

Town of Windham

Planning Department
8 School Road
Windham, ME 04062

voice 207.894.5960

fax 207.892.1916

MEMO

DATE: March 20, 2014

TO: Windham Planning Board
FROM: Ben Smith, Planning Director *BWS*
Cc: Wayne Wood, PLS, Wayne T. Wood & Co.
Kyle Rich

RE: Zoning Amendment Request – portion of Waterhouse property, Tax Map 14; Lot 17J, and portion of Rich property, Tax Map 50; Lot 1A
Farm-Residential (FR) to Medium-Density Residential (RM) & Roosevelt Trail Business and Professional Office Overlay (BPO)

At the Town Council meeting on March 11, 2014, the Council sent the attached rezoning request to the Planning Board for review and recommendation. Please note that during Council discussion, the scope of the proposed changed. The applicant had originally requested a zone change for a 65,000 square foot portion of the Waterhouse property from Farm-Residential (FR) to Medium-Density Residential (RM) and Roosevelt Trail Business and Professional Office Overlay (BPO). Based on Council discussion, the zone change request now also includes the portion of the Rich property that is currently zoned FR and BPO, which is also proposed to change to RM and BPO. The applicant has provided an updated sketch on the Town's Tax Map showing this update to the original request.

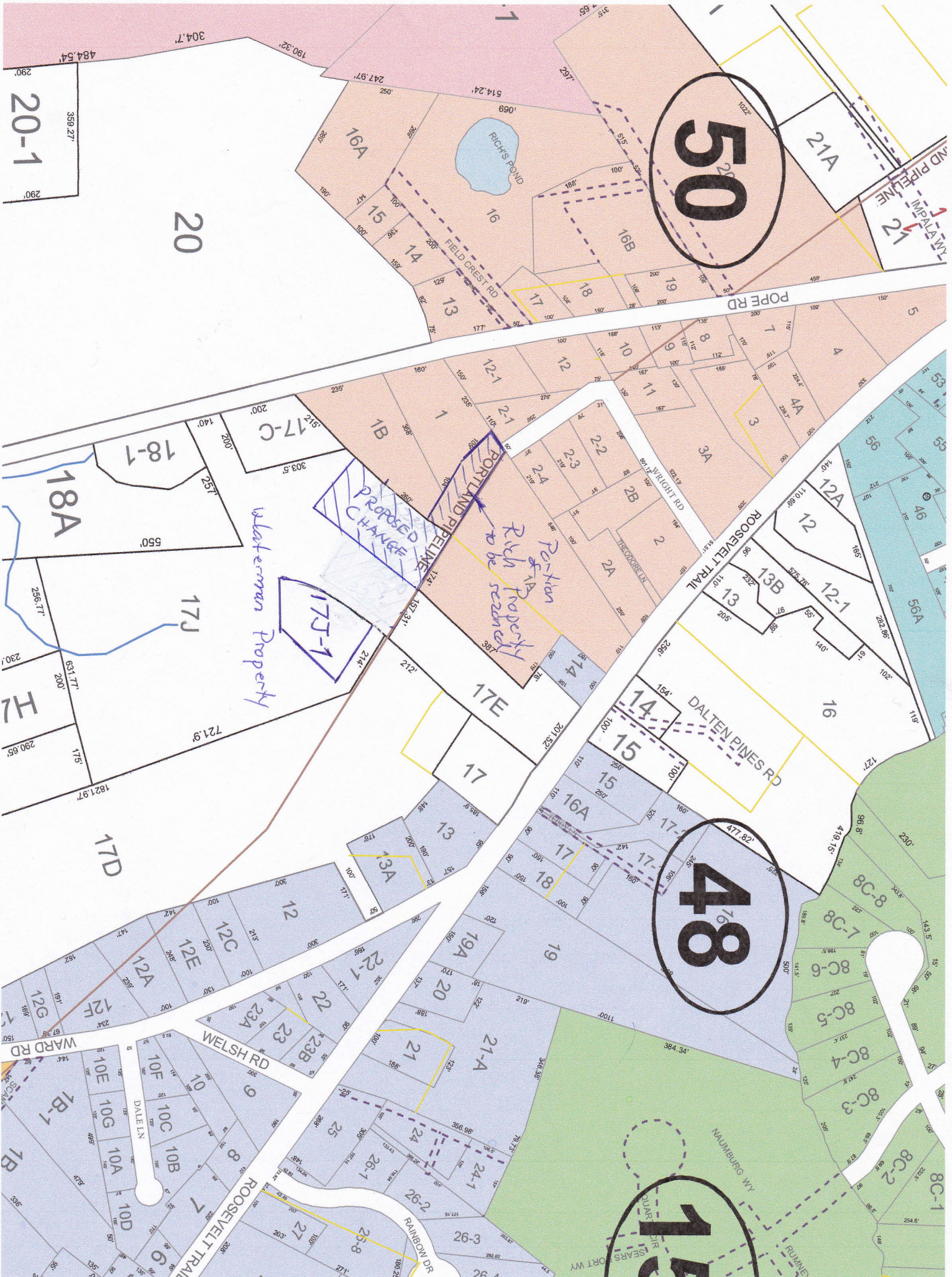
The 65,000 square foot portion of the Waterman property proposed for rezoning will be added to the applicant's abutting property at 570 Roosevelt Trail, if the zone change request is approved. The purpose of the zone change request and transfer to the abutting property would be to give the applicant enough land to build an additional four dwelling units on the property, which is currently occupied by three 4-unit buildings.

