

ORDINANCE NO. 2020-13

AN ORDINANCE OF THE BOROUGH OF BAY HEAD,
COUNTY OF OCEAN, STATE OF NEW JERSEY,
AUTHORIZING THE GRANT OF AN ACCESS
EASEMENT TO THE OWNER OF BLOCK 32 LOT 13
OVER A BOROUGH ALLEYWAY

WHEREAS, pursuant to the Local Land and Buildings Law, N.J.S.A. 40A:12-1 et seq., the Borough of Bay Head has the power to sell or devise any real property or interests therein for a public purpose; and

WHEREAS, the Borough of Bay Head is the owner of lands an alleyway that runs from Main Avenue to East Avenue between Lots 4 and 13 in block 32 and Lots 3, 13, and 15 in Block 32.01 on the official Tax Map of the Borough of Bay Head; and

WHEREAS, in 2007 the Borough adopted an ordinance vacating the Borough's right, title and interest in the alley way to the adjacent property owners; a property owner filed a complaint in Superior Court objecting to the vacation which resulted in a settlement in which the Borough and the property owner entered into a Consent Order, signed by the Court directing the County Clerk to remove the ordinance from the County Records; and

WHEREAS, the order was never filed with the County Clerk and until the certified Order was received and filed with the County Clerk, the alley way was still considered vacated.

WHEREAS, improvements associated with Block 32 Lot 13 have been constructed in the alleyway consisting of a portion of the driveway as well as a portion of the house; and

WHEREAS, the property owner has requested the grant of an easement from the Borough of Bay Head, ensuring their continuing ability to utilize the alleyway; and

WHEREAS, the Borough Council desires to authorize an Easement Agreement with the owner of Block 32, Lot 13 to ensure continued use of the property.

NOW, THEREFORE, BE IT ORDAINED by the governing body of the Borough of Bay Head, County of Ocean, and State of New Jersey, as follows:

SECTION 1. The Borough Council hereby authorizes and approves the execution of an Easement Agreement with the property owner of Block 32 Lot 13, granting a nonexclusive right of ingress and egress over the alleyway that runs through the block from Main Avenue to East Avenue between Lots 4 and 13 in block 32 and Lots 3, 13, and 15 in Block 32.01, as more particularly described in the Agreement attached hereto and incorporated herein as Schedule A.

SECTION 2. The Mayor and Borough Clerk are hereby authorized and directed to execute any and all such documents providing for the Easement Agreement and to undertake any and all such acts as may be necessary to effectuate the terms hereof, subject to the Borough Attorney's approval of the form and substance of said documents.

SECTION 3. If any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provisions so adjudged and the remainder of this Ordinance shall be deemed valid and effective.

SECTION 4. This ordinance shall take effect immediately upon its passage and publication as required by law.

ATTEST:


Patricia M. Applegate
Municipal Clerk

APPROVED:


William W. Curtis, Mayor

Introduced on First Reading: September 14, 2020

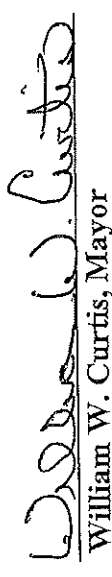
Introduced on Second Reading: October 5, 2020

Approved on Second Reading: October 5, 2020

ATTEST:


Patricia M. Applegate
Municipal Clerk

APPROVED:


William W. Curtis, Mayor

DEED OF EASEMENT

THIS DEED OF EASEMENT is made this 5th day of October, 2020

BETWEEN: BOROUGH OF BAY HEAD, a municipal corporation with principal offices located at 83 Bridge Avenue, Bay Head, New Jersey Hereinafter referred to as "Grantor,"

AND EDWARD A. CARPINELLO, TRUST, the owner of property located at 228 East Avenue, Bay Head, New Jersey, Hereinafter referred to as the "Grantee."

WITNESSETH

WHEREAS, Grantor is the owner of that certain tract of land, located in the Borough of Bay Head, County of Ocean, State of New Jersey, and/or identified as an alleyway that runs through the block from Main Avenue to East Avenue between Lots 4 and 13 in block 32 and Lots 3, 13, and 15 in Block 32.01, as depicted in Addendum A (Survey) and Addendum B, Portion of Official tax map of the Borough of Bay Head hereinafter the "Property(s)," and Grantor holds the requisite interest to grant this Deed of Easement.

