KENNEBUNKPORT ZONING BOARD OF APPEALS
Administrative Appeal Application

Name of Applicant: Randy Slager Phone: (786) 423-3288

Mailing Address: P.O. Box 190479 (street) Miami Beach (city) FL (state) 33119 (zip)

Owner of Record: Lori Bell & John Scannell Phone: (917)797-6770

Location Address: 200 Ocean Avenue (street) Kennebunkport (city) ME (state) (zip)

Location of Site: Map 7 Block 12 Lot 5 Zone: CA Area of Property: 0.44

Shoreland: _____ Resource Protection: _____

Reason for Appeal: Lifting of Suspension of Permit in violation of §11.5.C.

See Addendum Attached

Please Attach:

1. Site Plan containing date required under Article 7 of the Kennebunkport Land Use Ordinance. It should show dimensions and shape of the lot, size and locations of existing buildings, locations and dimensions of proposed buildings, or alterations, and any natural or topographic peculiarities of the lot in question.

2. Copies of any official decisions or required permits (note pending applications) of federal, State or local agencies regarding use of this property.

3. Names and addresses of all abutters of properties within 200 feet of owner's property.

4. Demonstration of right, title and interest in the property.

Please Note:

1. All applications must be filed in accordance with procedure prescribed in Article 9 of the Kennebunkport Land Use Ordinance.

2. All applications must conform to the Kennebunkport Land Use Ordinance and all applicable local, State and federal ordinances.

3. Appeals Board approval is required before any building permits shall be issued.

4. Fee must accompany application.

An Administrative Appeal: Relief from the decision, or lack of decision, of the Code Enforcement Officer or Planning Board in regard to an application for a permit. The undersigned believes that (check one):

☐ An error was made in denial of the permit

☐ The denial of the permit was based on a misinterpretation of Article _____ of the Kennebunkport Land Use Ordinance

☐ There has been a failure to approve or deny the permit within a reasonable period of time

☑ Other Remand to CEO for certifications required by §11.5.C, and/or continued suspension and prohibition on use of patio until issuance of Certificate of Occupancy

To the best of my knowledge, all information submitted on this application is correct.

Signed: David A Lourie, Agent Date: 12/27/2019

Printed Name: David A. Lourie, Agent for Randy Slager

Application Fee: $40.00 Postage & JT Fee: $_____ Date Received: 12/27/19 By: tlo

Addendum to Appeal to ZBA

This Appeal is filed on behalf of Randy Slager. The decision appealed from is the CEO's December 3, 2019 action lifting the prior CEO's July 17, 2019 suspension order on Ms. Bell's building permit #18-418, and land use permit #18-419, as shown in his e-mail to Lori Bell (copy attached as Exhibit 'A'.)

The suspension order dated July 17, 2019 is attached as Exhibit 'B'.

The error asserted is Exhibit 'A' purporting to lift the suspension order does not meet the certification requirements of Kennebunkport Land Use §11.5.C, and must be reversed.

The Suspension Order dated July 17, 2019 (Exhibit 'B') determined that:

> "Work being conducted may endanger the welfare of the community: Reference KPT LUO Article 11.5 section A sub-section 3
> Wall section A11 was not constructed as per submitted plan.
> Wall section A2 and Al do not match submitted engineered drawings dimensions.
> This letter is being sent for corrective action to be taken within 14 days of receiving."

The corrective actions required by the July 17 suspension order[1] NOT certified to have been taken in the lifting of the suspension order, as required by Kennebunkport Land Use Ordinance §11.5.C. §11.5.C requires that:

> **"When a cause for suspension has been removed or corrected, the Code Enforcement Officer shall so certify, in writing, and state:**
> **1. The reason for the suspension.**
> **2. The corrective measures taken. ...."**

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[1] **"1. A resubmission of a new plot plan containing an updated lot coverage break down for review.**
2. Verification by licensed professional engineer confirming wall sections A 1 and A2 match submitted drawings.
3. Wall section All needs to be reviewed structurally for potential failure due to the amount of uneven back fill."

The e-mail decision to Lori Bell dated December 3, 2019 (Exhibit 'A') states only that:

> "Lori, Thanks for the updated survey you recently provided me with a revision date of 11/05/19. I have no issues with you continuing your project based on the revisions contained in this plan. Please provide me with a full size print for our records.
> Werner"

Exhibit 'A' clearly not meet the written certification requirement of §11.5.C. If nothing else, it must be remanded for correction, and hopefully, reconsideration in light of all the evidence (including, but not limited to the Price Report) concerning: [1] the adequacy of the resubmitted plot plan containing an updated lot coverage break down for review; [2] whether "wall sections A 1 and A2 match submitted drawings."; and [3] whether there has been an adequate structural review "for potential "for potential failure due to the amount of uneven back fill."

A copy of the Price Report is attached as Exhibit 'C.' It is the expectation of Appellant that the Price Report will cause Mr. Gilliam to reconsider his decision to lift the suspension, as the Price Report validates the doubts expressed in the Suspension Order as to the ability of Ms. Bell's retaining wall to support the weight of fill and patio behind it.

The Board must order the CEO to correct Exhibit 'A' by making the findings and certifications required by §11.5.C in this challenge the December 3, 2019 lifting of the suspension of Ms. Bell's building permit #18-418, and land use permit #18-419 by the e-mail. If Appellant's concerns are not satisfied after remand by findings supported by evidence in the record, as required by §11.5.C of the Land Use Ordinance this Board can then address the merits of the CEO's action in lifting the suspension.

EXHIBIT 'A'

Lisa Harmon

From:	Werner Gilliam
Sent:	Tuesday, December 03, 2019 12:08 PM
To:	Lori Bell
Cc:	Lisa Harmon; Andrew Welch; Greg Reid
Subject:	200 Ocean Avenue

Lori,

Thanks for the updated survey you recently provided me with a revision date of 11/05/19. I have no issues with you continuing your project based on the revisions contained in this plan. Please provide me with a full size print for our records.

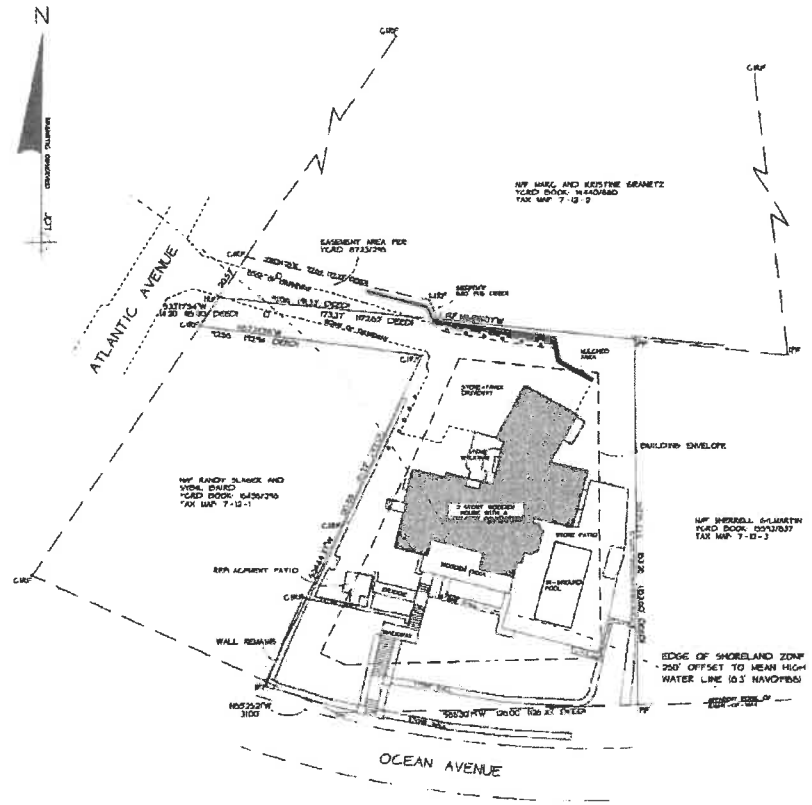
Werner

Werner Gilliam, CFM
Director of Planning and Development
Town of Kennebunkport
(207)967-1604
wgilliam@kennebunkportme.gov

EXHIBIT 'A'

LOCATION SKETCH

NOT TO SCALE!



LOCUS DEED REFERENCE

YORK COUNTY REGISTRY OF DEEDS (YCRD)
BOOK: 17373 PAGE: 727

PLAN REFERENCES

1 PLAN OF IMPROVEMENTS OF 198 OCEAN AVENUE KENNEBUNKPORT, MAINE. FOR RECORD OWNER RANDY J SLAGER AND SYBIL C BAIRD. PERFORMED BY SEBAGO TECHNICS. DATED 08-03-15. UNRECORDED

2 STANDARD BOUNDARY SURVEY AND SITE PLAN 198 OCEAN AVENUE, KENNEBUNKPORT, MAINE OWNED BY DANIEL C. AND NANCY K NELSON PERFORMED BY LOWER VILLAGE SURVEY COMPANY, DATED OCTOBER 10, 2006 UNRECORDED

3 BOUNDARY PLAN OF MARC D AND KRISTINE K GRANETZ, 5 ATLANTIC AVENUE, KENNEBUNKPORT, MAINE. PREPARED BY SEBAGO TECHNICS, DATED 2011, UNRECORDED

NOTES

1 SPOT ELEVATIONS SHOWN REFLECT THE NAVD 1988 DATUM

2 THE ELEVATION OF THE FIRST FINISHED FLOOR IS 46.1'

3 THE ELEVATION OF THE GARAGE SLAB IS 45.0

LEGEND

N/F	-	NOW OR FORMERLY
TM	-	TAX MAP
IPF	-	IRON PIPE FOUND
CIRS	-	CAPPED IRON ROD SET
CIRF	-	CAPPED IRON ROD FOUND
	-	FENCING

GRAPHIC SCALE: 1" = 20'

0 0 20 40 60 80

CURRENT COVERAGE CHARTS

OUTSIDE SHORELAND ZONE		
HOUSE	2,793	SQFT
POOL	532	SQFT
DECK	159	SQFT
PATIO	1,513	SQFT
TOTAL	5,027	SQFT
LOT	11,531	SQFT
COVERAGE	43.6%	

INSIDE SHORELAND ZONE		
HOUSE	459	SQFT
DECK	245	SQFT
PATIOS	264	SQFT
WALLS	1016	SQFT
STAIRS	295	SQFT
BRIDGE	84	SQFT
WALKWAYS	87	SQFT
MISC.	43	SQFT
WATERFALL	0	SQFT
FLAG STONES	0	SQFT
DRIVEWAY	37	SQFT
WALL REMAINS	70	SQFT
FIRE PIT/PATIO	115	SQFT
TOTAL	2,720	SQFT
LOT	8,924	SQFT
COVERAGE	30.4%	

PRE-EXISTING COVERAGE CHARTS

OUTSIDE SHORELAND ZONE		
HOUSE	2,793	SQFT
POOL	532	SQFT
DECK	905	SQFT
PATIO	843	SQFT
TOTAL	5,072	SQFT
LOT	11,531	SQFT
COVERAGE	44.0%	

INSIDE SHORELAND ZONE		
HOUSE	459	SQFT
DECK	436	SQFT
PATIOS	391	SQFT
WALLS	1001	SQFT
STAIRS	185	SQFT
BRIDGE	84	SQFT
WALKWAYS	171	SQFT
MISC.	73	SQFT
WATERFALL	223	SQFT
FLAG STONES	53	SQFT
DRIVEWAY	37	SQFT
WALL REMAINS	70	SQFT
TOTAL	2,720	SQFT
LOT	8,924	SQFT
COVERAGE	30.5%	

REVISION NO	DATE	REVISION PURPOSE
1	4/19/2019	AMEND COVERAGE CHART / CALCULATIONS
2	6/2/2019	SHOW CURRENT COVERAGE, CONSTRUCTION IN PROGRESS
3	6/17/2019	REVISE PRE-EXISTING, PER CEO DETERMINATION REVISE CURRENT COVERAGE
4	10/30/2019	ADD FIRE PIT/PATIO CONDO
5	11/06/2019	MOVE FIRE PIT/PATIO CONDO
6	11/25/2019	REVISE PATIO

STATE OF MAINE — DAVID L. A. HUGHES — 2800 — REGISTERED — LAND SURVEYOR — 2019

BOUNDARY SURVEY OF LAND AT
200 OCEAN AVENUE
KENNEBUNKPORT MAINE

PREPARED FOR
OWNER OF RECORD

LORI BELL

MAINE RESIDENCE 198 MID KENNEBUNK ANDOVER STAMFORD CONNECTICUT OWNER

BY

LIVINGSTON + HUGHES
PROFESSIONAL LAND SURVEYING CORPORATION
88 GUINEA ROAD KENNEBUNKPORT MAINE 04046

DATE 8-27-2019	DRAWN JCP	CADD FILE	FIELD BOOK 42-2	PROJECT # 19-088

EXHIBIT B to ZBA APPEAL File Copy

TOWN OF KENNEBUNKPORT, MAINE
- INCORPORATED 1653 -

July 17, 2019
Regular USPS & Certified USPS

Lori Bell & John Scannell
188 Van Rensselaer Avenue
Stamford, CT 06902

RE: 200 Ocean Avenue, Map 7, Block 12, Lot 5 – Suspension of Permits

Dear Lori & John:

It has been brought to my attention that the work currently being executed on the property has stepped outside the scope of work initially permitted through Land Use Permit #18-419 and Building Permit #18-418

A site visit was conducted on July 5th, 2019, after reviewing the submitted plans for both permits issued to Lori Bell violations of local ordinance (KPT LUO) were identified. Reference KPT LUO Article 11.5 section A sub-section 1 and 4

- Increasing lot coverage from a grandfathered 44% with additional non vegetative surfaces not on plan
- Increasing 5' granite step to 6' step does not match plan
- The continuation of wall section A5, to meet the existing wall at future hot tub area.
- Increase in dimensions to B2 "fire pit area."

Work being conducted may endanger the welfare of the community: Reference KPT LUO Article 11.5 section A sub-section 3

- Wall section A11 was not constructed as per submitted plan.
- Wall section A2 and A1 do not match submitted engineered drawings dimensions.

This letter is being sent for corrective action to be taken within 14 days of receiving.

EXHIBIT B to ZBA APPEAL

Corrective actions will be:

1. A resubmission of a new plot plan containing an updated lot coverage break down for review.
2. Verification by licensed professional engineer confirming wall sections A1 and A2 match submitted drawings.
3. Wall section A11 needs to be reviewed structurally for potential failure due to the amount of uneven back fill.

After 14 days if no corrective action is taken, a formal revocation of permits letter will be sent.

Please call the office at 207-967-1605 with any questions or to set up an appointment to discuss the matter.

Sincerely,

Matt Philbrick,
Asst. Code Enforcement Officer
enclosures

EXHIBIT C

Price Structural Engineers, Inc.

75 Farms Edge Road
North Yarmouth, ME 04097
Tel: 207-846-0099
Fax: 207-846-1633
E Mail: PriceStructural@maine.rr.com

STRUCTURAL REVIEW

of

EXISTING RETAINING WALLS

200 Ocean Avenue
Kennebunkport, Maine 04046

PSE Project No. 132-19
Pages: 1 – 47

Prepared for:
Randy Slager
Owner
196 Ocean Avenue
Kennebunkport, Maine 04046

Prepared by:
David A. Price, P.E.
President
Price Structural Engineers, Inc.
75 Farms Edge Road
North Yarmouth, ME 04097
Tel: (207) 846-0099

Site Visit #1: November 6, 2019
Site Visit #2: November 11, 2019

Date: December 17, 2019

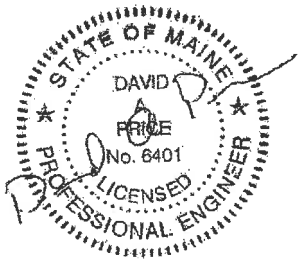


EXHIBIT C

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EXHIBIT C

A. INTRODUCTION

On behalf of Randy Slager and at his request, David Price, a licensed engineer from Price Structural Engineers, Inc. ("PSE"), performed a visual review of specific exterior construction materials recently installed at the residential property located at 200 Ocean Avenue in Kennebunkport. Mr. Slager's residence (196 Ocean Avenue) is located on the west side of the 200 Ocean Avenue lot and the two properties share a common property line.

Mr. Slager expressed concern regarding what he felt was poor quality construction taking place at his neighbor's property and whether construction deficiencies could eventually cause severe problems at a future time. Specifically, he expressed the following,

1. His primary concern pertained to the new elevated patio expansion structure which is located within inches of his property line and is 7' above the existing ground at some locations, A wall at the west end of the structure is constructed of concrete masonry units ("CMU") and is referred to as the "A-11" wall on the 10/29/19 Joshua Tompkins Site Plan design documents issued for this project.
2. His other concern pertained to the structural integrity of the two rubble stone walls located close to Ocean Avenue, which serves as the main access road for this area. These walls are currently referred to as the "A-1" and "A-2" walls on the 10/29/19 Joshua Tompkins Site Plan issued for this project.

During the review, two site visits were performed by PSE as further described below.

Site Visit #1:
Individuals present during the 11/6/19 site visit included Fulton Rice, Esq. (Alan Atkins Associates), Randy Slager (home owner) and David Price, P.E. (PSE). The purpose of the initial site visit was to:

1. Discuss Randy Slager's concerns.
2. Observe the elevated patio expansion structure at 200 Ocean Avenue from a position located inside the 196 Ocean Avenue lot lines.
3. Observe the rubble stone walls near the road at 200 Ocean Avenue from Ocean Avenue or from inside the 196 Ocean Avenue lot lines.

Site Visit #2:
Individuals present during the 11/11/19 site visit included Randy Slager (home owner) and David Price, P.E. The purpose of the second site visit was to:

1. Perform a ledge depth probe test near the CMU retaining wall adjacent to the common property line between 200 and 196 Ocean Avenue.
2. Obtain top of wall photos and an approximate height measurement at the southwest rubble stone wall (wall A-2) near the road at 200 Ocean Avenue.

The opinions expressed within this report are based on the following:

1. Project documents available at the Kennebunkport town office including but not limited to copies of emails, engineering reports, letters, and photographs.
2. Discussions with Mr. Slager.
3. Site visits performed by PSE on 11/6/19 and 11/11/19. Because the structural components to be reviewed were not on Mr. Slager's property, direct measurements of these components by PSE were not possible. Instead, approximate measurements were obtained from approved positions previously described.

EXHIBIT C

The owner of the 200 Ocean Avenue lot was reported to be Ms. Lori Bell. It is PSE's understanding that Ms. Bell either directly or indirectly retained the services of the following design professionals during the course of her construction project:

1. Joshua Tompkins Landscape Architecture LLC ("JTLA") – stone design drawings.
2. Structural Integrity Consulting Engineers, Inc. ("SICEI") – stone wall engineering.
3. M² Structural Engineering, P.C. ("M²SE") – stone wall engineering.
4. Lincoln/Haney Engineering Associates, Inc. ("L/HEA") – CMU wall review.

For purposes of this report, referenced items (north, south, east and west) are based on the assumption that the front of both residences (side facing Ocean Avenue) faces **south**.

B. REPORTED INFORMATION

1. Informal Interview with Randy Slager

   David Price conducted an informal interview with the homeowner at 196 Ocean Avenue, Randy Slager, regarding background information pertaining to the structures and the observed distress. The reported information is the homeowner's account and not necessarily PSE's opinions or observations.

   Mr. Slager reported the following:

   a. He received an email from Lori (his next door neighbor) that said she was going to replace the current fence with a new one and do landscaping and repairs. The email she sent in December 2018 said she would be "putting up new perimeter fencing for the entire property" and that, "it will be very similar to what was up before."
   b. The email said nothing about building a 7-foot high masonry wall immediately adjacent to his property line.
   c. He relied on that email and trusted her which was why he did not notify the town earlier about the construction when it started.
   d. His situation is that he spends the winter at his Florida residence, normally from middle of October to middle of May.
   e. Lori purposely waited until after he left for the winter to give him notice about her changes in construction at the property line.
   f. He had hoped to visit in December 2018 but had major rotor cuff (shoulder) surgery in late November.
   g. During mid-winter (2018-2019) his alarm company called to report the house was losing heat so he took the late night flight back to his Maine residence. The plumber was able to get the furnace running again but said it needed replacing.
   h. He observed the footing on the property line (for the wall) adjacent to his house and the footing was definitely not bearing on ledge. It was bearing on other materials, similar to dirt or gravel.
   i. He does not have a mailbox at the house.
   j. In April, he came to Maine for five days to have the furnace and generator replaced. During that week, he found an unaddressed envelope on the ground with a "dear neighbor" letter inside. It had been exposed to the winter weather
   k. That particular winter was especially difficult for him because he was recovering from shoulder surgery.
   l. He could not respond to correspondence due to his medical problems. Also in the spring, a family member was diagnosed with cancer and had limited time to live.
   m. He came back to Maine to replace the furnace. During that time he noticed no steel rebar in the patio construction materials and observed the wall was not reinforced; he felt he should have seen evidence of it.

EXHIBIT C

n. He did not see any continuous "bond beams" (term used by Mr. Slager) being installed at the masonry wall.
o. He returned to Maine after the memorial services June 8th.
p. He was also concerned about what he felt was poor construction at the rock walls close to Ocean Avenue. He heard that one of the workmen who assisted in the assembly of those walls said the walls were poorly constructed and were not as good as most of the other walls he had experience with.
q. He is also annoyed by the new white fences Ms. Bell had constructed on the property line. The white fence is flimsy and poorly connected. It is especially annoying during windstorms because the fence crosses his property line as it flops back and forth.
r. Photos provided by Mr. Slager:

CMU wall: southwest corner drain outlet

Dislodged fasteners at white fence post

EXHIBIT C

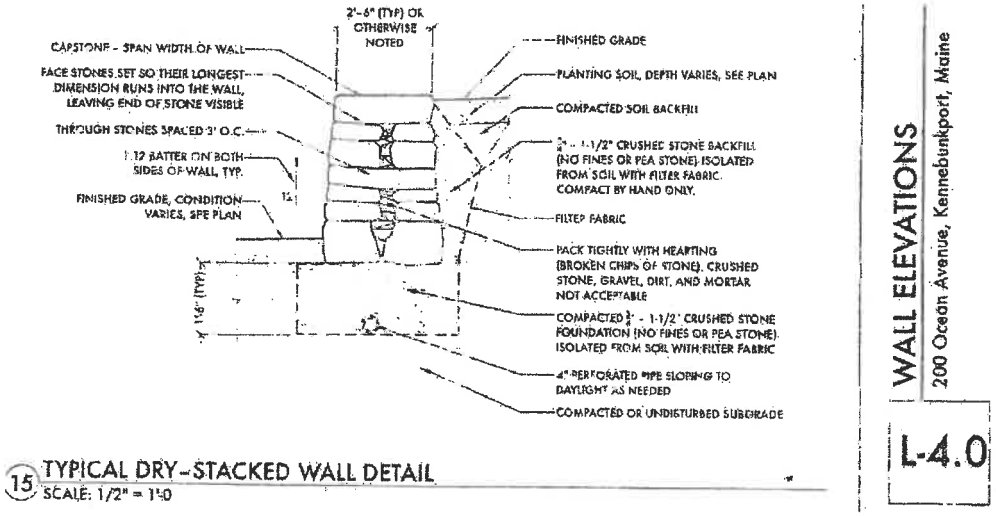
2. Selected Excerpts from JTLA – "Permit Drawings" (specified construction documents)

   New exterior walls were specified to be constructed in accordance with the "Typical Dry-Stacked Wall Detail" at Detail number 15 on Drawing L-4.0 (below).
   PSE Note: Underlines added by PSE for emphasis.

   Items specified by JTLA on this detail included:

   - "Capstone – Span width of wall", typical full length of wall
   - "Face stones set so their longest dimension runs into the wall, leaving end of stone visible"
   - "Through stones* spaced at 3'0" on center"
   - "1:12 batter on both sides of wall, typ.", slope at each side for added stability
   - "¾" – 1 ½" crushed stone backfill (no fines or pea stone)"
   - "¾" – 1 ½" crushed stone foundation (no fines or pea stone)"

   * "Through stones", as depicted on Detail 15 / L-4.0, are stones extending the full width of the wall with each end of the stone extending to the outside face of the wall. "Through stones" are the same as "capstones" except that the through-stones are located at the mid-height of the wall instead of at the top.



3. Selected Excerpts from SICEI letter - Structural Review of new Dry-Laid Stone Retaining Walls along Ocean Ave.at the Bell Residence (dated 4/3/19)
   PSE Note: Underlines added by PSE for emphasis.

   Items stated by SICEI in this letter included:

   a. "... our calculation set was based on typical detail 15 on sheet L-4.0."
   b. "It appears evident that the current construction to the walls does not match the intent of the typical detail for their construction."
      - "Most stones set with their shortest dimension set into the wall"
      - "No full capstones installed at this time"
      - "Batter not seen on front of wall, most of back wall appeared to have variable geometry"
      - "Small 3/8" to 3/4" stone used"
      - "Sub-grade not visible"

EXHIBIT C

4. Selected Excerpts from M²SE
   a. On 4/22/19, M²SE performed an analysis of the rubble stone walls adjacent to Ocean Avenue. The analysis was for stone walls limited to a maximum height of 5'-0" tall. The width was specified as 2'-4".
   b. On 7/10/19, M²SE was requested to perform a site visit and review these walls after they were constructed. The following is a selected statement from that review letter:
      - "Measurements for the width at the top of the wall and retained height of the walls were taken and were consistent with the structural design provided by our office."

   c. Selected Excerpts from L/HEA - Structural Assessment of Retaining Wall (dated 9/24/19)
   PSE Note: When performing an initial structural analysis of an assembly that has already been constructed, the engineer may have no option other than to rely on construction information provided by the contractor (Aceto) for items that cannot be seen since typically an invasive investigation is not permitted.
   Underlines added by PSE for emphasis.

   Items stated by L/HEA in this letter included:

   a. "The completed wall has retained soil for over 7 months"
   b. "The footing is pinned to ledge using two rows of reinforcing dowels"
   c. A photo caption states that the pin is "rebar" and that, "Aceto reported 6 to 8 inch grouted embedment."
   d. "We understand that each CMU cell is reinforced and grouted solid"
   e. "The foundation bears on ledge and so is adequately protected against frost heave."
   f. "...the wall has adequate capacity to retain seven feet of crushed stone assuming:
      - 60 psf active soil pressure (consistent with crushed stone backfill);
      - #4 bars centered in each cell;
      - The wall reinforcing bars and ledge pins are adequately developed into the retaining wall footing"
   g. "Documentation of reinforcement is not complete."

