

KELLY



LAW OFFICES

January 9, 2024

Inland Wetlands Commission
Wilton Town Hall
238 Danbury Road
Wilton, CT 06897

Sent via email to elizabeth.larkin@wiltonct.org and mike.conklin@wiltonct.org

Re: Old Driftway LLC, application for permit, Mountain Road

To the Commission,

I represented the applicant in the purchase of the subject property and submit this letter on the applicant's behalf responding to the Commission's title question regarding the applicant's access.

The applicant purchased the property on June 21, 2021. Its deed is attached. In addition to conveying ownership of the parcel, an easement to Mountain Road was also conveyed. Generally referred to as a 'right of way,' this easement is along what is referred to in multiple surveys and deeds as "Driftway" or "Old Driftway." The deed references a survey showing the parcel(s) conveyed and referencing the easement out to Mountain Road. An earlier survey from 1951 shows the entirety of that same easement out to Mountain Road. A copy of those surveys are also attached.

A right of way is an easement. A right to use land owned by others. It is not ownership. In law, the owner of the easement is referred to as the "dominant estate" and the owner of the land the "subservient estate." This is because, as it relates to exercise of the easement right, the dominant estate is superior to ownership. The owner can do nothing which impedes the easement holder's use of its easement.

The applicant's ownership and easement were title-searched at the time of purchase. This easement appears consistently in the owner's chain of title. As important, there was nothing of record in a search meeting the standards of title (within 60 years) that conflicted with the applicant's easement right. As a result, the applicant's title and easement are insured by CATIC, giving the applicant's easement the added force of being defended and indemnified by the state's largest title company.

Given the applicant's easement is a dominant estate, ownership of Old Driftway is largely irrelevant from a legal perspective of the right to use it, and from the perspective of this Commission. The law gives the applicant the legal right to pursue this permit, something the

Town's counsel, Peter Gelderman has confirmed both to your EO, as reported at your last meeting, and to me directly.

Still, who owns the Driftway is a good question. Before purchase I, CATIC and our title searcher had not definitively answered it. Having looked deeper after your request, we still haven't, but do know a great deal more and think we are very close.

We have not found any evidence in town meetings of the Town of Wilton, following the statutory processes, either declaring or discontinuing Driftway as a public road.

An exhaustive search of the land records - including every abutter on both sides of the Driftway out to Mountain Road - going back to at least to 1875, and some to the mid-1800s, revealed no deeded ownership of the Driftway or any part of it. There was some evidence of relevance: There are other abutter deeds which reference the same right. There are multiple references to it being a common driveway, road, and even a "old wagon road." Like the applicant's the right is in common with others. No evidence was found of any rights of any abutter which conflict with the applicant's easement right. [The lack of any evidence of ownership by others, or evidence of any right of others which conflicts with the applicant's easement is important. It means no property owner has any basis in the land records to contest the applicant's easement right.]

CATIC's counsel has caselaw (not the Wilton land records) which points to two other possible sources of an answer. There is a purported proprietor deed from 1730 wherein a commission with authority over what is now Wilton, the Norwalk Commission or Norwalk Proprietors, granted ownership of town lands and roads. There also seems to have been a deed or deeds from proprietors of Norwalk conveying all remaining land owned by them in Norwalk to the Town of Wilton on or about 1802. These ancient deeds are in a separate locked vault in Norwalk, accessible through the Town Clerk there. Our title searcher (also a licensed attorney) is looking into them. We are hopeful they answer the question or lead us to the answer.

[I do not include the deeds or caselaw from this exhaustive search as it is attorney work product and goes beyond, in my opinion, the general scope for this commission's review. If the commission requests its counsel to review the representations I've made in this letter, I will provide them to counsel directly.]

Notwithstanding the still open question of ownership of the "subservient estate," it remains true that the applicant has a deeded easement right over the Driftway and which is supported in his chain of title back to 1951. It is equally true there is no other property owner in Wilton who can claim ownership of the Driftway or claim to have deeded rights which conflict or interfere with my client's easement rights. This is a more than a sufficient title interest to allow it to pursue this permit.