Please note that the current application is for the rezoning of property only. Any additional dwelling units would need to be approved as an amendment to the Top of the Hill Subdivision and Site Plan, originally approved in 1996 and amended in 1998.

Zoning Amendment Process

The Planning Board must hold a public hearing prior to making a recommendation on this item to the Town Council. The Town Council will need to vote on the proposed changes to the zoning map for the changes to be officially approved.

There are no specific standards in the Town ordinance by which to judge the proposed zoning change, but State statute requires all proposed zoning changes and zoning map amendments to be consistent with the goals and objectives of the Comprehensive Plan.



WINDHAM MAP 14

Town of Windham

Planning Department
8 School Road
Windham, ME 04062

voice 207.894.5960

fax 207.892.1916

MEMO

DATE: January 28, 2014

TO: Tony Plante, Town Manager
FROM: Ben Smith, Assistant Town Planner *BWS*
Cc: Wayne Wood, PLS, Wayne T. Wood & Co.
Kyle Rich

RE: Zoning Amendment Request – portion of Waterhouse property, Tax Map 14; Lot 17J
Farm-Residential (FR) to Medium-Density Residential (RM) & Roosevelt Trail
Business and Professional Office Overlay (BPO)

The Planning Department has received a zoning amendment request to rezone a portion of a 10 acre undeveloped property on Pope Road, identified on Tax Map 14; Lot 17J. The property is located near the northern end of Pope Road, just north of Starlit Way. The request is to change the zoning for a portion of the property from Farm-Residential (FR) to Medium-Density Residential (RM), along with an extension of the Roosevelt Trail Business and Professional Office Overlay (BPO).

The applicant's representative has stated in the attached application that a 65,000 square foot portion of this property is proposed for rezoning, and if approved, will be added to the applicant's abutting property at 570 Roosevelt Trail. The purpose of the zone change request and transfer to the abutting property would be to give the applicant enough land to build an additional four dwelling units on the property, which is currently occupied by three 4-unit buildings.

Please note that the current application is for the rezoning of property only. Any additional dwelling units would need to be approved as an amendment to the Top of the Hill Subdivision and Site Plan, originally approved in 1996 and amended in 1998.

