



## Town Council Workshop Agenda

**Wednesday, November 8<sup>th</sup>, 2023, 6:00pm**  
**Council Chambers - 1 Portland Avenue**

*[www.oobmaine.com/town-council](http://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 1301 - check with your provider) or by clicking the Meeting Videos link on [oobmaine.com](http://oobmaine.com).)*

There will be a Town Council Workshop on Wednesday, November 8<sup>th</sup>, 2023, at 6:00 pm to discuss a potential Contract Zone for a 61-unit condominium project on E. Emerson Cummings Boulevard.

Chair: Shawn O'Neill

**TO: Old Orchard Beach Town Council  
Diana Asanza, Town Manager  
Tim Fleury, Executive Assistant**

**FROM: Planning Staff**

**SUBJECT: 61 Unit Contract Zoning Proposal at 63 -91 E. Emerson Cummings Blvd**

**DATE: 17 October 2023**

This item is for a new contract zone that proposes a 61-unit single-family condominium development on a 19-acre vacant lot located at 63-91 E. Emerson Cummings Blvd. (MBL: 207-1-2), across from the high school. The project connects to public utilities. Access will be from E. Emerson Cummings Blvd. The primary reason why a contract zone is sought is the density allowed under current zoning does not make this a viable project. The applicants' submissions provide more information concerning this proposal.

A little background. During 2006 a 39-unit development, named Ocean Ridge, was presented to the PB. The development secured preliminary plan approval but did not receive final approval. As I understand, one of the primary reasons it was not approved was costs associated with public sewer improvements. The improvements included updating replacing existing sewer lines and construction of new lines. Since 2006 several developers attempted to move forward with some kind of residential development proposal but there were no commitments due to the perceived public sewer improvement costs.

During 2021/22, a new developer approached the Town. This developer, who is now the applicant, took the extra steps to dig deeper into the sewer matter. Analysis was performed, including assistance from Wright-Pierce, and in the end it was found the sewer matter was not as severe as thought. Also, some of the problem areas are planned for upgrades by the Town through the capital improvement program. With this new information, the developer gained a better understanding of costs and determined this project was feasible; although, a higher housing density than what is allowed was required to move forward. After consideration of several options (e.g., variances, zoning district change), contract zoning was the best choice.

Contract zoning proposals require Planning Board and Council review. Similar to the zoning ordinance amendment process, the PB reviews, holds a public hearing and votes on a recommendation to the Council. The Council reviews the proposal, holds a public hearing, and issues a final decision.

The PB began review of the contract zoning agreement during Summer of 2023 and concluded at the September meeting. The PB voted in favor of the agreement and conditionally recommended the Council approve (5-0 vote). Conditions:

1. Add the following language as one of the conditional use agreement conditions and restrictions: "Short Term Rentals, as defined by the town of Old Orchard Beach Code of Ordinances, of any unit, including the entire unit or portion of a unit, shall be prohibited."
2. Add language to the contract zone agreement and on future plans that states the road shall remain private and road improvements, maintenance, and snow plowing/removal shall be the responsibility of the condominium association.

Note: The language associated with the two conditions is added to the revised contract zone agreement submitted to Council.

### **Ordinance Modification Requests**

To promote desirable development, contract zoning allows the Town to apply more "flexible and adaptable zoning methods" to proposals. These more flexible and adaptable methods are typically modifications to ordinance standards. The proposed contract zone agreement includes several modifications. These modifications and reasons for the modifications are found on pgs. 5 and 6 of the agreement (see letters A – E). The modifications are summarized below.

- Housing Density. The contract zone agreement proposes 61 single-family units. According to the applicant, when considering current zoning density standards and factor in square footage deductions (wetlands, access roads or 15% of lot area), the number of allowable units is 19 under current standards.
- Setback Reduction. The PMUD Zoning District has a 35' front, side and rear setback. The agreement proposes a 20' front/rear setback and 15' side setback.

- Distribution of Uses. The PMUD ordinance states no single use can exceed 75% of the total building square footage unless the Planning Board determines the size of the project property is inadequate to effectively support multiple uses. All building square footage associated with this contract zone will be for residential uses.
- Recreational Site Amenities. The PMUD requires developments exceeding 50 units to include indoor or outdoor amenities to serve the recreational needs of the residents. The contract zone proposes walking trails which should satisfy this standard (indoor and outdoor are not required) and not require a modification. Although, creation of these trails should be a condition included in the contract zone agreement.
- Sidewalks and Curbing. As proposed, the contract zone will modify the sidewalk standards (instead of a raised sidewalk the proposal includes an at-grade marked area), curbing, and right-of-way width (the proposal does not include a 50' right-of-way). Note: This is the reason the PB required a condition of the agreement that the road must remain private.

### **Public Benefits**

Contract zones basically are an agreement between the Town and a private person/entity that allow modifications to ordinance language in order to encourage desirable development and to provide public benefits. This proposal includes the construction of 61 units of affordable and reasonably priced homes. With the need for this type of housing this is certainly desirable development.

Regarding public benefits, the applicant and PB negotiated the following:

- 10% of units will be dedicated affordable housing. This will be deed restricted to ensure the units remain affordable.
- Short-term rental of all units will be prohibited which will help increase year-round housing options.
- Publicly accessible trails.
- Preservation of half of the property (9.5 acres).
- Conveyance of the preserved 9.5 acres to the Town.

### **Concerns**

Overall, the contract zone review process through the PB was very smooth. The reasons include a well-prepared applicant, an applicant who was willing to change items requested by the PB and staff, and a professionally prepared submission. There were several PB and staff concerns with the only outstanding items being the two conditions, which the applicant has complied.

The PB held a public hearing and heard a number of concerns which include:

- Ensuring buffer between the new development and Cide Hill is maintained.
- Traffic increase.
- Pedestrian safety.
- Storm water impacts, especially for Cider Hill

### **Council Responsibilities**

The Council acts on contract zoning requests in accordance with the procedures in Section 410 of the OOB Town Charter. Section 410 requires the Council to review a contract zone with the same procedure as an ordinance amendment- schedule a public hearing, hold a public hearing, issue a decision. In addition to formal meetings, Council can schedule workshops which are helpful to sort through project details.

Council has the option to add conditions to the contract zone agreement or alter in any way they feel is necessary to meet the contract zoning ordinance standards (Ch. 78, Art. IX). As stated in the contract zoning ordinance: "The decision whether or not to rezone remains committed to the town council exercising its sole and exclusive judgment as the elected legislative body of the Town of Old Orchard Beach."

### **Planning Board Responsibilities**

Contract zoning proposals require the Planning Board to make a recommendation to the Council on the contract zone. The primary responsibility of the PB is to rule on three factors when making their recommendation:

- (1) Is consistent with the comprehensive plan;
- (2) Is consistent with, but not limited to, the existing uses and allowed uses within the original zone; and

(3) Is subject to conditions sufficient to achieve the purposes described in Sec. 78-2131\* of the Contract Zoning Ordinance

\*78-2131 states: “Occasionally, traditional zoning methods and procedures such as variances, conditional use permits, and alterations to the zone boundaries are inadequate to promote desirable development. In these special situations, more flexible and adaptable zoning methods are needed to permit differing land uses in both developed and undeveloped areas, and at the same time recognize the effects of change. In consideration of a change in zoning classification for a particular property or group of properties, it may be determined that public necessity, convenience, or the general welfare require that provisions be made to impose certain limitations or restrictions on the use or development of the property. Such conditions are deemed necessary to protect the best interests of the property owner, the surrounding property owners and the neighborhood, all other property owners and citizens of the town, and to secure appropriate development consistent with the town’s comprehensive plan.”

A favorable recommendation to the Council requires a positive finding on all three factors. If the PB makes a negative finding on any of the factors, its recommendation shall be negative. As stated above, the PB recommended Council approve the contract zone which means they made a positive finding on all three factors.

In addition to contract zoning, this proposal requires PB review through the site plan and subdivision processes. An applicant may submit site plan and subdivision applications at the same time they’re seeking the contract zone as if the contract zone were already in effect or may submit after the Council rules on the contract zone. If the applicant seeks site plan or subdivision approval before final Council action on the contract zone, the PB must make its approval contingent on the Council’s approval of the contract zone. At this time, only the contract zoning proposal was reviewed by the PB

### **Conclusion**

What makes contract zoning unique is it’s essentially a zoning ordinance amendment, zoning map change and involves consideration of a specific project. Approval of the contract zone agreement does not approve the project; it only approves the agreement. The project must secure PB approval through the Site Plan and Subdivision process. Nonetheless, approval of the contract zoning agreement is a green light for the project.

As mentioned above, the contract zoning ordinance states: “The decision whether or not to rezone remains committed to the town council exercising its sole and exclusive judgment as the elected legislative body of the Town of Old Orchard Beach.” As part of exercising sole and exclusive judgement, the Council may find additional conditions are necessary to comply with the contract zoning ordinance purpose (Sec. 78-2131, see above).

63-91 E. Emerson Cummings Blvd. (MBL: 207-1-2)





## **Contract Zoning Application**

To:

**Town of Old Orchard Beach**

For:

**63-91 E Emerson Cummings Blvd**  
Old Orchard Beach, Maine

Prepared for:

Seacoast Land Acquisitions, LLC  
57 Smutty Lane  
Saco, Maine 04072

Prepared by:

Sebago Technics, Inc.  
75 John Roberts Road, Suite 1A  
South Portland, Maine 04106

September 2023

September 27, 2023  
230010

Diana Asanza, Town Manager  
1 Portland Ave  
Old Orchard Beach, Maine 04064

**Contract Zone Application**  
**E.E. Cummings Blvd. / Tax Map 207, Lot 1&2**  
**Seacoast Land Acquisitions, LLC**

Dear Diana:

On behalf of Seacoast Land Acquisitions, LLC, we are pleased to submit the enclosed Contract Zone Application for the development of a 61-unit condominium project located on E. E. Cummings Blvd. The site is currently undeveloped and wooded. The housing configuration would be accessed via two points along E. E. Cummings Blvd. and the development would extend back to the southwestern portion of the property. Approximately 9.5 acres of land on the site consists of forested wetlands. Proposed improvements to the site include (61) single-family, residential condominium units, driveways, access drives, utilities including water, sewer, and electrical, and stormwater management facilities for treatment and detention.

