

1. Legal Ad

Documents: [PB LGL AD 6-3-2014.PDF](#)

2. Agenda

Documents: [PB AGENDA 6-3-14.PDF](#)

3. Casco Heights Site Walk - 802-828 Ocean Ave.

Documents: [PB MEMO CASCO HEIGHTS -6-3-2014.PDF](#)

**LEGAL ADVERTISEMENT
PORTLAND PLANNING BOARD MEETING**

The Portland Planning Board will hold a site visit on June 3, 2014, at 802-828 Ocean Avenue as follows:

Site Visit – 5:30 p.m.

- i. Site Visit for 802-828 Ocean Avenue, Amendment to Conditional Rezoning Agreement; Casco Heights Condominiums (formerly Graves Hill Development); Ridge Development, LLC., Applicant. The site walk will be held at the property, which is located on the westerly side of Ocean Avenue and southwest of Ridge Road, and the Board will gather at the street frontage. The site visit is a public meeting.

STUART O'BRIEN, CHAIR - PORTLAND PLANNING BOARD

CITY OF PORTLAND, MAINE
PLANNING BOARD

Stuart G. O'Brien, Chair
Timothy Dean, Vice Chair
Elizabeth Boepple
Sean Dundon
Bill Hall
Carol Morrisette
Jack Soley

AGENDA
PORTLAND PLANNING BOARD

The Portland Planning Board will hold a site visit on June 3, 2014, at 802-828 Ocean Avenue as follows:

Site Visit – 5:30 p.m.

- i. Site Visit for 802-828 Ocean Avenue, Amendment to Conditional Rezoning Agreement; Casco Heights Condominiums (formerly Graves Hill Development); Ridge Development, LLC., Applicant. The site walk will be held at the property, which is located on the westerly side of Ocean Avenue and southwest of Ridge Road, and the Board will gather at the street frontage. The site visit is a public meeting.

STUART O'BRIEN, CHAIR - PORTLAND PLANNING BOARD

Memorandum
Planning and Urban Development Department
Planning Division



To: Stuart O'Brien, Chair and Members of the Portland Planning Board

From: Barbara Barhydt, Development Review Services Manager

Date: May 30, 2014

Re: Site Walk for the Amended Conditional Rezoning Agreement for 802-828 Ocean Avenue, Casco Heights Condominiums, formerly Graves Hill

CBL: 411 A007, 416 lots 6, 7, and 21

Meeting: June 3, 2014

On Tuesday, June 3, 2014, a site walk is scheduled for 5:30 p.m. to visit the proposed Casco Heights Condominiums property. The wooded parcel is located on the westerly side of Ocean Avenue and is just south of Ridge Road. We will meet along the street frontage and parking is along the edge of the road. A revised site plan is included (Attachment 2) which depicts where stakes will be placed in order to mark the roadway, building corners, surface parking areas, and the property boundary with the Ridge Condominiums. The revised site plan shows the adjustment to the zone line as it relates to the site features and Attachment 3 depicts the adjustment between the ROS zone and the conditional rezone area (C-34).

City staff and the applicant will lead the tour of the site. We are requesting that Board members stay together during the site walk in order to hear the material and questions presented at the site. We request that the Board members avoid concurrent and separate conversations. Attachment 1 is a memo from Danielle West-Chutha regarding site walks for the Board's information.

Notice of the site visit, as a public meeting, appeared in Portland Press Herald on May 26 and 27th, and it was sent to the interested citizen list and to property owners within 500 feet of the site.

From: Danielle West –Chuhta
To: Barhydt, Barbara
Date: Friday, October 02, 2009 2:57:39 PM
Subject: Site Walks

Barbara:

Here is the summary from the MMA Planning Board manual re: site walks:

Site Visits. If a majority of the board is going to visit the site of a proposed project, the board should be aware that such on-site meetings are meetings which must be preceded by public notice and at which the public has a right to be present under the Freedom of Access Act (“Right to Know Law”). Site visits conducted by individual board members or by a subcommittee comprised of less than a majority of the full board arguably would not be subject to the public notice requirements of the law. However, site visits by individual members or by subcommittees of less than a majority of the full board can raise due process problems which the board may wish to avoid, especially where the site visit occurs after the board has closed its record to additional public comment and has begun to make its decision. Compare, *City of Biddeford v. Adams*, 1999 ME 49, 727 A.2d 346 (Me. 1999), and *Fitanides v. Lambert*, CV-92-662 (Me. Super. Ct., York Cty., July 30, 1992), with *Armstrong v. Town of Cape Elizabeth*, AP-00-023 (Me. Super. Ct., Cum. Cty., Dec. 21, 2000). Many private municipal attorneys advise the municipal boards that they represent that site visits conducted by less than a majority of the board should never occur and insist that the board only conduct site visits as a public meeting of a majority of the board.

