

Rothesay

DEVELOPMENT AGREEMENT

Land Titles Act, S.N.B. 1981, c.L-1.1, s.24

Parcel Identifier of Parcels Burdened by Agreement: 30266845, 00243097
(to be reconfigured / consolidated)

Owner of Land Parcels: **Propertystar Inc.**
11 Elliot Road
Quispamsis, NB
E2G 2B5 (Hereinafter called the "Developer")

Agreement with: **Rothesay**
70 Hampton Road
Rothesay, N.B.
E2E 5L5 (Hereinafter called the "Town")

a body corporate under and by virtue of the Local Governance Act, RSNB 2017, Chapter 18, located in the County of Kings and Province of New Brunswick

WHEREAS the Developer is the registered owner of certain lands located at 145 Hampton Road (PIDs 30266845, 00243097) and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

AND WHEREAS the Developer is now desirous of entering into an development agreement to allow for the development of a forty-three (43) unit apartment building with ground floor commercial space on the Lands as described in Schedules A through D. (herein after called the "Project")

AND WHEREAS Rothesay Council did, on **INSERT DATE**, authorize the Mayor and Clerk to enter into a Development Agreement with **PROPERTYSTAR INC.** to develop a mixed use commercial residential apartment building on the Lands.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for and in the consideration of the mutual covenants and agreements herein expressed and contained, the parties hereto covenant and agree as follows:

1. The Developer agrees that the total area of ground floor commercial use space shall not exceed 486 square meters and that the total number of residential units situated on the Lands shall not exceed forty-three (43) apartment units and the.

Schedules

2. The Developer agrees to develop the Lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with the following Schedules attached to this Agreement:
 - a. Schedule A Legal Description of Parcels
 - b. Schedule B Proposed Site Plan and Location of Buildings
 - c. Schedule C Building Elevations (4)
 - d. Schedule D Landscape Plan
 - e. Schedule E Storm Water Management Plan

Site Development

3. The Developer agrees that except as otherwise provided for herein the use of the Lands shall comply with the requirements of the Rothesay Zoning By-law and Subdivision By-law, as may be amended from time to time.

4. The Developer agrees to develop the Lands in a manner, which, in the opinion of the Development Officer, is generally in conformance with Schedules B, C, D and E.

Architectural Guidelines

5. The Developer agrees that an objective of this development is to provide a high quality and visually attractive development, which exhibits an architectural design that reinforces the community character and that is generally consistent with the existing styles of housing in Rothesay. The Developer agrees to ensure the following:
 - a. The architectural design of the building shall be, in the opinion of the Development Officer, generally in conformance with Schedule C.
 - b. All exterior mounted ventilation and related mechanical equipment, including roof mechanical units, shall be concealed by screening in a manner to reduce clutter and negative impacts on the architectural character of the building.
 - c. The use of commercial fascia signage shall be prohibited; and
 - d. Awning signs, under awning signs, and projecting signs shall be the permitted forms of signage as specified in Rothesay's Signage By-law, as amended from time to time.

Storm Water

6. The Developer shall carry out, subject to inspection and approval by Town representatives, the installation of a storm water system as per Schedule E of this agreement. The Developer agrees to accept responsibility for all costs associated such installation including the following:
 - a. Construction, to Town standards, of a storm water system including pipes, fittings, precast sections for manholes and catch basins capable of removing surface water from the entire developed portion of the lands to a predetermined location selected by the Developer's Engineer and approved by the Town Engineer; and
7. The Developer agrees to submit for approval by the Town, prior to commencing any work on the storm water system such plans, as required by the Town, that shall conform with the design schematics and construction standards of the Town, unless otherwise acceptable to the Town Engineer.
8. The Developer agrees that all roof leaders, down spouts, and other storm water drains from the building, parking lot and landscape features shall not be directed or otherwise connected or discharged without attenuation directly to the Town's storm water or sanitary collection system.
9. The Developer agrees to provide to the Town Engineer written certification of a Professional Engineer, licensed to practice in New Brunswick that the storm water system has been satisfactorily completed and constructed in accordance with the Town specifications.

Sidewalks

10. The Developer shall carry out and pay for the entire actual cost of a sidewalk and associated barrier curbing as required to comply with Town standards extending the sidewalk from the proposed building to the Hampton Road, subject to inspection and approval by Rothesay's Engineer:

Water Supply

11. The Developer agrees to connect to the Town's nearest and existing water system at a point to be determined by the Town Engineer and utilizing methods of connection approved by the Town Engineer.

12. The Town agrees to supply potable water for the purposes and for those purposes only for ground floor commercial uses not exceeding 486 square meters and a total number forty-three (43) two-bedroom apartment units and for minor and accessory purposes incidental thereto and for no other purposes whatsoever.
13. The Developer agrees to pay the Town a fee for connection of the building to the Town water system including sprinkler feed to the Town water system calculated in the manner set out in By-law 1-18, Rothesay Water By-law as amended from time to time, to be paid to the Town twelve (12) months following the issuance of the building permit.
14. The Developer agrees that the Town does not guarantee and nothing in this Agreement shall be deemed a guarantee of an uninterrupted supply or of a sufficient or uniform water pressure or a defined quality of water. The Town shall not be liable to the Developer or to any person, firm or corporation for any damage or injury caused by the interruption of the supply of water, the lack of uniform pressure thereof or the quality of water.
15. The Developer agrees that all connections to the Town water mains shall be approved and inspected by the Town Engineer or such other person as is designated by the Town prior to backfilling and that the operation of water system valves is the sole responsibility of the Town.
16. The Developer agrees to comply with the Town's Water By-law and furthermore that a separate water meter shall be installed, at their expense, for each residential connection made to the Town's water system.
17. The Developer agrees that the Town may terminate the Developer's connection to the Town water system in the event that the Town determines that the Developer is drawing water for an unauthorized purpose or for any other use that the Town deems in its absolute discretion or if an invoice for water service is more than 90 days in arrears.
18. The Developer agrees to provide, prior to the occupation of the building, written certification of a Professional Engineer, licensed to practice in New Brunswick that the connection to the Town water system has been satisfactorily completed and constructed in accordance with the Town specifications.