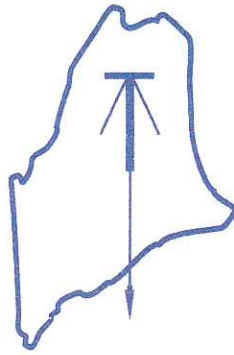
Zoning Amendment Process

If the Town Council chooses to start this request through the zoning amendment process, the Planning Board will review the submitted information and make a recommendation to the Town Council. A public hearing will be part of the Planning Board's review.

The recommendation from the Planning Board will be sent back to the Town Council for final action. Only the Town Council can make changes to the zoning map or zoning standards.

There are no specific standards in the Town ordinance by which to judge the proposed zoning change. Section 107 of the Land Use Ordinance (page 1-3) states that, “After review and recommendation by the Planning Board, this chapter may be amended in accordance with the Town Charter.” That being said, State statute requires all proposed zoning changes and zoning map amendments to be consistent with the goals and objectives of the Comprehensive Plan.

WAYNE



WOOD & co.

PROFESSIONAL LAND SURVEYING
and LAND PLANNING
30 Wood Drive, Gray, Maine 04039

WETLANDS DELINEATION
Telephone (207) 657-3330
Fax (207) 657-3344

December 10, 2013

Dear Councilors:

This zoning change is being requested to allow Kyle and Jill Rich to add the additional land to their existing parcel that fronts on Roosevelt Trail in order to allow them to add 4 new dwelling units.

This would be adding much needed affordable housing units in the North Windham area for people working in the Business and Professional offices in the area. This zoning change will merely move the dividing line between the two current zones to shift the acreage from the Farm-Residential(FR) zone to the Medium-Density Residential (RM) zone with the Business and Professional overlay zone, it does not create a different zone with the existing zones.

Sincerely;

Wayne T. Wood, PLS #1328
Wayne T. Wood & Co.

| | |
|----------|---------|
| RECEIVED | |
| Date | 1/16/14 |
| Time | 12:40 |
| Initials | JK |

**TOWN OF WINDHAM
ZONE CHANGE APPLICATION**

The original signed copy of this application must be accompanied by the required application fee, along with fifteen (15) copies of any and all plans, maps, drawings, and any related information which shall be printed or reproduced on paper. Applications must be submitted to the Town of Windham Planning Department. The Town Council Chair and Vice-Chair shall place the request on the Town Council's agenda at their discretion.

Contact Information

1. Applicant

Name: Kyle Rich
Mailing Address: 376 Pope Road, Windham, ME 04062
Telephone: 841-3063 Fax: _____ E-mail: _____

2. Record owner of property

_____ (Check here if same as applicant)
Name: Janet Waterhouse
Mailing Address: P.O. Box 628, Windham, ME 04062
Telephone: 892-8005 Fax: _____ E-mail: _____

Property Information

Property Address:

off Pope Road

Assessor's Tax Map & Lot(s) #:

Map: 14 Lot portion of 17J

Property size (square feet):

45,000 square feet

Current Zoning District:

Farm-Residential
FR

Requested Zoning District:

Medium-Density Residential
RM with BOP overlay

Current use of the property:

vacant land

Requested use of the property:

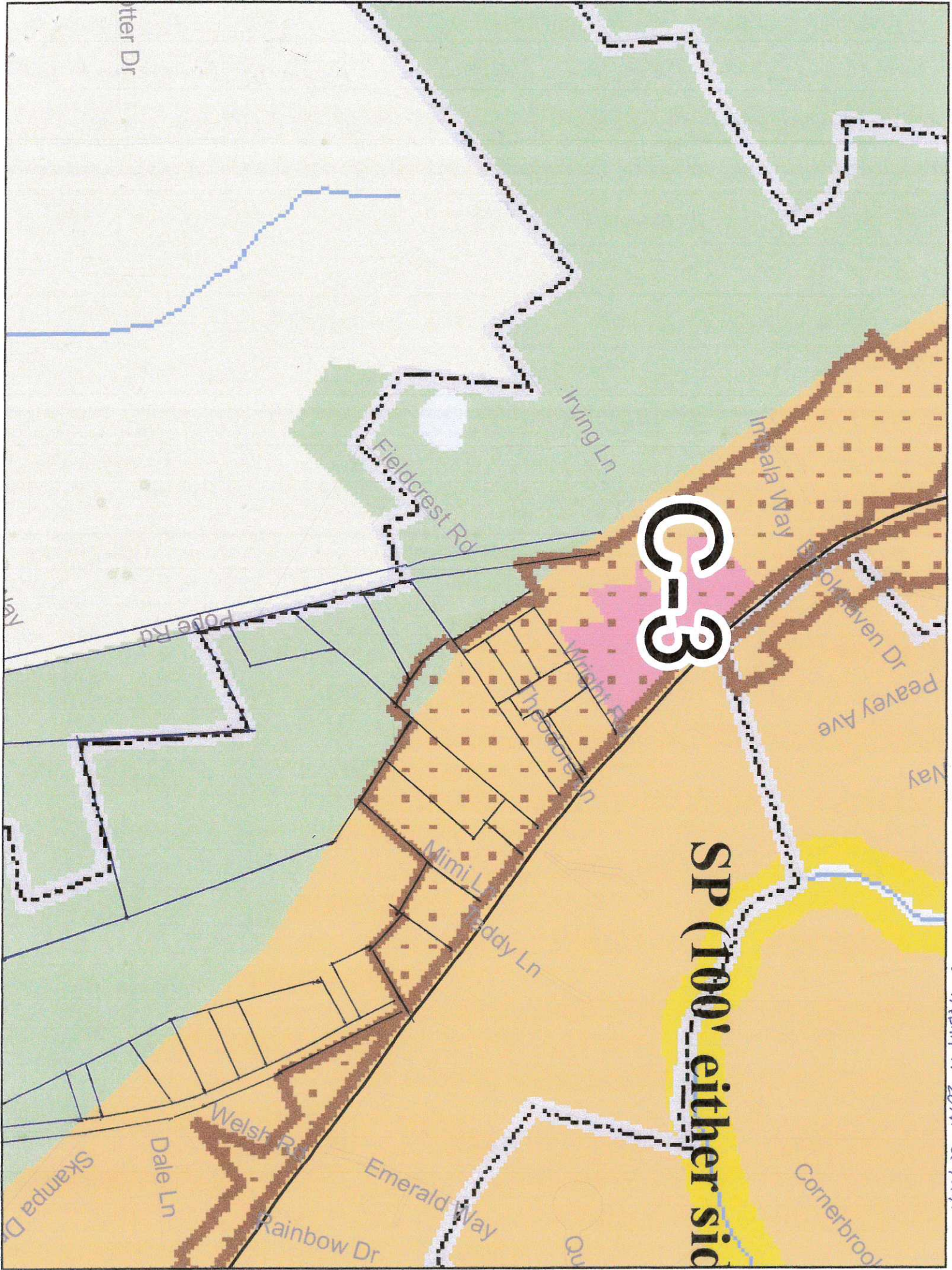
Multifamily Residential

Required Attachments

1. Evidence of right, title, or interest in the property.
2. An explanation of how rezoning the property in question would support the goals and objectives of the Town of Windham Comprehensive Plan.
3. A plan of the lot(s) proposed to be rezoned. This plan may be a Windham Tax Map or Survey conducted by a Maine Licensed Surveyor. At a minimum, the plan must contain the following:
 - a. Lot lines of the lot(s) proposed to be rezoned,
 - b. Approximate location, width, and purpose of easements or restrictions on the property (if applicable),
 - c. Streets on and adjacent to the lot(s),
 - d. Approximate location of existing buildings, structures, or other improvements to the site (if none, please note).
 - e. Major natural features of the site, approximated by the applicant, including wetlands, streams, ponds, floodplains, treelines, and other important natural features (if none, please note).

I certify all the information in this application form and accompanying materials is true and accurate to the best of my knowledge.

