



Town of Old Orchard Beach
Office of the Town Manager

1 Portland Ave, Old Orchard Beach, Maine

Phone: 207.937.5626

Web: www.oobmaine.com or

www.oobmaine.com/town-council

Town Council Meeting Minutes

I, Tim Fleury, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting is a copy of the original minutes from the meeting of the Old Orchard Beach Town Council.

Prepared By:

Tim Fleury

Approved By:

Old Orchard Beach Town Council

Respectfully
Submitted,

Tim Fleury
Town Council
Secretary



Town Council Workshop – Meeting Minutes

Wednesday, June 8th, 2022 @ 6:00 pm*

Town Council Chambers

1 Portland Avenue

www.oobmaine.com/town-council

**Members of the public wishing to view the meeting from home may tune into Local Access TV (Channel 3 or Channel 1301) or by logging onto https://townhallstreams.com/towns/oob_maine. FMI click on the Communications Tab @ www.oobmaine.com.*

There was a Town Council Workshop on Wednesday, June 8th, 2022. Chair O’Neill opened the workshop at 6:02pm in Council Chambers, 1 Portland Avenue. The workshop was to discuss the consent agreement between the Town of Old Orchard Beach and the Harrisburg Group, LLC. The following were noted to be present:

Shawn O’Neill, Chair

Kenny Blow, Vice-Chair

V. Louise Reid, Councilor

Larry Mead, Councilor

Mike Tousignant, Councilor

Neil Weinstein, Attorney representing Harrisburg Group, LLC

Diana Asanza, Town Manager

Jen Hayes, Council Secretary

Fred LaMontagne, OOB Fire Chief

Jim Butler, Code Enforcement Director

Town Manager Asanza summarized the purpose of the meeting. Referred to documents and consent agreement, with annual fee of \$5K, which was opened for discussion

Attorney Weinstein, “my client offered to pay several thousands dollars per year.” Questioning why not able to have ATM on Town property. Unfavor distinction seeing as there are several other businesses with ATM’s on Town property. From past discussions with the Town attorney, Attorney Weinstein stated that there was no help from Attorney Parkinson.

Town Manager stated that the attempt in the first amendment was to identify with more details. Since the initial agreement, items have shifted and moved. The new

agreement was to ensure the Town still had an easement access to structures in the back of the property. She noted that the Town realizes that all the ATM's noted to be on Town property are, in fact, are private property.

Attorney Weinstein – began to question that while on private property, individuals are lining up on public property to access private property.

Vice-Chair Blow – interrupted Attorney Weinstein. Confirmed with Town Manager that the ATMs noted are on private property.

Attorney Weinstein – tax assessor maps are not used to identify property lines by State Law.

Chair O'Neill – stopped “bickering” between Vice-Chair Blow and Town Manager. He questioned if there were any other current code violations for this property.

Code Enforcement Director Jim Butler stated that at present there were no new violations. The previous violations were issued in 2013 because the ATM was placed on Town property without permits.

Chair O'Neill – the equipment attached to other businesses behind the building are on Town property. Town Manager: partially on. Chair O'Neill – the Council and Attorney need to focus on the matter at hand, the ATM placed on Town property. Vice-Chair Blow clarified that the focus was on this ATM only.

Attorney Weinstein questioned, “what is the problem?”

Councilor Mead noted to Attorney Weinstein that boundaries for discussion were to be set. For there, Councilor Mead stated that the issue came up in 2020 when he was Town Manager. It came up with revelation that the gate located by the property was constantly open, the area in disarray, and then discussed that there was ATM. It was specific in the 2013 agreement, it was specific in the survey, allowed/not allowed with Town permission. The ATM was not part of the agreement along with canopy over platform. The recollection was that the canopy was covering a sitting area. In 2013 there was no mention of ATM, soda machines, etc. It was brought to the owner's attention. In May, 2020 Code Officer Rick Haskell hand delivered a notice of violation and demand from Town to remove the ATM. In Sept, 2020 – former Town Manager Mead sent a letter to the Harrisburg's, per the consent agreement terms, the Town was providing notice to revoke the permit for the ATM

license beginning October, 2021. At that point received a letter from Attorney Weinstein stating the 2013 agreement regarding the ATM was allowed due to conversation and agreement between Town that the ATM and soda machines were allowed. At the time that this agreement was in place, it was for businesses to move forward while beginning the process of removing the ATM.

