numbers 9 and 22 correspond with Tax Parcel #213 (see Plan 13). Note the other north/south Right-of-Way indicated on the 1903 plan.

Portion of Plan 14



Portion of Plan 13

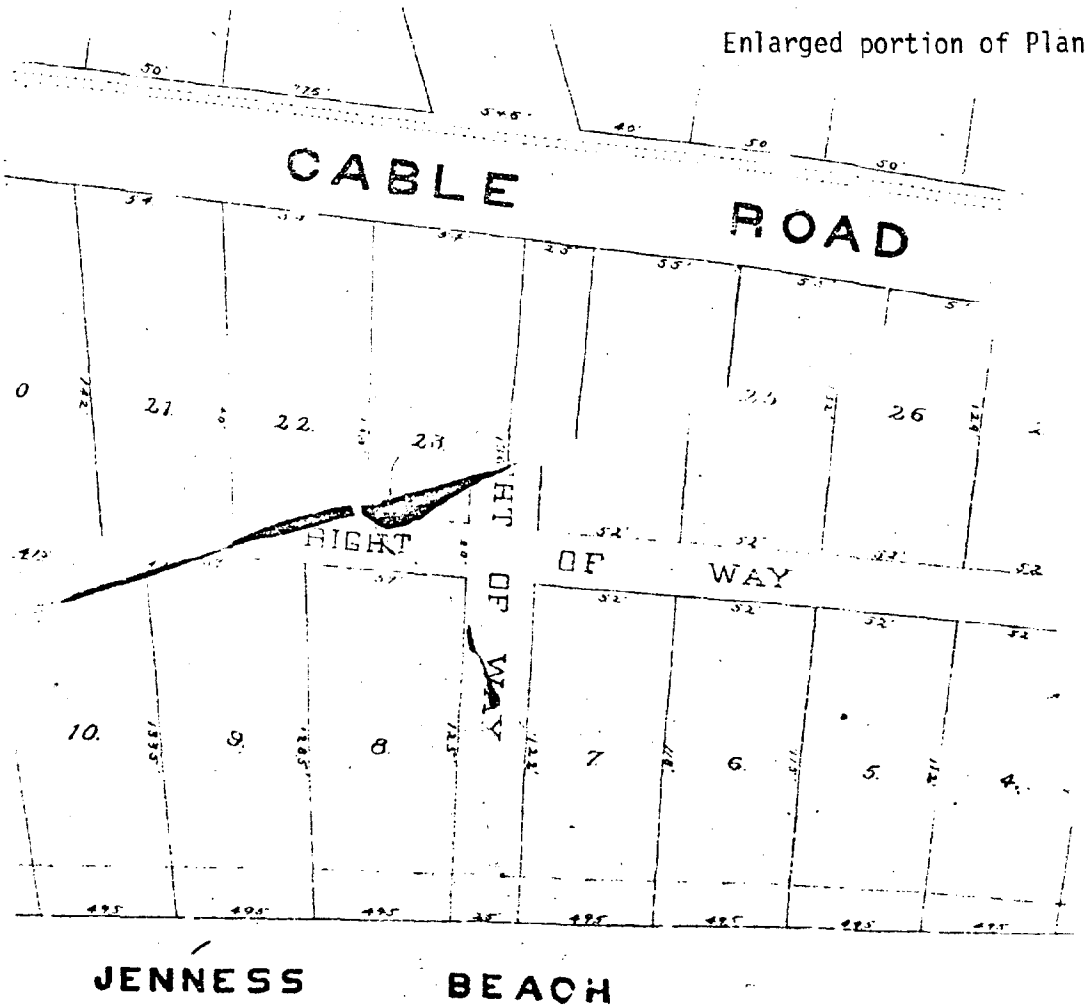


The New Hampshire Beach Improvement Company does not appear as a grantor in any recorded deeds, rather the lots were sold under the auspices of the North Shore Realty Company (Arthur Heffenger, President) or under the names of the four above-named proprietors.

In 1906, Lots 6, 7, 24 and 25 were sold as a single tract, along with the north/south right-of-way ("now discontinued") to Elizabeth Daland of Salem, Mass. (Vol. 616, Page 229; and Vol. 618, Page 426). These deeds twice refer to the east/west right-of-way as "Jenness Avenue."

Daland conveyed these premises to Ernest Griffin in 1919 (Vol. 735, Page 60). Griffin's heir, Ellen Griffin Root, conveyed the same to Norman Anderson in 1944 (Vol. 1016, Page 378) who in turn sold it to William Holihan in 1947 (Vol. 1081, Page 90). Note a 1964 Holihan deed in Attachment 36. Holihan's wife Ruth is the present owner.

The history of the land on the southerly side of the access site (Tax Parcel #213; Lots #8 and 23, and portions of #9 and 22 on Plan 14 below) is a bit more complicated.



Helen Trafton acquired this property from North Shore Realty Co., in 1912 (Vol. 667, Pagge 57), along with the north/south right-of-way which bisected it on the 1903 plan. Trafton, in turn, conveyed the same to Mary Jordan six years later (Vol. 726, Page 146, Attachment 37). In 1923, exactly 20 years after this "Jenness Avenue Extension" was platted, both abutters apparently made claims to the right-of-way. Jordan apparently claimed title to the half of the right-of-way which abutted her house lot, while announcing acquisition of rights to the other half by Quitclaim Deed from the northerly abutter, Ellen Griffin (Vol. 748, Page 313).

In 1938, Jordan conveyed the house lot and her supposed title to the east/west right-of-way in separate deeds to Marjorie Stannard (Vol. 937, Page 356 and Vol. 945, Page 224). Stannard conveyed both in the same deed in 1952 to James and Geraldine Holihan (Vol. 1258, Page 107. See Attachment 38.) The present owner, Geraldine Holihan, acquired the same in 1977 (Vol. 2281, Page 968; Attachment 39).

Interviews

(Conducted by Max Friedman, July 1984)

NAME	ADDRESS	YEARS IN HOME	USE OF RIGHTS OF WAY
Walter McGrail	9 Jenness Ave.	25	Yes
Betty Ardini	20 Jenness Ave.		No Answer
Laurence Tierney	20 Jenness Ave.		No Answer
Charles Parlatore	22 Jenness Ave.		No Answer
S. G. Marino	32 Jenness Ave.		No Answer
John Duffy	40 Jenness Ave.		No Answer
Jane Hobson	69 Jenness Ave.	20	Yes
Edward McCormack	1 Atlantic Ave.		Not at home
Warren Young	10 Atlantic Ave.	31	Yes
Angus Kennedy	18 Atlantic Ave.	27	Yes
Lois Bryant	21 Atlantic Ave.		Not at home
Charles Riley	22 Atlantic Ave.		Not at home
M. H. Donovan	58 Atlantic Ave.		Not at home
Judith Fudge	59 Atlantic Ave.		Not at home
Jeffrey Geraghty	59 Atlantic Ave.		Not at home
Peter Agrafioto	60 Atlantic Ave.	30	Yes
William Smith	72 Atlantic Ave.		Not at home
John Schermerhorn	72 Atlantic Ave.		Not at home
Woody Foss	Foss Circle		No Answer
Frances Gormley	Foss Circle		No Answer
Wallace Smith	Foss Circle		Phone disconnected
Plato Cronin	2 Breakers Road		No Answer
Paul Cronin	3 Breakers Road	8	Yes
Herbert McDonald	5 Breakers Road	1	Yes
Joseph O'Brien	14 Breakers Road		No Answer
John Todisco	19 Breakers Road		No Answer
James Shirley	27 Breakers Road		No Answer
M. J. Maguire	5 Old Beach Road	48	Yes
James Gard	34 Old Beach Road	6	Yes
Wm. McConner	36 Old Beach Road	28	Yes
John Batal	44 Old Beach Road	20	Yes
Robert Moran	44 Old Beach Road		No Answer

(Interviews continued)

NAME	ADDRESS	YEARS IN HOME	USE OF RIGHTS OF WAY
Philip Mongan	47 Old Beach Road		No Answer
W. R. Smart	50 Old Beach Road		No Answer
Geoffrey Hughes	63 Old Beach Road	28	Yes
Andrew Beach	67 Old Beach Road		No Answer
George Horne	68 Old Beach Road	30	Yes
Henry Tosi	74 Old Beach Road	1	Hasn't noticed
Wayne Rich	79 Old Beach Road	10	Yes
Dan O'Leary	80 Old Beach Road	55	Yes
Peter Harlan	83 Old Beach Road	25	Yes
Robert Dunn	85 Old Beach Road	23	Yes
Wm. Holihan	86 Old Beach Road		Did not call
M. J. Boyle	89 Old Beach Road		No Answer
G. T. Holihan	92 Old Beach Road		Did not call
Ruth Donnelly	95 Old Beach Road		No Answer
Harold Barnard	99 Old Beach Road		No Answer
J. Dansby	100 Old Beach Road	10	Yes
Nat Bellantone	103 Old Beach Road		No Answer
Albert Ryan	106 Old Beach Road	13	Yes
Pete Campobasso	108 Old Beach Road	37	Yes
Wm. Mitchell	109 Old Beach Road	30	Yes
Edmund Mahoney	110 Old Beach Road		No Answer
Daniel Black	112 Old Beach Road	25	Yes
E. L. Fiske	112 Old Beach Road		No Answer
Dennis Foss	112 Old Beach Road		No Answer

Findings:

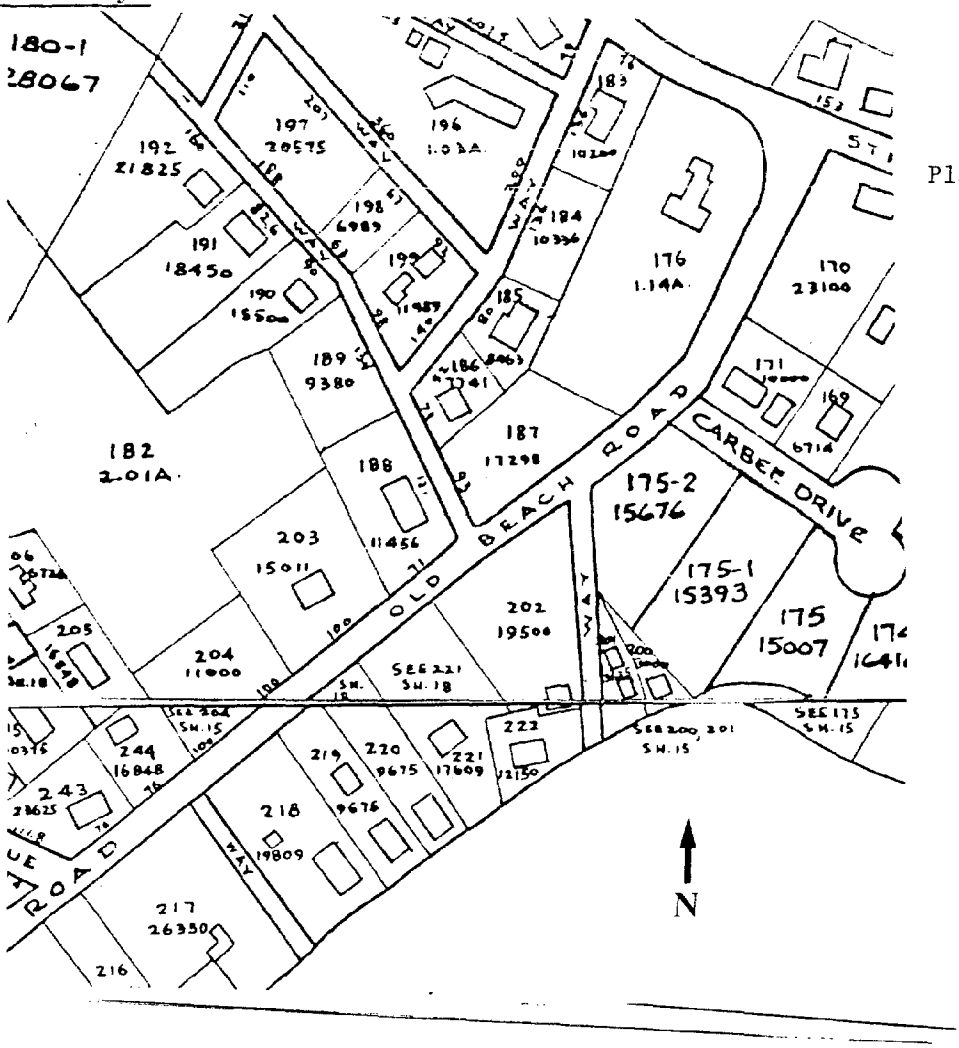
1) No expressed grants in favor of the public were found; on the contrary, abuttors claim title to this "right of way" and have accordingly incorporated it into their deeds.

2) The right of way was clearly platted in 1903. Whether RSA 321:51 relative to dedications applies to pre-1913 plans is unclear.

3) Interviews with area residents suggest that a strong case may be made for a public easement by prescription and adverse possession by nearby residents.

SITE "E"

Not investigated due to pending litigation. See McConnor et. al. vs. Rye



Plan 15

"Old Town Way" at Jenness Beach

REMEDIAL ACTIONS AVAILABLE TO RYE TOWN OFFICIALS

Rye town officials may enhance public rights to beach access through any of the four alternatives outlined below:

1. Litigation

As pointed out by Attorney Charles F. Tucker (Attachment 28A), the C Street case could have gone either way. Absent any dramatic new evidence, re-opening litigation on C Street would stand little chance of success. The court would likely dismiss such an attempt at the outset on the grounds of "Res judicata," a matter already adjudicated. Regarding all the other sites, however, litigation remains a viable, though expensive, alternative. Attorney Tucker estimated legal fees in the range of $3,000 - $5,000 per site.

Were permanent injunctions ensuring public access to be pursued by the Town. the interviews and lists of area residents cited in this report could serve as an initial step toward demonstrating a prescriptive easement and/or adverse possession. thereby reducing the Town's overall legal bill. Note that in the 1971 C Street case, the court found the plaintiffs' presentation deficient in respect to documented public use. This report has cited 15 resident interviews in the Alphabet Street area alone indicating long-term use.

Five years after the C Street case, the New Hampshire Supreme Court made a decision which appears to greatly strengthen possible future litigation in support of public access rights to Rye's beaches. In Leo Foundation v. State of New Hampshire (117 NH 209), the court ruled that use by the public of a road "looking for a place to swim," though "intermittent and of a slight volume," would be sufficient to sustain a finding of establishment by prescription. In yet another recent case, Marrone v. Hampton 123 NH 729 (1983), the NH Supreme Court ruled against an abutter who had encroached upon a public way to the beach in Hampton (see Attachment 46 for Hampton Selectmen's response to Marrone's encroachment). In short, since the C Street decision, it appears that the New Hampshire legal climate has shifted in favor of greater public access to public waters.

2. Street Layout

Pursuant to RSA 231, the Selectmen are empowered to lay out streets so long as it serves a "public purpose." Certainly access to the public beach would qualify as a legitimate public purpose.

The value of land taken for such a layout would be assessed by the Selectmen (RSA 231:15), and the owners compensated. The fact that taxes have never been paid on these roughly 30-foot strips might be taken into account as well as the "detrimental" effect in terms of real estate value, of documented public use. Obviously, Town Meeting action would be required to raise funds for this compensation. RSA 231 goes into greater detail on all procedures associated with street layout. Note Attachments 41 through 44 as sample formats for layout petitions, public notices, Selectmen findings and decisions.

The cost to the Town for this procedure is, of course, entirely dependent on the number of sites the Selectmen choose to address, and the assessed value of the land in question.

3. Eminent Domain

The Town might also pursue acquisition of fee simple ownership of these access sites through exercise of its power of eminent domain.[12] Once again, the necessary public purpose is easily demonstrated, but the required compensation for land taken would have to be raised at Town Meeting.

4. Acquisition of Public Rights by Negotiation

Of the four alternatives presented here, this one would probably be the most acceptable to all parties, and cause the least amount of expense to the Town. Given the Town's options outlined above, the Selectmen would command a great deal of leverage in any negotiating process. Obviously, the findings of this report and documented public use contained therein further strengthens the Town's negotiating position.

12See 26 AM Jur 2d, Eminent Domain, paragraph 60

The Selectmen could pursue fee simple ownership, or lesser property rights such as a transit easement for pedestrians. Such an easement could be in perpetuity or designed to expire after a specified number of years. Town Counsel could be asked to draft an easement that incorporates whatever restrictions seem appropriate.

Negotiated acquisition of easements would settle the public access question once and for all. An additional advantage to the Town would be receipt of tax revenue for those heretofore untaxed waterfront parcels. Indeed, additional tax revenue would soon pay for the relatively minor expenses associated with negotiation.

As the simplest and least costly option, it is our recommendation that Alternative 4 be pursued.

Regardless of which course the Town follows, the public will not likely exercise their rights unless they are aware of them. Therefore, we further recommend that the access sites be clearly posted, "Access To Public Beach," or the equivalent.

And finally, please note the no-nonsense response of Hampton Selectmen (Attachment 46) to similar encroachment on public access to the beach.

ATTACHMENTS

INDEX TO ATTACHMENTS

Attachment 1: Selectmen's letter re: Site Prioritization

Attachment 2: Selected state laws relative to streets and public ways

Attachment 3: 1805 Map of Rye

Attachment 4: 1851 Map of Rye

Attachment 5: 1857 Map of Rye

Attachment 6: 1892 Map of Rye

Attachment 7: 1918 Map of Rye

Attachment 8: 1938 Map of Rye

Attachment 9: Town Meeting Action on Roads

Attachment 10: Chronological Summary of Town Meeting Action on Roads

Attachment 11: Alphabetized Summary of Town Meeting Action on Roads

Attachment 12: Town Deeds

Attachment 13: Wallis Sands -- 1909 Sylvester Odiorne Plan

Attachment 14: Wallis Sands -- Johnson to Cole deed (2170/329)

Attachment 15: Wallis Sands -- 1901 Jonathan Everett Odiorne Plan

Attachment 16: Wallis Sands -- J.E. Odiorne to Kimball deed (584/354)

Attachment 17: Wallis Sands -- Sulloway and Kimball to Dedes (831/162)

Attachment 18: Wallis Sands -- Margaret Michaud to Norman Michaud (2300/1990)

Attachment 19: Wallis Sands -- Title Abstracts

Attachment 20: Alphabet Streets -- James Perkins to Mathilda Kirkegaard (739/113)

Attachment 21: Alphabet Streets -- Mathilda Kirkegaard to Rye Beach Realty Co. (739/114)

Attachment 22: Alphabet Streets -- 1920 Durgin plan of Myrica by the Sea

Attachment 23: Alphabet Streets -- 1921 Plan of Brown Beach Land

Attachment 24: Alphabet Streets -- 1922 Plan of Philbrick Land

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Attachment 27: Alphabet Streets -- Decision of the Superior Court, Young v. Prendiville

Attachment 28: Alphabet Streets -- Decision of the NH Supreme Court, Young v. Prendiville

Attachment 28A: Alphabet Streets -- Legal Opinion re: possible future legal action

Attachment 29: Little Harbor -- Rand to Odiorne (442/404)

Attachment 30: Little Harbor -- Charles Odiorne to Samuel Odiorne (476/412)

Attachment 31: Little Harbor -- Odiorne to Richardson (517/275)

Attachment 32: Little Harbor -- Richardson to Wentworth Hotel (795/415)

Attachment 33: Little Harbor -- Wentworth Fairways Golf, Inc., to Wentworth by the Sea Corp (2451/1727)

Attachment 34: Little Harbor -- Title Abstracts

Attachment 35: Old Beach Road -- 1903 Plan of NH Beach Improvement Co.

Attachment 36: Old Beach Road -- William Holihan to William & Ruth Holihan (1748/463)

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Attachment 39: Old Beach Road -- James Holihan to Geraldine Holihan (2281/968)

Attachment 40: Old Beach Road -- Title Abstracts

Attachment 41: Petition for Class VI Highway Layout

Attachment 42: Public Notice for Highway Layout

Attachment 43: Certification of Notice for Highway Layout

Attachment 44: Findings and Decision re Highway Layout

Attachment 45: Recent Time magazine article on legal trends relative to Beach Access

Attachment 46: Recent Portsmouth Herald article (9/19/84) detailing response of Hampton, N.H., Selectmen to encroachment on public access to the beach.

ATTACHMENT 1

Selectmen's letter regarding site prioritization

OFFICE OF SELECTME

RYE, NEW HAMPSHIRE

January 20, 1984

Mr. Tom Morgan
Rockingham Planning Commission
One Water Street
Exeter, New Hampshire 03833

Dear Tom:

Based on the list your provided to our office relative to public access we wish researched under the approved grant, below please find the list in order of our priority.

a. A public right-of-way, ten buildings south of Pirate's Cove
b. Alphabet streets (6) at Jenness Beach, especially "C" street
c. Little Harbor at Wentworth Road by Golf Course
d. Off Old Beach Road (Tax Map 18, Lots 213 and 214)
e. Off Old Beach Road (Tax Map 15 next to Lot 202)

Regarding Item c - Mr. Michael Cavaretta and our Town Clerk, Jane Ireland, may be able to provide you with historical information.

If you have any further questions, please let us know.

Very truly yours,

FOR THE BOARD OF SELECTMEN

J. P. Nadeau, Chairman

JPN/plh

ATTACHMENT 2

Selected State laws relative to public ways

CHAPTER 231

CITIES, TOWNS AND VILLAGE DISTRICT HIGHWAYS

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CROSS REFERENCES

Acquisition of land for highway purposes, see RSA 228:31.
Advisory supervision of highway agents, see RSA 228:47–49.
Application for state bridge aid, etc., see RSA 234:5 et seq.
Bridge inspections, see RSA 234:21 et seq.
Bridge regulations, see RSA 234:32 et seq.
Classification of highways, see RSA 229:5.
Classification of roads to recreational areas, see RSA 233:2.
Commissioner may regulate use of class I, II, and III highways in certain towns and cities under specified conditions, see RSA 236:1.
Construction and reconstruction limitation, see RSA 230:6.
Discontinuance, reversion to town, see RSA 230:55 et seq.
Duty to maintain certain bridges on class II highways, see RSA 234:1.
Eminent domain procedure, see RSA 498-A.
Erection of markers, monuments, etc., see RSA 236:40 et seq.
Erection of snow fences, see RSA 236:64 et seq.
Highway engineers as consultants, see RSA 228:45.
Highway or bridge workmen to be town employees, see RSA 235:38.
Highways defined, see RSA 229:1.
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Motor vehicle junk yards and other junk yards, see RSA 236:111 et seq.
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Powers granted to planning boards for permits, etc., see RSA 236:13, V.
Powers of commissioner, see RSA 228:21.
Privately owned water supplies, see RSA 228:34.
Procedure for removal of encroachments on highways and liability for damage or injury, see RSA 236:32 et seq.
Rehabilitation of covered bridges, see RSA 234:26 et seq.
Relocation assistance, see RSA 230:33 et seq.
Relocation of underground facilities, see RSA 228:22.
Removal of obstructions from highways, see RSA 236:29.
Roads in 2 or more towns, see RSA 232:18.
School bus shelters, see RSA 236:87.
Special limited access highways to be laid out in accordance with this chapter, see RSA 231:55.
State highway aid for construction of class II highways, see RSA 235:10 et seq.
State highway aid for construction, reconstruction and maintenance of class IV and V highways, see RSA 235:22 et seq.
State planning aid and inspection service, see RSA 228:46.
Town or city conveyance to state for highway construction, see RSA 230:5.
Use of highway funds, see RSA 228:27.