Sanitary Sewer

19. The Developer agrees to connect to the existing sanitary sewer system at a point to be determined by the Town Engineer and utilizing methods of connection approved by the Town Engineer.
20. The Developer agrees to pay the Town a fee for connection to the Town sewer system calculated in the manner set out in By-law 1-15 Rothesay Sewage By-law, as amended from time to time, to be paid to the Town twelve (12) months following the issuance of the building permit.
21. The Developer agrees to carry out subject to inspection and approval by Town representatives, and pay for the entire actual costs of Engineering design, supply, installation, inspection and construction of all service lateral(s) necessary to connect to the existing sanitary sewer system inclusive of all pipes, laterals, fittings, and precast concrete units.
22. The Developer agrees to submit for approval by the Town, prior to commencing any work to connect to the sanitary sewer system, any plans required by the Town, with each such plan meeting the requirements as described in the Town specifications for such development.
23. The Developer agrees that connection to the Town sanitary sewer system shall be supervised by the Developer's engineer and inspected by the Town Engineer or such other person as is designated by the Town prior to backfilling and shall occur at the sole expense of the Developer.

Retaining Walls

24. The Developer agrees that dry-stacked segmental concrete (masonry block) gravity walls shall be the preferred method of retaining wall construction for the purpose of erosion control or slope stability on the Lands and furthermore that the use of metal wire basket cages filled with rock (gabions) is not an acceptable method of retaining wall construction.
25. The Developer agrees to obtain from the Town a Building Permit for any retaining wall, as required on the Lands, in excess of 1.2 meters in height and that such retaining walls will be designed by a Professional Engineer, licensed to practice in New Brunswick.

Indemnification

26. The Developer does hereby indemnify and save harmless the Town from all manner of claims or actions by third parties arising out of the work performed hereunder, and the Developer shall file with the Town prior to the commencement of any work hereunder a certificate of insurance naming the Town as co-insured evidencing a policy of comprehensive general liability coverage on "an occurrence basis" and containing a cross-liability clause which policy has a limit of not less than Two Million Dollars (\$2,000,000.⁰⁰) including a project wrap-up liability policy (with no less than 24 months coverage after project completion). The aforesaid certificate must provide that the coverage shall stay in force and not be amended, canceled or allowed to lapse within thirty (30) days prior to notice in writing being given to the Town. The previously mentioned insurance coverage must remain in full force and effect during the period available to the Developer pursuant to this agreement to complete the work set out as described in this Agreement.

Notice

27. Any notice or advice which is to be given under this Agreement shall be deemed to have been satisfactorily given to the Developer if delivered personally or by prepaid mail addressed to **Propertystar Inc.**, 11 Elliot Road, Quispamsis, NB, E2G 2B5 and to the Town if delivered personally or by prepaid mail addressed to **ROTHESAY**, 70 HAMPTON ROAD, ROTHESAY, NEW BRUNSWICK, E2E 5L5. In the event of notice by prepaid mail, the notice will be deemed to have been received four (4) days following its posting.

By-laws

28. The Developer agrees to be bound by and to act in accordance with the By-laws of the Town as amended from time to time and such other laws and regulations that apply or that may apply in the future to the site and to activities carried out thereon.

Termination

29. The Town reserves the right and the Developer agrees that the Town has the right to terminate this Agreement without compensation to the Developer if the specific proposal has not been completed on or before **INSERT DATE** being a date 5 years (60 months) from the date of Council's decision to enter into this Agreement. Accordingly, the Agreement shall have no further force or effect and henceforth the development of the Lands shall conform to the provisions of the Rothesay Zoning By-law.
30. Notwithstanding the preceding paragraph (29) above, the Parties agree that the development shall be deemed to have commenced if within a period of not less than three (3) months prior to **INSERT DATE** the construction of the municipal service infrastructure has begun and that such construction is deemed by the Development Officer in consultation with the Town Engineer as being continued through to completion as continuously and expeditiously as deemed reasonable.
31. The Developer agrees that should the Town terminate this Agreement the

Town may call the Letter of Credit described herein and apply the proceeds to the cost of completing the work or portions thereof as outlined in this Agreement. If there are amounts remaining after the completion of the work in accordance with this Agreement, the remainder of the proceeds shall be returned to the Institution issuing the Letter of Credit. If the proceeds of the Letter of Credit are insufficient to compensate the Town for the costs of completing the work mentioned in this Agreement, the Developer shall promptly on receipt of an invoice pay to the Town the full amount owing as required to complete the work.

Security & Occupancy

32. The Town and Developer agree that Final Occupancy of the proposed building(s), as required in the Building By-law, shall not occur until all conditions above have been met to the satisfaction of the Development Officer and an Occupancy Permit has been issued.
33. Notwithstanding Schedule D and E of this Agreement, the Town agrees that the Occupancy Permit may be issued provided the Developer supplies a security deposit in the amount of one hundred twenty percent (120%) of the estimated cost to complete the required storm water management and landscaping. The security deposit shall comply with the following conditions:
 - a. security in the form of an automatically renewing, irrevocable letter of credit issued by a chartered bank dispensed to and in favour of Rothesay;
 - b. Rothesay may use the security to complete the work as set out in Schedule D and E of this Agreement including landscaping or storm water works not completed within a period not exceeding six (6) months from the date of issuance of the Occupancy Permit;
 - c. all costs exceeding the security necessary to complete the work as set out in Schedule D and E this Agreement shall be reimbursed to Rothesay; and
 - d. any unused portion of the security shall be returned to the Developer upon certification that the work has been completed and acceptable to the Development Officer.

Failure to Comply

34. The Developer agrees that after sixty (60) days written notice by the Town regarding the failure of the Developer to observe or perform any covenant or condition of this Agreement, then in each such case:
 - (a) The Town shall be entitled to apply to any court of competent jurisdiction for injunctive relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defense based upon the allegation that damages would be an adequate remedy;
 - (b) The Town may enter onto the Lands and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a breach of the Agreement, whereupon all reasonable expenses whether arising out of the entry onto the Lands or from the performance of the covenants or remedial action, shall be a first lien on the Lands and be shown on any tax certificate issued under the Assessment Act;
 - (c) The Town may, by resolution of Council, discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Lands shall conform with the provisions of the Land Use By-law; and/or
 - (d) In addition to the above remedies, the Town reserves the right to pursue any other remediation under the *Community Planning Act* or Common

Law in order to ensure compliance with this Agreement.

