

# RESOLUTION OF THE CITY COUNCIL

No. 127

*Approved* March 16, 1990

RESOLVED, That His Honor the Mayor is authorized to enter into an agreement of easement granting permission to North Main Associates, (hereafter "NMA"), their successors and assigns to erect and maintain a free standing pylon sign within the line of Collyer Street. Said grant is predicated upon the following conditions:

a.) The sign and the area for its maintenance shall be a rectangular area not more than ten (10) feet by thirty (30) feet located adjacent to the easterly side of Collyer Street approximately one hundred ninety (190') feet northerly of the intersection of Collyer Street and Smithfield Avenue;

b.) Said grant shall continue for a term of twenty five (25) years provided; however, that NMA may retain said grant for five (5) successive year option periods. Each of said option periods shall be entered into only with the approval of the Providence City Council upon terms and conditions to be negotiated between the City Council and NMA before the commencement of each option period. The annual payment for said grant for the initial twenty-five (25) year period shall be 14.33 which shall be paid in advance on the first business day of each renewal year.

c.) That NMA enter into an agreement by which the City and members of the City Council are indemnified from any and all causes of action resulting from the erection and maintenance of the sign in a form satisfactory to the City Solicitor;

d.) That NMA provide proof of insurance in the amount not less than one hundred thousand (\$100,000.00) Dollars providing for coverage against personal injury and property damage. The City shall be listed as an additional insured on said policy;

e.) NMA shall proceed forthwith, to seek and to provide highway signage in the manner detailed before the City Council Committee on Public Works;

f.) That should the City of Providence at any time hereafter be entitled to assess abutting property owners for the private use and occupation of the public highways, this resolution shall in no manner affect the right of the City to charge and collect rent for the use of Collyer Street or any successor or assign in interest;

g.) The City shall retain a right of Reverter in the premises and should NMA fail to comply with or to abide by any of the above referenced conditions as well as any further restrictions imposed by the Mayor or the City Council or the City Solicitor, the premises shall automatically revert to the City of Providence, any Agreement shall be null and void and any easement or other fee extinguished without recourse by NMA;

Together with such other terms and conditions as may be imposed by His Honor the Mayor and the City Solicitor.

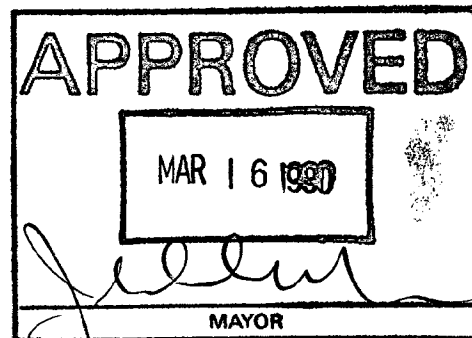
IN CITY COUNCIL

MAR 15 1990

READ AND PASSED

**PRES.**

**CLERK**



**THE COMMITTEE ON  
PUBLIC WORKS**

**Approves Passage of  
The Within Resolution**

*William C. Over*  
Chairman

*February 21, 1930*

**CITY OF PROVIDENCE**  
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

**PETITION TO THE CITY COUNCIL**

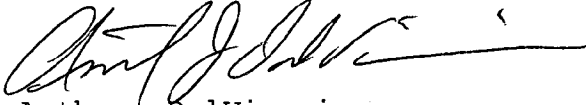
**TO THE HONORABLE CITY COUNCIL OF THE CITY OF PROVIDENCE:**

*The undersigned respectfully petitions your honorable body*

North Main Associates respectfully request permission from the Providence City Council to erect a 38ft. pylon sign on the sidewalk of Collyer Street, within the Shaw's Plaza Complex, as shown in attached exhibit B.

Respectfully,

NORTH MAIN ASSOCIATES



Anthony DelVicario

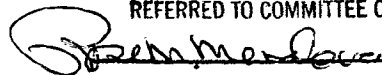
General Partner

IN CITY COUNCIL

AUG 10 1989

FIRST READING  
REFERRED TO COMMITTEE ON

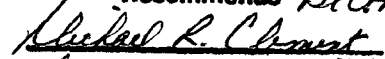
PUBLIC WORKS

 CLERK

THE COMMITTEE ON  
PUBLIC WORKS

*Sept. 6, 1989*

Recommends ReContinue

  
Feb. 14, 1990 Clerk

*Councilman Petroschelli - CB& Request*

CONFIDENTIAL

July 28, 1989

Mr. James Petrosinelli  
City Clerk's Office  
City of Providence  
25 Dorrance Street  
Providence, RI 02903

RE: Pylon Sign  
Shaw's Plaza  
Providence, Rhode Island

Dear Mr. Petrosinelli:

Enclosed please find a plan indicating the proposed location for a pylon sign identifying Shaw's Plaza and its anchor tenants. Also enclosed is a rendering showing the dimensional features of the proposed pylon sign.

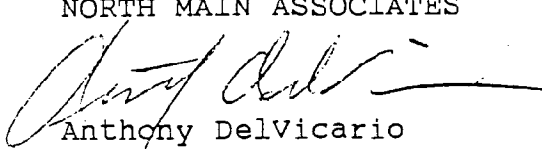
Our purpose in writing is to request that a resolution be introduced to the City Properties Committee and the City Council to approve erection of the pylon sign on City land as shown on the attached plan. Given the significant slope and distance of the Shopping Center from the Smithfield Avenue entrance, it is critical that the pylon be located as shown on the attached plan.

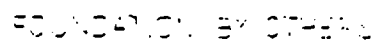
As you know, Shaw's Plaza is an exciting 125,000 square foot shopping center anchored by a Shaw's supermarket superstore along with other national and regional retailers, such as CVS and Fashion Bug, providing retail shopping and services to the people of the City of Providence. The project has also provided in excess of 250 construction-related jobs and will provide 300 permanent jobs in addition to generating tax revenues.

For all of these reasons, it is in the interest of the City of Providence to help ensure the success of Shaw's Plaza. Please support our endeavor to obtain City approval for the pylon sign to identify the shopping center entrance.