The purpose of the Contract Zone Agreement for this project is to allow for the successful use of the property given the existing constraints of the site and the restrictions within the existing zone that are unable to be met. Conditions within the proposed Contract Zone Agreement include a greater residential density, reduced setbacks, revisions to some of the performance standards, and a consistent single-family residential dwelling scheme. The combination of these conditions will allow for the development of a housing project that is in keeping with the Town's Comprehensive Plan and is also financially viable for the applicant/developer. The proposed zoning also encourages the preservation of forested areas around the site, including and emphasizing wetland preservation, while still proposing an appropriate number of residential units.

It should be noted that during the Planning Board review/approval process, the applicant was asked to meet with police and fire officials to determine a solution for a second means of access for the residents along the dead-end portion of the originally proposed roadway. Pedestrian safety was also discussed during this meeting and a summary of the discussion points is included with this response letter. The enclosed Contract Zone Application and Sketch Plan for the proposed development include measures, which address the safety concerns associated with access, fire protection, and pedestrian safety.

Feedback from the Planning Board also resulted in the incorporation of affordable housing (10% totaling 7 units to be offered at an affordable rate) and public access and conservation within/of the Open Space area. These elements have been added for increased public benefit, which is an overall theme of the comprehensive plan.

The Old Orchard Beach Planning Board approved this Contract Zone Application on September 14, 2023 with conditions of approval, including the addition of two (2) restrictions:

1. Short-term rentals shall be restricted in perpetuity
2. The roadway serving the proposed development shall remain privately owned by the condominium association

Please refer to items (F) and (G) on Page 3 of the Contract Zone Agreement for specific language addressing the above restrictions.

We are hopeful that we have provided sufficient information for the Town Council to review and approve the Contract Zone Application. Upon your review of the submitted information, please do not hesitate to contact us if you have any questions or require additional information. Thank you for your consideration and we look forward to presenting at the next regularly scheduled meeting.

Sincerely,

SEBAGO TECHNICS, INC.

A handwritten signature in black ink that reads "K Ramsell". The signature is written in a cursive, slightly slanted style.

Kendra J. Ramsell, E.I.  
*Project Manager/Civil Engineer*

Cc: Jason Labonte, Seacoast Land Acquisitions, LLC

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# Exhibit 1

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Right, Title, or Interest

# PURCHASE AND SALE AGREEMENT - LAND ONLY

("days" means business days unless otherwise noted, see paragraph 20)

May 26, 2022  
Offer Date

\_\_\_\_\_, \_\_\_\_\_ Effective Date  
Effective Date is defined in Paragraph 20 of this Agreement.

1. PARTIES: This Agreement is made between Seacoast Land Acquisitions LLC ("Buyer") and Wesley Kinney, Gwendolyn Kinney ("Seller").

2. DESCRIPTION: Subject to the terms and conditions hereinafter set forth, Seller agrees to sell and Buyer agrees to buy  all  part of (if "part of" see para. 22 for explanation) the property situated in municipality of Old Orchard Beach, County of York, State of Maine, located at 63-91 E Emerson Cummings Blvd and described in deed(s) recorded at said County's Registry of Deeds Book(s) 6076, Page(s) 160.

3. PURCHASE PRICE/EARNEST MONEY: For such Deed and conveyance Buyer agrees to pay the total purchase price of ~~XXXXXXXXXXXX~~. Buyer  has delivered; or  will deliver to the Agency within n/a days of the Effective Date, a deposit of earnest money in the amount ~~XXXXXXXXXX~~. Buyer agrees that an additional deposit of earnest money in the amount of \$n/a will be delivered n/a. If Buyer fails to deliver the initial or additional deposit in compliance with the above terms Seller may terminate this Agreement. This right to terminate ends once Buyer has delivered said deposit (s). The remainder of the purchase price shall be paid by wire, certified, cashier's or trust account check upon delivery of the Deed.

This Purchase and Sale Agreement is subject to the following conditions:

4. ESCROW AGENT/ACCEPTANCE: Keller Williams Realty ("Agency") shall hold said earnest money and act as escrow agent until closing; this offer shall be valid until May 31, 2022 (date) 5  AM  PM; and, in the event of non-acceptance, this earnest money shall be returned promptly to Buyer.

5. TITLE AND CLOSING: A deed, conveying good and merchantable title in accordance with the Standards of Title adopted by the Maine Bar Association shall be delivered to Buyer and this transaction shall be closed and Buyer shall pay the balance due and execute all necessary papers on 45 days from final town approvals (closing date) or before, if agreed in writing by both parties. If Seller is unable to convey in accordance with the provisions of this paragraph, then Seller shall have a reasonable time period, not to exceed 30 calendar days, from the time Seller is notified of the defect, unless otherwise agreed to in writing by both Buyer and Seller, to remedy the title. Seller hereby agrees to make a good-faith effort to cure any title defect during such period. If, at the later of the closing date set forth above or the expiration of such reasonable time period, Seller is unable to remedy the title, Buyer may close and accept the deed with the title defect or may terminate this Agreement in which case the parties shall be relieved of any further obligations hereunder and any earnest money shall be returned to the Buyer.

6. DEED: The property shall be conveyed by a warranty deed, and shall be free and clear of all encumbrances except covenants, conditions, easements and restrictions of record which do not materially and adversely affect the continued current use of the property.

7. POSSESSION: Possession of premises shall be given to Buyer immediately at closing unless otherwise agreed in writing.

8. RISK OF LOSS: Until the closing, the risk of loss or damage to said premises by fire or otherwise, is assumed by Seller. Buyer shall have the right to view the property within 24 hours prior to closing for the purpose of determining that the premises are in substantially the same condition as on the date of this Agreement.

9. PRORATIONS: The following items, where applicable, shall be prorated as of the date of closing: rent, association fees, (other) n/a. Real estate taxes shall be prorated as of the date of closing (based on municipality's fiscal year). Seller is responsible for any unpaid taxes for prior years. If the amount of said taxes is not known at the time of closing, they shall be apportioned on the basis of the taxes assessed for the preceding year with a reapportionment as soon as the new tax rate and valuation can be ascertained, which latter provision shall survive closing. Buyer and Seller will each pay their transfer tax as required by State of Maine.

10. DUE DILIGENCE: Buyer is encouraged to seek information from professionals regarding any specific issue or concern. Neither Seller nor Licensee makes any warranties regarding the condition, permitted use or value of Sellers' real property. This Agreement is subject to the following contingencies, with results being satisfactory to Buyer:

CONTINGENCY	YES	NO	FULL RESOLUTION	OBTAINED BY	TO BE PAID FOR BY
1. SURVEY Purpose: <b>development</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>180</u> days	<u>Buyer</u>	<u>Buyer</u>
2. SOILS TEST Purpose: <b>development</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>180</u> days	<u>Buyer</u>	<u>Buyer</u>
3. SEPTIC SYSTEM DESIGN Purpose: <u>N/A</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	within <u>N/A</u> days	<u>N/A</u>	<u>N/A</u>
4. LOCAL PERMITS Purpose: <b>development</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>365</u> days	<u>Buyer</u>	<u>Buyer</u>
5. HAZARDOUS WASTE REPORTS Purpose: <u>N/A</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>N/A</u> days	<u>N/A</u>	<u>N/A</u>
6. UTILITIES Purpose: <u>N/A</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>365</u> days	<u>Buyer</u>	<u>Buyer</u>
7. WATER Purpose: <u>N/A</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>365</u> days	<u>Buyer</u>	<u>Buyer</u>
8. SUB-DIVISION APPROVAL Purpose: <b>development</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>180</u> days	<u>Buyer</u>	<u>Buyer</u>
9. DEP/LUPC/ACOE APPROVALS Purpose: <u>N/A</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>365</u> days	<u>Buyer</u>	<u>Buyer</u>
10. ZONING VARIANCE Purpose: <u>N/A</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	within <u>N/A</u> days	<u>N/A</u>	<u>N/A</u>
11. HABITAT REVIEW/ WATERFOWL Purpose: <u>N/A</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>180</u> days	<u>Buyer</u>	<u>Buyer</u>
12. REGISTERED FARMLAND Purpose: <u>N/A</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	within <u>N/A</u> days	<u>N/A</u>	<u>N/A</u>
13. MDOT DRIVEWAY/ ENTRANCE PERMIT Purpose: <b>development</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>180</u> days	<u>Buyer</u>	<u>Buyer</u>
14. DEED RESTRICTION Purpose: <b>development</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>90</u> days	<u>Buyer</u>	<u>Buyer</u>
15. TAX STATUS* Purpose: <u>N/A</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	within <u>N/A</u> days	<u>N/A</u>	<u>N/A</u>
16. BUILD PACKAGE Purpose: <b>development</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	within <u>365</u> days	<u>Buyer</u>	<u>Buyer</u>
17. OTHER Purpose: <u>N/A</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	within <u>N/A</u> days	<u>N/A</u>	<u>N/A</u>

\* If the land is enrolled in the Maine Tree Growth Tax program, Seller agrees to provide Buyer with the current Forest Management and Harvest Plan within N/A days.  Yes  No

Further specifications regarding any of the above: N/A

Unless otherwise specified above, all of the above will be obtained and paid for by Buyer. Seller agrees to cooperate with Buyer and shall give Buyer and Buyer's agents and consultants reasonable access to the property in order to undertake the above investigations. Buyer agrees to take reasonable steps to return the property to its pre-inspection condition. If the result of any investigation or other condition specified herein is unsatisfactory to Buyer in Buyer's sole discretion, Buyer will declare the Agreement null and void by notifying Seller in writing within the specified number of days, and any earnest money shall be returned to Buyer. If the result of any investigation or other condition specified herein is unsatisfactory to Buyer, and Buyer wishes to pursue remedies other than voiding the Agreement, Buyer must do so to full resolution within the time period set forth above; otherwise this contingency is waived. If Buyer does not notify Seller that an investigation is unsatisfactory within the time period set forth above, or if any investigation under this paragraph is not performed or completed during the period specified in this paragraph, this contingency and the right to conduct an investigation are waived by Buyer. In the absence of inspection(s) mentioned above, Buyer is relying completely upon Buyer's own opinion as to the condition of the property.

11. FINANCING: Buyer's obligation to close:

**Not Subject to Financing**

- is not subject to a financing contingency. Buyer has provided Seller with acceptable proof of the funds.
- is not subject to a financing contingency. Buyer shall provide proof of the funds acceptable to Seller within N/A days. If such proof is unacceptable to Seller, Seller may terminate this Agreement no later than N/A days from receipt. If proof of funds is not provided within such time period, Seller may terminate this Agreement which right shall end once such proof is received, however Seller retains the agreed upon time period to terminate if such proof is unacceptable. If Seller terminates in either case, the earnest money shall be returned to Buyer.
- Buyer's ability to purchase  is  is not subject to the sale of another property. See addendum  Yes  No.