NOW, THEREFORE, the Grantor grants and conveys to Grantee a permanent easement as set forth herein:

GRANT OF EASEMENT: A permanent easement and right-of-way for non-exclusive access and continued use of improvements constructed across that land of the Property(s) identified as an alleyway that runs through the block from Main Avenue to East Avenue between Lots 4 and 13 in block 32 and Lots 3, 13, and 15 in Block 32.01 as identified in Addendum A (Survey) and Addendum B on the official tax map of the Borough of Bay Head hereinafter the "Property(s)," and Grantor holds the requisite interest to grant this Deed of Easement listed above for use by the Grantees, their representatives, agents, contractors and assigns to:

- a. Utilize the right-of-way for access;
- b. Continued use and occupation of improvements constructed across, over and through the alleyway;
- c. Vehicular ingress and egress;

The easement reserves to the Grantor, the Grantor's, successors and assigns the right and privileges as may be used and enjoyed without interfering with or abridging the rights and

easements hereby conveyed to the Grantees, subject however to existing easements for utilities and pipelines, existing public highways, existing paved public roads and existing public streets.

Duration of Easement: The easement granted hereby, the covenants, terms, conditions and restrictions of this Deed of Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective representatives, successors and assigns and shall continue as a servitude running with the land until such time as the encroachments consisting of a driveway and a portion of the residence are removed.

Character of Property(s): Notwithstanding the foregoing, nothing herein is intended or shall be deemed to grant the Grantees or otherwise permit the Grantee to any other person to cross encroach upon or occupy any part of the Property(s) which is not within the specified Easement Area; nothing herein is intended or shall be deemed to alter the boundary lines or setback lines of the Property(s).

By the acceptance of this Deed of Easement, the Municipality agrees, to the extent allowed by applicable law, that the Property(s) burdened by the easement herein described shall not be included in the calculations of minimum square footage requirements when construing applications under the Zoning Ordinance of the Municipality.

Miscellaneous:

1. The interpretation and performance of this Deed of Easement shall be governed by the laws of the State of New Jersey.
2. Indemnification. Grantee agrees to indemnify and hold the Grantor's agents, employees, guests or licensees harmless from and against any and all payments, expenses, costs, and attorney's fees and from and for any and all claims and liability for losses or damage to property or injuries to persons occasioned wholly or in part by or resulting from any acts or occasions by the Grantee or its agents, employees, guests, or licensees.
3. If any provisions of this Deed of Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Easement or the application of such provisions to person or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
4. Any notice, demand, request, consent, approval or communication under this Deed of Easement shall be sent by regular first-class mail, postage prepaid and by Certified

Mail, Return Receipt Requested, addressed to the mailing addresses set forth above or any other address of which the relocation party shall notify the other, in writing.

5. The captions in this Deed of Easement have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

6. No new structures or improvements may be constructed or otherwise placed in the easement area.

IN WITNESS WHEREOF, the said Grantor and Grantee have hereunto set their hands and seal on the day and year above written.

Signed, Sealed and Delivered

in the presence of:

Cathie M. Applegate

By: William Curtis
William Curtis, Mayor

Signed, Sealed and Delivered

in the presence of:

Cathie M. Applegate

By: Maria Capinella
Trustee

STATE OF NEW JERSEY, COUNTY OF Ocean
I CERTIFY that on October 9, 2020,

SS:

Rothstein, Mandel, Strohm,
Halm & Cipriani
Counsellors at Law
150 Airport Road, #600
P.O. Box 3017
Lakewood, New Jersey 08701