EXHIBIT C

C. PSE SITE VISIT OBSERVATIONS

In addition to observations indicated below, please refer to section "L" (near the end of this report) for additional photos.
During the site visit, PSE made the following observations at the building exterior:

1. Observations at CMU Wall A-11 (located at west side of elevated patio expansion structure):
   a. Wall A-11 extended in the north / south direction.
   b. All observations were taken from a position that was west of the property line between the 200 and 196 Ocean Avenue lots and therefore any measurements of the wall should be considered as approximate.
   c. The embedded CMU wall could not be viewed directly because it was covered by a mortared stone veneer on the west face and by a capstone on top.
   d. Continuous fractures in the stone veneer were not observed.
   e. Access was not permitted to perform a wall plumbness survey.
   f. Since the CMU was covered by the stone veneer, a review of the current condition of the embedded CMU wall could not be performed.
   g. The maximum height of the wall was at the southwest corner of wall A-11 and appeared to be approximately 7'-0".
   h. The top of footing supporting wall A-11 could be seen at multiple areas.
   i. The grade was sloped and so a series of footing steps was observed.
   j. The distance from the southwest corner of the A-11 wall footing to the first footing step located to the north was estimated to be 5'-7".
   k. The distance from the southwest corner of the A-11 wall footing to the second footing step located to the north was estimated to be 7'-2".
   l. The approximate distance between the edge of footing and the exposed face of the veneer stone varied but appeared to be between 3" to 4".
   m. The estimated dimensions of the wall cap stone appeared to be approximately 18" wide and 2" thick.
   n. There was a separation space between the bottom of the cap stone and the top of the veneer at multiple areas. It was possible to see daylight through the wall underneath the capstone at multiple areas.
   o. It appeared that the capstone was not placed on a continuous bed of mortar that extended across the top of the CMU and veneer stone. Instead, it appeared that the capstone was placed on top of the wall with no mortar underneath and only a small amount of mortar was applied to the outside edges of the capstone at some areas.

2. Observations at Rubble Stone Walls A-1 and A-2 (located adjacent to Ocean Avenue)
   a. Walls A-1 (located to the east) and A-2 (located to the west) extended primarily in the east / west direction.
   b. Observations were taken from a position that was either at the edge of pavement on Ocean Avenue or west of the property line extending north/south between the 200 and 196 Ocean Avenue lots.
   c. The south face of wall A-2 appeared to be approximately 4 feet from the paved edge of Ocean Avenue.
   d. There appeared to be a slight slope downward from the edge of road to the face of wall A-2.
   e. In general, wall A-2 appeared to be taller than wall A-1 at most areas. For this reason, most of PSE's attention was devoted to A-2 rather than A-1.

EXHIBIT C

f. Wall A-2 measured approximately 5'-6" high when standing on edge of pavement.
g. Wall A-2 was a retaining wall since it resists lateral earth pressure on the north side. The backfill on the north side was sloped downward toward the wall.
h. The height of the backfill being retained by A-2 varied considerably. At some areas it appeared to be within approximately 6" of the top of the wall whereas at other areas, in particular at the west end, it appeared to be below the top of wall by more than a foot.
i. 200 Ocean Avenue was located near the end of a blind curve (see Google Earth photo page 19).
j. Ocean Avenue appeared to be a busy road. A nearly constant flow of traffic was observed during both site visits.

EXHIBIT C

D. TESTING AT WALL A-11

1. Background

   The 9/24/19 L/HEA letter stated that the CMU wall footing was connected to ledge with rebar pins. It further stated that one of the requirements for the CMU wall to have "adequate capacity to retain seven feet of crushed stone" is that the "ledge pins are properly developed."

   The above statement is referring to the concept of "development length." It is the code requirement that the reinforcement bar ("rebar") must have sufficient depth inside an acceptable substrate material (typically concrete or sound ledge) so that it can develop the necessary force capacity (tension and shear) without pulling out of the hole or experiencing another failure mode. ACI 318-14 defines "development length" as follows, "Length of embedded reinforcement required to develop the design strength of reinforcement at a critical section."

   During a discussion with Mr. Slager, he stated the footing below the new masonry wall on the property line adjacent to his house is not bearing on ledge. If this is correct, then the "pins" may have little or no tensile capacity and the stability of the CMU retaining wall may be in jeopardy.

   Because the existing CMU wall footing is exposed above grade at several places and is approximately 16" +/- from the property line, it is reasonable to assume that if there is ledge near the surface on the east side of the property line (200 Ocean Avenue), that ledge would also be close to the surface at the west side of the property line (196 Ocean Avenue).

2. Methodology & Results

   a. Two steel "probes" were obtained by using a new ½" diameter x 8' long steel grounding rod (pointed at each end) and cutting it at 34" from one end.

   b. A string-line with fluorescent flagging was installed to clearly mark the property line.

   c. See attached SK-1 for plan view indicating locations of probes #1 and #2 and SK-2 for PSE's estimation of the existing CMU wall section.

   d. Probe #1 - Test Date 11/11/19
      - Position: Due west from the southwest corner of the CMU wall footing
      - Distance between southwest corner and property line = 16"+/-
      - Distance between southwest corner and Probe #1 = 17"+/-
      - Total length of Probe #1 = 34"
      - Method of installing probe: 16" long small sledge hammer (4 lb head)
      - Height of probe above ground after embedment = 5"
      - Length of probe below ground = 29"
      - Estimated length of probe below bottom of footing = 27"
      - Estimated location of top of footing: 5" minimum above grade
      - Estimated bottom of footing assuming 2x8 forms used: 2" below grade
      - Condition at end of probe below grade: ledge not found but increasing difficulty in going further, every time probe was hit with hammer it continued to go deeper
      - Reason for stopping probe embedment: Potential difficulty in removing probe from ground.

EXHIBIT C

e. Probe #2 · Test Date 11/11/19

- Position: Due west from a point located 5 feet north of the southwest corner of the CMU wall footing
- Distance between southwest corner and property line = 15" +/-
- Distance between southwest corner and Probe #1 = 16" +/-
- Total length of Probe #2 = 62"
- Method of installing probe: 16" long small sledge hammer (4 lb head)
- Height of probe above ground after embedment = 29"
- Length of probe below ground = 33"
- Estimated length of probe below bottom of footing = 23"
- Estimated location of top of footing: +/- 3" below top of grade
- Estimated bottom of footing assuming 2x8 forms used: 10" below grade
- Condition at end of probe below grade: ledge not found but increasing difficulty in going further, every time probe was hit with hammer it continued to go deeper
- Reason for stopping probe embedment: Potential difficulty in removing probe from ground.

f. Summary Table

Probe #	Probe Length	Depth Below Ground	Estimate Depth Below Bottom of Footing	Location of Ledge
#1	34"	29"	27"	Not Found
#2	62"	33"	23"	Not Found

g. Photos during Testing

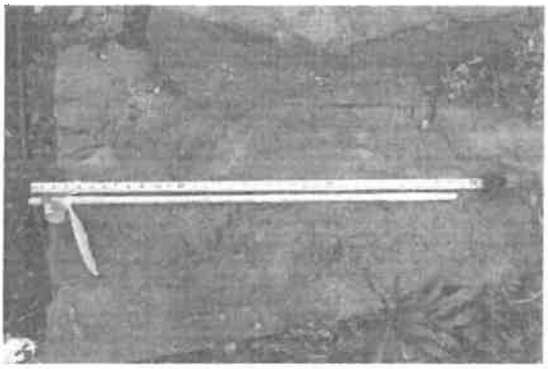


Photo #1 – 34" long Probe #1

Photo #2 – Probe #1 after embedment

EXHIBIT C

Photo #3 – Probe #1, ledge not found

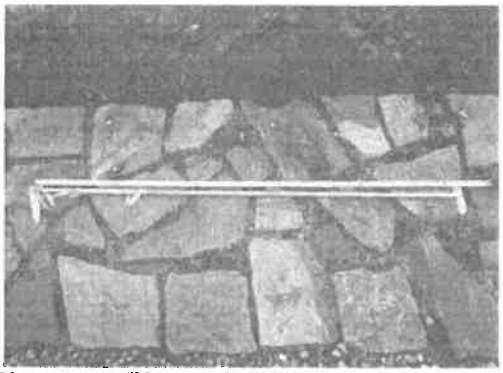


Photo #4 – 62" long Probe #2

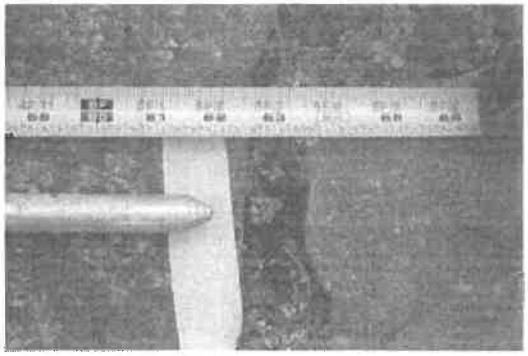


Photo #4 – Probe #2, note pointed tip

Photo #6 – Probe #2 at 5' north of corner

Photo #7 – Probe #2 at 29" above grade

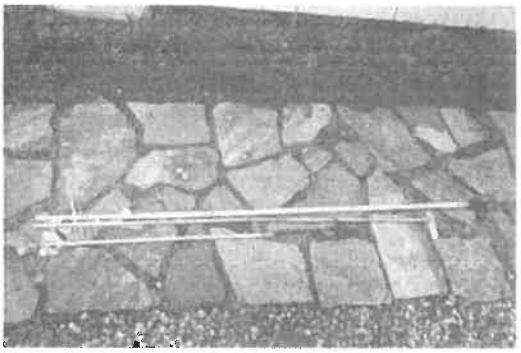


Photo #8 – Probes #1 & #2 after extraction

EXHIBIT C

E. FEATURES OF "AS-BUILT" WALLS CURRENTLY IN PLACE

1. Wall A-11 – CMU wall supporting lateral earth pressure loads at west side of elevated patio expansion structure

   a. It is PSE's understanding that no design or sketch of the modified A-11 wall section using CMU was submitted to the town for review or approval. Not performing a design for wall A-11 in accordance with "accepted engineering practice" is a **violation of the IRC-15 building code** which states:

   "R404.1.1 Design Required – Concrete or masonry foundation walls shall be designed in accordance with accepted engineering practice where ... walls supporting more than 48 inches of unbalanced backfill do not have permanent lateral support at the top or bottom."

   b. Based on the information below, see the attached Detail SK-2 (page 21) for PSE's current understanding of how wall A-11 was constructed.
   Detail SK-2 is based on:
   - Information field measured by others
   - Information reported by others
   - Photos provided by others
   - Field testing by PSE
   - Estimated measurements by PSE (without crossing property line)
   - Observations by PSE
   - Photos by PSE (attached).

2. Walls A-1 and A-2 – Rubble stone walls adjacent to Ocean Avenue

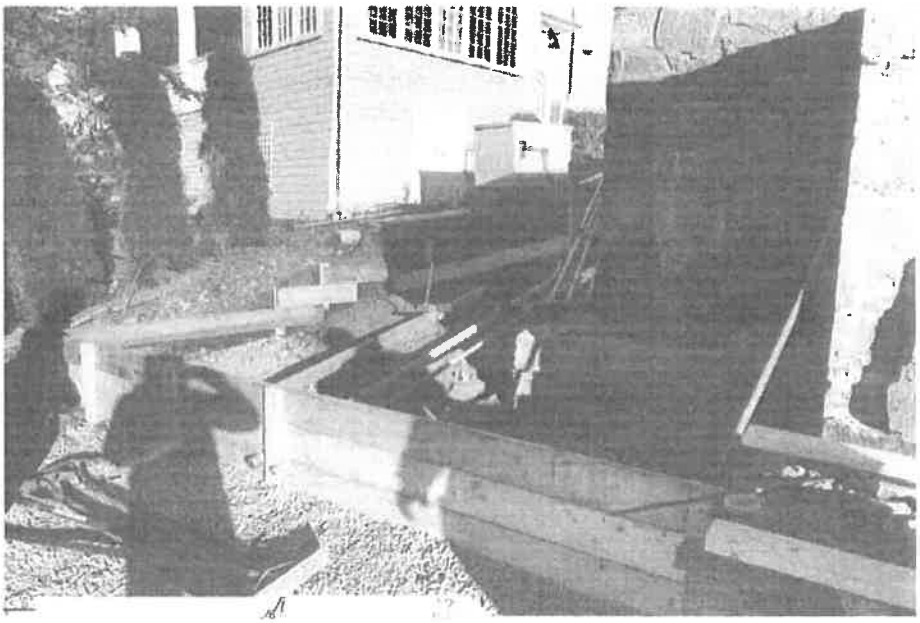
   a. Based on the information below, see the attached Detail SK-3 (page 22) for PSE's current understanding of how wall A-11 was constructed.
   Detail SK-3 is based on:
   - Information field measured by others
   - Information reported by others
   - Photos provided by others
   - Field testing by PSE
   - Estimated measurements by PSE (without crossing property line)
   - Observations by PSE
   - Photos by PSE (attached).

EXHIBIT C

3. Photos of walls A-11

"View up property line where new wall will be installed. New drain pipe in green to connect to existing and daylight downhill. Gray sleeves for lighting and irrigation runs."

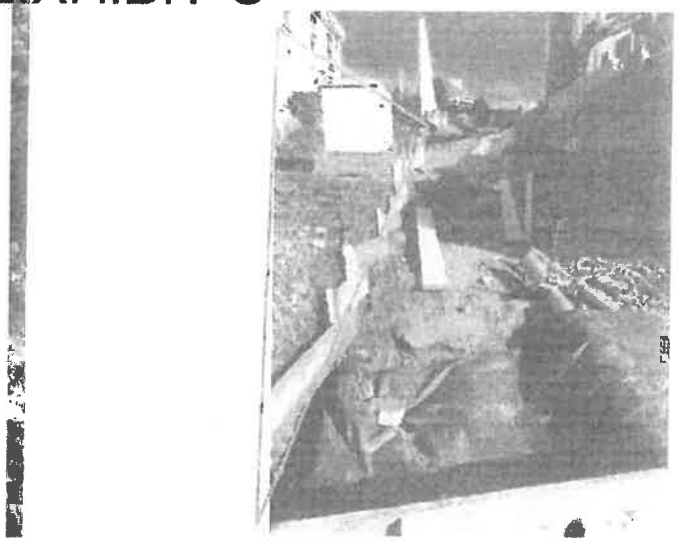
Photo #9 (by others) – Photo and caption above sent by email from Joshua Tomkins on 1/11/19 at Wall A-11. Crushed stone and formwork are clearly visible below bottom of forms. No ledge is observed or referenced in the caption. Soil compaction equipment is not observed in the photo.



"Forms in place for footing for block wall. Scheduled to be poured next week. The purpose of these walls is to gain valuable space above for the fire pit gathering area."

Photo #10 (by others) – Photo and caption above sent by email from Joshua Tomkins on 1/11/19 at Wall A-11. Crushed stone and formwork are clearly visible below bottom of forms. No ledge is observed or referenced in the caption. Soil compaction equipment is not observed in photo.

EXHIBIT C



JOSHUA TOMPKINS LANDSCAPE ARCHITECTURE LLC
26 MARINA ROAD
YARMOUTH, MAINE 04096 U.S.A.

Date: 1/15/19
Issued for Lot Review

207.603.4874
JT@JOSHUA-TOMPKINS.COM
WWW.JOSHUA-TOMPKINS.COM

Photo #11 (by others) – View looking north. Photo and caption above from Joshua Tomkins on 1/15/19 at Wall A-11. Soil added up to bottom of forms. No ledge is observed or referenced in the caption. No soil compactors observed in photo. Plastic sheeting or filter fabric added. No ledge observed for securing steel pins into ledge under footing as reported. Note generator at upper left of photo.

Photo #12 (by others) – Similar view as Photo #11 above, it is not clear what material the pins are embedded into. Based on Photos #9, #10, and #11, it appears doubtful that the material directly below the footing is ledge. Note location of blue underdrain is the same in both photos.

EXHIBIT C

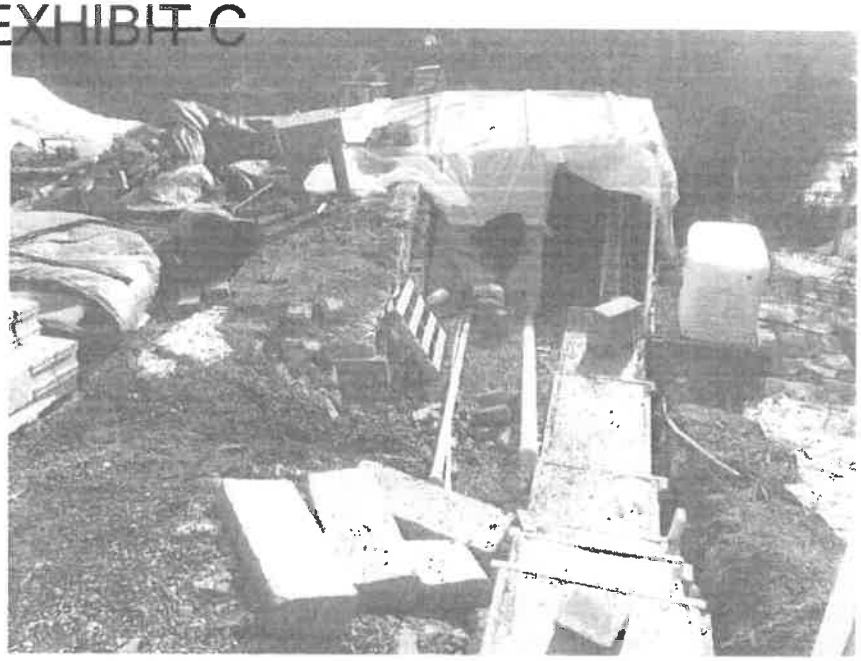


Photo #13 (by others) – Appears to be view looking south (generator on right, drain pipe on left) at stepped footing higher up the hill. Note CMU inside covered area beyond. An enlargement of this photo inside the cover is below (see Photo 14).

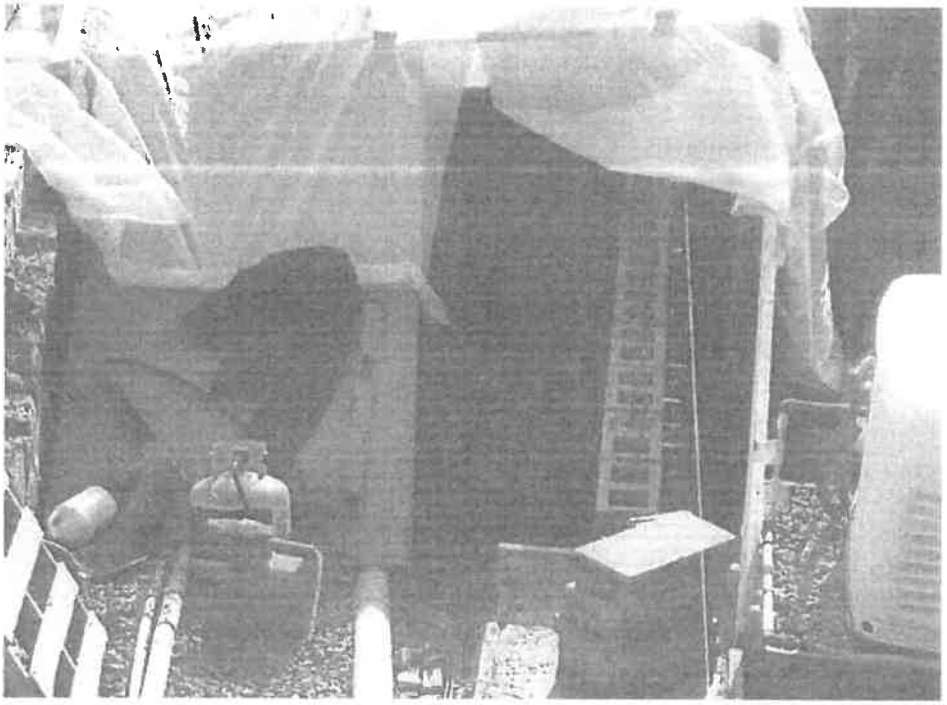


Photo #14 (by others)_ – View looking south. Concrete masonry block appears to have metal tie connectors at right side. Metal tie connectors are often used to connect stone veneer to CMU walls. Also note there appears to be vertical steel reinforcement inside the CMU vertical cells. Most of the bars are near the center of the core, but some are toward the west side of the cell (which reduces strength).

EXHIBIT C

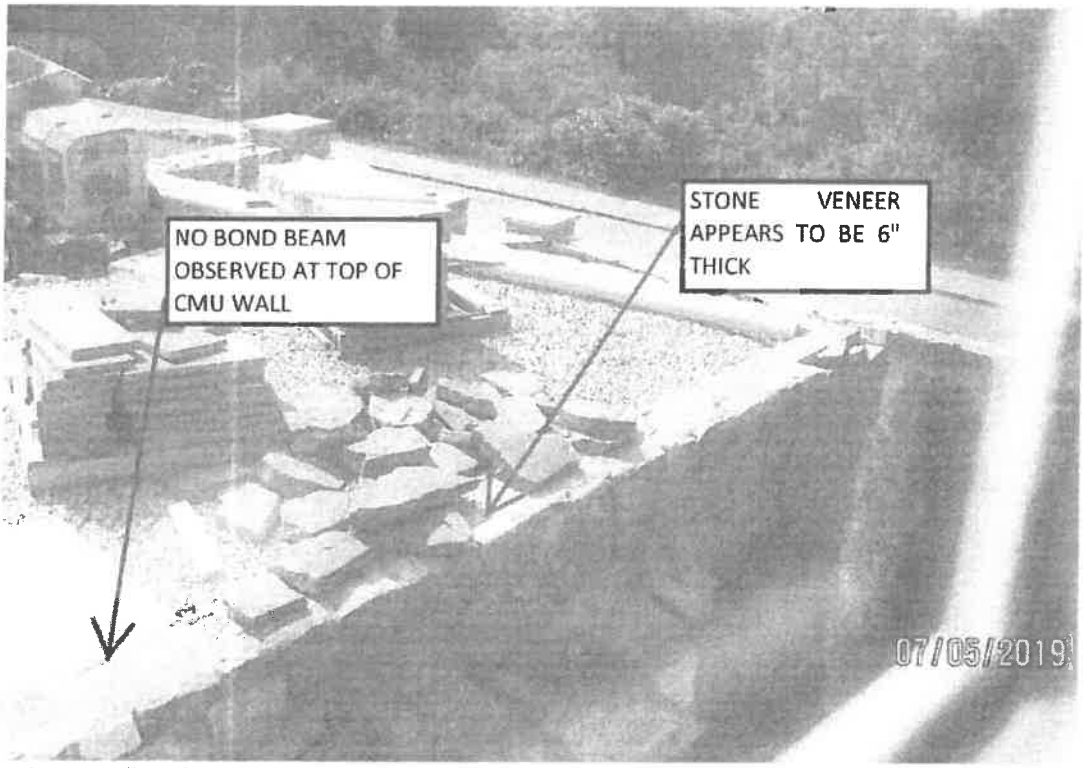


Photo #15 (by others) – Concrete masonry block does not appear to have a bond beam at the top and therefore likely has no horizontal reinforcement.

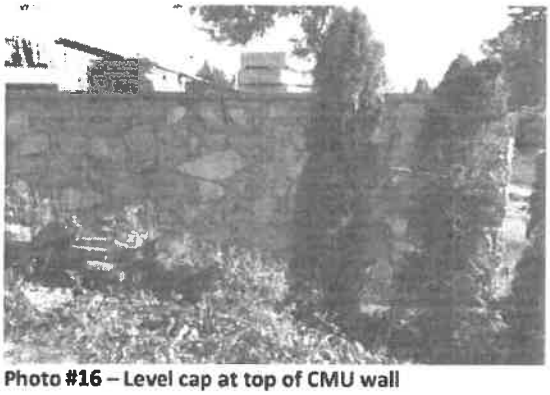


Photo #16 – Level cap at top of CMU wall

Photo #17 – CMU wall extends north of generator

EXHIBIT C

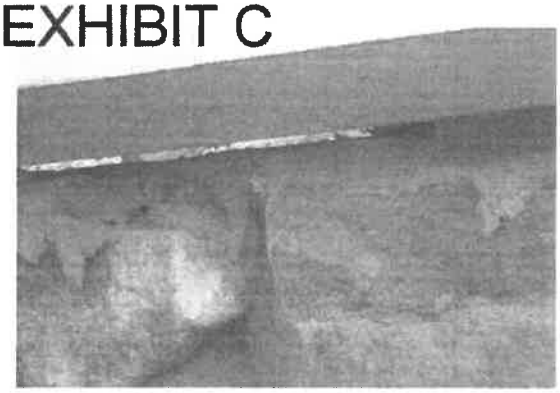


Photo 18 – Air void below CMU wall capstone

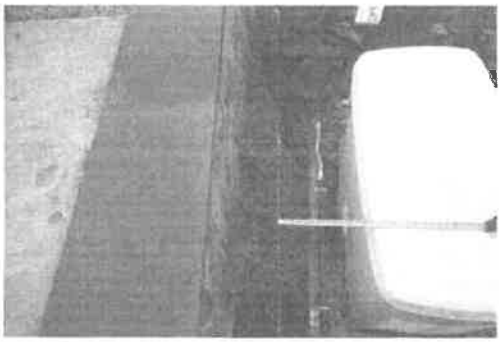


Photo #19 – Method to estimate capstone width

Photo #20 – Fully exposed footing above final grade

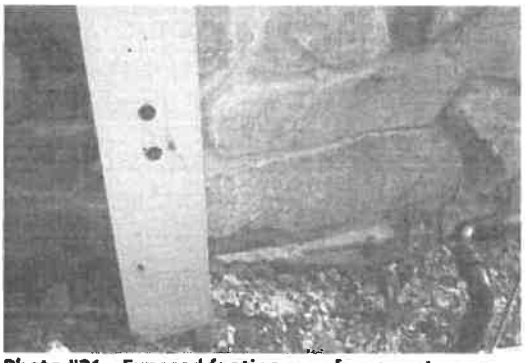


Photo #21 – Exposed footing near fence post

Photo #22 – Estimate wall A-2 distance form road

Photo #23 – Wall A-2 appears to be 5'-6" high

EXHIBIT C

Photo #24 – Enlarged photo of A-2 rubble stone wall – No full width capstone "bonders" observed

Photo #25 – Blind curve in front of 200 Ocean Avenue (reference: Google Earth)