Laying Out Highways

231:1 Class IV, V and VI. All class IV highways not financed in whole or in part with federal aid highway funds, and class V and VI highways shall be laid out by the mayor and aldermen of the city, the selectmen of the town or the commissioners of a village district formed for the purpose of RSA 52:1, I(m) in which such highways are located, or by the superior court as hereinafter provided. In the case of a village district formed for the purpose of RSA 52:1, I(m), references in this title to "town" and "selectmen" shall be deemed to be references to "village district" and "village district commissioners", respectively.

231:3 Class V Town Roads. All class V highways shall be constructed, reconstructed and maintained by the city or town in which they are located; provided, however, that town road aid may be used for such purposes, and town bridge aid may be used for the construction or reconstruction of any bridge thereon, as hereinafter provided.

231:6 Highways to Public Waters. Highways to public waters, when not a part of the primary or secondary highway system, may be laid out as class V highways by the mayor and aldermen of the city or the selectmen of the town in which such highways are located, or may be laid out as hereinafter provided by a commission appointed by the governor and council.

231:8 Petition. Selectmen of a town, upon petition, may lay out any new class IV highway not financed in whole or in part with federal aid highway funds, and class V or VI highway or alter any such existing highway within their town for which there shall be occasion.

231:9 Notice. Unless the selectmen are clearly of opinion that such petition ought not to be granted they shall cause notice in writing of the time and place of hearing appointed by them to be given at least 14 days previous to hearing to the first petitioner and to each owner of land over which such highway may pass.

231:11 Hearing. At the time and place so appointed the selectmen shall make a personal examination of the several routes proposed, and of the highways for which such new highway is designed to be a substitute, shall hear all parties interested who may attend and any evidence they may offer, and may adjourn as they see cause.

231:15 Assessment of Damages. The selectmen shall assess the damages sustained by each owner of land or other property taken for such highway.

231:17 Payment or Tender of Damages. No land or other property taken for a highway or alteration shall be appropriated or used for making the same until the damages assessed therefor are paid or tendered to the owner or his guardian or conservator.

231:21 Gates and Bars. Any highway may be laid out subject to gates and bars across the same. In such case it shall be determined, and the return of the selectmen shall state, by whom the gates and bars shall be maintained. Whenever the public good requires it they may be removed and further damages assessed, upon like proceedings as in the laying out of highways.

231:34 Appeal. Any person aggrieved by the decision of selectmen in the laying out or altering of a highway, or in the assessment of damages therefor, may appeal therefrom to the superior court for the county in which such land or other property is situate by petition within 60 days after the filing of the return with the town clerk for recording and not thereafter.

231:43 Power to Discontinue. Any class IV, V or VI highway, or any portion thereof, in a town may be discontinued by vote of a town; provided, however, that any highway to public waters, or portion of such highway, laid out by a commission appointed by the governor and council, shall not be discontinued except with the consent of the governor and council and provided further that no owner of land shall, without his written consent, be deprived of access over such highway, at his own risk.

231:51 Dedicated Ways. Any street, lane or alley within this state which has been dedicated to public use by being drawn or shown upon a plan of lands platted by the owner, and the sale of lots in accordance with such plan, shall be released and discharged from all public servitude unless such street, lane or alley shall be opened, built or used for public travel within 20 years from such dedication.

ANNOTATIONS UNDER FORMER RSA 238:7

Constitutional law. 1
Evidence of use. 2
Private development. 3

1. Constitutional law

The provision was not unconstitutional as an unreasonable exercise of legislative power. Hodge v. Manchester (1920) 79 NH 437, 111 A 385.

2. Evidence of use

Where evidence of public use was indefinite and at the most suggested an occasional use, it was insufficient to show public acceptance of the street. Young v. Prendiville (1972) 112 NH 190, 291 A2d 602.

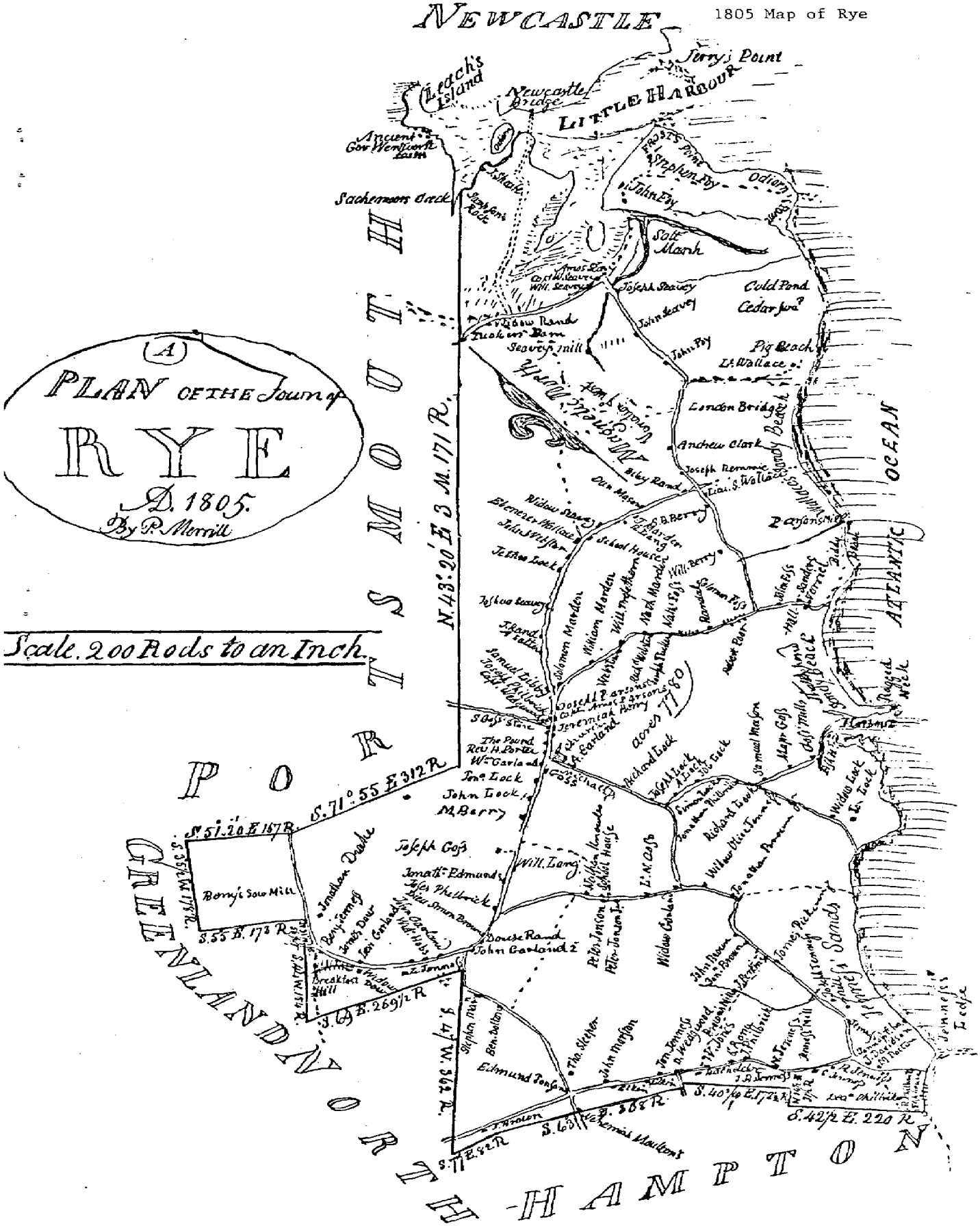
3. Private development

Where defendant in quiet title action had purchased lots in several blocks of a subdivision, including all the land designated as proposed streets, trial court correctly ruled that defendant had right to develop access road from end-to-end for his and others' use for purpose of going to and from his property, since such result did not circumvent intent of the provision in establishing time limits for city's acceptance of offers of street dedication, but rather, recited the type of use which was reasonable for defendant's easement. Duchesnaye v. Silva (1978) 118 NH 728, 394 A2d 59.

231:52 Release by Town. The mayor and aldermen of a city or the selectmen of a town may release and discharge any way dedicated as aforesaid from all public servitude at any time after such dedication, upon petition by any interested party and notice and hearing thereon, whenever in their opinion such way will not be needed for the accommodation of public travel. All proceedings shall be conducted in the manner provided for the laying out of highways, and any interested party may appeal to the superior court from the decision, as in the case of petitions for laying out highways.

ATTACHMENT 3

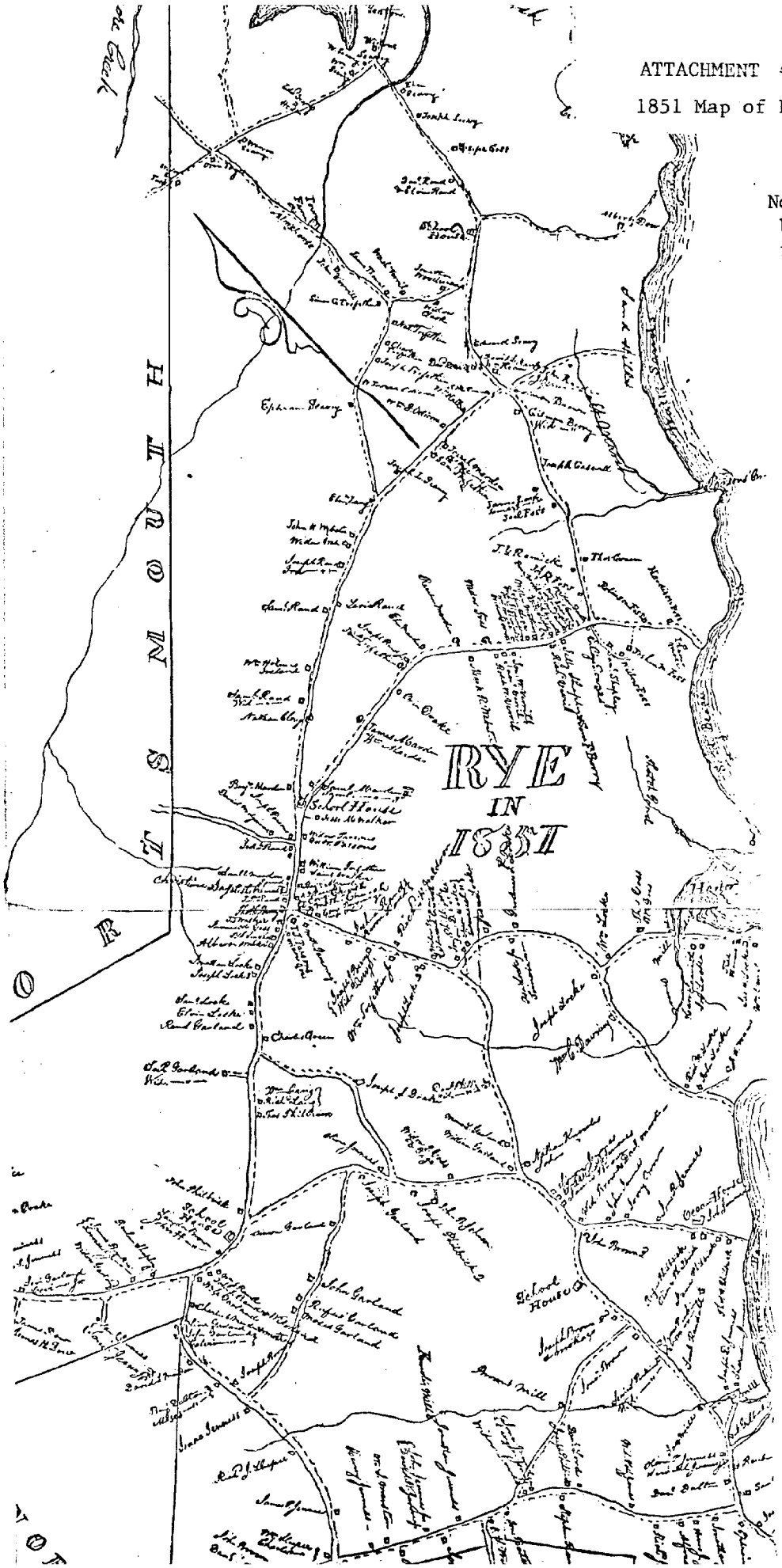
1805 Map of Rye



ATTACHMENT 4

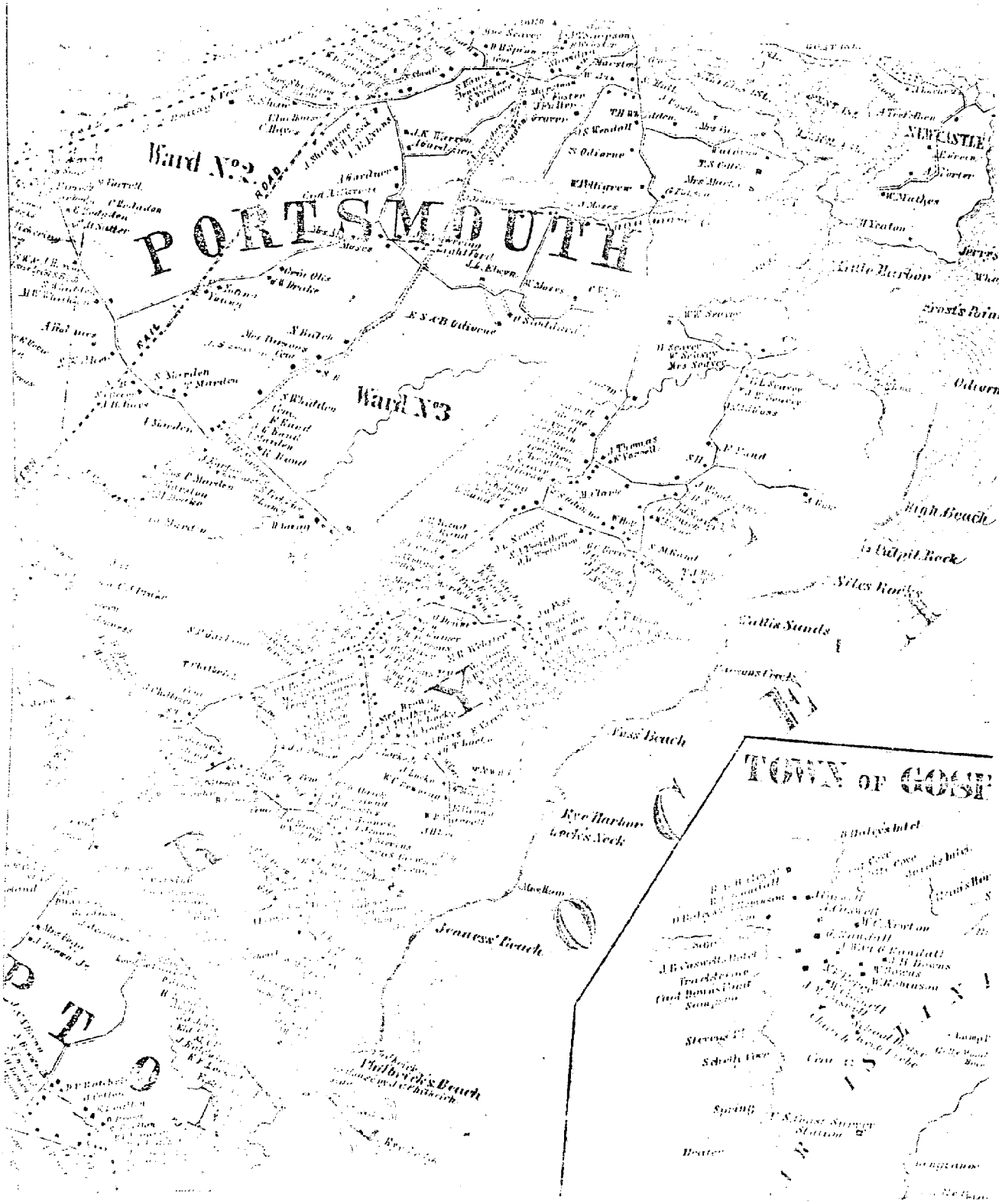
1851 Map of Rye

Note absence of buildings and roads on coast.