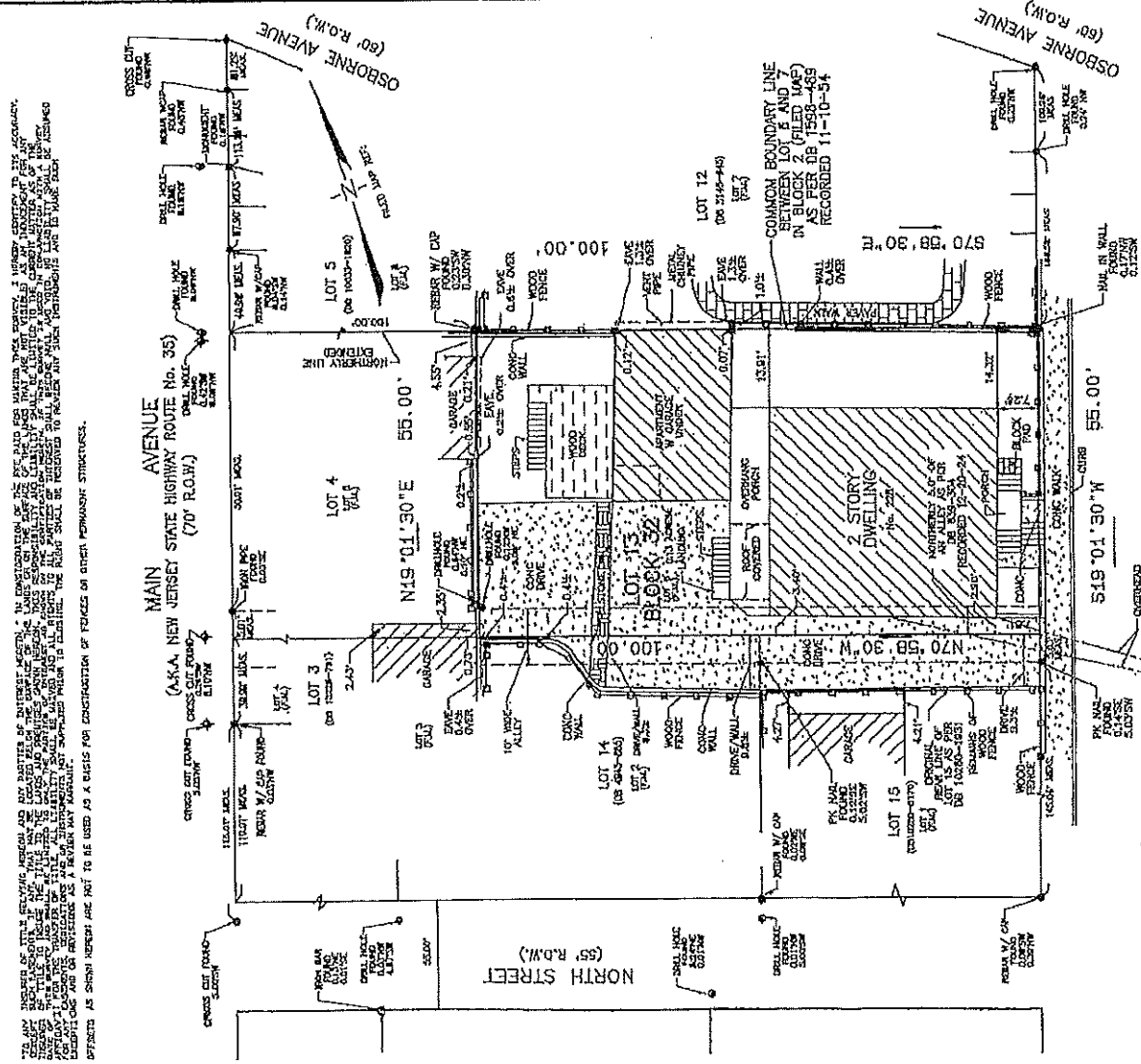
William Curtis, Mayor personally came before me and this person acknowledged under oath, to my satisfaction that this person (or if more than one, each person);

- 1) Is named in and personally signed this Deed of Easement;
 - 2) Signed, sealed and delivered this Deed of Easement as his or her act and deed;
 - 3) Holds the requisite ownership interest and authority to execute this Deed of Easement;
- and
- 4) Made this Deed of Easement for the full and actual consideration as set forth herein.

Claire S. Hense

Claire S. Hense
Notary Public
State of New Jersey
My Commission Expires 3/7/2022

338 EAST AVE / Carpinello



THIS MAP IS A SURVEY MAP AND NOT A MAP OF RECORD. IT IS NOT TO BE USED AS A BASIS FOR CONSTRUCTION OF BOUNDARIES OR OTHER PERMANENT STRUCTURES. THE INFORMATION ON THIS MAP IS BASED ON THE BEST AVAILABLE INFORMATION AND THE SURVEYOR HAS NO LIABILITY FOR ANY ERRORS OR OMISSIONS. THE SURVEYOR HAS NOT BEEN ADVISED OF ANY OTHER SURVEYS OR RECORDS THAT MAY AFFECT THIS MAP. THE SURVEYOR HAS NOT BEEN ADVISED OF ANY OTHER SURVEYS OR RECORDS THAT MAY AFFECT THIS MAP. THE SURVEYOR HAS NOT BEEN ADVISED OF ANY OTHER SURVEYS OR RECORDS THAT MAY AFFECT THIS MAP.