EXHIBIT C

F. ILLUSTRATIONS - PLAN AND SECTIONS

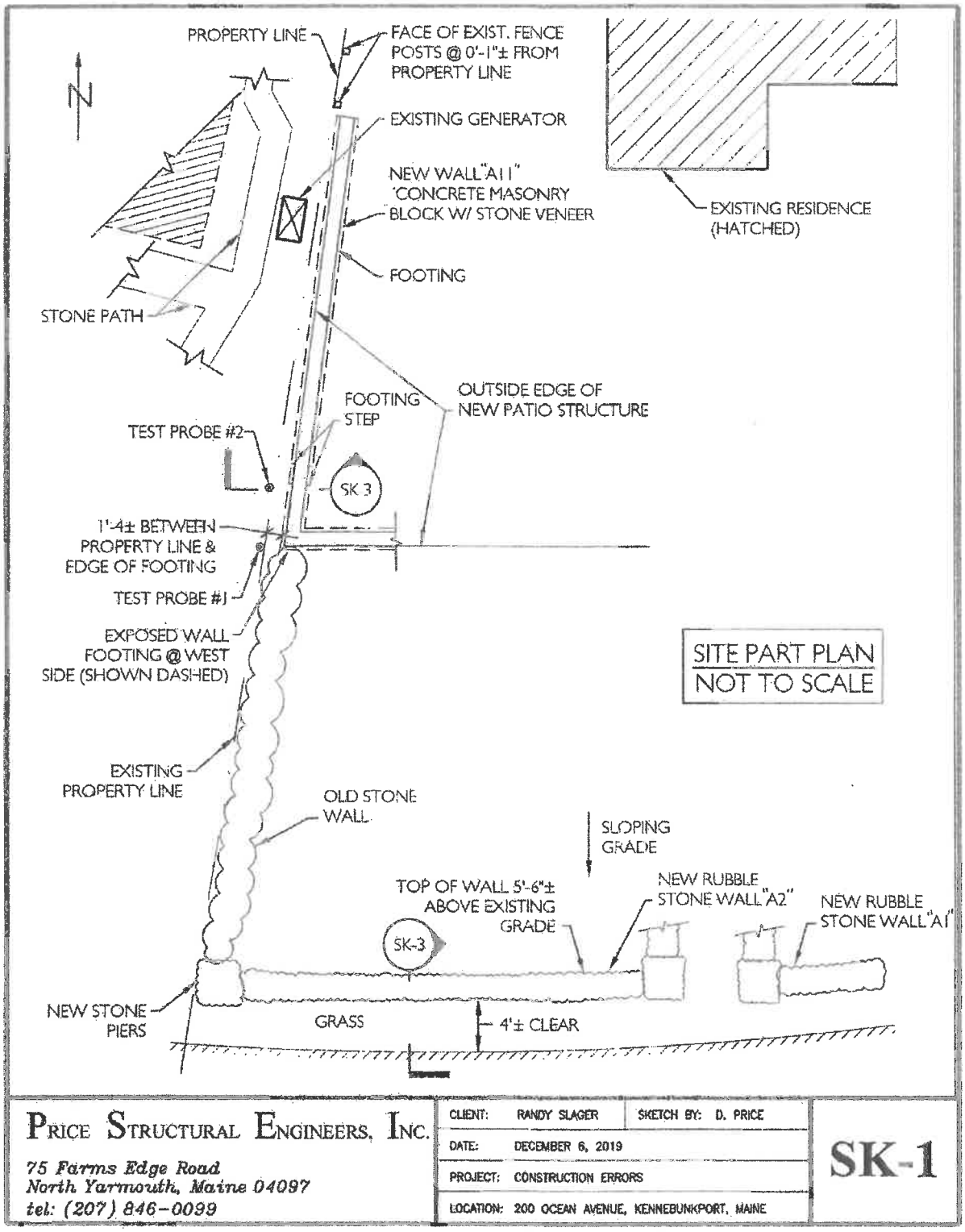
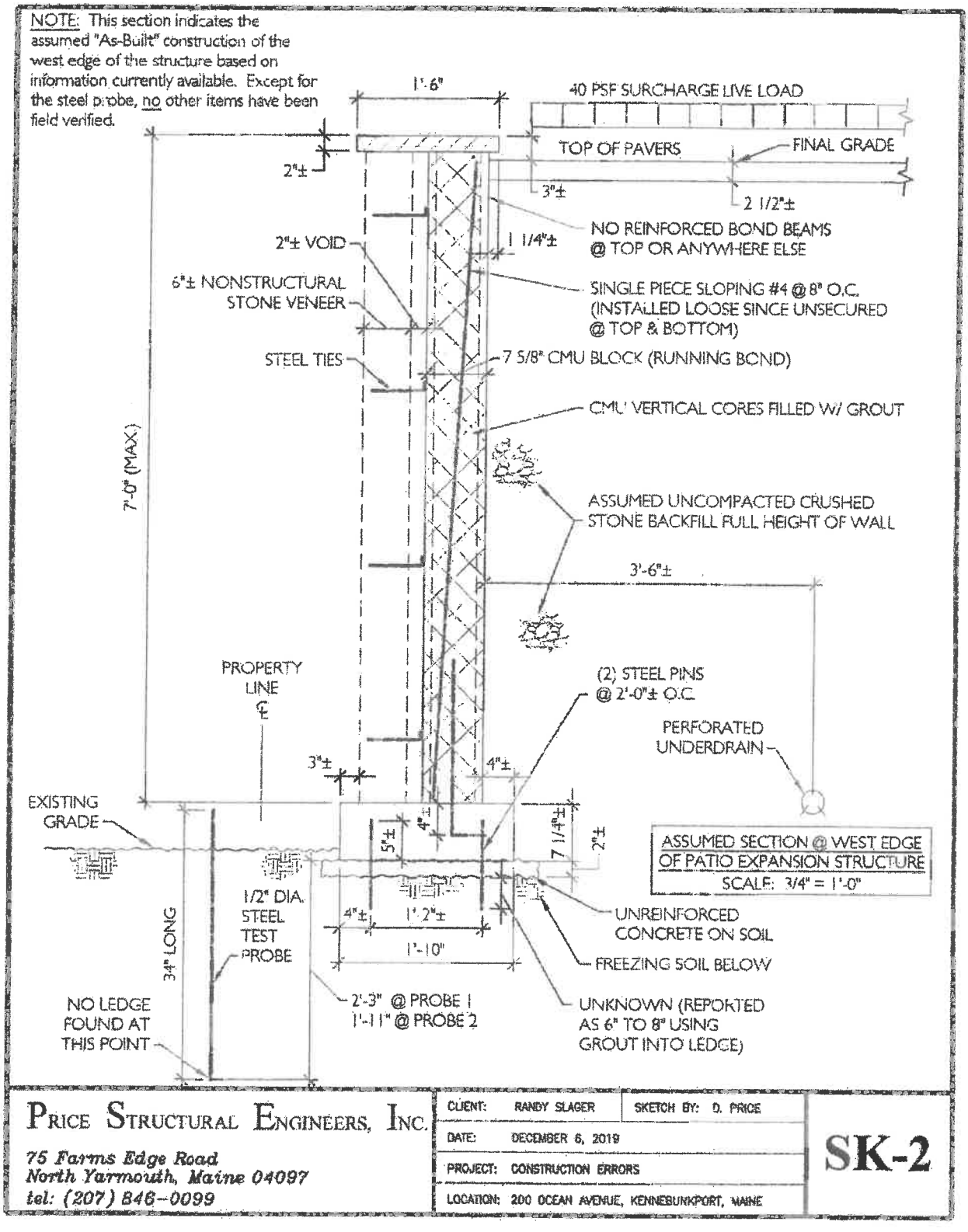


EXHIBIT C

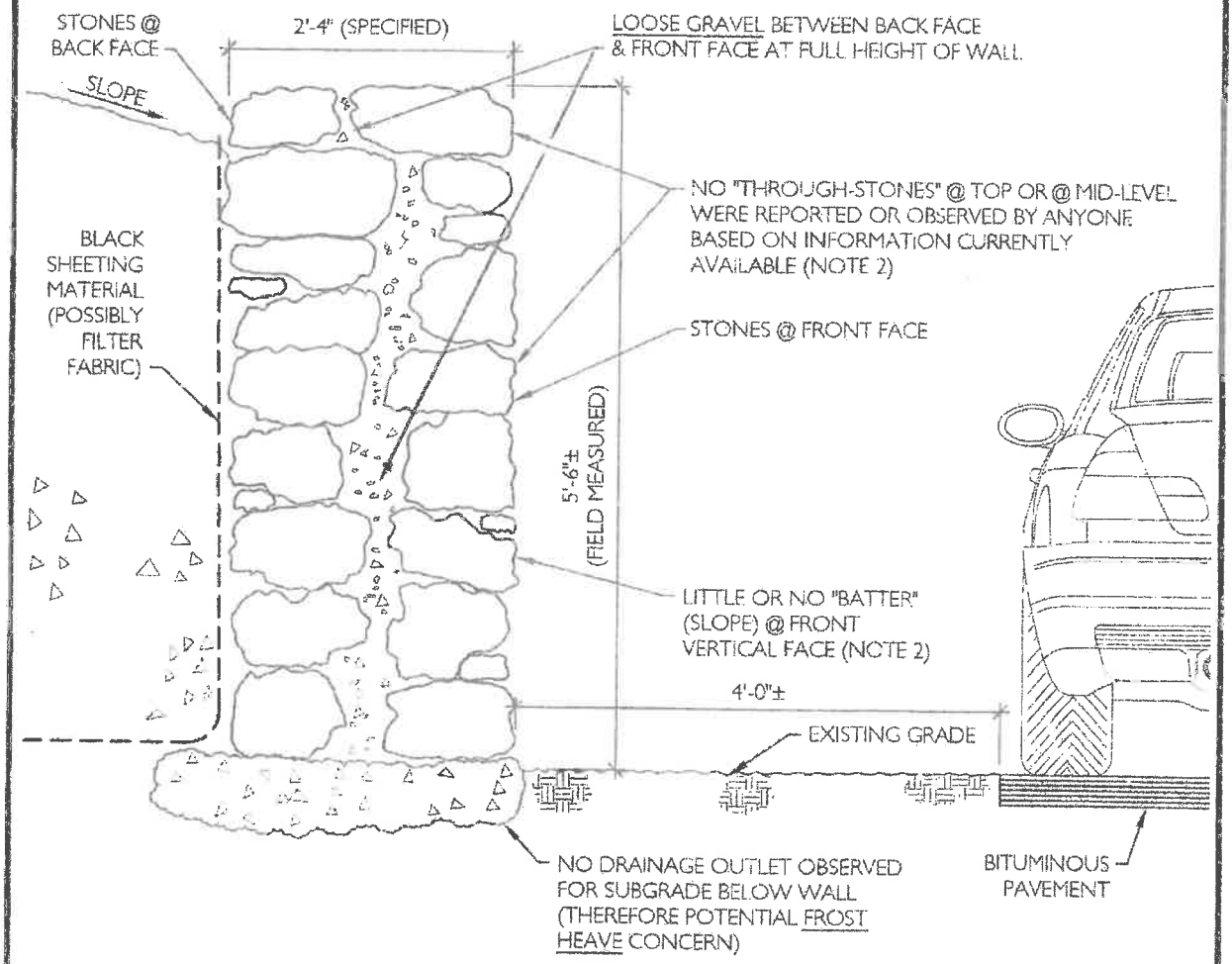


PRICE STRUCTURAL ENGINEERS, INC. 75 Farms Edge Road North Yarmouth, Maine 04097 tel: (207) 846-0099	CLIENT: RANDY SLAGER	SKETCH BY: D. PRICE	SK-2
	DATE: DECEMBER 6, 2019		
	PROJECT: CONSTRUCTION ERRORS		
	LOCATION: 200 OCEAN AVENUE, KENNEBUNKPORT, MAINE		

EXHIBIT C

NOTES: 1. Based on the documents, field measurements, observations, reported information and photographs currently available, this sketch represents what is believed to be the as-built condition of the stone rubble retaining walls labeled "A1" and "A2" adjacent to Shore Road. The concern is that because there are no bonder units ("through-stones") at the top or mid-level, the stones at the front face are acting alone as a wall resisting large lateral loads and frost heave. This is because the stones at the back face provide no lateral support assistance to the stones at the front face.

2. Lack of through-stones and missing battered front slope were reported in the 4/3/19 report by Structural Integrity Consulting Engineers, Inc.



ASSUMED SECTION @ SOUTH WALLS "A1" & "A2" AT ROAD
(SEE NOTE)
SCALE: 3/4" = 1'-0"

PRICE STRUCTURAL ENGINEERS, INC. 76 Farms Edge Road North Yarmouth, Maine 04097 tel: (207) 846-0099	CLIENT: RANDY SLAGER	SKETCH BY: D. PRICE	SK-3
	DATE: DECEMBER 6, 2019		
	PROJECT: CONSTRUCTION ERRORS		
	LOCATION: 200 OCEAN AVENUE, KENNEBUNKPORT, MAINE		

EXHIBIT C

G. DISCUSSION

1. Structural Integrity and Failure

The following is a selected excerpt (in quotes) listed under a Wikipedia website topic labeled, "Structural Integrity and Failure" (underlining added by PSE)

"Structural failure can occur from many types of problems, most of which are unique to different industries and structural types. However, most can be traced to one of five main causes.

1.1 The first is that the structure is not strong and tough enough to support the load, due to either its size, shape, or choice of material. If the structure or component is not strong enough, catastrophic failure can occur when the structure is stressed beyond its critical stress level.

1.2 The second type of failure is from fatigue or corrosion, caused by instability in the structure's geometry, design or material properties.

1.3 The third type of failure is caused by manufacturing errors, including improper selection of materials, incorrect sizing, failing to adhere to the design, or shoddy workmanship. This type of failure can occur at any time and is usually unpredictable.

1.4 The fourth type of failure is from the use of defective materials. This type of failure is also unpredictable, since the material may have been improperly manufactured or damaged from prior use.

1.5 The fifth cause of failure is from lack of consideration of unexpected problems."

2. Unnecessary Gradual and Sudden Failures

There is a high likelihood that if a new structure is designed and built in accordance with the IBC codes, such as those adopted by Kennebunkport, there will be neither a gradual or sudden structural failure.

As described in the previous section, some types of structural failure do not provide a warning before the actual failure takes place. To prevent this, the building code mandates specific safety factors and construction requirements.

Providing a warning is a critical aspect of sound structural engineering design and construction because recognizing a warning is a key aspect for both preventing injuries and perhaps even preventing the imminent failure that is about to occur. Nevertheless, structural failures occur every year where there is no warning.

One of the first warnings that should be taken seriously is whether or not the structure was built in close compliance with the adopted building code. If the code provisions are violated, then the public may be put in a position of substantial risk.

3. Frost Heave

When water undergoes a physical change from liquid to solid form it expands in volume. It is for this reason that glass bottles filled with water will break when placed inside a freezer. The expanding liquid inside imposes forces in the glass which can ultimately break the glass. In a similar fashion, water inside soil below foundation wall footings can expand during cold winters if it freezes and vertically lift a foundation even with a structure on top of it. Most foundation materials, such as concrete, masonry, or stone, are similar to glass in that they are typically rigid materials. Therefore, when the characteristics of soil are not uniform below a foundation wall, the amount of expansion will vary from one portion of the wall to the next which can introduce large internal stresses inside a foundation wall, often capable of causing substantial fractures.

EXHIBIT C

4. Stability Analysis of Dry Stacked Rubble Stone Walls

4.1 Typical Assembly

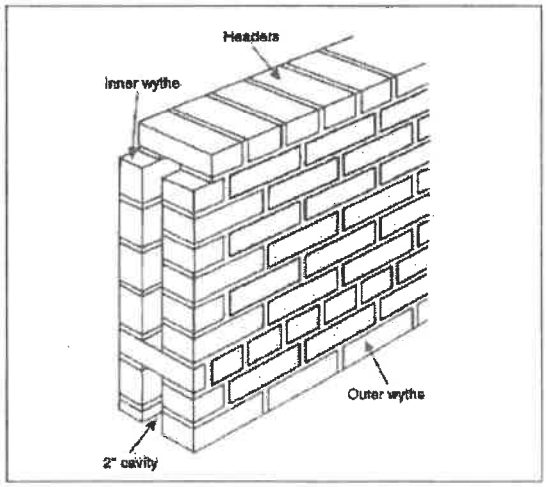
A "Dry-stacked" rubble stone wall is essentially exactly what it sounds like. The walls are constructed using large rocks that are stacked on top of each other with no mortar or other adhesive between any of the joints. Often, the rocks are installed with little or no field fabrication.

Due to the multiple sloped edges at the sides of the rocks, transfer of vertical loads occurs as point loads on a sloped surface, as opposed to uniform loads on a level bearing surface which occurs when using prefabricated masonry materials such as brick. As such, the rubble walls are significantly more unstable than walls constructed using prefabricated masonry materials. Therefore, they are typically limited to a few feet in height due to their high level of inherent instability.

4.2 Building Code Requirements

4.2.1 Bonders (also referred to as "headers" or "through-stones" on Tompkins Detail)

For taller walls, two vertical stone walls can be constructed next to each other but the two walls must then be tied together with long single piece stones at regular intervals which reach from the outside face of one wall and extend to the outside face of the other wall. It is best if these ties also occur at all of the top stones. This feature significantly improves the overall stability of the wall. This concept is also a longstanding feature in brick construction These single piece long stones that tie the two walls together are often referred to as "headers", "bonders", or as Joshua Tompkins indicated, "though-stones" and "capstones" which is a more visual description. The following sketch indicates the concept of headers ("bonders") in masonry construction:



Masonry Header Unit (or "Bonder Unit") Concept
(also applicable to dry-stacked rubble stone masonry)

The long transverse "bonder" stones are critical in rubble stone wall design which is why **bonders are a mandatory code requirement** for rubble stone masonry construction. In the building code they are referred to as "bonder units".
IRC-15 Code Section R606.13.3.2 states, "Rubble stone masonry 24 inches or less in thickness shall have bonder units with a maximum spacing of 3 feet vertically and 3 feet horizontally and if the masonry is a greater thickness than 24 inches shall have one bonder unit for each 6 square feet of wall surface on both sides."

4.2.2 Limiting Soil Stresses

When a rubble stone masonry wall is acting as a retaining wall, there is more backfill on one side than the other so this imbalance can further destabilize the wall. To reduce the potential collapse that might otherwise occur, the code limits the maximum lateral earth pressure that can be applied to the rubble stone wall.

The code mandates the following:
IRC-15 Code Section R404.1.8 states, "Rubble stone masonry foundation walls shall have a minimum thickness of 16 inches, shall not support an unbalanced backfill exceeding 8 feet in height, shall not support a soil pressure greater than 30 pounds per square foot per foot."

4.3 Batter

The Tompkins design called for 1:12 battered sides of the stone retaining walls. The word "batter," as it is used for structures retaining lateral earth pressure, means a sloping surface at either one side of a wall or both. The effect is that the bottom of the wall is wider than the top of the wall improving the wall stability.

The benefit is that the battered sides of the wall increase its resistance to overturning and the wider base is achieved without having to add as much material to the wall as would be necessary if the wall sides were plumb (vertical).

EXHIBIT C

H. ENGINEERING ANALYSIS / REVIEW

1. Relevant Building Codes

   a. It is PSE's understanding that as of January 23, 2018, the town of Kennebunkport formally adopted the 2015 International Residential Code as described on page 2 of the attached "Calculation" chapter.

   b. It is also PSE's understanding that the new construction at 200 Ocean Avenue was to be in conformance with the above referenced code.

   c. On November 6, 2019 David Price briefly spoke with Werner Gilliam, the Director of Planning, as to whether there were any written modifications to these codes made by Kennebunkport that are available and Mr. Gilliam said that there were not any modifications at this time.

2. Wall A-11 Concrete Masonry Block Retaining Wall

   It is PSE's opinion that the following are serious problematic features that appear to pertain to the A-11 CMU wall:

   a. It is PSE's understanding that no written structural design of the CMU wall was provided to the town for review prior to the construction of the current A-11 CMU wall.
      - IRC-15 / R404.1.1 states "Design Required" for masonry retaining walls that support more than 4 feet of unbalanced backfill." For the CMU on this project, the actual unbalanced backfill is almost twice that amount.
      - Without an available written design, it is now difficult to confirm whether or not the wall is "in accordance with accepted engineering practice" as the code mandates or if it is currently a community hazard.

   b. Based on a review of the documents received to date, it is PSE's understanding that no independent verification of the integrity of the "ledge", to which the CMU footing was attached, was performed by the town or anyone else.

   c. It is PSE's understanding that the first time a licensed design professional reviewed the CMU retaining wall design was in late September 2019, seven months after it was completed with most of the essential components, including the ledge, no longer visible.
      It is PSE's understanding that much of the information in the stamped L/HEA September 2019 review letter was information that was reported by the contractor and, hence, could not be independently verified.
      If the "ledge" is compromised, it is of great concern. The letter appeared to indicate that the ledge is critical to the wall integrity for two reasons:
      - The foundation is adequately protected from frost heave, and,
      - Rebar pins properly developed into ledge are a critical component enabling the wall to retain seven feet of crushed stone.

   d. Photographic documentation, provided by Joshua Tompkins Landscape Architecture LLC ("JTLA") in his January 11, 2019 site visit report, contains images of what appears to be footing formwork with soil and crushed stone below the bottom of the footing and no ledge is visible or referenced in the photos.

e. It is PSE's understanding that the only independent direct observation of the ledge's integrity below the CMU wall footing was made by Randy Slager. Mr. Slager stated that there was no ledge below the footing.

f. To try to resolve the discrepancy between what was reported in the September 2019 letter and Mr. Slager's observation, a probe test was performed at two locations, 5 feet apart and +/- 17 inches from the edge of the CMU footing. The results were that the probes extended approximately 23" and 27" below the bottom of the footing and no ledge was found.
This would imply that there was either a very steep ledge slope immediately adjacent to the west side of the footing or that the footing was not bearing on reliable ledge material.

g. If there is no ledge then the CMU footing, the top of which extends above final grade, may be highly vulnerable to frost heave.

h. If there is no ledge, then an analysis using a conventional retaining wall design procedure (attached) indicates that the masonry wall may be highly unstable.

i. The position of the vertical wall reinforcement inside a masonry wall is critical to the flexural capacity of the wall and therefore the amount of backfill it can resist. Placing vertical reinforcement near the center of an 8' wide CMU cell causes high compression stresses in the CMU when large bending forces are applied, as can occur at retaining walls of this size.
An initial analysis of the CMU for this project (attached) indicates that the compression stress in the CMU appears to exceed the allowable masonry compression stress beyond acceptable limits. Further review of embedded reinforcement locations should be performed. Typically, if stresses are more than 5% above code limits they are considered excessive.

j. Further investigation of the ledge pin embedment into the bottom of the concrete footing should also be performed. An initial analysis indicates that there may be inadequate bond length for the embedded pin to reach the required tension capacity inside the footing itself.

3. Wall A-1 and A-2 Rubble Stone Retaining Wall

The following are serious problematic features that appear to pertain to the A-1 and A-2 rubble stone walls:

a. The rubble stone walls were not constructed in accordance with the landscape architect's Detail 15/L-4.0.

b. Of greatest concern is the lack of the code mandated "bonders" (see Section G of this report for discussion). The bonders (specified as capstones and "through-stones" on the project drawings) are the key components that provide stability for rubble walls, particularly those more than a few feet high.

c. Calculations (see attached) indicate that retaining walls A-1 and A-2 are highly unstable at the present time.

d. The A-1 and A-2 rubble stone walls are situated close enough to the existing Ocean Avenue pavement that if an overturning collapse were to occur there is a realistic possibility some of the stones could unexpectedly be in the travel path of vehicles.

e. The potential for a partial collapse of these walls should be taken seriously due to the significant volume traffic on Ocean Avenue. Furthermore, the walls are located near a relatively blind curve so there would be less reaction time if were stones unexpectedly in the travel path of vehicles (photo #25, page 19).

4. Elevated Patio Expansion Structure

According to the IRC-15 code adopted by the town of Kennebunkport, the definition of the word "structure" is, "That which is built or constructed." For something to be "constructed" means that it is an assembly of multiple necessary components. Furthermore, chapter 16 of the IBC-15 code adopted by the town of Kennebunkport is entitled, "Structural Design" and its purpose is to provide parameters necessary to protect the public from structural failures.

The CMU retaining wall is one component of a much larger structure, specifically the "elevated patio expansion structure." This is made evident by each of the following features:

a. The sole purpose of the CMU wall was to be a vital component of the larger "elevated patio expansion structure." A seven foot high retaining wall constructed within inches of the property line would not have been constructed if there was no elevated patio expansion structure.

b. The original top of the CMU retaining wall was sloped; it was later changed to a level profile for the sole purpose of maximizing the "valuable space" of the elevated patio. This is further evidence that the sole purpose of the CMU retaining wall was to provide support to the elevated patio expansion structure.

c. Obtaining "valuable space" was a major priority during the construction of the elevated patio expansion project.
In the 1/11/19 site visit report emailed to Lori Bell by Joshua Tompkins, the landscape architect for the project, he included the following caption below a photo of the 7' high retaining wall footing formwork (reference photo #10, page 14, underling added by PSE for emphasis):

"Forms in place for footing for block wall. Scheduled to be poured next week. The purpose of these walls is to gain valuable space above for the fire pit gathering area."

d. Further evidence that indicates the elevated patio expansion structure is indeed a "structure" is that the full or partial collapse of the CMU would endanger the community.

EXHIBIT C

I. CONCLUSIONS

1. CMU retaining wall designated as "A-11"

Based on the reported information, observed conditions, available documentation, testing, photographs and analysis, PSE is of the following opinions:

1.1 Compelling evidence exists that indicates the footing below CMU wall A-11 may not be bearing on ledge.

1.2 The CMU wall was constructed without first performing a "design in accordance with accepted engineering practice" by a qualified professional. This is a violation of the IRC-15 / Section R404.1.1 code provision.

1.3 Further investigation of the wall should be performed as follows:

1.2.1 Phase 1– Minimum invasive investigation

- **Use diagonal steel probes at the west side of the existing CMU footing (similar to those used previously) to identify if probes can penetrate the substrate underneath the existing CMU wall footings at multiple places selected by PSE (10 places minimum).**

- **Temporally expose the west face of the existing CMU footing down to the bottom of the footing at multiple places selected by PSE (10 places minimum) so that the features of the substrate supporting the existing CMU footings, including the extents of reported ledge, may be observed directly.**

1.2.2 Phase 2 – Perform the investigation summarized in the previously issued 11/26/19 PSE document, "Field Test Summary for Patio Structure and Stone Wall" so that an accurate depiction of the as-built CMU wall structure can be determined and verification of load paths and safety factors identified.

1.4 If the existing CMU footing is not bearing on sound ledge, it is vulnerable to frost heave and is in violation of the IRC-15 / Section R403.1.4.1 code provision.

1.5 If the CMU footing is not adequately pinned directly to sound ledge, it is vulnerable to overturning and is in violation of the IBC-15 / Section 1807.2.3 code provision.

1.6 If the CMU wall footing is not pinned directly to sound ledge, it will likely need to be demolished and rebuilt.

2. Dry-stack rubble stone retaining walls designated as "A-1" and "A-2"

   Based on the reported information, observed conditions, available documentation, testing, photographs and analysis, PSE is of the following opinions:

   a. **Currently there are no photos or other evidence available that indicate the specified full width capstones and "though-stones" ("bonder units") were installed per Detail 15/L-4.0.**

   b. **Retaining walls A-1 and A-2 are highly unstable at the present time.**

   c. **The bonder units ("though-stones") missing from rubble stone walls A-1 and A-2 represent an extreme violation of the IRC-15 / Code Section R606.13.3.2 due to the corresponding loss of wall stability.**

   d. **The investigation summarized in the previously issued 11/26/19 PSE document, "Field Test Summary for Patio Structure and Stone Wall" should be performed so that an accurate depiction of the as-built rubble stone wall structure can be determined.**

   e. **Due to the poor construction of rubble stone walls A1 and A2, their relatively close proximity to Ocean Avenue, and the high volume of traffic, the wall height of walls A-1 and A-2 should be reduced to no more than 3 feet above existing grade, including at the wall end corners.**

EXHIBIT C

J. SCOPE OF STRUCTURAL REVIEW AND LIMITATIONS

The scope of this report does not include a comprehensive evaluation for code compliance or government regulation compliance. However, specific items potentially in conflict with the building code may be noted. Except for the structural components summarized in the site visit descriptions contained herein (existing walls A-1, A-2, and A-11) no other structural components were reviewed.

