



TOWN OF WELLS, MAINE ZONING BOARD OF APPEALS LEGAL NOTICE

MEETING AGENDA
MONDAY, FEBRUARY 3, 2025, 7:00 PM
LITTLEFIELD MEETING ROOM, WELLS TOWN HALL
208 SANFORD ROAD

ZONING BOARD OF APPEALS MEMBER TRAINING:

5:45 - 6:45 PM

MEETING:

CALL TO ORDER AT 7:00 P.M.

ELECTION OF OFFICERS

PUBLIC HEARING(S)

I. MISLOCATED BUILDING APPEAL – POINT EAST II CONDOMINIUM

Point East II Condominium Association of 1801 Post Road, further identified as Assessor's Map 139 Lot 033- B, is requesting a Mislocated Building Appeal pursuant to Article IX Section §145- 67. A. (5). The property includes 3 dwelling units and 102 motels units. The mislocated building appeal is for the lodging office, three- unit dwelling structure and "motel building 1", which were built within the required setbacks. Representation by Attorney, Ryan D. Lizanecz, with Jensen Baird Attorney at Law.

DELIBERATIONS

I. MISLOCATED BUILDING APPEAL – POINT EAST II CONDOMINIUM

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Documents:

[ZBA2025-02-03.PDF](#)

MINUTES:

Approval of Meeting Minutes of August 26th, 2024 & September 16th, 2024.

ADJOURN



WELLS ZONING BOARD
MISLOCATED BUILDING APPEAL PETITION

****ALL ITEMS ON THIS APPLICATION MUST BE COMPLETED****

NAME OF APPELLANT: Point East II Condominium Association PHONE: (207) 775-7271

EMAIL ADDRESS: rlizanecz@jensenbaird.com

MAILING ADDRESS: 10 Free Street Portland Maine 04101

CITY/TOWN STATE ZIP CODE

LOCATION OF PROPERTY: 1801 Post Road, Wells, Maine 04090

TAX MAP # 139 LOT# 33-B ZONE General Business;
Resource Protection;
250' Shoreland Overlay YEAR PURCHASED 1986

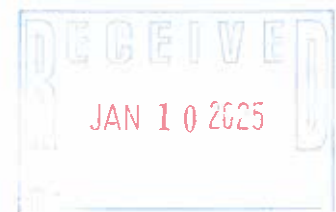
NAME OF OWNER _____ PHONE: _____
(IF DIFFERENT THEN APPELLANT)

EMAIL ADDRESS: _____

MAILING ADDRESS: _____

CITY/TOWN STATE ZIP CODE

MISLOCATED BUILDING APPEAL: To hear and decide upon appeal in specific cases where existing buildings are found to be in violation of the setback requirements and where such location of buildings will not be contrary to the public interest where an appeal should be granted. In order to grant a mislocated building appeal the Board must find that there was no willful or premeditated action (or gross negligence) to build within the setback.



JB **JENSEN BAIRD**
ATTORNEYS AT LAW

TEN FREE STREET
P.O. BOX 4510
PORTLAND, MAINE 04112-4510
www.jensenbaird.com

Ryan D. Lizanecz
e-mail:
rlizanecz@jensenbaird.com

(207) 775-7271 (Phone)
(207) 775-7935 (Fax)

January 8, 2025

Wilbur Gosbee
Chair, Zoning Board of Appeals
Town of Wells
208 Sanford Road
Wells, ME 04090

Re: *Application for a mislocated building appeal regarding 1801 Post Road*

Dear Chairman Gosbee and Members of the Wells Zoning Board of Appeals:

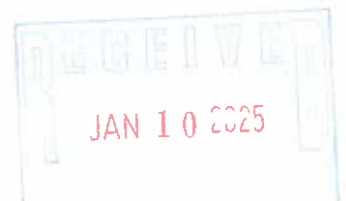
This letter is submitted on behalf of our clients, the Point East II Condominium Association (the "Association"), owners of property located at 1801 Post Road in Wells, Tax Map 139, Lot 33-B (the "Property"). The Property consists of 3 dwelling units and 102 motel units. The Association is applying for a mislocated building appeal regarding its lodging office, three-unit dwelling building, and "motel building 1", (together the "Buildings") which were built slightly within various setbacks over 40 years ago.

Background

By way of background, the Point East II Condominium Association's original site plan was approved by the Town of Wells Planning Board in 1985, with construction beginning shortly thereafter. Over the years, several updates and modifications were made to the Property. However, the Town recently informed the Association that these changes required after-the-fact approval. The Association promptly complied and submitted the necessary site plan.

On November 18, 2024, the Town of Wells Planning Board (the "Planning Board") granted retroactive approval for various modifications made to the Property since the original 1985 approval. These improvements included the addition of a patio, new walkways, expansions to the pool and hot tub areas, an expanded pool house, and the removal of two parking spaces and a vehicle turnaround. No new dwelling units were added.

~ Over 70 Years of Service ~



Jensen Baird

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Upon reviewing the site plan, it was discovered that three buildings – none of which have undergone expansions since their construction in 1985 – appear to have been constructed within the required setbacks on the northern side of the Property.

The specific setback discrepancies are as follows:

- The lodging office for the motel extends 10.7' into the 25' wide multi-family development/lodging facility buffer and a mere 0.7' into the 15' wide side setback.
- The three-unit dwelling building extends 11.7' into the 25' wide multi-family development/lodging facility buffer and 1.7' into the 15' wide side setback.
- "Motel building 1" extends 11.2' into the 15' wide side setback, and 1.4' into the 25' wide cemetery buffer.

The Planning Board approved the Association's amended site plan – reflecting the changes that have been made to the Property over the years – contingent upon obtaining an appeal from the Zoning Board of Appeals for the mislocated buildings in relation to all identified setback violations. For the reasons outlined below, we respectfully request that the Zoning Board of Appeals grant the necessary appeal for the mislocated buildings at all three structures.

