

SPECIAL BOARD OF ALDERMEN

JUNE 23, 2021

7:00 PM

Join Zoom Meeting: <https://us02web.zoom.us/j/86847884861?pwd=dUV6UGpvRy9CUi9EUkMwTkW4S0U2UT09>

Meeting ID: 868 4788 4861

Passcode: 389330

Join by telephone: 1-929-205-6099

Meeting ID: 868 4788 4861

Passcode: 389330

If for some reason you cannot connect to Zoom, please contact us at (603) 589-3329 and they will help you with connectivity. The public may also view the meeting via Channel 16.

PRESIDENT LORI WILSHIRE CALLS ASSEMBLY TO ORDER

PRAYER OFFERED BY CITY CLERK SUSAN K. LOVERING

PLEDGE TO THE FLAG LED BY ALDERMAN-AT-LARGE BRANDON MICHAEL LAWS

ROLL CALL

PUBLIC HEARING

PETITION FOR STREET DISCONTINUANCE – (OLD) GROTON ROAD

Testimony in Favor

Testimony in Opposition

Testimony in Favor

Testimony in Opposition

ADJOURNMENT

David K. Pinsonneault
J. Bradford Westgate*
Kent M. Barker
John M. Edwards*

All Admitted in NH
*Admitted in NH and MA

W&B
Winer and Bennett, LLP
Attorneys at Law

www.winerbennett.com

Brian C. Kelly*
Brenner G. Webb
Barbara W. Halevi*
Peter W. Bennett (retired)
Peter G. Webb (retired)
S. Robert Winer (1920-2019)
John V. Dwyer, Jr. (1946-2013)

RECORDED
MAY 11 2021

May 11, 2021

VIA HAND DELIVERY

Susan Lovering
City Clerk
City of Nashua
229 Main Street
Nashua, New Hampshire 03060

**Re: Etchstone Properties, Inc.
Petition for Street Discontinuance
(Old) Groton Road**

Dear Sue:

Following up our email exchange yesterday and this morning, I enclose the following:

1. Original and three (3) copies of the Petition for Street Discontinuance by Etchstone Properties, Inc. (Petitioner) dated May 10, 2021, inclusive of the Attachment to Petition for Street Discontinuance and a paper copy (8½ x 11) of the Discontinuance Plan by Hayner/Swanson, Inc.
2. Three (3) mylars of the plan entitled "Discontinuance Plan Portions of the Historic Locations of Groton Road Nashua, New Hampshire" prepared for Etchstone Properties, Inc. by Hayner/Swanson, Inc. dated 19 January 2021, together with a paper copy of that plan (11 x 17).

I am forwarding a copy of this letter (without enclosures) to Alderman Jette so he is notified that the original Petition and plans have been filed with your office. It is respectfully requested that the Petition be brought before the Board of Aldermen for consideration.

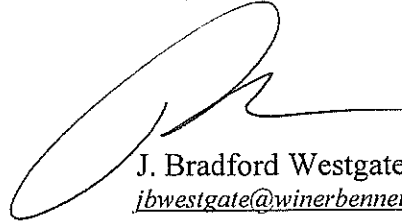
I am also copying Celia K. Leonard, Esquire on this letter so she is aware of the filing of the original Petition and is able to be in touch with me with respect to any questions she may have regarding the preparation of the proposed resolution for consideration by the Board of Aldermen.

May 11, 2021

Page 2

Thank you for your assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Bradford Westgate', with a large, sweeping initial 'J'.

J. Bradford Westgate

jwestgate@winerbennett.com

JBW:cns

Enclosures

cc: Alderman Ernest A. Jette (via email only) (w/o encls.)
Celia K. Leonard, Esquire (via email only) (w/o encls.)
Jaron Slattery (via email only) (w/o encls.)
David Petropulos (via email only) (w/o encls.)

