



# **Fifteenth Annual Legal Perspectives on Land Surveying**

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Speakers:

**Daniel Bartlett**  
**Denise A. Chicoine**  
**Edward S. Englander**  
**Brian M. Hurley**  
**Stephen T. LaMonica**  
**Joseph V. Polsinello**  
**Paul J. Tyrell**

**Massachusetts Association of Land Surveyors  
and Civil Engineers Seminar**  
**January 26, 2024**  
**Waltham, MA**

# **Fifteenth Annual Legal Perspectives on Land Surveying Agenda**

7:30 AM	<b>Registration &amp; Continental Breakfast</b>
8:00 AM	<b>Seminar Begins</b>
	<b>Stephen LaMonica</b>
9:00 AM	<b>Denise Chicoine</b>
9:45 AM	<b>Break</b>
10:00 AM	<b>Brian Hurley</b>
11:00AM	<b>Joseph Polsinello</b>
12:00 PM	<b>Lunch</b>
1:00 PM	<b>Daniel Bartlett</b>
2:00 PM	<b>Paul Tyrell</b>
2:45 PM	<b>Break</b>
3:00 PM	<b>Ed Englander</b>
4:00 PM	<b>Seminar Ends</b>



# **Fifteenth Annual Legal Perspectives on Land Surveying Speaker Biographies**

## **Daniel Bartlett**

Mr. Bartlett is a title examiner who has worked in every county of the Commonwealth for over thirty years. He has worked closely with the law firm of Englander & Chicoine to research complex title issues, such as tidal flats, fractional interests in estates, and long-defunct trusts. Mr. Bartlett is a go-to resource on any title problem, large or small, whether it is recorded land or registered land.

## **Denise A. Chicoine, Esq.**

Ms. Chicoine is a partner in the Boston law firm of Englander & Chicoine P.C. Ms. Chicoine has significant experience litigating disputes involving rights in the intertidal zone and beach access claims, easements, zoning matters, and Chapter 91. She also has expertise in employment law. She has handled a number of appeals, including arguing three times in the Supreme Judicial Court on behalf of the prevailing parties.

Ms. Chicoine received her B.A. from Trinity College in Hartford, Connecticut in 1990; J.D. from Boston College Law School 1993; admitted to the Massachusetts bar 1993 and the Connecticut bar in 1994. She is a member of CREW (Commercial Women in Real Estate), REBA (Real Estate Bar Association for Massachusetts), and has been a chair for a zoning panel for MCLE (Massachusetts Continuing Legal Education) for the past six years. She enjoys running, hiking, and skiing.

## **Edward S. Englander, Esq.**

Ed is a partner in the law firm of Englander & Chicoine. The firm concentrates in real estate and general civil law with an emphasis in real estate litigation and employment disputes. Englander & Chicoine has assisted numerous clients with solving their legal problems from title insurance companies, the Boston Redevelopment Authority, shell fishermen, to the single 89 year-old school teacher who faces eviction. Ed served on the Board of Registration for Professional Engineers and Land Surveyors for 6 years. Ed has practiced law more than 40 years. He attended the University of Wisconsin and Suffolk Law School.

## **Brian M. Hurley, Esq.**

Brian is a litigation lawyer focusing on real estate-related litigation, including land use, environmental, title and title insurance claims and disputes. Brian advises institutional, commercial and individual clients on a wide variety of litigation issues and represents them in the state and federal courts of Massachusetts.

Brian has frequently lectured on litigation matters for Massachusetts Continuing Legal Education Foundation, American Land Title Association, Real Estate Bar Association and National Business Institute. He has published written materials on a variety of complex litigation and real estate topics.