Wane Wood 1/16/14
Signature Date



C-3

SP (100' either side)

PURCHASE AND SALE AGREEMENT

1. **PARTIES.** Entered into this 2nd day of JANUARY, 2014, by and between the Janet and Rodney Waterhouse whose mailing address is PO Box 628 (hereinafter referred to/as the "Seller"), who agrees to sell; and Kyle and Jill Rich whose mailing address is 376 Pope Road Windham ME (hereinafter referred to as the "Buyer"), who agree to buy, upon the terms hereinafter set forth, the premises described in Paragraph 2 of this Agreement.

2. **DESCRIPTION.** The premises to which this Agreement applied is land located in the Town of Windham, County of Cumberland, and State of Maine, as more particularly described in Schedule A attached hereto and made a part hereof (hereinafter referred to as the "Premises").

3. **BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES.** Except as hereinafter specifically excluded, included in the sale as a part of the Premises are the buildings, Structures, and improvements now thereon, if any, and the fixtures belonging to the Seller and used in connection therewith including, if any, all Venetian blinds, window shades, screens, screen doors, awnings, shutters, furnace, heaters, heating equipment, stove, range, refrigerator, ventilators, garbage disposal, dishwasher, water heater, plumbing and bathroom fixtures, electric and other lighting fixtures, mantels, fences, gates, trees, shrubs, plants, gardening and lawn equipment and, if built in, microwave ovens and air conditioning units. (EXCEPT, however, those certain items and pieces of furniture contained on Schedule B attached hereto and made a part hereof.)

4. **TITLE DEED.** Said Premises are to be conveyed by a good and sufficient Warranty Deed running to Buyer and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

- (a) Provisions of existing building and zoning laws;
- (b) Such taxes for the then current municipal tax year as are not due and payable on
- (c) Standard utility easements, rights-of-way of record, if any.

5. **PURCHASE PRICE.** The agreed Purchase Price for the premises is ~~_____~~, payable as follows:

\$ _____ DOLLARS which has been paid as a deposit this day, and
\$ X DOLLARS which is to be paid at the time of delivery of the deed
by certified, cashier's, treasurer's or bank check.
~~_____~~ TOTAL.

6. **TIME FOR PERFORMANCE; DELIVERY OF DEED.** Such deed is to be delivered and the consideration paid on or before Mon 13th, 2014 at 5:00 o'clock p.m. at a mutually convenient location in Maine unless otherwise mutually agreed (hereinafter the "Closing"). It is agreed that time is of the essence of this Agreement.

7. **CONTINGENCIES.** In addition to the hazardous waste contingency contained in Paragraph 22(a)(11) herein, the obligations of Buyer under this Agreement are subject to the following contingencies, any of which, if not met after good faith efforts within the time period specified, shall entitle Buyer to terminate this Agreement by giving Seller written notice of Buyer's intention to do so within the time period specified. Upon such termination Seller shall direct Escrow Agent to return to Buyer all sums paid under this Agreement, and the parties shall be relieved of all further obligations under this Agreement.

(a) *Inspections.* Buyer shall have caused to be performed the following inspections, the results of which must be satisfactory to Buyer:

| TYPE OF INSPECTION | YES | NO | | |
|------------------------|-----|----|--------|------------|
| a. General Building | — | — | within | _____ days |
| b. Sewage Disposal | — | — | within | _____ days |
| c. Radon Air Quality | — | — | within | _____ days |
| d. Radon Water Quality | — | — | within | _____ days |
| e. Asbestos | — | — | within | _____ days |
| f. Lead Paint | — | — | within | _____ days |
| g. Other | — | — | within | _____ days |

N/A

All inspections will be performed by inspectors chosen and paid for by Buyer. In the event Buyer chooses not to have the above-listed inspections performed, Buyer acknowledges that Buyer is relying completely upon Buyer's own opinion as to the condition of the Premises. If Buyer does not notify Seller that an inspection is unsatisfactory within the time period set forth above, this contingency shall be deemed to have been waived by Buyer with respect to that inspection.