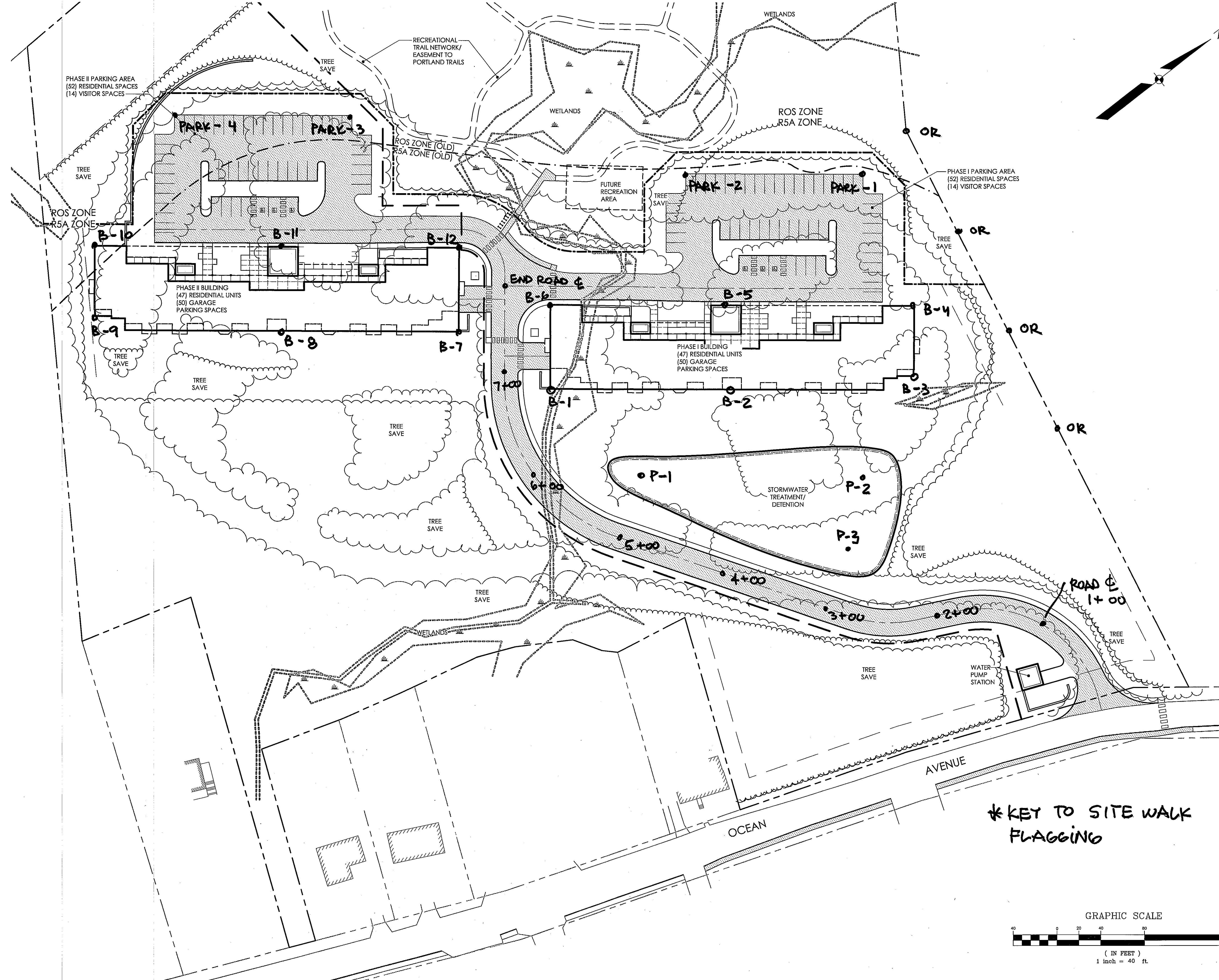
During a site visit which is not conducted as part of a public meeting recorded in board minutes, the individual board members have an obligation not to discuss substantive issues about the site or the application either with each other or with the applicant. Nor should the applicant or any one else be conducting demonstrations to prove a point which might be in controversy about the application. Such discussions or demonstrations would constitute illegal “ex parte” communications and would cause due process problems for the parties not present. The individual board members also need to be sure to note for the written record at the next board meeting the fact that a site visit was conducted and what information the visit generated that might affect the visiting board member’s vote on the application. It is crucial that a site visit conducted by less than a majority of the full board occur before the board closes the record to further public comment. *Adams*, supra. It also is crucial that the ultimate findings and conclusions prepared by the board in making its decision address the evidence from the site visit and that the findings in general are sufficiently detailed to allow a court to determine how the board evaluated all the evidence. In *Re Villeneuve*, 709 A.2d 1067 (Vt. 1998).