## **Stephen T. LaMonica, PE, PLS**

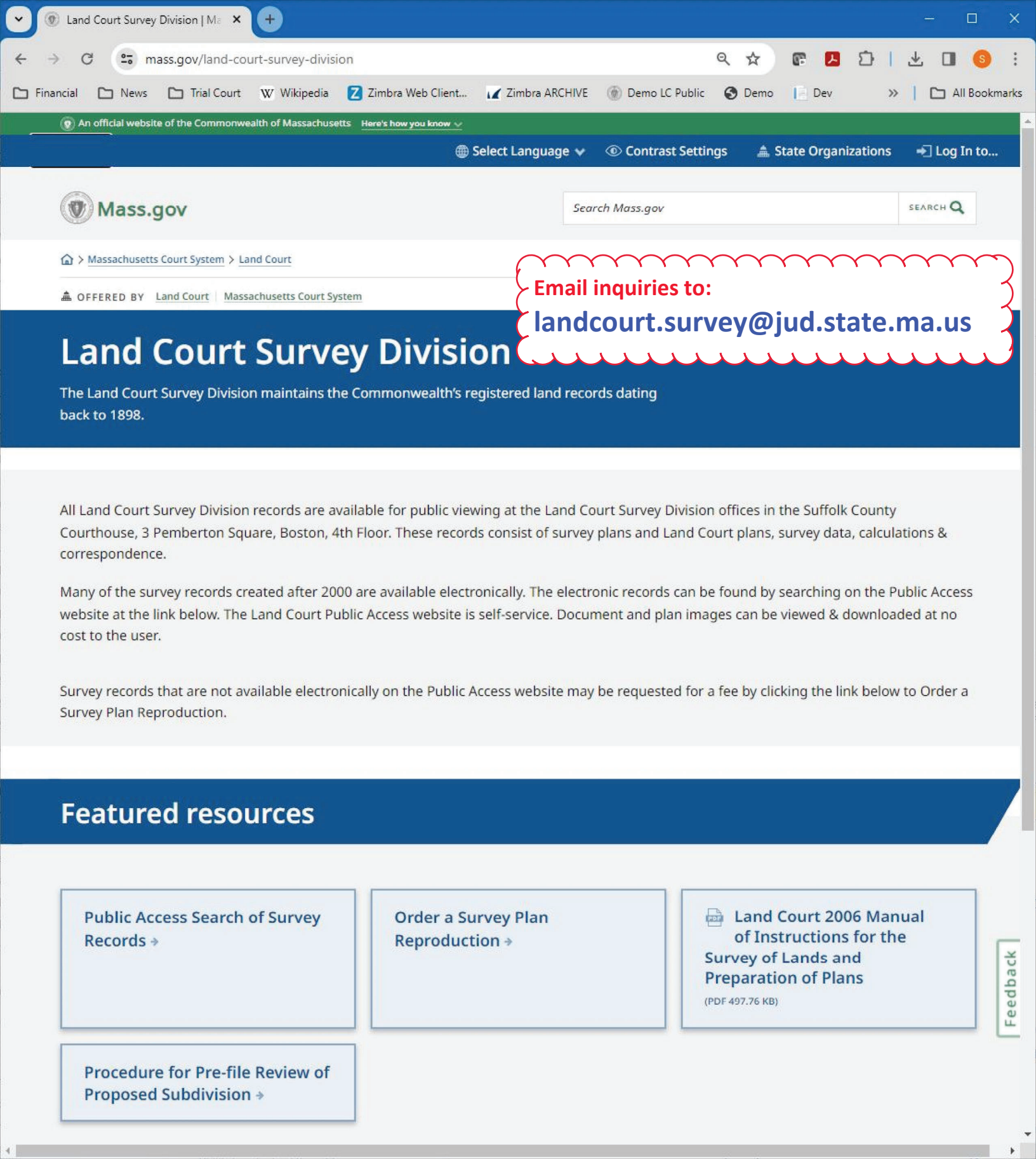
Mr. LaMonica joined the Land Court in 2016 as a Survey Engineer and was appointed the Chief Surveyor in 2018. Prior to joining Land Court he worked in the private sector on numerous international projects that include railroads, dams, bridges and roads as a land surveyor and civil engineer for over 40 years. Chief Surveyor LaMonica received a BS degree in civil engineering from Northeastern University and is licensed in multiple states.