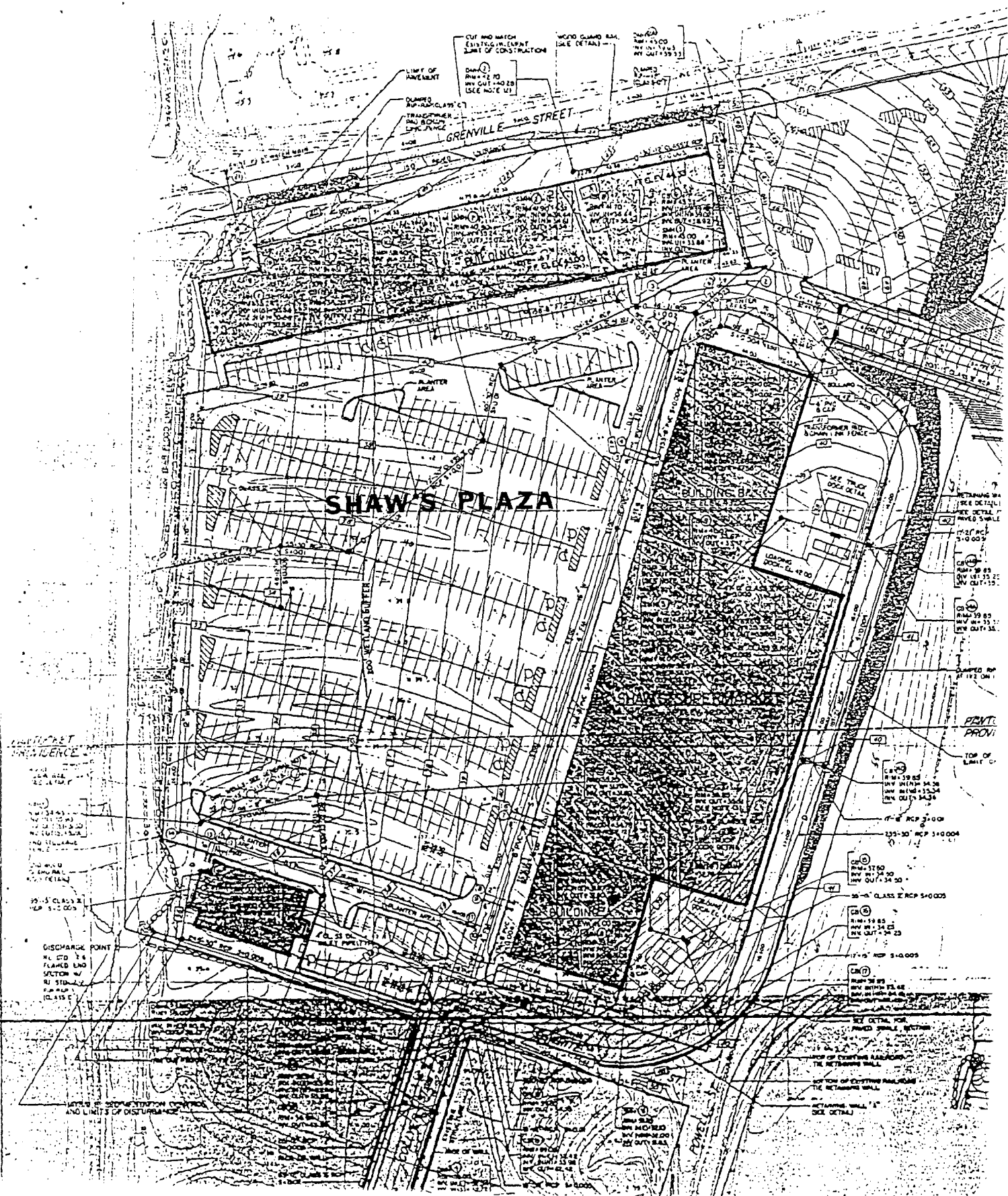
Respectfully

NORTH MAIN ASSOCIATES

  
Anthony DelVicario  
General Partner



—





August 2, 1987

Merlin DeConti  
Director Inspecting and Standards  
City of Providence  
60 Eddy Street  
Providence, RI 02903

Re: Collyer Street Pylon Sign  
Shaw's Plaza, Providence

Dear Mr. DeConti:

The State of Rhode Island Department of Transportation has issued regulations which require permits in some circumstances for advertising in the vicinity of interstates and certain other state highways.

The regulations applicable to the subject sign state that a permit is required if the sign is visible from an Interstate or Primary highway and said sign is within 660 feet of an Interstate or Primary highway (See Exhibit "A", paragraph XI).

Applying this criteria to the subject sign, it can be determined that a permit is not required at the subject location for the following reasons:

- A. The only Interstate or Primary highway within 660 feet of the subject sign is the cloverleaf exit and entrance ramps (the "Ramps"). Upon field research by Alco Sign, it was determined that the subject sign was not visible from the Ramps.
- B. Smithfield Avenue is a state-owned road from which the sign is visible. Based upon discussions with DOT, however, Smithfield Avenue is not a Primary highway. Therefore the sign is not subject to the permit requirement.

Sincerely,



Ned L. Craun,  
Legal Counsel

## EXHIBIT "A"

### X. RECLASSIFICATION OF SIGNS

Any sign which is lawfully erected and maintained and subsequently becomes nonconforming due to a revision in the State law or Rules and Regulations, a change in business activity, or rezoning by proper authority shall be acquired and removed upon the payment of just compensation in accordance with Chapter 24-10.1-6 of the General Laws of Rhode Island.

### XI. PERMITS

A. Permits required - No person, firm, association, or corporation, whether engaged in the business of outdoor advertising or not, shall erect any sign within six hundred sixty feet (660) feet of the nearest edge of the right-of-way of the Interstate or Primary highway in this State, which advertising is visible from the main-traveled way of said highway and:

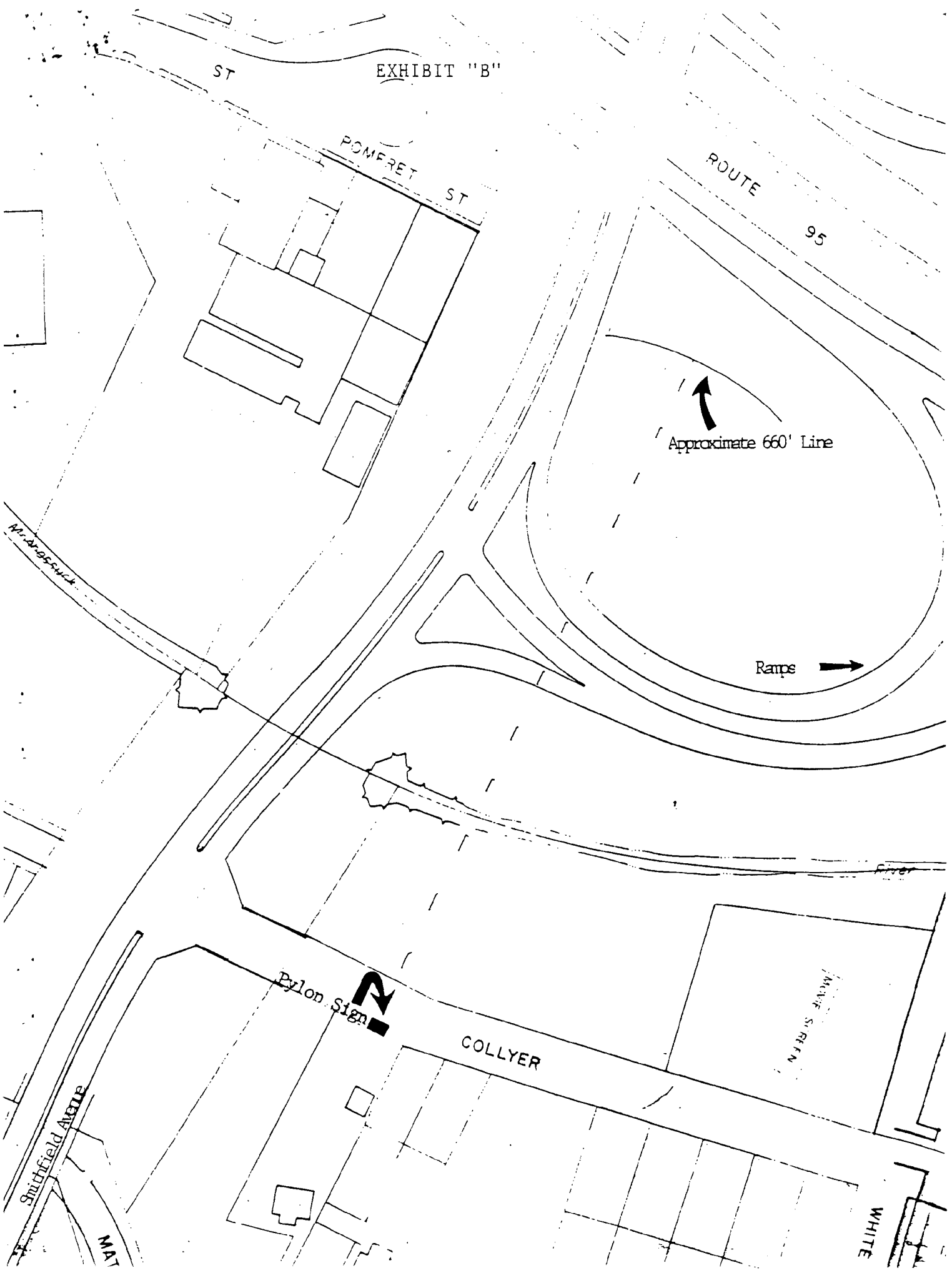
1. is located either in areas:
  - a. which are zoned industrial or commercial under authority of law; or
  - b. which are unzoned but are utilized by industrial or commercial activities as are herein described and delineated; or
2. is a directional or official sign in accordance with...

Section IX of these regulations;  
without first obtaining a permit therefore from the Rhode Island  
Department of Transportation.

- B. Application for Permits - a separate application for a permit shall be made for each separate sign as so defined in these regulations on a form furnished by the Rhode Island Department of Transportation, which application shall be signed by the applicant or his representative duly authorized in writing to act for him, and shall describe and set forth the size and shape of the sign, and its actual or proposed location with sufficient accuracy to enable the Department of Transportation to identify such and to find its proposed location, and any other information required under these rules and regulations as set forth by the Director of Transportation. Each application shall be accompanied by the written consent, or in lieu thereof a copy certified by the office authorized to take acknowledgments to deeds in this State, of the owner of the real property upon which sign is to be erected and maintained or of such other person having the legal right to grant such consent, or of the duly authorized agent of such owner.

- C. Duration and renewal - permits issued hereunder shall expire on December 31, next following the date thereof unless sooner revoked by the Department of Transportation, and may be renewed upon application made upon forms furnished by the Rhode Island Department of Transportation.

EXHIBIT "B"



City of Providence



Rhode Island

Department of City Clerk

**MEMORANDUM**

DATE: August 17, 1989

TO: Merlin A. DeConti, Director of Inspection & Standards

SUBJECT: Permission To Erect A 38ft. Pylon Sign On Sidewalk

CONSIDERED BY: Committee On Public Works

DISPOSITION:

Attached are copies of the subject petition for your study and report, back in writing to the above named committee as soon as practical.

First Deputy City Clerk



## Department of Inspection and Standards

*"Building Pride In Providence"*

### MEMO

To: Committee on Public Works  
From: Merlin A. DeConti, Jr., Director  
Date: August 30, 1989

I have reviewed the request of North Main Associates to erect a 38 foot pylon sign on the City sidewalk on Collyer Street. The area in which the sign is to be located is zoned R-3 as a General Residence Zone. Since the area does not permit the erection of any signs, it should be pointed out to the applicant that regardless of the action of the City Council to permit the use of City land for the erection of the sign, it will be the applicant's responsibility to obtain a variance from the applicable sections of the Providence Zoning Ordinance prior to the erection of any sign.

There are also certain existing regulations by the R.I. Department of Transportation that have been developed in order to control signage along interstate or primary highways in Rhode Island. Although I have a letter from legal counsel for the applicant stating that he does not feel that the Department of Transportation regulations apply in this particular instance, I feel it is important that this department receive a letter from the R.I. Department of Transportation approving the sign.

In addition, since the sign will be erected on City land, the applicant should provide the City with liability insurance to protect the City should anyone get injured by the sign or its supporting structure, and should provide a bond in an amount to be determined by the City Solicitor to insure that the City could call upon the bonding company to repair or remove the sign should it become hazardous.

With all the above conditions, I have no objection to the City Council's approval on the use of City land for erection of this sign.

MAD, JR:np

Department of Inspection and Standards

60 Eddy Street  
Providence, Rhode Island 02903

COMMITTEE ON PUBLIC WORKS

CITY CLERKS OFFICE

CITY HALL

**FILED**

AUG 31 9 32 AM '89

DEPT. OF CITY CLERK  
PROVIDENCE, R.I.



PATRICIA A. HURST  
CHAIR



JOSEPH R. PAOLINO, JR.  
MAYOR

## Zoning Board of Review

*"Building Pride In Providence"*

November 16, 1989

City of Providence

and

North Main Associates  
c/o Picerne Properties  
75 Lambert Lind Highway  
Warwick, RI 02886

Gentlemen:

You are hereby notified that the City of Providence and North Main Associates have filed an application for permission to be relieved from Sections 43-A-4 and 43-C-4 under Sections 91 & 92 of the Zoning Ordinance in the proposed construction of a sign on a proposed city easement said sign measuring 38' in height by 20' in width (at widest point) and 3' in depth. Applicant seeks relief from the use requirement which does not allow signs for commercial identification.

A public hearing will be held on the above application on Wednesday, November 29, 1989, in the City Council Chamber, City Hall, at six o'clock, p.m.

The Rules of the Zoning Board of Review of the City of Providence, Rhode Island require that the owner appear in person or be represented by an attorney, or send a letter addressed to the Board delegating some person to represent the owner at said hearing. The purpose of this rule is to assure that your application will be properly presented to the Board.

Four (4) photographs of the subject property from varying angles must be presented to the Board at the hearing.

By Order of the Zoning Board of Review.

Respectfully,

A handwritten signature in cursive script, reading "Peter D. Carnevale".