Entire Agreement

35. This Agreement contains the whole agreement between the parties hereto and supersedes any prior agreement as regards the lands outlined in the plan hereto annexed.

Severability

36. If any paragraph or part of this agreement is found to be beyond the powers of the Town Council to execute, such paragraph or part or item shall be deemed to be severable and all other paragraphs or parts of this agreement shall be deemed to be separate and independent therefrom and to be agreed as such.

Reasonableness

37. Both parties agree to act reasonably in connection with any matter, action, decision, comment or approval required or contemplated under this Agreement.

This Agreement shall be binding upon and endure to the benefit of the Parties hereto and their respective heirs, administrators, successors and assigns.

IN WITNESS WHEREOF, each of the parties set out below has caused this Agreement, made in duplicate, to be duly executed by its respective, duly authorized officer(s) as of _____, 2022.

Witness:

Propertystar Inc.

Mark Hatfield, Director

Rothesay

Witness:

Nancy E. Grant, Mayor

Witness:

Mary Jane E. Banks, Clerk

SCHEDULE A

PID: | **30266845, 00243097**
(PIDS TO BE RECONFIGURED / CONSOLIDATED)

Form 45

AFFIDAVIT OF CORPORATE EXECUTION

Land Titles Act, S.N.B. 1981, c.L-1.1, s.55

Deponent: Mark Hatfield
11 Elliot Road
Quispamsis, NB
E2G 2B5

Office Held by Deponent: **Director**

Corporation: **PROPERTYSTAR INC.**

Place of Execution: Rothesay, Province of New Brunswick.

Date of Execution: _____, 2022

I, MARK HATFIELD, the deponent, make oath and say:

1. That I hold the office specified above in the corporation specified above, and am authorized to make this affidavit and have personal knowledge of the matters hereinafter deposed to;
2. That the attached instrument was executed by me as the officer(s) duly authorized to execute the instrument on behalf of the corporation;
3. the signature "MARK HATFIELD" subscribed to the within instrument is the signature of me and is in the proper handwriting of me, this deponent.
4. the Seal affixed to the foregoing indenture is the official seal of the said Corporation was so affixed by order of the Board of Directors of the Corporation to and for the uses and purposes therein expressed and contained;
5. That the instrument was executed at the place and on the date specified above;

DECLARED TO at Rothesay,
in the County of Kings,)
and Province of New Brunswick,)
This ___ day of _____, 2022)

BEFORE ME:)

Commissioner of Oaths)

MARK HATFIELD

Form 45

AFFIDAVIT OF CORPORATE EXECUTION

Land Titles Act, S.N.B. 1981, c.L-1.1, s.55

Deponent: **MARY JANE E. BANKS**

Rothesay
70 Hampton Road
Rothesay, N.B.
E2E 5L5

Office Held by Deponent: Clerk

Corporation: **ROTHESAY**

Other Officer Who Executed the Instrument: **NANCY E. GRANT**

Rothesay
70 Hampton Road
Rothesay, N.B.
E2E 5L5

Office Held by Other Officer Who Executed the Instrument: Mayor

Place of Execution: Rothesay, Province of New Brunswick.

Date of Execution: _____, 2022

I, **MARY JANE E. BANKS**, the deponent, make oath and say:

- 1. That I hold the office specified above in the corporation specified above, and am authorized to make this affidavit and have personal knowledge of the matters hereinafter deposed to;
- 6. That the attached instrument was executed by me and **NANCY E. GRANT**, the other officer specified above, as the officer(s) duly authorized to execute the instrument on behalf of the corporation;
- 7. The signature "**NANCY E. GRANT**" subscribed to the within instrument is the signature of Nancy E. Grant, who is the Mayor of the town of Rothesay, and the signature "**Mary Jane E. Banks**" subscribed to the within instrument as Clerk is the signature of me and is in the proper handwriting of me, this deponent, and was hereto subscribed pursuant to resolution of the Council of the said Town to and for the uses and purposes therein expressed and contained;
- 8. The Seal affixed to the foregoing indenture is the official seal of the said Town and was so affixed by order of the Council of the said Town, to and for the uses and purposes therein expressed and contained;
- 9. That the instrument was executed at the place and on the date specified above;

DECLARED TO at town of
Rothesay, in the County of Kings,)
and Province of New Brunswick,)
This ___ day of _____, 2022)

BEFORE ME:)

Commissioner of Oaths)