**PETITION
FOR
STREET DISCONTINUANCE**

TO THE HONORABLE BOARD OF ALDERMEN OF THE CITY OF NASHUA:

Pursuant to the Nashua Revised Ordinances, Chapter 285, Section 24, the undersigned requests that the following described portions of:

35 Groton Road (Map D, Lot 23) be discontinued from public dedication or use:

Discontinuance Area 'A'

A CERTAIN PORTION OF THE HISTORIC LOCATION OF GROTON ROAD LOCATED IN THE CITY OF NASHUA, COUNTY OF HILLSBOROUGH, STATE OF NEW HAMPSHIRE, SITUATED ON THE NORTHERLY SIDE OF GROTON ROAD, BEING SHOWN ON A PLAN TITLED "DISCONTINUANCE PLAN PORTIONS OF THE HISTORIC LOCATIONS OF GROTON ROAD NASHUA, NEW HAMPSHIRE" PREPARED FOR ETCHSTONE PROPERTIES, INC. DATED: JANUARY 19, 2021, BY HAYNER/SWANSON, INC. (THE "DISCONTINUANCE PLAN") AND BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT A DRILL HOLE IN A STONE WALL ON THE NORTHERLY SIDE OF GROTON ROAD AT THE DIVISION LINE OF LAND OF PETER AND JUDY ERICKSON AND LAND OF ETCHSTONE PROPERTIES, INC. AND BEING THE NORTHWEST CORNER OF THE HEREIN DESCRIBED PARCEL; THENCE:

N 89° 42' 35" E BY A STONE WALL, A DISTANCE OF 118.99 FEET TO A DRILL HOLE; THENCE
S 87° 26' 07" E BY SAID STONEWALL, A DISTANCE OF 194.32 FEET TO A DRILL HOLE; THENCE
S 83° 51' 03" E BY SAID STONEWALL, A DISTANCE OF 58.70 FEET TO POINT; THENCE
N 89° 44' 16" E A DISTANCE OF 108.48 FEET TO A DRILL HOLE; THENCE
S 87° 50' 29" E BY A STONEWALL AND PASSING THROUGH A DRILL HOLE, A DISTANCE OF 180.37 TO POINT; THENCE
S 55° 40' 21" E A DISTANCE OF 155.96 FEET TO POINT; THENCE
S 51° 17' 29" E A DISTANCE OF 68.53 FEET TO THE POINT AT THE NORTHERLY SIDELINE OF GROTON ROAD AS LAID OUT AND REALIGNED IN 1937 BY THE STATE OF NEW HAMPSHIRE PLAN S.A.Y 1937; THENCE
N 67° 37' 18" W BY SAID SIDELINE, A DISTANCE OF 95.89 FEET TO POINT; THENCE
NORTHWESTERLY BY SAID SIDELINE AND A CURVE TO THE LEFT HAVING A RADIUS OF 1,457.39 FEET, A DELTA ANGLE OF 22 ° 02' 00" AND AN ARC LENGTH OF 560.45 FEET TO A POINT; THENCE
N 89° 39' 18" W BY SAID SIDELINE, A DISTANCE OF 207.74 FEET TO A POINT, BEING N 82° 50' 57" W A DISTANCE OF 1.81 FEET FROM AN IRON PIPE; THENCE
N 00° 20' 42" E A DISTANCE OF 3.99 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 0.329 ACRES OR 14,329 SF MORE OR LESS.

Discontinuance Area 'B'

Discontinunace Area 'B' consitutes those portions of the public right-of-way laid out by the Selectmen of Nashua on November 24, 1847 that are situated within the boundaries of Map 'D', Lot 23. Any portions of the public right-of-way laid out by the Selectmen of Nashua on November 24, 1847 that are either (i) within the existing 1937 layout (realignment) of Groton Road, or (ii) not within the boundaries of Map 'D', Lot 23, are specifically excluded from Discontinunace Area 'B'.

The metes and bounds of the entirety of the public right-of-way laid out by the Selectmen of Nashua on November 24, 1847 (which includes Discontinunace Area 'B'), is as follows:

Beginning at a ___ near the southwest corner of the School-house in District No. 7 in said Nashua, thence westerly 182 3/4°, 200 feet to a stake in the ground, thence westerly 163° 96 feet to a stake in the ground, thence westerly 179° 455 feet to a stake in the ground, thence westerly 176° 226 feet to a stake in the ground, thence westerly 176 3/4° 402 feet to a stake in the ground, thence westerly 163° 778 feet to an oak tree at a lane running to Peter Terrell's house, the line above described is at the north side of said Highway running through Peter Terrells land, and the highway is three rods wide.