PETER D. CARNEVALE  
SECRETARY

PDC/rr

cc Rose Mendonca, City Clerk



## Zoning Board of Review

*"Building Pride In Providence"*

December 15, 1989

### RESOLUTION NO. 7151

North Main Associates  
c/o Picerne Investment Corporation  
75 Lambert Lind Highway  
Warwick, RI 02886

Ladies and Gentlemen:

At a meeting of the Zoning Board of Review held on Wednesday, November 29, 1989, the following resolution was adopted:

WHEREAS, the City of Providence (the "City") and North Main Associates ("NMA") filed an application for permission to be relieved from Sections 43-A-4 and 43-C-4 under Sections 91 and 92 of the Zoning Ordinance in the proposed construction of a sign on a proposed easement to be granted by the City to NMA, said sign measuring 38 feet in height by 20 feet in width (at the widest point) and 3 feet in depth. Applicants sought relief from the use requirements which do not allow signs for commercial identification; and

WHEREAS, on November 29, 1989, the Zoning Board of Review held a public hearing on said application at which NMA, represented by counsel, and a remonstrant, appeared and presented evidence and exhibits; and

WHEREAS, based upon the evidence presented and its own knowledge, the Board makes the following findings and Order:

1. Evidence.

NMA first introduced evidence of a true copy of Resolution No. 541 of the City Council of the City of Providence approved November 6, 1989, by which the City, as the owner of the property upon which the sign in question is proposed to be constructed, authorized the appearance of Picerne, a general partner of NMA, on behalf of the City before the Zoning Board.

NMA presented the testimony of three witnesses, Anne F. Jannetti, Vice President of Commercial Property Management for Picerne, Karl Ginsberg, President of Alco Sign Company, Inc., and James M. Sloan IV, a real estate broker and appraiser. The Board took note of Mr. Sloan's credentials (Ex. 17) and frequent testimony before the Board and qualified him as an expert witness.

Each of the foregoing witnesses was sworn and presented testimonial evidence. NMA also submitted a number of photographs of Shaw's Plaza in Providence, the site of the proposed pylon sign, and examples of other similar pylon signs advertising Shaw's plazas. (Exhibits 3-16)

RESOLUTION NO. 7151

A. The site of the proposed sign is on the easterly edge of the public right of way known as Collyer Street, approximately 190 feet northerly of the intersection of Collyer Street and Smithfield Avenue in an area zoned R-3. Collyer Street provides the major arterial access from Smithfield Avenue to Shaw's Plaza, a recently opened retail shopping center consisting of approximately 120,000 square feet of leaseable area in which the lead tenant is Shaw's Supermarkets, Inc. which operates a Super Shaw's Supermarket with approximately 54,000 square feet, open 24 hours per day. There is no traffic control device on Smithfield Avenue regulating the flow of vehicles into Collyer Street.

B. Ms. Jannetti testified that Shaw's Plaza currently has no identifying landmark from Smithfield Avenue and that such a landmark is necessary not only to identify the location of the shopping center, but also to promote public safety among motorists along Smithfield Avenue turning onto Collyer Street. Ms. Jannetti also testified that because of the existence of the freeway line along Smithfield Avenue and the topography of the site which required the construction of a retaining wall along a portion of Collyer Street, it was not possible to locate the proposed sign any closer to Smithfield Avenue than 190 feet. Finally, Ms. Jannetti testified that NMA will be responsible for all maintenance of the proposed sign.

C. Mr. Ginsberg testified that he has been in the sign business for 25 years and regularly constructs free standing pylon signs of the kind proposed for this site. He stated that only the western face of the sign would be illuminated and that the sign panels advertising Shaw's would be opaque, with only the letters being illuminated. He further stated that the sign would be constructed with non-glare materials. Finally, he testified that the proposed sign is consistent with other pylon signs for shopping centers similar to Shaw's Plaza.

D. Mr. Sloan stated that he examined the area in the vicinity of the proposed sign and found that while there are three residential structures adjacent to the site of the sign which have been standing for many years, the prevailing use of this area is heavily commercial. In addition to Shaw's Plaza, he pointed out the intensive commercial use of the North Main Street area as well as the commercial uses on Smithfield Avenue west of the site. Consequently, it was his opinion that the construction of this sign would not substantially or permanently injure the use of the neighboring property. He further stated that in his opinion shopping centers of this size require signage of this kind and that the proposed location of the sign would be the best location in terms of visibility and safety.

E. Remonstrant's testimony consisted of statements that the proposed sign would be unattractive, was oversized, and not close enough to Smithfield Avenue. Remonstrant offered no expert testimony.

Based upon the foregoing evidence and its own knowledge, the Board makes the following findings:

RESOLUTION NO. 7151

1. Although the proposed location of the pylon sign is in a R-3 zone, the surrounding area is heavily commercial in nature.

2. The construction of the sign will not substantially or permanently injure the surrounding area.

3. Shopping centers similar to Shaw's Plaza typically have pylon signage like that proposed by NMA to identify the location of the center and to facilitate the safe flow of motor vehicle traffic from and to the center.

4. Collyer Street is a primary access route to Shaw's Plaza. There are no traffic control devices at the intersection of Collyer Street and Smithfield Avenue and no signs at or adjacent to the intersection identifying the location of Shaw's Plaza.

5. Because of the topography of the area in the vicinity of the intersection of Collyer Street and Smithfield Avenue, and the existence of the freeway line extending northerly of Smithfield Avenue, the proposed location and height of the sign are appropriate to serve the public convenience and welfare.

6. The inability of NMA to construct a pylon sign on the proposed site will constitute a hardship in that there will be no landmark visible from Smithfield Avenue to serve the public and identify the location of Shaw's Plaza. Further, NMA will suffer a hardship because patrons of Shaw's Plaza will be denied the beneficial use of Collyer Street as a safe access route to the center.

7. It was agreed that because the proposed location of the sign is not located on a lot, it is not necessary for NMA to obtain relief from the dimensional requirements of Section 43 of the Zoning Ordinance.

8. The Board finds the testimony of NMA's witnesses credible and persuasive. No competent expert testimony was presented by remonstrant.

9. The Board has considered the advisory negative recommendation of the Director of Planning (Ex. 2) and disagrees that the pylon sign as proposed will have an adverse impact on the visual quality of the area.

It is, therefore, ORDERED, pursuant to Section 92 of the Providence Zoning Ordinance, that

The Board does hereby grant a variance from the requirements of Sections 43-A-4 and 43-C-4 of the Zoning Ordinance to permit the construction by NMA of a free-standing pylon sign within the line of Collyer Street approximately 190 feet northerly of the intersection of Smithfield Avenue and Collyer Street, the precise location to be determined by NMA and the City, substantially in accordance with the plans submitted to the Board, subject to the following limitations:

(a) the height of the sign from the top of the pylon to the ground shall not exceed 38 feet,

RESOLUTION NO. 7151

(b) the easterly face of the sign shall remain blank and unlit,

(c) the primary sign panels advertising "Shaw's Plaza" and "Shaw's Open 24 Hours" shall be opaque, only the letters being illuminated,

(d) not more than three (3) additional sign panels shall be permitted, which may only be illuminated from the interior, the easterly face to remain blank and unlit.