Even if the board members do all of this, an applicant or someone opposing the project still could try to challenge the individual site visits as a violation of their due process rights if they were not at the site also to observe whether there were any improper “ex parte” communications. To avoid these due process challenges, the board may want to require that all site visits be done as a board with public notice under the Right to Know Law. If a board member is unable to attend a site visit, the board doesn’t need to reschedule it. The board can publicly advise an absent member of what was observed during the site visit at the next board meeting and provide an opportunity for rebuttal by the applicant or some other interested person who disagrees with the board’s description of the site.

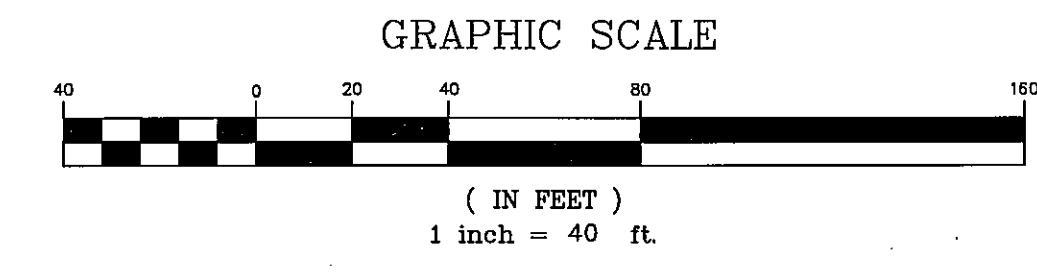
Sometimes a board decides to conduct a site visit and will set a date for the site visit to occur at a later date while it is at a public meeting on the application which will be the subject of the site visit. It arguably is enough for the purpose of giving notice under the FOAA for the board to announce the date, time and place of the site visit without also providing additional public notice by some other means, if the announcement is made at a meeting which itself complied with FOAA notice requirements. However, to be safe, the board also should provide notice to the public in the manner usually followed, for the benefit of the people who were not at the meeting where the site visit is announced.