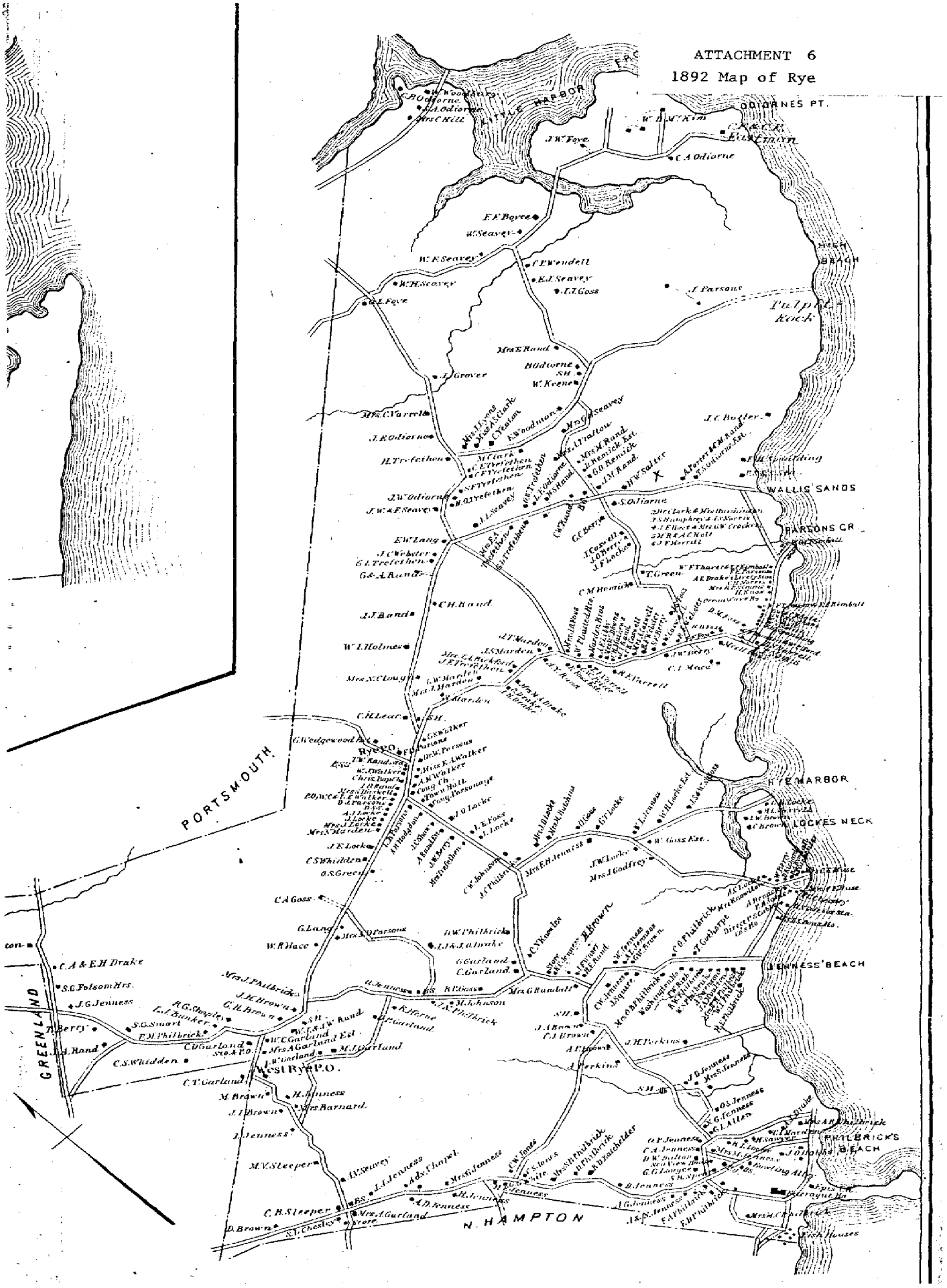
ATTACHMENT 5

1857 Map of Rye



ATTACHMENT 6

1892 Map of Rye

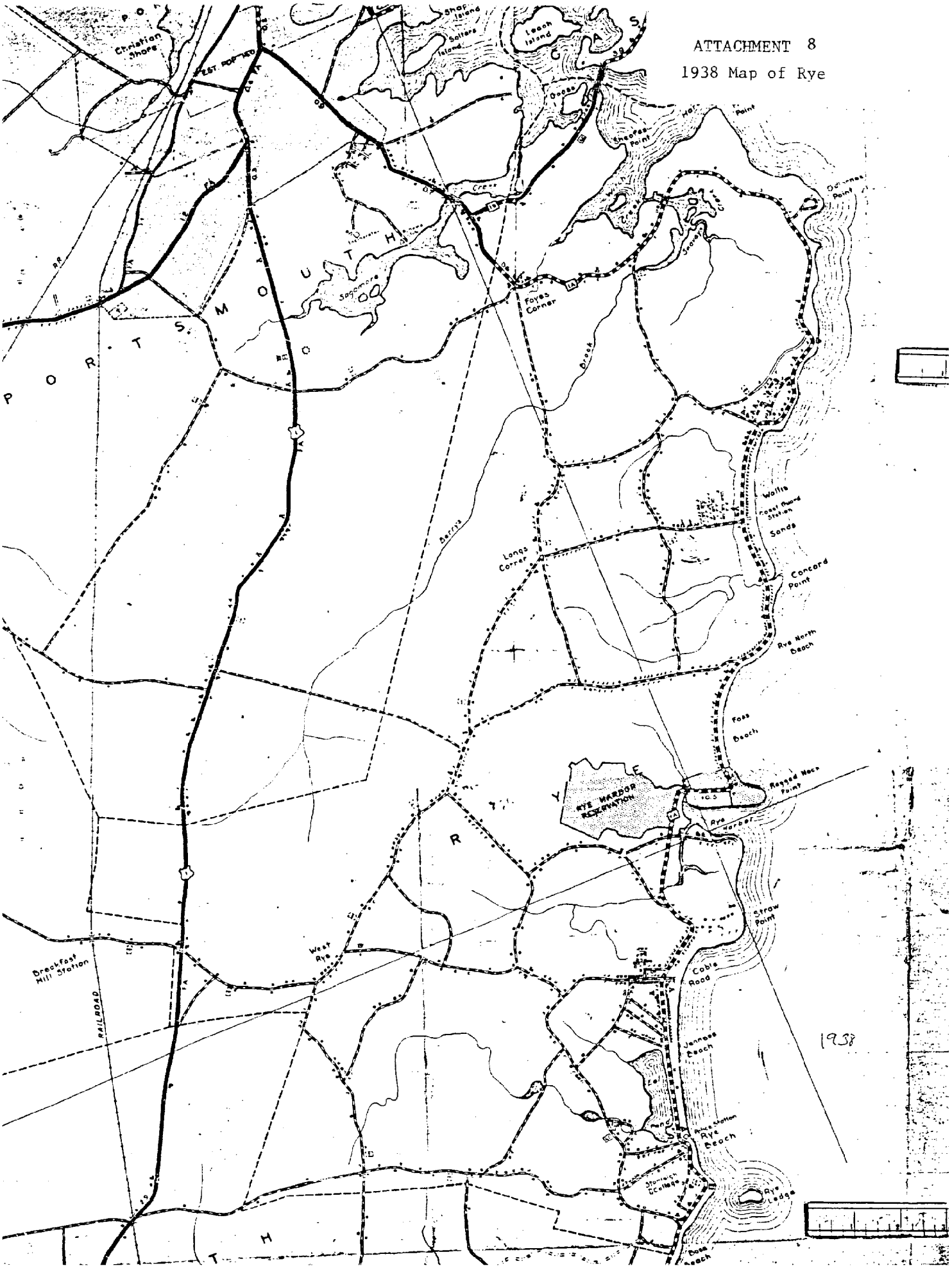


ATTACHMENT 7

1918 Map of Rye

ATTACHMENT 8

1938 Map of Rye



TOWN MEETING ACTION ON ROADS

YEAR	STREET	OUTCOME
1921	To see if the Town will vote to build a highway from the intersection of Cable Road and Central Road southerly across the land of Shirley Philbrick, Brown and Rye Beach Realty Company to the Perkins Road, so called, opposite the cottages of James H. Perkins and Goodwin Perkins and to see what sum of money the Town will vote to raise and appropriate for the building of said road agreeable to a petition.	Approved
1956	On petition of Doris M. Moody and thirty three others, to see if the Town of Rye, New Hampshire, will vote to accept a deed from Sherman P. and Catherine E. Moody, conveying to the Town the street called Mountain View Terrace, as shown on two certain plans of land entitled, "Subdivision of Mountain View Terrace, Rye, New Hampshire, dated August 18, 1954, Charles H. Morse and son, C.E.," and plan of land entitled, "Proposed Subdivision of Land Owned by Sherman P. Moody, Rye, New Hampshire, dated June, 1946, John E. LaSuer, Surveyor," both recorded in Rockingham County Register of Deeds.	Accepted
1956	On petition of Leon H. Valley and twenty others to see if the Town will vote to change the names of Grove Street, a town road running from Cable Road in a southeasterly direction to Perkins Road, and Grove Avenue, a town road running in a northeasterly direction from its intersection with Cable Road, the present Grove Street to be renamed Big Rock Road, and the present Grove Avenue to be renamed Surf Lane.	Approved
1957	On petition of Bernard A. Barteau and eleven (11) legal voters of the Town of Rye, New Hampshire, to see if the Town will vote to accept a street known as Bernard Drive, running from Perkins Road to Richard Road, a distance of 346 feet, being a part of a plan of Rye Beach Terrace as accepted by the Town of Rye Planning Board.	Accepted

YEAR	STREET	OUTCOME
1957	On petition of William H. Banks and ten others, to see if the Town of Rye, New Hampshire, will vote to accept a deed from Laurence A. and Louis J. Tosi, conveying to the town, the streets called Fairview Avenue and Maple Drive and Laurence Lane as shown on a certain plan of land entitled, "Plan of Lots, Rye Beach, New Hampshire, for Laurence Tosi, dated December 1954, revised January 1956, John W. Durgin, Civil Engineers," which said plan has been duly registered in Rockingham County Registry of Deeds.	Accepted
1957	On petition of Herbert M. Garratt and fourteen others, to see if the Town will vote that the public way beginning at its intersection with Washington Road and ending at its intersection with Mountain View Terrace, and known as Town Way be given the name Blueberry Lane.	Approved
1957	On petition of Mildred P. May and thirteen others, to see if the Town of Rye, New Hampshire, will vote to accept Odiorne Drive as a public street, Odiorne Drive extending southerly from Wallis Road.	Referred to Planning Board
1962	On petition of Edward L. Greene and 11 others: To see if the Town will vote to accept a deed of a way known as Baker Avenue running from Big Rock Road to Ocean Boulevard, for use as a public highway.	Accepted
1962	On petition of Elizabeth W. Van Wert and 13 others: To see if the Town of Rye, New Hampshire, will vote to accept Meadow Lane as a public street: Meadow Lane extending westerly from Central Road opposite the Central Cemetery.	Accepted
1962	On petition of Mildred V. Wilson and 10 others: To see if the Town will vote to accept Olde Parish Road, a street running northerly from Washington Road to a turnaround at the Old Parsonage, so called, a distance of 1025.82 feet.	Accepted
1962	On petition of John E. Carberry and 14 others: To see if the Town will vote to authorize the Selectmen to change the name of the road running east to Straw's Point from north and south of Ocean Boulevard in the Jenness Beach Precinct, the northerly access now named Locke Road, the southerly access, Cable, now assigned the name Faraday, the road to be hereafter known as Old Beach Road.	Approved

YEAR	STREET	OUTCOME
1965	On petition of Helen S. Shaw and eleven others, to see if the Town of Rye, New Hampshire will vote to accept Appledore Avenue as a public highway and to raise and appropriate the sum of twelve hundred dollars ($1,200.00) to place said road in acceptable condition.	Tabled
1965	On petition of Joseph O. Varrell and nine others: to see if the Town will vote to accept the street known as Harborview Drive, so called, off and intersecting at two places with Wentworth Road in the town of Rye, together with certain drainage easements and drainage lines draining said Harborview Drive and for such purposes to accept a Warranty Deed from Seybolt Realty Corporation to the Town of Rye, dated December 29, 1964, conveying said Harborview Drive, drainage easements and drainage lines to the Town of Rye.	Accepted
1969	On petition of Gerald F. Giles, Attorney for Channing H. Green and Ruth E. Green and 10 others: to see if the Town will vote to accept the following street: A certain street running westerly from Brackett Road to land now or formerly of Millie E. Odiorne, a distance of four hundred ninety (490) feet, more or less.	Accepted
1969	On petition of Norman E. Lord and 11 others: to see if the Town will vote to accept the following streets: Oral Lane, so called, running Easterly from Sagamore Avenue one hundred and eight (180) feet, more or less, to Foyes Road, so called; Foyes Road, so called, Southeasterly from Oral Lane three hundred fifty (350) feet, more or less, to Frontier Street, so called, and Frontier Street, so called, running Easterly from Foyes Road four hundred eighty (480) feet, more or less, to land now or formerly of Peter Rabbit Nursery School, Incorporated.	Accepted
1970	On petition of Harold B. Tucker and 15 others: To see if the Town will vote to accept the street at Acorn Acres, to be known as Acorn Avenue.	Accepted

YEAR	STREET	OUTCOME
1970	At the request of Margaret T. Smith, to see if the Town will vote to discontinue the highway, if any, believed to have been called Ferry Road extending or leading from a point on Pioneer Road near the Wright Farm barn Northeasterly to its Northerly terminus on Wentworth Road at the Northeasterly end of the Wentworth Fairways Golf Course. Amended to read: "to relocate that portion of the Ferry Road, so called, from where it crosses the land of the Hampton Country Day School, Incorporated, to a new location which shall be as follows: Beginning at the northeasterly end of the present road at land of Cavaretta Realty Company, Incorporated, in a street called Forest Lane and thence running northwesterly along said Forest Lane as presently laid out to Frontier Street; thence continuing northwesterly across Frontier Street in a northwesterly extension of said Forest Lane across land of the Hampton Country Day School, Incorporated, along a center line 20 feet easterly of land of Cavaretta Realty Company, Incorporated, in part and in part of land of Edwin and Mary Littlefield; and thence turning and running northeasterly along a line lying 20 feet southeasterly of a stone wall abutting land of the John J. Scammon estate and in part by land of the Mark Wentworth Home to the southerly end of the present Ferry Road at the land of Wentworth Fairways, Incorporated, with said relocation to be more particularly described in a recent survey made by John W. Durgin, Civil Engineers, in March, 1970.	Relocated, but not discontinued as requested
1971	On petition of Russell E. Phelan and 13 others: To see if the Town will vote to accept the deed to the following roads: McLaughlin Drive, Foster Lane, and Maple Avenue, as shown by subdivision plan Number 5114F, File Number 80. A revised section of Myrica-by-the-Sea, recorded in Rockingham County Register of Deeds. These roads to be used as public highways.	Accepted

YEAR	STREET	OUTCOME
1973	On petition of Maynard L. Young and 18 others: To see if the Town will vote to acquire A Street as identified on the Town of Rye assessors map, dated 1964, and other plans filed in Rockingham County Register of Deeds, said street to be used for the purpose of providing access to the beaches along said street. This street to become right of way only under class 6 (Recreational Usage) that require no maintenance and to raise and appropriate the sum of $200.00 (two hundred dollars) to cover necessary costs to enable the Selectmen to begin acquisition procedures upon passage of this article.	Approved as amended
	Identical Warrant Articles also submitted for B, C, D, E, and F, Streets.	Approved as amended
1974	On petition of Donald J. Philbrick and 12 others: To see if the Town will vote to accept as a public highway, the road named Stonewall Lane.	Accepted
1974	On petition of Elizabeth R. Burke and sixteen others, to see if the Town will vote to authorize the Selectmen, with approval of the Highway Agent, to accept Fairway Drive as a Town road upon its completion on or before July 1, 1974 and to secure said completion to authorize the Selectmen to accept a performance bond to insure completion in accordance with the subdivision specifications as approved by the Rye Planning Board.	Accepted
1977	On petition of Richard P. Hamlin and 11 others, to see if the Town will vote to accept Pine Street extension in Lawrence Woods in Rye. The road has been completed in accordance with Lawrence Woods subdivision plans approved by the Rye Planning Board and to the satisfaction of the Rye Highway Agent.	Accepted
1977	On petition of Arthur W. Sandstrom and 10 others, to see if the Town will vote to accept Colbourn Road, located southerly of Washington Road, and described in the attached Warranty Deed.	Accepted
1979	To see if the Town will vote to authorize the Selectmen to accept a road known as LaMer Drive upon the recommendation of the Highway Agent and and to accept a proper deed for the road from the owner, Michael Cavaretta. The said road is part of a subdivision on Washington Road, approved by the Rye Planning Board on October 14, 1975.	Accepted

YEAR	STREET	OUTCOME
1979	On petition of Lena B. Dunton and 10 others, to see if the Town will vote to accept as a town road a certain road known as Burnette Drive located on the southerly side of Washington Road as shown on a certain subdivision plan entitled "The Smart Estates," prepared by John W. Durgin, Civil Engineers Professional Association, dated July 1976, revised February 1977, approved by the Rye Planning Board on February 8, 1977 and recorded in Rockingham County Registry of Deeds, Plan No. D-6620.	Accepted
1979	To see if the Town will vote to authorize the Selectmen to accept a road known as Tehias Road upon recommendation of the Highway Agent and to accept a proper deed from the owner, Tucker-Shanley, Incorporated. The said road is part of a subdivision known as Tahlton Woods, approved by the Rye Planning Board on August 20, 1974.	Accepted
1979	To see if the Town will vote to authorize the Selectmen to accept a road known as Patriots Way and part of a road known as Liberty Common Road from Wallis Road to and inclusive of Station 10 & 0 upon the recommendation of the Highway Agent and to accept a proper deed for these roads from the owner, David J. Chase. The said roads are shown on a subdivision plan approved by the Rye Planning Board on February 11, 1977.	Accepted
1980	To see if the Town will vote to authorize the Selectmen to accept a road known as Bond Road upon recommendation of the Highway Agent and to accept a proper deed for the road from the owner, Marie Doyle. The road is situated off Church Road and is part of a subdivision plan approved by the Rye Beach Precinct Planning Board.	Not Accepted
1980	On petition of Peter R. Geremia and 12 other registered voters to see if the Town will vote to name the presently unnamed road bordering on the southerly side of the property owned by Peter R. and Frances E. Geremia "Geremia Road." The road starts at the junction of Brackett Road and the southerly boundary of the Geremia property and runs westerly ending in a turn around.	Approved

YEAR	STREET	OUTCOME
1979	On petition of Lena B. Dunton and 10 others, to see if the Town will vote to accept as a town road a certain road known as Burnette Drive located on the southerly side of Washington Road as shown on a certain subdivision plan entitled "The Smart Estates," prepared by John W. Durgin, Civil Engineers Professional Association, dated July 1976, revised February 1977, approved by the Rye Planning Board on February 8, 1977 and recorded in Rockingham County Registry of Deeds, Plan No. D-6620.	Accepted
1979	To see if the Town will vote to authorize the Selectmen to accept a road known as Tehias Road upon recommendation of the Highway Agent and to accept a proper deed from the owner, Tucker-Shanley, Incorporated. The said road is part of a subdivision known as Tahlton Woods, approved by the Rye Planning Board on August 20, 1974.	Accepted
1979	To see if the Town will vote to authorize the Selectmen to accept a road known as Patriots Way and part of a road known as Liberty Common Road from Wallis Road to and inclusive of Station 10 + 0 upon the recommendation of the Highway Agent and to accept a proper deed for these roads from the owner, David J. Chase. The said roads are shown on a subdivision plan approved by the Rye Planning Board on February 11, 1977.	Accepted
1980	To see if the Town will vote to authorize the Selectmen to accept a road known as Bond Road upon recommendation of the Highway Agent and to accept a proper deed for the road from the owner, Marie Doyle. The road is situated off Church Road and is part of a subdivision plan approved by the Rye Beach Precinct Planning Board.	Not Accepted
1980	On petition of Peter R. Geremia and 12 other registered voters to see if the Town will vote to name the presently unnamed road bordering on the southerly side of the property owned by Peter R. and Frances E. Geremia "Geremia Road." The road starts at the junction of Brackett Road and the southerly boundary of the Geremia property and runs westerly ending in a turn around.	Approved

YEAR	STREET	OUTCOME
1982	On petition of Hazel L. Ham and eleven others, to see if the Town will vote to accept Ham Lane in Rye. The road has been completed in accordance with Hazel L. Ham subdivision plans approved by the Rye Planning Board and to the satisfaction of the Rye Highway Agent.	Accepted
1982	To see if the Town will vote to accept as a public road a certain portion of the Liberty Common roadway shown on a plan entitled, "Subdivision Plan, David J. Chase, Wallis Road, Rye, New Hampshire," recorded at the Rockingham Registry as plan #D-6652. The said portion to be accepted services lots #25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 55 as shown on the said plan. This acceptance is conditioned upon the final approval of the roadway by the Town's road agent. This acceptance will complete the entire Liberty Common roadway as a public road, the remaining portion having been previously accepted by the Town.	Accepted

CHRONOLOGICAL SUMMARY OF TOWN MEETING ACTION ON ROADS

Year	Road	Town Action
1950	Huntervale Avenue	Accepted
1955	Bernard Drive	Tabled
1956	Surf Lane	Named
1956	Big Rock Road	Named
1956	Concord Point	Discontinued
1956	Mountain View Terrace	Accepted
1957	Remainder of Mountain View Terrace	Construction approval
1957	Richard Road	Accepted
1957	Bernard Drive	Accepted
1957	Odiorne Drive	Referred to Plng.Bd.
1957	Blueberry lane	Named
1957	Laurence Lane	Accepted
1957	Maple Drive	Accepted
1957	Fairview Avenue (later renamed "Willowbrook")	Accepted
1962	Old Beach Road	Named
1962	Old Parish Road	Accepted
1962	Meadow Lane	Accepted
1962	Baker Avenue	Accepted
1963	Gray Court	Accepted
1965	Harborview Drive	Accepted
1965	Appledore Avenue	Tabled
1967	Old Locke Road	Named
1967	Oral, Foyes, and Frontier	Tabled
1969	Geremia Street (unnamed at the time)	Accepted
1969	Oral, Foyes, and Frontier	Accepted
1970	Alphabet Streets (accept deed)	Not accepted 134-113
1970	Acorn Avenue	Accepted
1970	McLaughlin Drive, Foster Lane & Maple Ave.	Tabled
1970	Old Ferry Road	Relocated, but not Discontinued as requested
1971	McLaughlin Dr., Foster Ln., & Maple Ave.	Accepted
1971	Alphabet Streets (eminent domain)	Ruled illegal
1972	Alphabet Streets (acquisition)	Tabled 109-76

ALPHABETICAL SUMMARY OF TOWN MEETING ACTION ON ROADS

Year	Road	Town Action
1970	Acorn Avenue	Accepted
1976	Ahleson Street	Accepted
1970	Alphabet Streets (accept deed)	Not accepted 134-113
1971	Alphabet Streets (eminent domain)	Ruled illegal
1972	Alphabet Streets (acquisition)	Tabled 109-76
1973	Alphabet Streets (acquisition) (6 Articles)	Approved
1965	Appledore Avenue	Tabled
1962	Baker Avenue	Accepted
1955	Bernard Drive	Tabled
1957	Bernard Drive	Accepted
1956	Big Rock Road	Named
1980	Birchwood Drive	Accepted
1957	Blueberry lane	Named
1979	Bond Road	Tabled
1980	Bond Road	Not accepted
1979	Burnette Drive	Accepted
1977	Colburn Road	Accepted
1956	Concord Point	Discontinued
1980	Constitution Circle	Accepted
1957	Fairview Avenue (later renamed "Willowbrook")	Accepted
1974	Fairway Drive	Accepted
1970	Foster Lane	Tabled
1971	Foster Lane	Accepted
1967	Foyes Road	Tabled
1969	Foyes Road	Accepted
1967	Frontier Street	Tabled
1969	Frontier Street	Accepted
1969	Geremia Street (unnamed at the time)	Accepted
1980	Geremia Street	Named
1963	Gray Court	Accepted
1982	Ham Lane	Accepted
1965	Harborview Drive	Accepted
1950	Huntervale Avenue	Accepted
1979	LaMer Drive	Accepted

Summary of Town Meeting Action, continued

Year	Road	Town Action
1957	Laurence Lane	Accepted
1979	Liberty Common to Station 10 + 0	Accepted
1980	Liberty Common from Station 10 + 0 to 25 + 0	Accepted
1982	Liberty Common (remainder)	Accepted
1970	Maple Avenue	Tabled
1971	Maple Avenue	Accepted
1957	Maple Drive	Accepted
1970	McLaughlin Drive	Tabled
1971	McLaughlin Drive	Accepted
1962	Meadow Lane	Accepted
1956	Mountain View Terrace	Accepted
1957	Mountain View Terrace (remainder)	Construction approval
1957	Odiorne Drive	Referred to Plng.B
1962	Old Beach Road	Named
1970	Old Ferry Road	Relocated, but not discontinued as requested
1967	Old Locke Road	Named
1962	Old Parish Road	Accepted
1967	Oral Lane	Tabled
1969	Oral Lane	Accepted
1979	Patriots Way	Accepted
1977	Pine Street extension	Accepted
1984	Rands Spring	Accepted
1957	Richard Road	Accepted
1974	Stonewall Lane	Accepted
1956	Surf Lane	Named
1979	Tehias Road	Accepted

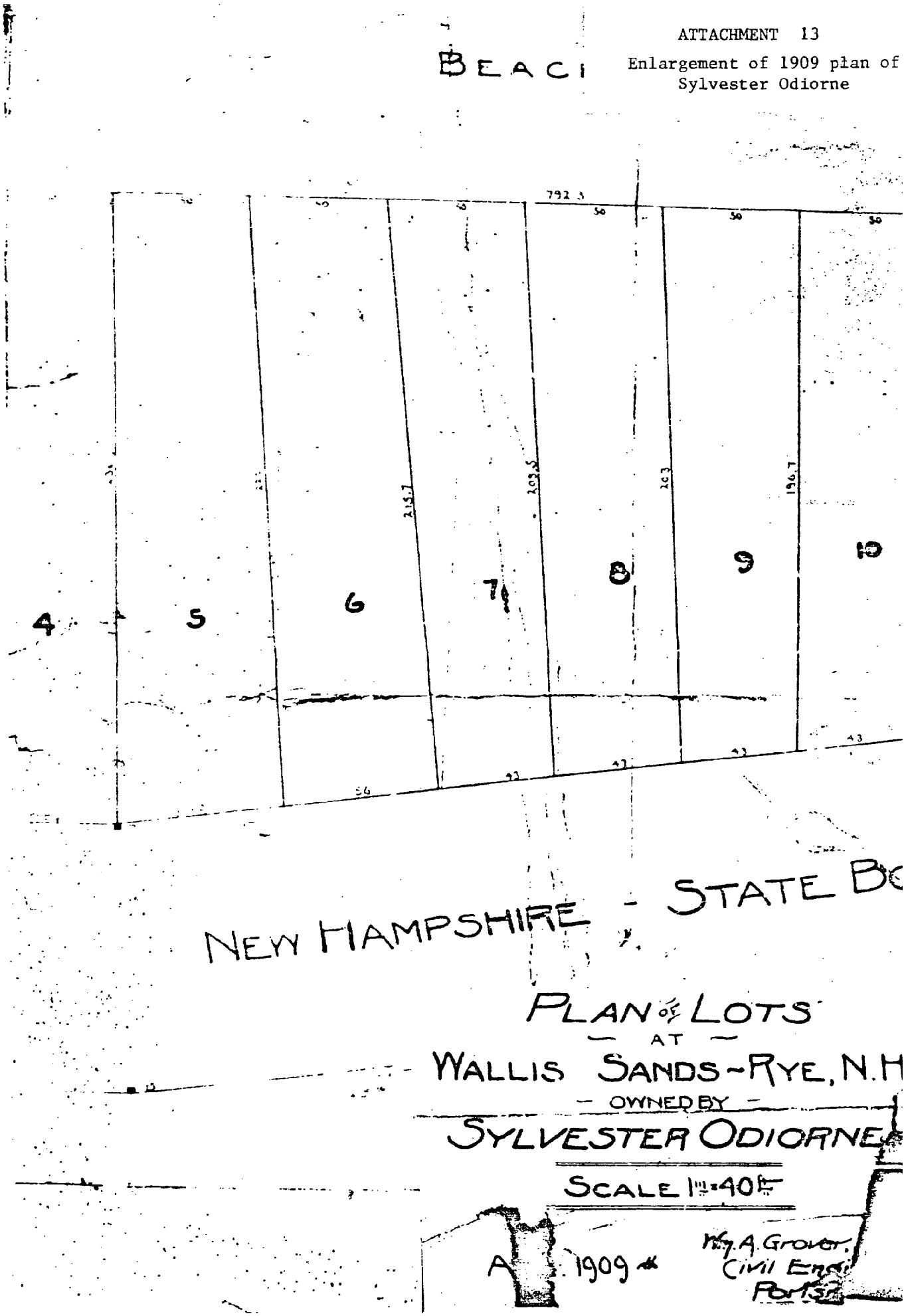
LAND AND EASEMENTS GIVEN TO THE TOWN

(Compiled by Max Friedman)

DATE	Land and Easements
March 17, 1959	Land between Locke Road, deeded to Town by State.
July 30, 1949	Land on south side of Central Road.
July 5, 1978	71.4 acres from Dorothy Tucker, on Ocean Boulevard.
November 25, 1980	Easement, Burnette Drive.
December 18, 1974	Easement, Grove and Central Road.
October 16, 1957	Ingress and egress to cemetery from Rye Harbor Road.
September 11, 1977	Easement in Acorn Acres.
August 18, 1977	Easement southeasterly side of Wallis Road.
November 2, 1974	Easement, Cable Road.
November 30, 1966	Easement, westerly side of Sagamore Road.
October 10, 1979	Easement northeasterly side of Grove Road and northwesterly side of Fern Avenue.
May 31, 1978	Birchwood Drive.
January 8, 1978	Easement, Alehson Street.
August 20, 1975	Ten acres at 190 Brackett Road and the Gladys Sewall property.
August 8, 1973	Westerly side of Sagamore Road.
February 5, 1964	Junction of Rye Harbor Road.
June 28, 1968	Highland Park Avenue.
August 20, 1975	Wallis Road.
July, 1973	E Street.
August 31, 1971	Appledore Avenue Lot Number 34.
June 29, 1967	Lot 10 in Highland Park.
June 28, 1968	Land and buildings, 165 West Road.
February 29, 1980	Southerly side of Elwyn Road.
July 5, 1978	Lot 5 of Philbrick Land.
November 18, 1980	Easement, Wallis Road property of David J. Chase.