MARY JANE E. BANKS

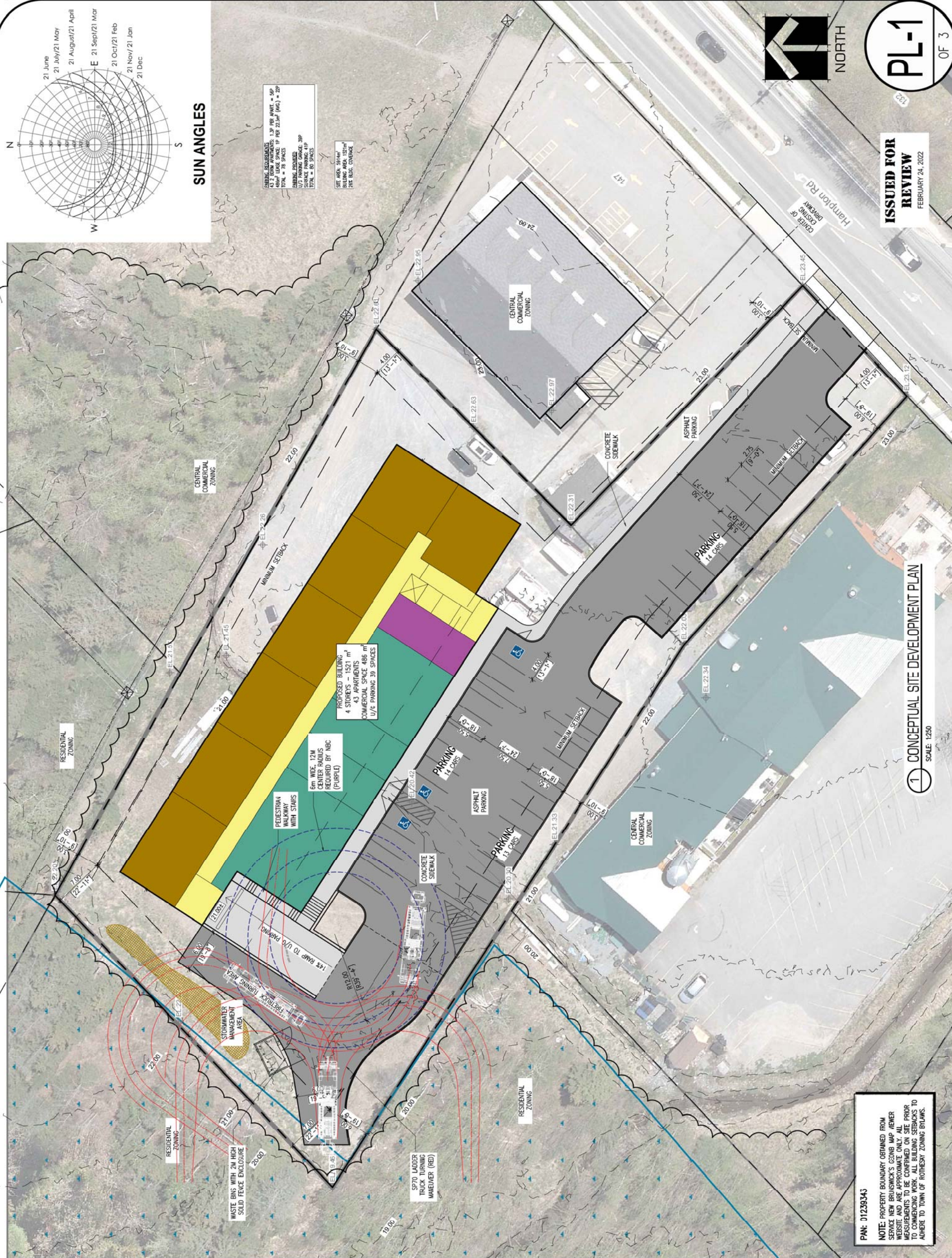
PROPERTYS STAR 145 ROAD NORTHWAY, BRUNSWICK, GA

Polyline Designs Inc.
 RESIDENTIAL / COMMERCIAL BUILDING DESIGN
 SITE AND LANDSCAPE DESIGN
 ARCHITECTURAL RENDERING
 PAINTING and GRAPHIC SERVICES

MONROE OFFICE: 666 LESLIE STREET, MONROE, LA 70607
 WASHINGTON OFFICE: 1000 14TH STREET, WASHINGTON, DC 20004
 SUSSEX OFFICE: 437 PICOBY ROAD, PICOBY, MS 38677
 T: 504.850.1833 • E: info@polylinedesigns.com
 WWW.POLYLINEDESIGNS.COM