Sincerely,



James G. Kelly

JGK/eka

Cc: M. Nogid, Peter Gelderman Esq., John Scanlon Esq. CATIC

Encls: Deed and Surveys

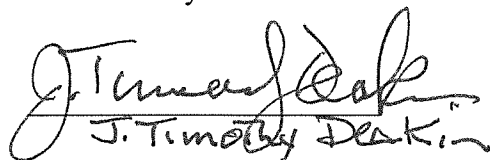
Return to:
James Kelly, Esq.
8 Titus Road
Washington Depot, CT 06794

ADMINISTRATOR'S DEED


Paul T. Edwards, Sr. of New Britain, Connecticut duly qualified and authorized co-administrator of the Estate of Jerome Edwards a/k/a Jerome Vincent Edwards late of Somers, Connecticut for consideration paid, grant to Old Driftway, LLC a Connecticut limited liability company with ADMINISTRATOR'S COVENANTS a certain piece or parcel of land known as Mountain Road located in the Town of Wilton and State of Connecticut and more particularly described on Schedule A which is attached hereto and made a part hereof.

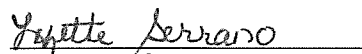
Signed this 16th day of June, 2021.

Witnessed by:


J. Timothy Deakin

Estate of Jerome Edwards a/k/a
Jerome Vincent Edwards

By 
Paul T. Edwards, Sr.,
Co-Administrator


Lizette Serrano


STATE OF CONNECTICUT)

ss: Danbury

COUNTY OF FAIRFIELD)

On this 16th day of June, 2021, before me, J. Timothy Deakin, the undersigned, personally appeared Paul T. Edwards, Sr., known to me (or satisfactorily proven) to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged that he executed the same for purposes therein contained.

In witness whereof I hereunto set my hand.


J. Timothy Deakin
Commissioner of the Superior Court

Latest Address of Grantee:
P.O. Box 712
Wilton, Ct. 06897

SCHEDULE A

The premises situated in the Town of Wilton, County of Fairfield and State of Connecticut, more particularly shown and delineated on a certain map entitled "Map Of Property belonging To Ronnholn – Carlson Eckelberry & Moore Georgetown – Wilton, Conn. Scale: 1" = 100' Jan. 31, 1951" which map is on file in the Wilton Town Clerk's Office bearing File No. 1147. Said premises are more particularly bounded and described as follows:

NORTHERLY: by land now or formerly of the State of Connecticut;
EASTERLY: by land now or formerly of the State of Connecticut;
SOUTHERLY: by land now or formerly of the State of Connecticut;
WESTERLY: by land now or formerly of George Jennings and a lane or driftway as
Shown on said map.

Being the same premises conveyed by two certain warranty deeds recorded in Volume 46 at Page 258 and Volume 65 at Page 19 of the Wilton Land Records.

Also shown as a parcel '2.820 ACRES' on Map entitled "PROPERTY SURVEY PREPARED FOR JEROME V. EDWARDS WILTON, CONNECTICUT SCALE 1" = 40' July 8, 1998" filed in the Wilton Town Clerk's Office on September 30, 2016 as map #5879.

TOGETHER WITH a right of way over land conveyed in a Warranty Deed recorded in Volume 65 Page 341, on the common driveway, as constructed, to the highway Mountain Road.

TOGETHER WITH any rights which exist to the old highway identified as Old Driftway, and across it to Mountain Road.

Said premises contain 3.08 acres, more or less.