By Order of the Zoning Board of Review.

  
\_\_\_\_\_  
BRUCE A. LEACH, MEMBER

cc: Carl I. Freedman, Esq.

ATTENTION: SECTION 92A UNDER THE ZONING ORDINANCE REQUIRES THAT ANY VARIANCE OR SPECIAL EXCEPTION GRANTED BY SAID BOARD SHALL EXPIRE BY LIMITATION WITHIN SIX MONTHS FROM THE DATE THE SAME IS GRANTED UNLESS THE APPLICANT SHALL WITHIN SAID PERIOD EXERCISE THE RIGHT GRANTED BY SAID DECISION OR RECEIVE A BUILDING PERMIT FROM THE DEPARTMENT OF INSPECTION AND STANDARDS.

0782Z

FILED

DEC 29 3 01 PM '89

DEPT. OF JUSTICE  
PROVIDENCE, R. I.



Department of Law  
"Building Pride In Providence"

February 14, 1990

James Petrosinelli, Chairman  
City Council Committee on Public Works  
c/o City Council Office  
City Hall  
Providence, Rhode Island 02903

Dear Councilman Petrosinelli:

North Main Associates ("NMA") has petitioned the Committee for the granting to it of an easement on a portion of Collyer Street. The Petitioners are seeking a 10' x 30' easement on, under and over the public area. The purposes for which they seek the easement are the erection and maintenance of a sign advertising the recently developed shopping area. The petition was originally referred to this Committee then transferred to the City Council Committee on Property and finally reactivated here. These actions were the result of some confusion over the "labeling" of what precisely NMA sought to obtain from the City. At this time, the Petition is appropriately before your Committee.

NMA's petition is substantially different from the routine petition seeking an easement or alternatively seeking permission for an encroachment. It is different in that the Committee is usually asked to permit an abutting property owner to encroach on the public area immediately adjacent to the individual's realty; in this instance, NMA is seeking an easement on public area which is not immediately adjacent to its real estate.

This difference prompted a review of the legal rights and relationships among the municipality, the public at large and the rights of abutting landowners. It also sparked the communications from Carl Freedman, Esquire and Paul Adler, Esquire - attorneys for NMA (of which I have attached a photocopy). In reviewing NMA's communication, and being aware that Messrs. Freedman and Adler seek to persuade the Committee of their client's perspective on this issue, this Department finds that law presented is accurately reviewed, but we are not drawn to the same conclusion as they. It appears that their conclusion may or may not be correct.

James Petrosinelli, Chairman  
City Council Committee on Public Works  
February 14, 1990

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It is this Office's opinion that the issue which has arisen by NMA's petition is unresolved in Rhode Island. The issue raised is whether or not the City may allow an easement or encroachment on land designated as a public passageway when the grantee or encroaching party is someone other than the abutting property owner. This Department could find no caselaw, statute or regulation which undisputedly answers the question. The issue remains open. The easement sought by NMA may well be a permitted use of the public areas. The facts of the proposed easement will show that no vehicular and virtually no pedestrian passage is affected by the proposal, since a retaining wall extends almost to the roadway and no sidewalk exists on the side of Collyer Street on which the sign is planned.

In addition to these legal and factual conclusions, NMA, being aware that there exists an unresolved legal issue, has, in negotiation with this office, agreed to the following:

1. It will take the easement in a bargain and sale mode; that is; to the extent that we are able to give the easement, they will have it. We will not make warranty in any way that we can give the easement to NMA.

2. In the event it is determined (by a court of competent jurisdiction) that we cannot make the grant of the easement, they have agreed to execute any necessary documents to return the easement and the area to the current status quo.

3. In the event the City of Providence, Stephen T. Napolitano or any members of the Council or successors are sued with respect to the granting of the easement, NMA, its successors or assigns will indemnify and hold harmless all of the above as well as defend the claim from its inception.

In light of these agreements, together with an agreement that they provide insurance and are prepared to indemnify the City of Providence against claims arising from the negligent maintenance of the sidewalk, the City will be protected from legal liability from an erroneous granting of the easement and the Committee may, if it so wishes, grant the easement.



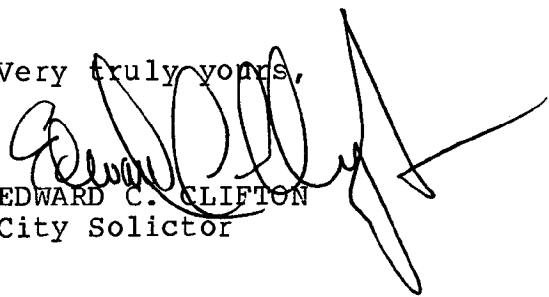
James Petrosinelli, Chairman  
City Council Committee on Public Works  
February 14, 1990

Page Three

Finally, it has come to this Department's attention that the Department of Public Works and NMA have some understanding that NMA will maintain Collyer Street free of snow. This office respectfully suggests that this Committee authorize and require an agreement to that effect.

Certainly feel free to contact me should you have any questions.

Very truly yours,



EDWARD C. CLIFTON  
City Solicitor

ECC/vav

FILED

FEB 16 3 25 PM '90

DEPT. OF JUSTICE  
PROVIDENCE, R.I.

LICHT & SEMONOFF  
ATTORNEYS AT LAW

*JD 2/12/90 Law Dept*

One Park Row  
Providence, Rhode Island 02903  
(401) 421-8030  
Cable: LEVGO PVD Telex: 927614  
Telecopier: (401) 272-9408

February 12, 1990

HAND DELIVERY

Edward Clifton, Esq.  
City Solicitor  
City of Providence  
Providence, RI 02903

Re: North Main Associates

Dear Mr. Clifton:

The letter from Carl I. Freedman of this office which was delivered to you this afternoon mistakenly left out the phrase "the impact on" in the last sentence of page two which carries on to page three. That sentence should read "Therefore, because the impact on the right of the public and abutting landowners resulting from the proposed easement is de minimus, ..." In connection therewith, kindly discard the previous letter and substitute in place thereof, the enclosed revised letter. I appologize for any inconvenience caused by this circumstance.

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

Very truly yours,

  
Paul J. Adler

PJA:ec

Enclosures

cc: John T. D'Amico, Jr., Esq.

LEIGHT & SEMONOFF

ATTORNEYS AT LAW

One Park Row  
Providence, Rhode Island 02903  
(401) 421-8030  
Cable: LEVGO PVD Telex: 927614  
Telecopier: (401) 272-9408

February 12, 1990

Edward Clifton, Esq.  
City Solicitor  
City of Providence  
Providence, RI 02903

Re: North Main Associates

Dear Ed:

I am writing to set out the position of North Main Associates concerning the construction of a free-standing pylon sign at the edge of Collyer Street, north of its intersection with Smithfield Avenue, advertising the location of Shaw's Plaza. As you know, NMA has already received approval from the Providence Zoning Board of Review to construct the sign.