## **Joseph V. Polsinello**

Mr. Polsinello is president and principal owner of Inland Professional corporation providing environmental, business and project management. Having over 45 years of combined experience in general contracting, emergency spill response, hazardous waste cleanup, real estate development, building and site construction, and the petroleum industry. As a Massachusetts Licensed Site Professional (LSP) Mr. Polsinello along with associates provides environmental site assessment, management, site ranking, and LSP opinion consistent with the Massachusetts Contingency Plan.

## **Paul J. Tyrell, PE, PLS, LEED AP, DBIA**

Paul Tyrell is associate vice president at HDR and is an accomplished professional engineer licensed in MA, ME, NH, RI, VT, CT, and NY and a professional land surveyor in MA. He's a LEED Accredited and certified Design Build professional with 30 years of experience in Land Surveying, Civil Engineering and Construction Management.



**Email inquiries to:**  
**landcourt.survey@jud.state.ma.us**

# Land Court Survey Division

The Land Court Survey Division maintains the Commonwealth's registered land records dating back to 1898.

All Land Court Survey Division records are available for public viewing at the Land Court Survey Division offices in the Suffolk County Courthouse, 3 Pemberton Square, Boston, 4th Floor. These records consist of survey plans and Land Court plans, survey data, calculations & correspondence.

Many of the survey records created after 2000 are available electronically. The electronic records can be found by searching on the Public Access website at the link below. The Land Court Public Access website is self-service. Document and plan images can be viewed & downloaded at no cost to the user.

Survey records that are not available electronically on the Public Access website may be requested for a fee by clicking the link below to Order a Survey Plan Reproduction.

## Featured resources

[Public Access Search of Survey Records](#) →

[Order a Survey Plan Reproduction](#) →

[Land Court 2006 Manual of Instructions for the Survey of Lands and Preparation of Plans](#)  
(PDF 497.76 KB)

[Procedure for Pre-file Review of Proposed Subdivision](#) →

Feedback

**THE TRIAL COURT OF MASSACHUSETTS  
LAND COURT  
SURVEY DIVISION**



**Land Surveying  
Project Management System**

**Public Access Site  
User Guide**

## Table of Contents

Important Notice about the use of this Public Access Site .....	3
Overview .....	3
Notes on Requesting Reproductions.....	3
Notes On Terminology .....	3
Site Access.....	3
How To Use the Site .....	4
Landing Page .....	4
Help Menu .....	5
Case and Map Search Page .....	6
Case Search .....	7
PDF Viewer .....	11
Map Search .....	12
Basemapping.....	13
Appendix A: Public Access Site Glossary of Terms .....	14

## Important Notice about the use of this Public Access Site

The information contained within this website is generated from digital records maintained by the *Massachusetts Trial Court, Land Court Department, Survey Division* and is deemed to be public information. This information is provided for general reference purposes only, should not be construed as giving business, legal or other advice, and is not the official record of the *Trial Court*. While every effort is made to assure the data is accurate and current, it must be accepted and used by the recipient on an “as is” basis without warranties of any kind, expressed or implied. Please take all steps necessary to confirm that the material/information is accurate, complete, and current. The *Trial Court* and the developers of this website assume no liability whatsoever associated with the use or misuse of the information obtained from this website. Before taking any action, you should consider your personal situation and seek professional advice. The Mass.gov Privacy Policy can be found at: [Mass.gov Privacy Policy | Mass.gov](#).

## Overview

The Land Court Survey Division maintains a collection of registered land records dating back to 1898. Many of the records created after 2000 are also kept electronically.

These records are available for public review at the Land Court and any records kept electronically can be found by searching on this site. Document and plan images can be viewed and/or downloaded.

The Land Court Public Access website is self-service. This user guide describes how to best utilize this website and search for electronic Land Court survey records.

## Notes on Requesting Reproductions

If you are looking to request either electronic or paper reproductions of images and plans, please refer to the procedure found at the following link: [Reproduction Request](#).