Said premises are conveyed subject to the following:

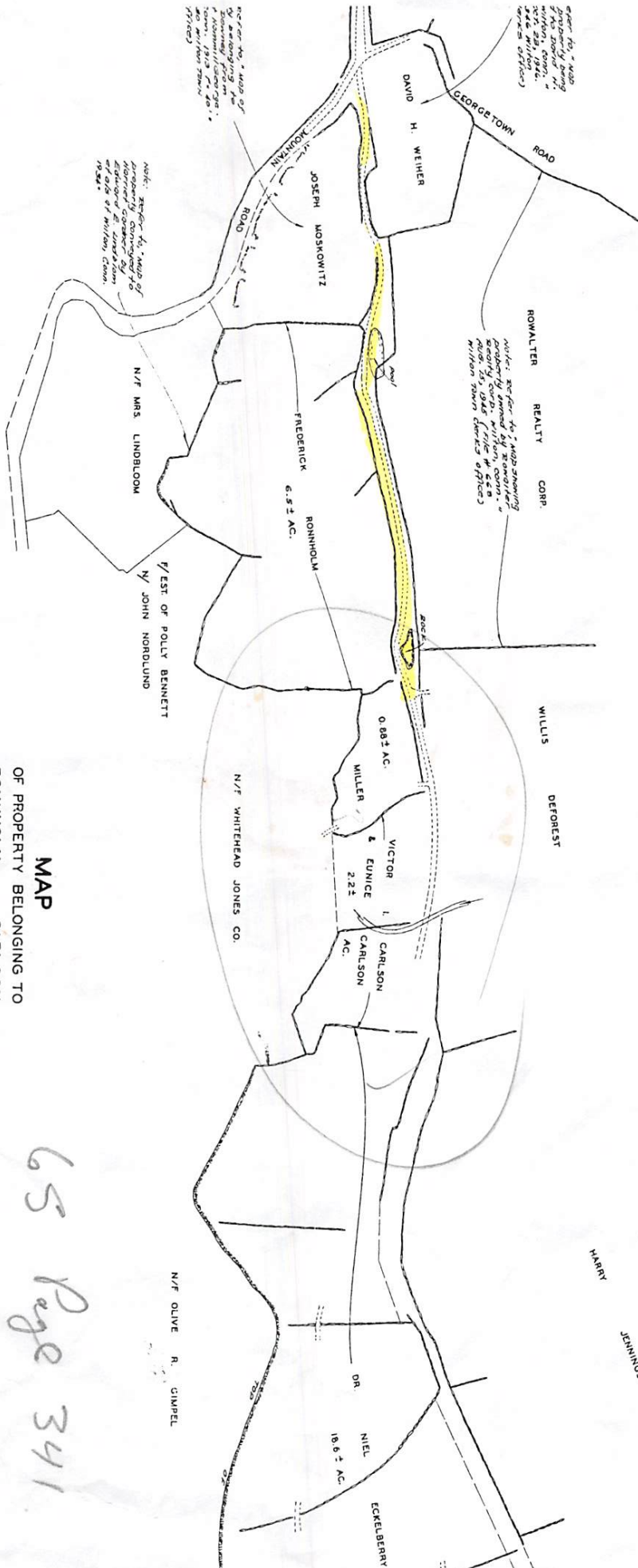
1. Limitations of use imposed by governmental authority.
2. Taxes hereafter becoming due and payable with the Grantee herein assumes and agrees to pay as part of the consideration.
3. Notes, facts and conditions as shown on Maps #5879, #2723 and #1147 of the Wilton Land Records.
4. Restrictive covenants, easements, and agreements, if any, which map appear of record.
5. Rights, if any, of others in and to the lane as shown on said map.

Berchey + Moses.
203- 227 8445.