**Subject to Financing**

- Buyer's obligation to close is subject to financing as follows:
  - a. Buyer's obligation to close is subject to Buyer obtaining a seller financing loan of 85.000 % of the purchase price, at an interest rate not to exceed 5.000 % and amortized over a period of 20 years. Buyer is under a good faith obligation to seek and obtain financing on these terms. If such financing is not available to Buyer as of the closing date, Buyer is not obligated to close and may terminate this Agreement in which case the earnest money shall be returned to Buyer.
  - b. Buyer to provide Seller with letter from lender showing that Buyer has made application for loan specified in (a) and, subject to verification of information, is qualified for the loan requested within 30 days from the Effective Date of the Agreement. If Buyer fails to provide Seller with such letter within said time period, Seller may terminate this Agreement and the earnest money shall be returned to Buyer. This right to terminate ends once Buyer's letter is received.
  - c. Buyer hereby authorizes, instructs and directs its lender to communicate the status of the Buyer's loan application to Seller, Seller's licensee and Buyer's licensee.
  - d. After (b) is met, if the lender notifies Buyer that it is unable or unwilling to provide said financing, Buyer is obligated to provide Seller with written documentation of the loan denial within two days of receipt. After notifying Seller, Buyer shall have 5 days to provide Seller with a letter from another lender showing that Buyer has made application for loan specified in (a) and, subject to verification of information, is qualified for the loan requested. If Buyer fails to provide Seller with such letter within said time period, Seller may terminate this Agreement and the earnest money shall be returned to Buyer. This right to terminate ends once Buyer's letter is received.
  - e. Buyer agrees to pay no more than n/a points. Seller agrees to pay up to \$n/a toward Buyer's actual pre-pays, points and/or closing costs, but no more than allowable by Buyer's lender.
  - f. Buyer's ability to obtain financing  is  is not subject to the sale of another property. See addendum  Yes  No.
  - g. Buyer may choose to pay cash instead of obtaining financing. If so, Buyer shall notify Seller in writing including providing proof of funds and the Agreement shall no longer be subject to financing, and Seller's right to terminate pursuant to the provisions of this paragraph shall be void and Seller's obligations pursuant to 11e shall remain in full force and effect.

12. BROKERAGE DISCLOSURE: Buyer and Seller acknowledge they have been advised of the following relationships:

Craig Church/Kirk Butterfield (N/A) of Keller Williams Realty (N/A)  
 Licensee MLS ID Agency MLS ID  
 is a  Seller Agent  Buyer Agent  Disc Dual Agent  Transaction Broker  
N/A (N/A) of N/A (N/A)  
 Licensee MLS ID Agency MLS ID  
 is a  Seller Agent  Buyer Agent  Disc Dual Agent  Transaction Broker

If this transaction involves Disclosed Dual Agency, the Buyer and Seller acknowledge the limited fiduciary duties of the agents and hereby consent to this arrangement. In addition, the Buyer and Seller acknowledge prior receipt and signing of a Disclosed Dual Agency Consent Agreement.

13. PROPERTY DISCLOSURE FORM: Buyer acknowledges receipt of Property Disclosure Form.

14. DEFAULT/RETURN OF EARNEST MONEY: Buyer's failure to fulfill any of Buyer's obligations hereunder shall constitute a default and Seller may employ all legal and equitable remedies, including without limitation, termination of this Agreement and forfeiture by Buyer of the earnest money. Seller's failure to fulfill any of Seller's obligations hereunder shall constitute a default and Buyer may employ all legal and equitable remedies, including without limitation, termination of this Agreement and return to Buyer of the earnest money. Agency acting as escrow agent has the option to require written releases from both parties prior to disbursing the earnest money to either Buyer or Seller. In the event that the Agency is made a party to any lawsuit by virtue of acting as escrow agent, Agency shall be entitled to recover reasonable attorney's fees and costs which shall be assessed as court costs in favor of the prevailing party.

15. MEDIATION: Earnest money or other disputes within the jurisdictional limit of small claims court will be handled in that forum. All other disputes or claims arising out of or relating to this Agreement or the property addressed in this Agreement (other than requests for injunctive relief) shall be submitted to mediation in accordance with generally accepted mediation practices. Buyer and Seller are bound to mediate in good faith and to each pay half of the mediation fees. If a party fails to submit a dispute or claim to mediation prior to initiating litigation (other than requests for injunctive relief), then that party will be liable for the other party's legal fees in any subsequent litigation regarding that same matter in which the party who failed to first submit the dispute or claim to mediation loses in that subsequent litigation. This clause shall survive the closing of the transaction.

16. PRIOR STATEMENTS: Any representations, statements and agreements are not valid unless contained herein. This Agreement completely expresses the obligations of the parties and may only be amended in writing, signed by both parties.

17. HEIRS/ASSIGNS: This Agreement shall extend to and be obligatory upon heirs, personal representatives, successors, and assigns of the Seller and the assigns of the Buyer.

18. COUNTERPARTS: This Agreement may be signed on any number of identical counterparts, such as a faxed copy, with the same binding effect as if the signatures were on one instrument. Original, faxed or other electronically transmitted signatures are binding.

19. NOTICE: Any notice, communication or document delivery requirements hereunder may be satisfied by providing the required notice, communication or documentation to or from the parties or their Licensee. Only withdrawals of offers and withdrawals of counteroffers will be effective upon communication, verbally or in writing.

20. EFFECTIVE DATE/BUSINESS DAYS: This Agreement is a binding contract when the last party signing has caused a paper or electronic copy of the fully executed agreement to be delivered to the other party which shall be the Effective Date. Licensee is authorized to fill in the Effective Date on Page 1 hereof. Except as expressly set forth to the contrary, the use of the term "days" in this Agreement, including all addenda made a part hereof, shall mean business days defined as excluding Saturdays, Sundays and any observed Maine State/Federal holidays. Deadlines in this Agreement, including all addenda, expressed as "within x days" shall be counted from the Effective Date, unless another starting date is expressly set forth, beginning with the first day after the Effective Date, or such other established starting date, and ending at 5:00 p.m. Eastern Time on the last day counted. Unless expressly stated to the contrary, deadlines in this Agreement, including all addenda, expressed as a specific date shall end at 5:00 p.m. Eastern Time on such date.

21. CONFIDENTIALITY: Buyer and Seller authorize the disclosure of the information herein to the real estate licensees, attorneys, lenders, appraisers, inspectors, investigators and others involved in the transaction necessary for the purpose of closing this transaction. Buyer and Seller authorize the lender and/or closing agent preparing the entire closing disclosure and/or settlement statement to release a copy of the closing disclosure and/or settlement statement to the parties and their licensees prior to, at and after the closing.

22. OTHER CONDITIONS: Buyer agrees to give, and Seller agrees to hold, the balance of the purchase price in the form of a promissory note in the original principal amount of ~~XXXXXXX~~ secured by a first position mortgage on the property. Said note shall be for a term of 3 years with principal and interest, calculated on a 20-year amortization, at an annual interest rate of 5 percent payable in equal monthly installments of principal and interest in the amount of ~~XXXXXX~~. A balloon payment of all outstanding principal and accrued interest shall be due and payable on the 3rd anniversary of the date of the note. The note may be prepaid, in whole or in part, without penalty and may not be assumed without the written consent of the Seller. Buyer will give Seller \$40,000 no refundable deposit upon preliminary sub-division approval at which time the earnest money of \$10,000 will also become non-refundable and given to Seller and both deposits to be applied towards the purchase price.

23. GENERAL PROVISIONS:

- a. A copy of this Agreement is to be received by all parties and, by signature, receipt of a copy is hereby acknowledged. If not fully understood, contact an attorney. This is a Maine contract and shall be construed according to the laws of Maine.
- b. Seller acknowledges that State of Maine law requires buyers of property owned by non-resident sellers to withhold a prepayment of capital gains tax unless a waiver has been obtained by Seller from the State of Maine Revenue Services.
- c. Buyer and Seller acknowledge that under Maine law payment of property taxes is the legal responsibility of the person who owns the property on April 1, even if the property is sold before payment is due. If any part of the taxes is not paid when due, the lien will be filed in the name of the owner as of April 1 which could have a negative impact on their credit rating. Buyer and Seller shall agree at closing on their respective obligations regarding actual payment of taxes after closing. Buyer and Seller should make sure they understand their obligations agreed to at closing and what may happen if taxes are not paid as agreed.
- d. Buyer acknowledges that Maine law requires continuing interest in the property and any back up offers to be communicated by the listing agent to the Seller.
- e. Whenever this Agreement provides for earnest money to be returned or released, agency acting as escrow agent must comply with Maine Real Estate Commission rules which may require written notices or obtaining written releases from both parties.

24. ADDENDA:  Yes  No Explain: \_\_\_\_\_

25. ELECTRONIC SIGNATURES: Pursuant to the Maine Uniform Electronic Transactions Act and Digital Signature Act, the parties authorize and agree to the use of electronic signatures as a method of signing/initialing this Agreement, including all addenda. The parties hereby agree that either party may sign electronically by utilizing an electronic signature service.

Buyer's Mailing address is **57 Smutty Ln, Saco, ME 04072-9717**

DocuSigned by:  
Jason Labonte 5/26/2022  
BUYER **Seacoast Land Acquisitions LLC** DATE

BUYER DATE

BUYER DATE

BUYER DATE

Seller accepts the offer and agrees to deliver the above-described property at the price and upon the terms and conditions set forth and agrees to pay agency a commission for services as specified in the listing agreement.

Seller's Mailing address is **39 Maple Ln, Knox, ME 04986-4008**

DocuSigned by:  
Wesley Kinney 5/31/2022  
SELLER **Wesley Kinney** DATE

DocuSigned by:  
Gwendolyn Kinney 5/31/2022  
SELLER **Gwendolyn Kinney** DATE

SELLER DATE

SELLER DATE

**COUNTER-OFFER**

Seller agrees to sell on the terms and conditions as detailed herein with the following changes and/or conditions:

The parties acknowledge that until signed by Buyer, Seller's signature constitutes only an offer to sell on the above terms and the offer will expire unless accepted by Buyer's signature with communication of such signature to Seller by (date) \_\_\_\_\_ (time) \_\_\_\_\_  AM  PM.

SELLER DATE

SELLER DATE

SELLER DATE

SELLER DATE

The Buyer hereby accepts the counter offer set forth above.