PAN: 01239343

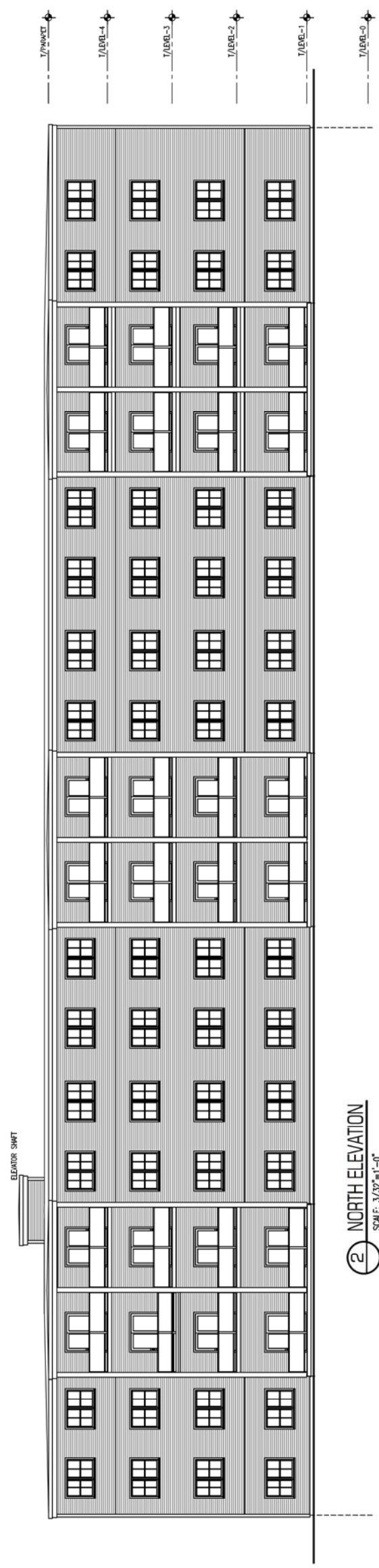
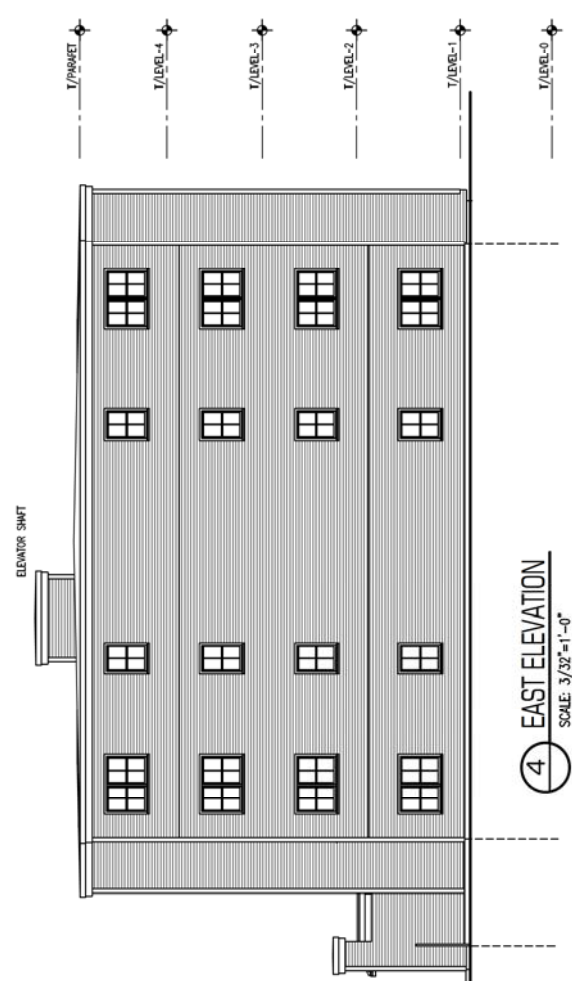
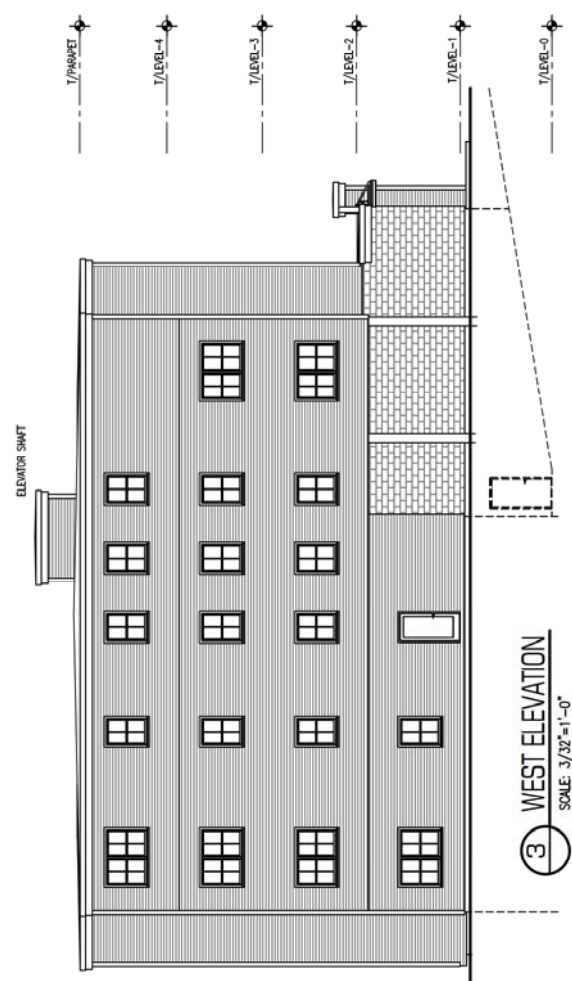
NOTE: PROPERTY BOUNDARY OBTAINED FROM SERVICE NEW BRUNSWICK'S GOING MAP REVER MESSERS AND THE APPROXIMATE ONLY. SITE PRIOR TO COMMENCING WORK. ALL BUILDING SETBACKS TO ADHERE TO TOWN OF RUTHERS ZONING BYLAW.



PROPERTYS TAR 145 ROAD 145

R O T H E S A Y , N E W B U R U N S W I C K

Polyline Designs Inc.
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 SITE AND LANDSCAPE DESIGN
 ARCHITECTURAL RENDERING
 PAINTING and GRAPHIC SERVICES
 MONTEBELL OFFICE: 505 LESLIE STREET, WILMINGTON, NH 03102-6807
 T: 508.850.8838 x 1 E: info@polylinedesigns.com
 SUSSEX OFFICE: 437 RICHMOND ROAD, RICHMOND, NH 03440-5177
 T: 508.434.1157 x 1 E: info@polylinedesigns.com
 WWW.POLYLINEDESIGNS.COM