### Tip:

*Images found on this site are free of charge to view and/or download. Otherwise, requesting reproductions will incur charges.*

## Notes On Terminology

Appendix A of this document contains a glossary of terms for the Public Access Site that Land Court uses to describe cases and accessible data. Refer to this appendix for additional information on data fields presented in this documentation and the site.

## Site Access

The Public Access Site can be found by using the following link:

<https://lcsurveyaccess.jud.state.ma.us/>

### Tip:

*The Public Access Site can be used with a desktop browser application or a mobile device.*

## How To Use the Site

This section details how to best utilize each part of this site.

The site is divided into four parts:

- **Landing Page:** This is the homepage for the site that provides basic information.
- **Help Menu:** The help menu is available on each page of the site and provides useful resources such as the user guide, glossary of terms, plan reproduction request procedure and contact information.
- **Case and Map Search Page:** Search tools that provide several ways to find specific land records.
- **PDF Viewer:** View and/or download images of documents and plans.

The following subsections will provide details for each part of the site.

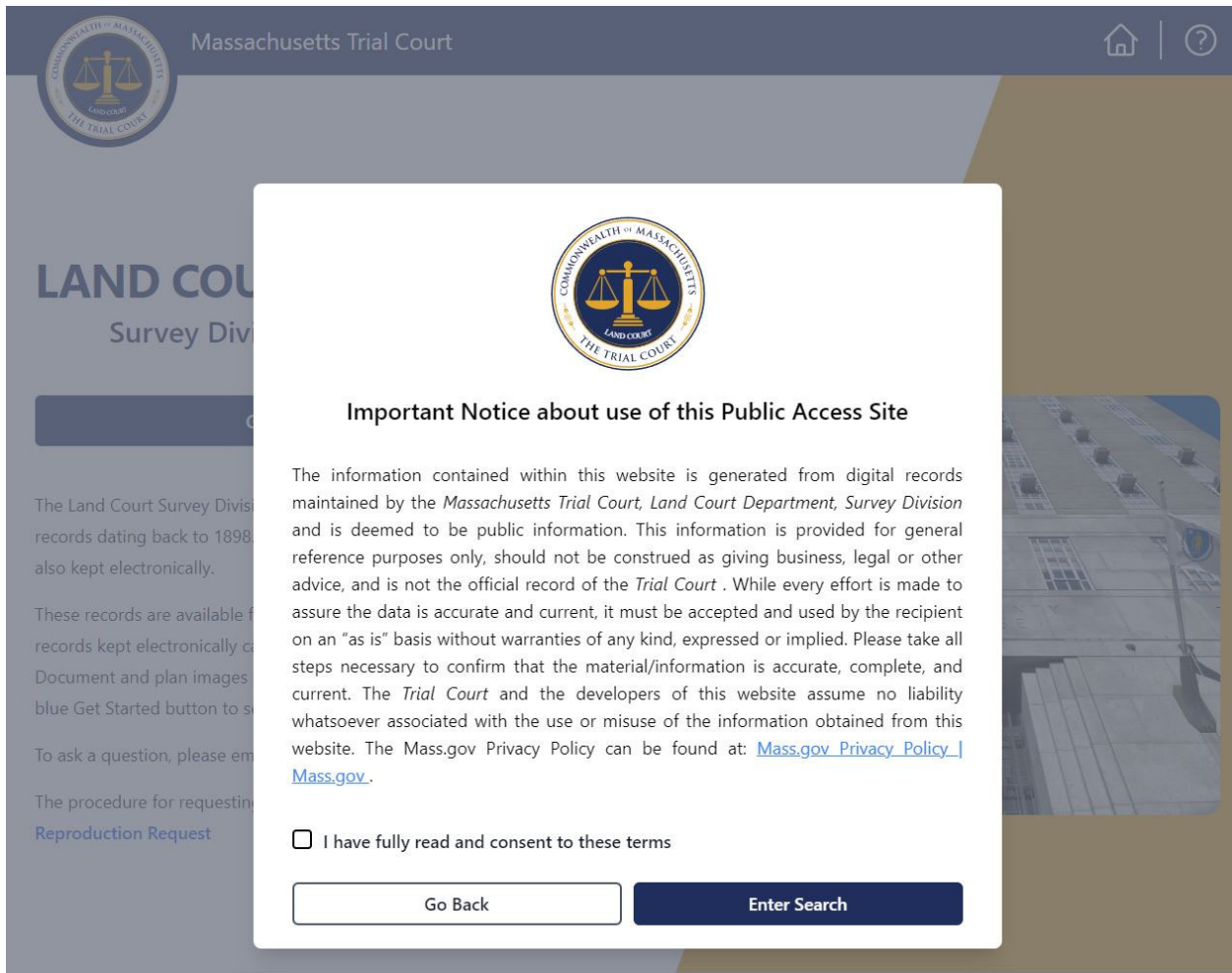
### Landing Page

This is the homepage for the Land Court Department Survey Division records search. This page contains basic information about the site.

The screenshot shows the landing page for the Land Court Department Survey Division records search. At the top, there is a dark blue header with the Massachusetts Trial Court logo on the left, the text "Massachusetts Trial Court" in the center, and home and help icons on the right. Below the header, the main heading reads "LAND COURT DEPARTMENT Survey Division Records Search". A prominent blue button with the text "Get started" and a magnifying glass icon is positioned below the heading. To the right of the text is a photograph of the Suffolk County Courthouse, a large, multi-story building with a classical facade and a prominent entrance. Below the "Get started" button, there is a paragraph of text explaining that the Land Court Survey Division maintains a collection of registered land records dating back to 1898, with many records created after 2000 kept electronically. It states that these records are available for public review at the Land Court and any records kept electronically can be found by searching on this website. Document and plan images can be read and downloaded. It instructs users to click on the blue "Get Started" button to search. Below this, it provides an email address for questions: [landcourt.survey@jud.state.ma.us](mailto:landcourt.survey@jud.state.ma.us). Finally, it mentions that the procedure for requesting copies of images and plans is found at: [Reproduction Request](#).

To access the search experience, click on the blue 'Get Started' button. You are then presented with the terms and conditions for the search. Only by fully reading and agreeing to these terms can you access the site (check the box and select "Enter Search").