Dele Goldman

1147B

1951



MAP

OF PROPERTY BELONGING TO
RONNHOLM CARLSON
ECKELBERRY & MOORE

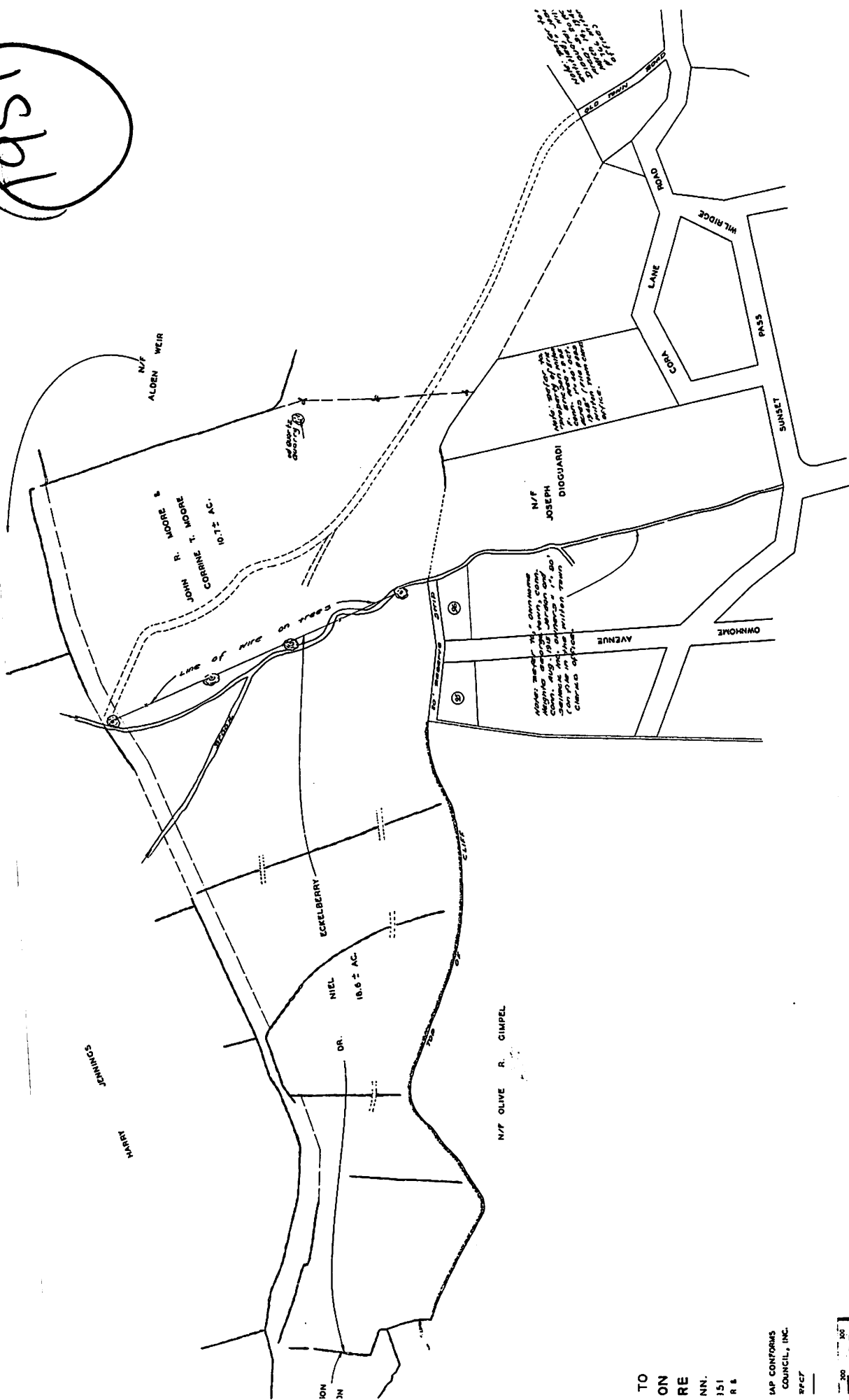
GEORGETOWN, WILTON, CONN.
SCALE: 1" = 100' JAN. 31, 1951
BY LEO LEONARD, JR. CIVIL ENGINEER &
SURVEYOR NORWALK, CONN.