ATTACHMENT 13

Enlargement of 1909 plan of Sylvester Odiorne



BK2170 PG329

WARRANTY DEED

We, David K. Johnson, of 14 Meade Street, in Nashua, in the County of Hillsborough and State of New Hampshire, Janet Johnson Patterson of 1794 Jackson Road, in Penfield, in the County of Monroe and State of New York, and Duane H. Johnson, of 27 Felch Road, in Natick, in the County of Middlesex and Commonwealth of Massachusetts, for consideration paid, grant unto Harlow W. Cole and Rita F. Cole, husband and wife, both of 10 Hillsboro Lane, in Avon, in the County of Hartford and State of Connecticut, as joint tenants with rights of survivorship, with WARRANTY COVENANTS:

Apr 15 4 27 PM '72
REC'D ROCKINGHAM COUNTY
REGISTRY OF DEEDS

A certain lot or parcel of land, with the buildings thereon, situate on Ocean Boulevard (and known as #1260 and 1262 Ocean Boulevard, at Wallis Sands, in Rye, in the County of Rockingham, and said State of New Hampshire, being Lot #1, on a Plan of Lots at said Wallis Sands drawn by William A. Grover, C. E., dated August, 1909, and recorded in said Rockingham County Registry of Deeds in Book of Plans 1, Page 10, bounded and described as follows:

1) Bounded Northerly by land formerly of E. P. Campbell and of William F. Thayer, two hundred thirty-one and 68/100 (231.68) feet, more or less;

2) Bounded Easterly by the Atlantic Ocean fifty (50) feet;

3) Bounded Southerly by Lot #2 on said plan two hundred thirty-one and 1/10 (231.1) feet, more or less; and

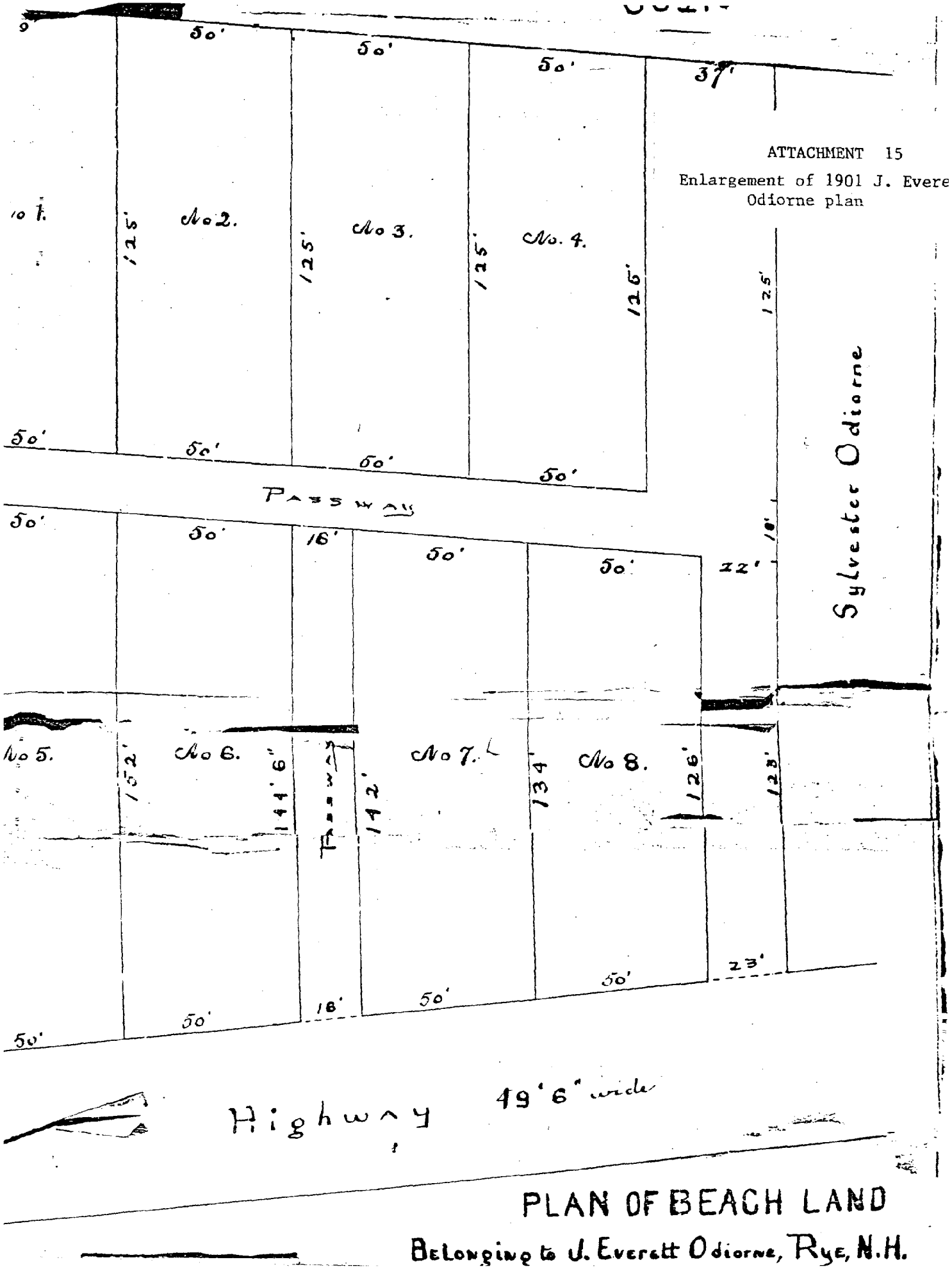
4) Bounded Westerly by New Hampshire State Boulevard fifty-four (54) feet, more or less.

Title to said premises was conveyed to Hazel P. Johnson by Gertrude Stone and Vivia Stone by deed dated October 28, 1939 and recorded in said Registry of Deeds in Volume 961 at Page 360. We derive our title to said premises as the sole residuary legatees and devisees u/w of said Hazel P. Johnson, who died testate on May 25, 1968 (see Rockingham County Probate Court Docket #48611).

1972

ATTACHMENT 15

Enlargement of 1901 J. Everett Odiorne plan



PLAN OF BEACH LAND

Belonging to J. Everett Odiorne, Rye, N.H.

354

584

Know all Men by these

ATTACHMENT 16

J.E. Odiorne to Kimball (584/354)

That I, Jonathan Everett Odiorne of Rye, (State of New Hampshire

Odiorne to Kimball etc

For and in consideration of the sum of One Dollar to me in hand before the delivery hereof, well and truly paid by Edward P. Kimball of Portsmouth in said County and William F. Thayer of Concord, County of Merrimack in said State

Delivered to E. P. Kimball by mail

the receipt whereof I do hereby acknowledge, have ~~given~~ granted, bargained and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said Edward P. Kimball and William F. Thayer and their heirs and assigns forever,

A certain tract of land situate at Wallis Sands in said Rye and bounded and described as follows: Beginning at the Northwest corner of the herein described lot and running Easterly from said corner by the land of John S. Young one hundred twenty five feet (125 feet), thence turning and running Southerly fifty feet (50 feet) thence turning and running Westerly one hundred twenty five feet to the hassuwa, thence turning and running Northerly by said hassuwa fifty feet to the place of beginning. said described lot of land is designated as lot No. 4 on "plan of beach land of J. Everett Odiorne of Rye N.H. surveyed by E. B. Phillbrick May 27, 1901." Said grantees given the right to use the common hassuways designated on said plan.

Also another tract of land lying nearly west of the above described lot with a sixteen foot hassuway between, bounded as follows: Beginning at the Northwest corner of the herein described lot and running Easterly by land of John S. Young one hundred thirty four feet to said hassuway, thence turning and running Southerly by said hassuway fifty feet to land of said J. Everett Odiorne, thence turning and running westerly by land of said Odiorne one hundred twenty six feet to the highway, thence turning and running Northerly by said highway fifty feet to the place of beginning. Said described lot is known and designated on said plan above mentioned as lot No. 8. Said grantees are given the right of way over said grantors land from the highway to the Ocean, said right of way to be twelve feet wide and adjoining land of Sylvester Quinby

To have and to hold the said granted premises, with all the privileges and appurtenances to the same belonging to them the said Edward P. Kimball & William F. Thayer and their heirs and assigns, to their and their only proper use and benefit forever. And I the said grantor for myself and my heirs, executors and administrators, do hereby covenant, grant and agree, to and with the said grantees and their heirs and assigns, that until the delivery hereof I am the lawful owner of the said premises, and am seized and possessed hereof in my own right in fee simple; and have full power and lawful authority to grant and convey the same in manner aforesaid; that the said premises are free and clear from all and every incumbrance whatsoever; and that I will and my heirs, executors and administrators, shall ~~and will~~ warrant and defend the same to the said grantees and their heirs and assigns, against the lawful claims and demands of any person or persons whomsoever.

And I, Ella M. Odiorne, wife of the said Jonathan Everett Odiorne in consideration aforesaid, do hereby relinquish my right of dower in the before-mentioned premises.

And we and each of us do hereby release, discharge and waive all such rights of exemption from attachment and levy or sale on execution, and such other rights whatsoever in said premises, and in each and every part thereof, as our Family Homestead, as are reserved or secured to us, or either of us, by the Statute of the State of New Hampshire, passed July 4, 1851, entitled "an Act to exempt the Homestead of Families from attachment and levy or sale or execution," or by any other Statute or Statutes of said State.

In witness whereof, we have hereunto set our hand s and seal s this eighteenth day of [illegible] in the year of our Lord 190[illegible]

Warranty Deed
Sulloway et al
to
Dedes
Del to
Grantee

Know All Men By These Presents,
That We, Margaret T. Sulloway, of Concord, in the County of Merrimack and State of New Hampshire, and Maud B. Kimball, of Brookline, in the County of Norfolk and Commonwealth of Massachusetts, for and in consideration of the sum of One Dollar and other valuable considerations in hand before the delivery hereof, well and truly paid by Arthur Dedes of Portsmouth, in the County of Rockingham and State of New Hampshire, the receipt whereof we do hereby acknowledge, have granted bargained and sold and by these presents do give grant bargain, sell, alien, enfeoff, convey and confirm unto the said Arthur Dedes, his heirs and assigns forever Certain parcels of land situated at Wallis Sands, in the town of Rye, New Hampshire, together with the bath-house on the first described of said parcels bounded and described as follows:

Beginning at the Northwest corner of the herein described lot and running Easterly from said corner by the land of John S. Young one hundred twenty five feet (125 feet) thence turning and running Southerly fifty feet (50 feet) thence turning and running Westerly one hundred twenty-five feet to the passway, thence turning and running Northerly by said passway fifty feet to the place of beginning. Said described lot of land is designated as lot No. 4 on "plan of beach land of J. Everett Odiorne of Rye, N.H. surveyed by S. B. Philbrick May 27, 1901." Said grantee given the right to use the common passways designated on said plan.

Also another tract of land lying nearly west of the above described lot with a sixteen foot passway between bounded as follows Beginning at the Northwest corner of the herein described lot and running easterly by land of John S Young one hundred thirty four feet to said passway thence turning and running Southerly by said passway fifty feet to land of said J. Everett Odiorne thence turning and running westerly by land of said Odiorne one hundred Twenty six feet to

ATTACHMENT 18

Margaret Michaud to Norman Michaud (2300/1990)

2300-1990

'77 DEC 20 4:11:19

FORM 404 N. H. QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That Margaret E. Portsmouth, County of Rockingham and State of New Ham

for consideration paid, grant to Norman A. Michaud of 1237 Ocean Boulevard, Rye, County of Rockingham and State of New Hampshire

with Quitclaim Covenants

A certain tract of land with the buildings thereon situate on Ocean Boulevard, Rye, County of Rockingham and State of New Hampshire and lying nearly West of Lot No. 4 on Plan of Beach Land of J. Everett Odiorne of Rye, New Hampshire, surveyed by E. B. Philbrick, May 27, 1901 with a sixteen foot passway between bounded as follows:

Beginning at the Northwest corner of the herein described lot and running Easterly by land of John S. Young one hundred thirty four feet to said passway; thence turning and running Southerly by said passway fifty feet to land of said J. Everett Odiorne; thence turning and running westerly by land of said Odiorne one hundred twenty six feet to the highway; thence turning and running Northerly by said highway fifty feet to the place of beginning. Said described lot is known and designated on said plan above mentioned as Lot No. 8.

Being the same premises conveyed to Norman A. Michaud and Margaret E. Michaud by deed of Helen D. Michaud dated August 25, 1970, and recorded in Rockingham County Registry of Deeds at Book 2036, Page 220. Helen D. Michaud died at Portsmouth, New Hampshire on November 23, 1977.

Included in the above conveyance is the right to use the common passways as set forth on the plan above referred to and as more particularly described in the deed from Margaret T. Sullivan et al to Arthur Dedes dated December 30, 1926 and recorded in Rockingham County Registry of Deeds at Book 831, Page 162. Helen D. Michaud was the sole heir of Arthur Dedes and the grantor and grantee are the sole heirs of Helen D. Michaud.

Grantor is unmarried. *, husband wife of said grantor, release to said grantee all rights of homestead and other interests therein.*

Witness my hand and seal this 17th day of December, 1977.

Witness:

Gerald F. Gibb

Margaret E. Michaud

Margaret E. Michaud

STATE OF NEW HAMPSHIRE TAX ON TRANSFER OF REAL PROPERTY STATE TAX COMMISSION DEC 1977 $15.75

State of New Hampshire

Rockingham ss.: December 17, A. D. 1977

Personally appeared Margaret E. Michaud *known to me, or satisfactorily proven, to be the person whose name subscribed to the foregoing instrument and acknowledged that* She *executed the same for the purposes therein contained.*

Before me, Gerald F. Gibb

Justice of the Peace — ~~Notary Public~~

(Site A)

TAX MAP PARCEL #181

Year	Grantor	Grantee	Vol/Page	Description
1881	Trueman Odiorne	Sylvestor Odiorne	486/40	Large tract of "sand hills" and "marsh" (Tax Map Parcels 181 through 198)
1912	Sylvester Odiorne	Frank Beebe	667/222	Tax Map Parcels #181 and 182
1919	Frank Beebe	Frances Stone	734/56	Tax Map Parcels #181 and 182
1923	Frances Stone	Gertrude & Vivia Stone	780/15	Tax Map Parcel #181
1939	Gertrude & Vivia Stone	Hazel Johnson	961/360	Tax Map Parcel #181
1972	heirs of H. Johnson	Harlow & Rita Cole	2170/329	Tax Map Parcel #181

(Site A)

TAX MAP PARCELS #180-1 AND #180-2

1901	Jonathan Everett Odiorne	E.P. Kimball & W.F. Thayer	584/354	Tax Map Parcels #180-1 and #180-2
1926	heirs of Kimball & Thayer	Arthur Dedes	831/162	Tax Map Parcels #180-1 & 180-2
1950	Helen Michaud (heir of A. Dedes)	Paul & Gladys Little	1162/25	Tax Map Parcel #180-1
1970	Helen Michaud (heir of A. Dedes)	Norman Michaud	2036/220	Tax Map Parcel #180-2

Rev.

Know all Men by these Pres

ATTACHMENT 20

James Perkins to Mathilda Kirkegaard (739/113)

THAT We, James H. Perkins, of Rye, in the and State of New Hampshire, and J. Goodwin Perkins also of said Rye,

for and in consideration of the sum of one Dollar to me in hand, before the delivery hereof well and truly paid by Mathilde V. Kirkegaard, of Bedford, in the County of Middlesex and Commonwealth of Massachusetts.

the receipt whereof we do hereby acknowledge, have ~~given~~ granted, bargained and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said Mathilde V. Kirkegaard, and her heirs and assigns forever.

Two certain tracts of land with the buildings thereon situated in said Rye, bounded and described as follows: Beginning at the northwesterly corner of said land on the highway leading from Rye to Portsmouth adjoining land of J. Arthur Brown; thence Easterly by a stone wall and land of J. Arthur Brown; thence Easterly by a stone wall including my new house and my new field; thence Easterly by said Perry land to land of Southeasterly, Easterly and Northerly by said Perry land to land of Philbrick; thence Easterly by land of G. A. Philbrick; thence Northerly by land of said Philbrick to Cable Road; thence Easterly by said Cable Road to the Washington House lot; thence Southerly by said lot to a pond; thence Easterly and Northerly by wall to land of Theodore Mitchell; thence Easterly to land of Ruffus W. Philbrick Homestead; thence Southerly and Easterly to land of said Rufus W. Philbrick; thence Southerly and Easterly by land of said Philbrick to the Sea Beach; thence by the Sea Beach Southerly to Perkins Road; thence by said road Westerly to Boulevard; thence Northerly by said Boulevard to corner of land of Lucretia Parsons; thence Northwesterly by said Parsons land to the corner of a stone wall; thence Southwesterly to said Perkins Road; thence by said Road Northerly to the corner of a stone wall opposite the Town Hall lot; thence Westerly by said Road to the line between Rye & Portsmouth; thence Northerly by said Road to the Point of beginning; excepting a field belonging to G. A. Philbrick situated in the above described lot and entirely surrounded thereby and also excepting which Decatur Parsons may have in land Dept. Gic lot between the Boulevard and the Sea Beach. Also another tract of land situated in said Rye, beginning at the Northwest corner thereof at the junction of Perkins Road and Highway leading to Portsmouth; thence Easterly along said Perkins Road across a brook to a stone wall; thence Southeasterly to land owned by James H. Perkins and one Van Der Mulin; thence Southwesterly to a post in a stone wall; thence Westerly by said stone wall and bounded Southerly by said Van Der Mulin land to said highway leading to Portsmouth; thence by said highway Northerly to the Point of beginning. Said two about described tracts contain about seventy acres more or less. This conveyance is made subject to a lease to James G. Perkins which expires April 1, 1920. It is hereby agreed that the grantee may enter and survey the property at any time before the 1st of April 1920.

To have and to hold the said granted premises, with all the privileges and appurtenances to the same belonging, to her the said Mathilde V. Kirkegaard and her heirs and assigns, to her and their only proper use and benefit forever. And We the said James H. Perkins & J. Goodwin Perkins and our heirs, executors and administrators, do hereby covenant, grant and agree, to and with the said Mathilde V. Kirkegaard and her heirs and assigns, that until the delivery hereof We are the lawful owner of the said premises, and are seized and possessed thereof in our own right and fee simple; and have full power and lawful authority to grant and convey the same in manner aforesaid; that the said premises are free and clear from all and every incumbrance whatsoever except as aforesaid; and that we and our heirs, executors and administrators, shall and will warrant and defend the same to the said Mathilde V. Kirkegaard and her heirs and assigns, against the lawful claims and demands of any person or persons whomsoever.

I, Mary G. Perkins wife of James H. Perkins and Margaret C. Perkins wife of the said J. Goodwin Perkins, in consideration aforesaid, do hereby release ~~my~~ right of dower in the above mentioned premises.

And we and each of us do hereby release, discharge and waive all such rights of exemption from attachment and levy or sale on execution and such other rights whatsoever in said premises and to each and every part thereof, as our Family Homestead, as are reserved or secured to us, or either of us, by the Statutes of the State of New Hampshire, ~~passed July 4, 1851, entitled "An Act to exempt the Homestead of Families from attachment and levy or sale on execution,"~~ or by any other Statute or Statutes of said State.

In witness whereof we have hereunto set our hands and seals this 2 day of

114

Vol. 739

Rev.

ATTACHMENT 21

Mathilda Kirkegaard to Rye Beach Realty Co. (739/114

Know all Men by these P

THAT I, Mathilda V. Kirkegaard of Belfo
wealth of Massachusetts.