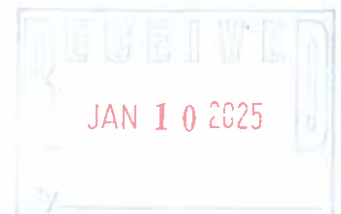
Discussion

The Town's Land Use Code (the "Code") empowers this Board to hear and decide appeals in specific cases where (1) existing buildings are found to be in violation of the setback requirements; and (2) where such location of buildings will not be contrary to the public interest whether an appeal should be granted. Further, the Board must find that there was no willful or premeditated action (or gross negligence) to build within the setback. Wells, Me., Land Use Code § 145-67(A)(5).

Since it is evident that the mislocated buildings do not meet various setback requirements, this discussion will focus on demonstrating two key points: (1) that the location of the buildings is not contrary to the public interest, and (2) that there is no evidence of willful or premeditated intent, nor gross negligence, in constructing the buildings within the setbacks. If both conditions are met, the Association's application should be approved.

I. Approving the location of the buildings is not contrary to the public interest.

Approving the Association's mislocated building appeal is unquestionably in the public interest, as it addresses a long-standing issue while supporting the responsible and sustainable development of the community. Since the original site-plan approval in 1985, the Association has not added dwelling units or expanded the footprints of the lodging house, three-unit dwelling, or



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motel. While there have been minor expansions, such as the addition of a pool house, these are not in violation of any setbacks, and therefore are not at issue here. The mislocation of the buildings appears to be a result of an error made by the Town or developer over 40 years ago, and their continued existence in their current positions has not led to any safety concerns or other adverse effects on the neighborhood. In fact, as far as we can tell, the Planning Board found no public objections to the setback violations, further demonstrating that this appeal is not harmful to the community.

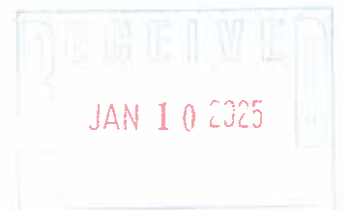
Denying the appeal would create unnecessary hardship for the Property owner and disrupt the business operation that has been successfully functioning without incident for four decades. Granting the appeal will allow the Property to continue its historical use, avoid potentially costly and disruptive relocation or demolition, and ensure that the zoning regulations are applied in a fair and reasonable manner. Approving the appeal is not only fair to the Association but also serves the best interests of the community by preventing an unjustifiable burden and preserving the integrity of the Town's zoning laws.

II. There is no evidence of willful or premeditated action, nor gross negligence, in constructing the buildings within the setback.

Simply put, neither the Association nor the Town have uncovered or provided any evidence that the Buildings were mislocated with willful intent or premeditated action. The Town authorized the construction of the buildings 40 years ago, and the developer at that time built them in accordance with the approved plan. While it is impossible to retroactively determine the mindset of those who approved and constructed the project—and we have limited information on the individuals involved—there is no indication of any willful intent to construct the buildings within the setbacks.

The developer relied on the Town to ensure that the buildings were properly permitted and constructed, and the Town presumably inspected and approved the project as it proceeded. For this action to be considered willful, there must have been, for example, a communication between the Town and the developer, informing the developer that construction was occurring within the setbacks, and the developer must have knowingly disregarded this information, proceeding with construction despite the violation. In this case, there is no evidence to suggest that such a communication or willful violation occurred.

It appears that for the following 40 years, neither the Town nor any residents raised concerns about the Buildings' placement. It was only when the Association sought to bring the Property up to current standards that the issue of the buildings' placement within the setbacks was even uncovered.



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Moreover, there is no evidence of gross negligence—or any negligence, for that matter—in the Buildings' placement. Any potential negligence would fall on the Town and its planning department at the time, as they issued the permit and allowed the construction to proceed without objection for 40 years, only addressing the issue after the mistake was identified.

Conclusion

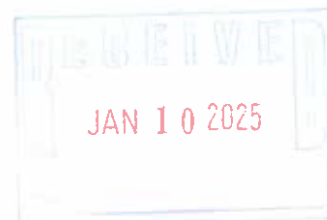
For all the foregoing reasons, we ask that the Board approve the Association's mislocated building appeal application so that it may proceed with its approved amended site plan on the Property. We look forward to presenting this application to the Board and thank you for your consideration.

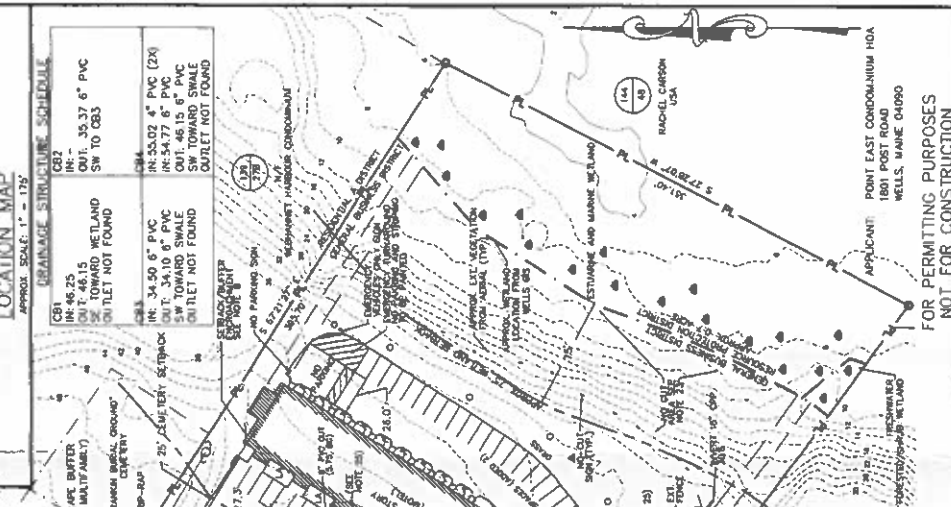
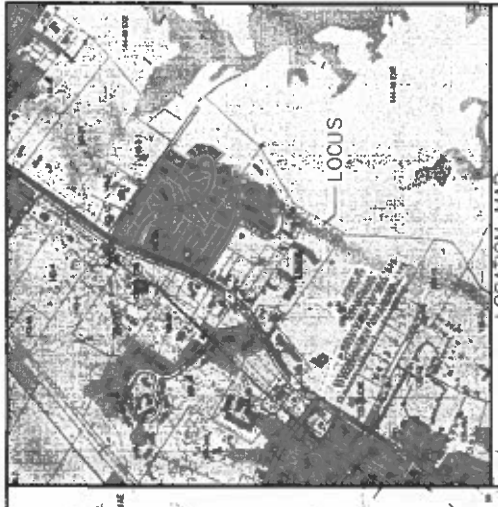
Sincerely,

