

March 17, 2023

**VIA EMAIL ONLY**

Peter Joseph, Town Manager  
Town of Freeport  
30 Main Street  
Freeport, Maine 04032  
pjoseph@freeportmaine.com

Re: **Administrative Consent Agreement Addressing Notice of Violation**  
Owners: Amanda Berry and Benjamin Willauer  
Location: 90 Birch Point Road

Dear Mr. Joseph,

As we discussed during our telephone call on March 14, 2023, on behalf of our firm's clients, Amanda Berry and Benjamin Willauer, we request that the Freeport Town Council ("Council") consider an Administrative Consent Agreement to address certain violations in the above-referenced Notice of Violation ("NOV"), which was issued May 17, 2022, with respect to property located at 90 Birch Point Road (the "Property").

Our clients have owned the Property since approximately 2003. In 2004, when our clients updated the previous dwelling on the Property, they installed a State-approved septic system, which was inspected and approved by the Town's then-Code Enforcement Officer ("CEO"), Fred Reeder, who also approved selective cutting of trees to accommodate the septic field mound. In 2013 and 2014, the Property Owners demolished the previous dwelling and built a new dwelling closer to the septic field and right at the 75-foot shoreland setback boundary. The new rear exterior door was located above the septic field, but neither steps nor a deck could be erected adjacent to the rear exterior door because of the shoreland setback. Mr. Reeder inspected the dwelling and approved the installation of hardscaping over the septic field. Specifically, he approved a stone patio on top and a short retaining wall around it that was intended to provide a landing from the exterior door while also preventing erosion and protecting the underground septic system from failure.

Unfortunately, there are no records of Mr. Reeder's approvals in the Town's files, which precipitated the issuance of the May 17, 2022 NOV. The NOV cites 9 different violations related to exterior improvements, removal of vegetation, and installation of a pier/wharf at 90 Birch Point Road ("Property"). The NOV was issued primarily because the Town cannot locate all previous permits and authorizations for clearing and improvements on the Property, including for

the hardscaped patio and retaining wall abutting the dwelling, which are within the 75-foot shoreland setback. Photographs of the Property are enclosed for reference.

Ms. Berry and Mr. Willauer have taken reasonable steps to address and correct the conditions cited in the NOV. They applied for an after-the-fact permit from the Town's Coastal Water Commission, which was approved earlier this month. They have also contacted the Maine DEP to seek guidance on obtaining DEP consent or a permit for the remaining unpermitted conditions. However, according to current ordinances, the Town cannot issue permits for some of the improvements cited in the NOV, which as noted above, are almost ten years old and were installed with the knowledge and the express permission of the Town's former CEO. Removing the patio and wall now would not only be costly, but would also compromise the dwelling's septic system and remove a safe exterior exit from the dwelling.


In light of these circumstances, we request that the Town Council consider an Administrative Consent Agreement allowing the unpermitted conditions that cannot be remedied by after-the-fact permitting to remain as-is on the Property. Specifically, these conditions include the existing stone patio and retaining wall. We understand that this matter has been placed on the Town Council's agenda for Tuesday, March 21, 2023, and would be happy to answer any questions the Council may have at that time.

We thank you for your time and consideration.

Sincerely,



Joseph C. Siviski, Esq.



John E. Belisle, Esq.

Copy (by email only): Clients; Christine Wolfe, Town Clerk (cwolfe@freeportmaine.com)