The only portion of the public right-of-way described in the previous paragraph that is being discontinued is Discontinunace Area 'B'.

In support of this petition, see the Attachment to Petition attached hereto.

The street discontinuance is being petitioned by:

Etchstone Properties, Inc. (Petitioner)
By its Attorneys
Winer and Bennett, LLP

By: 
J. Bradford Westgate, Esquire


603-882-5157
Telephone Number

111 Concord Street, Nashua, New Hampshire 03064
Address

May 10, 2021
Date

The petitioner has submitted three copies of the petition and plan (along with three copies of the 22" x 34" recordable mylar surveyor prints) of the proposed street discontinuance showing the abutting owners, the location of the new proposed property lines, any existing utilities and the new bounds to be set.

See attached the plan entitled "Discontinunace Plan Portions of the Historic Locations of Groton Road, Nashua, New Hampshire" by Hayner/Swanson, Inc. dated 19 January 2021.

Plan and Petition received 
CITY CLERK

May 11, 2021
DATE

The foregoing petition () is () is not Recommended for approval:

The foregoing petition () is () is not recommended for approval:

_____, 2021
CITY ENGINEER DATE

_____, 2021
CHAIR, NASHUA PLANNING BOARD DATE

Petition introduced at Board of Aldermen Meeting _____, 2021
DATE

Public Hearing conducted by the Committee on Infrastructure:

_____, 2021 _____
DATE TIME PLACE

In accordance with Chapter 285, Section 23(C), the foregoing petition was granted, conditional on the petitioner's recording the plan in the Hillsborough County Registry of Deeds, by the Board of Aldermen and Mayor on _____, 2021.
DATE

Attest: _____, 2021 _____
DATE CITY CLERK

ATTACHMENT TO PETITION FOR STREET DISCONTINUANCE

Etchstone Properties, Inc., a New Hampshire corporation, with a principal address of 179 Amherst Street, Nashua, New Hampshire 03064 (the “Petitioner”), is hereby petitioning the City of Nashua, by and through its Board of Aldermen, to discontinue (i) an existing portion of a street (public right-of-way) described in **Exhibit A** attached (“Discontinuance Area ‘A’”), which includes a portion of a road as laid out on January 14, 1799 and another portion of a road for which no layout or acceptance was found but which is presumed to be public under RSA 229:1, and (ii) an existing portion of a street (public right-of-way) described in **Exhibit B** attached (“Discontinuance Area ‘B’”), which includes a portion of a public-right of way as laid out on November 24, 1847.

Discontinuance Area ‘A’ is a portion of the historic location of Groton Road and abuts a portion of existing Groton Road, as laid out by the State of New Hampshire’s realignment of Groton Road in 1937. Discontinuance Area ‘B’ is a public road layout from 1847, which was likely intended to relocate the historic location of Groton Road, possibly to avoid certain wetlands and straighten out the “S” curve in the 1799 public road layout, but such 1847 public road layout was never built, opened, or used by the public.

In support of its Petition, the Petitioner states as follows:

1. This Petition is filed pursuant to RSA 231:43 and the City of Nashua Revised Ordinances Chapter 285-23.
2. The Petitioner is the owner of real estate located at 35 Groton Road, Nashua, New Hampshire (Map D, Lot 23) (“Lot 23”).
3. Discontinuance Area ‘A’ (described by metes and bounds in **Exhibit A**) is owned (in fee simple) by Etchstone Properties, Inc. Discontinuance Area ‘A’ abuts Lot 23 and is shown on a plan of land titled “DISCONTINUANCE PLAN PORTIONS OF THE HISTORIC

LOCATIONS OF GROTON ROAD NASHUA, NEW HAMPSHIRE”, prepared for Etchstone Properties, Inc. by Hayner/Swnason, Inc., dated 19 January 2021 (the “Discontinuance Plan”).

4. On January 14, 1799, the Selectmen of Nashua laid out a public road, as described in Book 1, Page 18 of the Books of Layouts and Discontinuances on file with the City of Nashua Engineer’s Office. Such public road later became known as Groton Road. A portion of such 1799 public road’s layout is a component of Discontinuance Area ‘A’.