Councilor Mead referenced 2015 Bing Maps and 2019 Google Maps illustrating the canopy area and the disrepair of the area.

Councilor Mead – does not support ATM in place, does support restaurants moving forward with use of Town property.

Attorney Weinstein disagreed.

Chair O’Neill – interrupted conversation and reidentified that Council was here to discuss the ATM on Town property. He noted that he struggled with the fact, the Town is represented as the ‘bad guy.’ Encroachment in the Town is an issue, ever since he was on the Council since 1997. He continued by stating the Town was being a good neighbor.

Councilor Tousignant – was on the 2013 Council. The intention of the consent agreement was to wipe away violations and move along with a clean slate. Referenced the map and questioned the date. Confirmed August, 2021 by Town Manager.

Chair O’Neill – confirmed with Attorney Weinstein that both parties had time to see the consent agreement.

Councilor Tousignant to Attorney Weinstein, “what does your client want ATM or let it go?”

Vice-Chair Blow stated, “I will not back away on ATM , just put it in building they own and compromise.” The issue he has is the \$5K fee. The Harrisburg’s is a smart family, the fees will be past along to the businesses leasing space in the property. The associated cost of 5K is high and the increase of 2% may not enough.

Attorney Weinstein identified that the past area had telephones (that the public paid) and after that newspaper stands.

Informal poll by Chair O'Neill re: ATM & Council thoughts:
Councilor Tousignant – reluctant to make a decision. There are two items that are contentious; the penalty and \$5K. Town Manager clarified that there was no \$6K penalty (that was from 2013 agreement).

Chair O'Neill –clarified for the public that the entire strip of land was 4.77 ft in width and 7.6 ft long.

Councilor Tousignant restated that his hang ups were the ATM and monetary value.

Attorney Weinstein noted on the consent agreement #4 -clean up the wiring. That wiring cannot be touched by State Law.

Jim Butler and Town Manager confirmed the wire was CMP and that #4 come off the consent agreement.

Attorney Weinstein - #6 wants a notification process Town Manager: agreed. #7 client would like modified to include some flexibility with equipment. Chair O'Neill: wants to keep same. Vice-Chair Blow – if stays as is, the businesses cannot replace equipment therefore putting them in violation. Attorney Weinstein – want to replace items if items break down.

Jim Butler noted that anything that needs to be replaced, discuss with Code, and bring permit to council.

Vice-Chair Blow - understood, but doesn't want to impact a business.

LM: have it read, as approved by TM

Chief LaMontagne noted valid concerns on both sides. Replacement of item to fit the same footprint to maintain access to propane tanks, etc.

Town Manager: will discuss with attorney.

Attorney Weinstein – by CMP client cannot lock a gate as they need access. Public Works cuts the locks all the time.

Councilor Tousignant: suggestion of spring load spring gate.

Councilor Mead noted, “the reality is the gate has been opened more than it is

closed. Over the past several summers it is chronically unlocked. If there is concern about “who’s back there” in late evenings then put security cameras.”

Chair O’Neill: oppose as we are trying to clean up the Town and now providing hiding spots.

Chief LaMontagne stated, “if ok with Manager, we will verify with CMP and work with a solution regarding a lock. We manage those issues with other private properties.”

Councilor Mead: #6 date of notice – “prior to May 1st” should be the edit.

Chair O’Neill: ATM should go. Monetary value and area to be CLEAN.

Attorney Weinstein noted the request will not be a major problem with client.

Councilor Mead noted he would like to see something about area being kept clean and repaired (i.e., fence area itself) Councilor Tousignant: add as #10 item.

Chair O’Neill: why not move fence up to front of business.