BUYER DATE

BUYER DATE

BUYER DATE

BUYER DATE

**EXTENSION**

The closing date of this Agreement is extended until \_\_\_\_\_ DATE

SELLER DATE

SELLER DATE

SELLER DATE

SELLER DATE

BUYER DATE

BUYER DATE

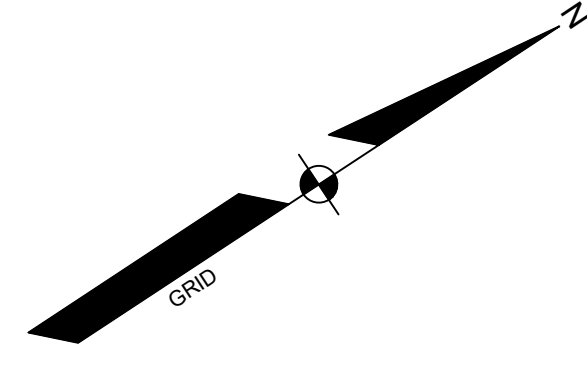
BUYER DATE

BUYER DATE

## **Exhibit 2**

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Boundary Map



N/F  
ROYAL RIVER DEVELOPMENT  
COMPANY  
"CIDER HILL VILLAGE"  
12831/222

"ANCIENT OLD ORCHARD ROAD"

"WOODED"

N/F  
SEAWARD, LLC  
18095/681

N 10° 07' 24" W  
288.778'

1" IRON PIPE  
15" ABOVE GRADE  
(WITNESS)

3/4" IRON PIPE  
3" ABOVE GRADE  
(HELD)

1" IRON PIPE  
12" ABOVE GRADE

1" IRON PIPE  
3" ABOVE GRADE

523.34'  
S 23° 15' 25" W

1" IRON PIPE FOUND  
"PINCHED"  
3" ABOVE GRADE

N/F  
INHABITANTS OF THE TOWN OF  
OLD ORCHARD BEACH  
889/200

771.83'  
S 22° 32' 50" W

RIM=98.53'  
INV.(A)=94.80' 15" CMP  
INV.(B)=94.60' 15" CMP  
INV.(C)=94.60' 12" CMP  
SUMP=93.45'

15" HOPE  
INV.=93.34'

RIM=99.89'  
INV.(A)=92.75' 8" PVC  
INV.(B)=92.85' 8" PVC

RIM=100.05'  
INV.(A)=96.53' 12" PVC  
INV.(B)=96.40' 15" PVC  
SUMP=96.15'



LOCATION MAP N.T.S.

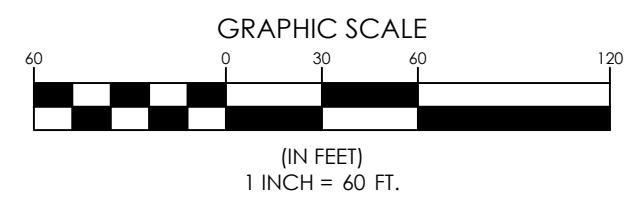
GENERAL NOTES:

- THE RECORD OWNERS OF THE PARCEL ARE WESLEY A. KINNEY JR. & GWEN H. KINNEY BY DEED DATED APRIL 21, 1992 AND RECORDED AT THE YORK COUNTY REGISTRY OF DEEDS (YCRD) IN BOOK 6076, PAGE 160.
- THE PROPERTY IS SHOWN AS LOT 1-2 ON THE TOWN OF OLD ORCHARD BEACH TAX MAP 207.
- TOTAL AREA OF PARCEL IS APPROXIMATELY 19.23 ACRES.
- BOUNDARY AND TOPOGRAPHIC INFORMATION SHOWN HEREON IS BASED UPON FIELD WORK PERFORMED BY SEBAGO TECHINCS, INC. IN MARCH OF 2023.
- PLAN REFERENCES:
  - STANDARD BOUNDARY SURVEY OF LANDS ON E. EMERSON CUMMINGS BOULEVARD, OLD ORCHARD BEACH, YORK COUNTY, STATE OF MAINE, FOR RECORD OWNER WESLEY A. KINNEY, JR. & GWEN H. KINNEY, BY LEWIS & WASINA, INC., DATED SEPTEMBER 15, 1999 AND REVISED THROUGH JANUARY 23, 2002, RECORDED IN PLAN BOOK 312, PAGE 10.
- BASIS OF BEARING IS GRID NORTH, MAINE STATE PLANE COORDINATE SYSTEM, WEST ZONE 1802-NAD83 (2011), GEOID18 IN INTERNATIONAL FEET, ELEVATIONS DEPICTED HEREON ARE NAVD88, BASED ON DUAL FREQUENCY GPS OBSERVATIONS.
- BENCHMARK:
 

BM-1	HORIZONTAL SPIKE IN UTILITY POLE	ELEVATION: 99.28' (NAVD88)
------	----------------------------------	----------------------------
- UTILITY INFORMATION DEPICTED HEREON, UNLESS OTHERWISE NOTED, IS OF QUALITY LEVEL D PER AMERICAN SOCIETY OF CIVIL ENGINEERS (ASCE) STANDARD C1ASCE 38-02. UTILITIES DEPICTED HEREON MAY NOT NECESSARILY REPRESENT ALL EXISTING UTILITIES. CONTRACTORS AND/OR DESIGNERS NEED TO CONTACT DIG-SAFE SYSTEMS, INC. (1-888-DIG-SAFE) AND FIELD VERIFY EXISTING UTILITIES WITHIN THE PROJECT AREA PRIOR TO CONSTRUCTION AND/OR EXCAVATION.
- THE BOUNDARY INFORMATION DEPICTED ON THIS PLAN IS BASED SOLELY ON PLAN REFERENCE (A). RESEARCH HAS ONLY BEEN UPDATED FROM THE DATE OF THE REFERENCED SURVEY TO BE MADE CURRENT.
- PROJECT AREA WAS COVERED BY ICE AND SNOW AT THE TIME OF SURVEY. SOME FEATURES MAY HAVE BEEN OBSERVED AND NOT SHOWN ON THIS PLAN.

LEGEND

DESCRIPTION	DESCRIPTION
	PROPERTY LINE/O.W.
	ABUTTER LINE/O.W.
	IRON PIPE/ROD
	NOW OR FORMERLY
	BENCHMARK
	BM-1
	EDGE PAVEMENT
	CONCRETE
	EDGE GRAVEL
	CONTOURS
	STOCKADE FENCE
	DECIDUOUS TREE
	TREELINE
	SIGN
	SANITARY MANHOLE
	SD
	STORM DRAIN
	CATCH BASIN
	OHU
	OVERHEAD UTILITY
	LIGHT POLE
	UTILITY POLE
	GUY WIRE
	RIPRAP



REV.	BY	DATE	STATUS

THIS PLAN SHALL NOT BE COPIED WITHOUT WRITTEN PERMISSION FROM SEBAGO TECHINCS, INC. ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO SEBAGO TECHINCS, INC.

**TITCOMB ASSOCIATES**  
A Division of Sebago Technics  
75 John Roberts Rd.  
Suite 4A  
South Portland, ME 04106  
Tel: 207-200-2100

BOUNDARY SURVEY & EXISTING CONDITIONS  
OF:  
PARCEL LOCATED ON  
E. EMERSON CUMMINGS BOULEVARD  
OLD ORCHARD BEACH, ME  
FOR:  
SEACOAST LAND ACQUISITIONS, LLC  
57 SMUTTY LANE  
SACCO, ME 04072

DESIGNED	-
DRAWN	JMC/CNG
CHECKED	BRS
DATE	03/27/23
SCALE	1" = 60'
PROJECT	230010

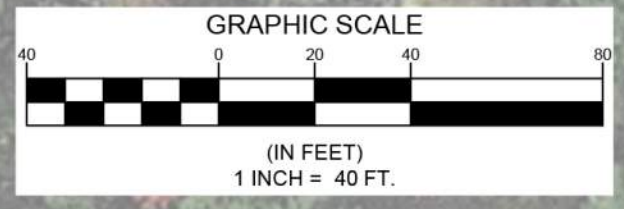
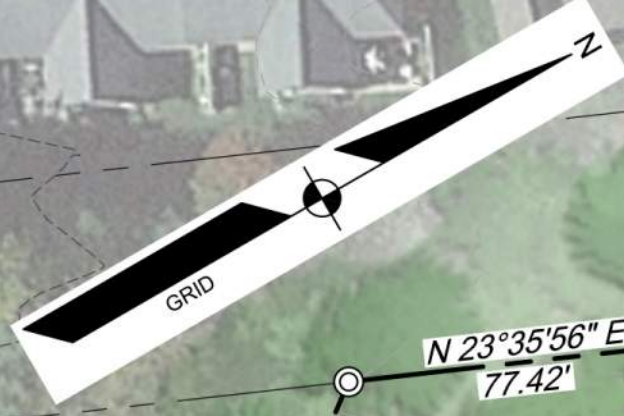


# Exhibit 3

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Street Plan

F:\Projects\23000\230010\DWG\Design\230010 B.dwg - 5/28/2023 11:57 AM - KENDRA RAMSELL



PROGRESS PRINT

NOT FOR CONSTRUCTION

REV	BY	DATE	STATUS
3	KJR	08/28/23	REVISED PER PLANNING BOARD/STAFF COMMENT (CONTRACT ZONE APP)
2	KJR	07/24/23	SUBMITTED TO TOWN OF OOB (CONTRACT ZONE APP)
1	KJR	08/21/23	SUBMITTED TO CLIENT FOR REVIEW

THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM SEBAGO TECHNIQS, INC. ANY ALTERATIONS AUTHORIZED OR OTHERWISE SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO SEBAGO TECHNIQS, INC.

**SEBAGO**  
TECHNIQS  
75 Pine Roberts Rd.  
Sullivan, MA  
South Portland, ME 04106  
Tel. 207-200-2100  
WWW.SEAGOTECHNIQS.COM

OOB CONDOMINIUM DEVELOPMENT  
OF  
LOT 1-2, OOB TAX MAP 207  
E. EMERSON CUMMINGS BLVD.  
OLD ORCHARD BEACH, ME  
FOR:  
SEACOAST LAND ACQUISITIONS, LLC  
57 SMUTTY LANE  
SACO, ME 04072

DESIGNED	BAM
DRAWN	KJR
CHECKED	KJR
DATE	05/24/2023
SCALE	1" = 40'
PROJECT	230010

SHEET 1 OF 1

230010 B.dwg, TAB 24/68

# **Exhibit 4**

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Contract Zoning Agreement

## CONTRACT ZONE AGREEMENT

This CONTRACT ZONE AGREEMENT is made this \_\_\_ day of \_\_\_\_\_, 2023, by and between SEACOAST LAND ACQUISITIONS, LLC, a Maine limited liability company with a principal place of business in the City of Saco, in the County of York and State of Maine, (hereinafter "Seacoast"), and THE TOWN OF OLD ORCHARD BEACH, a municipal corporation located in York County, Maine.