Ryan Lizanecz, Esq.

Ryan D. Lizanecz, Esq.

Attorney for Point East Condominium Association II





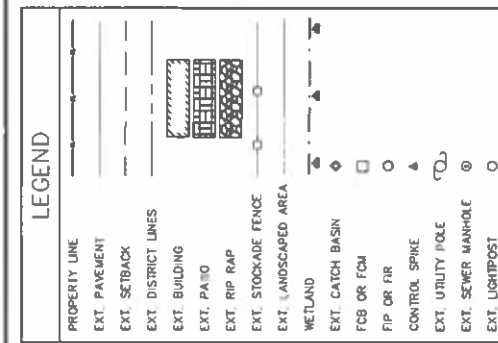
REFERENCE PLANS
1. PLAN OF LOTS FOR POINT EAST CONDOMINIUM II, WELLS, MAINE...
2. TRACT MAP AND PLAN OF POINT EAST CONDOMINIUM II, WELLS, MAINE...
3. TRACT MAP AND PLAN OF POINT EAST CONDOMINIUM II, WELLS, MAINE...



PLAN REVISIONS SITE PLAN BK 183 PG 1
POINT EAST CONDOMINIUM II
WELLS, YORK COUNTY, MAINE

FOR: POINT EAST CONDOMINIUM II
1801 POST ROAD
WELLS, MAINE, 04090
ATTAR ENGINEERING INC.
128 STATE ROAD, 2ND FLOOR, WELLS, MAINE 04090

Table with columns for REVISIONS, NO., DATE, and DESCRIPTION. Includes entries for TOWN REVISIONS 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50.



7) THE PLAN SUBMITTER AGREES TO THE PLANNING BOARD APPROVED SITE PLAN...
8) THE PLAN SUBMITTER AGREES TO THE PLANNING BOARD APPROVED SITE PLAN...
9) THE PLAN SUBMITTER AGREES TO THE PLANNING BOARD APPROVED SITE PLAN...

GENERAL NOTES
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3) THE PLAN SUBMITTER AGREES TO THE PLANNING BOARD APPROVED SITE PLAN...

Table with columns for CROSS-D. AREA, RECALC. AREA, and REVISIONS. Includes rows for BUILDING 1, BUILDING 2, BUILDING 3, BUILDING 4, BUILDING 5, BUILDING 6, BUILDING 7, BUILDING 8, BUILDING 9, BUILDING 10, BUILDING 11, BUILDING 12, BUILDING 13, BUILDING 14, BUILDING 15, BUILDING 16, BUILDING 17, BUILDING 18, BUILDING 19, BUILDING 20, BUILDING 21, BUILDING 22, BUILDING 23, BUILDING 24, BUILDING 25, BUILDING 26, BUILDING 27, BUILDING 28, BUILDING 29, BUILDING 30, BUILDING 31, BUILDING 32, BUILDING 33, BUILDING 34, BUILDING 35, BUILDING 36, BUILDING 37, BUILDING 38, BUILDING 39, BUILDING 40, BUILDING 41, BUILDING 42, BUILDING 43, BUILDING 44, BUILDING 45, BUILDING 46, BUILDING 47, BUILDING 48, BUILDING 49, BUILDING 50.