No attempt has been made by PSE to document every possible condition that may exist regarding the items observed.

It is the responsibility of PSE to observe the conditions which were accessible and relevant to the purpose of the site visits. PSE is not, however, responsible for conditions that could not be seen or were not within the scope of our services at the time of the site visit. This report is not to be considered a guarantee of condition and no warranties are implied.

The opinions expressed within this report are based on visual observations made at the time of the site visit, documentation provided by others, and interviews with those present during the site visits. No disassembly of components was performed.

If additional information is discovered, provided or otherwise becomes available that might alter the conclusions expressed in this report, PSE reserves the right to review, and, if necessary, change some or all of the opinions contained herein.

This report has been prepared for the exclusive use of the client and the client's representatives. No unauthorized use or reproduction of this report, in part or as a whole, shall be permitted without prior written consent from the client or the client's designated representatives.

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Tel: 207-846-0099
Fax: 207-846-1633

Project: 200 Ocean Ave — Kennebunkport
Subject: Wall A-II/CMU Retaining Wall — Sheet: 1 of
Date: December 2019 — Job #: 132-19
Designed by: DJF — Checked by:

Wall A-II (CMU Retaining Wall)

I. Design Criteria — Stability Check

A. Assumptions

1. CMU wall designed as Wall "A-II" was constructed as depicted on attached SK-2 (footing not bearing on ledge)
2. Final grade is level and at -2" below top of wall
3. Geotechnical parameters (assumed)
   a) Friction angle (ϕ)
   The recommended friction angle selected Ms. Ballis engineers (SICEI and M²SE) was ϕ=35°. PSE does not necessarily agree with this angle but the fact is the only way to know is for a qualified geotechnical engineer to expose and review the existing backfill and make a determination. Therefore, for consistency ϕ=35° will be assumed.
   b) Backfill unit weight: γ = 110 pcf (same as owners M²SE engineer see discussion above regarding geotechnical engineer)
   c) Assumed sliding friction factor = 0.4 (on soil)
   d) No hydrostatic pressure (clean backfill & underdrain)

Specified by Geotechnical Engineers on previous PSE projects →

B. Requirements:

1. Codes: 2015 IRC & 2015 IBC
2. Soil surface surcharge load
   a) Use 40 psf live load (same as residential floor live load)

IBC 2015 states live load is a "nominal load" and must be included.

3. Factors of Safety (stability)
   a) Overturning: S.F. = 1.5 minimum
   b) Sliding: S.F. = 1.5 minimum

IBC 2015 Code Reference Section 1807.2.3

4. Frost depth = 4'-0", as stated by Werner Gilbreth, CFM (Director of Planning and Development for Kennebunkport) during a conversation with David Ballis on 11/6/19.

IRC 15/R403.1.4.1 Frost Protection Required

EXHIBIT C

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2/

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Code Enforcement / Planning

Please contact Lisa Harmon at 207-967-1605 for all scheduling and allow 24-48 hours notice. Please be advised that any messages sent either through voicemail or by email to the Assistant Code Enforcement Officer directly should not be considered a confirmed appointment. If no return call or email is received, please contact the office directly at 207-967-1605.

Please be advised on January 23, 2013 the 2015 Building Codes went into effect. This includes the 2015 International Residential Code (IRC), 2015 International Building Code (IBC), the 2015 International Existing Building Code (IEBC). The 2009 IECC (Energy Code) will continue to be used. Because of the above changes, we no longer accept plans with 2009 references.

Staff Contacts

[redacted]	Director of Planning & Development	(207) 967-1624
[redacted]	Administration	(207) 967-1306
[redacted]	Assistant Code Enforcement Officer	(207) 967-1617
[redacted]	Assistant Code Enforcement Officer	(207) 967-1602

Frequently Asked Questions

What is the code for stair heights and risers?

Do I need a permit?

Do I need inspections during ...

What is the requirement for Smoke Detectors?

Are all forms available online?

News & Announcements

RE: [redacted] NEW PLANNING ...

Community Survey - [redacted]

Code Enforcement / Planning Calendar

S	M	T	W	T	F	S
					1	2
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

All upcoming events

EXHIBIT C

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Project: 200 Ocean Ave
Subject: Wall All / Select
Date:
Designed by:
Sheet: 3 of
Job #: 132-19
Checked by:

I. Design Criteria

B. Requirements (cont.)

5. Engineered Design at Retaining Walls

IRC-15/R404.1.1 - Design required

Quote from code:

"Concrete or masonry foundation walls shall be designed in accordance with accepted engineering practice where:"

2. Walls supporting more than 48 inches of unbalanced backfill that do not have permanent lateral support at the top or bottom."

6. Select Wall Height ("h") above footing for wall section analysis

a) The wall height varies but largest forces occur where wall is tallest.

b) Nevertheless, there is a wall corner at the south end which provides lateral support to some portions of the wall. The beneficial restraining effect of the corner is reduced at wall areas further away from the corner.

c) Since it appears no horizontal reinforced bond beams were installed, the wall must rely on horizontal shear in the masonry alone for transferring effects of corner restraint. The wall is unreinforced for horizontal shear stresses, so cracks could very well exceed code limits.

d) Also, without ledge, frost heave will induce additional significant shear stresses to CMU wall.

e) After the first footing step, the wall height is +/- 6' above footing. This height occurs at +/- 7' north of south corner. Use h=6'-6"

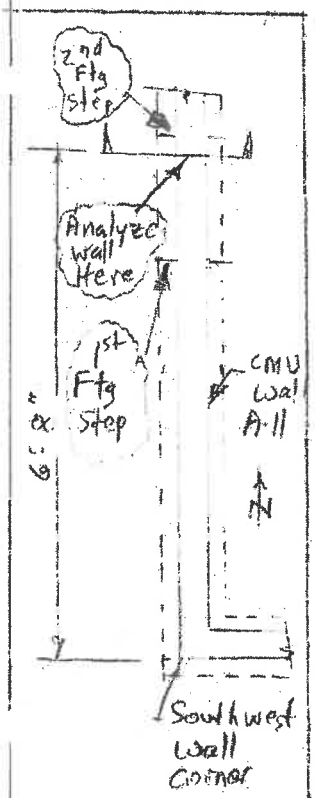

EXHIBIT C

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Project: 200 Ocean Ave
Subject: Wall A-11 (CMU Ret. Wall, cont.)
Date:
Designed by:
Sheet: 4 of
Job #: 13219
Checked by:

Wall A-11 (CMU Ret. Wall, cont.)

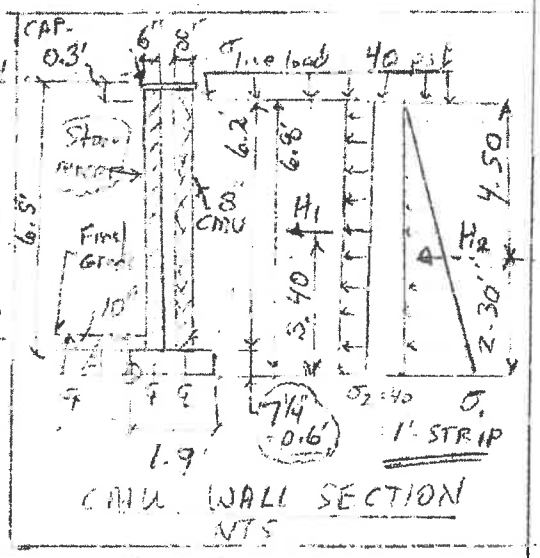
II Analysis

∴ CMU Wall Stability Review

For 1' strip,

H_1 = Lateral load due to live load surcharge

$H_1 = 6.8' (40 psf) = 272^{lb}$ per 1 strip



CMU WALL SECTION
NTS

(Passive Pressure) 10" +/- deep soil @ front of wall will reduce sliding by passive pressure. $\phi = 35°$ $K_p = 3.7$

$\sigma_p = K_p(\gamma)h = (3.7)(110 pcf)(.83') = 338$ psf

1' strip Force: $\frac{1}{2}(337)(.83') = 140^{lb}$

1. Overturning Moment & Sliding Load

a) IF footing is not on ledge then the pins extending below the footing must be considered ineffective since no other information is available. Making further assumptions about the pins without thorough field verification would be inappropriate and irresponsible.

1' strip b) Vertical Masonry Loads on footing (Reference: ASCE 7-10/Table C3-2)

- Top Bluestone Cap ($\gamma = 100$ pcf)

  Wgt = $\frac{2}{12} \times \frac{18"}{12} \times 1.0' (100 pcf) = 25^{lb}$

- 6" stone veneer = $\frac{6}{12} \times 6.30' \times 1' \times (100 pcf) = 315^{lb}$

- 8" CMU (Fully grouted, @ 130 pcf density) = $6.30' \times 73 psf = 523^{lb}$

- 7" x 1'-10" conc Ftg $\frac{7}{12}(1.83) \times 1.0 \times 150 = 161^{lb}$

- Sum = 25 + 315 + 523 + 161 = 1024^{lb} (@ 1' strip)

- Soil column: .3' (6.30') (130 pcf) = 246^{lb} (right side of Ftg)

Since info is limited, assume centroid of masonry force acts at Footing ℄:

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Project: 227 Ocean Ave. | Sheet: 5 of
Subject: Wall A-11 / CMU (cont.) | Job #: 19-19
Date: Dec. 2019 | Checked by:
Designed by: AJB

Wall A-11 / CMU (cont.)

c) Lateral load on wall (A-11 load "H" = Lateral Earth Pressure)

① Calculate K_a for $\phi = 35°$ & level backfill surface

$\phi = 35°$ $\cos(\phi) = \cos(35) = .819$

$\beta = 0.0°$ $\cos(\beta) = \cos(0) = 1.0$

$$K_a = (\cos\beta)\left[\frac{\cos\beta - \sqrt{\cos^2\beta - \cos^2\phi}}{\cos\beta + \sqrt{\cos^2\beta - \cos^2\phi}}\right]$$

$\sqrt{(\cos^2\beta) + (\cos^2\phi)} = \sqrt{(1)^2 - (.219)} = .5736$

$$K_a = 1.0\left[\frac{1 - .5736}{1 + .5736}\right] = \left[\frac{.4264}{1.5736}\right] = .271$$

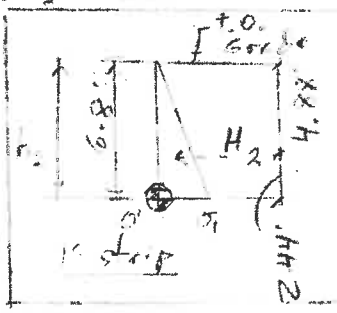
Analyze 1' strip of wall

② $\sigma_1 = K_a \gamma h_1$

$= .271\ (110\ pcf)\ 6.8'$

$= 203\ psf$

③ $H_2 = \frac{1}{2}(h_2)(\sigma_1) = \frac{6.8'(203\ psf)}{2} = 690\ lb$



Sliding load - H_{TOTAL} = H_1 (live) + H_2 (soil) = 272 lb + 690 − 140 lb (passive pressure) = 822 lb

d) Overturning Moment

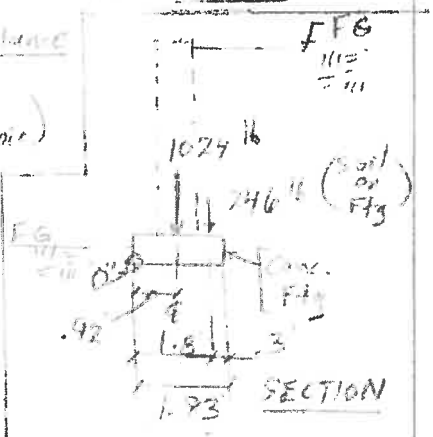
$M_{OT} = 3.4'(H_1) + 2.3'(H_2) = 3.4(272) + 2.3'(690) = 2512\ ft\text{-}lb$

2. Resisting Moment & Sliding Resistance

a) ASD Load "D" (uniformed psf
Basic load Comb.
w/o wind or seismic)

b) $M_R = .92\ (1024\ lb) + 1.8'(246\ lb) = 1384\ ft\text{-}lb$

c) Sliding resistance $= .4(1024 + 246) = 508\ lb$



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Project: 200 Ocean Ave.
Subject: Wall A-11 Stability
Date: 4 Dec 2019
Designed by: DAP
Sheet: 6 of
Job #: 132-19
Checked by:

Wall A-11/CMU (cont.)

II Analysis (cont.)

Stability Review

3. Check Safety Factors (1.5 minimum)

a) Safety Factor for resisting overturning

Note: A safety factor = 1.0 means that the items being reviewed may not move but that there is little or no remaining safety to prevent sudden movement and instability. A safety factor of 1.0 does not mean an object safe or stable. This is because the 1.5 requirement takes into account the many uncertainties that pertain to the analysis and therefore the 1.5 requirement is a code mandate.

"OT" = Overturning

Overturning: $SF_{OT} = \frac{M_R}{M_o} = \frac{1384}{2512} = 0.55 < 1.50$

⇒ Extreme code violation

b) Safety Factor for resisting sliding

"SL" = Sliding $SF_{SL} = \frac{H_{RESIST.}}{H_{Lateral}} = \frac{508\ lb}{822\ lb} = 0.62 < 1.50$

⇒ Extreme code violation

III. CMU Wall Stability Conclusion

Based on conventional structural engineering methodology for retaining analysis and design, the existing CMU retaining wall A-11 is in extreme violation of the adopted building code

EXHIBIT C

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Project: 200 Ocean Ave		Kennebunkport
Subject: Wall A II / Strength		Sheet: 7 of
Date: December 2019		Job #: 132-19
Designed by: DAP		Checked by:

Wall A-II (CMU Retaining Wall)

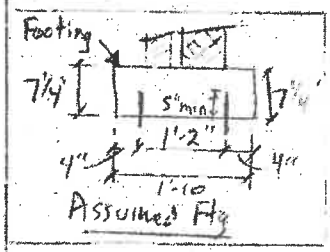
Strength Check

- Masonry Analysis
- Reinforcement Development Length

I. Design Criteria

A. Assumptions

1. Concrete masonry f'm = 1500 psi
2. CMU wall designated as wall "A II" was constructed as depicted on attached sketch SK 2
3. Steel reinforcement
   a) ½ diameter (#4)
   b) Fy = 60 ksi
   c) Vertical bars at "x" oc
   d) No horizontal bars
   e) Vertical bars centered in CMU wall
4. CMU width = 7 5/8"
5. All CMU cells grouted
6. Grout f'c = 2500 psi
7. Backfill: γ = 110 pcf Ka = 0.271
7. Concrete footing
   a) f'c = 3000 psi
   b) Dimensions = 1'-10" wide x 7" tall (2x8 form)
   c) Bottom pins @ 4' from edge of footing
   d) Bottom pins extend 5" (min) into bottom of ftg.
   e) Form depth = 7¼"



B. References

1. Masonry Code: ACI 530-13/ASCE 5-13
2. Masonry Designers Guide 2013

EXHIBIT C

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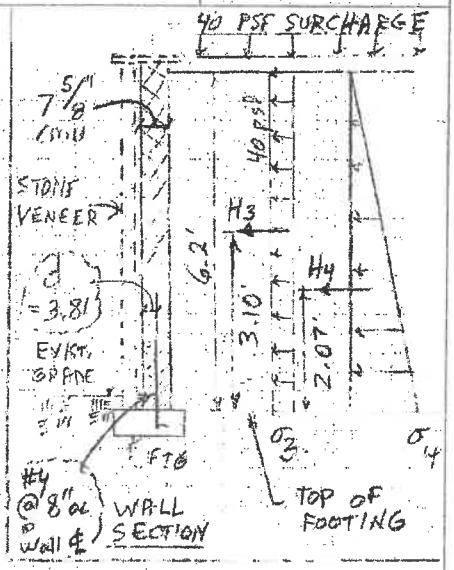
Project: 200 Ocean Ave	Kennebunkport
Subject: D.I.I. CMU Strength	Sheet: 8 of
Date: December 2019	Job #: 132-19
Designed by: DAP	Checked by:

Wall A-11 (CMU Retaining Wall)



II Analysis

A. CMU Strength Check

1. Forces (unfactored)

For 1' strip

- H_3 = Lateral load from live load surcharge on ground surface
- H_4 = Lateral earth pressure load

- $\sigma_3 = 40\ psf$

  $H_3 = 40\ psf\ (6.2) = 248\#$
- $\sigma_4 = K_a(\gamma)(h) = .271(110\ pcf)6.2' = 185\ psf$

  $H_4 = \frac{1}{2}(185\ psf)(6.2) = 574\#$

2. Parameters

- d = distance between compression face and reinf. ℄

  Reinforcement @ CMU wall ℄

  $d = \frac{7.625"}{2} = 3.81"$ $\quad b = 12"$ (1' strip)
- #4 bar area = 0.20 in²
- For #4 @ 8": $A_s = \frac{12"}{8"}(0.20\ in^2) = 0.30\ in^2/ft$ ← A_s for 1' strip
- $E_m = 900\ f'm = 900(1500\ psi) = 1350{,}000\ psi$ ← cmu
- $n = \frac{E_s}{E_m} = \frac{29{,}000\ ksi}{1{,}350\ ksi} = 21.5$
- $p = \frac{A_s}{bd} = \frac{0.30\ in^2}{12"(3.81")} = .00656$

$np = (21.5)(.00656) = 0.141$

- $k = -(np) + \sqrt{n^2p^2 + 2np} = -.141 + \sqrt{(21.5^2)(.00656)^2 + 2(.141)}$

  $= .4084$
- $j = 1 - \frac{k}{3} = 1 - \frac{.4083}{3} = 0.8639$

- $kd = .4084(3.81") = 1.556"$
- $jd = .8639(3.81") = 3.29"$

EXHIBIT C

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Project: 200 Ocean Ave		Kennebunkport	
Subject: A-11 / CMU strength		Sheet: 9 of	
Date: December 2019		Job #: 132-19	
Designed by: DAP		Checked by:	

Wall A-11 (CMU Retaining Wall)

II. Analysis

A. Strength Check

3. Allowable Stresses (ASD design)

Reference: ACI 530-13/ASCE 5-13 - "Building Code Requirements for Masonry Structures"

The above masonry code is referenced in the 2015 IRC under Part IX "Referenced Standards" / Chapter 44

ACI 530) Section 8.3.3 (Reinf. masonry)

a) Steel: For grade 60 reinf., Max tensile stress in reinf shall not exceed 32,000 psi

b) Masonry: Section 8.3.4.2.2

Max compressive stress for flexure:

$F_b = 0.45 f'_m = 0.45(1500\ psi) = 675\ psi$

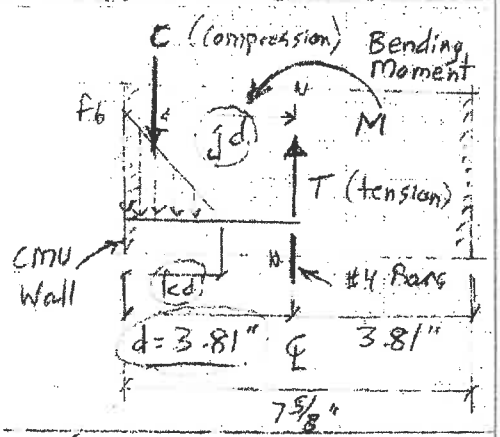
4. Analysis

a. Bending Moment

$M = 3.10'(H_3) + 2.07'(H_4)$

$= 3.1'(248\ lb) + 2.07'(574\ lb)$

$= 1957\ ft\text{-}lb$



b. Steel Stress $T = C$

$T = A_s(f_s)$

$M = (jd)(T) = (jd)A_s(f_s)$

$f_s = \frac{M}{(jd)A_s} = \frac{1957\ ft\text{-}lb(12)}{(3.29")(0.3\ in^2)} =$

$= 1983\ psi = 23,800\ psi < 32,000\ psi$ ok

c. CMU Stress

$C = \frac{b(kd)(f_b)}{2} = A_s(f_s) = \frac{M}{(jd)} = T \Rightarrow \frac{b(kd)(f_b)}{2} = \frac{M}{(jd)}$

$f_b = \frac{2(M)}{(b)(kd)(jd)} = \frac{2(1957\ ft\text{-}lb)(12)}{(12")(1.556")(3.29)} = 765\ psi > 675\ psi$

Overstress $= \left[\frac{765-675}{675}\right]100\% = 13\%$ overstress | EXCESSIVE CODE VIOLATION

EXHIBIT C

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Project: 200 Ocean Ave | Kennebunkport
Subject: Ftg Dowel Bond | Sheet: 10 of
Date: December 2019 | Job #: 132-19
Designed by: DAP | Checked by:

Wall A-11 (CMU Retaining Wall)

II Analysis

B. Footing "Pin" Development Strength Check

1. Factored forces

↳ For reinforced concrete design

Assume max spacing of pins along length of footing ≤ 20" oc (must field verify)

1' strip • From previous calcs, overturning moment at bottom footing: $3.4'(272^{\#}) + 3'(690) = 2512'^{\#}$

Live Load ("L") | Lateral Earth Pressure ("H")

• IBC 15 Load Factors for strength design ("Mat Ass't")

IBC Eqn 16-2 : $1.6(H) + 0.5(L)$

Earth pressure ↑ | ↑ Load factor for residential live load

Factored overturning moment:

$M_u = 1.6[3'(690'^{\#})] + 0.5[3.4'(272^{\#})]$

$= 2539'^{\#} + 463'^{\#} = 3002'^{\#}$ @ 1' strip

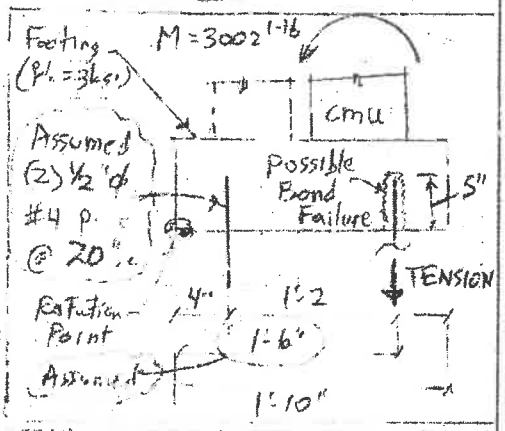
Factored Tension

Factored Tension @ 1' strip

$\text{Tension/ft} = \frac{3002'^{\#}}{1.5'} = 2.0^{k}$ @ 1' strip

For bars at 20" oc

Tension @ Bar: $\frac{20}{12}(2^{k/ft}) = 3.33^{k}$



** Must field verify (if possible):

- Min height of pins
- Max spacing of pins parallel to footing
- Min distance between pin at and west end of Ftg.
- f'c

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Project: 200 Ocean Ave	Kennebunkport
Subject:	Sheet: 11 of
Date: December 2019	Job #: 132-19
Designed by: DAP	Checked by:

Wall A-11 (CMU Retaining Wall)

II Analysis

B. Footing "Pin" Development Length

2. Reinforcement development length

Reference ACI 318-14th Ed. / Section 25.4

No hooks

- l_d available appears to be ± 5" (must be field verified)
- f'_c = 3000 psi (assumed) normal wgt
- bar = #4 (reported) *Assume no epoxy coating

1 Reference ACI Table 25.4.2.2

For #6 & smaller bars

$$l_d = \left[\frac{f_y \psi_t \psi_e}{25 \lambda \sqrt{f'_c}}\right] d_b$$

- f_y 60000 psi (assumed but not yet verified)
- ψ_t = 1.0
- ψ_e = 1.0 (no epoxy coating)
- λ = 1.0 (normal wgt)
- f'_c = 3000 psi (assumed but not yet verified)
- d_b = 0.5"

$$l_d = \left[\frac{60000(1)(1)}{25(1)\sqrt{3000}}\right](.5") = 21.9"$$

Tensile strength of bar: $\phi(A_s)(f_y) = .9(.20 in^2)(60 ksi) = 10.8 k$

Capacity/inch = $10.8 k / 21.9" = 0.5 k/inch$

Approx. Bond Capacity = $5"(.5 k/in) = 2.5 k < 3.33$ n.g.

Overage = $\frac{3.33 - 2.5}{2.5}(100\%) = 33\%$ over | Excessive Code Violation

EXHIBIT C

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Project: 200 Ocean Ave	Kennebunkport
Subject:	Sheet: 1 of
Date: December 2019	Job #: 132-19
Designed by: DAP	Checked by:

Wall A-2 (Rubble Stone Retaining Wall @ Ocean Ave)

I. Design Criteria — Stability Check

A. Assumptions -

1. Rubble stone wall A-2 was constructed as depicted on attached sketch K-3. No headers ("bonders" or "through stones") installed at either middle level or at top of wall since none were observed in any of the project photographs. The bonder units specified @ 3' o.c. at middle and Tompkins detail and capstone headers typical full length of wall all appear to be missing.
2. Wall is 2'-4" wide (per M²SE 4/24/19 calc).
3. No batter at rear face (per 4/3/19 SICFI letter)
4. Wall is 5'-6" high (per PSE site visit) and backfill at 6" below top of wall (per PSE site visit).
5. Slope of backfill = 15°
6. Wgt of backfill = 110 pcf
7. Avg. wgt. of stone wall = 120 pcf
9. ϕ = 35° (possibly too high due to voids) *

Use same * parameters as M²SE to be consistent (See note below)

10. Sliding coef. = 0.47 (approved by geotech engr on other projects)
11. Safety factors: Overturning = 1.5 ; Sliding = 1.5 ; per IBC
12. Soil is 6" below top of wall (assumed until field measure)

* Existing soil should be reviewed by geotechnical engineer to obtain more applicable values.

EXHIBIT C

Price Structural Engineers, Inc.
75 Farms Edge Road
North Yarmouth, ME 04097
Tel: 207-846-0099
Fax: 207-846-1633

Project: 200 Ocean Ave	Kennebunkport
Subject:	Sheet: 2 of
Date: December 2019	Job #: 132-19
Designed by: DAD	Checked by:

Wall A-2 stability

II. Methodology

PSE received and reviewed (2) sets of calcs for the rubble stone walls for this project. PSE does not agree with the approach taken by these calcs because the "As-Built" wall does not appear to have been constructed in conformance with the Tompkins 15/L-4.0 detail. Many pictures of the rubble walls were taken during construction. Except for one photo, none of the other pictures show "through stones" (bonders) at mid-level or at the top as specified by Tompkins. The only exception is page 5 of the 4/3/19 SICE site visit letter which appears to show one mid-level bonder in the 4'-foot long A-2 wall, which is insufficient. As a result the inner & outer walls are essentially independent and will now need to be modelled that way to check stability.