NOTE: THIS MAP IS NOT FOR CONVEYANCE OF TITLE OR TO DEFINE BOUNDARY OF PROPERTY AND IS ONLY FOR SHOWING PHYSICAL CONDITIONS AND LOCATION OF RECORDS. THIS FIRM SHALL NOT BE HELD LIABLE FOR BOUNDARY INFORMATION RECEIVED FROM ANY SOURCE. THE LOCATION OF THE ALLEY AS VACATED AS PER DEED BOOK 15765-1229 HAS NOT BEEN DETERMINED AND NO RIGHTS, TITLE AND INTEREST OF SAID ALLEY HAVE NOT BEEN CONVEYED.

THIS MAP IS CERTIFIED TO ONLY:
EDWARD A. CARPINELLO
TURTON SIGNATURE TITLE AGENCY, LLC (1010TU-010)

DEED DESCRIPTION:
BEING KNOWN AS LOT 5 IN BLOCK 32 IN SECTION A, BEING KNOWN AS LOT 5 IN BLOCK 32 IN SECTION A, OCEAN COUNTY, N.J. 18031 AND FILED IN THE OCEAN COUNTY CLERK'S OFFICE ON NOVEMBER 11, 1983 AS MAP No. A-1-107. THE NORTHERLY 5 FEET OF AN ALLEY BETWEEN LOTS 1, 2, AND 5 IN BLOCK 32, SECTION A, AS SHOWN ON THE ABOVE MENTIONED FILED MAP.

A-K-A, LOT 15 IN BLOCK 32 AS SHOWN ON THE OFFICIAL TAX MAPS OF THE BOROUGH OF BAY HEAD, OCEAN COUNTY, NEW JERSEY.
DEED REFERENCE:
BOOK 15765-1229

MAP SHOWING PHYSICAL CONDITIONS OF PROPERTY OWNED BY EDWARD A. CARPINELLO 228 EAST AVENUE LOT 15 BLOCK 32 BOROUGH OF BAY HEAD OCEAN COUNTY, NEW JERSEY

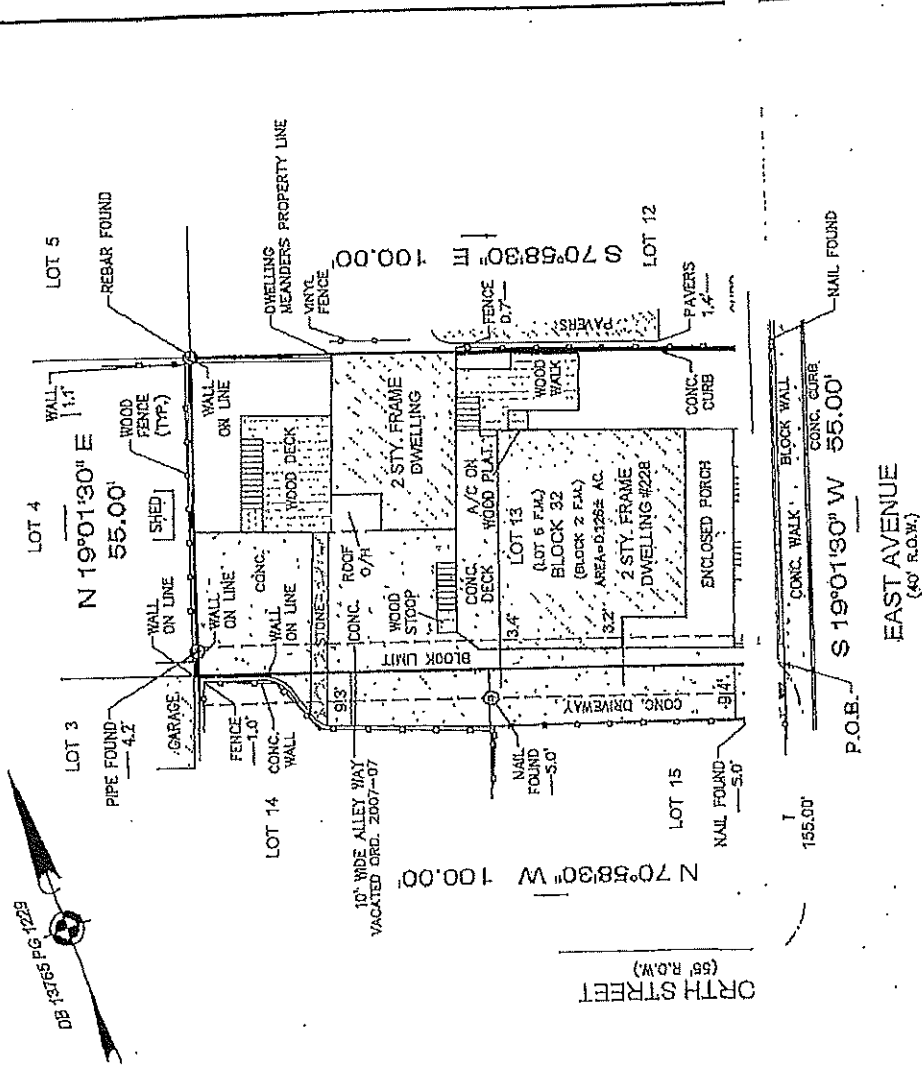
Proj. No.:	07-7223	LEGEND:
Date:	12-14-07	
Drawn by:	J.R.H.	
Scale:	1" = 20'	