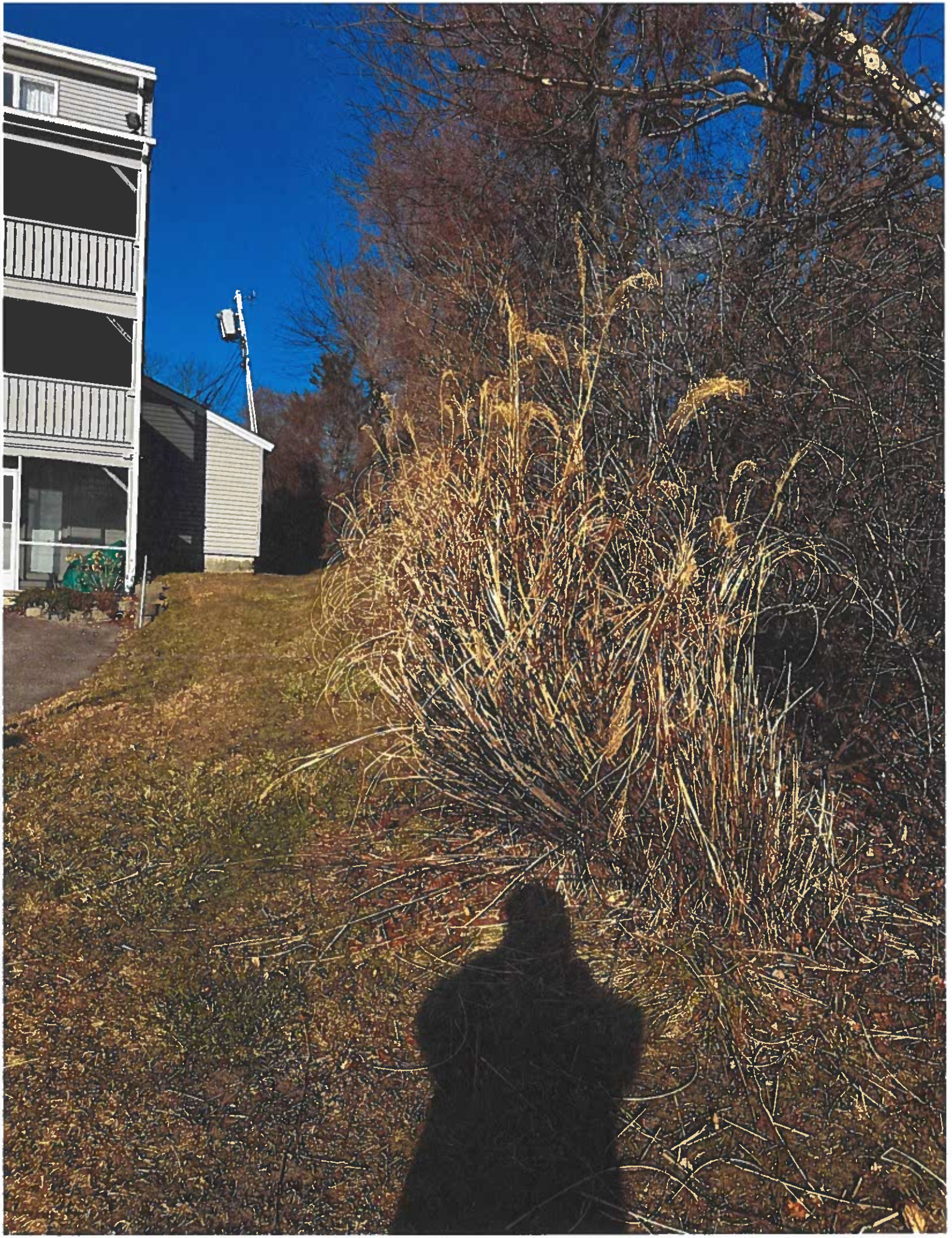
TOWN OF WELLS
PLANNING BOARD
DATE: 11-4-2024