Kirkegaard to Rye Beach Realty Co.

for and in consideration of the sum of one dollar and other valuable considerations to me in hand, before the delivery hereof well and truly paid by Rye Beach Realty Company a corporation duly established by law and having a usual place of business in Boston, County of Suffolk and Commonwealth of Massachusetts.

the receipt whereof I do hereby acknowledge, have ~~given~~, granted, bargained and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said Rye Beach Realty Company, its successors ~~heirs~~ and assigns forever,

del. to E. A. Brown

Certain tract of land situated in Rye, County of Rockingham and State of New Hampshire. Beginning at the northwesterly corner of said land on the highway leading from Rye to Portsmouth adjoining land of Perkins Tibbetts; thence Easterly to a corner and row of willows; thence Northerly by said row of willows to a barn and land of Perkins Tibbetts; thence Easterly by a stone wall including the barn and old orchard and the new field; thence Southerly to land of one Trefry; thence Southeasterly bounding Northerly by land of Trefry to land of Joseph Philbrick; thence Easterly to land of J. O. Philbrick; thence Northerly by land of said Philbrick to Cable Road; thence Easterly by said Cable Road to the Wachingle House lot; thence Southerly by said lot to a corner; thence Easterly and Northerly by wire fence of Thomas Cuffel; thence Westerly to land of said Philbrick; thence Southerly and Easterly by land of said Philbrick to the Sea Beach; thence by said Sea Beach Southerly to Perkins Road; thence by said Road Westerly to the Boulevard; thence Northerly by said Boulevard to corner of land of Decator Parsons; thence Northwesterly by said Parsons land to the corner of a stone wall; thence Southwesterly by said Parsons land to said Perkins Road; thence by said Road Northerly to the corner of a stone wall opposite the Tower lineage; thence Westerly by said Road to the highway from Rye to Portsmouth; thence Northerly by said road to the point of beginning, Westerly, with all buildings thereon. Excepting and reserving unto land of Decator Parsons lot between the Boulevard and the Ocean, which the said Parsons may have if any.

Also another tract of land situated in said Rye, beginning at the Northwest corner thereof at the junction of Perkins Road and the road from Rye to Portsmouth; thence Easterly along said Perkins Road to a stone wall; thence Southeasterly to a fog on a stone wall; thence Northerly by said stone wall and borrowed Southerly by said Van der Veer land to the highway from Rye to Portsmouth; thence by said highway Northerly to the point of beginning.

Said two above described tracts contain about seventy-two acres, be the same more or less, excepting the Ocean Boulevard, so called, now owned by the State of New Hampshire.

Meaning hereby to convey all land deeded to the within named grantor by John F. Brown by deed duly recorded in Rockingham Registry of Deeds, and by deed of James H. Perkins to be recorded herewith.

To have and to hold the said granted premises, with all the privileges and appurtenances to the same belonging, to it the said Rye Beach Realty Company, its successors ~~and heirs~~ and assigns, to its and their only proper use and benefit forever. And I the said Mathilda V. Kirkegaard and my heirs, executors and administrators, do hereby covenant, grant and agree, to and with the said Rye Beach Realty Company and its successors ~~and heirs~~ and assigns, that until the delivery hereof I am the lawful owner of the said premises, and my seized and possessed thereof in my own right and fee simple; and have full power and lawful authority to grant and convey the same in manner aforesaid; that the said premises are free and clear from all and every incumbrance whatsoever; and that I and my heirs, executors and administrators, shall and will warrant and defend the same to the said Rye Beach Realty Company, its successors ~~and heirs~~ and assigns, against the lawful claims and demands of any person or persons whomsoever.

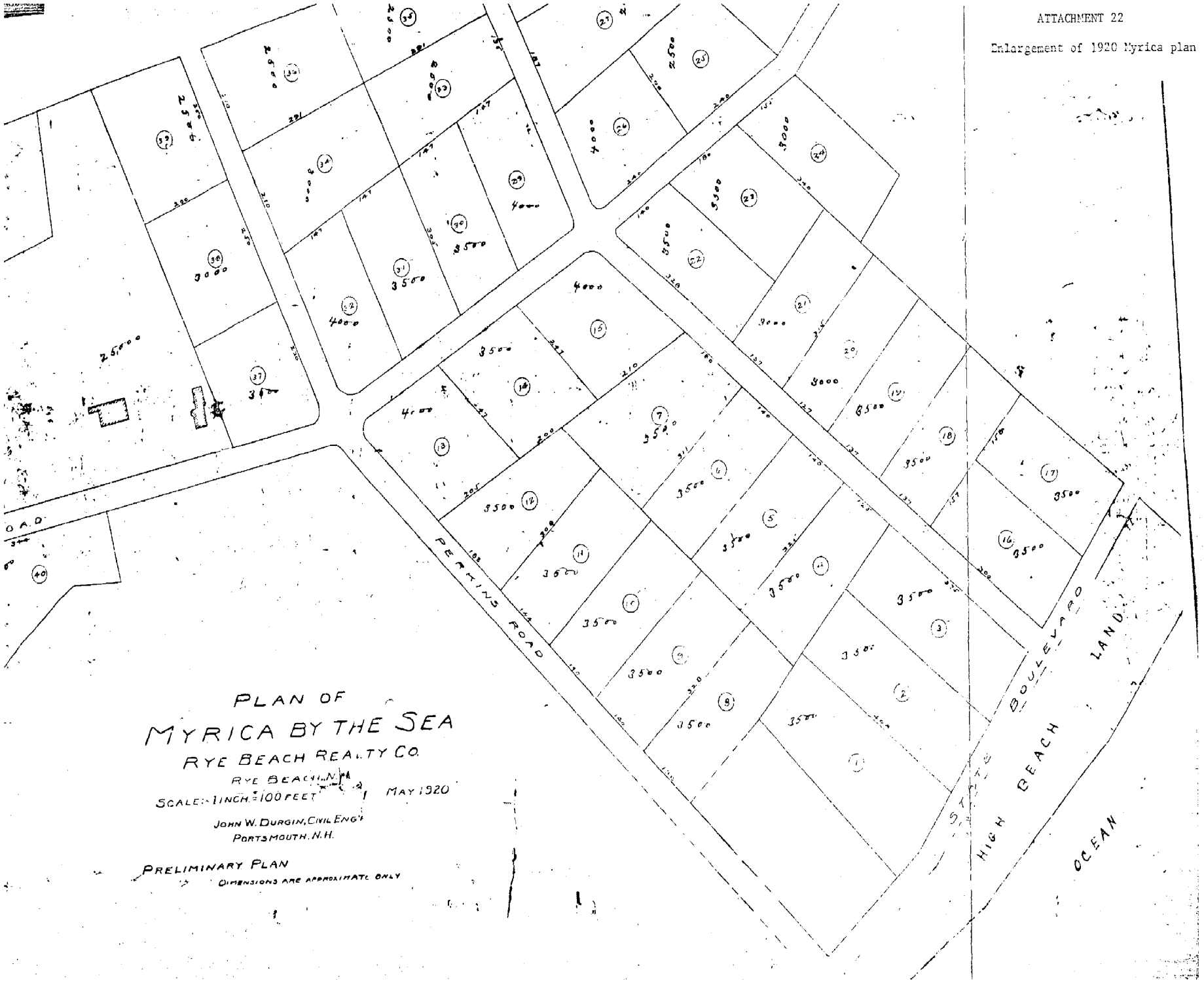
And I, John Kirkegaard, husband and wife of the said Mathilda V. Kirkegaard in consideration aforesaid, do hereby release my right of ~~dower~~ curtesy in the ~~above~~ mentioned premises.

And we and each of us do hereby release, discharge and waive all such rights of exemption from attachment and levy or sale on execution and all other rights whatsoever in said premises and to each and every part thereof, as our Family Homestead, as are reserved or secured to us, or either of us, by the Statute of the State of New Hampshire, ~~passed July 4, 1854, entitled "An Act to exempt the Homestead of Families from attachment and levy or sale on execution,"~~ or by any other Statute or Statutes of said State.

In Witness whereof We have hereunto set our hands and seals this 22nd

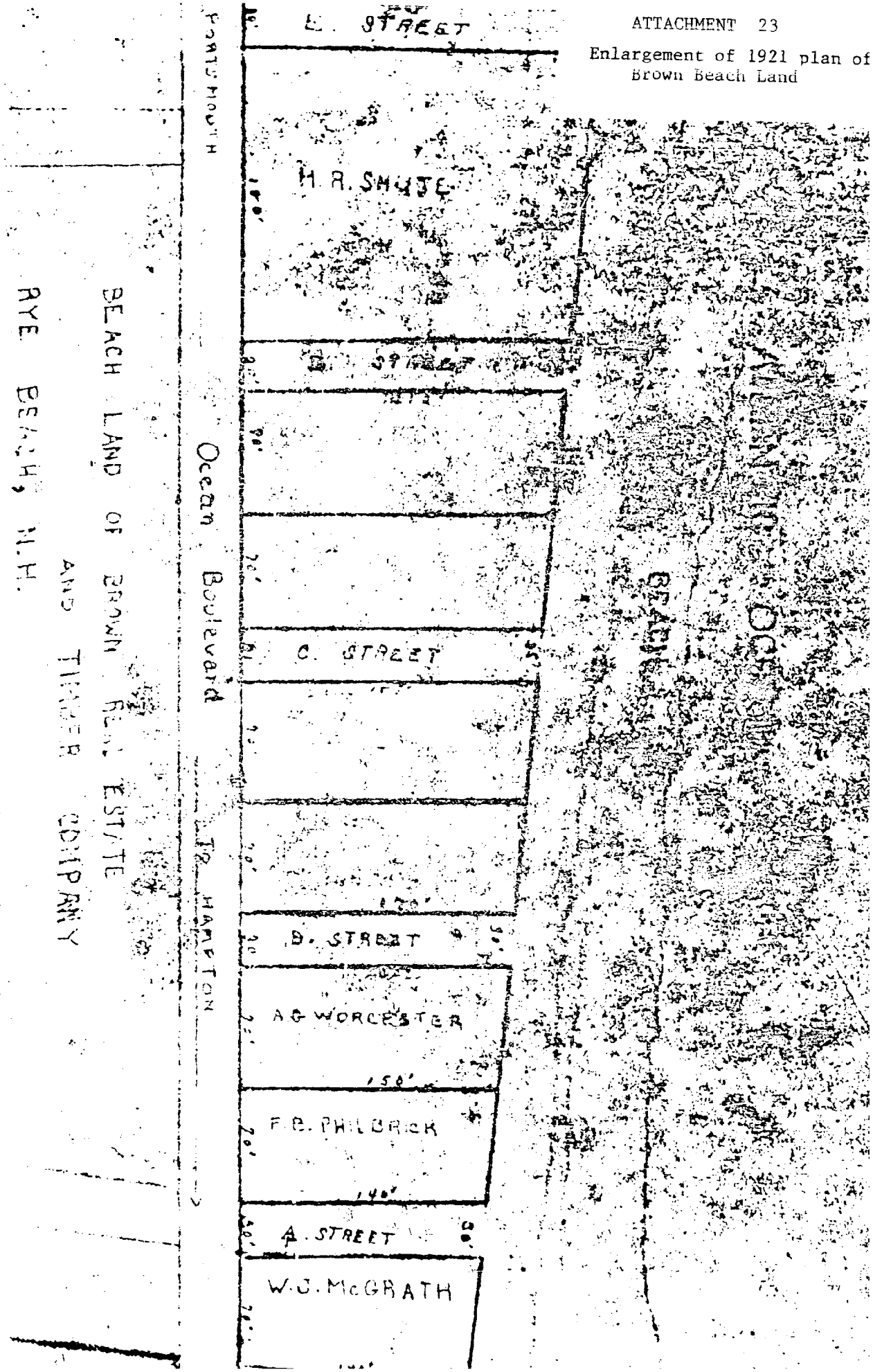
ATTACHMENT 22

Enlargement of 1920 Myrica plan



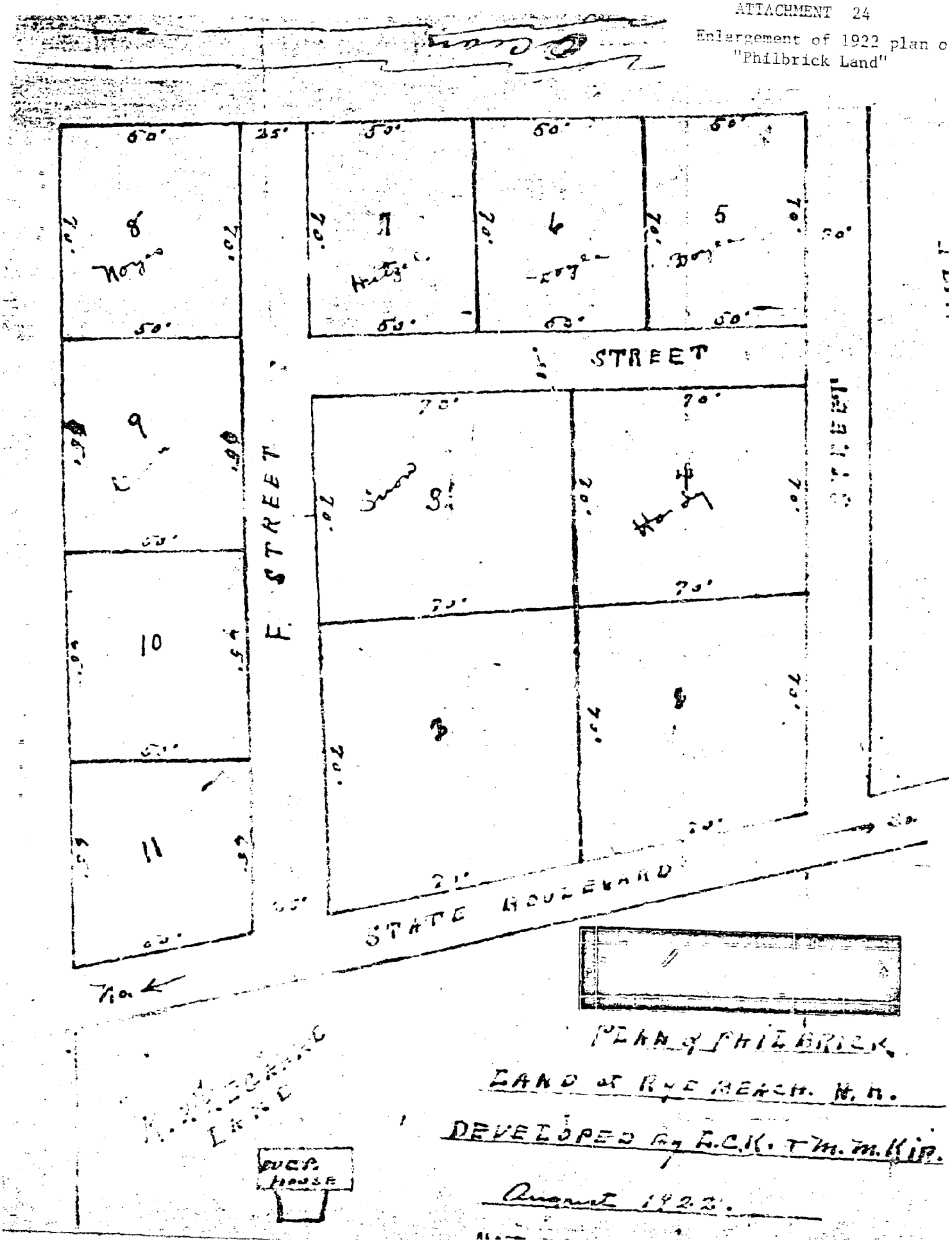
ATTACHMENT 23

Enlargement of 1921 plan of Brown Beach Land

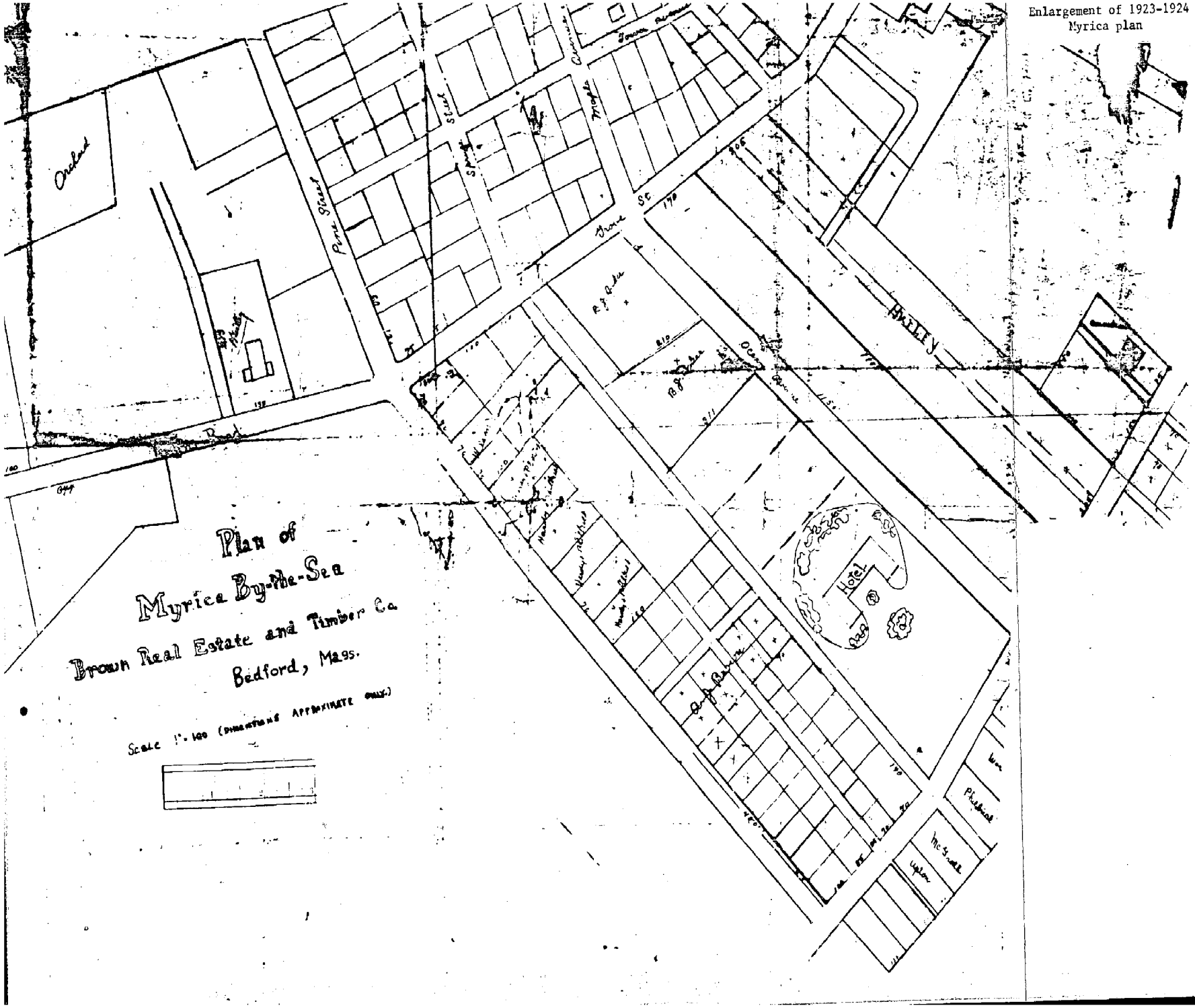


ATTACHMENT 24

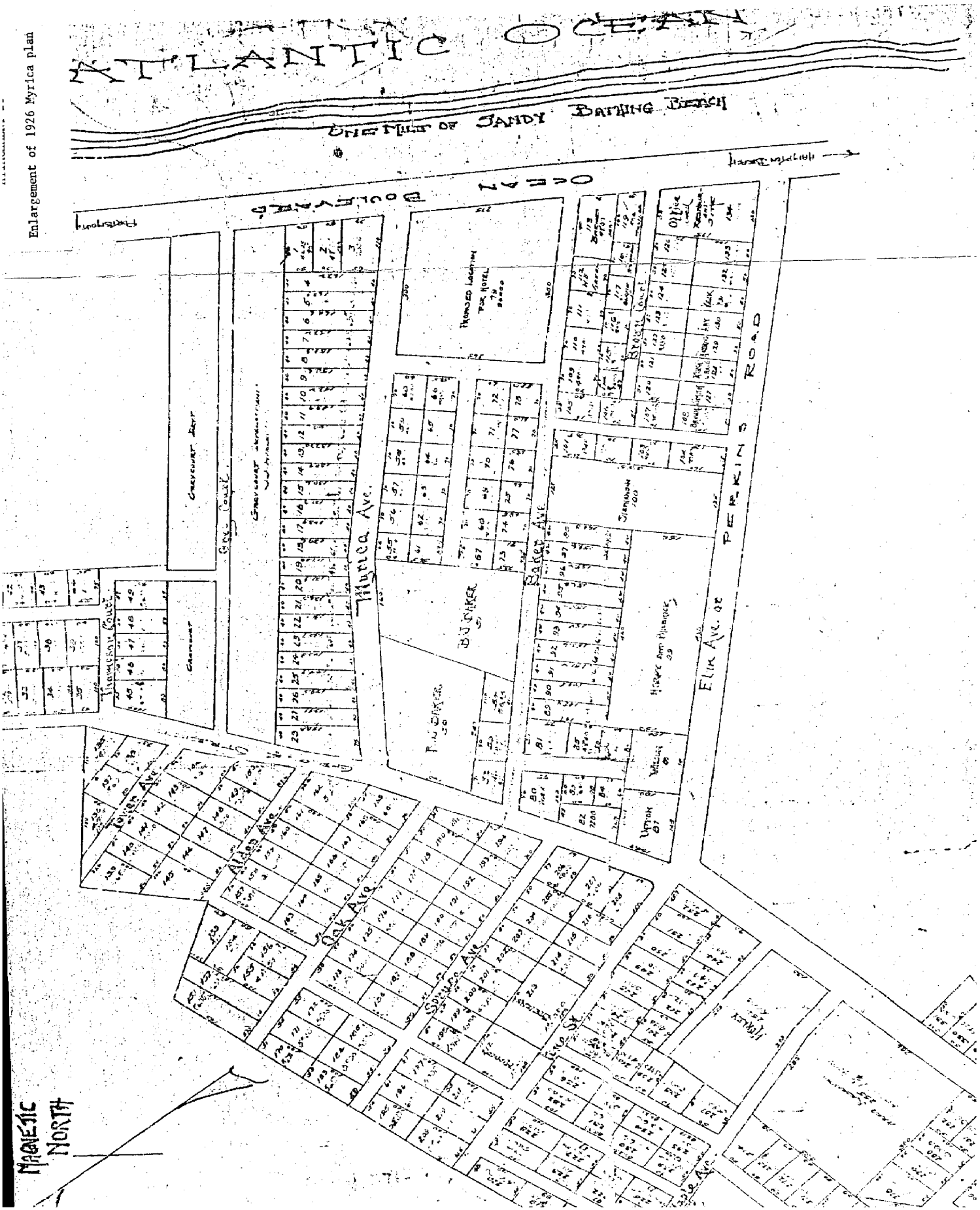
Enlargement of 1922 plan o
"Philbrick Land"



Enlargement of 1923-1924
Myrica plan



Enlargement of 1926 Myrica plan



ATTACHMENT 27

Decision of the Superior Court
Young et al. vs. Prendiville

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT
January Term
1971
am

EQUITY NO. 2241

MAYNARD L. YOUNG, JR., ET ALS

vs.