Enclosures: Photographs of Property



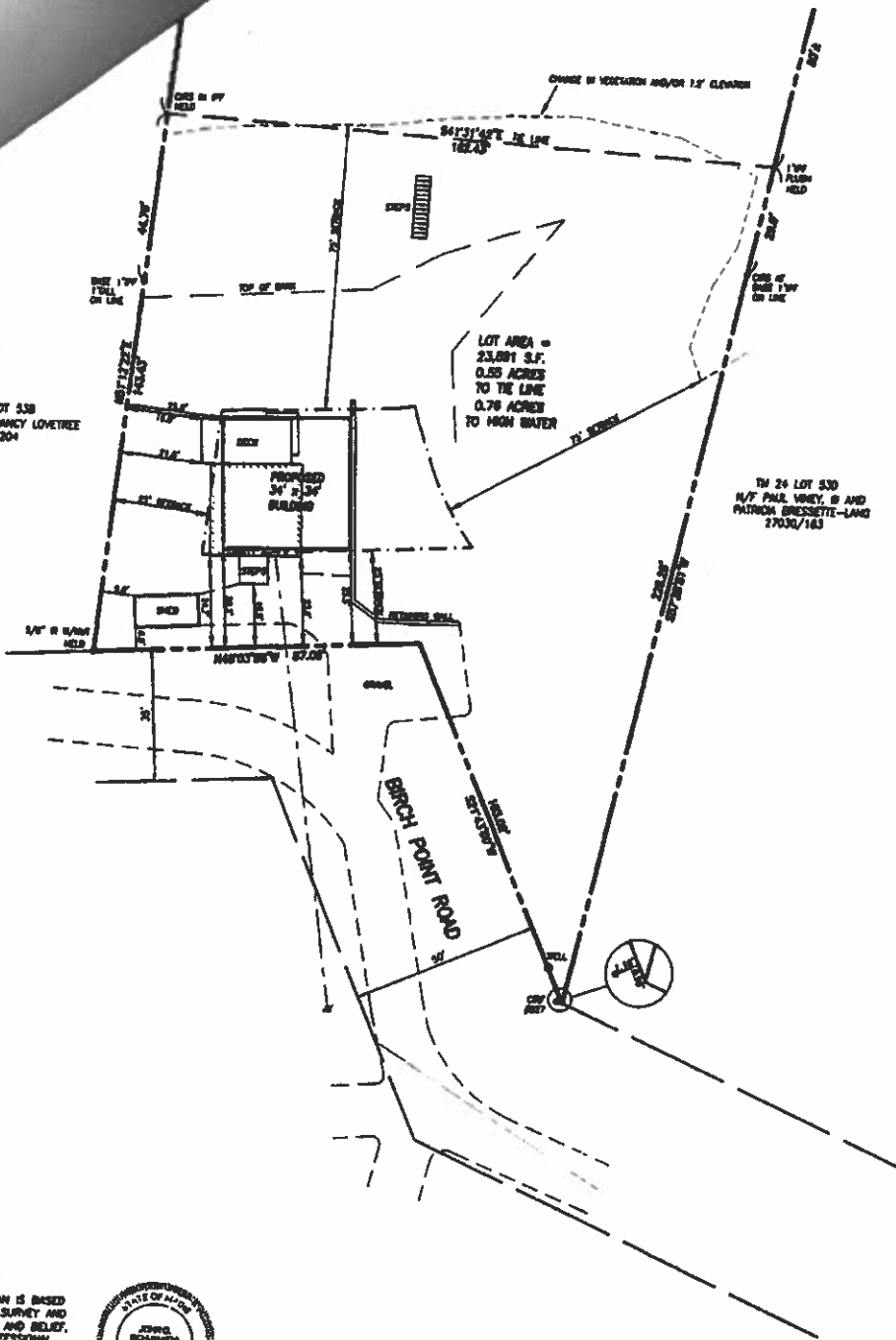


Septic access

TM 24 LOT 53B  
 H/F JOHN & NANCY LOVETREE  
 0294/204

LOT AREA =  
 23,891 S.F.  
 0.55 ACRES  
 TO THE LINE  
 0.78 ACRES  
 TO HIGH WATER

TM 24 LOT 53D  
 H/F PAUL VINEY, JR AND  
 PATRICIA BRESSETTE-LANG  
 27030/163



ESBY CERTIFIES THAT THIS PLAN IS BASED  
 ON THE GROUND FIELD SURVEY AND  
 HIS KNOWLEDGE, INFORMATION AND BELIEF,  
 AND OF LICENSURE FOR PROFESSIONAL  
 LAND SURVEYING STANDARDS OF PRACTICE.



*John C. Schindler*  
 JOHN C. SCHINDLER, PLS #1202