STATE OF MAINE - YORK COUNTY
RECEIVED: NOV 8 2024
AT 11:11 AM
PLANNING BOARD

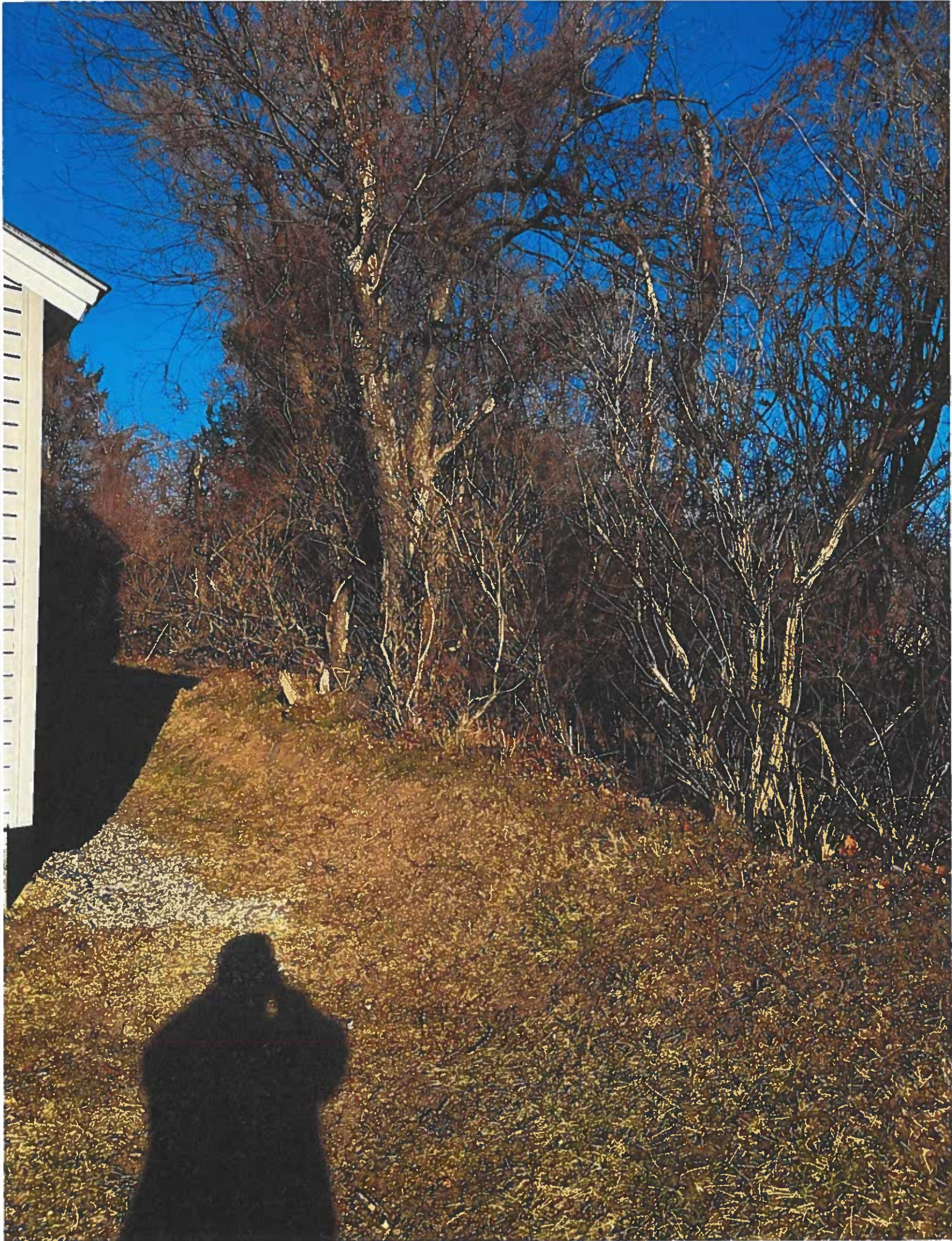
SEAL OF THE TOWN OF WELLS
PLANNING BOARD
DATE: 11-4-2024

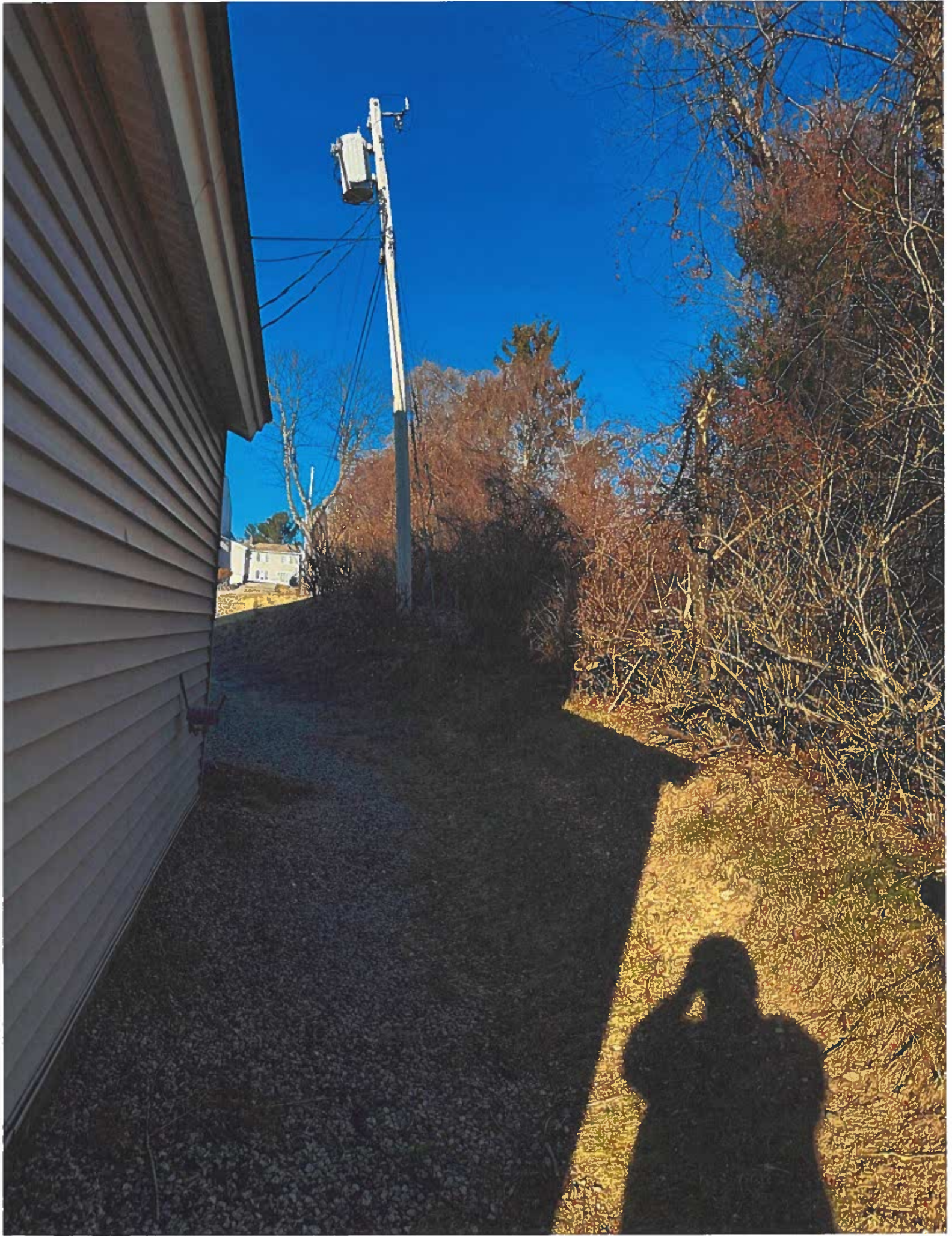
SEAL OF THE TOWN OF WELLS
PLANNING BOARD
DATE: 11-4-2024

Vertical sidebar containing various administrative stamps, dates, and signatures. Includes 'STATE OF MAINE - YORK COUNTY RECEIVED: NOV 8 2024 AT 11:11 AM PLANNING BOARD' and 'TOWN OF WELLS PLANNING BOARD DATE: 11-4-2024'.