5. The remainder of Discontinuance Area ‘A’ is presumed to be a public road under RSA 229:1, as it appears that certain areas adjacent to the 1799 public road’s layout were used for public travel over the years.

6. From 1799 to 1937, Discontinuance Area ‘A’ was a part of historic location of Groton Road and the City of Nashua had a public right-of-way over Discontinuance Area ‘A’.

7. In 1937, Groton Road was realigned by the State of New Hampshire. The new location of Groton Road as laid out by the State of New Hampshire in 1937 did not include the Discontinuance Area ‘A’. The State of New Hampshire acquired fee ownership of the land included in the 1937 layout of Groton Road by deeds of the existing landowners; however, the State of New Hampshire did not acquire fee ownership of Discontinuance Area ‘A’, which was not included in the new location of Groton Road. As a result, the City of Nashua continued to have a public right-of-way over Discontinuance Area ‘A’.

8. Petitioner has found no record that the State of New Hampshire ever acquired the fee ownership of Discontinuance Area ‘A’, nor any evidence that the City of Nashua discontinued or released as a public right-of-way Discontinuance Area ‘A’ in connection with or following that 1937 road realignment. As a result, Discontinuance Area ‘A’ continues to be an existing public right-of-way based on (i) the public road layout by the Selectmen of Nashua in

1799, and (ii) pursuant to RSA 229:1, for that portion of Discontinuance Area 'A' for which no layout or acceptance has been found.

9. On November 24, 1847, the Selectmen of Nashua laid out a public road that seems likely to have been intended to relocate the location of the 1799 public road, possibly to avoid certain wetlands and straighten out the "S" curve in the 1799 public road layout. The Petitioner has found no evidence that the 1847 public road layout was ever constructed, opened, or used by the public.

10. Discontinuance Area 'B' (as identified on the Discontinuance Plan and described in **Exhibit B**) is that portion of the 1847 public road layout that crossed Lot 23. Because of ambiguous language in the 1847 layout, the location of the 1847 layout cannot be determined and therefore Discontinuance Area 'B' cannot be plotted on the Discontinuance Plan. If it had ever been constructed, a portion of the public road built using such 1847 layout likely would have been within the real estate now owned by the Petitioner identified as Lot 23 (defined above), and would likely have run between Discontinuance Area 'A' and the eastern boundary of Lot 23. The metes and bounds description of the 1847 public road layout is the basis for the legal description of Discontinuance Area 'B' included in **Exhibit B**. Although the Petitioner cannot determine the location of the 1847 public road layout and therefore cannot show its location on the Discontinuance Plan, the Petitioner has limited the definition of Discontinuance Area 'B' to those portions of the 1847 public road layout that are within the boundaries of Lot 23, which excludes from Discontinuance Area 'B' any portions of such layout that are contained in the existing layout of Groton Road and the current paved travel lanes of Groton Road.

11. Petitioner has found no record that any public road using the 1847 public road layout was ever constructed. Petition also has not found any record that the State of New Hampshire ever acquired the fee ownership of Discontinuance Area 'B' or any evidence that the

City of Nashua discontinued or released as a public right-of-way Discontinuance Area 'B' at any time, notwithstanding the fact that it was not constructed, nor was it used in connection with the 1937 road realignment.

12. Discontinuance Area 'A' does not include any portion of the paved travel lanes of existing Groton Road and it is not necessary that such land remain as a public right-of-way, given the current layout and public use of Groton Road, following the 1937 realignment of the road.

13. While the Petitioner cannot be certain of the location of the 1847 public road layout, Discontinuance Area 'B' has been defined in **Exhibit B** so that it does not include any portion of the paved travel lanes of existing Groton Road and, therefore, it is not necessary that Discontinuance Area 'B' remain as a public right-of-way, given the current layout and public use of Groton Road, as laid out in the 1937 realignment of Groton Road. Discontinuance Area 'B' (as defined in this Petition to not include any portion of the 1937 layout of Groton Road) is the only portion of the 1847 public road layout that is proposed to be discontinued by this Petition.