NOTE: THE DEGREE OF ACCURACY OF THIS MAP CONFORMS
TO CLASS A-3 OF THE CONN. TECH. COUNCIL, INC.
CHARTERED SUBSTANTIALLY CORRECT



65 Page 341

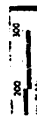
1951



TO
ON
RE
NN.
151
R E

**LAP CONFORMS
COUNCIL, INC.**

8967



Title. Claim # Make
Claim #

LISA

OLD DEFENDANTY LLC.

04714434

75,000

Agent # 005400

6/21/2021

MOTOICHI YAUCHI
AND
HIROKO YAUCHI
(MAP #2725 W.L.R.)

STATE OF CONNECTICUT

PROPERTY SURVEY
PREPARED FOR
JEROME V. EDWARDS

SCALE 1" = 40'

JULY 3, 1998

STATE OF CONNECTICUT

RYAN AND FAULDS, LLC LAND SURVEYORS
WILTON CONNECTICUT

NOTES

[illegible][illegible]

TO MY KNOWLEDGE AND BELIEF
THIS MAP IS SUBSTANTIALLY
CORRECT AS NOTED HEREON.

DOUGLAS R. FAULDS
LAND SURVEYOR
CONN. LIC. # 13292

5879 Received for filing on September 30, 2016 @ 10:54 AM by Kathy M. Cooper, Assistant Town Clerk

5879

REFERENCE TO NEIGHBORHOOD MAP DATED JANU. 1942
RECORDED IN VOLUME 46-1, PAGE 220 AND 100-1 AND 100-2
PROPERTY LOCATED IN R-2A ZONE
PLANNING SETBACKS, IF ANY, NOT DEPICTED HEREON.

WENYAN - 9-30-2016
TOWN PLANNER
DATE
TO MY KNOWLEDGE AND BELIEF THE MAP IS SUBSTANTIALLY
CORRECT AS NOTED HEREOF

5879

5879

1498

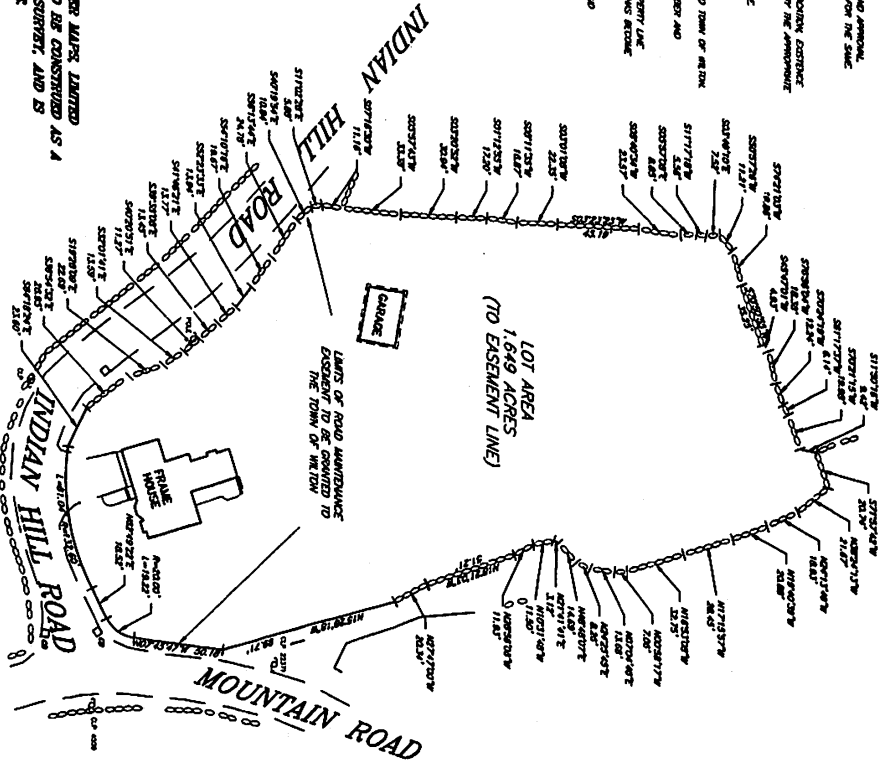
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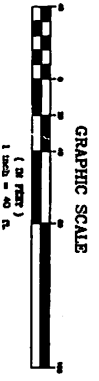
5547