**ISSUED FOR
 PAC SUBMISSION**
 JANUARY 14, 2022

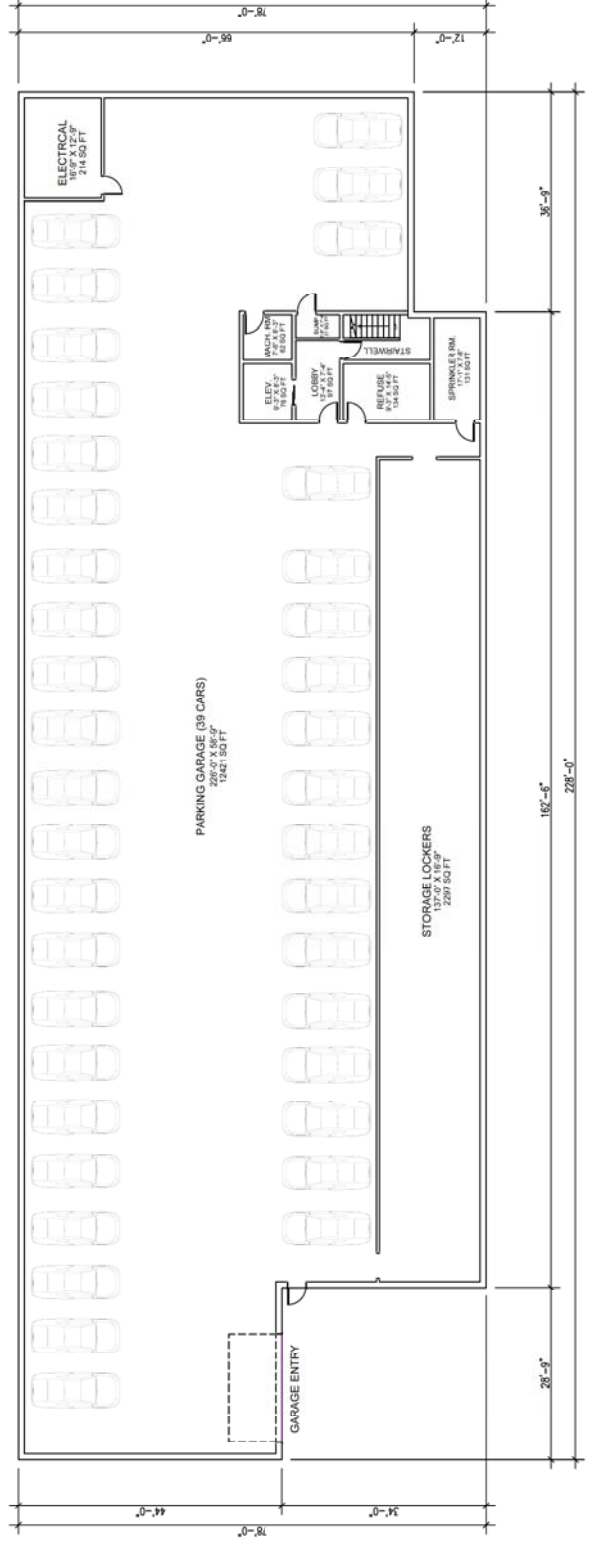
PROPERTYS STAR 145

145 HAMPTON ROAD

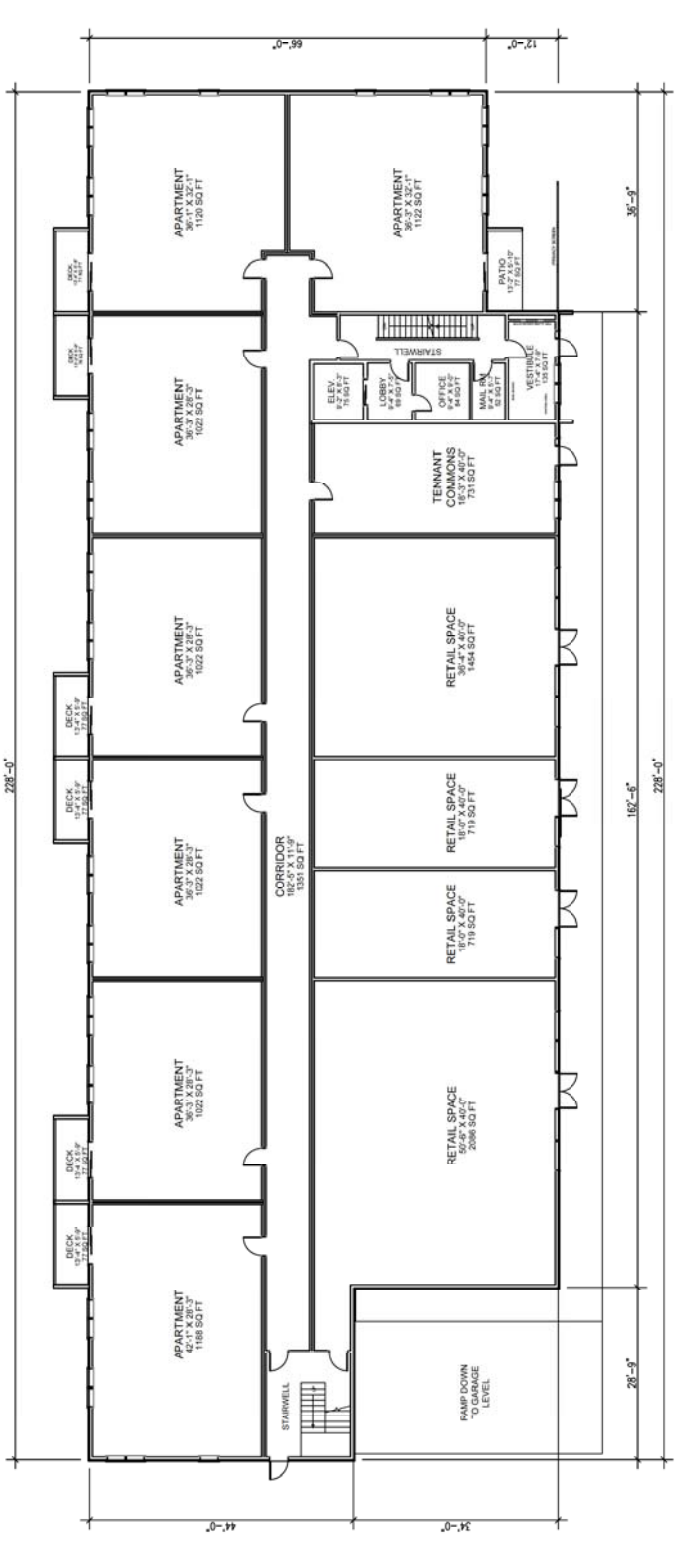
R O T H E S A Y , N E W B U R U N S W I C K



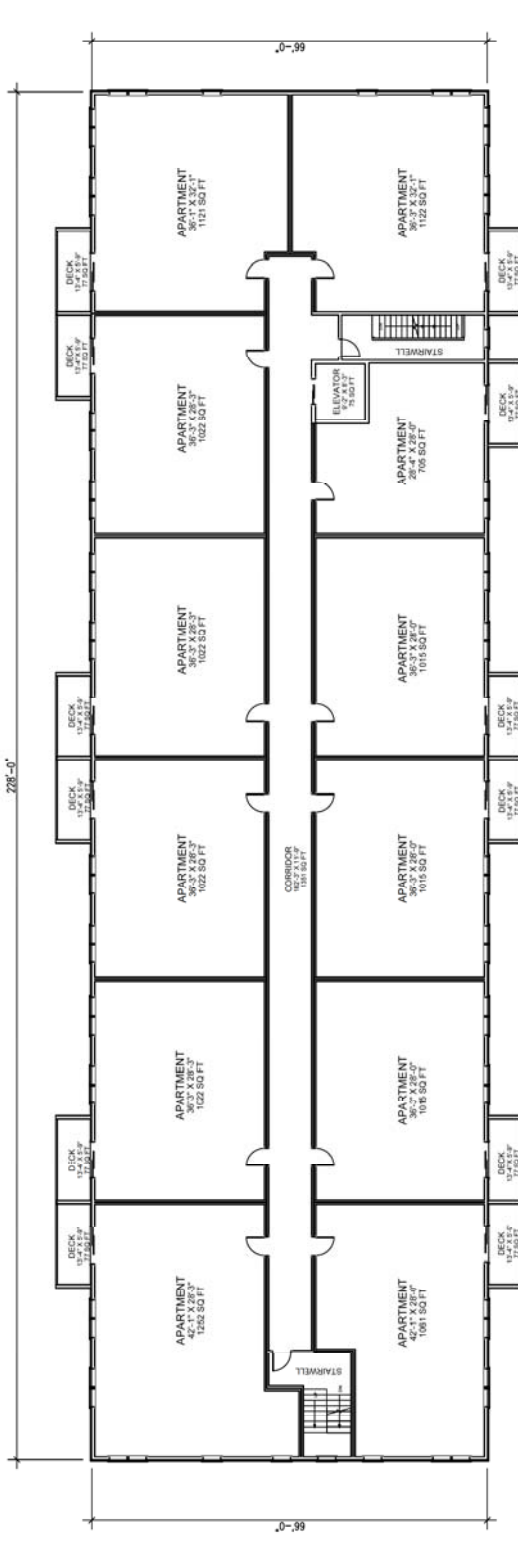
1 LEVEL-0 FLOOR PLAN
 SCALE: 1/16"=1'-0"
 FLOOR AREA 16,365 S.F.
 39 VEHICLE PARKING SPACES