COASTAL SURVEYING COMPANY
SURVEYORS & PLANNERS
659 RIVERSIDE DRIVE
BAYVILLE, N.J. 08724
PHONE: (732) 268-7533
FAX: (732) 268-7534

DATE: 1-9-08
FRANK J. ERNST
PROFESSIONAL LAND SURVEYOR N.J. LIC. NO. 28308
PROFESSIONAL PLANNER NO. 2864

THIS MAP IS SUBJECT TO CONDITIONS WHICH AN ACCURATE TITLE SEARCH MIGHT DISCLOSE.

288 East Ave / Cleaves

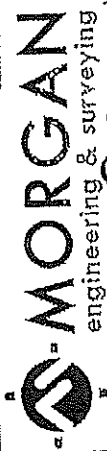


DISCUSSION TOPIC:
CONCRETE DRIVEWAY CROSSES
BOUNDARY LINE BETWEEN SUBJECT
LOT AND LOT 14 WITH NO KNOWN
EASEMENTS.

PREPARED FOR: DANIEL CLEAVES and KIMBERLY CLEAVES
 TITLE INSURER: SIMPLICITY TITLE, LLC (ST-14819)
 WESTCOOR LAND TITLE INSURANCE COMPANY
 MORTGAGE HOLDER: BANK OF AMERICA, N.A.
 its successors and/or assigns, as their interest may appear.
 BUYER'S ATTORNEY: SCOTT A. TERRY, Esquire
 LINDABURY, MCCORMICK, ESTABROOK & COOPER

IMPORTANT NOTES, PLEASE REVIEW:

- IDEAS ARE THAT, TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF, THIS MAP OR PLAN MADE ON 1/27/20 BY ME OR UNDER MY DIRECT SUPERVISION IS IN ACCORDANCE WITH THE RULES AND REGULATIONS PROMULGATED BY THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS.
- THIS SURVEY PLAT OR MAP IS NOT TO BE USED TO RECONSTRUCT PROPERTY LINES.
- THIS SURVEY IS SUBJECT TO CORRECTIONS AND FIELD MAPS AND MAY NOT REFLECT CURRENT LOCAL REQUIREMENTS.
- PROPERTY CORNERS HAVE NOT BEEN SET AS PER CONTRACTUAL AGREEMENT (CALL 201-940-5100)