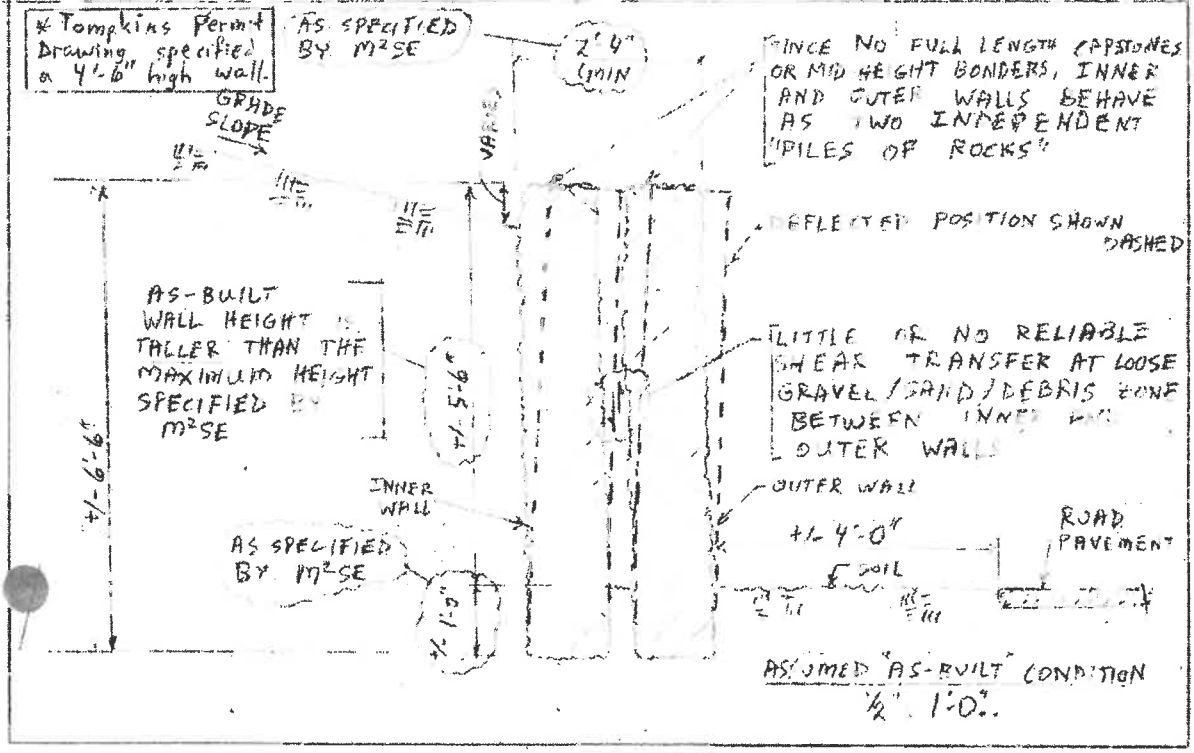


EXHIBIT C

Price Structural Engineers, Inc.
75 Farms Edge Road
North Yarmouth, ME 04097
Tel: 207-846-0099
Fax: 207-846-1633

Project: 200 Ocean Ave	Kennebunkport
Subject:	Sheet: 3 of
Date: December 2019	Job #: 132-19
Designed by: DAD	Checked by:

III Analysis

A. Calculate K_a for sloped backfill

$$K_a = \cos\beta \left[\frac{\cos\beta - \sqrt{\cos^2\beta - \cos^2\phi}}{\cos\beta + \sqrt{\cos^2\beta - \cos^2\phi}} \right] \qquad \beta = 15^\circ \quad \phi = 35^\circ$$

$\cos\beta = \cos(15) = 0.966$

$\cos^2\beta = \cos^2(15) = .933$

$\cos^2\phi = \cos^2(35) = .671$

$\sqrt{.933 - .671} = .5119$

$K_a = .966 \left[\frac{.166 - .5119}{.966 + .5119} \right] = \underline{0.30}$ (for lateral component)

B. Calculate K_p for passive pressure @ front of wall

(Level grade at front of wall $\Rightarrow \beta = 0^\circ$)

$\cos\beta = \cos(0) = 1.0$

$\cos^2\beta = 1.0$

$\cos^2\phi = 0.671$

$\sqrt{1.0 - .671} = .5736$

$K_p = 1.0 \left[\frac{1 + .5736}{1 - .5736} \right] = \underline{3.40}$

EXHIBIT C

Price Structural Engineers, Inc.
75 Farms Edge Road
North Yarmouth, ME 04097
Tel: 207-846-0099
Fax: 207-846-1633

Project: 200 Ocean Ave	Kennebunkport
Subject:	Sheet: 4 of
Date: December 2019	Job #: 132-19
Designed by: DAP	Checked by:

Wall A-2 Stability (front)

III. Analysis

A. Loads

γ backfill = 110 pcf

γ stone = 120 p.c.f

1' strip

W = 1.1 (6.5) (.12 kcf)

= .858 k (for one wall)

$\sigma_a = K_a (\gamma) h$

= 0.30 (.110) (6.0')

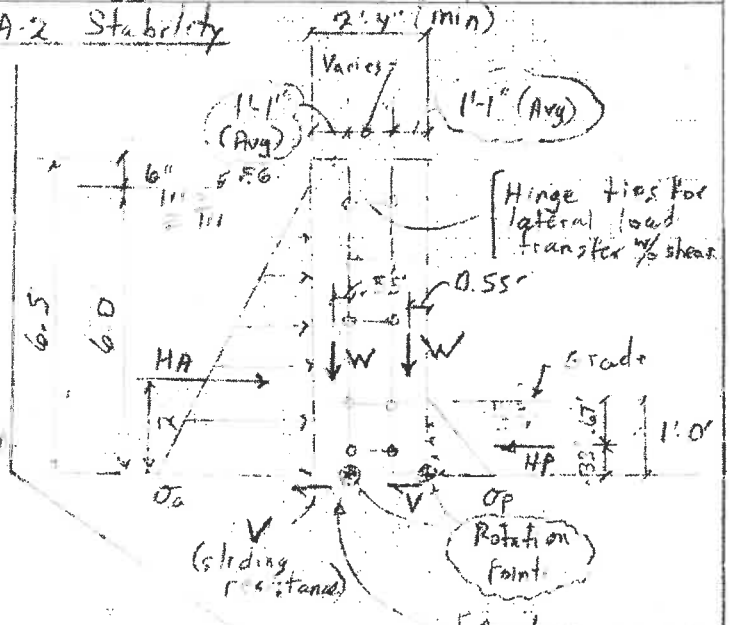
= 0.198 ksf

$H_{a_{TOT}} = \frac{1}{2}(\sigma_a)(h) = \frac{.198}{2}$ · 6 = 0.60 k

Each wall resists half = $H_{a/wall} = \frac{.6}{2} = .30$ k/wall

$\sigma_p = K_p \gamma h = 3.4 (.110) 1' = .374$ ksf

$H_p = \frac{1}{2}(\sigma_p) h = \frac{.374 (1)}{2} = .187$ k $H_{p/wall} = \frac{.187}{2} = .094$ k



Analysis assumes Grade below wall corner has sufficient bearing capacity to support wall weight at or near rotation points

B. Overturning Moment

1) M_o - For each wall $M_o = 2'(.36$ k/wall$) = 0.72$ ft-k/wall

2) Resisting Moment

For each wall, $M_R = .55 (.858^k) + .33 (.094^k) = .50$ ft-k/wall

3) Factor of safety to resist overturning

$SF = \frac{M_R}{M_o} = \frac{0.50}{.72} = 0.70 < 1.5$

Extreme instability w/ regard to overturning

EXHIBIT C

Price Structural Engineers, Inc.
75 Farms Edge Road
North Yarmouth, ME 04097
Tel: 207-846-0099
Fax: 207-846-1633

Project: 200 Ocean Ave	Kennebunkport
Subject:	Sheet: 5 of
Date: December 2019	Job #: 132-19
Designed by: DAP	Checked by:

Wall A-2 Stability (cont.)

III Analysis

C- Sliding

1) Applied sliding force (per wall)

H_a/wall = 0.30k

2) Resisting sliding forces

$V_{wall} = \underset{\text{sliding factor}}{\mu}(W) + H_{p/wall} = 0.4(.858^k) + .094^k$

$= .437^k$/wall

3) Factor of safety to resist sliding

$SF \quad \frac{V_{wall}}{H_a} = \frac{0.437}{0.30} = \underline{1.46}$

check if within 5%

Req'd SF = 1.5

Actual SF = 1.46

$\frac{1.5 - 1.46}{1.46}(100\%) = 3\% < 5\%$

say ok

A-2 wall is stable with regard to sliding only

200 foot Abutters List Report

Kennebunkport, ME
July 29, 2019

Subject Property:

Parcel Number: 7-12-5
CAMA Number: 7-12-5
Property Address: 200 OCEAN AVENUE

Mailing Address: SCANNELL, JOHN W & BELL, LORI L
188 VAN RENSSELAER AVE
STAMFORD, CT 06902

Abutters:

Parcel Number: 7-11-1
CAMA Number: 7-11-1
Property Address: 14 SUMMIT AVENUE

Mailing Address: HETZ FAMILY TRUST
PO BOX 1830
KENNEBUNKPORT, ME 04046

Parcel Number: 7-11-1A
CAMA Number: 7-11-1A
Property Address: 6 ATLANTIC AVENUE

Mailing Address: HETZ FAMILY TRUST
PO BOX 1830
KENNEBUNKPORT, ME 04046

Parcel Number: 7-11-3
CAMA Number: 7-11-3
Property Address: 192 OCEAN AVENUE

Mailing Address: KENNEBUNKPORT, TOWN OF
PO BOX 566
KENNEBUNKPORT, ME 04046

Parcel Number: 7-12-1
CAMA Number: 7-12-1
Property Address: 196 OCEAN AVENUE

Mailing Address: SLAGER, RANDY J & BAIRD, SYBIL K
PO BOX 190479
MIAMI BEACH, FL 33119

Parcel Number: 7-12-2
CAMA Number: 7-12-2
Property Address: 5 ATLANTIC AVENUE

Mailing Address: GRANETZ, MARC D & KRISTINE K
36 CHESTNUT HILL ROAD
WILTON, CT 06897

Parcel Number: 7-12-3
CAMA Number: 7-12-3
Property Address: 204 OCEAN AVENUE

Mailing Address: PERKINS, GILMAN C & MILLARD, JAYNE N
2575 NORTH STREET
FAIRFIELD, CT 06823

Parcel Number: 7-12-4
CAMA Number: 7-12-4
Property Address: 208 OCEAN AVENUE

Mailing Address: CAI PROPERTIES, LLC
2 LIVEWELL DR., SUITE 203
KENNEBUNK, ME 04043

Parcel Number: 7-1-4
CAMA Number: 7-1-4
Property Address: OCEAN AVENUE-PARSONS

Mailing Address: KENNEBUNKPORT, TOWN OF
PO BOX 566
KENNEBUNKPORT, ME 04046

Parcel Number: 7-1-5
CAMA Number: 7-1-5
Property Address: 203 OCEAN AVENUE

Mailing Address: M3300790 CANADA INC - MOLSON ERIC
3A-1485 RUE SHERBROOKE OUEST
MONTREAL, QC H3G 0A3

Parcel Number: 7-1-7
CAMA Number: 7-1-7
Property Address: 197 OCEAN AVENUE

Mailing Address: STONEHOUSE, LLC
3 HARBOR BLUFF LANE
ROWAYTON, CT 06853-1544

200 foot Abutters List Report

Kennebunkport, ME
July 29, 2019

Parcel Number:	7-1-8	Mailing Address:	KENNEBUNKPORT, TOWN OF PO BOX 566 KENNEBUNKPORT, ME 04046
CAMA Number:	7-1-8		
Property Address:	OCEAN AVENUE-PARSONS		
Parcel Number:	7-6-2	Mailing Address:	BRYAN, JOHN R & CARTER A 6345 RIDGEWAY ROAD RICHMOND, VA 23226
CAMA Number:	7-6-2		
Property Address:	3 SUMMIT AVENUE		
Parcel Number:	7-6-6	Mailing Address:	BRYAN, JOHN R & CARTER A 6345 RIDGEWAY ROAD RICHMOND, VA 23226
CAMA Number:	7-6-6		
Property Address:	SUMMIT AVENUE		

Property Card: 200 OCEAN AVENUE
Town of Kennebunkport, ME

Parcel Information	
Parcel ID: 7-12-5	**Map:** 7-12
Vision ID: 138	**Lot:** 5
Owner: SCANNELL, JOHN W & BELL, LORI L	**Use Description:** Single Family
Co-Owner:	**Zone:** CA
Mailing Address: 188 VAN RENSSELAER AVE	**Land Area in Acres:** 0.44
STAMFORD, CT 06902	

Sale History	Assessed Value
Book/Page: 17372/ 727	**Land:** $1,219,800
Sale Date: 11/28/2016	**Buildings:** $1,726,600
Sale Price: $0	**Extra Bldg Features:** $7,500
	Outbuildings: $25,200
	Total: $2,946,400

Building Details: Building # 1

Model:	Residential	**Int Wall Desc 1:**	Drywall/Sheet
Living Area:	4908	**Int Wall Desc 2:**	
Appr. Year Built:	1988	**Ext Wall Desc 1:**	Wood Shingle
Style:	Shingle Style	**Ext Wall Desc 2:**	
Stories:	2	**Roof Cover:**	Wood Shingle
Occupancy:	1	**Roof Structure:**	Gable/Hip
No. Total Rooms:	9	**Heat Type:**	Forced Air-Duc
No. Bedrooms:	05	**Heat Fuel:**	Oil
No. Baths:	5	**A/C Type:**	Central
No. Half Baths:	1		

BK 17372 PGS 727 - 729
INSTR # 2016051031
RECEIVED YORK SS

11/28/2016 02:43:49 PM
DEBRA ANDERSON
REGISTER OF DEEDS

Space above for recording information

NO R.E. TRANSFER TAX PAID

WARRANTY DEED
(Maine Statutory Short Form)

KNOW ALL PERSONS BY THESE PRESENTS that **JOHN W. SCANNELL and LORI L. BELL,** of the Town of Stamford, County of Fairfield, State of Connecticut, in consideration of one dollar and other valuable consideration, grants to **JOHN W. SCANNELL and LORI L. BELL,** of Stamford, Connecticut, whose mailing address is 188 Van Rensselaer Avenue, Stamford, CT 06902, with **warranty covenants,** as **tenants in common,** the following described property:

A certain lot or parcel of land situated in Kennebunkport, in the County of York and State of Maine, and being more particularly described in Exhibit A attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF the said **JOHN W. SCANNELL and LORI L. BELL** have set their hands and seals this 23rd day of November, 2016

Ralph W. Austin

John W. Scannell

Lori L. Bell

STATE OF MAINE
YORK, ss.

Nov 23, 2016

Then personally appeared the above named JOHN W. SCANNELL and LORI L. BELL and acknowledged the foregoing instrument to be their free act and deed, before me

Ralph W. Austin, Attorney-at-Law
Bar No. 1186

EXHIBIT A

A certain lot or parcel of land with any improvements thereon situated generally easterly of and near the junction of Ocean and Atlantic Avenues in the Cape Arundel or Arundel Point section of Kennebunkport in the County of York and State of Maine and being the land area surveyed in 1974 by H. I. & E. C. Jordan, surveyors, Portland, Maine, also being a portion of the land area surveyed in 1883 by E. C. Jordan for the Kennebunkport Sea Shore Company as per plans to which is hereinafter made; the perimeter description of said certain lot, multi-sided and irregular in form, being more particularly bounded and described as follows:

BEGINNING on the northeasterly side of Ocean Avenue at a point marked by a drill hole in the ledge at the most southerly corner of the parcel of land conveyed by Kennebunkport Sea Shore Company to Joseph Yeoman by deed, dated May 13, 1890 and recorded in the York Registry of Deeds, Book 439, Page 129 and by mesne conveyances and property dispositions passing to Wood;

THENCE from said point of beginning by said land so conveyed to Yeoman on a course of N 40° 57' 11" E substantially following an old stone wall, a distance of one hundred fifty-one and seventy-seven hundredths (151.77) feet to an angle point marked by an iron set in the ground;

THENCE continuing by said land so conveyed to Yeoman on a course of N 66° 54' 30" W, in part following the remains of a stone wall, a distance of ninety-two and ninety-four hundredths (92.94) feet to a point marked by an iron set in the ground and to Atlantic Avenue;

THENCE by Atlantic Avenue on a course of N 49° 28' 10" E, a distance of fifteen (15.00) feet to a point marked by a drill hole in the ledge at the southwesterly corner of "parcel 1" conveyed to Barrington Boardman by deed of the Executor of the Will of Almeda B. Myers, dated November 25, 1970 and recorded in said Registry of Deeds, Book 1891, Page755;

THENCE by "parcel 1" and "parcel 3" conveyed to Barrington Boardman by the last mentioned deed on a course of S 68° 00' 30" E, a distance of one hundred seventy-two and sixty-two hundreds (172.62) feet to a point marked by an iron set in the ground and to land conveyed by Kennebunkport Sea Shore Company to Annie F. Smith by deed, dated September 29, 1890 and recorded in said Registry of Deeds, Book 439, Page 372, and by mesne conveyances and property dispositions passing to Brooks;

THENCE by said land so conveyed to Smith on a course of S 15° 02' W, substantially following an old stone wall, a distance of one hundred fifty-three and sixty hundredths (153.60) feet to a point marked by an iron set in the ground and to Ocean Avenue;

THENCE by Ocean Avenue successive courses and distances as follows: N 75° 20' W one hundred and twenty-six and twenty hundredths (126.20) feet to an angle point marked by an iron set in the ground, N 49° 19' W thirty-one (31.00) feet to the point of beginning.

The references to lots of land, avenues, drill holes, iron and stone walls in the description of this deed, unless the context indicates otherwise, are to the lots of land, avenue, drill holes, irons and

stone walls as designated upon aforementioned "Plan of Property in Kennebunkport, Maine made for Barrington Boardman" by H. I. & E. C. Jordan, surveyors, under date of December 1974 intended to be recorded in said Registry of Deeds. The specific courses, specific distances and land area heretofore given in the description on this deed, unless the context indicates otherwise, are taken from said plan. Also the land described in this deed was a portion of the land area shown on the old E. C. Jordan plan entitled "Plan of Lots of the Kennebunkport Sea Shore Company" situated at Kennebunkport, Maine, dated August 13, 1883, and recorded on December 4, 1884 in said Registry of Deeds, Book of Plans 3, Page 7.

The land area heretofore described in this deed contains twenty thousand four hundred sixty-seven and eight hundredths (20,467.08) square feet.

The property hereinbefore descried is hereby conveyed (1) subject to such utility service easements on, over or across said property as may now have any legal existence, (2) with the benefit of appurtenant utility service easements, and (3) subject to and with the benefit of all other rights, interest, privileges, conditions, covenants, restrictions, reservations and limitation set forth in the Kennebunkport Sea Shore Company and other deeds in record title to said property and all Town and State zoning and land use ordinances and regulations, insofar as such benefits and burdens may be in force and effect and insofar as applicable to said property.

SAID PREMISES ARE CONVEYED TOGETHER WITH the rights and easements as set forth in Easement Deed from Barrington Boardman and Sandra D. Boardman to Andrea P. Irvine, dated February 23, 1998 and recorded in the York County Registry of Deeds in Book 8723, Page 296.

Being the same premises conveyed to John W. Scannell and Lori L. Bell by deed from Cameron M. Thornton dated March 18, 2016 and recorded in the York County Registry of Deeds in Book 17202, Page 578.

The purpose of this deed is to sever the joint tenancy of the Grantors and to establish ownership as tenants in common.

WOODMAN EDMANDS DANYLIK AUSTIN
SMITH & JACQUES, P.A.
P.O. BOX 468
BIDDEFORD, ME 04005-0468
(207) 284-4581

3 pgs

RWA

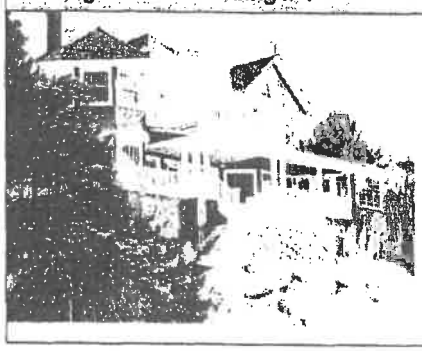
Property Card: 196 OCEAN AVENUE

Town of Kennebunkport, ME

Parcel Information	
Parcel ID: 7-12-1	**Map:** 7-12
Vision ID: 3327	**Lot:** 1
Owner: SLAGER, RANDY J & BAIRD, SYBIL K	**Use Description:** Single Family
Co-Owner:	**Zone:** CA
Mailing Address: PO BOX 190479	**Land Area in Acres:** 0.27
MIAMI BEACH, FL 33119	

Sale History	Assessed Value
Book/Page: 16458/ 398	**Land:** $1,169,500
Sale Date: 11/9/2012	**Buildings:** $1,359,300
Sale Price: $3,400,000	**Extra Bldg Features:** $5,600
	Outbuildings: $0
	Total: $2,528,800

Building Details: Building # 1



Model:	Residential	**Int Wall Desc 1:**	Plastered
Living Area:	4064	**Int Wall Desc 2:**	Drywall/Sheet
Appr. Year Built:	1896	**Ext Wall Desc 1:**	Wood Shingle
Style:	Shingle Style	**Ext Wall Desc 2:**	
Stories:	2	**Roof Cover:**	Asph/F Gls/Cmp
Occupancy:	1	**Roof Structure:**	Gable/Hip
No. Total Rooms:	8	**Heat Type:**	Hot Water
No. Bedrooms:	04	**Heat Fuel:**	Oil
No. Baths:	3	**A/C Type:**	None
No. Half Baths:	0		

Doc# 2012053384
Bk 16458 Pg 398 - 399
Received York SS
11/09/2012 3:40PM
Debra L. Anderson
Register of Deeds

Space Above This Line For Recording Data

WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS, that **DANIEL C. NELSON** and **NANCY K. NELSON**, FOR CONSIDERATION PAID, hereby grant to **RANDY J. SLAGER** and **SYBIL K. BAIRD**, whose mailing address is P.O. Box 190479, Miami Beach, Florida, 33119, with WARRANTY COVENANTS, as joint tenants, a certain lot or parcel of land, together with any improvements thereon and all rights appurtenant thereto, located in the Town of Kennebunkport, York County, Maine; being more particularly described as follows:

SEE EXHIBIT A ATTACHED HERETO AND
INCORPORATED HEREIN BY REFERENCE

Maine R.E. Transfer Tax Paid

IN WITNESS WHEREOF, DANIEL C. NELSON and NANCY K. NELSON, have hereunder set their hands and seals as of this 8 day of November, 2012.

Witness — DANIEL C. NELSON

Witness — NANCY K. NELSON

STATE OF MAINE
COUNTY OF YORK, ss. November 8, 2012

Personally appeared the above-named DANIEL C. NELSON and NANCY K. NELSON and acknowledged the foregoing instrument to be their free act and deed.

Before me,

Attorney at Law/~~Notary Public~~
RALPH W. AUSTIN
Bar #1156

WOODMAN EDMANDS DANYLIK AUSTIN
SMITH & JACQUES, P.A.
P.O. BOX 99
BIDDEFORD, ME 04005-0099
(207) 284-4501

RWA

← 2 pgs

EXHIBIT A

A certain lot or parcel of land with the improvements thereon located in the Town of Kennebunkport, County of York and State of Maine, which certain lot or parcel of land is more particularly bounded and described as follows:

Beginning on the Southerly side of Atlantic Avenue 125 feet from its intersection with Ocean Avenue at the Westerly corner of a lot of land conveyed by Joseph Yeoman to M.H. Forrest by deed dated August 15, 1891; thence N 70° 18' E 90 feet more or less; thence S 38° 12' W 153 feet to a drill hole in a ledge on the Northeasterly side line of Ocean Avenue; thence N 51° 48' W 107 feet by said Ocean Avenue; thence N 46° 51' E by said Atlantic Avenue 125 feet to the point of beginning.

For location of Atlantic Avenue and Ocean Avenue see plan on file in York County Registry of Deeds, entitled "Plan of Cape Arundel, May 1883, E.C. Jordan Civil Engineer; filed with said Registry, December 4, 1884." The plan likewise contains the locus without describing the lot thereon.

The said property hereby conveyed has been surveyed by Libby & Dow, Engineers, Saco, Maine, and is shown on their plan dated November 1945, according to which plan the said property is described as follows:

Beginning at the junction of the Southeasterly side of Atlantic Avenue and the Northeasterly side of Ocean Avenue as shown on a "Plan of Cape Arundel" made by E.C. Jordan, May 1883 and recorded in the York County Registry of Deeds; thence Southeasterly by Ocean Avenue 107 feet to land of one Myers; thence Northeasterly by said Myers land, said line making an included angle of 89° 7' with said street 151.30 feet to other land of said Myers; thence Northwesterly by said Myers land, said line making an included angle of 72° 56' with the last described line 90.08 feet to said Atlantic Avenue; thence Southwesterly by Atlantic Avenue making an included angle of 116° 36' with the last described line 125 feet to the point of beginning.

Being the same premises described in a Trustee's Deed from S. Yale Brass and Adele S. Brass, Co-Trustees of the Adele S. Brass and S. Yale Brass Living Trust Agreement to Daniel C. Nelson and Nancy K. Nelson dated June 23, 2006 and recorded in the York County Registry of Deeds in Book 14880, at Page 152.

End of Document

Lisa Harmon

From: Tracey O'Roak
Sent: Thursday, February 20, 2020 3:37 PM
To: Werner Gilliam; Lisa Harmon
Cc: Laurie Smith
Subject: FOAA Request
Attachments: SKM_C65820022015210.pdf

Attached please find a FOAA request with regard to 200 Ocean Avenue. I have acknowledged receipt of the request to Attorney Atkins.

If you could please provide the copies to me by next Wednesday (2/26), I'll prepare a final response to Attorney Atkins.

Thanks!

Tracey O'Roak, CCM, CMC
Town Clerk
Kennebunkport, Maine
toroak@kennebunkportme.gov
207-967-1610

ALAN R. ATKINS & ASSOCIATES LLC

Alan R. Atkins, Esq.
aratkins@aratkinslaw.com

Fulton S. Rice, Esq.
fsrice@aratkinslaw.com

February 19, 2020

Via E-Mail and USPS
Amy K. Tchao, Esq.
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, ME 04101-2480

RE: FOAA Request – Town of Kennebunkport

Dear Amy,

I am writing to you in your capacity as attorney for the Town of Kennebunkport ("Town").

Pursuant to the Maine Freedom of Access Act, 1 M.R.S.A. §§ 402 et. seq., I am requesting copies of all documents related to the following:

1. Lori Bell and John Scannell's application to the Town for a building permit (#18-418) and land use permit (#18-419) dated November 27, 2018 for the Bell-Scannell property at 200 Ocean Avenue;
2. All documents related to the Town's decision to grant the above-referenced permits; and
3. All documents related to any and all decisions made by the Town related to the above-referenced permits, including but not limited to suspensions of the permits and subsequent actions, through the current date.

Thank you for your attention to this request. If this request should be made upon someone other than yourself, please let me know to whom I may direct this request.

Very Truly Yours,

Alan Atkins

CC: Randy Slager, via E-Mail
David Lourie, Esq., via E-Mail

100 Commercial Street, Suite 305 | Portland, Maine 04101 | T: 207 747 4416 | F: 207 747 4417

Lisa Harmon

From: Mike Claus
Sent: Monday, January 13, 2020 3:32 PM
To: Werner Gilliam
Cc: Lisa Harmon
Subject: RE: 200 Ocean Avenue Wall

I will stop by your office at 9:00 to see if you are germ free.