JOHN F. PRENDIVILLE, ET ALS

Master's Report

This is a petition originally brought by some thirty-eight plaintiffs seeking an injunction to restrain the defendants from barring the plaintiffs access to Rye Beach through an area which in this report will be referred to as "C" Street. "C" Street extends eastward from Ocean Boulevard to the beach.

On motion of the plaintiffs the petition was dismissed as to six of the original plaintiffs, to wit: James C. Gahan, Jr., Jane R. Gahan, John H. Fallon, Edith H. Fallon, Richard M. Oeser, and Lucy-Anne Oeser.

The plaintiffs are residents of a development known as Myrica by the Sea, and it is situate westerly of Ocean Boulevard. The defendants own summer homes situate on the easterly side of the Boulevard and bordering on Rye Beach -- the Prendivilles' lying southerly of "C" Street and the Wynots' property lying northerly.

The plaintiffs are only entitled to relief if there has been some interference with some right or interest they have in "C" Street. The burden of proving the existence of such right or interest rests upon the plaintiffs.

The plaintiffs, either in their original pleadings or in amendments thereto, based their claim on four grounds:

1. By expressed grant.
2. By implied easements by reason of the layout of "C" Street on a plan or map.
3. By "C" Street having become a public way by prescriptive use of the general public.
4. By plaintiffs having acquired a private way over "C" Street by adverse use.

There was no evidence that the plaintiffs had ever acquired any rights in "C" Street by expressed grant. None of their deeds mention "C" Street and none specifically give to the grantees any right of access to the beach. There was no evidence introduced of any other written documents expressly granting such rights to the plaintiffs.

The Master finds and rules that the plaintiffs acquired no rights or interest in "C" Street by virtue of any expressed grant.

The deeds of the plaintiffs all contain the following provisions: "...being Lot No. (number of lot inserted) on

plan entitled, 'Myrica by the Sea, Building Lot Layout, Kirkegaar Real Estate Development, Rye Beach, New Hampshire', by Higgins and Collins, Engineers, Lawrence, Massachusetts". There is no other map or plot plan referred to in the conveyances. The plan was introduced as Plaintiffs' Exhibit No. 1. The plan consists of the layout of some 350, plus, lots and various roads or streets. While the plan itself bears no date, it was filed and recorded in the Registry of Deeds on November 12, 1926. The entire layout is situate on the westerly side of Ocean Boulevard. The only reference to the area on the easterly side of the Boulevard is the notation, "one mile of sandy bathing beach". The plan indicates no access to the beach and no layout or streets running easterly from Ocean Boulevard to the beach.

There were certain other maps or plans that indicate an area marked "C" Street that runs from the Boulevard easterly to the beach. However, none of these are mentioned in the deeds of the plaintiffs, and they are not entitled to derive any benefits by reason thereof.

The Master finds and rules that the plaintiffs acquired no interest or right in "C" Street by implied easements.

The Master is unable to find that the general public acquired any interest or right in "C" Street by virtue of prescriptive use by the general public. There was some evidence

of use of "C" Street by persons other than the plaintiffs and residents of the Myrica development, but the evidence was vague and of only an occasional use that was not sufficient to establish any public right of way. No persons other than the plaintiffs, residents of the Myrica development, as far as these proceedings are concerned made any claim to such a right. Whatever use the residents of the Myrica development made of "C" Street, it was a use at best restricted to a specific group and was not sufficient to establish a public right of use.

The Master finds and rules that the plaintiffs acquired no interest or right to "C" Street as members of the general public.

In order to determine whether or not the plaintiffs acquired any private right or interests in "C" Street by prescriptive use, it is necessary for the plaintiffs to show that such use as made by them was adverse and hostile. Before this can be determined, it is necessary to decide who did have such a title or interest in "C" Street against whom the use of "C" Street would be adverse or hostile.

The titles of the defendants were derived from Brown Real Estate and Timber Company. The deeds of the defendants and their predecessors in title described the property as abutting on "C" Street. Neither "C" Street itself nor any

rights therein were ever specifically granted.

The defendants' deeds and most of those of their predecessors in title describe "C" Street as a "proposed street called "C" Street on 'Plan of Lots' of beach land of Brown Real Estate and Timber Company, recorded in Rockingham County Registry of Deeds". The Master finds that plan, introduced as Plaintiffs' Exhibit No. 2, is the plan this referred to. It specifically indicates an area marked "C" Street running easterly from the Boulevard to the beach. There was no evidence indicating any disagreement between the parties to this action as to the location of "C" Street on the ground. From the evidence the first conveyance that attempted to include "C" Street within the conveyed premises was the deed of Stanley Burns, defendant Prendiville's predecessor in title, to Irene Burns, dated January 2, 1964. This deed located the lot on the southerly side of "a proposed street called "C" Street", but also bounded the conveyed lot on the northerly side by land of Edith Hill, who owned the lot on the northerly side of "C" Street. The next specific attempt to convey any rights in "C" Street was deed dated July 20, 1967, from Evelyn Flanders to defendants Edward D. and Eugenia Wynot. This deed included, "...together with all right, title, and interests to the grantor in and to "C" Street and the right to use the same in common with others".

Defendants John F. and Ella M. Prendiville secured title to their lot on the southerly side of "C" Street by two deeds from Irene Burns, both dated July 24, 1968. The first deed followed the same description as the above-mentioned deed from Stanley Burns to Irene Burns. The second, a quitclaim deed purported to convey, "All my right, interest, and title to a certain hard-topped driveway northerly and adjacent to property deeded by me this day to John F. Prendiville and Ella M. Prendiville," and referred to in said deed as, "...a proposed street called "C" Street, together with all of my right and title, including any rights of way, or title by prescriptive use, to land running from the easterly edge of said driveway to the mean low water mark of the Atlantic Ocean."

Other than the above-mentioned deeds, there was no evidence that the Brown Real Estate and Timber Company, or any of its successors in title, or any of the defendants or their predecessors in title had ever specifically granted to anyone any interest in "C" Street.

The Master finds and rules that as between the parties to these proceedings the lots presently owned by the defendants, having been sold to the defendants and their predecessors in title with reference to a recorded plan showing "C" Street as a proposed street and describing "C" Street as a boundary, the

conveyances to the defendants and their predecessors in title deeded each of them the underlying fee to that one-half of "C" Street which abutted their respective properties.

A stone wall was constructed on the easterly side of the defendants' properties for the purpose of preventing erosion and water damage. This wall extended along the easterly terminus of "C" Street. There were three stairways erected in this wall leading down to the beach, one in front of defendant Wynot's property, one at the end of "C" Street, and one in front of defendant Prendiville's property. Certain people who lived in the vicinity had used "C" Street and the center stairway to reach the beach beginning as far back as 1932. The street was never blocked off. About 1957 a sign was erected on the westerly terminus of "C" Street reading, "Private Way, Residents Only". Plaintiff's Exhibit No. 2, in addition to "C" Street, indicates "A", "B", "D", and "E" Streets. There is no line on the plan closing the easterly terminus of any of these streets.

Up until recent years the evidence indicates that the use of "C" Street by persons other than abutting owners was not hostile. A number of those who used the way beyond the prescriptive period were friends of the abutting owners, and there was a friendly relationship that would have disallowed hostility. Many of them used the way with the expressed permission of the

abutting owners. Many of the plaintiffs neither testified nor were present at the hearing. There was no evidence as to what use some of these had made of the way. The testimony of others indicated that their use was only in recent years. The lack of definiteness as to time of use, by whom, whether with or without permission, implied or otherwise, are bars to the Master making a finding that the plaintiffs have sustained their burden in proving that their use of the way was adverse and hostile for a continuous period of twenty years or more.

The Master recommends the petition be dismissed and that no damages be assessed against the plaintiffs.

3/8/71

Leonard C. Hardwick
Master

March 8, 1971. Master's Report approved. Decree accordingly.

/s/ Francis E. Perkins
Presiding Justice

ATTACHMENT 28

Decision of the Supreme Court
Young et al. vs. Prendiville

MAYNARD L. YOUNG, JR., & a.

v.

JOHN F. PRENDIVILLE & a.

May 31, 1972.

1. Evidence of indefinite and occasional public use of a street within twenty years of its dedication to such use by the filing of a subdivision plan in the county registry of deeds and of subsequent sales of lots in accordance with the plan were properly found to be insufficient to constitute public acceptance of the street under RSA 238:7.
2. Use of such a street by the abutting owners' tenants, friends, and neighbors within twenty years of its dedication did not constitute a public use within the meaning of RSA 238:7.

Griffin, Harrington & Brigham (*Mr. Lindsey R. Brigham* orally) for the plaintiffs.

Upton, Sanders & Upton and *Sullivan & Wynot* (*Mr. Frederic K. Upton* orally) for the defendants.

KENISON, C.J. The principal issue presented in this case is whether a street to Rye Beach was accepted by the public as a public way or whether it has remained the private property of defendants, abutting land owners.

C Street is one of five streets running from Ocean Boulevard to Rye Beach as shown on a subdivision plan of the land between the boulevard and the beach. Around 1921, the owner filed the plan in the county registry of deeds and thereafter sold lots in accordance with the plan. C Street has never been formally accepted or developed by the municipality as a public way. Today C Street is in part a paved common driveway for the abutting owners and in part a grass lawn divided from the beach by a sea wall.

Plaintiffs, residents of a different development on the other side of Ocean Boulevard, sought an injunction restraining defendants from obstructing passage along C Street to the beach. Plaintiffs alleged both a private right of passage based on prescription or implication from the plan and a public right of passage based on prescription or dedication. The Master (*Leonard C. Hardwick*, Esq.) found that none of the plaintiffs acquired rights in C Street by express grant or by deed reference to any plan showing access to the beach. He found neither a private nor a public right of passage and recommended the petition be dismissed. The Superior Court (*Perkins*, J.) approved the master's decision.

The principal issue that the plaintiffs argue on appeal is whether the land has become public, under RSA 238:7, by dedication. The statute provides: "238:7. Dedicated Ways. Any street, lane or alley within this state which has been dedicated to public use by being drawn or shown upon a plan of lands platted by the owner, and the sale of lots in accordance with such plan, shall be released and discharged from all public servitude unless such street, lane or alley shall be opened, built or used for public travel within twenty years from such dedication." *See Hodge v. Manchester*, 79 N.H. 437, 111 A. 385 (1920).

Defendants initially contend that the plaintiffs' failure to except to the master's report or to the superior court's approval of the report prevents them from raising the issue of dedication on appeal. We agree that under *Axton v. Cooper*, 97 N.H. 327, 87 A.2d 687 (1952), review of this issue might properly be denied. However inasmuch as the issue was raised by plaintiffs' requests for rulings of law and inferentially covered by the master's report, we prefer to consider the case on its merits.

C Street was dedicated to public use in 1921 with the filing of the plan and subsequent sale of the lots. RSA 238:7; *Perrotto v. Claremont*, 101 N.H. 267, 140 A.2d 576 (1958); 6 Powell, Real Property para. 935 (1971). The master found the evidence of public use, as contrasted with use by the abutting owners' tenants, friends, and neighbors, indefinite, at best suggesting an occasional use insufficient to create public rights. Although this finding was principally in response to plaintiffs' primary argument of right by prescription based on use after 1941, it well characterizes the pre-1941 use. We hold such meager evidence of use within 20 years of dedication insufficient for public acceptance of a street under RSA 238:7. *McInnis v. Hampton*, 112 N.H. 57, 288 A.2d 691 (1972); *Town of Glenarden v. Lewis*, 261 Md. 1, 273 A.2d 140 (1971); *County of Banner v. Young*, 184 Neb. 546, 169 N.W.2d 280 (1969); *Holgesang v. Woodbine Avenue Realty Co.*, 414 S.W.2d 580 (Ky. 1967); 11 McQuillin, Municipal Corporations sv. 33.50, 33.54 (3d ed. rev. 1964); *see* Note, Public Ownership of Land Through Dedication, 75 Harv. L. Rev. 1406 (1962).

Plaintiffs rely heavily upon *Phillips v. City of Stamford*, 81 Conn. 408, 71 A. 361 (1908), which affirmed a trial court's finding that a limited annual summer use by nearby residents of a path to the ocean was sufficient to show public acceptance of dedication of the path. We need not pass on whether *Phillips* represents the law in New Hampshire because the case is clearly distinguishable. Moreover, the evidence in this case suggests less public use and is significantly less definite than in *Phillips*.

The plaintiffs complain of the master's failure to expressly grant or deny certain requests and also to certain evidentiary rulings. We have examined both the requests and the rulings and find no prejudicial error. *See* Traynor, The Riddle of Harmless Error 80-81 (1970).

Plaintiffs' exceptions overruled.

All concurred.

ATTACHMENT 28A

Alphabet Streets: Legal Opin:
RE possible future legal act:

KEARNS, COLLIANDER, DONAHUE & TUCKER, P. A.
ATTORNEYS AT LAW
108 HIGH STREET
P. O. BOX 610
EXETER, NEW HAMPSHIRE 03833

PETER F. KEARNS
JOHN D. COLLIANDER
MICHAEL J. DONAHUE
CHARLES F. TUCKER
DAVID S. BROWN
DENISE A. POULOS

TELEPHONE
603-778-0566

August 21, 1984

George N. Olson, Director
Rockingham Planning Commission
One Water Street
Exeter, New Hampshire 03833

Re: Young vs. Prendiville

Dear George:

I have reviewed the Superior Court Decision, Reserve Case, and Supreme Court Decisions in Young vs. Prendiville with an eye toward whether the case might be brought again either by the Town of Rye, itself, or by citizens in the development.

Alhtough the case clearly could have gone either way, I think it is one of those examples where what my gut reaction "ought to be" and what the law actually says are two different things.

Apparently Mr. Young could not prove:

1. That the original plan established a right in the plaintiffs to use "C" Street since their lots derived from a different subdivision plan;

2. The public had acquired no rights to "C" Street since the Town did not take over and maintain it within twenty (20) years of its showing on the plan as required by state statute;

3. Mr. Young et al could not show that the public had by adverse use acquired a right to use "C" Street since it had appeared that the public had been effectively prohibited from using it by signs which said "residents only" and other such devises; and,

4. Mr. Young and his neighbors could not prove that they acquired a right to use it by adverse possession (a prescriptive easement) because they had been permitted to use the right-of-way by the defendants and their predecessors thus raising no "adversity" and thus creating no rights.

In order to determine whether it is worth bringing the matter up before the court again, it must be determined whether anything has changed.

A. Certainly the original grant of rights has not changed.

B. Certainly the original dedication procedure has not changed.

C. Perhaps the public has now used the right-of-way, adversely, for twenty (20) years. If that can be proven that is a change sufficient enough to re-open the case. In that event the Town of Rye might be the appropriate plaintiff, or the State of New Hampshire might be the appropriate plaintiff.

D. If, since the date of the decree, the original plaintiffs and their successors-in-title have used the property for access despite the court decision, warnings, threats, signs, and physical barriers, then perhaps both plaintiffs can now prove use by adverse possession.

My estimate for the cost of such a Suit on this street or any of the other letter streets is at least $3,000 and perhaps $5,000. As far as "C" Street goes, it would be particularly difficult to get by the first hearing wherein the Prendivilles or their successors, would attempt to have the case thrown out and obtain attorneys fees because the same case was being brought twice. Although award of attorneys fees is rare, I think it is quite possible that a judge who found the defendants were being sued twice over the same matter would be entitled to them.

If one of the other alphabet streets has a quite different history and public use can be proven, or use by neighbors can be proven, and such use can shown to be notorious, adverse, and for a period of twenty (20) or more years, then I believe those cases would have a good chance of success. Each one would turn on its own fact situation.

Sincerely yours,

Charles F. Tucker
dictated/not read
CFT:bdm

ATTACHMENT 29

Rand to Odierne (442/404)

Know all Men by these Presents

That I Jedediah Rand of Rye in the County of Rockingham and State of New Hampshire

For and in consideration of the sum of Seven hundred dollars to me in hand, before the delivery hereof, well and truly paid by

Rand to Odierne

Charles B. Odierne of Rye in the aforesaid County of Rockingham

the receipt whereof I do hereby acknowledge, have given, granted, bargained, sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said Charles B. Odierne his heirs and assigns forever,

A certain tract of land situate in said Rye containing four acres and seventy three rods more or less. Bounded and described as follows. Northerly by land of the New Castle Bridge Company, Easterly by Little Harbor so called. Southerly by land of Orrin E. Foye and Westerly by the old road leading from New Castle to Portsmouth. Being the same tract of land I purchased of Edwin J. Travis and commonly called the Sand field.

To HAVE and to HOLD, the said granted premises, with all the privileges and appurtenances to the same belonging to him the said Charles B. Odierne and his heirs and assigns, to his and their only proper use and benefit forever. And I the said Jedediah Rand and my heirs, executors, and administrators, do hereby covenant, grant and agree to and with the said Charles B. Odierne and his heirs and assigns, that until the delivery hereof I am the lawful owner of the said premises and am seized and possessed thereof in my own right in fee simple, and have full power and lawful authority to grant and convey the same in manner aforesaid: that the said premises are free and clear from all and every incumbrance whatsoever, and that I and my heirs, executors, and administrators, shall and will warrant and defend the same to the said Charles B. Odierne and his heirs and assigns, against the lawful claims and demands of any person or persons whomsoever.

In witness whereof, I have hereunto set my hand and seal this twenty seventh day of October in the year of our Lord ~~one thousand eight hundred and~~ 1870.

Signed, sealed, and delivered in presence of us.

ATTACHMENT 30

Charles Odiorne to Samuel Odiorne (476/412)

Know all Men by these Presents, that I Charles B. Odiorne of Rye in the County of Rockingham and State of New Hampshire

For and in consideration of the sum of Seven Hundred Dollars to me in hand, before the delivery hereof, well and truly paid by

Odiorne 15 Odiorne

Samuel A. Odiorne of said Rye

the receipt whereof I do hereby acknowledge, have given, granted, bargained and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said Samuel A. Odiorne and his heirs and assigns forever,

of Moses C. Page

A certain tract of land in said Rye situate upon the Road leading from Portsmouth to Newcastle over the new bridge by the Wentworth House, and bounded Northerly by said Road, Easterly by Little Harbor River so called, Southerly by land of Jew L. Page and Westerly by the old Road leading from Rye to Newcastle, together with the beach and water privileges thereunto belonging.

The premises containing five and one half acres more or less and comprising with other land that tract of land conveyed to me by Jedidiah Rand by his deed dated October 9th 1873 and recorded in Rockingham Records Book 442 Page 404.

To HAVE and to HOLD the said granted premises, with all the privileges and appurtenances to the same belonging, to him the said Samuel A. Odiorne and his heirs and assigns, to me and their only proper use and benefit forever. And I the said Charles B. Odiorne for myself and my heirs, executors, and administrators, do hereby covenant, grant and agree to and with the said Samuel A. Odiorne and his heirs and assigns, that until the delivery hereof I am the lawful owner of the said premises and am seized and possessed thereof in my own right in fee simple, and have full power and lawful authority to grant and convey the same in manner aforesaid; that the said premises are free and clear from all and every encumbrance whatsoever; and that I and my heirs, executors and administrators, shall and will warrant and defend the same to the said Samuel A. Odiorne and his heirs and assigns, against the lawful claims and demands of any person or persons whomsoever.

And I, Lucy S. Odiorne, wife of the said Charles B. Odiorne in consideration aforesaid, do hereby *relinquish my right of dower* in the before mentioned premises.

And we, and each of us, do hereby release, discharge and waive all such rights of exemption from attachment, and levy or sale on execution, and such other rights whatsoever, in said premises, and in each and every part thereof, as our family homestead, as are reserved or secured to us, or either of us, by the Statute of the State of New Hampshire, passed July 4th, 1851, entitled "An act to exempt the Homestead of Families from Attachment and Levy or Sale on Execution," or by any other statute or statutes of said State.

IN WITNESS WHEREOF we *have hereunto set our hands and seal this* ninth

Know all Men by these Pr

That I, Samuel A. Odiorne of Rye,

Rockingham and State of New Hampshire,

For and in consideration of the sum of One dollar to me in hand before the delivery hereof, well and truly paid by

Lucy Cushing Richardson of Boston in the County of Suffolk and Commonwealth of Massachusetts,

the receipt whereof I do hereby acknowledge, have given, granted, bargained and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said Richardson and her heirs and assigns forever.

Odiorne to Richardson

Delivered to C. Page.

A certain lot of land in said Rye, on the Southerly side of the road which leads from Sagamore Road over the bridge across Little Harbor River to Hatch's Westmouth, in Newcastle, bounded Northerly by said road, Easterly - Southerly and South-westerly by Little Harbor River and Westerly by land belonging to me, intending to convey all the land and water rights and privileges not belonging to the public which lies on the Southerly side of the following described line, viz. Beginning on the Southerly side line of said road, at Little Harbor River - where it runs under said bridge and following said Southerly side line of said road Westerly to the stone steps opposite land of Charles B. Odiorne, which leads from said road down over the beach towards the beach, the distance measuring from the westerly end of said bridge to said steps being about five hundred feet. The premises are a part of the estate conveyed to me by Chas. B. Odiorne by his deed dated April 9, 1880, recorded in Rockingham Records, Book 476, Page 410.

To have and to hold the said granted premises, with all the privileges and appurtenances to the same belonging to her the said Richardson and her heirs and assigns, to her and their only proper use and benefit forever. And I the said Samuel A. Odiorne for myself and my heirs, executors and administrators, do hereby covenant, grant and agree, to and with the said Richardson and her heirs and assigns, that until the delivery hereof I am the lawful owner of the said premises, and am seized and possessed hereof in my own right in fee simple; and have full power and lawful authority to grant and convey the same in manner aforesaid; that the said premises are free and clear from all and every incumbrance whatsoever; and that I and my heirs, executors and administrators, shall and will warrant and defend the same to the said Richardson and her heirs and assigns, against the lawful claims and demands of any person or persons whomsoever.