You have raised a question concerning the authority of the City to grant an easement over a small, unimproved portion of Collyer Street for purposes of locating the sign in question. For the reasons which follow, our research has indicated that the City has such authority.

It is well established that, in the absence of special circumstances, the owner of land abutting on a highway owns the fee to the middle line of the highway, subject to easement of passage and all rights incident thereto in favor of the general public. See Newman v. Mayor of Newport, 73 R.I. 385, 392, 57 A.2d 173, 177 (1948) and Wolfe v. City of Providence, 77 R.I. 192, 205, 74 A.2d 843, 848 (1950). Accordingly, in Gill v. Town Council, Jamestown, 47 R.I. 425, 430, 133 A. 806, 808 (1926), it was set forth that "an abutter has rights in the public way, both as a member of the general public and in addition certain special rights by reason of ownership of land adjoining the way (citations omitted)." Under Rhode Island

Edward Clifton, Esq.  
February 12, 1990  
Page Two

law, these special rights of the abutter consist primarily of (1) "the right of access" which has been defined as nothing more than an easement appurtenant to the land abutting a public highway (See Armenian Church v. Dir. Pub. Works, 116 R.I. 735, 740-41, 360 A.2d 534, 536-37 (1976)), which right affords the abutting owner with reasonable opportunity to enter and leave his property through the use of the abutting way and ensures that once the abutter arrives on that way he can proceed from there to the general system of roadways (Id., citations omitted) and (2) the right to use the highway from end to end and from side to side (i.e., "to have the whole highway open"), limited to the factual circumstances before the Court (Sullivan v. Marcello, 100 R.I. 241, 244-245, 214 A.2d 181, 184 (1965)).

All Rhode Island cases we have examined confronting the issue of interference with the special rights of an abutter have been decided on the basis of a taking analysis. As a result, with respect to the special rights of an abutter, it is equally well established under Rhode Island law that an abutter's special rights are subject to reasonable regulation and cannot be taken away or materially impaired without first adequately compensating the abutter. See Newman, 73 R.I. at 392, 57 A.2d at 177. Accordingly, courts have focused on whether there has been so substantial or material diminution of the right such that the abutter no longer has reasonable use of that right (Armenian Church, 116 R.I. at 742 and 360 A.2d at 537 and Aust v. Marcello, 112 R.I. 381, 385, 310 A.2d 758, 760 (1973)) in which event, the abutter must be awarded just compensation.

In the present case, the area in question lies beyond the roadbed, outside the guardrail, in a gully or depression substantially lower than the grade of the paved portion of Collyer Street. Therefore, while the area is within the paper boundary of Collyer Street, it is clearly not a part of the public way. As a result, to the extent that the law prohibits only substantial or material interference with or diminution of an abutter's right of access and use, it is evident that the impact of the proposed easement does not rise to that level. To the contrary, the position of the proposed sign will not interfere or diminish any right of access to or use of Collyer Street by the public or abutters. Therefore, because the rights of the public and abutting landowners resulting from the

LICHT & SEMONOFF

Edward Clifton, Esq.  
February 12, 1990  
Page Three

proposed easement is de minimus, at best, it is our view that the City has the authority to grant the easement and should do so on the same terms and conditions as were carefully negotiated recently with your office.

My understanding is that The Public Works Committee will meet on Wednesday at 1:30 p.m. in The City Council Chamber. At that time, we will be present with photographs and plans showing the proposed location of the sign and will be available to answer any questions that may arise.

Very truly yours,



Carl I. Freedman

cc: John T. D'Amico, Jr., Esq.  
Ms. Anne F. Jannetti

2527F

L I C H T & S E M O N O F F

A T T O R N E Y S   A T   L A W

One Park Row  
Providence, Rhode Island 02903  
(401) 421-8030  
Cable: LEVGO PVD   Telex: 927614  
Telecopier: (401) 272-9408

February 12, 1990

Edward Clifton, Esq.  
City Solicitor  
City of Providence  
Providence, RI 02903

Re:   North Main Associates

Dear Ed:

I am writing to set out the position of North Main Associates concerning the construction of a free-standing pylon sign at the edge of Collyer Street, north of its intersection with Smithfield Avenue, advertising the location of Shaw's Plaza. As you know, NMA has already received approval from the Providence Zoning Board of Review to construct the sign.

You have raised a question concerning the authority of the City to grant an easement over a small, unimproved portion of Collyer Street for purposes of locating the sign in question. For the reasons which follow, our research has indicated that the City has such authority.

It is well established that, in the absence of special circumstances, the owner of land abutting on a highway owns the fee to the middle line of the highway, subject to easement of passage and all rights incident thereto in favor of the general public. See Newman v. Mayor of Newport, 73 R.I. 385, 392, 57 A.2d 173, 177 (1948) and Wolfe v. City of Providence, 77 R.I. 192, 205, 74 A.2d 843, 848 (1950). Accordingly, in Gill v. Town Council, Jamestown, 47 R.I. 425, 430, 133 A. 806, 808 (1926), it was set forth that "an abutter has rights in the public way, both as a member of the general public and in addition certain special rights by reason of ownership of land adjoining the way (citations omitted)." Under Rhode Island

Edward Clifton, Esq.  
February 12, 1990  
Page Two

law, these special rights of the abutter consist primarily of (1) "the right of access" which has been defined as nothing more than an easement appurtenant to the land abutting a public highway (See Armenian Church v. Dir. Pub. Works, 116 R.I. 735, 740-41, 360 A.2d 534, 536-37 (1976)), which right affords the abutting owner with reasonable opportunity to enter and leave his property through the use of the abutting way and ensures that once the abutter arrives on that way he can proceed from there to the general system of roadways (Id., citations omitted) and (2) the right to use the highway from end to end and from side to side (i.e., "to have the whole highway open"), limited to the factual circumstances before the Court (Sullivan v. Marcello, 100 R.I. 241, 244-245, 214 A.2d 181, 184 (1965)).

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L I C H T & S E M O N O F F

Edward Clifton, Esq.  
February 12, 1990  
Page Three

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My understanding is that The Public Works Committee will meet on Wednesday at 1:30 p.m. in The City Council Chamber. At that time, we will be present with photographs and plans showing the proposed location of the sign and will be available to answer any questions that may arise.

Very truly yours,

*Carl Freedman*

Carl I. Freedman

cc: John T. D'Amico, Jr., Esq.  
Ms. Anne F. Jannetti

2527F

CITY OF PROVIDENCE, RHODE ISLAND • MAYOR JOSEPH R. PAOLINO, JR.