www.morganengineering.com

P.O. BOX 6232
 TOMAS RIVER, N.J. 08764
 TEL: 732-270-8990
 FAX: 732-270-8991

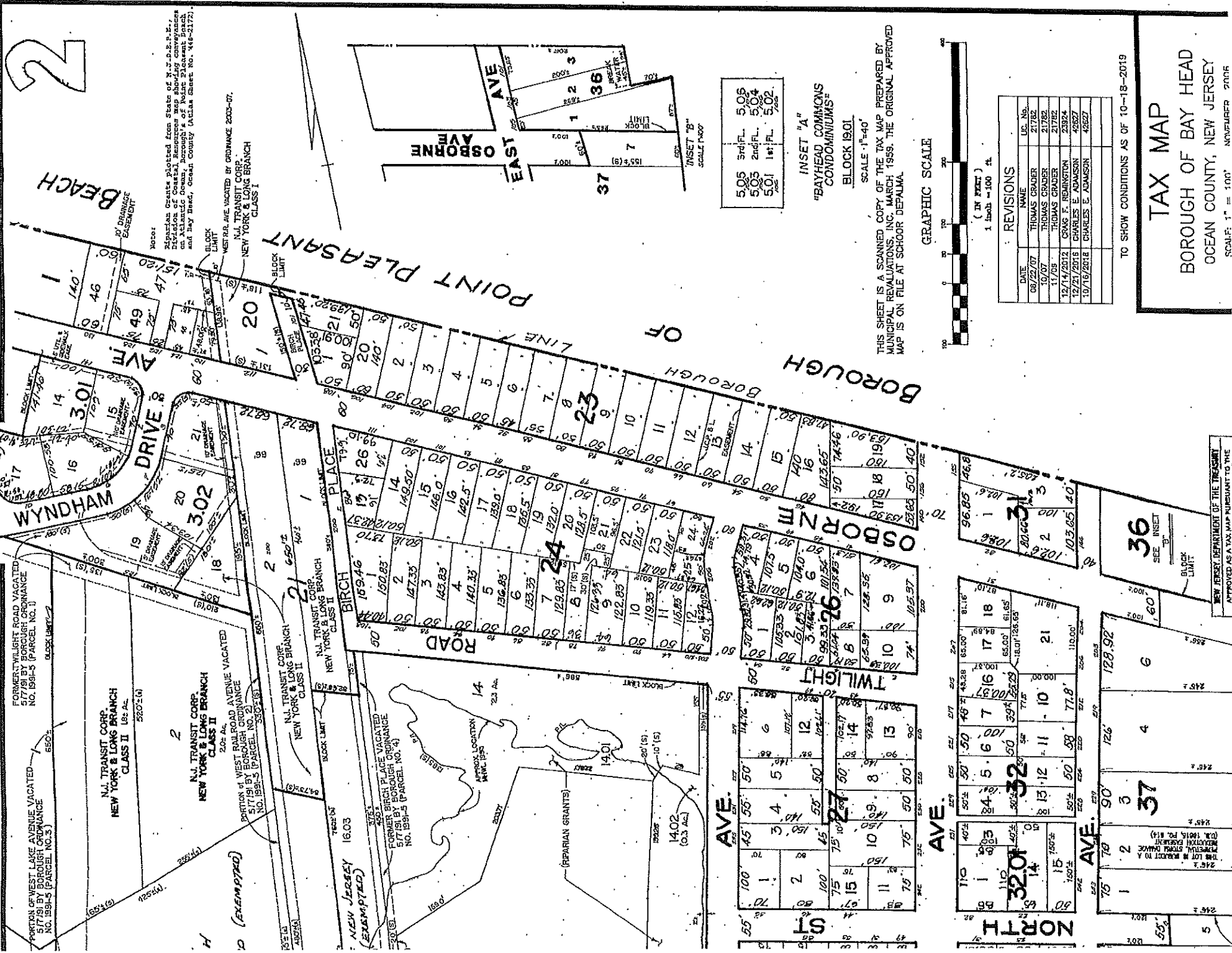
DAVID J. VON STEENBURG
 PROFESSIONAL LAND SURVEYOR
 N.J. LIC. No. 3-4500

SURVEY OF PROPERTY
 LOT 13
 BLOCK 32
 BOROUGH OF BAY HEAD
 NEW JERSEY

Scale	1"=20'	Drawn By	PK	1/27/20	Job #	20-00841	Sheet #	1 of 1
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DB 13765 PG 1229

SEE PLATE I



5.05	2nd FL.	5.05
5.05	2nd FL.	5.04
5.01	1st FL.	5.02

INSET "A"
 "BAYHEAD COMMONS"
 CONDOMINIUMS"
 BLOCK 19.01
 SCALE: 1"=40'

THIS SHEET IS A SCANNED COPY OF THE TAX MAP PREPARED BY MUNICIPAL REVALUATIONS, INC. MARCH 1959. THE ORIGINAL APPROVED MAP IS ON FILE AT SCHOOR DEPALMA.



REVISIONS		
DATE	NAME	LT. NO.
08/23/07	THOMAS CRAIGER	21782
10/07/07	THOMAS CRAIGER	21782
11/05/07	THOMAS CRAIGER	21782
12/14/2012	CRAG F. REMINGTON	23924
12/21/2012	CHARLES E. ADAMSON	42927
10/16/2018	CHARLES E. ADAMSON	42927

TO SHOW CONDITIONS AS OF 10-18-2019

TAX MAP
 BOROUGH OF BAY HEAD
 OCEAN COUNTY, NEW JERSEY
 SCALE: 1" = 100' NOVEMBER 2006

NEW JERSEY DEPARTMENT OF THE TREASURY
 APPROVED AS A TAX MAP PURSUANT TO THE