(b) *Financing.* Within twenty (20) days of the date of this Agreement, Buyer shall have obtained from a local lending institution a commitment for a residential mortgage in the amount of _____ dollars at an interest rate not to exceed _____% amortized over a period of not less than _____ years.

N/A

8. **CLOSING DOCUMENTS.** At the Closing, Seller and Buyer shall execute, acknowledge and deliver the following documents and such other documents as Seller's and/or Buyer's attorney may require:

(a) *Purchase Price.* The Buyer shall deliver to Seller the Purchase Price, as adjusted pursuant to the terms hereof, as provided herein.

(b) *Deed.* Seller shall execute, acknowledge and deliver to Buyer the Warranty deed for the Premises as provided herein.

(c) *Title Affidavits.* Seller shall deliver to Buyer two executed original counterparts of such customary certificates, affidavits or letters of indemnity as the title insurance company issuing the title insurance policy on the Premises shall require in order to issue such policy and to omit there from all exceptions for unfilled mechanic's, materialmen's or similar liens and for parties in possession

(d) *Non foreign Person Affidavit.* Seller shall deliver to Buyer such affidavits and certificates, in form and substance reasonable satisfactory to Buyer, as Buyer shall deem necessary to relieve Buyer of any obligation to deduct and withhold any portion of the Purchase Price pursuant to Section 1445 of the Internal Revenue Code.

(e) *Notification to Buyer of Withholding Tax Requirement.* Buyer shall deliver to Seller two executed original counterpart certificates in form and substance reasonable satisfactory to Seller acknowledging receipt of notification of the State's withholding tax requirements

(f) *Maine Resident Affidavit.* Seller shall deliver to Buyer such affidavits and certificates, in form and substance reasonable satisfactory to Buyer, as Buyer shall deem necessary, to inform Buyer of (his/her/its/their) obligation, if any, to deduct and withhold a portion of the Purchase Price pursuant to 36 M.R.S.A. § 5250-A.

(g) *Underground Oil Storage Tank Certification.* Seller shall deliver to Buyer a written notice, in form and substance reasonable satisfactory to Buyer, which written notice shall certify either (i) that there is no underground oil storage facility located on the Premises, or (ii) pursuant to 38 M.R.S.A. § 563(6), if there is such a facility on the Premises, that the facility exists and shall disclose its registration number or numbers, the exact location of the facility, whether or not it has been abandoned in place, and that the facility is subject to regulation by the Maine Board of Environmental Protection.

(h) *Subsurface Waste Water Disposal System Certification.* Provided the Premises is (i) within the shore land area, as defined in 38 M.R.S.A. § 435; and (ii) contains a subsurface waste water disposal system, Seller shall deliver to Buyer a written notice as to whether the system has malfunctioned during the 180 days preceding the Closing.

(k) *Real Estate Transfer Tax Declaration.* Seller and Buyer shall execute a Real Estate Transfer Tax Declaration in the form required to be recorded with the deed.

9. POSSESSION AND CONDITION OF PREMISES. Full Possession of the Premises free of all tenants and occupants, except as herein provided is to be delivered at the Closing, the Premises to be then (a) in the same condition as they now are, reasonable use and wear thereof excepted, (b) not in violation of the building and zoning laws, and (c) in compliance

with the provisions of any instrument referred to in Paragraph 4 hereof. The Buyer or (his/her/its/their) agent may inspect the Premises within 48 hours prior to the Closing in order to determine whether the condition thereof complies with the terms of this paragraph.

10. EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM.

If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or, if at the time of Closing the Premises do not conform with the provisions hereof, then Seller may use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Premises conform to the provisions hereof, as the case may be, in which event Seller may give written notice thereof to Buyer at or before the time for performance hereunder, and thereupon the time for performance hereof shall be extended for a period of thirty (30) days.

11. FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM.

If Seller elects to use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Premises conform to the provisions hereof, as the case may be, and if at the expiration of any extended time Seller shall have failed so to remove any defects in title, deliver possession or make the Premises conform, as the case may be all as herein agreed, then, at Buyer's option, any payments made under this Agreement shall be forthwith refunded and all other obligations of all parties hereto shall cease and this Agreement shall be void without recourse of the parties hereto.

12. BUYER'S ELECTION TO ACCEPT TITLE AND CONDITION.

Buyer shall have the election, at either the original or any extended time for performance, to accept such title to the Premises (in its then condition) as Seller can deliver and to pay therefore the Purchase Price without deduction, in which case Seller shall convey such title or deliver the Premises in such condition, except that in the event of such conveyance in accord with the provisions of this clause the Premises shall have been damaged by fire or casualty insured against, then Seller shall, unless Seller has previously restored the Premises to their former condition, pay over or assign to Buyer, on delivery of the deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by Seller for any partial restoration.

13. ACCEPTANCE OF DEED. The acceptance of a deed by Buyer shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

14. USE OF PURCHASE MONEY TO CLEAR TITLE. To enable Seller to make conveyance as herein provided, Seller may, at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed.

15. RISK OF LOSS. Until delivery of the deed from Seller to Buyer, risk of loss or damage to Premises by fire or otherwise shall be on Seller.

16. ADJUSTMENTS. Collected rents, water and sewer use charges, and real estate taxes for the then current municipal tax year shall be apportioned and fuel value shall be adjusted, as of Closing, and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price payable by Buyer at the time of delivery of the deed. Collected rents for the current rental period shall be apportioned if and when collected by either party. Seller will transfer Security Deposit(s) and notify Tenant(s) as provided in Section 6035 of Title 14.

17. ADJUSTMENT OF UNASSESSED AND ABATED TAXES. If the amount of said taxes referred to in Paragraph (16) above is not known at the time of the Closing, they shall be apportioned on the basis of the real estate taxes assessed for the immediately preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained.

18. DEPOSIT. All deposits made hereunder shall be held to escrow agent, in a non-interest-bearing account, subject to the terms of this Agreement and shall be held and disposed of in accordance with the terms of this Agreement. At the Closing the deposit shall be delivered to Seller, and the deposit shall constitute a credit toward the Purchase Price.

19. DEFAULT/ DAMAGES. If Buyer shall fail to fulfill Buyer's agreements herein, all deposits made hereunder by Buyer, together with all interest earned thereon, shall be retained by Seller as liquidated damages and this shall be Seller's sole and exclusive remedy at law or in equity for any default by Buyer under this Agreement. Should Seller default, all deposits made hereunder by Buyer shall be returned to Buyer as liquidated damages and this shall be Buyer's sole and exclusive remedy at law or in equity for any default by Seller under this Agreement.

20. WARRANTIES, REPRESENTATIONS AND INDEMNIFICATION.

(a) By Seller, Seller represents and warrants as of this date and as of each date through and including the Closing that:

(1) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code.

(2) Seller is a Maine "resident" within the meaning of 36 M.R.S.A. § 5250-A.

(3) This Agreement and the performance hereof by Seller will not contravene any law, judgment, order, injunction, decree or any contractual restriction or arrangement binding on Seller or by which any of (his/her/its/their) assets or properties may be affected.

(4) No consent, approval, order or authorization of any court or other governmental entity is required to be obtained by Seller in connection with the execution and delivery of this Agreement or the performance hereof by Seller.

(5) There is no pending, or to the best of Seller's knowledge, threatened action or proceeding (including, but not limited to, any condemnation or eminent domain action or proceeding before any court, governmental agency or arbitrator relating to or arising out of the ownership of the Premises or any portion thereof, or which may adversely affect Seller's ability to perform this Agreement, or which may affect the Premises or any portion thereof.

(6) To the best of Seller's knowledge, the Premises are in material compliance with all statutes, ordinances, rules, regulations, orders and requirements of all federal, state and local authorities and any other governmental entity have jurisdiction over the Premises, and Seller has not received any notice from any such governmental entity of any violation of any of such statutes, ordinances, rules, regulations, orders and requirements.