And I, Carrie A. Odiorne wife of the said Samuel A. Odiorne in consideration aforesaid, do hereby relinquish my right of dower in the before-mentioned premises.

And we and each of us do hereby release, discharge and waive all such rights of exemption from attachment and levy or sale on execution, and such other rights whatsoever in said premises, and in each and every part thereof, as our Family Homestead, as are reserved or secured to us, or either of us, by the Statute of the State of New Hampshire, passed July 4, 1851, entitled "an Act to exempt the Homestead of Families from attachment and levy or sale on execution," or by any other Statute or Statutes of said State.

In witness whereof, We have hereunto set our hands and seals this twenty second

War. Deed
Richardson
to
Wentworth Hotel
Company
Dat. 1
J. P. Cotton
by mail

Know All Men By These Presents,

That I, Lucy C. Richardson, of Boston, County of Suffolk, and Commonwealth of Massachusetts, being unmarried, for and in consideration of the sum of Two Thousand Dollars, to me in hand, before the delivery hereof, paid by the Wentworth Hotel Company, a corporation organized under the laws of the Commonwealth of Massachusetts, the receipt thereof I do hereby acknowledge, have given, granted, bargained and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said Wentworth Hotel Company, its successors and assigns forever.

A certain lot of land in Rye, County of Rockingham, State of New Hampshire, on the southerly side of the road which leads from Sagamore Road over the bridge across Little Harbor River to Hotel Wentworth in Newcastle, bounded: Northerly by said road, easterly, southerly and southwesterly by Little Harbor River and westerly by land now or formerly of Samuel A. Chisholm; intending to convey all the land and water rights and privileges not belonging to the public which lie on the southerly side of the following described line, to wit:- Beginning on the southerly side line of said road at Little Harbor River where it runs under said Bridge, and following said southerly side line of said road westerly to the stone steps opposite land of Charles E. Chisholm, which leads from said road down over the bank towards the beach, the distance measuring from the westerly end of said Bridge to said steps being about five hundred feet. Meaning and intending to convey hereby the same property which were conveyed to me by Samuel A. Chisholm by deed dated August 22, 1889, and recorded with Rockingham County Records, Book 517, Page 285.

To Have and To Hold the said granted premises with all the privileges and appurtenances to the same belonging, to it, the said Wentworth Hotel Company, and its successors and assigns, to its and their only proper use and benefit forever. And I, the said Lucy C. Richardson for myself and my heirs, executors and administrators, do hereby covenant, grant and agree, to and with the said Wentworth Hotel Company and its successors and assigns, that until the delivery hereof I am the lawful owner of the said premises, and am seized and possessed thereof in my own right in fee simple;

ATTACHMENT 33

Wentworth Fairways Golf, Inc.
Wentworth-by-the-Sea Corp.
(2451/1727)

20933

Jun 13 11 46 AM '83

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That WENTWORTH FAIRWAYS GOLF, INC., a New Hampshire Corporation with a place of business and a mailing address at Wentworth Road, Rye, County of Rockingham and State of New Hampshire, for consideration paid, grants to WENTWORTH-BY-THE-SEA CORPORATION, a Delaware Corporation registered to do business in the State of New Hampshire, with a place of business at Wentworth Road, New Castle and Rye, County of Rockingham and State of New Hampshire, with WARRANTY COVENANTS, the following described premises:

> The real estate including buildings thereon within this conveyance is described on the attached "EXHIBIT A".

IN WITNESS WHEREOF, it hereunto sets its hand and Corporate Seal this 01st day of June, 1983.

WENTWORTH FAIRWAYS GOLF, INC.

Witness

By: _____
(Duly Authorized Officer)

STATE OF NEW HAMPSHIRE
ROCKINGHAM, SS.

June 01, 1983

Personally appeared the above named Warner Cooke, duly authorized officer of Wentworth Fairways Golf, Inc. and acknowledged the foregoing instrument as his voluntary act and deed and that of the said Corporation.

Before me,

_____
Justice of the Peace

STATE OF NEW HAMPSHIRE

EXHIBIT A
TO DEED GIVEN BY WENTWORTH FAIRWAYS GOLF, INC. TO
WENTWORTH-BY-THE-SEA CORP.

Certain tracts or parcels of land, including leasehold interests, situated in the Town of Rye, County of Rockingham, State of New Hampshire, bounded and described as follows:

Tract A

A tract of land containing thirty-three (33) acres, more or less, with the golf club house thereon, lying in the Town of Rye in said County of Rockingham and bounded and described as follows: Beginning on the Southerly side of the highway leading from Sagamore Road to the Hotel Wentworth, called "Wentworth Road" at a hub set in the ground, thirty-four and three-tenths (34.3) feet distant from a large oak tree on the opposite side of said highway which stands on the Easterly side of a driveway now or late of Caroline I. Hill, which hub is also forty and three-tenths (40.3) feet from the corner of a large stone set in the wall on the opposite side of said highway at the Westerly corner of said driveway; thence running Southerly by land now or late of the Estate of Frank Jones, three hundred five and five-tenths (305.5) feet to the stone wall; thence Westerly by said land now or late of the Estate of Frank Jones, following said stone wall, one hundred eighty-four (184) feet to land now or late of the heirs or devisees of Charles B. Odiorne; thence turning and running Southeasterly by said Odiorne's land, three hundred forty-three

and five-tenths (343.5) feet to the stone wall; thence Easterly by said Odiorne's land, as the said stone wall runs, one hundred forty-three (143) feet; thence Southeasterly across what is known as the Old Road, leading from said Wentworth Road to Sagamore Road and on in the same direction as the fence now stands by said Odiorne's land, eight hundred ninety (890) feet, more or less, to Seavey's Creek, otherwise called Witch Creek; thence Easterly and Northerly by said Creek and by Little Harbor to land now or late of the heirs of Orion L. Foye; thence Westerly by said land now or late of the heirs of Orion L. Foye nine hundred thirty-two (932) feet, more or less, to an angle in the division line; thence Northerly by said land now or late of the heirs of Orion L. Foye and land now or late of the heirs of Charles B. Odiorne to said Wentworth Road and thence Southerly by said Wentworth Road to the point begun at.

Statement of Restrictions, Easements and Rights of Others Pertaining to Tract A.

(a) An unused public road known as "Old Ferry Road" crosses over this tract at an unknown location. Old Ferry Road is not presently maintained by the Town of Rye and may be subject to gates and bars. In connection with this Tract, Old Ferry Road is mentioned in a deed recorded at Book 736, Page 391 at the Rockingham Registry.

Tract B

A certain lot of land situated in said Town of Rye upon the Southerly side of the highway leading from Sagamore Road to Hotel Wentworth called Wentworth Road, bounded and described as follows: Beginning at the hub in the ground on the Southerly sideline of said highway at the Northwesterly corner of the above described parcel; thence running Southerly by the above described parcel to the stone wall at an angle in the division line three hundred and five and five-tenths (305.5) feet; thence turning and running Westerly following said stone wall by land of the above described parcel, one hundred and eighty-four (184) feet to an angle in the division wall where said stone wall meets another stone wall running nearly North and South; thence turning and running Northerly by land now or late of the Estate of the late Frank Jones in the same direction as said stone wall runs, following a line coinciding with the line of said stone wall produced, to the Southerly sideline of said Wentworth Road, at a hub set in the ground; and thence turning and running Easterly by said Wentworth Road to the point of beginning; Said lot of land includes the land where the Northwesterly tee of the Wentworth Golf Club is located and contains about one and one-half (1-1/2) acres, more or less.

(a) An unused public road known as "Old Ferry Road," crosses over this Tract at an unknown location. Old Ferry Road is not presently maintained by the Town of Rye and may be subject to gates and bars.

Tract C

Also a certain lot of land in Rye, in said County of Rockingham known as the "sand field," containing seven (7) acres, more or less, bounded Northerly by land formerly of the heirs of Jacob Sheafe, Easterly by Little Harbor, Southerly by land formerly of the heirs of Ebenezer Odiorne, and Westerly by land formerly of the heirs of said Sheafe.

Tract D

A certain lot of land in said Rye containing 7.38 acres, more or less, bounded and described as follows: Beginning on the Southerly side of the Wentworth Road at land sold by Samuel A. Odiorne to Lucy C. Richardson at the steps leading down from the said Road over the Bank toward the Beach, and thence running Westerly by said Road seven hundred seventy-one and four-tenths (771.4) feet to the Old Road, so-called; thence running by said Old Road South four degrees West four hundred seventy-eight (478) feet to land recently purchased by the Wentworth Hotel, ~~Inc.~~ Co. of the heirs of Orion L. Foye; thence running by said Foye land North eighty-eight degrees East four hundred ninety-seven and five-tenths (497.5) feet to Little Harbor; thence running Northerly and Northeasterly by Little Harbor about seven hundred ninety-one (791) feet to said land of Richardson; thence running Northerly by said land of Richardson (now Waldron) thirty (30) feet, more or less, to the place of beginning.

Note:

Tracts A and B may be subject to certain easements and rights of way as described in a deed recorded at Book 736, Page 391 of the Rockingham County Registry of Deeds.

Conveyancing Note:

For title reference for Tracts A, B, C & D see deed recorded at Book 1745, Page 419 of the Rockingham County Registry of Deeds.

Tract E

A certain parcel of land situate in Rye in the County of Rockingham and State of New Hampshire, and being more particularly described as follows:

Beginning at the Northeasterly corner of the within described parcel at the high water mark of Seavey's or Witch Creek, so-called, at land of Esther Elsea and thence running Southwesterly by other land of said Elsea, four hundred fifteen (415) feet, more or less along a stone wall in part to a point; said point being the Southeasterly corner of land formerly of Charles Wendell, et al; thence turning and running Westerly through land formerly of Wendell, Elsea, Garland and Wright to a point six hundred (600) feet Southwesterly of said Creek at land retained by Charles S. Wright; thence turning and running Northeasterly along other land of said Wright six hundred (600) feet to said Creek; and thence turning and running in a generally Easterly direction as the high water mark runs, to land of Elsea which is the point of beginning.

Tract E

Two certain parcels of land situate in said Rye, County of Rockingham and State of New Hampshire, more particularly described as follows:

A certain tract or parcel of land situate in Rye, County of Rockingham and State of New Hampshire, bounded and described as follows:

Beginning at a junction of two stone walls, at the Westerly corner of the parcel herein described, the Northerly corner of land now or formerly of Cavaretta Realty Company and land of the Mark H. Wentworth Home; thence following a stone wall N 35° 08' E, 222.7 feet; N 33° 40' E, 198.6 feet and N 35° 00' E, 456.0 feet by land of said Mark H. Wentworth Home and land of Helen V. Mulcahy to a point; thence turning and running S 57° 34' E, 270.0 feet and N 68° 55' E, 512.3 feet by other land of Otis C. Odiorne to a stone wall; thence turning and running S 21° 39' E, 298.7 feet and S 22° 08' E 442.2 feet crossing the Ancient New Castle Highway and by land of Theodore F. Bartlett to a wall junction; thence turning and running S 65° 05'W, 123.3 feet; N 84° 30' W, 143.7 feet; S 77° 46' W, 228.0 feet; S 66° 24' W, 197.0 feet; S 73° 32' W, 163.6 feet and S 69° 42' W, 314.6 feet following said stone wall, bounding on Marsh land to a wall junction; thence turning and running N 56° 22' W by land of said Cavaretta 447.2 feet to the point of beginning containing 20.24 acres.

Statement of Restrictions, Easements and Rights of Others Pertaining to Tract F.

(a) An unused public road known as "Old Ferry Road" crosses this Tract at an unknown location. Old Ferry Road is presently not maintained by the Town of Rye and may be subject to gates and bars.

Tract G

A certain tract or parcel of marsh land situate in Rye, County of Rockingham and State of New Hampshire, bounded and described as follows:

Beginning at a point in the Northerly shore of Seavey's Creek at land of Cavaretta Realty Co.; thence running in a Northerly direction following a stone wall about 310 feet to a wall corner; thence turning and running N 69° 42' E, 314.6 feet; N 73° 32' E, 163.6 feet; N 66° 24' E, 197.0 feet; N 77° 46' E, 228.0 feet; S 84° 30' E, 143.7 feet and N 65° 05' E, 123.3 feet all by the above described parcel and by a stone wall to a corner; thence turning and running Southerly by marsh land of Theodore F. Bartlett about 120 feet to said Seavey's Creek; thence turning and running generally Westerly by said Creek to the point of beginning. Containing 8.6 acres.

Statement of Restrictions, Easements and Rights of Others Pertaining to Tract G.

(a) The rights-of-way contained in a deed recorded in Rockingham County Registry of Deeds at Book 1745, Page 417.

(b) The rights of way contained in a deed recorded at the Rockingham County Registry at Book 1653, Page 186.

Conveyancing Note

For a title reference to the above tracts E, F, and G, see deed recorded at Book 1745, Page 417 of the Rockingham County Registry of Deeds.

Tract H

All right, title and interest in and unto certain Lease between Lavina O. Bartlett of Rye, New Hampshire and Wentworth Fairways Golf, Inc., dated January 25, 1963 and recorded at Book 1661, Page 9 as amended by an Indenture dated April 27, 1973 and recorded at Book 2205, Page 0781.

See also Agreement dated November 22, 1980 and recorded in the Rockingham County Registry of Deeds at Book 2379, Page 0902.

Tract I

All right, title and interest in and to a certain lease between John Odiorne of Greenland, and Wentworth Fairways Golf, Inc. dated March 7, 1963 and recorded in Book 1663, Page 143 and amended by an Indenture dated May 4, 1973 and recorded at Book 2205, Page 784. See also Agreement dated November 22nd and recorded at the Rockingham County Registry of Deeds at Book 2381, Page 1542.

(Site C)

NORTHEAST CORNER OF GOLF COURSE

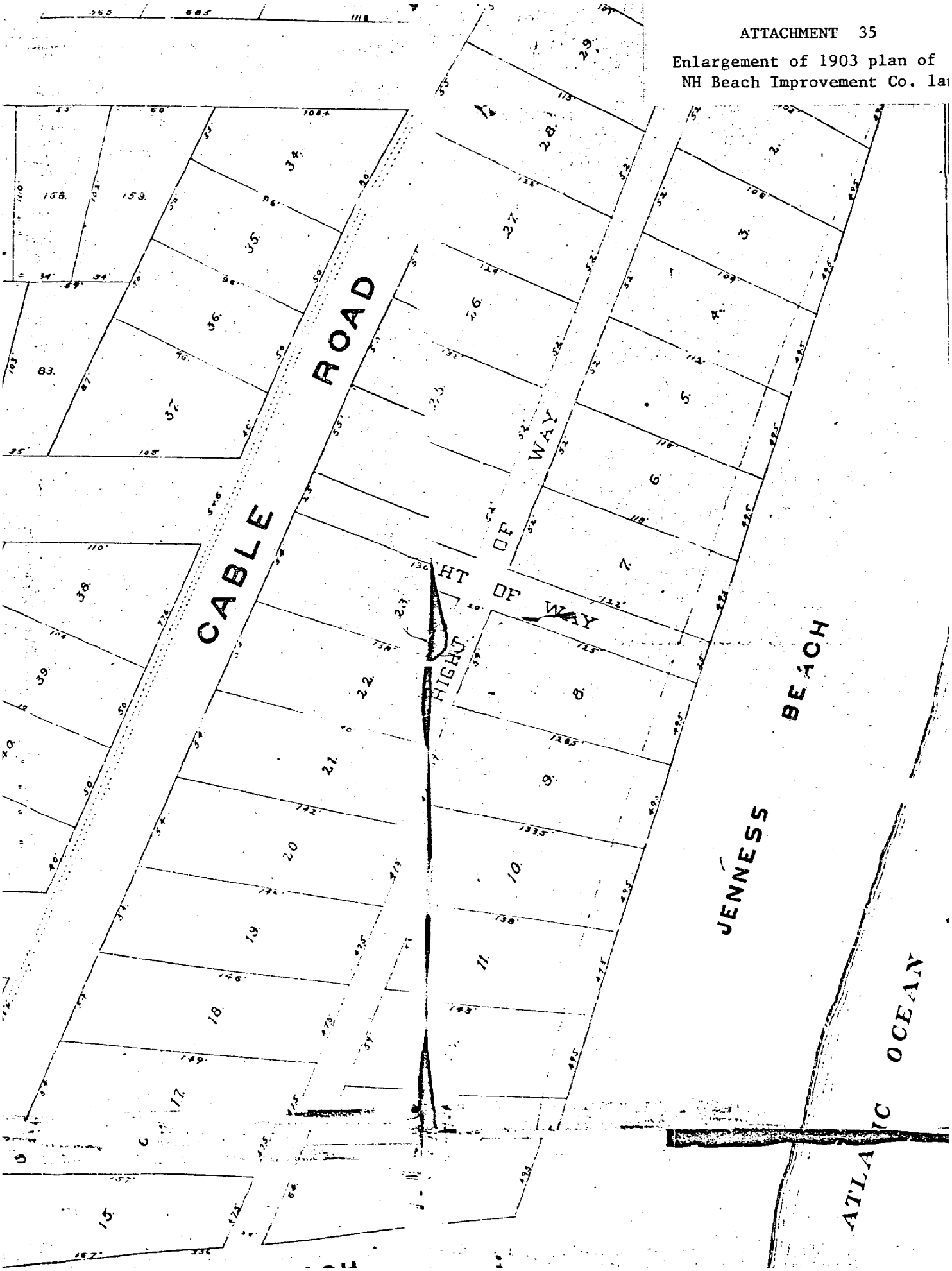
Year	Grantor	Grantee	Vol/Page	Description
1873	Jedediah Rand	Charles Odiorne	442/404	4 1/2 acre tract by Little Harbor
1880	Charles Odiorne	Samuel Odiorne	476/412	5 1/2 acre tract by Little Harbor
1921	Samuel Odiorne	Wentworth Hotel Co.	743/390	Northeast corner of present golf course
1932	Wentworth Hotel Co.	Harry Beckwith	886/411	Northeast corner of present golf course
1938	Harry Beckwith	Wentworth Hotel, Inc.	1042/397	Northeast corner of present golf course
1964	Wentworth Hotel, Inc.	Wentworth Fairways Golf, Inc.	1745/419	Northeast corner of present golf course
1983	Wentworth Fairways Golf, Inc.	Wentworth'By-The-Sea Corp.	2451/1727	Northeast corner of present golf course

WALDRON LOT (Tax Map Parcel #8 on Sheet #1)

1873	Jedediah Rand	Charles Odiorne	442/404	4 1/2 acre tract by Little Harbor
1880	Charles Odiorne	Samuel Odiorne	476/412	5 1/2 acre tract by Little Harbor
1889	Samuel Odiorne	Lucy Richardson	517/275	Tax Map Parcels #7 & #8
1925	Lucy Richardson	Wentworth Hotel Co.	795/415	Tax Map Parcels #7 & #8
1932	Wentworth Hotel Co.	Harry Beckwith	886/411	Large tract by Little Harbor
1938	Harry Beckwith	Wentworth Hotel, Inc.	1042/397	Large tract by Little Harbor
1946	Wentworth Hotel, Inc.	Helen Waldron	1058/458	Tax Map Parcel #8 on Sheet #1

ATTACHMENT 35

Enlargement of 1903 plan of
NH Beach Improvement Co. la



ATTACHMENT 36

William Holihan to William & Ruth Holihan (1748/463)

1748 463

Know all Men by these Presents

That I, William B. Holihan, of Andover, Essex County, Massachusetts,

for and in consideration of the sum of One Dollar and other good and valuable consideration to me in hand before the delivery hereof, well and truly paid by myself, the said William B. Holihan, and my wife, Ruth C. Holihan, as joint tenants, both of said Andover,

the receipt whereof I do hereby acknowledge, have granted, bargained, and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said William B. Holihan and Ruth C. Holihan, as joint tenants, their heirs and assigns, forever,

Two (2) certain tracts of land with all the buildings thereon, situated in Rye, New Hampshire, and bounded and described as follows:

FIRST TRACT: Four (4) certain lots of land, being Lots No. 6, 7, 24, and 25, on a plan of lots of "New Hampshire Beach Improvement Company" drawn by L. E. Scruton, C.E., dated May 1, 1903, and recorded with the Rockingham Records, Book 593, Page 501.

SECOND TRACT: Beginning at the Northwesterly corner of Lot No. 7 on the aforesaid plan of "New Hampshire Beach Improvement Company" and the extension of Jenness Avenue; thence running by an extension of Jenness Avenue to the Southwesterly corner of Lot No. 24 on said plan; thence turning and running Northeasterly by the Southerly bound of Lots No. 24 and 25 to the Southwesterly corner of Lot No. 26; thence turning and running Southeasterly to a point which is the Northwesterly corner of Lot No. 5 and the Northeasterly corner of Lot No. 6; thence turning and running Southwesterly by the Northerly bound of Lots No. 6 and 7 to the extension of Jenness Avenue at the point begun at. Meaning and intending hereby to convey a strip of land between Lots No. 6 and 7 on the South side of said strip and Lots No. 24 and 25 on the North side of said strip, which said strip of land was originally laid out for a right of way but which right of way has been discontinued.

This conveyance is made subject to all restrictions and conditions of record so far as the same now are in force and applicable.

Being the same premises conveyed to me by deed of J. Norman Anderson dated April 7, 1947, recorded with Rockingham Records, Book 1081, Page 90.

Rec.

ATTACHMENT 37

Trafton to Jordan (726/146)

Know all Men by these P

That I, Helen P. Trafton of Portsmouth in the county of Rockingham and State of New Hampshire.