WHEREAS, Seacoast proposes to construct a single-family condominium development containing sixty (61) units on 19.23 acres of land located in Old Orchard Beach, 63-91 E Emerson Cummings Boulevard (hereinafter referred to as the "Project"); and

WHEREAS, the parcel to be developed is shown as Tax Map 207, Block 1, Lot 2 on the Town of Old Orchard Beach Tax Maps, more specifically described on Exhibit A attached (the "Property"), and is located within the Planned Mixed Use District (the "PMU District"); and

WHEREAS, at the time of application for a contract zone, Seacoast has purchased the Property and a copy of a Warranty Deed as recorded in the York County Registry of Deeds at Book \_\_\_\_, Page \_\_\_\_ has been presented to the Old Orchard Beach Town Council as evidence of right, title or interest in the Property; and

WHEREAS, residential dwellings are permitted as a conditional use within the PMU District, and the rezoning to permit the construction of the Project is consistent with the Old Orchard Beach Comprehensive Plan (the "Comprehensive Plan") and with existing uses within the PMU District; and

WHEREAS, Seacoast has petitioned for a contract zone to amend the Old Orchard Beach Zoning Ordinance (the "Zoning Ordinance") to allow the Project to be developed, for the following reasons:

- A. The proposed Project would provide sixty (61) units on 19.23 acres. The minimum lot area requirement within the PMU District for general residential uses with sewer is 20,000 square feet of buildable area per unit. Given the buildable area of the subject property after subtracting the wetland area that will remain protected, the Project would be restricted to 19 general residential units and would not be viable without the Contract Zone.
- B. The required front, side, and rear setbacks within the PMU District for a site with public sewer are equal to 35 feet (25 feet plus 10 feet per additional story above the 1<sup>st</sup> story – the proposed condominiums have two floors). Given the significant acreage of wetland area on-site, which is located generally to the southwest and covers nearly half of the property, development is restricted to upland areas to the north/northeast. The abutting parcel to the south of the subject property is zoned Residential 4 (R-4), which requires 20-foot front/rear setbacks and 15-foot side setbacks. With reduced setbacks that are in keeping with the neighboring zone, the project will result in less wetland impact and will allow for more open space, which will contain these natural resources and be protected from further development in perpetuity.

- C. The proposed Project use will be entirely single-family residential. Although the Distribution of Uses standard set forth in Section 78-1025 of the Zoning Ordinance states that no single use shall exceed 75 percent of the total building square footage permitted in the PMU District, the nature of the site and surrounding properties is more suitable for a solely residential development. Existing residential developments occupy general areas to the south and west of the project site and abutting parcels to the north and east have educational uses. Residential developments, such as the one proposed, provide living opportunities for families; with close proximity to two schools, a fully residential use meets the intent of the Comprehensive Plan.
  
- D. Per Section 78-1027: Performance Standards – Site Amenities, residential neighborhoods containing in excess of 50 units in the PMU District shall provide neighborhood facilities designed to service the recreational needs of the residents. Such facilities may be designed for indoor or outdoor use and for passive or active recreational activities. An indoor facility is not feasible due to the limited amount of upland area on-site, however, walking trails within the dedicated Open Space area would allow for outdoor recreation for residents of the development, as well as general members of the public.
  
- E. Per Section 78-1027: Performance Standards – Site Amenities, pedestrian travel, safety, and convenience for PMUD residents is encouraged; sidewalks shall be provided along all residential streets and between recreational site amenities. The applicant proposes that the roadway be designated as an internal drive, as it will not have its own Right of Way and the surrounding land will be considered common, outside of the individual condo plats for each unit. This being the case, the applicant proposes to construct a 24-foot-wide road, which will consist of two (2) 10-foot-wide travel lanes, and a 4-foot-wide painted pedestrian path. This design allows for maneuverability of a ladder truck/other emergency vehicles and enhances pedestrian safety, without requiring the road to be widened, which would result in further wetland impacts. A 24-foot-wide paved road also meets the design criteria outlined within the street design standards for a “collector street”. The applicant also notes that a traditional curbed sidewalk would require 61 breaks for individual driveways along the travel way, which is not feasible from a design perspective, due to the close proximity of each driveway.

NOW, THEREFORE, pursuant to the authority found in 30-A M.R.S.A, Section 4352(8), and Article IX of the Zoning Ordinance (the "Contract Zoning Ordinance"), and by vote of the Old Orchard Beach Town Council on \_\_\_\_\_, 2023, the following findings are hereby adopted:

- A. The Property is a large undeveloped 19.23-acre parcel located in Old Orchard Beach, in an existing residential area, with access to existing public water and sewer, and extensive wetland area existing on a large portion of the site. Single-family dwellings are permitted as a conditional use within the PMU District and the Project has been designed to be highly visually appealing, which will complement the surrounding neighborhood. In keeping with the Comprehensive Plan, the proposed contract zone will allow the development of the Property to be maximized for residential use, while preserving roughly 9.5 acres of existing forested wetland area.

- B. The proposed rezoning is further consistent with one of the goals identified as most important to the Town, as set forth in Section IV of the Comprehensive Plan, which is to direct growth to areas with economical access to existing sewer and water facilities.
- C. The Comprehensive Plan has an overall theme of promoting desirable development, which includes providing a benefit to the public. The applicant, therefore, proposes the inclusion of “affordable” housing within the proposed development, which restricts the purchase price of each unit so that it is affordable to a household earning up to 120% of the Area Median Income limits the resale price by deed restriction for all future sales of the home to ensure that it remains affordable. 10% of 61 units is 6.1; accordingly, 7 units will be offered at the affordable rate, as described.
- D. As an added benefit the applicant also proposes the creation of trails throughout the open space, which will be available for resident and general public use. These trails will be constructed with as little disturbance as possible to preserve the natural resources, terrain, and forested areas within the Open Space. Thirteen (13) parking spaces have been added to the layout for use by visitors/guests and those who wish to use the trails.
- E. The proposed rezoning is further consistent with Section IV(D) of the Comprehensive Plan, which provides that development should work to protect, preserve and enhance the wetlands of the community. The Property is a total of 19.23 acres, 9.5 acres of which will be preserved forested area, with at least 5.36 of that being wetlands. The wetlands will be protected from development in perpetuity and places within a conservation easement. The applicant proposes to convey this land to the Town of Old Orchard Beach.
- F. Short Term Rentals, as defined by the town of Old Orchard Beach Code of Ordinances, of any unit, including the entire unit or portion of a unit, shall be prohibited.
- G. The roadway serving the development shall remain private and roadway improvements, maintenance, and snow plowing/removal shall be the responsibility of the condominium association.
- H. The conditions hereinafter set forth in this contract and by the Old Orchard Beach Planning Board are sufficient to meet the intent of the Contract Zoning Ordinance.

WHEREFORE, based on the findings above set forth, the Old Orchard Beach Town Council hereby agrees that this contract shall modify the Space & Bulk Requirements in the PMU District to allow a reduction in the minimum lot size per dwelling unit to allow 61 residential units to be constructed on the Property; however, that this agreement shall be subject to the conditions and restrictions as follows:

- A. Except as set forth herein, the applicant shall adhere to all other applicable provisions of the PMU District, the Zoning Ordinance and Subdivision Ordinance.
- B. All details shown on the plans approved by the Old Orchard Beach Planning Board on \_\_\_\_\_, 2023 are incorporated into this contract by reference. The Property shall

be developed substantially in conformance with those plans. Revisions to the Site Plan may be administratively approved by the Town Planner and Code Enforcement Officer in accordance with applicable provisions of the Zoning Ordinance. Any changes determined by the Planning Staff to require Planning Board approval shall be submitted for such review. If it is determined by the Planning Board that any of the changes constitute a change in this contract, then Seacoast shall also be required to obtain Town Council approval of such changes.

- C. These amendments affect only the parcel of land identified as Tax **Map** 207, Block 1, Lot 2 on the Town of Old Orchard Beach tax maps as more particularly described on Exhibit A.
- D. This contract and its provisions shall specifically and exclusively apply to the contract zone request submitted by Seacoast. Approval of this contract zone is in part based on the technical qualifications of Seacoast as submitted to the Town. Accordingly, without the prior written consent of the Town Council, which consent shall not unreasonably be withheld, this contract and the contract zone it creates shall not be transferable by Seacoast except that this contract shall be binding upon, and shall inure to the benefit of, future owners of the Property, or any part thereof, provided, however, that Seacoast may (1) transfer this contract and the contract zone it creates to a Maine limited partnership in which the general partner thereof is controlled by \_\_\_\_\_ without any need for written consent of the Town Council and (2) this contract and the contract zone it creates may be assigned or pledged to lenders providing financing secured by the Property and the Project. In the event of a transfer to such a limited partnership, all references in this agreement to Seacoast shall thereafter be deemed to refer to such limited partnership.
- E. Failure of Seacoast to secure the required Site Plan and Subdivision approvals from the Planning Board, and any and all other permits or approvals that may be required by the Town or other regulatory agencies including but not limited to the Maine Department of Environment Protection and/or Department of Transportation within one year of the approval of this Contract by the Town Council shall render this Contract null and void. In the event that permits or approvals are delayed due to circumstances beyond the control of Seacoast, this one year deadline may be extended by one (1) year upon written request to the Town Council submitted by Seacoast prior to the expiration of the original one-year period, and in the event the final permits or approvals are delayed due to the pendency of an appeal, the one-year deadline shall start to run from the date the appeal(s) are determined and such permits or approvals become final.
- F. Failure of Seacoast to initiate construction of the Project within two (2) years from the date of final approval of this contract zone by the Town Council, or within two (2) years from the date the permits and approvals referred to in Subparagraph E above become final, whichever shall last occur, shall render this contract null and void. In the event that permits or approvals are delayed due to circumstances beyond control of Seacoast, this two-year deadline may be extended by one year upon written request to the Town Council submitted by Seacoast prior to the expiration of the original applicable

two-year period.

G. Breach of these conditions and restrictions by Seacoast shall constitute a breach of the contract. Should Seacoast seek to modify these conditions or restrictions, it shall be required to apply for a contract modification. Failure to apply for and obtain a modification shall constitute a zoning violation, subject to enforcement action.

H. Seacoast shall record this Contract Zone Agreement in the York County Registry of Deeds within thirty (30) days of the date on which Seacoast receives an executed original of this Contract Zone Agreement from the Town. The purpose of this requirement is to provide record notice of all of the requirements of the Contract Zone Agreement.