Vice-Chair Blow noted there is a window in the building that would be blocked. He has no issue with ATM, so long as it is placed “in” the building.

Chair O’Neill: the area is a catch all for trash.

Councilor Tousignant: #10 – maintain area and maintain gate.

Attorney Weinstein questioned if the Town would be amenable of lighting by the ATM area. Council and Town Manager agreed. Town Manager clarified – light and camera? Attorney Weinstein stated either or.

FLM noted there is a utility pole noted by current survey. There is a possibility to have lighting available.

Councilor Mead: in terms of money – strongly believe a penalty needs to be applied for operating for two summers without removing the ATM per notice. Wants penalty pay with consent agreement, \$6K. Attorney Weinstein – strongly objected and stated it was retribution. Responded in 2020 with a letter and Haskell (whom never responded), as far as his client knew there was no restriction of an ATM when consent agreement was created in 2013. To penalize client with Town not

responded. Councilor Mead: 2021 a letter was sent to Attorney Weinstein and owner, Harrisburg, notifying him of violations with no response by owner. Weinstein stated that he responded on May 7th, 2021 and read letter (see attached)

Councilor Mead: in Sept 2020 – wrote a letter (not only Nov 2021).

Attorney Weinstein – rebuttal with letter he sent on Oct 2020. LM: the letter in April was to notify hat there was no action. Wants to stop kicking can down the road and pick it up with and figure what to do. Realistically the owner operated the ATM for two summers in violation.

Chair O’Neill stated, “I struggle that this did not come to Council two years ago. Struggle with a penalty going back – even with use in violation. I don’t support penalty.”

Councilor Tousignant: 6k payment? Town Manager: in 2013 paid \$6K. Attroney Weinstein - until 2013 there was no consent agreement.

Chair O’Neill noted that Councilor Mead is asking for a penalty for \$3K for noncompliance for two years. Attorney Weinstein – if there was hearing in front of Council and asked to remove, he would have removed it. Councilor Tousignant: the ATM issues should have been addressed in Town a few years ago. Vice-Chair Blow noted that it was a totally different topic. He believed Larry’s intention was to address the issue. He noted, “I do understand his reason, not necessarily disagree, may be easier to forgo and move forward. In favor in looking past a fine/cost and do believe that Harrisburg did know it was issue. In the best interest of moving forward, forgo penalties to move forward, but wants it noted that your clients knowingly operated in violation.”

Councilor Mead: move forward and have council address fees.

Vice-Chair Blow: \$1K per year with no less than a 5% increase, doesn’t agree with \$5K fee. Stressing that this fee will not come out of the owners pockets, but it will come out of the pockets of the leases.

Chair O’Neill: \$2,500K or \$3K. Vice-Chair Blow noted that the charge will go on these businesses. Trying not to put burden on these businesses especially with license fee increase. He requested a compromise increase of \$1K, \$1,500 each.

Attorney Weinstein – \$2K, \$1K is reasonable without ATM.

Councilor Tousignant noted that the ATM appears to be out with the plan.

Chair O’Neill: opposed \$1K stating it will not register with Harrisburg.

Councilor Tousignant referenced #10 being added in which the clients will need to keep the area maintained.

Attorney Weinstein noted the Town was asking client to maintain Town land. Chair O’Neill stated the area was being leased by client.

Chair O’Neill: CIPU 5% or whichever is higher and \$2K – consensus from Council.

Town Manager offered a suggestion – “the property of area being used is fence line back. Chair O’Neill: the area in front needs to be required to maintain. Councilor Tousignant: suggesting the Town will maintain the front. Chair O’Neill: the Town is having a hard time maintaining what it has. Councilor Tousignant if it is us to maintain then will improve downtown.

Jim Butler – one comment with consent agreement, any complaints coming in, what are marching orders? He referenced that last year that the area was in tough shape. Requesting instructions within the agreement. Vice-Chair Blow – 100% right, fines/penalties can be taken care of within the agreement.

Attorney Weinstein – page1, paragraph 4 – take out.