14. The Petitioner is the only person affected by this Petition since only its property (Lot 23) abuts Discontinuance Area 'A' or Discontinuance Area 'B', which would be discontinued by this Petition.

15. The Petitioner has commenced development of a twenty-five (25) single-family residential condominium project on Lot 23, as approved by the Nashua City Planning Board on December 3, 2019 (which approval was extended on November 6, 2020), which condominium development will include private streets and will not require the use of the public right-of-way over Discontinuance Area 'A' or Discontinuance Area 'B' for any access to the condominium project.

16. The Petitioner hereby consents to the deprivation of access over Discontinuance Area 'A' and Discontinuance Area 'B', in the context of such areas no longer being a public highway or city road upon the granting of this Petition.

EXHIBIT A

Discontinuance Area 'A'

A CERTAIN PORTION OF THE HISTORIC LOCATION OF GROTON ROAD LOCATED IN THE CITY OF NASHUA, COUNTY OF HILLSBOROUGH, STATE OF NEW HAMPSHIRE, SITUATED ON THE NORTHERLY SIDE OF GROTON ROAD, BEING SHOWN ON A PLAN TITLED "DISCONTINUANCE PLAN PORTIONS OF THE HISTORIC LOCATIONS OF GROTON ROAD NASHUA, NEW HAMPSHIRE" PREPARED FOR ETCHSTONE PROPERTIES, INC. DATED: JANUARY 19, 2021, BY HAYNER/SWANSON, INC. (THE "DISCONTINUANCE PLAN") AND BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

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Exhibit B

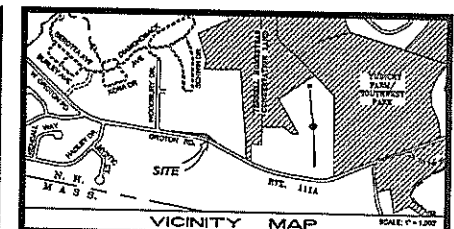
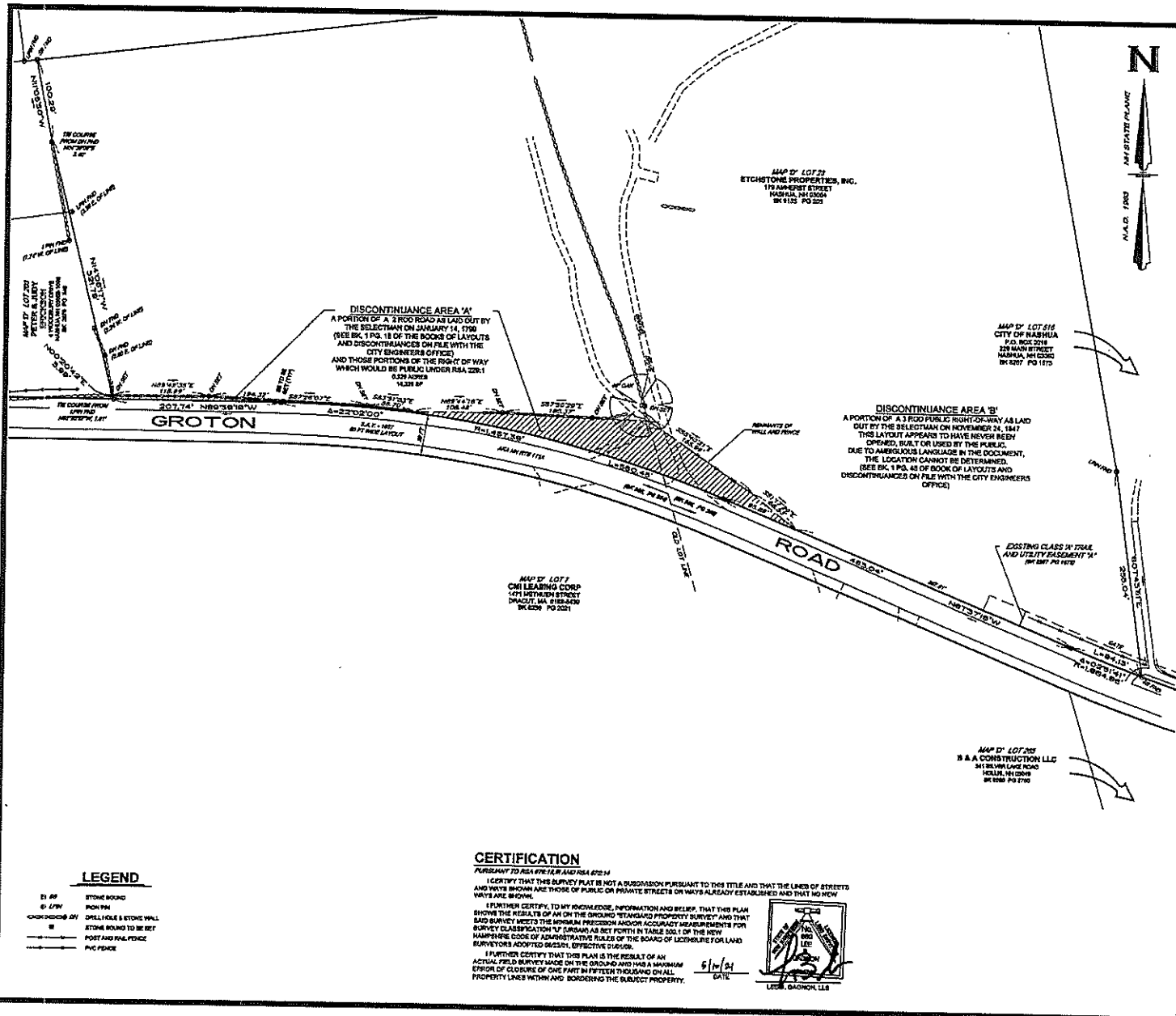
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The metes and bounds of the entirety of the public right-of-way laid out by the Selectmen of Nashua on November 24, 1847 (which includes Discontinunace Area 'B'), is as follows:

Beginning at a ___ near the southwest corner of the School-house in District No. 7 in said Nashua, thence westerly $182\frac{3}{4}^{\circ}$, 200 feet to a stake in the ground, thence westerly $163^{\circ} 96$ feet to a stake in the ground, thence westerly $179^{\circ} 455$ feet to a stake in the ground, thence westerly $176^{\circ} 226$ feet to a stake in the ground, thence westerly $176\frac{3}{4}^{\circ} 402$ feet to a stake in the ground, thence westerly $163^{\circ} 778$ feet to an oak tree at a lane running to Peter Terrell's house, the line above described is at the north side of said Highway running through Peter Terrells land, and the highway is three rods wide.

The only portion of the public right-of-way described in the previous paragraph that is being discontinued is Discontinunace Area 'B'.



- PLAN REFERENCES:**
- SUBDIVISION PLAN (LOT 23, MAP 17) OF GROTON ROAD NASHUA, NEW HAMPSHIRE PREPARED FOR CITY OF NASHUA, RECORD OWNER: ALBERT W. TERRELL REVOCABLE TRUST, SCALE: 1" = 100' DATED AUGUST 31, 2018, BY MATTHEW SWANSON, INC. RECORDED: HCRD PLAN NO. 30840
 - PLAN OF A PORTION OF DEERFIELD DEVELOPMENT, NASHUA NH BELONGING TO EDWARD H. LEVICKER, SCALE: 1" = 40' DATED: APRIL 1982, BY HENRY SHAFER RECORDED: HCRD PLAN NO. 2471
 - CONVEYANCE & SUBDIVISION PLAN, GROTON ROAD NASHUA NH PREPARED FOR J. EDWARD TERRELL & ALBERT W. TERRELL, SCALE: 1" = 200', DATED: SEPTEMBER 4, 1981, BY A.E. MAYNARD RECORDED: HCRD PLAN NO. 14273
 - AMENDED CONDOMINIUM SITE PLAN, PHASE 4, GROTON WOODS CONDOMINIUM, WEST GROTON AND GROTON RIDGE, NASHUA, NEW HAMPSHIRE, OCCASIONARY USE LAND DEVELOPMENT, CC DECLARANT, HOMES BY PARADISE, S.C. SCALE: 1" = 80' DATED: 16 JULY 2015 BY MATTHEW SWANSON, INC.
 - NASHUA (EST BAY GROTON ROAD, PROPOSED CHANGE IN GRADE, SCALE: 1" = 10' DATED MAY 1997, ON FILE WITH BAYBROT ROW DEPARTMENT.
- NOTES:**
- LOT NUMBERS REFER TO THE CITY OF NASHUA ASSESSORS MAP 'D'.
 - PURPOSE OF PLAN: TO DEPICT PORTIONS OF THE HISTORIC LOCATIONS OF THE GROTON ROAD PUBLIC RIGHT-OF-WAY PROPOSED TO BE DISCONTINUED.
 - MONUMENTS, WHERE REQUIRED, TO BE SET BY A LICENSED LAND SURVEYOR.
 - SURVEY CONTROL INFORMATION: HORIZONTAL DATUM: NAD83 HORIZONTAL PROJECTION: NAD83 STATE PLANE UNITS: US SURVEY FEET