From: Werner Gilliam <wgilliam@kennebunkportme.gov>
Sent: Monday, January 13, 2020 3:15 PM
To: Mike Claus <mclaus@kennebunkportme.gov>
Cc: Lisa Harmon <lharmon@kennebunkportme.gov>
Subject: RE: 200 Ocean Avenue Wall

Ok, lets plan for tomorrow at 9:00AM I'm a little under the weather but I should be in tomorrow unless something drastic happens.

Werner

Werner Gilliam, CFM
Director of Planning and Development
Town of Kennebunkport
(207)967-1604
wgilliam@kennebunkportme.gov

From: Mike Claus <mclaus@kennebunkportme.gov>
Sent: Monday, January 13, 2020 2:33 PM
To: Werner Gilliam <wgilliam@kennebunkportme.gov>
Subject: RE: 200 Ocean Avenue Wall

I am open Tuesday and Wednesday. Meeting at PD Thursday morning.

Michael Claus
Kennebunkport Public Works Director
207.391.3239

From: Werner Gilliam <wgilliam@kennebunkportme.gov>
Sent: Monday, January 13, 2020 1:28 PM
To: Mike Claus <mclaus@kennebunkportme.gov>
Subject: 200 Ocean Avenue Wall

Mike,
Do you have some time to do a site visit with me to look at the rubble walls that were built at 200 Ocean Ave?

Werner

Werner Gilliam, CFM
Director of Planning and Development
Town of Kennebunkport
(207)967-1604
wgilliam@kennebunkportme.gov

Lisa Harmon

From: Lisa Harmon
Sent: Friday, December 20, 2019 2:15 PM
To: Amy Tchao
Cc: Werner Gilliam
Subject: 200 Ocean Ave - Alan Atkins correspondence received today - attached
Attachments: Atkins let 12 18 2019.pdf

Hi Amy, please see attached. As an FYI, we also received a call today from David Lourie, who asked me to get a message to Werner that he wanted to chat with him about 200 Ocean Ave. He left his telephone number of 749-3642.

Merry Christmas 😊

Lisa Harmon, Administrative Asst to
Code Enforcement, Planning Board,
Zoning Board of Appeals and Board of
Assessment Review

PO Box 566
6 Elm Street
Kennebunkport ME 04046
(207) 967-1605

Lisa Harmon

From: Werner Gilliam
Sent: Thursday, January 09, 2020 9:21 AM
To: Amy K. Tchao
Cc: Lisa Harmon
Subject: RE: 200 Ocean

Hi Amy,
I am available to discuss this morning.

Werner

Werner Gilliam, CFM
Director of Planning and Development
Town of Kennebunkport
(207)967-1604
wgilliam@kennebunkportme.gov

From: Amy K. Tchao <ATchao@dwmlaw.com>
Sent: Thursday, January 09, 2020 8:56 AM
To: Werner Gilliam <wgilliam@kennebunkportme.gov>
Cc: Lisa Harmon <lharmon@kennebunkportme.gov>
Subject: 200 Ocean

Werner –
Hope your dental procedure went well yesterday. I started an email to you about next steps in the Bell/Slager matter, but then thought it would make more sense for us to discuss by phone first. Let me know if you have any time this morning to discuss. Thanks.

Amy

Amy K. Tchao
Attorney

207.772.1941 ext. 552
ATchao@dwmlaw.com

84 Marginal Way, Suite 600, Portland, ME 04101
800.727.1941 | 207.772.3627 Fax | **dwmlaw.com**

DrummondWoodsum
ATTORNEYS AT LAW

Lisa Harmon

From: Lisa Harmon
Sent: Thursday, January 16, 2020 9:54 AM
To: Paul Cadigan; Werner Gilliam
Cc: pwcadigan@roadrunner.com; Amy K. Tchao
Subject: RE: 200 Ocean Avenue Appeal Request

Packet was received December 27th by Tracey O'Roak, Town Clerk.

Lisa Harmon, Administrative Asst to
Code Enforcement, Planning Board,
Zoning Board of Appeals and Board of
Assessment Review

PO Box 566
6 Elm Street
Kennebunkport ME 04046
(207) 967-1605

From: Paul Cadigan <paul.cadigan@gmail.com>
Sent: Wednesday, January 15, 2020 9:09 PM
To: Werner Gilliam <wgilliam@kennebunkportme.gov>
Cc: pwcadigan@roadrunner.com; Lisa Harmon <lharmon@kennebunkportme.gov>; Amy K. Tchao <ATchao@dwmlaw.com>
Subject: Re: 200 Ocean Avenue Appeal Request

I should first say that I believe I do not have to recuse myself from hearing this Appeal.

Werner: the responsive way you are approaching this matter most appropriate. Please let me know if the parties' attorneys you copied agree to a hearing in February. In the meantime...

Lisa: could you tell me when this appeal was received by the ZBA from the Town Clerk pursuant to Section 9.3.D of the LUO. I assume that means giving it to you. I don't recall the day I received my copy, but I know it couldn't have been before January 4th because I was out of state. We are supposed to schedule a hearing within 35 days of the ZBA's receipt of the Appeal from the Clerk unless the parties concur on extending the 35 days. I don't know if the 35 days puts us into February anyway.

Please reply to both my home and work emails.
Thanks guys.
Paul

On Wed, Jan 15, 2020 at 3:04 PM Werner Gilliam <wgilliam@kennebunkportme.gov> wrote:

> Paul,
>
> Please see attached a request from the Code Enforcement Office regarding the recently filed appeal regarding 200 Ocean Avenue.

Thank you for your consideration.

Werner

Werner Gilliam, CFM

Director of Planning and Development

Town of Kennebunkport

(207)967-1604

wgilliam@kennebunkportme.gov

Lisa Harmon

From: Daniel Rosenthal <dlr@marcusclegg.com>
Sent: Thursday, January 23, 2020 4:37 PM
To: Werner Gilliam
Cc: Lori Bell; Lisa Harmon; Amy K. Tchao
Subject: Re: Site Inspection 200 Ocean Avenue

Thank you, Werner.

Dan

On Jan 23, 2020, at 4:34 PM, Werner Gilliam <wgilliam@kennebunkportme.gov> wrote:

Dan,
We can plan on being there at 10:00AM

Werner

Werner Gilliam, CFM
Director of Planning and Development
Town of Kennebunkport
(207)967-1604
wgilliam@kennebunkportme.gov

From: Daniel Rosenthal <dlr@marcusclegg.com>
Sent: Thursday, January 23, 2020 8:07 AM
To: Werner Gilliam <wgilliam@kennebunkportme.gov>; Lori Bell <lbell@bellassoc.com>
Cc: Lisa Harmon <lharmon@kennebunkportme.gov>; Amy K. Tchao <ATchao@dwmlaw.com>
Subject: RE: Site Inspection 200 Ocean Avenue

Werner,

Can you give us a set time when you will be there? We plan to have one of our engineers there as well.

Thanks.

Dan

From: Werner Gilliam <wgilliam@kennebunkportme.gov>
Sent: Wednesday, January 22, 2020 4:31 PM
To: Lori Bell <lbell@bellassoc.com>
Cc: Lisa Harmon <lharmon@kennebunkportme.gov>; Amy K. Tchao <ATchao@dwmlaw.com>; Daniel Rosenthal <dlr@marcusclegg.com>
Subject: Site Inspection 200 Ocean Avenue

Hi Lori,

The Code Enforcement office has retained a third party structural engineer to review the questions that have been raised regarding the retaining walls on your property as it relates to the Code office's role in formally lifting the permit suspension. I would like to visit the property with him sometime between 9 AM and noon on Monday the 27th.

Please let me know if this is acceptable.

Werner

Werner Gilliam, CFM
Director of Planning and Development
Town of Kennebunkport
(207)967-1604
wgilliam@kennebunkportme.gov

Lincoln/Haney Engineering Associates, Inc.
Structural Engineering Consultants
Michael A. Cunningham, P.E., LEED AP
Thad Gabryszewski, P.E., S.E.

February 27, 2020

Ms. Lori Bell
200 Ocean Avenue
Kennebunkport, ME 04046

Subject: Response to Price Structural Engineers February 19, 2020 letter regarding Rubble Retaining Walls and Stone Veneer/Reinforced Masonry Retaining Walls 200 Ocean Avenue, Kennebunkport, ME

Dear Lori:

This letter is in response to the 2/19/20 Price Structural Engineering (PSE) letter regarding the retaining walls on your property. As with past letters, this recent PSE's letter is marked by exaggeration and misinterpretation. PSE appears to have concluded that the walls are deficient, and vehemently and voluminously argues the mistaken conclusion, ignoring or misconstruing information that does not support the claim.

Wall Sections A1 & A2 – rubble walls

The rubble walls were first designed by Structural Integrity. Later, M2 Structural Engineering (M2SE) prepared an alternate design. PSE continues to emphasize the report prepared by Structural Integrity (SI). PSE ignores the fact that SI reviewed construction using the wrong details. In-progress work was mistakenly compared to the SI design instead of the M2SE design. To serve their purposes PSE continues to misleadingly use the SI report, despite that the basis of the report is fundamentally flawed.

PSE misleadingly tries to underscore the importance of the SI letter by saying, "This SICE report is one of the few times that the A1 and A2 walls were observed directly during its construction (not after) by a licensed structural engineer in Maine." As the PSE report earlier states and has been recorded by M2SE, Matt Miller, PE of M2SE inspected the construction of the walls twice. Mr. Miller, a licensed engineer, inspected the construction in accordance with his design and concluded that walls A1 and A2 were being constructed correctly.

The PSE letter strives to create a crisis where there is none. PSE's letter on page 1 says, "The partial collapse of these walls could easily result in some of the large stones being thrown into the vehicle right of way. If this were to occur during a dense fog or freezing rain, both of which are common in Maine, the results could be catastrophic." The notion that the rubble walls would suddenly collapse into the road under the worst possible weather conditions is inflammatory, misleading, and nonsense. Unless major failure occurs very soon after construction, deterioration to retaining walls usually takes long periods of time. A1 & A2 have stood for several months with no sign of movement, leaning, or rock displacement. There is no indication that the walls are at immediate risk of collapse.

PSE concludes "based on the information available" that the wall should be disassembled. PSE has ignored or misconstrued available information to suit their conclusions. Instead, the walls have been determined acceptable by experienced builders, and two licensed engineers.

Wall Section A11 – reinforced CMU wall

Again, PSE misconstrues information to support mistaken claims. The photo on page 8 of PSE's 2/19/20 report is the basis for "convincing and irrefutable evidence" that the CMU wall's footing does not bear on ledge. The Page 8 photo is taken too far away to make any conclusions whatsoever regarding the material footings bear on. The Photo cannot be reliably used to either support or refute what the footings bear on. Other photos (including one used in an earlier PSE letter) taken more closely to the wall clearly show that ledge is present in formwork. Please see Photo 1 at the end of this letter. Photo 1 further shows that

formwork is close to grade, rather than "there is nothing but air well below the bottom of formwork" as PSE very misleadingly states.

When additional information is gathered, PSE seeks to discredit facts which they do not suit PSE's conclusions. Three test holes were dug on 2/5/2020 and found ledge below the CMU wall footing, as documented in our 2/5/2020 letter. Despite the new test holes, past photos, testimony by the builder, knowledge of the site from former and current owners, somehow PSE is alone in the belief that the wall does not bear on ledge. PSE tries to discredit plausible explanations regarding the findings of their probes, saying on page 9, "The Bell team is proposing that all of the A11 footings are bearing on ledge and that the edge of the ledge, perhaps somehow by amazing good luck and coincidence, just happens to align perfectly with the existing property line. On its face, this does appear to be suspiciously very convenient. The Bell team is further stating that they have no problem believing that the ledge is essentially at the top of the existing grade or close to it all along the property line but that just 17" to the west the ledge immediately drops off to more than 27" below top of grade." Perhaps PSE is unaware that owners regularly adjust the elevation of ledge on their property, while not touching the rock on adjacent properties. Ledge removal is expensive, so owners remove as little ledge as possible to suit their goals. PSE may also be unaware that elevation of ledge can rapidly naturally change in Maine. Both common facts easily explain how ledge can vary over a short distance. Please also note – depth to ledge was about 8 to 10 inches below the grade at one of the test holes we dug, and 12 to 14 inches at another. Ledge would have to drop only 17 to 10 inches away from the wall to be lower than PSE's probes. Wall A11 is founded on ledge, and so is not susceptible to frost heaves.

PSE erroneously or purposefully misinterprets comments in our 2/5/2020 letter. The intent of discussing the crushed stone fill between wall A11 and the existing, old retaining wall is to underscore that A11's loading is lighter than at other retaining walls. Crushed stone, according to the IRC, IBC, and Geotechnical Engineering practice creates less lateral pressure than other soils such as clays, silts, or loam. The material is quick to drain water, again, decreasing potential load on A11. The only soil A11 must retain is a narrow band of crushed stone because the existing retaining wall retains the remainder of adjacent soil. Page 11 of the PSE report attempts to distort this intent by citing there is no soil compactor on site, and that compaction would be needed to realize a lower load. PSE's comments are irrelevant to the facts our 2/5/2020 letter explains.

Closing

As stated above, and as borne out by countless retaining walls across Maine, deterioration of retaining walls usually takes long periods of time. No sudden collapse of walls A1, A2, and A11 should be expected. Price Structural Engineers slanders the previous letters and intent of three licensed professional engineers indicating "the Bell engineers… fully accept the contractor's construction by relying with confidence on the contractor's statements and an "it just might work" attitude in lieu of adequate testing and verification is disconcerting and inappropriate, particularly because this is new construction." This comment is untrue and self-serving. Appropriate engineering work in the forms of calculations, on-site inspections, and correct interpretations of photographs have been undertaken by your Team and are the basis of our Opinions. The walls have been load tested for over a year, with no signs of distress. The Bell Team has never taken "it just might work" attitude, and instead correctly observe the facts before us: the walls are working.

Should you have any questions regarding this letter, please contact us at your earliest convenience.

Sincerely,

Lincoln/Haney Engineering Associates, Inc.

Thad Gabryszewski, P.E., SE
Vice President

Lincoln/Haney Engineering Associates, Inc.
(207) 729-1061 mail@lincolnhaney.com


PHOTO 1 - PROGRESS OF WALL A11
Wall Section A11
Formwork close to and bearing on grade
Ledge visible in formwork

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(via e-mail)
March 5, 2020

Appeals Board Chairman
c/o Werner Gilliam, CFM, CEO
P.O. Box 566
Kennebunkport, ME 04046

Re: Appeal of Randy Slager – RE: 200 Ocean Avenue, Map 7, Block 12, Lot 5 - Suspension of Permits

Dear Chairman Cadigan:

This will acknowledge your e-mail of March 3, 2020 concerning the 35 day period within which to schedule a hearing on the above referenced appeal (which was extended by agreement to await an amended decision from the CEO), as well as receipt of a copy the CEO's e-mail letter to Lori Bell & John Scannell dated February 28th, 2020 amending his prior decision, but only to the extent of paying lip service to the Ordinance requirement that he make findings in order to justify his lifting of suspension of the Bell/Scannell permits. I appreciate your timely e-mail giving me leave on behalf of my client to "*withdraw the pending appeal or ask that it be scheduled for a hearing*. …. Your prompt response is appreciated."

We are studying the decision, and are disappointed in its *substance,* which is not a balanced judgment of unsupported by engineering plans for these walls, and does not propose further investigation. We will decide on our course of action within the 30 days of his decision, and get back to you as soon as we decide.

I agree that the pending appeal does not lend itself to addressing the merits of the CEO's amended decision. I ask therefore whether Bell/Scannell would object, and whether the Board would entertain a timely amendment to the pending appeal to allow the Board to address the merits of his amended decision, and to exhaust all administrative remedies to the CEO's acts and omissions in this matter.

Please advise.

Sincerely,

David A. Lourie

Cc: Randy Slager (via e-mail)
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We are studying the decision, and are disappointed in its *substance,* which is not a balanced judgment of unsupported by engineering plans for these walls, and does not propose further investigation. We will decide on our course of action within the 30 days of his decision, and get back to you as soon as we decide.

I agree that the pending appeal does not lend itself to addressing the merits of the CEO's amended decision. I ask therefore whether Bell/Scannell would object, and whether the Board would entertain a timely amendment to the pending appeal to allow the Board to address the merits of his amended decision, and to exhaust all administrative remedies to the CEO's acts and omissions in this matter.

Please advise.

Sincerely,

David A. Lourie

Cc: Randy Slager (via e-mail)
Alan Atkins, Esq. (via e-mail)
Daniel Rosenthal . Esq. (via e-mail)
Amy Tchao , Town Attorney (via e-mail)

LAW OFFICES OF DAVID A. LOURIE
189 Spurwink Avenue
Cape Elizabeth ME 04107
(207) 799-4922
Cell (207) 749-3642 * fax (207) 221-1688
david@lourielaw.com

(via e-mail)
March 5, 2020

Appeals Board Chairman
c/o Werner Gilliam, CFM, CEO
P.O. Box 566
Kennebunkport, ME 04046

Re: Appeal of Randy Slager – RE: 200 Ocean Avenue, Map 7, Block 12, Lot 5 - Suspension of Permits

Dear Chairman Cadigan:

This will acknowledge your e-mail of March 3, 2020 concerning the 35 day period within which to schedule a hearing on the above referenced appeal (which was extended by agreement to await an amended decision from the CEO), as well as receipt of a copy the CEO's e-mail letter to Lori Bell & John Scannell dated February 28th, 2020 amending his prior decision, but only to the extent of paying lip service to the Ordinance requirement that he make findings in order to justify his lifting of suspension of the Bell/Scannell permits. I appreciate your timely e-mail giving me leave on behalf of my client to "*withdraw the pending appeal or ask that it be scheduled for a hearing.* …. Your prompt response is appreciated."

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Please advise.

Sincerely,

David A. Lourie

Cc: Randy Slager (via e-mail)
Alan Atkins, Esq. (via e-mail)
Daniel Rosenthal . Esq. (via e-mail)
Amy Tchao , Town Attorney (via e-mail)

Lisa Harmon

From: Tracey O'Roak
Sent: Friday, March 06, 2020 1:45 PM
To: Werner Gilliam; Lisa Harmon
Subject: FW: FOAA Request
Attachments: 3.6.2020 FOAA Request.pdf

Tracey O'Roak, CCM, CMC
Town Clerk
Kennebunkport, Maine
toroak@kennebunkportme.gov
207-967-1610

From: Fulton Rice <FSRice@aratkinslaw.com> **On Behalf Of** Alan Atkins
Sent: Friday, March 06, 2020 1:32 PM
To: Tracey O'Roak <toroak@kennebunkportme.gov>
Cc: atchao@dwmlaw.com; Randy Slager (seareveler@me.com) <seareveler@me.com>; David Lourie (david@lourielaw.com) <david@lourielaw.com>
Subject: FOAA Request

Clerk O'Roak,

I am responding to your e-mail of March 5, 2020. I am attaching a revised and updated FOAA request as of today's date. This is intended to replace my request of February 21, 2020 by including documents through the current date, March 6, 2020, including all correspondence in my request, and by requesting the Town produce responsive documents in an electronic format, preferably by PDF. Please let me know if you have any questions.

Alan Atkins

Alan R. Atkins & Associates, LLC
100 Commercial Street, Suite 305
Portland, ME 04101
aratkins@aratkinslaw.com
www.atkinsllc.com

ALAN R. ATKINS & ASSOCIATES LLC

Alan R. Atkins, Esq.
aratkins@aratkinslaw.com

Fulton S. Rice, Esq.
fsrice@aratkinslaw.com

March 6, 2020

Via E-Mail and USPS
Tracey O'Roak
Kennebunkport Town Clerk
6 Elm St.
P.O. Box 566
Kennebunkport, ME 04046

RE: FOAA Request

Dear Clerk O'Roak,

I am writing to you in your capacity as public access officer for the Town of Kennebunkport ("Town"). The request contained below amends and replaces my FOAA request dated February 21, 2020.

Pursuant to the Maine Freedom of Access Act, 1 M.R.S.A. §§ 402 et. seq., I am requesting copies of all documents related to the following:

1. Lori Bell and John Scannell's application to the Town for a building permit (#18-418) and land use permit (#18-419) dated November 27, 2018 for the Bell-Scannell property at 200 Ocean Avenue;
2. All documents related to the Town's decision to grant the above-referenced permits; and
3. All documents related to any and all decisions made by the Town related to the above-referenced permits, including but not limited to suspensions of the permits and subsequent actions, through the current date, March 6, 2020.

The documents requested herein include all correspondence, including e-mails and letters, received or sent by the Town related to the foregoing matters. If possible, please send responsive documents electronically, preferably in a PDF format.

Thank you for your attention to this request.

Very Truly Yours,

Alan Atkins

CC: Randy Slager, via E-Mail
David Lourie, Esq., via E-Mail
Amy Tchao, Esq., via E-Mail

Lisa Harmon

From: Werner Gilliam
Sent: Thursday, March 05, 2020 3:44 PM
To: ATchao@dwmlaw.com; Laurie Smith
Cc: Lisa Harmon; Andrew Welch; Greg Reid
Subject: FW: Administrative Appeal dated 122719
Attachments: Lourie2Cadigan.pdf

FYI

Werner Gilliam, CFM
Director of Planning and Development
Town of Kennebunkport
(207)967-1604
wgilliam@kennebunkportme.gov

-----Original Message-----
From: David A. Lourie <david@lourielaw.com>
Sent: Thursday, March 05, 2020 3:41 PM
To: pwcadigan@roadrunner.com
Cc: Daniel Rosenthal <dlr@marcusclegg.com>; atchao@dwmlaw.com; Werner Gilliam <wgilliam@kennebunkportme.gov>; 'Cadigan Home' <paul.cadigan@gmail.com>
Subject: Re: Administrative Appeal dated 122719

Please see attached

On 3/3/2020 1:58 PM, pwcadigan@roadrunner.com wrote:
> David:
>
> By agreement of the parties, the 35 day period within which to
> schedule a hearing on the above referenced appeal was extended. CEO
> Gilliam has now issued his Decision which is purported to be in
> conformance with the Ordinance section 11.15.C. At this time you, on behalf of your client Mr.
> Slager, may withdraw the pending appeal or asked that it be scheduled
> for a hearing. For your consideration in rendering your decision, my
> review of the Appeal leads me to conclude that it is to the procedure
> employed by the CEO to "lift the suspension" in his action of December
> 23, 2019; you alleged his action did not meet the "certification
> requirements" of the Ordinance section referenced above. I do not view
> the pending appeal as challenging the content of the CEO's Decision
> dated February 28, 2020 as it had not been issued as of the date of
> your appeal. Beyond that I will make no further comment.
>
> Your prompt response is appreciated.
>
> Paul
>
>

>
> Paul W. Cadigan
>
> Attorney At Law
>
> 62 Portland Road Suite 7
>
> Kennebunk Maine 04043
>
> Tel. 207 - 985 - 5600
>
> Fax 207 - 985 - 5678
>
> <mailto:pwcadigan@roadrunner.com> pwcadigan@roadrunner.com
>
>
>
>
>
> This email message may contain information that is privileged,
> confidential, or exempt from disclosure under applicable law. All
> recipients are notified that if this message comes to your attention
> by mistake, any dissemination, use, or copying of the information is
> prohibited. If you receive this message in error, please notify the sender at once.
>
>
>
>
>

--
The above is from the Law Offices of David A. Lourie, 189 Spurwink Avenue, Cape Elizabeth, ME 04107

Tel: Office: (207) 799-4922 / cell: (207) 749-3642 / Fax: (207) 221-1688.

This communication may contain attorney-client privileged, or other confidential matter that is exempt from disclosure under applicable law. If you received this e-mail in error please hit "reply",and advise me of your receipt to avoid repetition of the error.

LAW OFFICES OF DAVID A. LOURIE
189 Spurwink Avenue
Cape Elizabeth ME 04107
(207) 799-4922
Cell (207) 749-3642 * fax (207) 221-1688
david@lourielaw.com

(via e-mail)
March 5, 2020

Appeals Board Chairman
c/o Werner Gilliam, CFM, CEO
P.O. Box 566
Kennebunkport, ME 04046

Re: Appeal of Randy Slager – RE: 200 Ocean Avenue, Map 7, Block 12, Lot 5 - Suspension of Permits

Dear Chairman Cadigan:

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Please advise.

Sincerely,

David A. Lourie

Cc: Randy Slager (via e-mail)
Alan Atkins, Esq. (via e-mail)
Daniel Rosenthal . Esq. (via e-mail)
Amy Tchao , Town Attorney (via e-mail)

Lisa Harmon

From: Tracey O'Roak
Sent: Thursday, March 05, 2020 2:38 PM
To: Alan Atkins
Cc: Werner Gilliam; Lisa Harmon; Tracey O'Roak
Subject: RE: FOAA Request

Attorney Atkins,

Staff has been working to pull together documents pursuant to your FOAA request of February 21, 2020. There are currently 4 binders of information based upon your request.

Would you like to refine your request to be more specific? If not, the cost is estimated to be over $1,000 with the current request.

Tracey O'Roak, CCM, CMC
Town Clerk/Public Access Officer
Kennebunkport, Maine
toroak@kennebunkportme.gov
207-967-1610

From: Fulton Rice <FSRice@aratkinslaw.com> **On Behalf Of** Alan Atkins
Sent: Friday, February 21, 2020 12:13 PM
To: Tracey O'Roak <toroak@kennebunkportme.gov>
Cc: atchao@dwmlaw.com; David Lourie (david@lourielaw.com) <david@lourielaw.com>; Randy Slager (seareveler@me.com) <seareveler@me.com>
Subject: FOAA Request

Clerk O'Roak,
Attached please find a Maine Freedom of Access Act request dated February 21, 2020.

Alan Atkins

Alan R. Atkins & Associates, LLC
100 Commercial Street, Suite 305
Portland, ME 04101
207-747-4416
aratkins@aratkinslaw.com
www.atkinsllc.com

Lisa Harmon

From: Werner Gilliam
Sent: Friday, February 28, 2020 4:46 PM
To: Lisa Harmon
Subject: 200 Ocean Ave Packet to be mailed
Attachments: 200 Ocean Avenue Suspension update February 28th 2020 w attachments.pdf

Lisa,
Please send out a hard copy per certified USPS to Lori Bell.

Thanks

Werner

Werner Gilliam, CFM
Director of Planning and Development
Town of Kennebunkport
(207)967-1604
wgilliam@kennebunkportme.gov

Lisa Harmon

From: Werner Gilliam
Sent: Friday, February 28, 2020 4:45 PM
To: Lori Bell
Cc: ATchao@dwmlaw.com; Laurie Smith; pwcadigan@roadrunner.com; Randy Slager (seareveler@me.com); Alan Atkins; David A. Lourie; 'Daniel Rosenthal'
Subject: 200 Ocean Avenue Permit Suspension Update
Attachments: 200 Ocean Avenue Suspension update February 28th 2020 w attachments.pdf

Dear Lori and John,
Please see the attached letter and attachments regarding the status of your permits.