2006

ANY INFORMATION, ATTENTION, OR REVISIONS REGARDING THE SURVEYOR'S KNOWLEDGE AND APPROVAL, AND ANY INFORMATION, AND NO SURVEY SHALL BE CONSIDERED BY THE SURVEYOR ON THE DATE THIS MAP WAS MADE WITHOUT THE SURVEYOR'S LINE SIGNATURE AND EMPOWERED SEAL. LANDSCAPED PLANTS, STRUCTURES AND BUILDINGS NOT YET LOCATED. THE USE, LOCATION, EXISTENCE OR NON-EXISTENCE OF ALL SPOIL PILES MUST BE FIELD DETERMINED AND NOTED BY THE APPROPRIATE AGENTS. CONTACT TOLL FREE 1-800-455-4655. ADDRESS: 1000 N. 1000 E. 1000 S. 1000 W. 1000 T. 1000 R. 1000 C. 1000 D. 1000 F. 1000 G. 1000 H. 1000 I. 1000 J. 1000 K. 1000 L. 1000 M. 1000 N. 1000 O. 1000 P. 1000 Q. 1000 R. 1000 S. 1000 T. 1000 U. 1000 V. 1000 W. 1000 X. 1000 Y. 1000 Z. 1000 AA. 1000 AB. 1000 AC. 1000 AD. 1000 AE. 1000 AF. 1000 AG. 1000 AH. 1000 AI. 1000 AJ. 1000 AK. 1000 AL. 1000 AM. 1000 AN. 1000 AO. 1000 AP. 1000 AQ. 1000 AR. 1000 AS. 1000 AT. 1000 AU. 1000 AV. 1000 AW. 1000 AX. 1000 AY. 1000 AZ. 1000 BA. 1000 BB. 1000 BC. 1000 BD. 1000 BE. 1000 BF. 1000 BG. 1000 BH. 1000 BI. 1000 BJ. 1000 BK. 1000 BL. 1000 BM. 1000 BN. 1000 BO. 1000 BP. 1000 BQ. 1000 BR. 1000 BS. 1000 BT. 1000 BU. 1000 BV. 1000 BW. 1000 BX. 1000 BY. 1000 BZ. 1000 CA. 1000 CB. 1000 CC. 1000 CD. 1000 CE. 1000 CF. 1000 CG. 1000 CH. 1000 CI. 1000 CJ. 1000 CK. 1000 CL. 1000 CM. 1000 CN. 1000 CO. 1000 CP. 1000 CQ. 1000 CR. 1000 CS. 1000 CT. 1000 CU. 1000 CV. 1000 CW. 1000 CX. 1000 CY. 1000 CZ. 1000 DA. 1000 DB. 1000 DC. 1000 DD. 1000 DE. 1000 DF. 1000 DG. 1000 DH. 1000 DI. 1000 DJ. 1000 DK. 1000 DL. 1000 DM. 1000 DN. 1000 DO. 1000 DP. 1000 DQ. 1000 DR. 1000 DS. 1000 DT. 1000 DU. 1000 DV. 1000 DW. 1000 DX. 1000 DY. 1000 DZ. 1000 EA. 1000 EB. 1000 EC. 1000 ED. 1000 EE. 1000 EF. 1000 EG. 1000 EH. 1000 EI. 1000 EJ. 1000 EK. 1000 EL. 1000 EM. 1000 EN. 1000 EO. 1000 EP. 1000 EQ. 1000 ER. 1000 ES. 1000 ET. 1000 EU. 1000 EV. 1000 EW. 1000 EX. 1000 EY. 1000 EZ. 1000 FA. 1000 FB. 1000 FC. 1000 FD. 1000 FE. 1000 FF. 1000 FG. 1000 FH. 1000 FI. 1000 FJ. 1000 FK. 1000 FL. 1000 FM. 1000 FN. 1000 FO. 1000 FP. 1000 FQ. 1000 FR. 1000 FS. 1000 FT. 1000 FU. 1000 FV. 1000 FW. 1000 FX. 1000 FY. 1000 FZ. 1000 GA. 1000 GB. 1000 GC. 1000 GD. 1000 GE. 1000 GF. 1000 GG. 1000 GH. 1000 GI. 1000 GJ. 1000 GK. 1000 GL. 1000 GM. 1000 GN. 1000 GO. 1000 GP. 1000 GQ. 1000 GR. 1000 GS. 1000 GT. 1000 GU. 1000 GV. 1000 GW. 1000 GX. 1000 GY. 1000 GZ. 1000 HA. 1000 HB. 1000 HC. 1000 HD. 1000 HE. 1000 HF. 1000 HG. 1000 HH. 1000 HI. 1000 HJ. 1000 HK. 1000 HL. 1000 HM. 