Jim Butler: the stockade fence was put up by Harrisburg group – needs to be maintained and stay in repair.

Chair O’Neill questioned how soon ATM could be removed. Councilor Mead: requested removal before Council agreed to consent agreement. Attorney Weinstein noted he would discuss with client.

7:30pm closed.

ADJOURNMENT



TOWN OF

Old Orchard Beach

A FOUR SEASON COMMUNITY

April 22, 2021

Mr. Harrisburg
Harrisburg Group, LLC
P.O. Box 370
13 Old Orchard Street
Old Orchard Beach, Maine 04064

Dear Mr. Harrisburg:

In a letter dated September 25, 2020, I provided you with notice that the Town of Old Orchard Beach was exercising its right to revoke the license granted to Harrisburg Group, LLC by a consent agreement dated August 20, 2013 allowing the use of Town property located between the rail line and your property located at 13 Old Orchard Street. Attorney Neal Weinstein, acting in your behalf, acknowledged receipt of that notice by a letter to me dated October 2, 2020.

As made evident by the notice of violation served on May 22, 2020 by Code Enforcement Officer Rick Haskell, and further articulated in my letter of this past September, the placement on the licensed premises of an ATM machine accessible to the general public is not authorized and is in violation of the 2013 consent agreement. Condition 5 is unambiguous. It states "Harrisburg and Big Daddy's agrees that their use of the Town Property is strictly limited to structures and equipment shown on the survey...". The survey shows a wood platform with a covering canopy at the time the lease was established. I used the Bing Streetside application to obtain a view of the covered platform on July 5, 2015 and I used Google Maps to obtain a view of the covered platform four years later in June, 2019. In each image there is no equipment within the canopy or outside of the covered platform, no soda machine and certainly no ATM.

This communication will serve to remind you that, per the terms of the consent agreement, all structures and equipment must be removed from Town property no later than October 15 of this year.

Sincerely,

Larry S. Mead
Town Manager

cc: Jim Butler, Code Enforcement Officer
Diana Asanza, Finance Director
Neal Weinstein

Attachments: Consent Agreement 08.20.2013
Notice of Violation 05.22.2020
Mead letter dated 09.25.2020
Weinstein letter dated 10.02.2020
Relevant portion of survey from 2013 consent agreement

CONSENT AGREEMENT

AGREEMENT made this 20th day of August, 2013, by and between the **Town of Old Orchard Beach** (the "Town") and the **Harrisburg Group, LLC** ("Harrisburg") and **Big Daddy's Bar and Grill** ("Big Daddy's") as follows:

1. Harrisburg is the owner of commercial property located at 13 Old Orchard Street in Old Orchard Beach, Maine (Tax Map 307, Block 3, Lot 4) being further described in the deed recorded in the York County Registry of Deeds in Book 16020, Page 522. ("Harrisburg Property").
2. Big Daddy's is a tenant of the Harrisburg Property and operator of a restaurant at that location.
3. The Town is the owner of property abutting the Harrisburg Property and described in deeds from the Boston and Maine Railroad dated April 8, 1948 recorded in the York County Registry of Deeds in Book 1095, Page 350 and dated November 26, 1991 and recorded in Book 5902, Page 36 (the "Town Property").
4. According to a survey by Dow & Coulombe, Inc. dated November 26, 2012, a refrigerator unit and other equipment belonging to Big Daddy's, Harrisburg, Dunkin Donuts and/or Rocco's Pizza encroach upon Town Property attached hereto as Exhibit A (the "Survey").
5. The Town's Code Enforcement Officer, James Butler, has cited Harrisburg and Big Daddy's for violations of the Town's Code of Ordinances relating to the location of the above described structures and equipment on Town Property.
6. The parties wish to resolve issues regarding the alleged violations of the Code of Ordinances without the necessity of litigation.