Sincerely,

Werner Gilliam, CFM
Director of Planning and Development
Town of Kennebunkport
(207)967-1604
wgilliam@kennebunkportme.gov

Lisa Harmon

From: Werner Gilliam
Sent: Wednesday, February 19, 2020 4:03 PM
To: geoff@civcon.com
Cc: Lisa Harmon; Andrew Welch; Greg Reid; Laurie Smith
Subject: FW: 200 Ocean Avenue
Attachments: 2-19-20 PSE response to recent letters.pdf

Hi Geoff,
Please see attached a response from David Price. Let me know your thoughts.
Thanks

Werner

Werner Gilliam, CFM
Director of Planning and Development
Town of Kennebunkport
(207)967-1604
wgilliam@kennebunkportme.gov

From: Fulton Rice <FSRice@aratkinslaw.com> **On Behalf Of** Alan Atkins
Sent: Wednesday, February 19, 2020 3:19 PM
To: Werner Gilliam <wgilliam@kennebunkportme.gov>
Cc: atchao@dwmlaw.com; dlr@marcusclegg.com; David Lourie (david@lourielaw.com) <david@lourielaw.com>; Randy Slager (seareveler@me.com) <seareveler@me.com>; David Price (pricestructural@maine.rr.com) <pricestructural@maine.rr.com>; David Price (pricestructural@gmail.com) <pricestructural@gmail.com>; drosenthal@marcusclegg.com
Subject: 200 Ocean Avenue

Werner,

Attached for your consideration please find a letter from David Price on behalf of our client Randy Slager responding to the Town's letter to Lori Bell of January 31, 2020, and Lincoln/Haney's letters of January 23, 2020, and February 5, 2020.

Very truly yours,

Alan Atkins

Alan R. Atkins & Associates, LLC
100 Commercial Street, Suite 305
Portland, ME 04101
207-747-4416
aratkins@aratkinslaw.com
www.atkinsllc.com

Lisa Harmon

From: Werner Gilliam
Sent: Thursday, February 06, 2020 2:19 PM
To: Laurie Smith; Lisa Harmon; Greg Reid; Andrew Welch
Subject: FW: 200 Ocean Avenue
Attachments: Lourie2Gilliam#2 Final.docx

FYI

Werner Gilliam, CFM
Director of Planning and Development
Town of Kennebunkport
(207)967-1604
wgilliam@kennebunkportme.gov

-----Original Message-----
From: David A. Lourie <david@lourielaw.com>
Sent: Thursday, February 06, 2020 1:13 PM
To: Werner Gilliam <wgilliam@kennebunkportme.gov>; Amy Tchao <atchao@dwmlaw.com>
Cc: Randy Slager <seareveler@me.com>; Alan Atkins <aratkins@aratkinslaw.com>; Daniel Rosenthal <dlr@marcusclegg.com>; Fulton Rice <FSRice@aratkinslaw.com>; 'Cadigan Home' <paul.cadigan@gmail.com>
Subject: 200 Ocean Avenue

--
The above is from the Law Offices of David A. Lourie, 189 Spurwink Avenue, Cape Elizabeth, ME 04107

Tel: Office: (207) 799-4922 / cell: (207) 749-3642 / Fax: (207) 221-1688.

Lisa Harmon

From: Werner Gilliam
Sent: Thursday, February 06, 2020 2:18 PM
To: Lisa Harmon; Andrew Welch; Greg Reid
Cc: Laurie Smith
Subject: FW: 200 Ocean Avenue letter as requested
Attachments: Bell-wall-2020.02.05-reduced.pdf

Importance: High

FYI

Werner Gilliam, CFM
Director of Planning and Development
Town of Kennebunkport
(207)967-1604
wgilliam@kennebunkportme.gov

From: Lori Bell <lbell@bellassoc.com>
Sent: Thursday, February 06, 2020 1:07 PM
To: Werner Gilliam <wgilliam@kennebunkportme.gov>
Cc: Dan Rosenthal (dlr@marcusclegg.com) <dlr@marcusclegg.com>
Subject: 200 Ocean Avenue letter as requested
Importance: High

Please see the attached letter from Lincoln/Haney Engineering Associates, Inc.

Thank you for your attention to this matter. Would you please confirm receipt of this letter I want to make sure the pdf goes through.

Lori Bell
Bell Associates Consultants, INC.
79 E Putnam Ave
Greenwich, CT 06830
203-707-1335 Direct
203-707-1330 Main
917-797-6770 Cell
203-621-3344 Fax
www.bellassoc.com
Click here to upload files.

Lincoln/Haney Engineering Associates, Inc.
Structural Engineering Consultants
Michael A. Cunningham, P.E., LEED AP
Thad Gabryszewski, P.E., S.E.

February 5, 2020

Ms. Lori Bell
200 Ocean Avenue
Kennebunkport, ME 04046

Subject: Summary of Engineering and Verification Efforts
Rubble Retaining Walls and Stone Veneer/Reinforced Masonry Retaining Walls
200 Ocean Avenue, Kennebunkport, ME

Dear Lori:

This summary is to address concerns noted by the Town of Kennebunk in its January 31, 2020 letter regarding the retaining walls at your property at the above noted address. The Town's letter pertains to the rubble walls along Ocean Avenue, noted as Wall Section A1 and A2, and the stone veneer faced/ reinforced concrete masonry unit (CMU) wall along the western property line, noted as Wall Section A11. The Town's letter is in response to the report prepared by Price Structural Engineers. The Price Report was completed at the request of Randy Slager, the abutter to the west of your property. As we have noted in our January 23, 2020 letter to you, the Price Report is impressive in its size (47 pages) however does not conclude the walls are inadequate. Instead, the Price Report speculates that the walls could be inadequate if certain conditions exist. Three engineering firms have offered Opinions that counter the speculations of the Price Report and conclude that the walls are sound. The Opinions are based on calculations, observations of in-progress construction, and evidence of performance. This letter compiles and summarizes the engineering and verification efforts regarding the retaining walls.

Wall Sections A1 & A2 – rubble walls

Structural Integrity originally performed a design for the walls in 2018. Somehow, the original walls were constructed at a wrong location on the property. The project had a stop work order issued by the Town, and the walls were subsequently demolished. New walls were built closer to the road, and in accordance with a different design.

Structural Integrity was somehow sent photos of the new wall installation, and issued a letter stating that the walls were not built according to their details & calculations. What Structural Integrity may not have known is that another set of calculations were performed for the new walls.

M2 Structural Engineering prepared new calculations for the A1 and A2 Wall Sections, dated April 22, 2019. Matthew Miller, P.E., of M2 Structural Engineering also prepared a Memorandum recording his visit to inspect construction, dated July 30, 2019. Mr. Miller's Memorandum states, "Measurements for the width at the top of the wall and retained height of the walls were taken and were consistent with the structural design provided by our office." Mr. Miller also states, "Prior to our visit the upper wall had been backfilled and the lower wall partially backfilled therefore the width of the wall at the base could not be verified." Although Mr. Miller did not observe the bottom of the wall, photographic evidence exists to confirm the width and construction of the wall. Mr. Tony Aceto of Maineway Landscaping and Excavating provided several photos that document construction. The construction includes filter fabric, crushed stone backfill, two wythes of stone, and course of stone that connect the front and rear wythes. Further, Mr. Miller and I discussed the walls and his design via telephone on February 3, 2020. During this call Mr. Miller confirmed what his calculations show, that the rubble walls were designed as "mass walls". This means they resist soil pressure by their weight and size. So long as the walls are of the proper width and have courses that lock the two wythes, the walls are consistent with his design. Mr.

Aceto's photos show that the width of the walls is consistent over its height (verifying construction at the base of the wall) and that locking courses (stretcher courses) are in place. Mr. Miller further commented that he visited the site twice. He further commented that both times the wall construction was in accordance with his design, including the width and presence of stretcher courses.

Based on the stamped design of Mr. Miller, his stamped Memorandum, and the photos provided by Mr. Aceto, Wall Sections A1 and A2 are constructed in accordance with Mr. Miller's design.

Wall Section A11 – reinforced CMU wall

The wall at the western limit of the property has been retaining soil for over a year, through one and a half winters. The wall shows no signs of movement or distress despite numerous frosts. The wall shows no visible cracks. This was observed on site today, as well as documented by the Price Report on Page 8, Section 1. d. where the Report notes, "Continuous fractures in the stone veneer were not observed". Our September 24, 2019 letter documents what we knew to date about the wall, which includes: The wall ranges in height, and is composed of reinforced concrete masonry units (CMU), stone facing, with a concrete footing. The footing is pinned to ledge using two rows of reinforcing dowels, and we understand that each CMU cell is reinforced and grouted solid. The wall is backfilled with crushed stone and has a perimeter drain at its base. The foundation bears on ledge and so is adequately protected against frost heave. Based on reports from the wall's builder, each cell of the wall's CMU is reinforced with #4 reinforcing bars. Engineering calculations demonstrate that a wall reinforced in such a manner has sufficient capacity to resist Code required loads.

The Price Report speculates that Wall Section A11 does not bear on ledge, despite photos that show ledge and the testimony of the wall's builder. The Report notes two test probes driven by Mr. Price did not find ledge, however, these probes were not below the wall nor on the same property as the wall. Today three test holes were dug at the base of the wall. All three found ledge, and found the wall's foundation bears on ledge. Two test holes along the western wall seem to show that ledge gets deeper to the west of the property. This is consistent with plantings (a row of bushes) and utilities (a generator) to the west. The bushes need soil cover to prevent toppling over and utilities need soil cover to meet Code required burial depth. The Price probes did not find ledge because they were too far from the wall. They were in an area with more soil above ledge. Wall Section A11 bears directly on ledge and so is protected from frost heaves.

The CMU wall varies in height. Portions of the western wall are 48 inches or less in height. Those portions inherently support lower loads and fall within the IRC's prescriptive limit which do not ask for engineering design. The taller portions of the wall are laterally braced both by the wall's corners, and by an existing CMU retaining wall which ties into the new wall. The western portion of the new wall is closely located to the existing wall, and the soil fills between the two are all crushed stone. This lowers the demand on the wall because: less soil volume; crushed stone creates less retaining pressure; crushed stone freely drains water. Collectively all these items help make the wall more robust. These items are in addition to the reinforcing reported by the contractor. Based on these items, it is little surprise that the wall is performing well.

In the above noted report by M2 Structural Engineering, Mr. Miller states regarding Wall Section A11, "We did not observe indications of wall movement, either sliding or rotation, nor were deficiencies noted during our visit." In his September 24, 2019 letter regarding the wall, Mr. Owens McCullough, P.E. indicates, "The wall is in excellent condition with no observations of instability or distress and has been in place for approximately 7 months." The Lincoln/Haney letters of September 24, 2019 and January 23, 2020 both indicate that the wall is in good repair, and that evidence of its adequate construction is provided through its excellent performance. Three independent engineering firms attest that Wall Section A11 is performing well.

Complete documentation of the wall's construction is not available. Nevertheless, we can only conclude that Wall Section A11 is adequately constructed to safely resist its retained backfill because of the items noted above, and because the wall has successfully retained its backfill for over a year, through frost seasons, with no signs of distress.

Wall Sections A1, A2, and A11

As noted above, we do not doubt that Wall Sections A1, A2, and A11 are adequately constructed to effectively retain soil. If for argument's sake doubts remain in other persons' minds, perhaps concerns may be assuaged with understanding that walls are covered under the Contractor's insurance policy. However unlikely, if the walls start to show signs of distress, such distress would be gradual and would take time. If cracks form in the CMU wall, or stones start to shift in the rubble walls, repairs would be covered under the Contractor's policy, preventing a visual nuisance from developing.

Closing

We hope that this summary addresses concerns noted in the Town's January 31, 2020. Should you have any questions regarding this letter, please contact us at your earliest convenience.

Sincerely,

Lincoln/Haney Engineering Associates, Inc.

Thad Gabryszewski, P.E., SE
Vice President


Wall that was
demolished.


Wall that was demolished. Note location of wall relative to edge of road. The following photos show the new wall closer.

Rubble Retaining Wall

200 Ocean Avenue

Kennebunkport, Maine

These calcs were completed after Structural Integrity's design (dated 20 Nov 2018) and Structural Integrity's letter to the town (dated 3 April 2019). Structural Integrity indicated that the wall was not completed per their design & detail; the wall was re-designed in these calcs.

April 22, 2019

Prepared for:

Maineway Landscaping and Excavating

1021 Portland Road

Saco, ME 04072

Prepared by:

M^2 Structural Engineering, P.C.

23 Thornbury Way

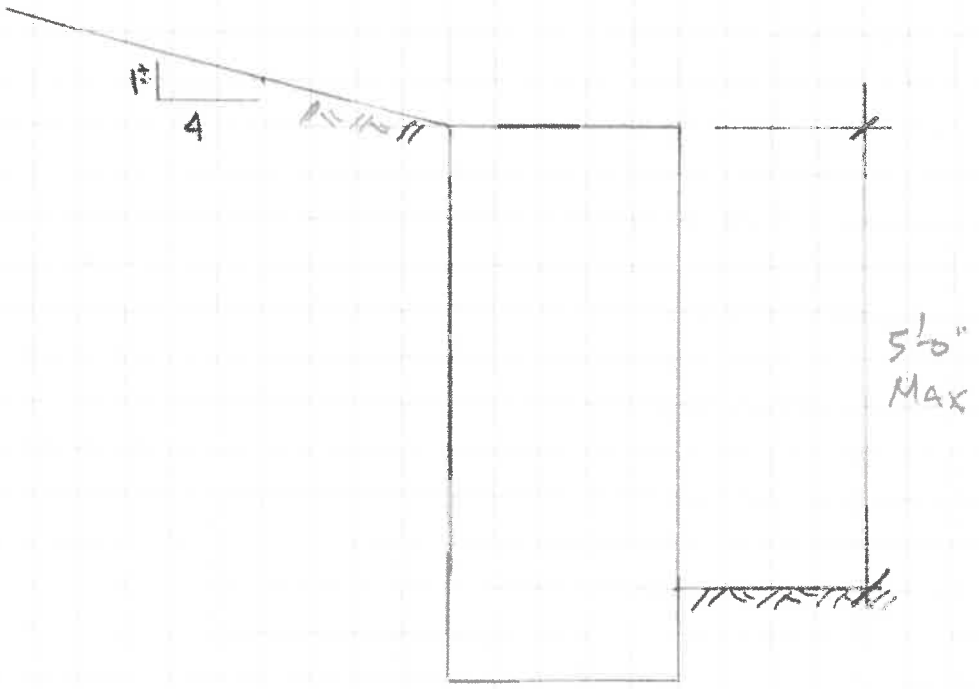
Windham, ME 04062

04/22/2019

M^2SE Project No.: 19040

M² STRUCTURAL ENGINEERING, P.C.
23 Thornbury Way
Windham, ME 04062
(207) 892-0983
www.m2se.com

PROJECT 100 OCEAN AVENUE
PROJECT # 19040
CALCULATED BY MJM DATE 4/22/19
CHECKED BY _____ DATE _____
SHEET 1 OF 4



TAKE AVG WEIGHT OF WALL = 120 PCF.

TAKE UNIT WEIGHT OF BACKFILL = 110 PCF

ϕ BACKFILL = 35°

CALCULATE COEFF. OF ACTIVE EARTH PRESSURE, K_a

$$K_a = \frac{\cos\beta - \sqrt{\cos^2\beta - \cos^2\phi}}{\cos\beta + \sqrt{\cos^2\beta - \cos^2\phi}} \qquad \sqrt{\cos^2\beta - \cos^2\phi} = 0.51$$

$\beta = 15°$
$\phi = 35°$

$$\therefore K_a = \frac{(0.97 - 0.51)}{0.97 + 0.51} = 0.31$$

$\therefore EFP = .31(110) = \underline{34 \text{ PLF}}$

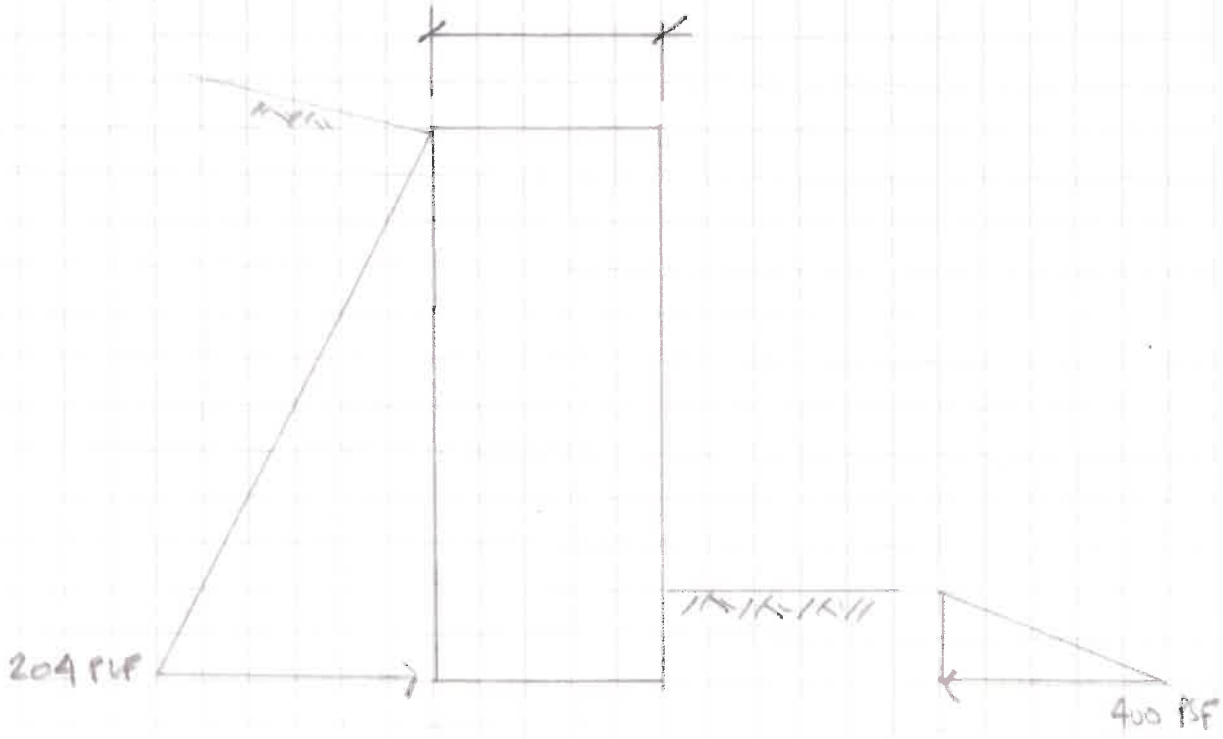
M² STRUCTURAL ENGINEERING, P.C.
23 Thornbury Way
Windham, ME 04062
(207) 892-0983
www.m2se.com

PROJECT 200 OCEAN AVENUE
PROJECT # 19040
CALCULATED BY MJM DATE 4-22-19
CHECKED BY _____ DATE _____
SHEET 2 OF 4

PASSIVE EARTH PRESSURE

$K_p = 3.69 \rightarrow$ USE 3.5

$\therefore$ EFP = 400 PCF



DRIVING FORCE $F_D = 204(6)/2 = 612\ ^{\#}/FT$

RESISTING FORCE = F_R = $400(1)/2 = 200\ ^{\#}/FT$ (PASSIVE PRESSURE).

FRICTION $\mu \simeq 0.55$ (CONCRETE ON GRAVEL)

WEIGHT OF WALL = $120(6) = 720$ PLF/FT

$\therefore$ $F_F = 396\ ^{\#}$ / FT OF WALL THICKNESS

M² STRUCTURAL ENGINEERING, P.C.
23 Thornbury Way
Windham, ME 04062
(207) 892-0983
www.m2se.com

PROJECT Bar Ocean Outfall
PROJECT # 1940
CALCULATED BY MTM DATE 4-22-19
CHECKED BY ____ DATE ____
SHEET 3 OF 4

DETERMINE MINIMUM WALL THICKNESS TO RESIST SLIDING

TAKE F.S. = 1.5.

$\therefore \quad 1.5(612) - 200 - 396(x) = 0$

$x = 1.81'$ USE 2'-0" MIN WALL WIDTH.

CHECK OVERTURNING

$M_{OTM} = 1.5(612)(6/3) = 1836^{1\cdot lb}$

↑ F.S.

$M_{RES.} = 6(120)(2')(1') = 1440^{1\cdot lb} < 1836$ NO. GOOD.

∴ INCREASE WALL WIDTH TO INCREASE OVERTURNING RESISTANCE

WALL WIDTH	M_R.	
2'-4"	$1963^{1\cdot lb}$	∴ USE MIN. 2'-4" WIDE WALL.

CHECK BEARING CAPACITY

TAKE $f_p = 3000$ PSF

$e = 0.78' > 6/6 = 0.38'$

$\therefore F_{p,MAX} = \frac{2(2.32)(4)(120)}{3(1.167 - 0.78)} = 2560$ PSF < 3000 PSF O.K.

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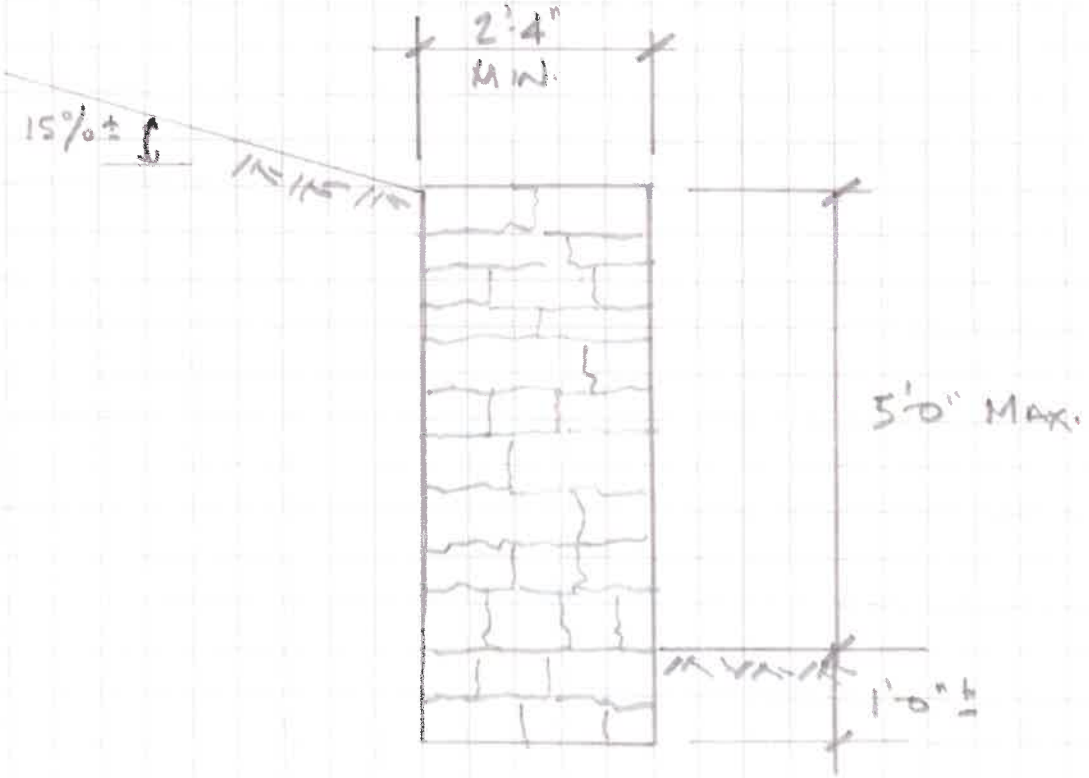
PROJECT 200 OCEAN AVENUE
PROJECT # 19049
CALCULATED BY M.J.M DATE 4-22-19
CHECKED BY _____ DATE _____
SHEET 4 OF 4

∴ USE 2'-4" WIDE WALL MIN.



TYPICAL WALL SECTION

NOT TO SCALE.

End of Submittal

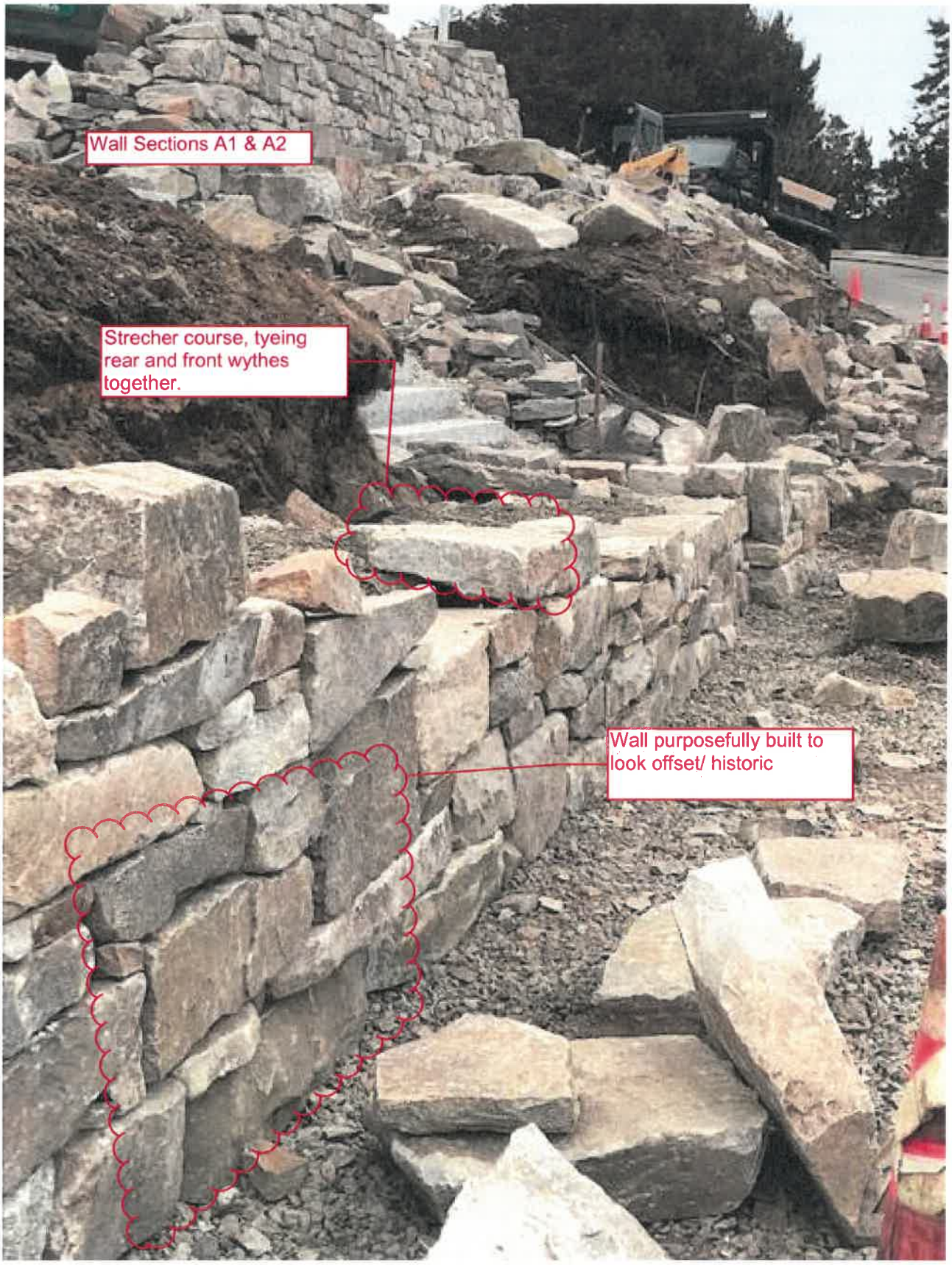

Wall Sections A1 & A2
New base of wall, including filter fabric.