Rose M. Mendonca

City Clerk

—  
Clerk of Council

—  
Clerk of Committees



DEPARTMENT OF CITY CLERK  
CITY HALL

Michael R. Clement

First Deputy

—  
Jean M. Angelone

Second Deputy

March 19, 1990

Mr. Anthony Del Vicario  
North Main Associates  
75 Lambert Lind Highway  
Warwick, R. I. 02886

Dear Mr. Del Vicario,

Enclosed is certified copy of Resolution No. 127,  
approved March 16, 1990 by His Honor the Mayor.

The said resolution having been passed by the City  
Council, is self-explanatory.

Very truly yours,

Rose M. Mendonca  
City Clerk

RMM/bp

Enc.

Rose M. Mendonca  
City Clerk

\_\_\_\_\_  
Clerk of Council

\_\_\_\_\_  
Clerk of Committees



Michael R. Clement  
First Deputy

\_\_\_\_\_  
Jean M. Angelone  
Second Deputy

DEPARTMENT OF CITY CLERK  
CITY HALL

March 19, 1990

Carl F. Freedman, Esq.  
Licht & Semonoff  
One Park Row  
Providence, R. I. 02903

Dear Mr. Freedman,

Enclosed is certified copy of Resolution No. 127,  
approved March 16, 1990 by His Honor the Mayor.

The Said resolution having been passed by the City  
Council, is self-explanatory.

Very truly yours,

Rose M. Mendonca  
City Clerk

RMM/bp

Enc.



Department of Law  
*"Building Pride In Providence"*

May 17, 1990

Michael Clements,  
Deputy City Clerk  
City Hall  
Providence, Rhode Island 02903

RE: SHAW'S PLAZA

Dear Mike:

Pursuant to our discussion relative to the above matter,  
enclosed please find a copy of the Certificate of Insurance  
and the Easement and Maintenance Agreement.

Should you have any questions, certainly feel free to call me.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John T. D'Amico, Jr.".

John T. D'Amico, Jr.,  
Special Counsel

JTD/sms

cc: James Suzman, Director of Public Works

PRODUCER  
F.I. PENN INSURANCE AGENCY  
P.O. BOX 444  
NEEDHAM, MA 02192-0444

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BELOW.

INSURED  
KELLY & PICERNE, INC. ET AL  
75 LAMBERT LIND HIGHWAY  
WARWICK, RI 02886

COMPANIES AFFORDING COVERAGE

CO. A THE NORTH RIVER INSURANCE COMPANY  
CO. B  
CO. C  
CO. D  
CO. E

COVERAGES: This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated, notwithstanding any requirement, term condition of any contract or other document with respect to which this cert may be issued or may pertain, the insurance afforded by the policies described herein is subject to all terms, exclusions, conditions of such policies. Limits shown may have been reduced by paid claims.

CO	TYPE OF INSURANCE	POLICY NUMBER	EFF. DATE	EXP. DATE	ALL LIMITS IN THSND\$	
A	GENERAL LIABILITY	5030428257	03/31/90	03/31/91	GENERAL AGG	\$ 1,000
	[X] Comm'l G/L				PRD-CMP/OPS	\$ 1,000
	[ ] Claim [X] Occur				PER/ADV INJ	\$ 500
	[ ] Cwnrs/Cntr Prt				EACH OCCUR.	\$ 500
	[ ]				FIRE DAMAGE	\$ 50
					MED EXPENSE	\$ 5
	AUTOMOBILE LIAB.				C.S.L.	\$
	[ ] Any Auto				BI/PERSON	\$
	[ ] All Owned Auto				BI/AGGREGATE	\$
	[ ] Scheduled Auto				PROP. DAMAGE	\$
	[ ] Hired Autos					
	[ ] Non-Owned Auto					
	[ ] Garage Liab.					
	EXCESS LIABILITY				EACH OCCUR.	AGGREG
	[ ]				\$	\$
	[ ] Other Than Umb					
	WORKER'S COMP & EMPLOYERS LIAB.				STATUTORY	
					\$ EACH ACCIDENT	
					\$ DISEASE LIMIT	
					\$ DISEASE EMPL	
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS  
RE: PYLON SIGN TO BE INSTALLED AT SHAW'S PLAZA  
INSURED INCLUDES: NORTH MAIN STREET ASSOCIATES

CERTIFICATE HOLDER  
CITY OF PROVIDENCE  
PROVIDENCE, RI

AS ADDITIONAL INSURED

3 CANCELLATION: should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation/liability of any kind upon the company, its agents or reps.

r32  
4/11/90

EASEMENT AND MAINTENANCE  
AGREEMENT

THIS AGREEMENT made this            day of            , 1990,  
by and between THE CITY OF PROVIDENCE, a municipal corporation  
existing under the laws of the State of Rhode Island (the  
"City") and NORTH MAIN ASSOCIATES, a Rhode Island general  
partnership ("NMA").

WHEREAS, NMA is the owner of a certain shopping center  
currently designated "Shaw's Plaza" (the "Shopping Center")  
located partially in the City of Pawtucket and partially in the  
City of Providence, Rhode Island, presently identified as Lots  
5 and 226 on Plat 75 of the Tax Assessor of the City of  
Providence and Lots 79 through 102, inclusive, on Plat 62A of  
the Tax Assessor of the City of Pawtucket; and

WHEREAS, NMA proposes to construct a free-standing  
pylon sign (the "Sign") on land of the City on the easterly  
side of that public right of way designated Collyer Street,  
situated northerly of the intersection of Collyer Street and  
Smithfield Avenue; and

WHEREAS, by Resolution No. 7151 dated December 15,  
1989, (the "Resolution"), the Providence Zoning Board of Review  
granted NMA relief from the Providence Zoning Ordinance for the  
purpose of authorizing NMA to construct the Sign, in accordance

with certain specifications set out in the Resolution, the precise location of the Sign to be determined by the City and NMA; and

WHEREAS, the City and NMA have reached agreement concerning the location of the Sign and certain responsibilities relating to the maintenance thereof,

NOW, THEREFORE, the parties agree as follows:

1. Grant of Easement. The City grants to NMA a right and easement to enter, pass, and repass, by vehicle and by foot, upon a rectangular portion of the public right of way identified as Collyer Street, approximately one hundred ninety (190) feet northerly of the intersection of Collyer Street and Smithfield Avenue, ten (10) feet in width and thirty (30) feet in length, as shown with more particularity on Exhibit "A", attached hereto (the "Easement Area") for the purpose of constructing, locating, maintaining, and reconstructing a free-standing pylon sign advertising the location of the Center and certain commercial establishments therein.

2. Term of Easement. The Easement granted herein and the rights and obligations relating thereto shall be deemed to commence on the date hereof and shall continue in full force and effect for a term of twenty-five (25) years; provided, however, NMA may retain said grant for five (5) successive option periods of five (5) years each, each of said option periods to be entered into only with the approval of the

Providence City Council upon terms and conditions to be negotiated between the said City Council and NMA before the commencement of each option period.