2 LEVEL-1 FLOOR PLAN
 SCALE: 1/16"=1'-0"
 FLOOR AREA 16,365 S.F.
 7 APARTMENTS
 TENANT COMMONS 731 S.F.
 RETAIL SPACES 4,978 S.F.



3 LEVEL-2, 3, 4 FLOOR PLAN
 SCALE: 1/16"=1'-0"
 FLOOR AREA 15,048 S.F.
 12 APARTMENTS



**ISSUED FOR
 PAC SUBMISSION**
 JANUARY 14, 2022

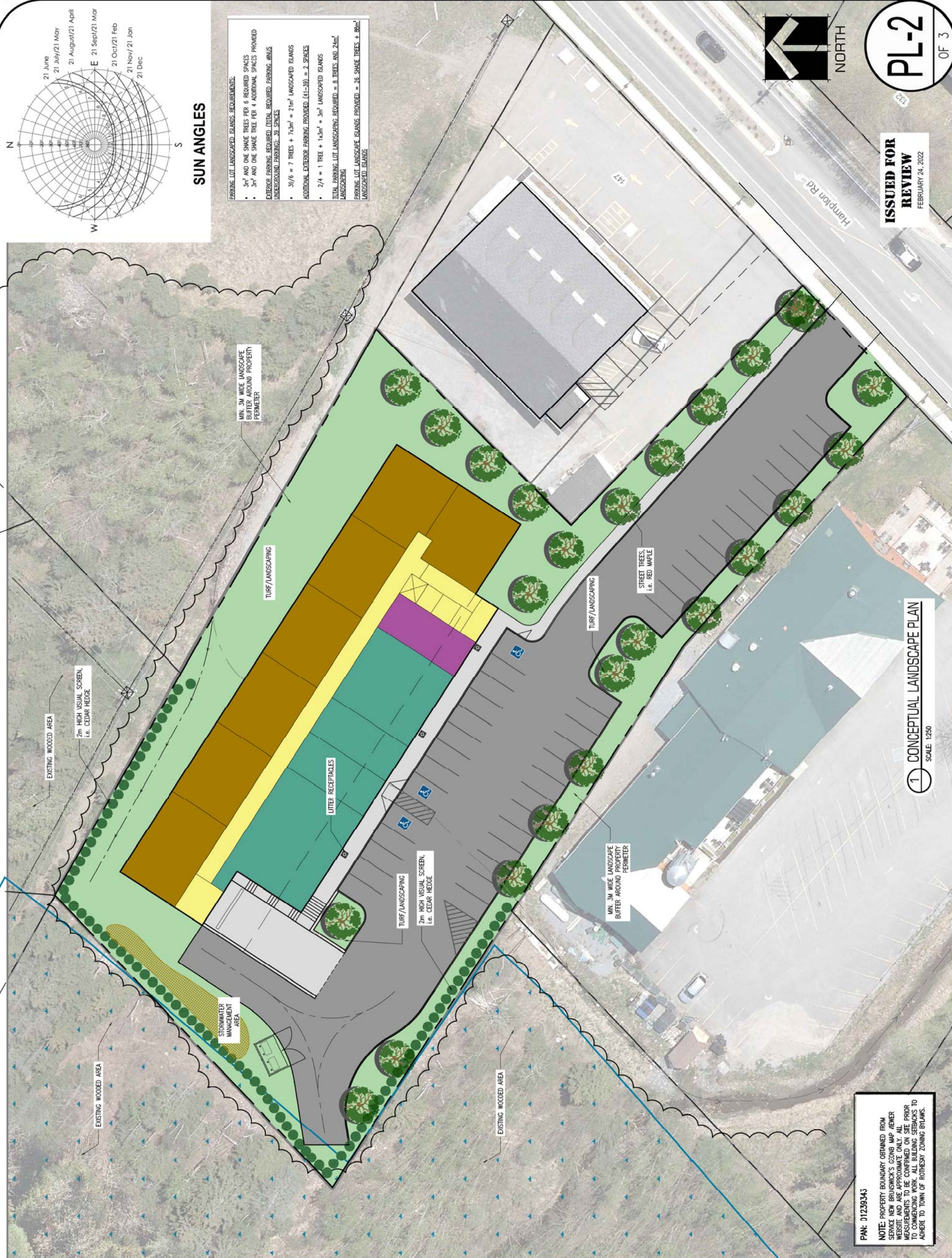
PA-1
 OF 2

PROPERTYS 145 HAMPTON RD 145

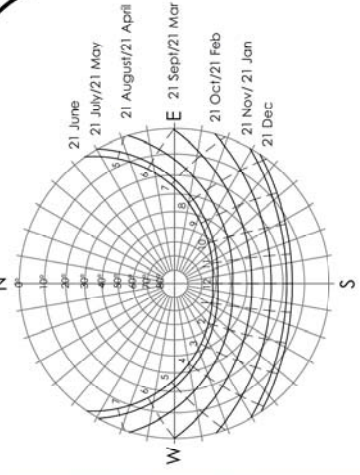
Polyline Designs Inc.
 RESIDENTIAL / COMMERCIAL BUILDING DESIGN
 SITE AND LANDSCAPE DESIGN
 CONCEPTUAL DESIGN
 ARCHITECTURAL DRAWINGS AND GRAPHIC SERVICES