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1000 LU. 1000 LV. 1000 LW. 1000 LX. 1000 LY. 1000 LZ. 1000 MA. 1000 MB. 1000 MC. 1000 MD. 1000 ME. 1000 MF. 1000 MG. 1000 MH. 1000 MI. 1000 MJ. 1000 MK. 1000 ML. 1000 MM. 1000 MN. 1000 MO. 1000 MP. 1000 MQ. 1000 MR. 1000 MS. 1000 MT. 1000 MU. 1000 MV. 1000 MW. 1000 MX. 1000 MY. 1000 MZ. 1000 NA. 1000 NB. 1000 NC. 1000 ND. 1000 NE. 1000 NF. 1000 NG. 1000 NH. 1000 NI. 1000 NJ. 1000 NK. 1000 NL. 1000 NM. 1000 NO. 1000 NP. 1000 NQ. 1000 NR. 1000 NS. 1000 NT. 1000 NU. 1000 NV. 1000 NW. 1000 NX. 1000 NY. 1000 NZ. 1000 OA. 1000 OB. 1000 OC. 1000 OD. 1000 OE. 1000 OF. 1000 OG. 1000 OH. 1000 OI. 1000 OJ. 1000 OK. 1000 OL. 1000 OM. 1000 ON. 1000 OO. 1000 OP. 1000 OQ. 1000 OR. 1000 OS. 1000 OT. 1000 OU. 1000 OV. 1000 OW. 1000 OX. 1000 OY. 1000 OZ. 1000 PA. 1000 PB. 1000 PC. 1000 PD. 1000 PE. 1000 PF. 1000 PG. 1000 PH. 1000 PI. 1000 PJ. 1000 PK. 1000 PL. 1000 PM. 1000 PN. 1000 PO. 1000 PP. 1000 PQ. 1000 PR. 1000 PS. 1000 PT. 1000 PU. 1000 PV. 1000 PW. 1000 PX. 1000 PY. 1000 PZ. 1000 QA. 1000 QB. 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1000 UJ. 1000 UK. 1000 UL. 1000 UM. 1000 UN. 1000 UO. 1000 UP. 1000 UQ. 1000 UR. 1000 US. 1000 UT. 1000 UY. 1000 UZ. 1000 VA. 1000 VB. 1000 VC. 1000 VD. 1000 VE. 1000 VF. 1000 VG. 1000 VH. 1000 VI. 1000 VJ. 1000 VK. 1000 VL. 1000 VM. 1000 VN. 1000 VO. 1000 VP. 1000 VQ. 1000 VR. 1000 VS. 1000 VT. 1000 VU. 1000 VV. 1000 VW. 1000 VX. 1000 VY. 1000 VZ. 1000 WA. 1000 WB. 1000 WC. 1000 WD. 1000 WE. 1000 WF. 1000 WG. 1000 WH. 1000 WI. 1000 WJ. 1000 WK. 1000 WL. 1000 WM. 1000 WN. 1000 WO. 1000 WP. 1000 WQ. 1000 WR. 1000 WS. 1000 WT. 1000 WU. 1000 WV. 1000 WW. 1000 WX. 1000 WY. 1000 WZ. 1000 XA. 1000 XB. 1000 XC. 1000 XD. 1000 XE. 1000 XF. 1000 XG. 1000 XH. 1000 XI. 1000 XJ. 1000 XK. 1000 XL. 1000 XM. 1000 XN. 1000 XO. 1000 XP. 1000 XQ. 1000 XR. 1000 XS. 1000 XT. 1000 XU. 1000 XV. 1000 XW. 1000 XX. 1000 XY. 1000 XZ. 1000 YA. 1000 YB. 1000 YC. 1000 YD. 1000 YE. 1000 YF. 1000 YG. 1000 YH. 1000 YI. 1000 YJ. 1000 YK. 1000 YL. 1000 YM. 1000 YN. 1000 YO. 1000 YP. 1000 YQ. 1000 YR. 1000 YS. 1000 YT. 1000 YU. 1000 YV. 1000 YW. 1000 YX. 1000 YY. 1000 YZ. 1000 ZA. 1000 ZB. 1000 ZC. 1000 ZD. 1000 ZE. 1000 ZF. 1000 ZG. 1000 ZH. 1000 ZI. 1000 ZJ. 1000 ZK. 1000 ZL. 1000 ZM. 1000 ZN. 1000 ZO. 1000 ZP. 1000 ZQ. 1000 ZR. 1000 ZS. 1000 ZT. 1000 ZU. 1000 ZV. 1000 ZW. 1000 ZX. 1000 ZY. 1000 ZZ.