Thanks,

Danielle



*KEY TO SITE WALK
FLAGGING



Att. 2

DATE	04-21-14	SCALE	1" = 40'
------	----------	-------	----------

SHEET 1 OF 1

134505.dwg, TAB S-40

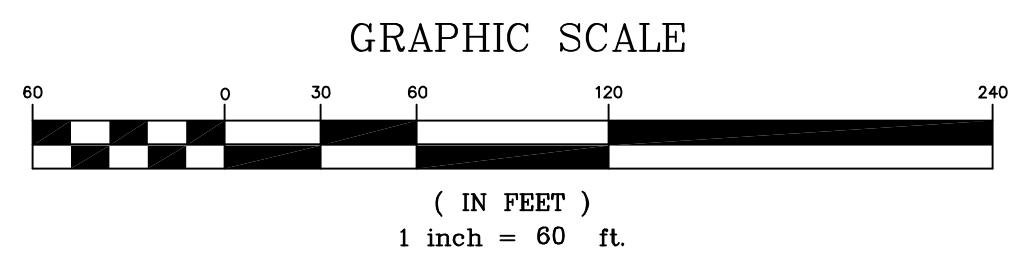
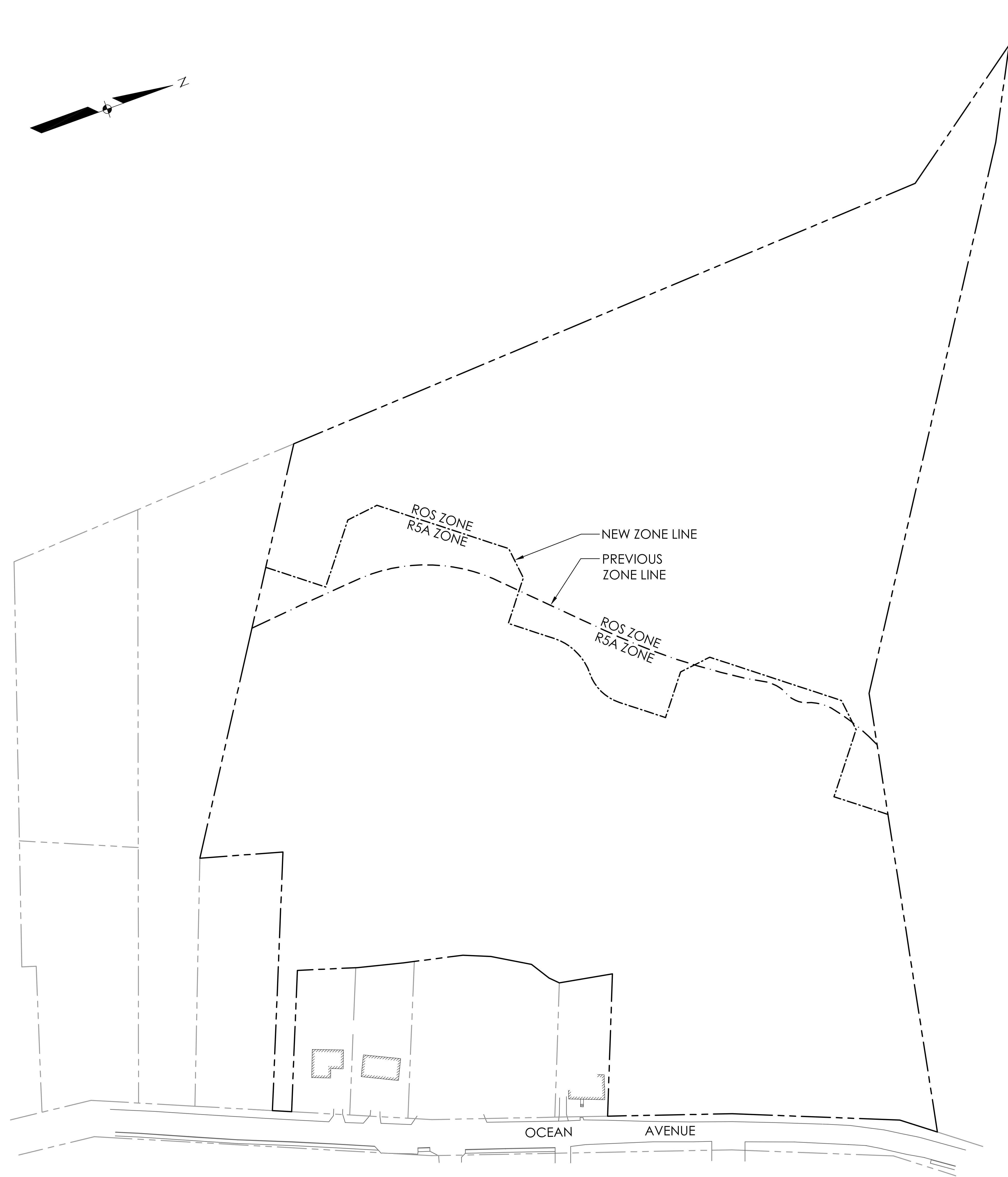
SEBAGO
TECHNICALS
75 John Roberts Rd., Suite 1A
South Portland, ME 04106
(207) 283-5500
www.sebagotechnicals.com

PROJECT NO.	13450	FIELD BOOK	DESIGN	CHKD	WTC	DRAWN	MAL
REV.	A	BY:	WTC	DATE:	STATUS:		

FOR: RIDGE DEVELOPMENT, LLC
P.O. BOX 535
BUXTON, MAINE 04093

OF: CASO HEIGHTS
OCEAN AVENUE
PORTLAND, MAINE

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



CASCO HEIGHTS ZONE REVISION

PREPARED BY:

SEBAGO
T E C H N I C S

75 John Roberts Rd. - Suite 1A 250 Goddard Rd. - Suite B
South Portland, ME 04106 Lewiston, ME 04240
Tel. 207-200-2100 Tel. 207-783-5656