Wall Sections A1 & A2
New base of wall, including filter fabric.


Wall Sections A1 & A2
New base of wall, including filter fabric.


Wall Sections A1 & A2
Strecher course, tyeing rear and front wythes together.


Wall Sections A1 & A2
Crushed stone placed concurrently with assembly of wall.
Strecher course, tyeing rear and front wythes together.


Wall Sections A1 & A2
Strecher course, tyeing rear and front wythes together.
Wall purposefully built to look offset/ historic


Wall Sections A1 & A2
Strecher course, tyeing rear and front wythes together.


Wall Sections A1 & A2
The top of the crushed stone has wall stones placed on it...making the wall look like it has a third wythe. The two actual wall wythes are tied together, as the previous photos show.

M² STRUCTURAL ENGINEERING, P.C.

23 Thornbury Way
Windham, ME 04062
(207) 892-0983

MEMORANDUM

Date: July 30, 2019

To: Tony Aceto
Maineway Landscaping and Excavating
1021 Portland Road
Saco, ME 04072

From: Matthew J. Miller, P.E.

Re: 200 Ocean Avenue, Kennebunkport, ME

At your request, M² Structural Engineering visited the project site at 200 Ocean Avenue in Kennebunkport, ME in Monday July 29, 2019 to review the construction of the rubble retaining walls.

Prior to our visit the upper wall had been backfilled and the lower wall partially backfilled therefore the width of the wall at the base could not be verified.

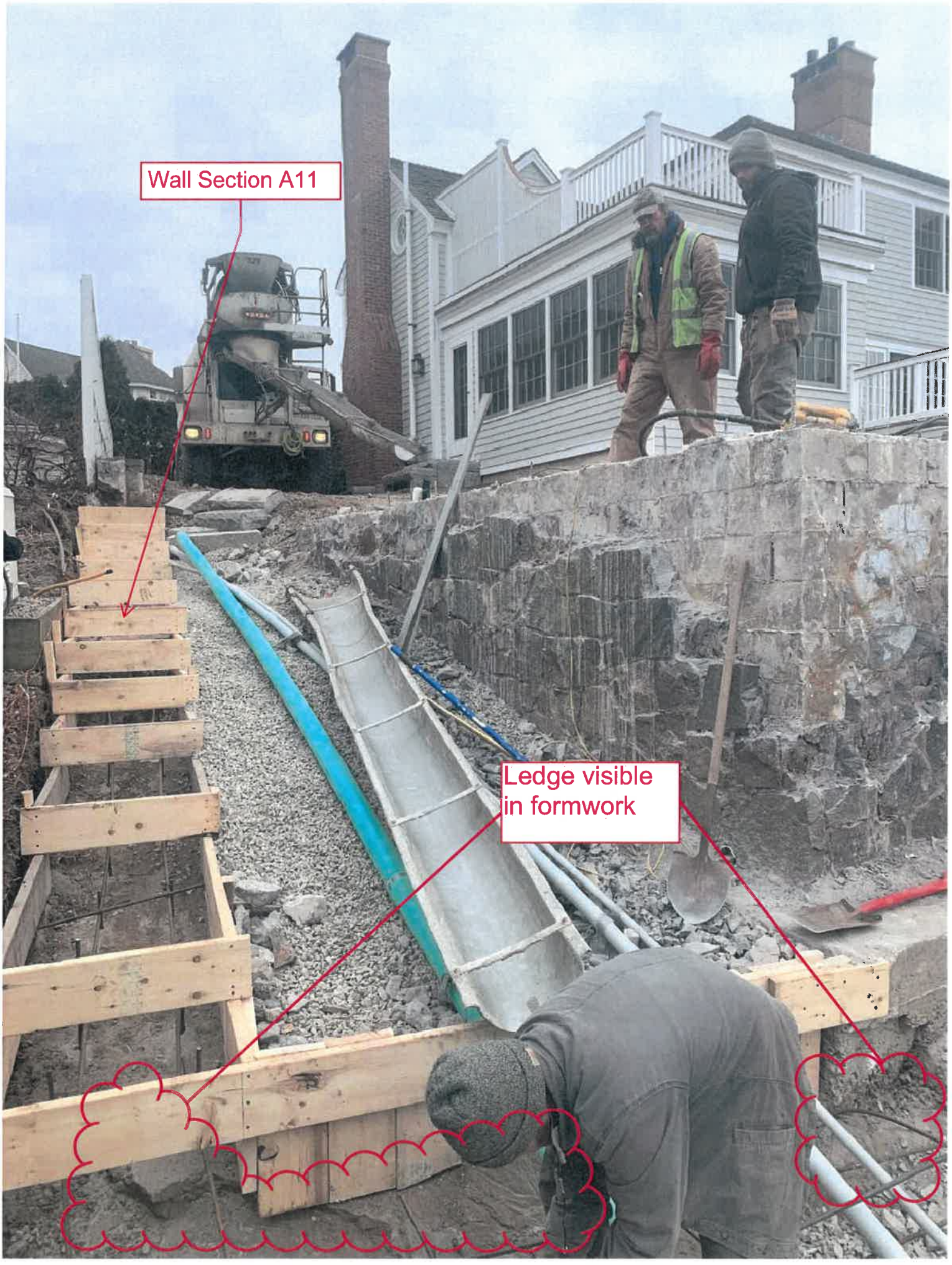
Measurements for the width at the top of the wall and retained height of the walls were taken and were consistent with the structural design provided by our office.

While on site we also provided a visual inspection of the retaining wall located on the west side of the property as requested. Our inspection was limited to visual observations of the completed wall and did not include any selective demolition to verify the wall construction. We understand that this wall was designed by another engineer and constructed by a previous contractor. M² Structural Engineering did not provide a structural analysis of the wall, nor were on site during the construction of the wall. Presence of crushed stone backfill of the wall limited our review to the front face of the wall. We did not observe indications of wall movement, either sliding or rotation, nor were deficiencies noted during our visit.

If you have any questions regarding this memo, please do not hesitate to contact me.

Regards,
M² Structural Engineering, P.C.

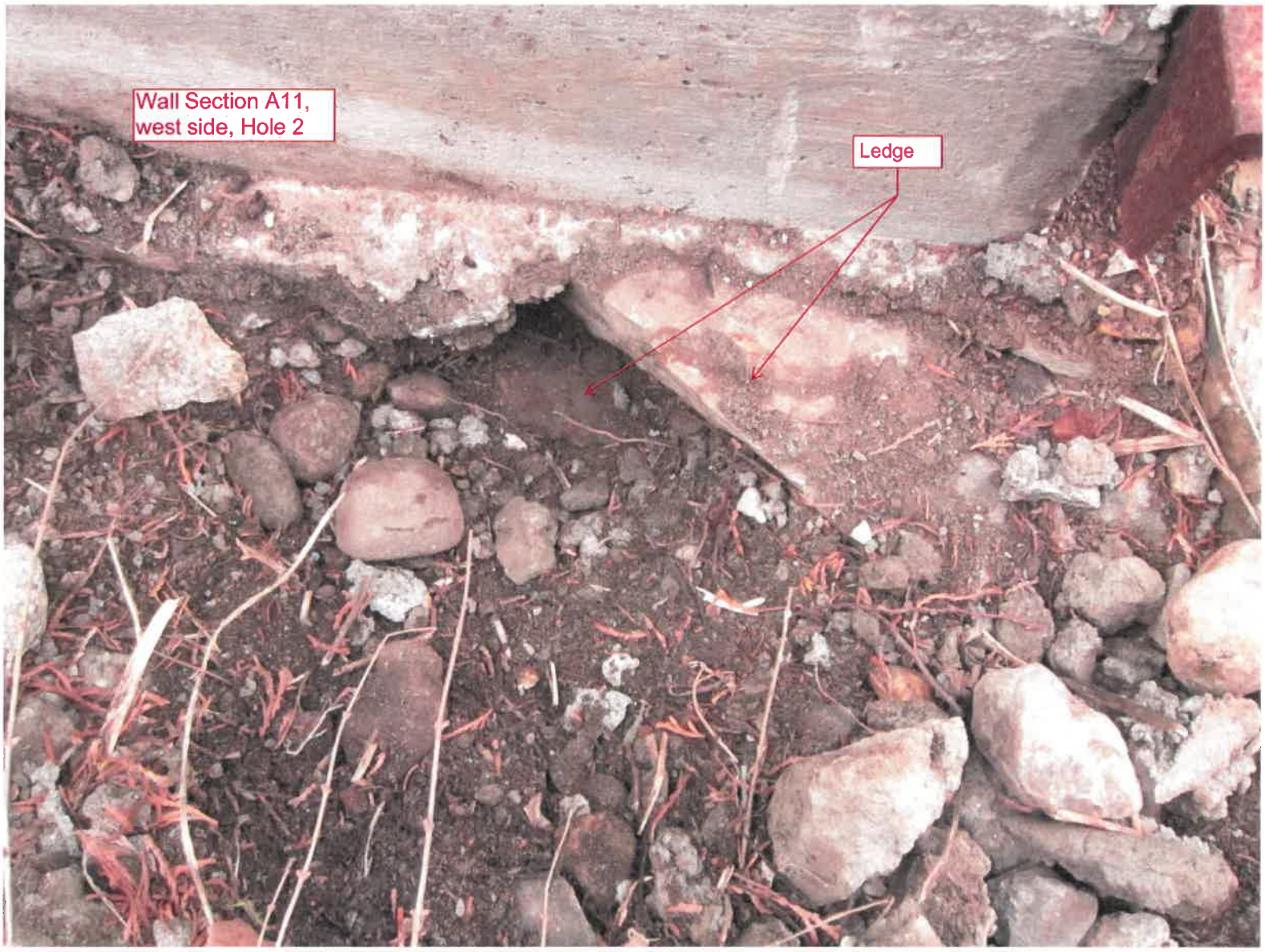
Matthew J. Miller, P.E.


Wall Section A11
Ledge visible in formwork

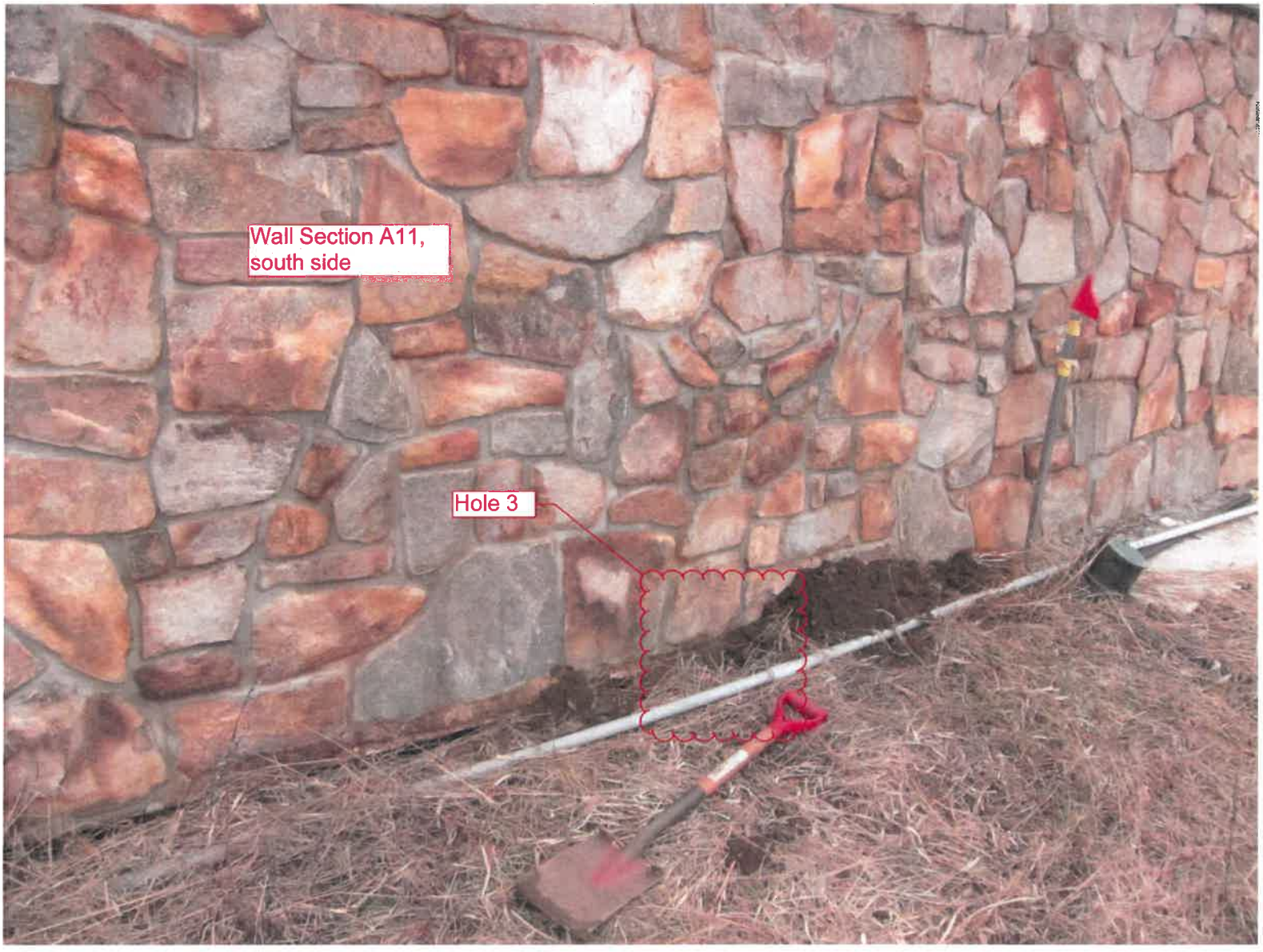

Wall Section A11,
west side
Hole 1
Hole 2

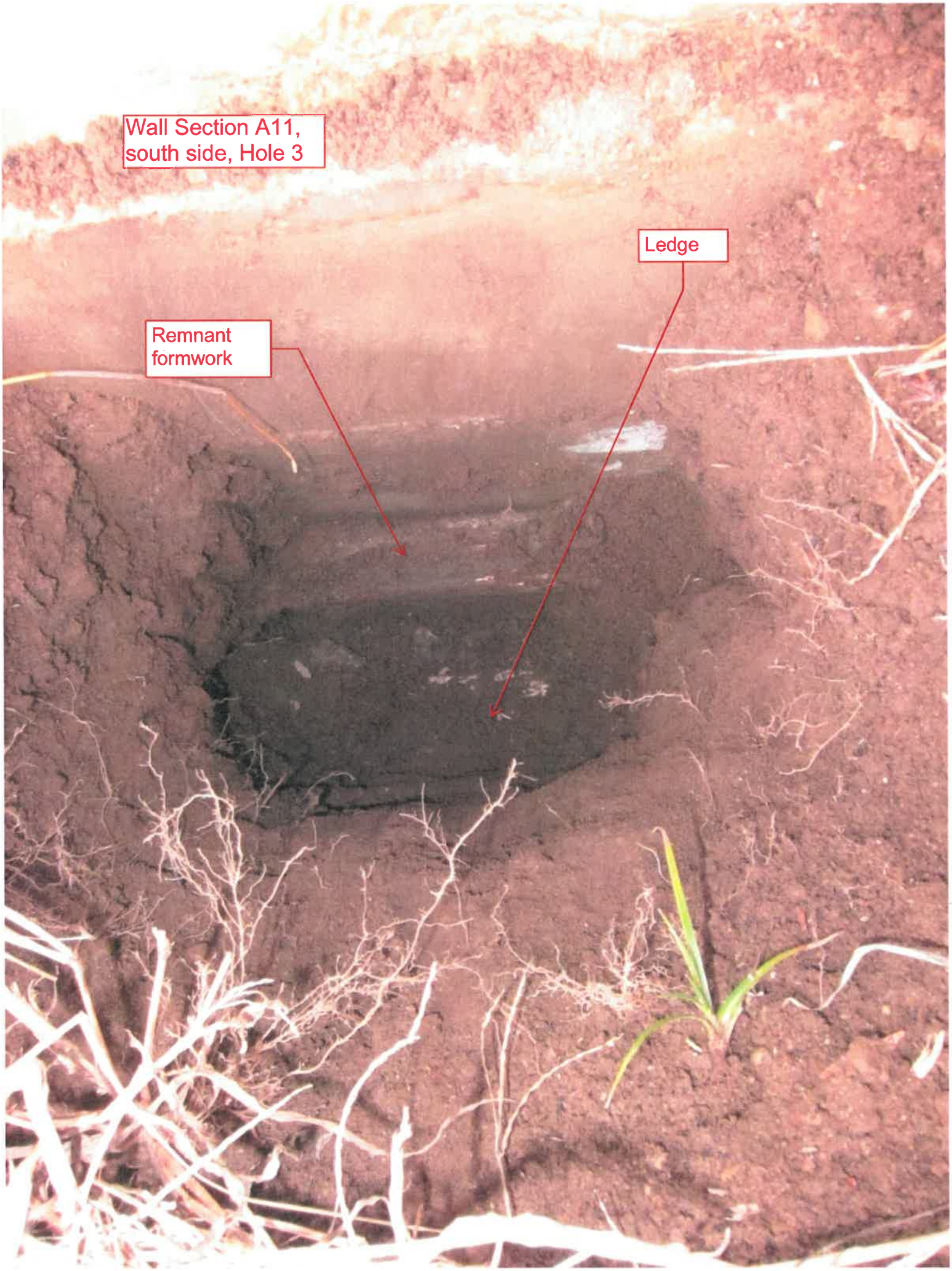

Wall Section A11,
west side, Hole 1
Ledge

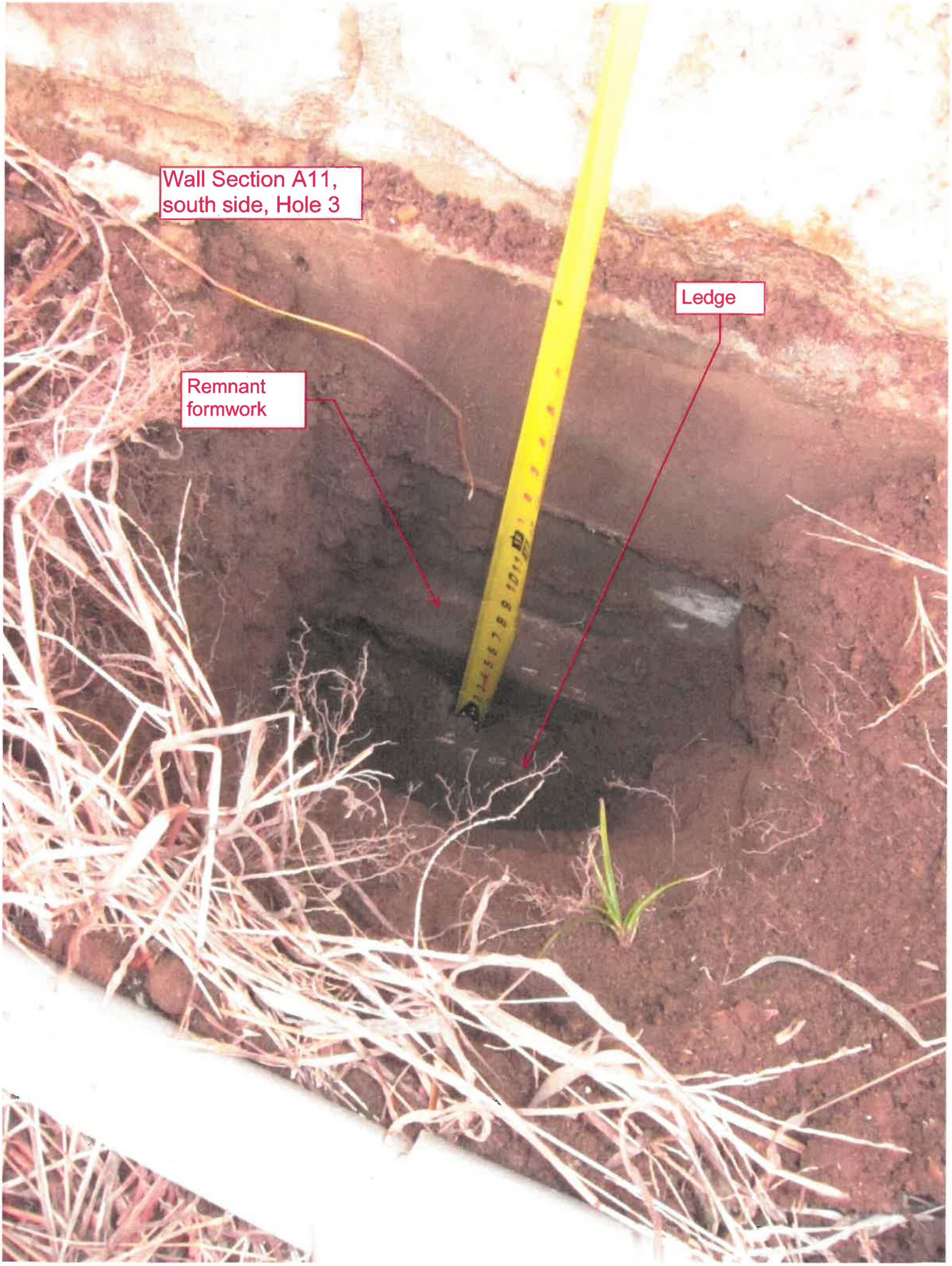

Wall Section A11,
west side, Hole 1
Ledge


Wall Section A11,
west side, Hole 2
Ledge


Wall Section A11,
west side, Hole 2
Ledge


Wall Section A11,
south side
Hole 3


Wall Section A11,
south side, Hole 3
Ledge
Remnant
formwork


Wall Section A11,
south side, Hole 3
Ledge
Remnant
formwork

LAW OFFICES OF DAVID A. LOURIE
189 Spurwink Avenue
Cape Elizabeth ME 04107
(207) 799-4922
Cell (207) 749-3642 * fax (207) 221-1688
david@lourielaw.com

March 6, 2020~~February 6, 2020~~

Werner Gilliam, CFM
Code Enforcement Office
P.O. Box 566
Kennebunkport, ME 04046

Re: Appeal of Randy Slager – RE: 200 Ocean A venue, Map 7, Block 12, Lot 5 - Suspension of Permits

Dear CEO Gilliam:

This will acknowledge receipt of a copy your letter to Lori Bell & John Scannell dated January 31, 2020 Responding to your request for information in your reconsideration/clarification of your decision to lift the stay while subject to Mr. Slager's appeal. We have been diligently monitoring your file on this project of late, which has been burdensome.[1] I have been copying Attorney Rosenthal on our recent filings with your office. I hereby request that Attorney Rosenthal provide us with courtesy copies of all correspondence filed with you, as this will ensure completeness and allow more timely filings with respect to new information supplied. I also request that he try to submit paginated documents whenever possible in future to facilitate review, comment, and use at any ZBA hearing thereafter

We have asked David Price to review your letter. We have asked him to provide a written summary of problems with the Bell submissions, which we will provide to you directly when received. Meanwhile, I will merely note that his initial review of the photographs provided (and those omitted) indicates likely significant code violations in the construction of both the CMU and the rubble stone walls. Of immediate concern to the Town should be the rubble stone wall along the street line which Price believes may have been constructed in such a deficient manner that it could currently represent a danger to the public, let alone last the 50-year minimum life that code standards are designed to reflect.

In the absence of additional information, David Price cannot be certain to the extent of code deviation at the rubble stone wall. Briefly, no as-built construction details have been provided; the height/width of wall sections may not adequately conform to the calculations previously prepared for the wall; and the inside face of the rubble stone wall is not shown in the 1/23/20 photos provided so it is not possible to see the code mandated

[1] As you will recall, I waived objection to this irregular procedure "so long as we have a complete record of what you considered, and can have the Board address the merits of any amended decision in this appeal without the necessity of a formal remand and 2nd Appeal." Not to make a mountain of a mole hill, but to avoid waiver of Mr. Slager's rights, and to preserve the integrity of the Town's files, I must call your attention to an apparent discrepancy between one of the documents relied upon in your letter of January 31, and the document physically in your office when recently reviewed by Mr. Atkins' Associate which bears your looking into, whether or not the apparent discrepancy is material to the above appeal. I refer in particular to Revision 5 and 6 of the Bell boundary survey. Your letter refers to Revision 5, although the file reviewed by Fulton Rice was missing Revision 5 (perhaps on your desk at the time?) In any case, Fulton received a copy of "Revision 6", which indicates a "Revised Patio", so any reconsideration or clarifications should rely upon the latest survey should refer to the latest plan filed, especially where such discrepancy may prove significant in computation of permitted lot coverage.

tie-in of bonders ("stretchers") on the inside face of the wall.[2] Moreover, the Aaron Jones Report, dated April 3, 2019 (Structural Integrity) provided, noted that most stones were installed with their longest dimension placed parallel to wall rather than perpendicular, and that the 1/12 batter called for was not observed. Mr. Price said that the lack of these features further contributes to the wall's inherent instability. (Mr. Jones' presence was apparently dispensed with thereafter, and there is no evidence that any of the defects noted in his report were addressed or corrected.)

Unfortunately, Lori Bell & John Scannell continue to refuse my client's expert permission to enter the Bell property for the purpose of minimally invasive inspection, and our requests for permission for an expert inspection of the walls (in discovery in our private nuisance court action) have been blocked until the Court rules on the dispute. So our expert witness cannot yet definitively test the assumptions and assertions of compliance with code (many of which remain unproven, or tend to be disproved by Bell's submissions.)

The photographs submitted show the wall along Ocean Avenue was built closer to the street than the prior wall, but the boundary survey (Rev #6 anyway) references the deed and not the right of way. Not only is correction of this omission from the plan required, but the Town's property right to inspect and require correction may depend upon how close the "rebuilt" wall is to the Town right of way, in addition to your ordinance power as CEO to inspect and order correction of defective conditions or areas.

We are pleased that you have chosen to retain a neutral engineer in your reconsidering your decision prior to board action on our pending appeal. My client is willing to waive the deadlines for hearing and decision as suggested by Amy Tchao's e-mail yesterday evening, to allow you the opportunity to reconsider, and or correct your decision, and/or to allow the Board to address the merits as well as compliance with ordinance requirements for findings for lifting suspension (if not mooted by reconsideration.) I hope and trust that Bell and Scannell will also waive these deadlines, although I question whether they have standing in this appeal of the CEO's decision to object or to insist on adherence to ordinance deadlines as a non-party.

I believe that Mr. Prices' more detailed comments on the Bell submissions, especially concerning the integrity of the wall along Ocean Avenue should cause the Town to undertake immediate inspection and correction of these walls, and especially to take *emergency action* to protect the public with regard to the rubble wall along Ocean Avenue.

Please advise if you have any questions concerning the above.

Sincerely,

David A. Lourie

David A. Lourie

Cc: Appeals Board Chairman Cadigan (via e-mail)
Randy Slager (via e-mail)
Alan Atkins, Esq. (via e-mail)
Daniel Rosenthal . Esq. (via e-mail)
Amy Tchao , Town Attorney (via e-mail)

[2] The red boxes on photos claiming "stretcher course tying in" do not appear to depict the claimed tie-ins.