Based on the above findings, conditions and restrictions, the Town Council hereby incorporates this contract zoning agreement into the Zoning Ordinance by reference. By signing this contract, both parties agree to abide by the conditions and restrictions contained herein. The above restrictions, provisions and conditions are an essential part of the rezoning of the Property. shall run with the land. shall bind and inure to the benefit of Seacoast

<b>The Town of Old Orchard Beach</b>	<b>Seacoast Land Acquisitions, LLC</b>
bys/Shawn O'Neill, Chairman	bys/Jason Labonte, Owner
bys/Kenneth Blow, Vice-Chair	
bys/Michael Tousignant	
bys/Larry Mead	



STATE OF MAINE

)

)ss

COUNTY OF

)

On \_\_\_\_\_, 2023, before me personally appeared Jason Labonte, Owner of Seacoast Land Acquisitions, LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity.

---

NOTARY PUBLIC, signature

Print Notary Name

My Commission

Expires:

EXHIBIT A

PROPERTY DESCRIPTION

# **Exhibit 5**

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Statement of Consistency

## Exhibit 5 – Statement of Consistency

The proposed development and contract zone is consistent with the Town’s Comprehensive Plan. The Comprehensive Plan speaks to increasing housing availability for summer and year-round residents that is affordable, as well as more efficient use of the available, undeveloped parcels. The proposed contract zone will allow for better, more viable, development of the site, in addition to providing a public benefit to the surrounding community, due to the following:

1. The proposed rezone is in keeping with the Comprehensive Plan in that the proposed contract zone will allow the development of the Property to be maximized for residential use, while preserving roughly 9.5 acres of existing forested wetland area.
2. The proposed rezoning is consistent with one of the goals identified as most important to the Town, as set forth in Section IV of the Comprehensive Plan, which is to direct growth to areas with economical access to existing sewer and water facilities. The Comprehensive Plan has an overall theme of promoting desirable development, which includes providing a benefit to the public. The applicant, therefore, proposes the inclusion of “affordable” housing within the proposed development, which restricts the purchase price of each unit so that it is affordable to a household earning up to 120% of the Area Median Income limits the resale price by deed restriction for all future sales of the home to ensure that it remains affordable. 10% of 61 units is 6.1; accordingly, 7 units will be offered at the affordable rate, as described.
3. As an added benefit the applicant also proposes the creation of trails throughout the open space, which will be available for resident and general public use. These trails will be constructed with as little disturbance as possible to preserve the natural resources, terrain, and forested areas within the Open Space. Thirteen (13) parking spaces have been added to the layout for use by visitors/guests and those who wish to use the trails.
4. The proposed rezoning is further consistent with Section IV(D) of the Comprehensive Plan, which provides that development should work to protect, preserve and enhance the wetlands of the community. The Property is a total of 19.23 acres, 9.5 acres of which will be preserved forested area, with at least 5.36 of that being wetlands. The wetlands will be protected from development in perpetuity and places within a conservation easement. The applicant proposes to convey this land to the Town of Old Orchard Beach. The Project design also includes robust landscaping and plantings that will provide a buffer along the wetland edge.

# **Exhibit 6**

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Statement of Proposed Conditions

## Exhibit 6 Statement of Proposed Conditions

The applicant proposes the following conditions as outlined in the Contract Zone Agreement:

1. The agreement would allow for greater development density. The proposed agreement would allow for 61 units to be developed on the 19.23-acre parcel. The existing zone would only allow for 19 units which would not make development viable.
2. The agreement would allow for reduced setbacks that match the abutting zone requirements: 20-foot front/rear setbacks and 15-foot side setbacks. With reduced setbacks that are in keeping with the neighboring zone, the project will result in less wetland impact and will allow for more open space, which will contain these natural resources and be protected from further development in perpetuity.
3. The agreement would allow for an entirely single-family residential development. The nature of the site and surrounding properties is more suitable for a solely residential development. Existing residential developments occupy general areas to the south and west of the project site and abutting parcels to the north and east have educational uses. Residential developments, such as the one proposed, provide living opportunities for families; with close proximity to two schools, a fully residential use meets the intent of the Comprehensive Plan. Furthermore, the inclusion of “affordable” housing within the proposed development, which restricts the purchase price of each unit so that it is affordable to a household earning up to 120% of the Area Median Income limits the resale price by deed restriction for all future sales of the home to ensure that it remains affordable, is proposed. 10% of 61 units is 6.1; accordingly, 7 units will be offered at the affordable rate, as described.
4. The agreement would allow for the Section 78-1027: Performance Standard regarding Site Amenities to be met utilizing the open space for walking trails. Site constraints do not allow for an indoor facility on site; however, walking trails within the dedicated Open Space area would allow for outdoor recreation for residents of the development, as well as the general public as an added benefit. Guest and trail access parking, with 13 total spaces, are shown on the accompanying Sketch Plan.
5. The applicant proposes that the roadway be designated as an internal drive, as it will not have its own Right of Way and the surrounding land will be considered common, outside of the individual condo plats for each unit. This being the case, the applicant proposes to construct a 24-foot-wide road, which will consist of two (2) 10-foot-wide travel lanes, and a 4-foot-wide painted pedestrian path. This design allows for maneuverability of a ladder truck/other emergency vehicles and enhances pedestrian safety, without requiring the road to be widened, which would result in further wetland impacts. A 24-foot-wide paved road also meets the design criteria outlined within the street design standards for a “collector street”.

# **Exhibit 7**

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Summary of Police/Fire Meeting



## *Memorandum*

**To:** Jeffrey Hinderliter, Town Planner

**From:** Kendra Ramsell, Project Manager/Civil Engineer

**Cc:** David Hemmingway, John Gilboy, Clifton Whitten, Elise Chard, Jason Labonte

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### **Background**

At the August 10, 2023 Planning Board Meeting, the Planning Board provided feedback on the Contract Zone Application that was submitted for a proposed 60-unit condominium project located off of E. Emerson Cummings Boulevard in Old Orchard Beach. The issue of site access due to safety concerns was raised.

The Planning Board agreed with previous input from the Police and Fire Departments, that while there were two means of access provided for the overall development as required, the 25+/- units located along the dead-end portion of the road, would not have a way out if something were to obstruct the travel-way southeast of the intersection, specifically in the event of a fire or other emergency. It was requested by the Board that the applicant work with the police chief and fire chief to provide a solution prior to the next Planning Board meeting.

### **Discussion**

Site constraints:

Wetlands cover almost half of the total parcel area. As such, the development has been laid out in a manner that utilizes uplands to the best extent practicable and minimizes wetland impact. There is also a stream that crosses the southernmost corner of the parcel, which has been avoided.

Proposed Solutions for Access:

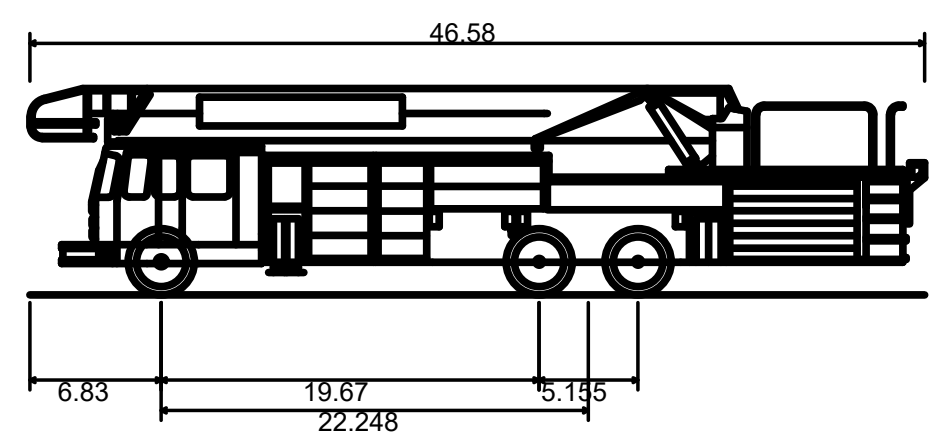
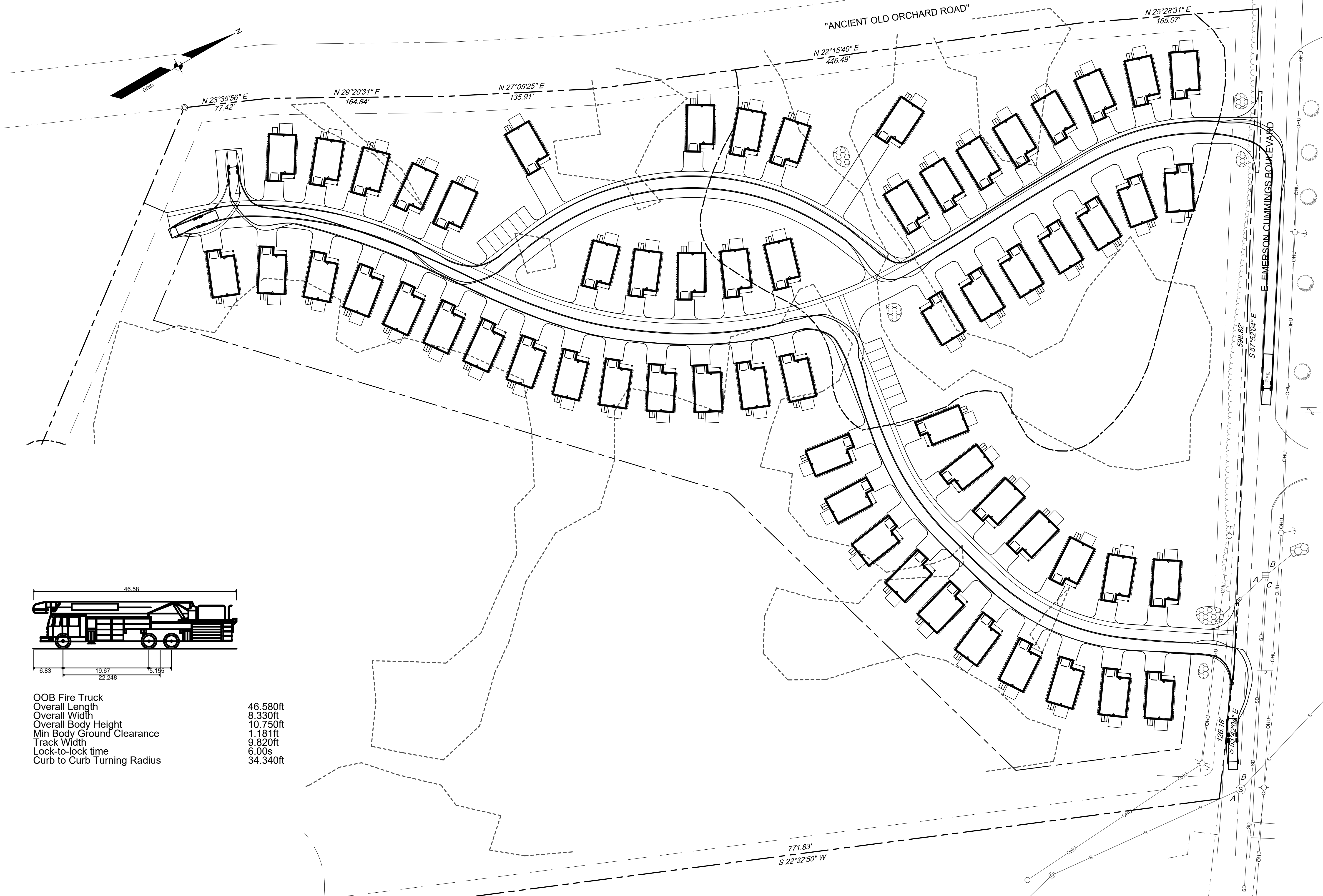
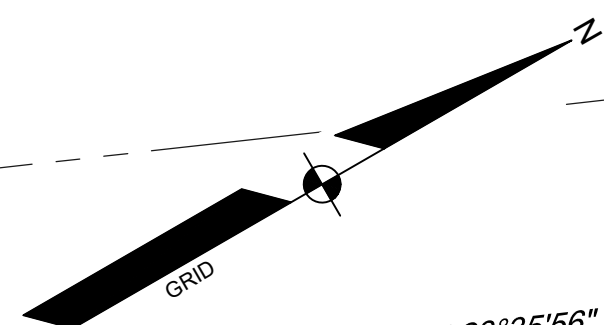
- #1 A gravel roadway running from the end of the hammerhead, down the entire southern property line and across the Jameson school parcel to Saco Ave was suggested as a means of emergency access for the homes along the dead-end portion of the street. While this solution does provide another point of access for units along the dead-end portion of the road, it would be extremely costly to build. The fire department would require a 20-foot-wide paved surface and maintenance of the emergency access drive would pose an issue, especially in winter months with snow removal. This solution also adds impervious to the project and would require further treatment of stormwater, a stream crossing, and additional impacts to wetlands.