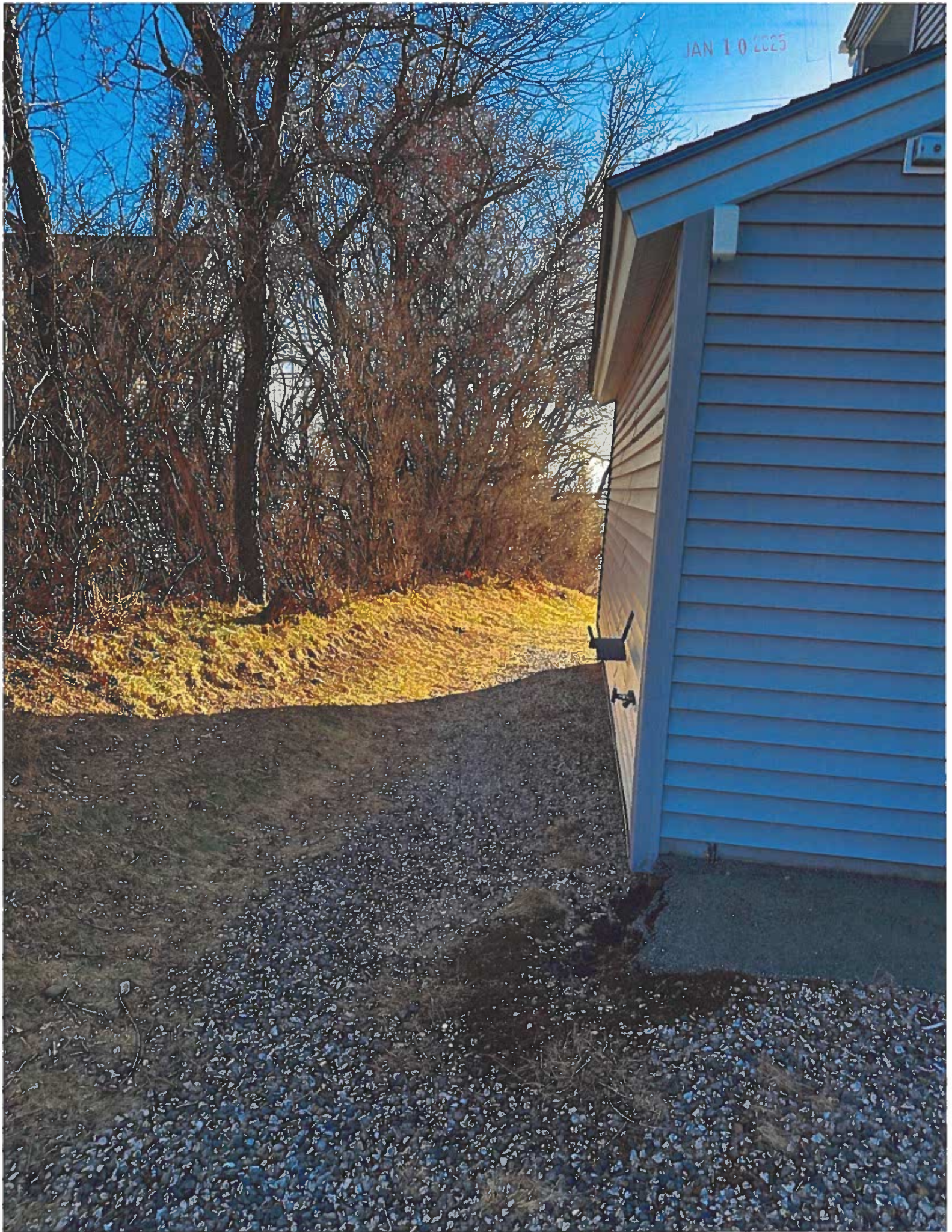


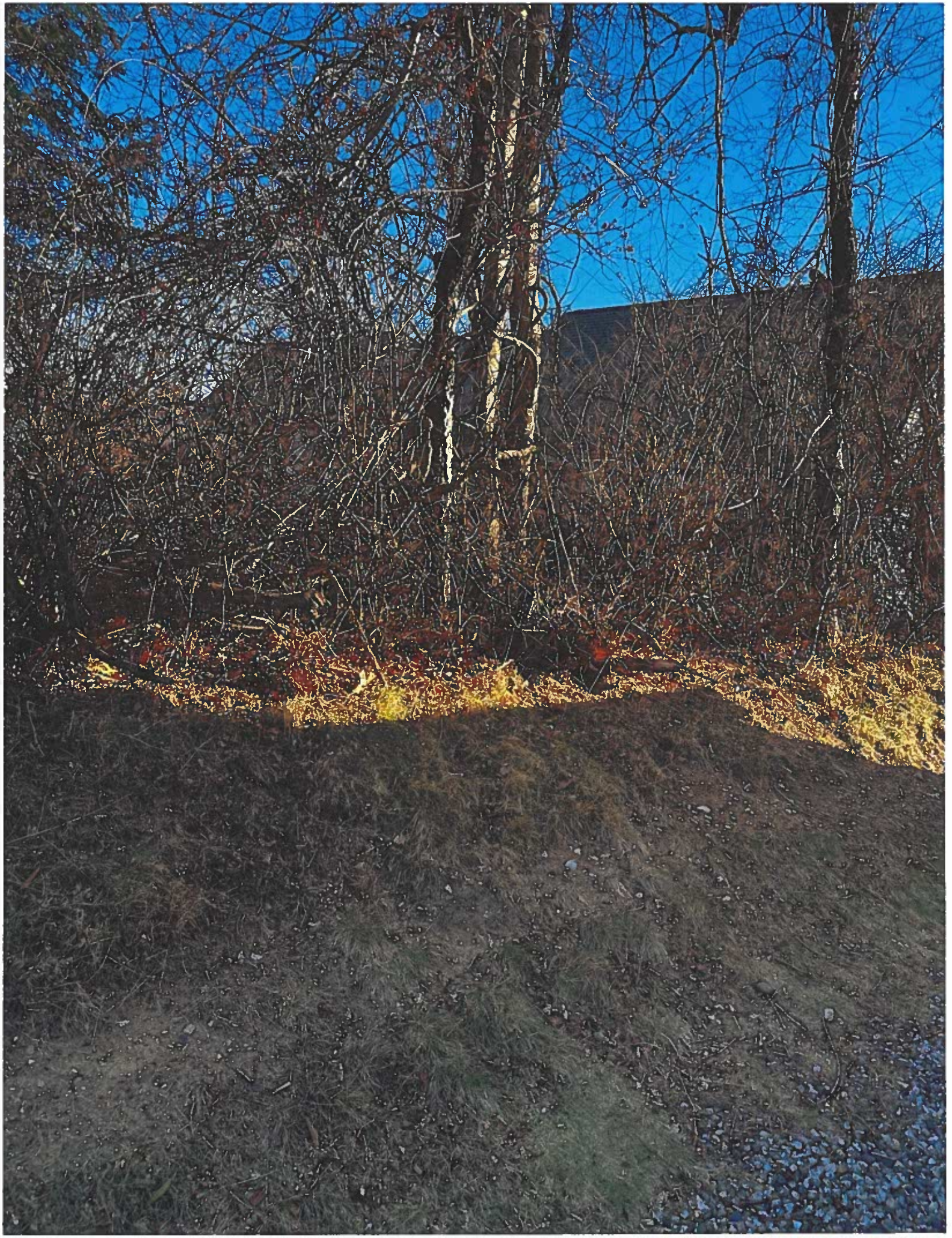






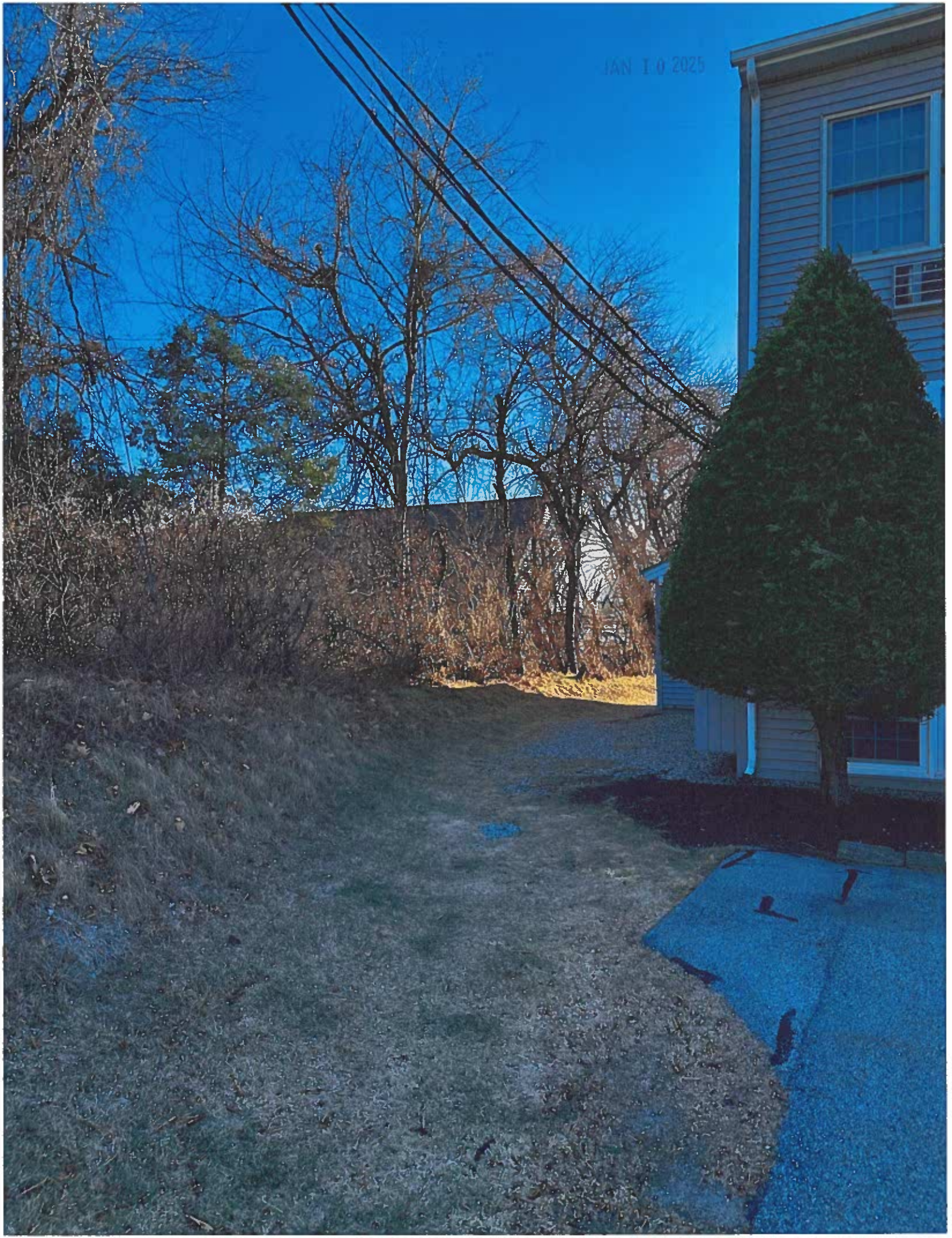
JAN 10 2025







JAN 10 2025





JAN 10 2025

BOOK 3761 PAGE 117

05196

WARRANTY DEED

Michael A. Gallo, Jr., Ralph L. Tisei, Ronald W. Lane, and Sheila J. Pine, Trustee of the R & L Realty Trust, of Sanford, Maine, for consideration paid, grant to Point East Associates, Inc., of P. O. Box 241, Sanford, Maine, with WARRANTY COVENANTS, the land in Wells, York County, Maine, more particularly described as follows:

A certain lot or parcel of land, together with any improvements thereon, situated on the Southeasterly side of U. S. Route #1, so-called, in said Town of Wells being more specifically bounded and described as follows:

Beginning at a granite monument found set in the ground on the apparent Southeasterly sideline of said Route #1 at the Westerly Corner of land now or formerly of Albert Selinder and at the Northerly corner of land herein described: thence South 74 deg 23' 00" West by the apparent Southeasterly sideline of Route #1, 66.32 feet to a point; thence South 40 deg 17' 30" East 100 feet more or less to a point; thence South 24 deg 27' 36" West 158.08 feet to an iron pin (the last two courses being by land now of Granger); thence South 64 deg 15' West by said land of Granger 101.33 feet to an iron rod driven into the ground on line of land of David Talevi; thence South 37 deg 12' 00" East along land of said Talevi, 879.68 feet to an iron pip found set in the salt marsh at land of owners unknown; thence North 44 deg 22' 20" East by the salt marsh, 351.30 feet to an iron pipe found set in the salt marsh at land of Harry Lord; thence North 40 deg 26' 15" West by said land now or formerly of Harry Lord and by the Rankin Cemetery, so-called, 395.26 feet to a iron rod found set in a granite stone at the Westerly corner of the Rankin Cemetery and at the Southerly corner of said land of Albert Selinder; thence North 40 deg 17' 30" West by land of said Selinder, 564.77 feet to the point of beginning. Bearings are magnetic and refer to the 1973 Magnetic Meridian.

Being the same premises conveyed to the Gallo Construction Co., Inc., by deed of E. R. Jellison Realty, dated June 4, 1981, and recorded in the York County Registry of Deeds. The grantors herein are all the titleholders in the Point East Condominiums, which was established by the recording of Declaration and Bylaws of the Point East Condominium, dated July 17, 1981, at Book 2825, Page 157. The said Point East Condominium was withdrawn from the provisions of the Unit Ownership Act, 33 M.R.S.A. Section 573, by a document of even or near even date, and recorded in the York County Registry of Deeds.

MAINE REAL ESTATE TRANSFER TAX PAID

①

RECEIVED
JAN 10 2025

BOOK 3761 PAGE 118

Subject to all mortgages of record.

This conveyance is subject to the following easement found in said deed of E. R. Jellison Realty to Gallo Construction Co. Inc.:
"Reserving to the Grantor, its heirs, successors and assigns an easement of ingress and egress over any roads and ways constructed or developed by the Grantee in said property hereby conveyed for access to the Grantors remaining property and a further easement in said roads and ways for the purpose of connecting to any utility services situated in, over and under said roads and ways provided that the Grantor return the road surface to its original condition as soon as and the such extent as is practicable."

Witness our hands this 14th day of FEBRUARY, 1986.

Signed, sealed and delivered in the presence of

Emile J. Patten

Michael A. Gallo, Jr.
Michael A. Gallo, Jr.
Ralph L. Tisei
Ralph L. Tisei
Ronald W. Lane
Ronald W. Lane

R & L Realty Trust
by Sheila J. Fine
Sheila J. Fine, Trustee of the R&L Realty Trust, a Trust organized under the laws of the State of Maine, under a declaration of Trust dated March 11, 1981 and recorded in the York County Registry of Deeds in Book 2761, Page 11.

STATE OF MAINE
County of York, ss. FEBRUARY 14, 1986

Then personally appeared the above-named Michael A. Gallo, Jr., and acknowledged the foregoing instrument to be his free act and deed, before me,

Emile J. Patten
Notary Public, Attorney at Law

(For Notaries) My commission expires: N/A

Emile J. PATTENSON
PRINT NAME


4661 L.P. 13 fil 8: 35
RECORDED 10/31/86

JAN 10 2025

APPOINTMENT OF AGENT

We, the Point East II Condominium Association, by and through the undersigned, appoint Ryan D. Lizanecz, of Jensen Baird Gardner & Henry, 10 Free Street, Portland, Maine 04101, to act on our behalf in connection with the Mislocated Building Appeal Petition to the Town of Wells Zoning Board of Appeals, relating to our property located at 1801 Post Road in Wells, Maine (Tax Map 139, Lot 33-B).

January 8, 2025

Signed by:

A3509F00E454442

Thomas Bussone, President
Point East II Condominium Association

JAN 10 2025

ABUTTER LIST

GARY BLANCH, PRESIDENT
FOREST VILLEGE NORTH
152 SYLVAN WAY
WELLS, ME 04090

VINCENT CLOUTIER, CLERK
FOREST VILLAGE NORTH
29 CHESTNUT LANE
WELLS, ME 04090

1810 POST ROAD LLC
750 LAFAYETTE RD STE 201
PORTSMOUTH, NH 03801

POSTLUXE LLC
34 ASH TREE TRL
WELLS, ME 04090

1810 POST ROAD CONDO MAIN
1810 POST RD
WELLS, ME 04090

USA
RACHEL CARSON 300 WESTGATE CENTER DR
HADLEY, MA 01035

1793 POST LLC
41 BENNETT AVE
SAUGUS, MA 01906

DICKERSON, DANIEL R W/LIFE ESTATE
ATTN THOMAS DICKERSON
PO BOX 148
WELLS, ME 04090

STEEN, A DELORES STEEN, DONALD B
80 WASHINGTON PL
RIDGWOOD, NJ 07450

JKG MAINE REALTY LLC
ATTN JAMES P DUSZA & KATHY J KASCHULUK
1813 POST RD
WELLS, ME 04090

FRANCIS I. DANIELS, PRESIDENT
WEBHANNET HARBOUR - CONDO ASSOCIATION
35-16 WEBHANNET HARBOUR RD
WELLS, ME 04090

SV NORTH LANDHOLDINGS LLC
PO BOX 67
WELLS, ME 04090 □