3. Payment. The annual payment for said grant for the initial twenty-five (25) year period shall be \$14.33 which shall be paid in advance on the first business day of each renewal year.

4. Maintenance. NMA, at its sole expense, shall maintain and repair the Sign so that, at all times, it shall be in good order and working condition.

5. Indemnification. NMA shall indemnify and hold the City and members of the City Council harmless from and against any loss, cost, causes of action, damages, and expenses incurred by the City arising out of the actions or omissions to act by NMA with respect to the Sign, including, but not limited to the erection and maintenance thereof.

6. Insurance. NMA shall provide the City with proof of personal injury and property damage insurance in an amount not less than One Hundred Thousand (\$100,000.00) Dollars, naming the City as an additional insured with respect to the matters referred to in this Agreement.

7. Compliance With Laws. NMA will comply with all applicable laws, ordinances, and regulations relating to the use and maintenance of the Sign.

8. Assessment of Abutters. In the event that the City is entitled to assess abutting property owners for the



private use and occupation of the public highways, nothing contained in this Agreement shall in any manner affect the right of the City to change and collect rent for the use of Collyer Street or any successor or assign in interest.

9. Reverter. In the event that NMA fails to comply with the provisions of this Agreement or any further restrictions imposed by the Mayor or the City Council or the City Solicitor, this Agreement shall terminate and be null and void and the Easement Area shall revert to the City.

10. Binding Effect. This Agreement and the rights and obligations contained herein shall constitute covenants running with the land and shall be binding upon and inure to the benefit of the City and NMA, their successors, grantees, mortgagees, and assigns.

IN WITNES WHEREOF, the undersigned have caused their authorized representatives to execute this Agreement as of the date first above written.

NORTH MAIN ASSOCIATES

Witness:

By: PICERNE INVESTMENT  
CORPORATION, General Partner

By: \_\_\_\_\_

Witness:

THE CITY OF PROVIDENCE

By: \_\_\_\_\_

STATE OF RHODE ISLAND  
COUNTY OF

In                      on the                      day of                      , 19                      ,  
before me personally appeared                      , President of  
Picerne Investment Corporation, General Partner of North Main  
Associates, to me known and known by me to be the party executing  
the foregoing instrument and he acknowledged said instrument by  
him executed in his said capacity to be his free act and deed and  
the free act and deed of the said partnership.

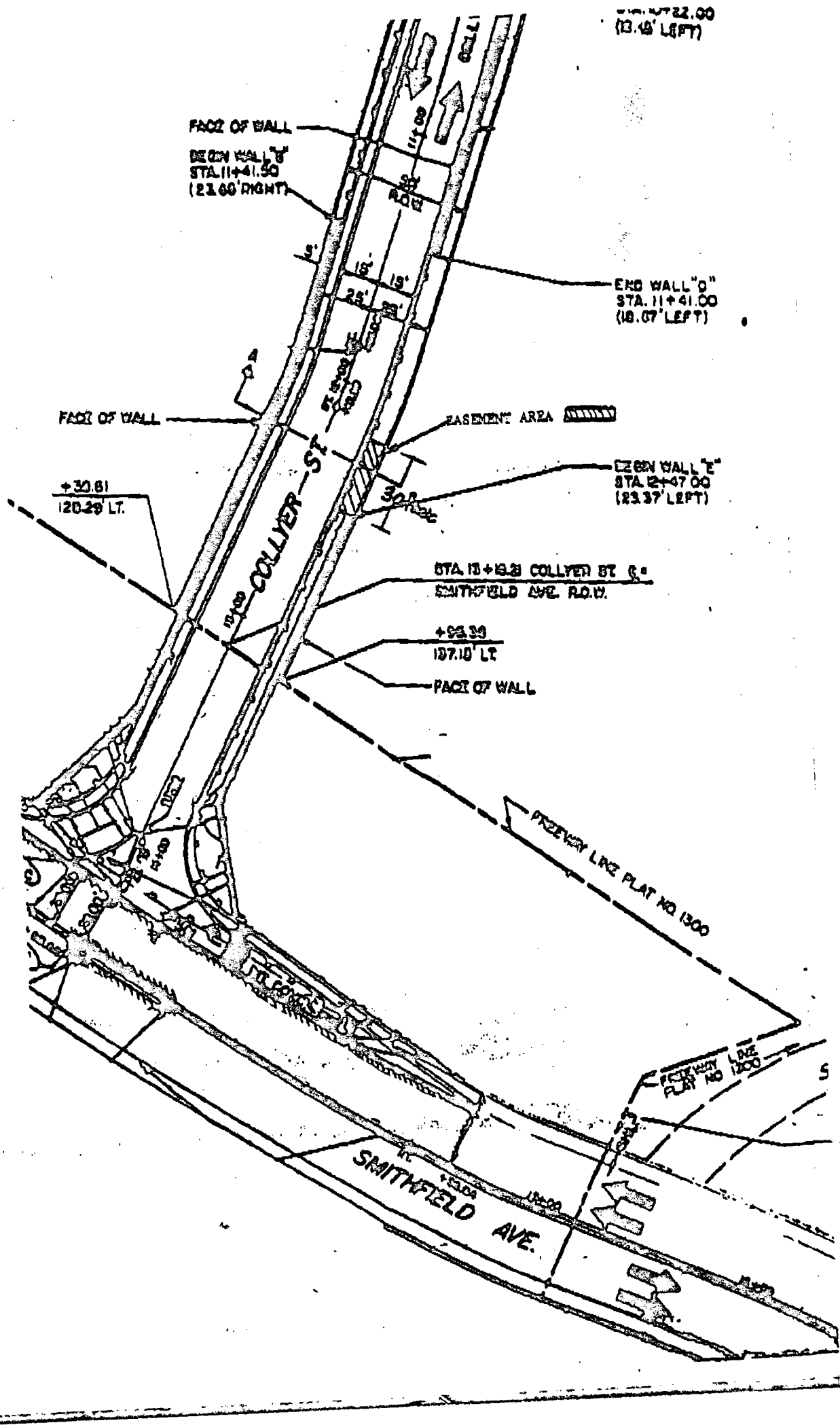
\_\_\_\_\_  
Notary Public

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

In Providence on the                      day of                      , 19                      ,  
before me personally appeared                      ,                      of  
the City of Providence, to me known and known by me to be the  
party executing the foregoing instrument and he acknowledged said  
instrument by him executed in his said capacity to be his free act  
and deed and the free act and deed of the City of Providence.

\_\_\_\_\_  
Notary Public

Exhibit "A"



Department of Law  
60 Eddy Street  
Providence, Rhode Island 02903

MIKE CLEMENTS  
DEPUTY CITY CLERK



DEPARTMENT OF CITY CLERK  
RECEIVED

MAY 18 1990  
11:19

*Robert M. Newman*  
CITY CLERK OF PROVIDENCE, RI