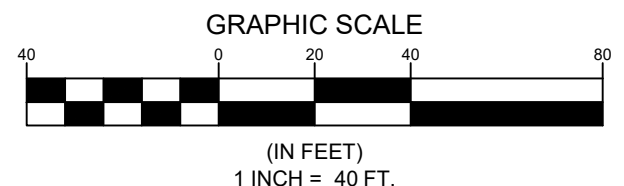
- #2 Access via “Ancient Old Orchard Road” to the northwest of the subject parcel was also suggested by the Planning Board. This option is not feasible, as neither the Town, nor the applicant, have access rights over the paper street.
- #3 (Solution Chosen) Both the police chief and the fire chief agreed that adding a fourth leg to the proposed intersection that would loop back to the dead-end portion of the road at the half-way point would provide a second access for more than half of the 25 homes previously discussed. This would leave roughly 300 feet of roadway that would be considered “dead-end”; however, it is a short enough section of road for police/fire to respond to an emergency without issue.

Other Items:

- The hammerhead at the dead-end is acceptable if designed to the Old Orchard Beach roadway standards and if a vehicle simulation can prove that a ladder truck can be accommodated.
- A vehicle simulation for maneuverability through the entire development shall be provided.
- Hydrants shall be proposed in accordance with the ordinance and Maine Water standards. Placing a hydrant at each intersection, which would provide a total of 4 hydrants within the development (including two along E. Emerson Cummings Boulevard), seemed to be agreeable amongst all parties.
- A paved roadway with (2) 10-foot-wide travel lanes and a 4-foot-wide striped pedestrian path is acceptable to both the police chief and the fire chief, in lieu of a typical curbed sidewalk. The reduced width still allows for appropriate fire access, while accommodating pedestrians and keeping wetland impacts to a minimum.
- Lighting for pedestrian safety at each intersection and at the end of the hammerhead was also discussed and found to be agreeable.
- Road names shall ultimately be approved by the Town but it is preferred by police/fire that two names are proposed, as opposed to four names (once the second loop has been added to the new layout).
- Guest parking shall be provided in some capacity to reduce the likeliness of on-site parking. “No parking” signs shall be placed along internal roadways as necessary. The HOA documents will specifically restrict on-street parking. (2) outdoor parking spaces and (1) garage space per unit meets the off-street parking requirements in the ordinance and was satisfactory to the police chief.



OOB Fire Truck  
 Overall Length 46.580ft  
 Overall Width 8.330ft  
 Overall Body Height 10.750ft  
 Min Body Ground Clearance 1.181ft  
 Track Width 9.820ft  
 Lock-to-lock time 6.00s  
 Curb to Curb Turning Radius 34.340ft



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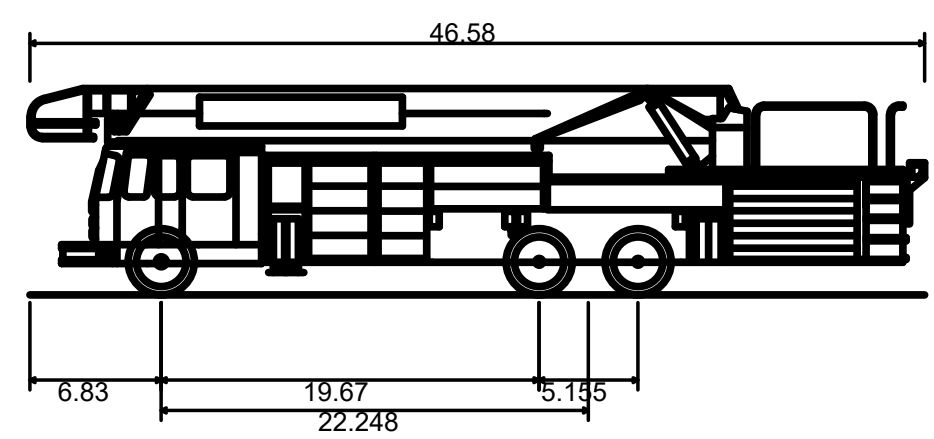
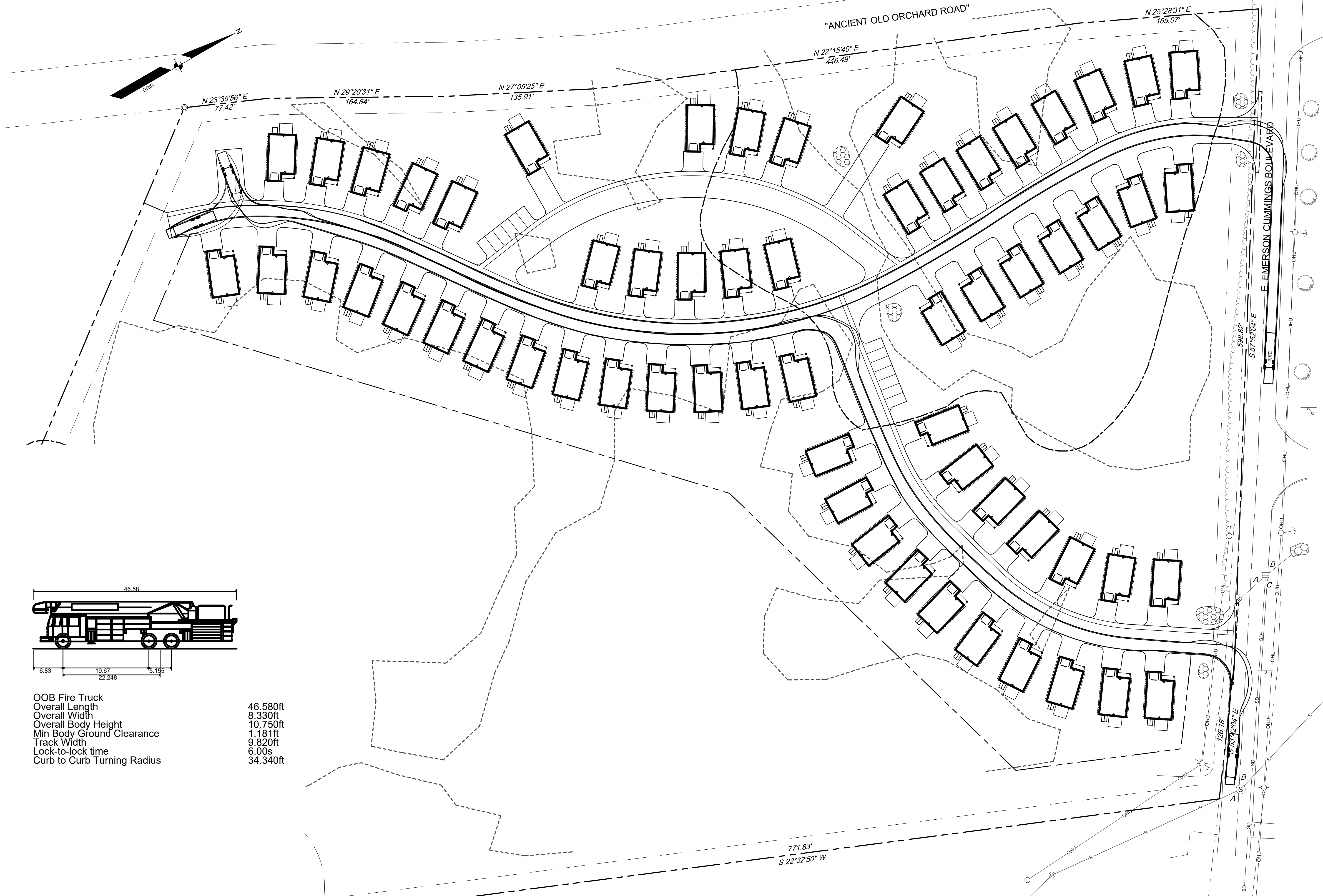
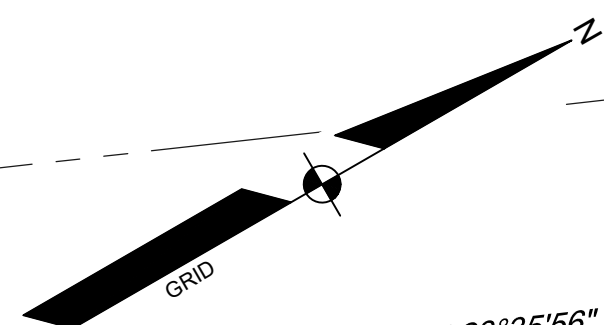
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2	KJR	07/24/23	SUBMITTED TO TOWN OF COB (CONTRACT ZONE APP)
1	KJR	08/21/23	SUBMITTED TO CLIENT FOR REVIEW
REV	BY	DATE	STATUS