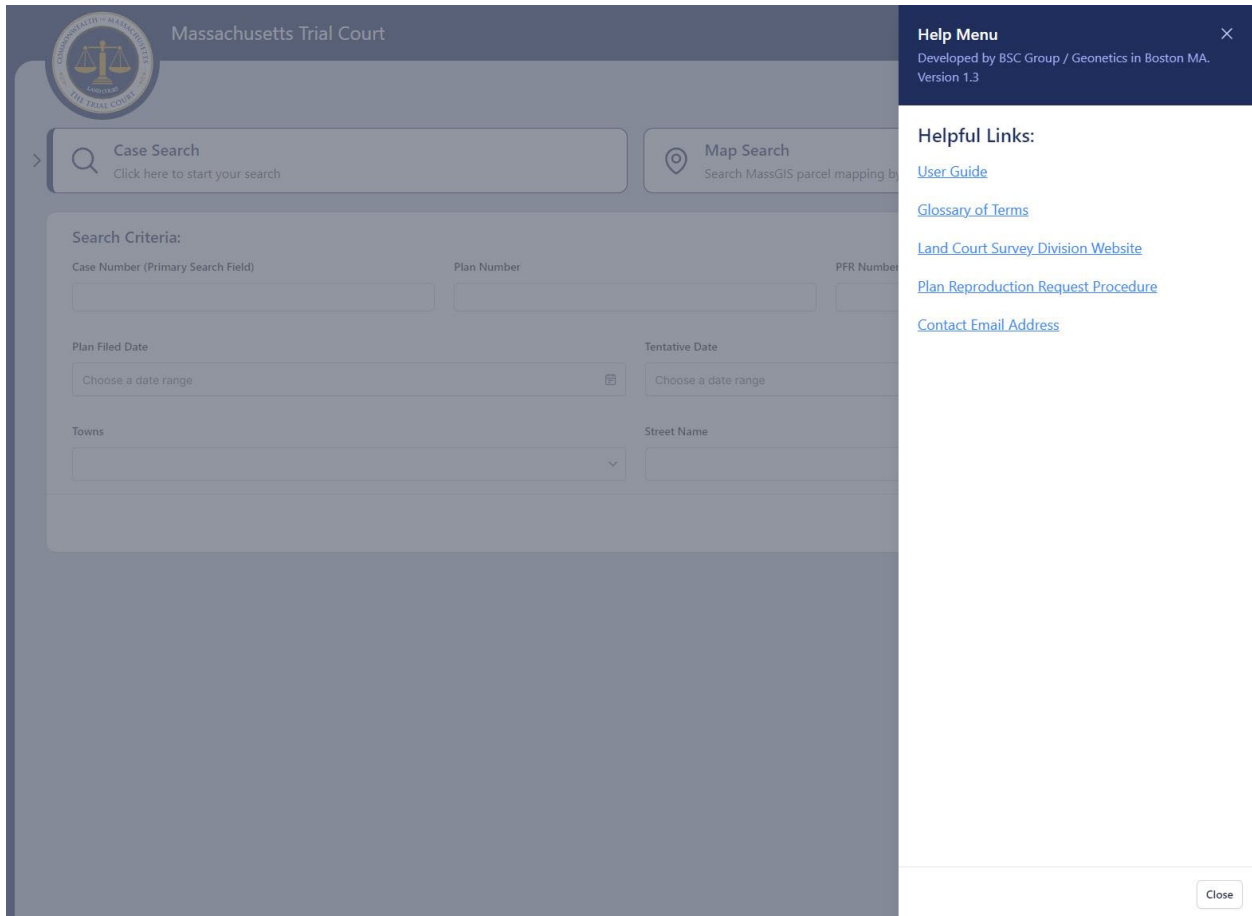
## Help Menu

The help menu is a slide-out menu that is accessible from each webpage. To access the help menu, please select the question mark in the blue header on the top right of the screen (refer to the figure below).



Selecting the question mark will open the help menu. From here you can access this user guide, glossary of terms, plan reproduction request procedure and contact information. To close the help menu either select the 'X' icon located at the top right of the menu or select the 'Close' button located at the bottom right of the menu.





## Case and Map Search Page

The Case and Map Search Page provide several ways to find information related to a specific land record.

There are two types of search experiences available:

- **Case Search:** Search for Land Court records based on specific criteria such as case number.
- **Map Search:** Identify a parcel of land and associated information using the MassGIS parcel map based upon street address.

Case search is the default search experience when you first navigate to the Case and Map Search Page. To begin one of these searches, select either the “Case Search” or “Map Search” button located at the top of the page. The given search button will be highlighted with an arrow to indicate that it is active.

Each search type is described in detail in the subsections below.

Massachusetts Trial Court

Case Search  
Click here to start your search

Map Search  
Search MassGIS parcel mapping by address

Search Criteria:

Case Number (Primary Search Field) Plan Number PFR Number

Plan Filed Date Tentative Date

Towns Street Name

Clear Search Criteria Search

## Case Search

The case search provides several criteria that you can use to find a specific land record. These criteria include:

- **Case Number:** Unique number assigned to registered land parcels assigned sequentially. The case number is a 1-to-5-digit integer. This is the primary search field for the database application.
- **Plan Number:** Paired with the case number, this is the unique identifier of a registered land plan. *Refer to the glossary of terms for more details.*

### Tip:

*Always enter data separately into the Case Number and Plan Number fields. Do not combine them for searching the database.*

- **PFR Number:** Pre-File Review (PFR) is a process for submitting subdivisions of registered land to the Survey Division. PFR numbers are assigned to subdivisions sequentially as submitted to the Survey Division. *Refer to the glossary of terms for more details.*
- **Plan Filed Date:** The date a subdivision plan of registered land is approved by the Survey Division. To search using this field enter a date range where you specify a start and end date. The land record results will return land records with approval dates that fall within the specified range. Selecting the calendar icon on this field will display a date picker. *Refer to the glossary of terms for more details.*

- Tentative Date:** The date the PFR is started by the Survey Division. To search using this field enter a date range where you specify a start and end date. The land record results will return land records that fall within the specified range. Selecting the calendar icon on this field will display a date picker.
- Towns:** The town or towns related to the registered land plan (i.e., where the property is located). This drop down allows for selection of one or multiple towns and returns results for the specified towns. If no town is selected, results will return for all towns.