Trafton to Jordan

For and in Consideration of the sum of One Dollar to me in hand, before the delivery hereof, well and truly paid by Mary E. Jordan of Manchester in the county of Hillsborough and State of New Hampshire

the receipt whereof I do hereby acknowledge, have given, granted, bargained and sold, and by these presents do give, grant, bargain, sell, alien, enfeoff, convey and confirm unto the said Mary E. Jordan and her heirs and assigns forever, A certain parcel or lot of land with the buildings thereon situated at Jenness Beach so called in Rye in said County of Rockingham and known as the whole of lots Nos. 9 and 23 and a portion of lots Nos. 9 and 22 on a plan of lots made for the Property of the New Hampshire Improvement Company of Portsmouth N. H. made by L. D. Newton C. E. May 1903, recorded in Rockingham Records Book 593 Page 501, bounded and described as follows; beginning at a stake at the Northerly corner of said parcel, bounded on the Southwest by the State Highway eighty-one feet to a stake in the ground thence turning in a Southerly direction (dividing lots Nos. 9 and 22) running two hundred and eighty-seven feet to a stake in the ground, thence turning and running in a Southeasterly direction, bounded by the Ocean seventy-four feet and two inches to a stake in the ground; thence turning and running in a Northerly direction bounded by a right of way as shown on said Plan two hundred and eighty-one feet to the point of beginning. This deed is given nevertheless, subject to the following conditions, restrictions and reservations, to wit; that the said grantee or her heirs or assigns shall never carry on upon said premises any illegal business nor permit the sale of any intoxicating liquors upon said premises and that only dwelling houses and the usual and customary outbuildings shall ever be erected or placed upon said premises; that all buildings shall be at least ten feet from the front line of said lots which face the Ocean; screened porches, steps, windows, porticoes and other projections appurtenant thereto are to be allowed within said reserved space and that no dwelling house built or moved upon said premises shall cost less than Fifteen Hundred dollars. The right of way shown upon said plan between said lots as herein conveyed shall be discontinued. That all other deeds executed by the grantor for the conveyance of lots Nos. 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 26, 27, 28, 29, 30. shall contain like clauses in perfect unition with this deed. In case of violation of any of the foregoing conditions restrictions and reservations by the grantee or her heirs or assigns the premises herein conveyed together with all improvements that may be made thereon shall revert and become the property of the grantor or her heirs or assigns, and the grantor may enter upon said premises and take possession of the same free from encumbrance by the grantee or her heirs or assigns. Being a part of premises conveyed to me by Alice Beatty et al by deed recorded in Rockingham Records.

Also all furniture and fixtures contained in said buildings.

To have and to hold the said granted premises, with all the privileges and appurtenances to the same belonging, to her the said Mary E. Jordan and her heirs and assigns, to her and their only proper use and benefit forever.

And I the said Helen P. Trafton for myself and my heirs, executors and administrators, do hereby covenant, grant, and agree to and with the said Mary E. Jordan and her heirs and assigns, that until the delivery hereof I am the lawful owner of the said premises, and am seized and possessed thereof in my own right in fee simple; and have full power and lawful authority to grant and convey the same in manner aforesaid; that the said premises are free and clear from all and every incumbrance whatsoever, except as written mentioned; and that I and my heirs, executors and administrators, shall and will Warrant and Defend the same to the said Mary E. Jordan and her heirs and assigns, against the lawful claims and demands of any person or persons whomsoever.

And I, Alanson E. Trafton husband of said Helen P. Trafton in consideration aforesaid, do hereby release unto the said grantee my right of dower in the above mentioned premises.

And we and each of us do hereby release, discharge and waive all such rights of exemption from attachment and levy on execution and such other rights whatsoever in said premises and in each and every part thereof, as our Family Homestead, as are reserved to us, or either of us, by the Statutes of the State of New Hampshire, ~~passed July 4, 1851, entitled "An act to exempt the Homestead of families from attachment and levy on execution,"~~ or by any other Statute or Statutes of said State.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this twenty-second day of December in the year of Lord ~~one thousand nine hundred and~~ 19[illegible].

Signed, sealed and delivered in presence of us:

ATTACHMENT 38

Stannard to Holihan (1258/10

Know all Men by these Pre

THAT I, Marjorie B. Stannard, of Winchester, in the County of Middlesex, and the Commonwealth of Massachusetts,

in consideration of one dollar and other valuable considerations

to me paid by James E. Holihan and Geraldine M. Holihan, of Andover, in the County of Essex, and the Commonwealth of Massachusetts,

the receipt whereof I do hereby acknowledge, have given, granted, bargained, sold and conveyed

and do for my self and my heirs, by these presents, give, grant, bargain, sell and convey

unto the said grantees as joint tenants with the right of survivorship and not as tenants in common, the survivor of them, his or her

heirs and assigns, forever.

A certain parcel or lot of land, with the buildings thereon, situated at Jenness Beach, so-called, in Rye, in the County of Rockingham, and the State of New Hampshire, and known as the whole of lots nos. 8 and 23 and a portion of lots nos. 9 and 22 on a plan designated as the property of the New Hampshire Improvement Company of Portsmouth, New Hampshire, made by L. E. Scruton, C. E., May 1903, recorded in Rockingham Records, Book 593, Page 501, bounded and described as follows: Beginning at a stake at the Northerly corner of said parcel, bounded on the Southwest by the State Highway eighty-one (81) feet to a stake in the ground; thence turning in a Southerly direction (dividing lots nos. 9 and 22) running two hundred eighty-five (285) feet to a stake in the ground; thence turning and running in a Southeasterly direction, bounded by the Ocean seventy-four (74) feet and two (2) inches to a stake in the ground; thence turning and running in a Northerly direction bounded by a right-of-way as shown on said plan two hundred eighty-one (281) feet to the point of beginning.

Being the same premises conveyed to me by deed of Mary E. Jordan, dated December 9, 1938, recorded in Rockingham Records, Book 937, Page 356.

Also all my right, title, and interest in and to a certain right-of-way or passageway running between Lots #23 and 8 and 24 and 7 from Cable Road to Jenness Beach, so-called, as shown on a plan designated as the property of the New Hampshire Beach Improvement Company, of Portsmouth, New Hampshire, made by L. E. Scruton, C. E., May, 1903, and recorded in Rockingham Records, Book 593, Page 501,

ATTACHMENT 39

James Holihan to Geraldine Holihan (2281/968)

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS THAT I, JAMES P. HOLIHAN

of Rye Beach, Rockingham County, State of New Hampshire, for consideration paid, grant to GERALDINE M. HOLIHAN

82 South Road (Street Address)

of Rye Beach (Town or City), Said County, State of New Hampshire 03871, with QUITCLAIM covenants, the following described real estate:

(Description of land or interest being conveyed: incumbrances, exceptions, reservations, if any)

A certain parcel or lot of land, with the buildings thereon, situated at Jenness Beach, so-called, in Rye, in the County of Rockingham, and the State of New Hampshire, and known as the whole of lots nos. 8 and 23 and a portion of lots nos. 9 and 22 on a plan designated as the property of the New Hampshire Improvement Company of Portsmouth, New Hampshire, made by L. E. Scruton, C. E., May 1903, recorded in Rockingham Records, Book 593, Page 501, bounded and described as follows:

Beginning at a stake at the Northerly corner of said parcel, bounded on the Southwest by the State Highway eighty-one (81) feet to a stake in the ground; thence turning in a Southerly direction (dividing lots Nos. 9 and 22) running two hundred eighty-five (285) feet to a stake in the ground; thence turning and running in a Southeasterly direction, bounded by the Ocean seventy-four (74) feet and two (2) inches to a stake in the ground; thence turning and running in a Northerly direction bounded by a right-of-way as shown on said plan, two hundred eighty-one (281) feet to the point of beginning.

Being the same premises conveyed to this grantor by deed of Marjorie B. Stannard dated August 28, 1952 and recorded in the Rockingham County Registry of Deeds in Book 1258, Page 107.

Also all my right, title and interest in and to a certain right-of-way or passageway running between lots #23 and 8 and 24 and 7 from Cable Road to Jenness Beach, so-called, as shown on a plan designated as the property of the New Hampshire Beach Improvement Company, of Portsmouth, New Hampshire, made by L. E. Scruton, C. E., May 1903, and recorded in Rockingham Records, Book 593, Page 501.

I, James P. Holihan ~~wife~~ ~~husband~~ ~~xxx~~ said Grantor, release to said Grantee all rights of homestead and other interests therein.

WITNESS my hand and seal this 14 day of April, 19 77.

Witness: Elwood J. McDermott

James P. Holihan

STATE OF NEW HAMPSHIRE
Rockingham ss.

April 14, 19 77

James P. Holihan Personally appeared and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me,

Elwood J. McDermott
Justice of the Peace

No Transfer Tax Stamps required.

'77 MAY -9 A 10:47
REC'D ROCKINGHAM COUNTY
REGISTRY OF DEEDS

(Site D)

TAX MAP SHEET 318 PARCEL #214

Year	Grantor	Grantee	Vol/Page	Description
1901	A. E. Turner	F. Towle, H. Yeaton C. Trafton	584/126	27 acres of "woodland and pasture"
1906	Towle, Yeaton, Trafton & Heffenger	Elizabeth Daland	616/229 & 618/426	Tax Map Parcel #214 on Sheet #18
1919	Elizabeth Daland	Ernest Griffin	735/60	Tax Map Parcel #214 on Sheet #18
1944	heir of Ernest Griffin	Norman Anderson	1016/378	Tax Map Parcel #214 on Sheet #18
1947	Norman Anderson	William Holihan	1081/90	Tax Map Parcel #214 on Sheet #18

TAX MAP SHEET #18 PARCEL #213

1901	A. E. Turner	F. Towle, H. Yeaton C. Trafton	584/126	27 acres of "woodland and pasture"
1912	North Shore Realty Co.	Helen Trafton	667/57	Tax Map Parcel #213 on Sheet #18
1918	Helen Trafton	Mary Jordan	726/146	Tax Map Parcel #213 on Sheet #18
1938	Mary Jordan	Marjorie Stannard	937/356 and 945/224	Tax Map Parcel #213 on Sheet #18
1952	Marjorie Stannard	James & Geraldine Holihan	1258/107	Tax Map Parcel #213 n Sheet #18

ATTACHMENT 41

Petition for Class VI Highway Layout

To: Selectmen
Town of Rye
New Hampshire

Petition For Lay-out of Highway

We the undersigned being lawful residents of the Town of Rye, New Hampshire, pursuant to R.S.A. 234 and pursuant to the authority granted the Selectmen of a Town under R.S.A. 232, do petition the Selectmen of the Town of Rye, New Hampshire, to lay-out a new class Vl highway for the benefit and welfare of the public, the location and descrition of which is as follows:

> A certain street located on the easterly side of Ocean Boulevard so-called, in the Town of Rye, New Hampshire and running from the said Ocean Boulevard to the beach and described as "C Street" on plan of "Beach Land of Brown Real Estate and Timber Company, Rye Beach, New Hampshire" and recorded in Rockingham Records as Plat B-010.
>
> However otherwise described above meaning a strip of land twenty (20) feet wide partly blacktopped and partly grassed running from Ocean Boulevard so-called in Rye, easterly, and terminating at the beach. The point on Ocean Boulevard being located by starting from a point five (5) feet southerly from utility pole number 237-44A, 32X NET & T Co. and continuing southerly twenty (20) feet to the southerly side line of a blacktopped way.

Patrick J. Foley
Dorothy M. Foley
Joseph C. Holmes
Sarah F. Holmes
Mary Maguire
Lois M. Oesser
Richard H. Oesser
Donald G. Cilley
Katharine H. Cilley
Esther C. Kraus
Crosby Cilley
Edward F. Meany
King Keller
Esther Parsons
Jessie H. Holley
Frances A. Holloway
Wanda Littlefield
Joseph L. Tucker
Dorothy S. Tucker
M. R. Jones
Frank J. Tonis
Una B. Tonis

TOWN OF RYE

ROCKINGHAM, ss OFFICE OF THE SELECTMEN

NOTICE IS HEREBY GIVEN pursuant to a petition filed with the Board of Selectmen of the Town of Rye by Patrick J. Foley and others a copy of which is attached hereto, a public hearing will be held on Monday, August 19, 1974 in the Town Hall of Rye, New Hampshire at 7:30 p.m. in the afternoon to consider the facts set forth in the petition and the action requested in said petition.

Copies of this notice shall be delivered to each owner of land affected and shall be posted in two of the most public places in Rye and shall as well be published in the Portsmouth Herald a newspaper of general circulation in said Town of Rye. The land specifically affected is further identified as "C" Street on Plan 18 of the Tax Maps of the Town of Rye which said street runs from the easterly sideline of Ocean Boulevard so-called to the Atlantic Ocean so-called.

All interested parties may attend and shall be heard.

GIVEN UNDER OUR HANDS at Rye, New Hampshire this 1st day of August, 1974.

Robert B. Goss

Shirley B. Tibbetts

Ralph E. Morang, Jr.

ATTACHMENT 43

Certification of Notice for
Highway Layout

Rye, New Hampshire, August 14, 1974

We hereby certify that we gave notice to the inhabitants within named, to meet at the time and place and for the purpose within mentioned, by posting up an attested copy of the within Warrant at the place of meeting within named, and a like attested copy at the Selectmen's Office being a public place in said Town on the 5th day of August, 1974 and a like attested copy published in the Portsmouth Herald August 7, 1974.

And further: That we did serve notice by delivering in hand a like attested copy to Patrick J. Foley at 10:00 P.M. on August 5, 1974 being the first petitioner.

And: By delivering in hand like attested copies to Chris Papoutsy at 8:45 P.M. and to Joseph P. and Dorothy W. Holihan, persons whose property is effected, known to be within the Town of Rye.

And: By sending a like attested copy of said notice to Gagnon Realty Trust by certified mail, return receipt requested, on the 6th day of August 1974.

Robert B. Goss

Shirley B. Tibbetts

Ralph E. Morang, Jr.

Selectmen of Rye

ATTACHMENT 44

Findings and Decision Regardi
Highway Layout

STATE OF NEW HAMPSHIRE

ROCKINGHAM, ss TOWN OF RYE

In the Matter of a Petition
to Lay Out a Highway
Filed By Patrick J. Foley and Others
with
Selectmen of Rye, N. H.

FINDINGS AND DECISION

The above-entitled petition having been filed with the Selectmen of Rye, New Hampshire on or about June 10, 1974 and the abutting landowners and the public having been properly served with notice of a public hearing and a public hearing having been held on August 19, 1974 and all interested parties having been heard, after due deliberation and at a public meeting of the Selectmen and upon a motion to grant the petition, Mr. Morang voting in the affirmative and Mr. Goss and Mrs. Tibbetts voting in the negative, the petition for the layout of a new Class VI highway was denied for the following reasons:

The Selectmen find no occasion for the layout of a highway in accordance with the petition. After due consideration of the public exigency and convenience, the rights of the affected owners and the necessary expense to the entire town, the Selectmen find that any public good which might arise from the layout of the highway would be limited to a small area of the town and the general convenience to the entire town would be minimal at best. It further appears that the cost to the town as a whole which would be incurred by reason of the layout of a highway in the area stated in the petition, would far outweigh any benefit which may accrue to the town as a whole should the highway be laid out.

There has not been demonstrated a genuine overall public need for such a highway as petitioned.

Dated at Rye, New Hampshire this 16th day of October, 1974.

SELECTMEN

Robert B. Goss

Shirley B. Tibbetts

Ralph E. Morang Jr.

ATTACHMENT 45

Recent Time Magazine article on legal trends relative t Beach Access

The Gritty Battle for Beach Access

From sea to shining sea, sunbathers vs. *property owners*

A year after Hurricane Alicia walloped the Texas coast around Galveston last summer, the storm has not entirely abated. Having weathered natural disaster, some 140 beachfront-property owners are facing an even worse legal catastrophe. Texas law gives the public the right to use all the beach in the corridor between the sea at low tide and the natural vegetation line. The violent winds and rain of Hurricane Alicia tore away such large chunks of land that private, $100,000 homes are no longer sitting on privately controlled property. When officials moved in to claim the land for sunbathers and fishermen and to require that some of the houses be abandoned without any state compensation, the homeowners' wrath easily matched that of Alicia. A maelstrom of lawsuits is still raging.

Such beach battles are by no means unusual. From sea to shining sea, landlocked citizens are asserting what in many states is their traditional right of access to the beaches, even if they have to tramp across private property to get there. At the same time, property owners, especially wealthy residents of exclusive beachfront communities, are becoming increasingly militant about the invasion of beachgoers. In Maine's high-priced coastal enclaves, property owners, many of them from out of state, have built fences, thrown rocks, towed cars and on at least one occasion brandished a shotgun to keep clammers, fishermen and would-be sunbathers off their land. On the Massachusetts island of Martha's Vineyard, a summer retreat for some of the East Coast's most prominent lawyers and businessmen, homeowners have begun hiring private guards to confine outsiders to relatively crowded stretches of public beach.

But nationally, the trend is otherwise: courts and new laws are gradually eroding private beaches. Earlier this year, for instance, the New Jersey Supreme Court took note of "the increasing demand for our state's beaches" and held that they are a "public trust" to which private-property rights must give way. The theory is a ground-breaking, potentially sweeping one. Courts in Oregon, Florida and Hawaii have also upheld beach access under the more legally traditional "doctrine of custom." When the beaches have always been open to the public, these courts have held, they must remain so. In Hawaii a tough law forced even the Mauna Kea Beach Hotel, one of the world's poshest resorts, to build an access path to the beach for the public. The hotel, however, has reduced the flow of ordinary tourists by charging high parking fees. Such indirect attempts to limit beach-going crowds are common. Resort towns often impose parking restrictions and stiff bridge and beach tolls for nonresidents. But these too are being attacked. In Florida this month, Governor Bob Graham authorized local officials in St. Augustine to press a lawsuit challenging beach tolls.

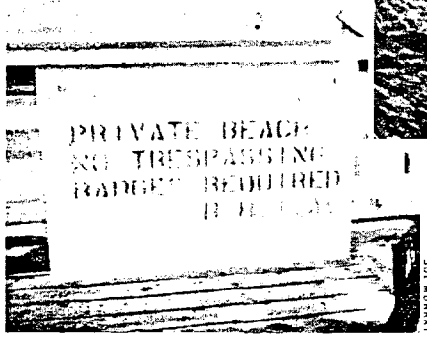
The beach legal wars are largely an outgrowth of rapid coastline development. In Texas, for instance, there was little protest from landowners when the Open Beaches Act was passed in 1959, because at that time the Texas Gulf Coast was sparsely developed. Widespread construction of private homes, hotels and high-rise condominiums has come only in the past ten or 15 years. The new objections, in the wake of Hurricane Alicia, are nothing but "the arrogance of affluence," says Assistant Attorney General Ken Cross. "Building on a beachfront is a gamble with nature. When they take that gamble and put their money down, they should be prepared to risk losing it."

Some beachfront dwellers accept their losses from the ever-changing sea, but not from the ever-changing state. In California, the state coastal commission ruled in 1977 that when owners build or rebuild sea walls to protect their property from erosion, all land seaward of the embankments is automatically opened to public access. In 1979 a Ventura County community called Whalers' Village built a revetment and fought the public-access rule. A local court found the requirement unconstitutional in 1983 because it was "the taking of private property without paying just compensation." The ruling is being appealed. "The government is giving these people a Hobson's choice," says Whalers' Village Attorney Charles Greenberg. "Allow your homes to be destroyed or open up your backyard to the public." Santa Monica Attorney Sherman Stacey, who is bringing a similar suit, argues, "If the state wants to improve public access, why doesn't it buy the property and impose the cost on all the taxpayers?"

One reason: it is too expensive. On Nantucket Island, Mass., an innovative approach to that problem is a 2% tax on all real estate sales, the funds to be used to buy back the beaches for the public. But most states are not obliged to pay for what is viewed as a longstanding public right. That may be true even in Maine, which is still governed to some extent by a 17th century grant from the King of England that gave away huge tracts of coastal land, including the beaches, to encourage settlement. How the King's law now applies will be decided by the Maine courts in a case involving public access to a prime stretch of coastline called Moody Beach. Assistant Attorney General Paul Stern, for one, believes that the courts "will decide that the public has the right to use the state beaches rather than preserving them for essentially the privileged classes. Why shouldn't a mill worker from Lisbon Falls be able to use the beaches?" he asks. The legal tide seems to be going his way. —*By Michael S. Serrill. Reported by Adam Cohen/Boston and Lianne Hart/Houston*

SYGMA

... and Massachusetts on the East Coast ...



SYGMA

Tread not, warn signs from New Jersey ...

DOHERTY—MEGA

... to sunny Malibu on the Pacific

ATTACHMENT 46

Recent response of Hampton, NH Selectmen to encroachment on publi access to the beach (Portsmouth Herald 9/19/84)

Hampton Selectmen settle land dispute

By DWIGHT ADAMS
Staff Writer

HAMPTON — Selectmen literally took the matter into their own hands yesterday as they supervised town employees uprooting 10-foot-tall pine trees, shrubs, a blacktop sidewalk and a park bench placed at the end of an unpaved section of James Street by neighbor Michael Marrone.

Tuesday morning's action ended a four-year-old dispute between selectmen and Marrone, after a state Supreme Court decision Aug. 31 "reversed and remanded" an earlier Superior Court action supporting Marrone. All removed trees and shrubs have been replanted at the public works compound on Tide Mill Road and the roadway replaced with beach sand.

"If he wants them, he can come get them," said Selectmen Chairman Ashton Norton of Marrone's greenery. "The lesson here is you cannot encroach upon town rights-of-way with anything — trees, rocks, bushes or buildings."

The Supreme Court said the town has a right to "abate" improvements made by Marrone on the unpaved James Street extension, as well as to remove a deck he built out into the road.

However, the town is required to compensate Marrone for the "fair value" of a concrete seawall and wooden steps he constructed at the beach's edge at selectmen's request. The case has been remanded back to Superior Court to find the reasonable value of those improvements provided for the town's benefit.

Selectman Norton said Marrone's deck was not removed yesterday — even though it encroaches on the public right-of-way — in lieu of a "negotiated settlement" between the town and Marrone, regarding his compensation for the seawall and steps.

The problems began when selectmen and Marrone entered into negotiations in July 1980, regarding a house he had just bought at 15 James Street, which resided on town-owned leased land.

Marrone planned to construct a four-foot-high seawall across the beach side of his property, similar to an existing seawall on property of his neighbor O'Shaughnessy.

Selectmen then suggested that he extend his proposed seawall across James Street to connect with O'Shaughnessy's property, to offer greater protection to the road and property owners from the "ravages of the sea." They also asked Marrone to install stairs to allow public access over the seawall.

Marrone agreed if he could "landscape" the area behind the seawall where the unpaved section of James Street meets the beach. Selectmen granted Marrone permission to landscape that area, as long as a walkway was maintained to the beach.

But Marrone's improvements to the James Street extension included planting trees and shrubs and extending a private deck from his jacuzzi, eventually reducing the forty-foot-wide road into a paved pedestrian way.

When selectmen began receiving complaints from neighbors in the spring 1981, they ordered Marrone to remove all greenery and restore the right-of-way to its original condition, excepting the seawall and steps. Marrone sought injunctive relief from the selectmen's order and the three-year court battle began.

A Superior Court master found Marrone's improvements to be "tastefully done," issuing an injunction to prevent selectmen from removing it. The Supreme Court reversed the decision on appeal, however, finding that Marrone's actions resulted in the discontinuance of a public highway — an illegal action unless approved by town vote.

Also appearing at yesterday's clean-up were Selectman Louisa K. Woodman and Police Chief Robert Mark who videotaped the removal of the greenery. Marrone, however, was conspicuously absent.

DATE DUE

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