ORIGINAL
ON FILE
AT
ROCKY HILL, CT



THIS MAP WAS PREPARED FROM RECORD RESEARCH, OTHER MAPS, LIMITED FIELD MEASUREMENTS, AND OTHER SOURCES. IT IS NOT TO BE CONSIDERED AS A PROPERTY/BOUNDARY OR LIMITED PROPERTY/BOUNDARY SURVEY, AND IS SUBJECT TO SUCH FACTS AS SAID SURVEY MAY DISCLOSE.

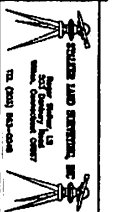
THIS MAP HAS BEEN PREPARED PURSUANT TO THE REGULATIONS OF CONNECTICUT STATE AGENCIES SECTION 20-300-1 THROUGH 20-300-30 AND THE STANDARDS FOR SURVEYS AND MAPS BY THE STATE OF CONNECTICUT AS ADOPTED BY THE CONNECTICUT ASSOCIATION OF LAND SURVEYORS, INC. ON SEPTEMBER 28, 1988.

SURVEY TYPE: GENERAL LOCATION SURVEY
BOUNDARY DETERMINATION CATEGORY: RESURVEY
CLASS OF ACCURACY: 4-8

TO MY KNOWLEDGE AND BELIEF, THIS MAP IS SUBSTANTIALLY CORRECT AS NOTED HEREON.
CREATED BY:

John A. Lucas
ROCKY HILL, CT 06067
ATTEST:
John A. Lucas
TOWN CLERK

NO.	DATE	DESCRIPTION	BY
1	6-6-06	EASEMENT LINE ADDED	RAS



OWNER	DATE	NO.
RAS	5-20-06	
ORDERED BY		
RAS	0102006	
DATE		
SHEET	1	1

5547

5547

GENERAL LOCATION SURVEY
2 INDIAN HILL ROAD
ZONE: R-2A
WILTON, CONNECTICUT
PREPARED FOR
JAMES R. LUCAS
AND
CORINE J. LUCAS
MARCH 21, 2006