NOW THEREFORE, the parties agree as follows:

1. Harrisburg and Big Daddy's agree to pay the Town the sum of \$6000 as a fine for the alleged violations which includes costs to the Town for attorney's fees and survey costs. Payment shall be made by October 31, 2013.
2. Upon payment of the fine, The Town hereby grants Harrisburg and Big Daddy's a revocable license to continue locating the structures and equipment on the Town Property as shown on the Survey.
3. In exchange for the granting of the license, the parties agree to pay the Town the sum of \$400 per year on the first day of June commencing June 1, 2014.

4. The license is revocable by the Town provided that written notice is sent to Harrisburg and Big Daddy's by May 1st of any succeeding year. If the license is revoked by the Town, Harrisburg and Big Daddy's agree to remove the structures and equipment from the Town Property by October 15th of the year in when the license is revoked.
5. Harrisburg and Big Daddy's agrees that their use of the Town Property is strictly limited to structures and equipment shown on the Survey and at no time will this use interfere with the access to or operation of the Town's utility lines.
6. Harrisburg and Big Daddy's agree to indemnify and hold the Town harmless for any claim by the Boston and Maine Railroad, or its successors, arising from their use of the Town Property as described in this Agreement.

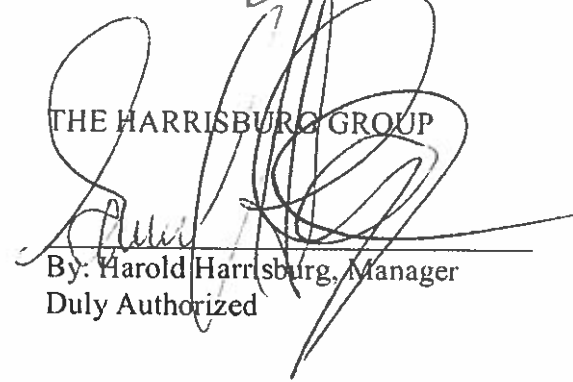
SEEN AND AGREED

TOWN OF OLD ORCHARD BEACH



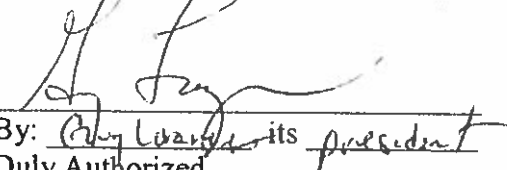
By its Town Manager
Duly Authorized

THE HARRISBURG GROUP



By: Harold Harrisburg, Manager
Duly Authorized

BIG DADDY'S BAR AND GRILL



By: Ray L... its president
Duly Authorized

TOWN OF

Old Orchard Beach THE FINEST, CLEANEST BEACH IN THE WORLD 

5-22-2020

Harrisburg Group LLC
13 Old Orchard Street
Old Orchard Beach, Maine 04064

RE: 6 West Grand Avenue MBL; 307-3-2

Dear Harold,

An evaluation of the above property, on 5-21-2020, revealed the following:

- 1) The installation of an ATM machine.

This in violation of;

Consent Agreement between The Town of Old Orchard Beach and the Harrisburg Group and Big Daddy's Bar and Grill dated August 30th, 2013.

Harrisburg and Big Daddy's agree that their use of the Town property is strictly limited to structures and equipment shown on the Survey and at no time will this use interfere with the access to or operation of the town's utility lines. (see attached)

Town ordinance Chapter 18 Section 31(e).

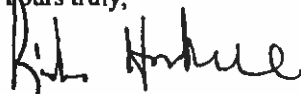
Installation of an ATM without securing applicable approvals including a business license.

(e) No person shall operate or conduct any business or activity identified in the schedule set forth in section 18-32 without first obtaining a license therefor, nor shall any person operate or conduct any business or activity identified in the schedule set forth in section 18-32 except in compliance with the terms of this article and any conditions imposed upon the license issued.

The above stated violation must be corrected **immediately**. Failure to comply with this order will cause this office to seek legal action including civil penalties.

Please contact me at 937-5615 to discuss the matter or if you have questions.