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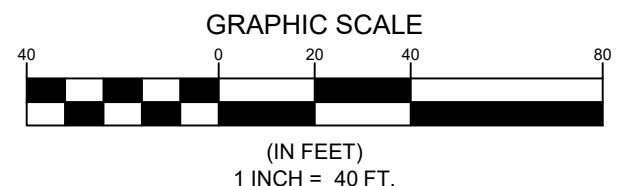
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 TECHNICALS  
 WWW.SEAGOTECHNIQS.COM  
 75 John Roberts Rd.  
 Suite 4A  
 South Portland, ME 04106  
 Tel: 207-200-2100

FIRE TRUCK TURNING MOVEMENT FIGURE 1  
 OF:  
 LOT 1-2, OOB TAX MAP 207  
 E. EMERSON CUMMINGS BLVD.  
 OLD ORCHARD BEACH, ME  
 FOR:  
 SEACOAST LAND ACQUISITIONS, LLC  
 57 SMUTTY LANE  
 SACO, ME 04072

DESIGNED	BAM
DRAWN	KJR
CHECKED	KJR
DATE	05/24/2023
SCALE	1" = 40'
PROJECT	230010



OOB Fire Truck  
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 Min Body Ground Clearance 1.181ft  
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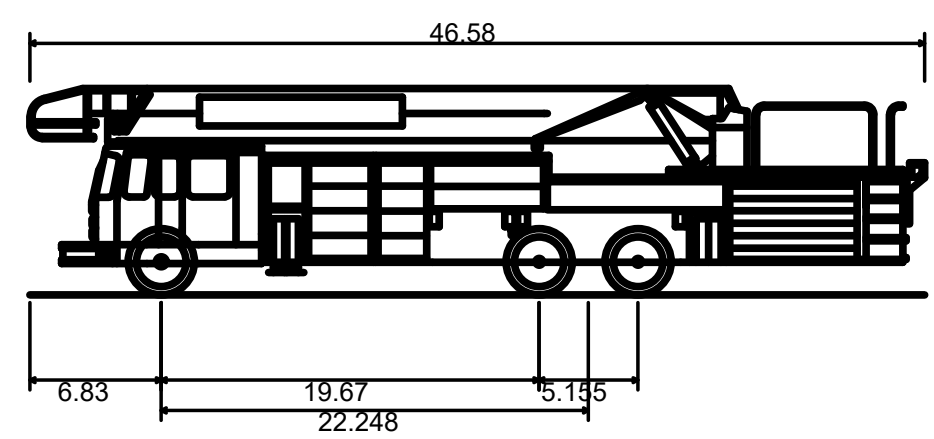
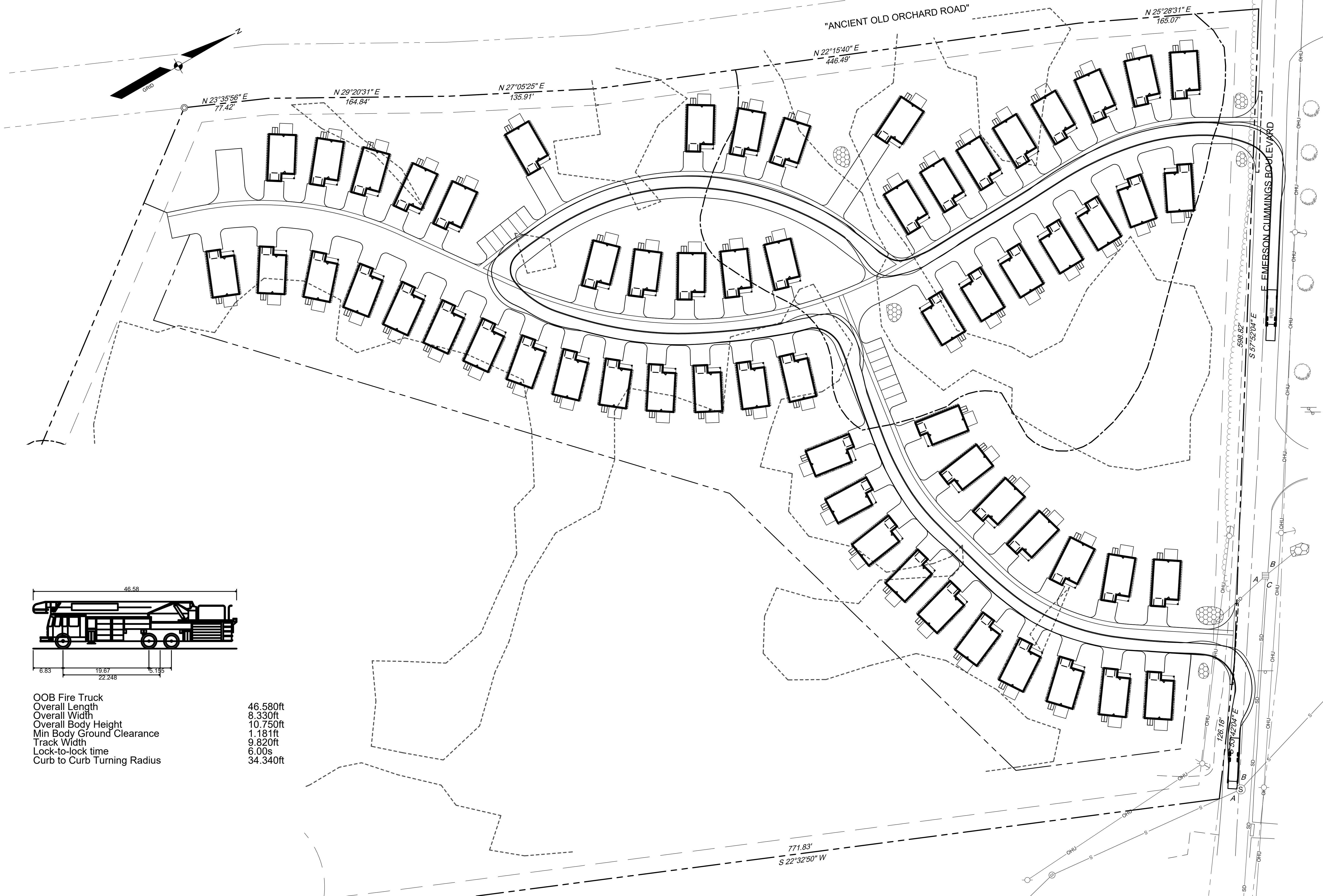
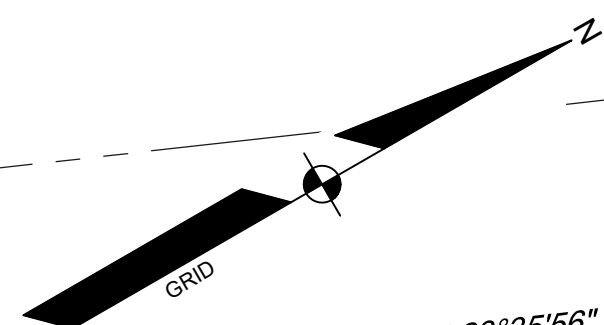
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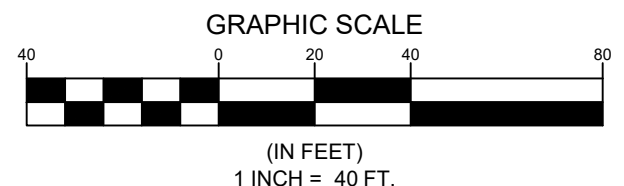
**SEBAGO**  
 TECHNICS  
 WWW.SEAGOTECHNIQS.COM  
 75 Sibley Roberts Rd.  
 South Portland, ME 04106  
 Tel: 207-200-2100

FIRE TRUCK TURNING MOVEMENT FIGURE 2  
 OF:  
 LOT 1-2, OOB TAX MAP 207  
 E. EMERSON CUMMINGS BLVD.  
 OLD ORCHARD BEACH, ME  
 FOR:  
 SEACOAST LAND ACQUISITIONS, LLC  
 57 SMUTTY LANE  
 SACO, ME 04072

DESIGNED	BAM
DRAWN	KJR
CHECKED	KJR
DATE	05/24/2023
SCALE	1" = 40'
PROJECT	230010



OOB Fire Truck  
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 Min Body Ground Clearance 1.181ft  
 Track Width 9.820ft  
 Lock-to-lock time 6.00s  
 Curb to Curb Turning Radius 34.340ft



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REV	BY	DATE	STATUS

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 South Portland, ME 04106  
 Tel: 207-200-2100

FIRE TRUCK TURNING MOVEMENT FIGURE 3  
 OF:  
 LOT 1-2, OOB TAX MAP 207  
 E. EMERSON CUMMINGS BLVD.  
 OLD ORCHARD BEACH, ME  
 FOR:  
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 57 SMUTTY LANE  
 SACO, ME 04072

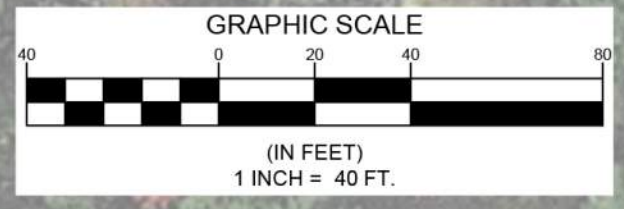
DESIGNED	BAM
DRAWN	KJR
CHECKED	KJR
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SCALE	1" = 40'
PROJECT	230010

SHEET 3 OF 3

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OPEN SPACE  
413,122 SF  
(9.48 AC)



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75 Pine Roberts Rd.  
Sullivan, MA  
South Portland, ME 04106  
Tel. 207-200-2100

OOB CONDOMINIUM DEVELOPMENT  
OF  
LOT 1-2, OOB TAX MAP 207  
E. EMERSON CUMMINGS BLVD.  
OLD ORCHARD BEACH, ME  
FOR:  
**SEACOAST LAND ACQUISITIONS, LLC**  
57 SMUTTY LANE  
SACO, ME 04072

DESIGNED	BAM
DRAWN	KJR
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PROJECT	230010