DISCONTINUANCE PLAN
PORTIONS OF THE HISTORIC LOCATIONS OF
GROTON ROAD
NASHUA, NEW HAMPSHIRE

PREPARED FOR:
ETCHSTONE PROPERTIES, INC.
 178 AMHERST STREET NASHUA, NEW HAMPSHIRE 03064

19 JANUARY 2021

HSI *Haynes/Swanson, Inc.*
 Civil Engineers/Land Surveyors
 1 Orange Street, 1st Middlesex Turnpike
 Nashua, NH 03063, Durham, NH 03824
 603-883-3017, 603-303-1907
www.hsi-haynes.com

FIELD BOOK: 1024-A DRAWING NAME: 5185 2021 5185 1 OF 1
 DRAWING LOG: A WOOD/5185/21

CERTIFICATION
 PURSUANT TO RSA 478:12 AND RSA 478:4

I CERTIFY THAT THIS SURVEY PLAN IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.

I FURTHER CERTIFY, TO MY KNOWLEDGE, INFORMATION AND BELIEF, THAT THIS PLAN SHOWS THE RESULTS OF AN ON-THE-GROUND REVERSE-SIGHT PROPERTY SURVEY AND THAT SAID SURVEY MEETS THE MINIMUM PRECISION AND/OR ACCURACY REQUIREMENTS FOR SURVEY CLASSIFICATION AS SHOWN AS SET FORTH IN TABLE 500.1 OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS ADOPTED 06/23/11, EFFECTIVE 06/28/11.

I FURTHER CERTIFY THAT THIS PLAN IS THE RESULT OF AN ACTUAL FIELD SURVEY MADE ON THE GROUND AND THAT A MAXIMUM ERROR OF CLOSURE OF ONE PART IN FIFTEEN THOUSAND ON ALL PROPERTY LINES WITHIN AND BORDERING THE SUBJECT PROPERTY.

5/1/21 DATE
 LEON GAGNON, LLS

- LEGEND**
- DIAGONAL LINE STONE BOUND
 - SOLID LINE IRON PIN
 - DASHED LINE CHAIN OR CHAIN
 - DOTTED LINE STONE BOUND TO BE SET
 - SOLID LINE POST AND PALE FENCE
 - DASHED LINE PVC FENCE

ABUTTER LIST
Job No. 5155-ETCH
Street Discontinuance Plan
May 24, 2021

Map	Lot No.	Name & Address
<i>OWNER(S):</i>		
D	23	Etchstone Properties, Inc. 179 Amherst Street Nashua, NH 03064
<i>ABUTTERS:</i>		
D	7	CMI Leasing Corp. 1471 Methuen Street Dracut, MA 01826-5439
D	203	Peter & Judy Erickson 4 Woodbury Drive Nashua, NH 03062-1006
D	265	B&A Construction, LLC 341 Silver Lake Road Hollis, NH 030498
D	516	City of Nashua P.O. Box 2019 229 Main Street Nashua, NH 03061-2019
D	516	Society for the Protection of New Hampshire Forest 54 Portsmouth Street Concord NH 03301-5400
		Lee B. Gagnon, LLS Hayner/Swanson, Inc. 3 Congress Street Nashua, NH 03062-3301