(7) Seller does not know of, and has not received written notice, of any default or breach by Seller under any of the covenants, conditions, restrictions, right-of-way or easements, if any, affecting the Premises or any portion thereof, and, to the best of Seller's knowledge, no such default or breach now exists, and no event has occurred and is continuing which, with notice or the passage of time, or both, would constitute a default there under.

(8) Seller has not received any notice of assessment for benefits or betterment's which affect the Premises and does not have knowledge that any such assessment is pending or threatened.

(9) To the best of Seller's knowledge, no portion of the Premises has ever been used as a landfill or as a dump to receive refuse or waste, and there is and has been no hazardous or toxic waste, substance matter, or material, as those terms may be defined from time to time by applicable state, local or federal law, stored in, on, or about the Premises. In the event any such waste, substance matter or material is discovered at the Premises any time prior to the Closing, Buyer may, at (his/her/its/their) option, terminate this Agreement by written notice to Seller, whereupon Seller shall return all sums paid hereunder by Buyer and the parties shall be relieved of all future obligations hereunder.

(10) There is no underground oil storage facility located on the Premises.

(11) The Premises do not abut, on any boundary, farmland which has been registered pursuant to 7 M.R.S.A. § 51 et seq.

(12) The Premises are not within the shore land area as defined in 38 M.R.S.A. § 435.(6).

The Premises are within the shore land area as defined in 38 M.R.S.A. §435 and contain no subsurface waste water disposal system.

The Premises are within the shore land area as defined in 38 M.S.R.A. §435 and contain a subsurface waste water system.

(13) No work has been performed or is in progress at, and no materials have been furnished to, the Premises or any portion thereof which may give rise to mechanic's materialmen's or other liens against the Premises or any portion thereof.

(b) By Buyer. Buyer represents and warrants as of this date and as of each date through and including the Closing Date that:

(1) Buyer acknowledges that Buyer has not been influenced to enter into this transaction by, nor has Buyer relied upon, any warranties or representations not set forth or incorporated in this Agreement or previously made.

(c) Survival. Buyer's performance under this Agreement is conditioned upon the truth and accuracy of Seller's warranties and representations expressed herein as of the Closing. All warranties and representations expressed herein shall survive the Closing and any termination of this Agreement. Buyer and Seller each agree to indemnify and hold harmless the other from and against any liability, cost, damage, loss, claim, expense or cause of action (including but not limited to, attorneys' fees and court costs) incurred by or threatened against such other party as a result of any breach of the indemnifying party of any of the covenants, warranties or representations contained in this Agreement. This agreement to indemnify and hold harmless shall survive the Closing.

21. MISCELLANEOUS:

(a) This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties.

(b) Any notice relating in any way to this Agreement shall be in writing and shall be sent by registered or certified mail, return receipt requested, addressed as follows:

To Seller: _____

To Buyer: _____

And such notice shall be deemed delivered when so posted. Either party may, by such manner of notice, substitute persons or addresses for notice other than those listed above.

(c) This Agreement may not be modified, waived or amended except in a writing signed by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such a breach, and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto.

(d) Any and all prior and contemporaneous discussions, undertakings, agreements and understandings of the parties are merged in this Agreement, which along fully and completely express their entire agreement.

(e) This Agreement shall be governed by and construed and enforced in accordance with the laws in effect in the State of Maine.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date and year first above written.

WITNESS:



Seller

Seller



Buyer

Buyer

Schedule A
(copy of deed obtained by current Seller of the property)

Addendum

- ① Buyer will need Town Council Approval For Zone Change
- ② Planning Board shall Approve buyer to build a 4 unit Bldg
- ③ Seller agrees to sell Approx 60,000 square Feet,
Adequate For buyer to build a 4 unit Bldg.
- ④ Buyer will pay For a new survey of
Lot 17 + as agreed upon