Yours truly,



Rick Haskell
Code Enforcement Officer
Town of Old Orchard Beach

Attachments;
Consent Agreement
Appendix A Schedule of license, permit and application fees

September 25, 2020
Harold Harrisburg
Harrisburg Group, LLC
P.O. Box 370
Old Orchard Beach, ME 04064

Hand Delivered

Dear Mr. Harrisburg:

Your placement of an ATM machine on Town property near 13 Old Orchard Street is unauthorized and not permitted. The revocable license that the Town granted to you for the use of Town property in 2013 specifically states that the use of Town property granted through the license is "strictly limited to structures and equipment shown on the Survey". The revocable license was granted by the Town as part of a Consent Agreement entered into with Harrisburg Group, LLC and Big Daddy's Bar and Grill to resolve violations cited by the Town's Code Enforcement Officer. I have attached copies of both the consent agreement and the referenced survey. The ATM clearly is not shown on the Survey and therefore is not authorized under the revocable license.

CEO Rick Haskell hand delivered to Sam Harrisburg a notice of violation dated May 22, 2020 making you aware that the ATM was not permitted by the consent agreement and that it also violated Chapter 18-31 (e) of the Town ordinance. You have done nothing to rectify the violation.

As provided for by the consent agreement between the Town, Harrisburg Group LLC, and Big Daddy's Bar and Grill, the Town is providing you with this written notice revoking the license for use of the Town's property. Per the terms of the consent agreement this notice is given prior to May 1 of 2021, and all structures and equipment must be removed from Town property no later than October 15, 2021.

Sincerely,

Larry S. Mead
Town Manager

Cc: Guy Loranger, Big Daddy's
Rick Haskell, Code Enforcement Officer



Law Office of Neal L. Weinstein

Admitted in Maine and Massachusetts

32 Saco Avenue
Old Orchard Beach, ME 04064

October 2, 2020

Phone: 207-934-2173
Fax: 207-934-5800
E-mail: weinlaw@maine.rr.com

Larry Mead, Town Manager
Old Orchard Beach Town Hall
1 Portland Avenue
Old Orchard Beach, ME 04064

RE: 13 Old Orchard Street/Harrisburg Group, LLC

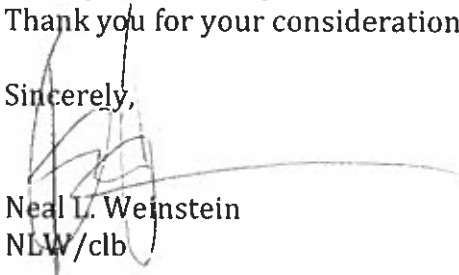
Dear Larry,

I represent Harold Harrisburg and Harrisburg Group, LLC. I reviewed your correspondence dated September 25, 2020, alleging that my client has not complied with a violation notice Rick Haskell sent him on May 22, 2020. When I received the letter of 5/22, I contacted Rick immediately to discuss the matter with him. I explained to him that the wooden platform shown on the plan was originally being used for soda machines and other vending machines that were on site in 2013, and long before that time. The particular type of machine was intentionally left off the plan at that time, to allow my client to place other types of vending machines and/or an ATM on the wooden platform. We had discussed both vending machines and ATM's at that time (2013) and agreed not to bind my client into placing a particular type of vending machine or ATM at that location, but agreed to leave the platform on the plan so everyone would know that it was a platform for one or the other machines. Why else would there even be a platform on the plan?

Rick said that he was unaware of that, and would get back to me after looking into it. When I did not hear back from him, I assumed, apparently incorrectly, that he found information that established that other vending machines were there, and had been there for many years, and everything was ok, and that the matter was closed. Frankly, I was shocked to read your letter. Please let me know if you need any further information, or if you believe the matter is finally closed, or if you intend to disregard what the Town agreed to in 2013 and go forward with your termination of the Lease. My client is still ready, willing and able to purchase that slice of land, if the Town now wishes to sell it.