WORKING OFFICE: 685 LESLIE STREET, WILMINGTON, MA 01897
 508.850.1833 • E: info@polylinedesigns.com
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 508.434.1157 • E: poly@polylinedesigns.com
 WWW.POLYLINEDESIGN.COM

PAN: 01239343
 NOTE: PROPERTY BOUNDARY OBTAINED FROM SERVICE NEW BRUNSWICK'S GEOID MAP. REVER SERVICE AND THE APPROXIMATE ONLY. SITE PRIOR MEASUREMENTS AND RECORDS SHOULD BE REFERRED TO COMMENCING WORK. ALL BUILDING STRUCKS TO ADHERE TO TOWN OF RUTHERS ZONING BYLAW.



- PARKING LOT LANDSCAPED ISLANDS REQUIREMENTS:**
- 3/4' AND ONE SHADE TREE PER 6 REQUIRED SPACES
 - 3/4' AND ONE SHADE TREE PER 4 ADDITIONAL SPACES PROVIDED
- EXTERIOR PARKING REQUIRED TOTAL REQUIRED PARKING MINUS UNDERGROUND PARKING: 38 SPACES**
- 35/6 = 7 TREES + 7.5m² = 21m² LANDSCAPED ISLANDS
 - ADDITIONAL EXTERIOR PARKING PROVIDED (41-39) = 2 SPACES
 - 2/4 = 1 TREE + 1.5m² = 3m² LANDSCAPED ISLANDS
- TOTAL PARKING LOT LANDSCAPING REQUIRED = 8 TREES AND 24m² LANDSCAPING**
- PARKING LOT LANDSCAPE ISLANDS PROVIDED = 26 SHADE TREES + 86m² LANDSCAPED ISLANDS**



SUN ANGLES

ISSUED FOR REVIEW
 FEBRUARY 24, 2022

PL-2
 OF 3

1 CONCEPTUAL LANDSCAPE PLAN
 SCALE: 1:250

Ref: 21358-StormwaterReview

January 14, 2022

Mr. McLean,

Re: 145 Hampton Road - Homestar - Stormwater Review

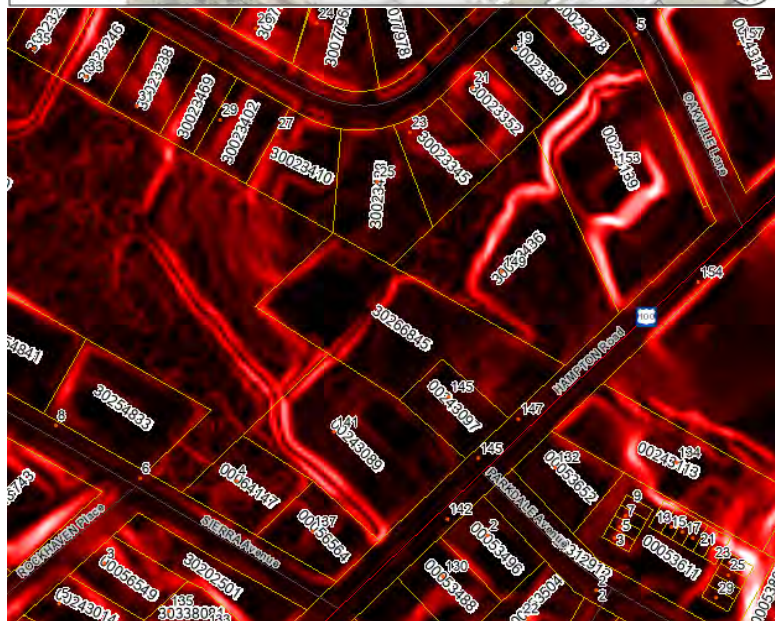
Don-More Surveys & Engineering Ltd. (Don-More) has been engaged to perform a high level review of a proposed development at the above address relative to a stormwater management strategy.

We have been provided with a revised conceptual site plan prepared by Polyline Designs dated January 13, 2022 and this review is limited to details shown on this site plan.



Existing Site

The existing site can be characterised as a generally flat area with two existing buildings. The front area of the site is an asphalt parking area. The rear portion of the site is gravel. The rear area is bisected by a drainage channel flowing southwest from the vacant property at 149 Hampton Road. This drainage channel connects with a larger channel flowing northwest along the southern side of 141 Hampton Road and the combined channel flows northwest into an existing wetland area which eventually drains into Salmon Creek.



Stormwater Management Approach

The proposed site plan shows the new building sitting on the northern portion of the site and

lying on top of the existing drainage channel. This channel would need to be rerouted along the northern and western sides of the new building.

The new site would be designed to perform stormwater management to limit peak flows to pre development levels. Water draining from the parking areas would be directed to a Stormscepter to provide treatment of water quality. Below are preliminary design ideas for how this will be achieved.

The new building has a flat roof. We would plan to detain water on the roof of the building using flow controllers on the roof drains. Typically we design this system to pond the equivalent of 100mm of water in a 100 year event.

The new parking area would be designed to have a catch basin system which will collect the water and direct it to a Stormscepter, then discharge to the western corner of the property. The parking lot around the catch basins will be graded to create "ponds" at the catch basins and Inlet Control Devices (ICD's) will be installed on the catch basins to limit peak flows into the piped system. This results in water ponding on the parking area in peak rain events.

Following detailed design and once modelling of these two approaches has been completed, if additional measures are required to reduce peak flows we would look at either a traditional stormwater management pond at the western corner of the property, or underground storage under the parking areas.

Closing

We trust this is sufficient for your present needs. Please feel free to contact the undersigned at 506.636.2136 or at at@dmse.ca for any additional information or clarification.

Yours truly,

Don-More Surveys & Engineering Ltd.

Andrew Toole

Andrew Toole, NBLs, P.Eng.