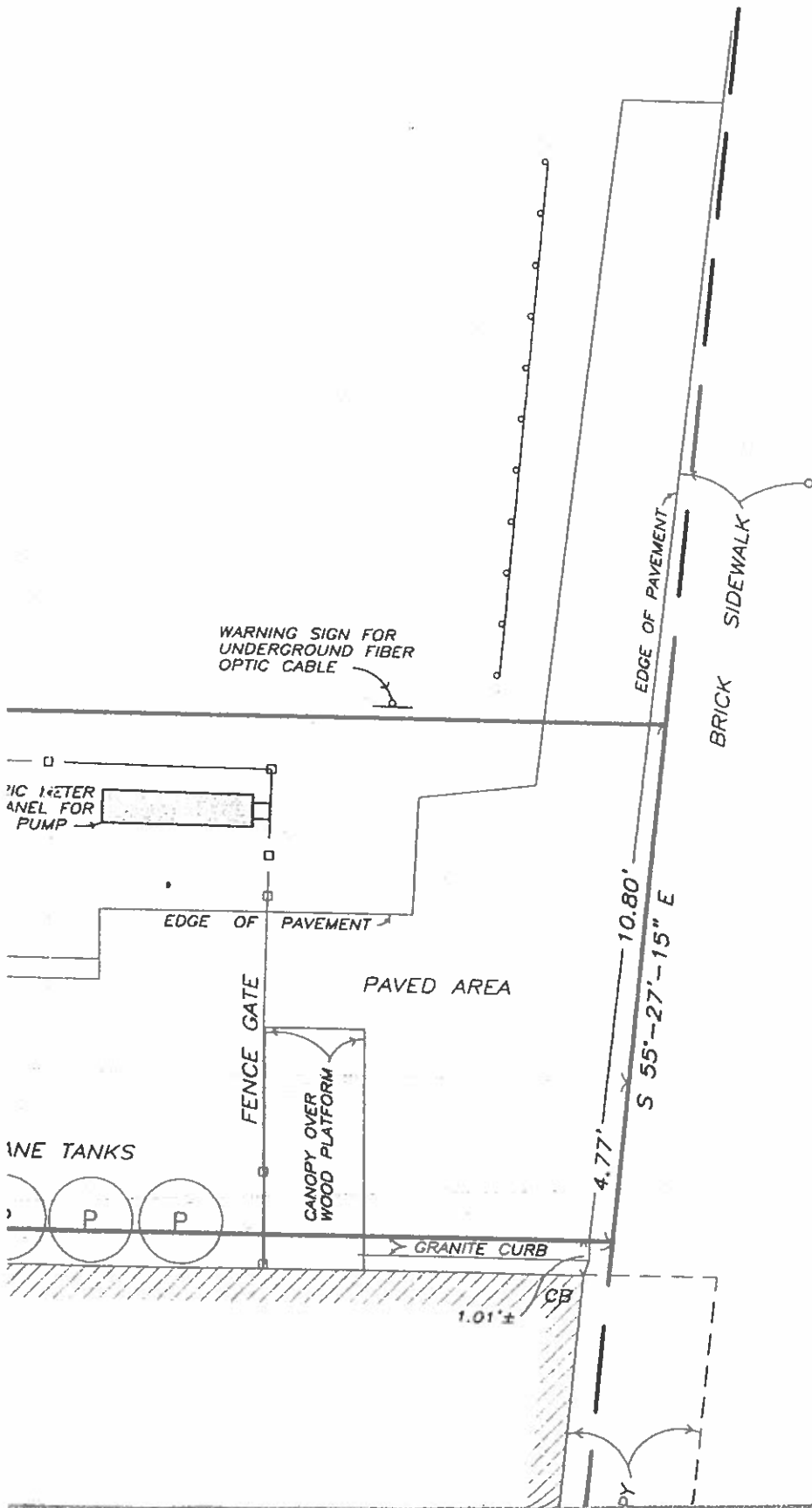
Thank you for your consideration,

Sincerely,


Neal L. Weinstein
NLW/clb

cc: Harold Harrisburg

EXHIBIT A



OLD ORCHARD STREET

(SEE CITY OF SACO RECORDS, VOLUME 8, PAGE 453)

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