- Street Name:** The name of the street related to the registered land plan. This field should **not** include the street number. For example, if the street address is '101 Main Street' you should enter 'Main Street'.

**Note:** Not all registered land plans have an associated street name. If you are not seeing the desired result, please try searching for the land record using other criteria.

**Tip:**

*You can pair the Street Name with a Town to narrow your street search results.*

Select the blue “Search” button to begin a search using the entered search criteria. Details related to the search results are in a subsequent subsection called “Search Results”. There is no limit to the number of searches you can perform. You may update the search criteria anytime and select the blue “Search” button to start a new search.

The white “Clear Search Criteria” button will clear all the search criteria fields.

### Search Results

Once a search has been performed. The search results are displayed underneath the “Search Criteria” section. The search result section includes a summary count of matching land records and a table of results. The search result table contains basic information about the land record such as case number, plan number, towns and type.

**Note:** *Subdivisions of registered land currently under review (and not yet approved) by the Land Court are not viewable by this site.*

Massachusetts Trial Court

Case Search  
Click here to start your search

Map Search  
Search MassGIS parcel mapping by address

**Search Criteria:**

Case Number (Primary Search Field)      Plan Number      PFR Number

Plan Filed Date      Tentative Date

Towns      Street Name

Abington

Clear Search Criteria      Search

Found 55 matching cases

CASE NUMBER	PLAN NUMBER	TOWNS	TYPE	LAST MODIFIED DATE
> 7975	23	Abington	Subdivision	7/23/2021
> 7975	24	Abington	Subdivision	7/23/2021
> 7975	25	Abington	Subdivision	7/23/2021
> 7975	26	Abington	Subdivision	7/12/2023

Click on a line to select a specific search result. It will open and display the details related to the specific land record. The detailed view of a specific land record is broken into the following categories:

- Documents
- Standard Info
- Status Info
- Process Info
- Site Info
- Subdivision/Modification Info
- Professional/Agent Info
- Miscellaneous
- Comments

Each category is represented as a tab. Select the desired tab to view the details related to the selected category (see figure below).

CASE NUMBER	PLAN NUMBER	TOWNS	TYPE	LAST MODIFIED DATE
> 7975	23	Abington	Subdivision	7/23/2021
∨ 7975	24	Abington	Subdivision	7/23/2021
> 7975	25	Abington	Subdivision	7/23/2021
> 7975	26	Abington	Subdivision	7/12/2023

Found 55 matching cases

Documents Standard Info **Status Info** Process Info Site Info Subdivision/Modification Info Profess

### Status Info


<b>PFR Date Recieved</b> 09/22/1998	<b>Pre File Review Number</b> 983416
<b>PFR Received By</b>	<b>Tentative Date</b> 10/06/1998
<b>Date Plan Filed</b> 10/23/1998	<b>Plan Order Date</b> 10/23/1998
<b>Plan Approval Date</b> 10/23/1998	<b>Sent to Legal/Registry Date</b> 11/12/1998

The documents tab lists all associated files for the given land record result. Each document can be downloaded by selecting the blue 'Download' button.

PDF documents can be previewed within this web application (see figure below). A PDF document has an additional blue button titled "View". Selecting this button opens the PDF viewer (see 'PDF Viewer' section for more details).

CASE NUMBER	PLAN NUMBER	TOWNS	TYPE	LAST MODIFIED DATE
23422	B	Abington	Subdivision	6/2/2022

TITLE	CATEGO...	DATE
 <b>23422-B Abington (S).pdf</b> Surveyor's Subdivision Plan	Plans	6/2/2022

**Tip:**

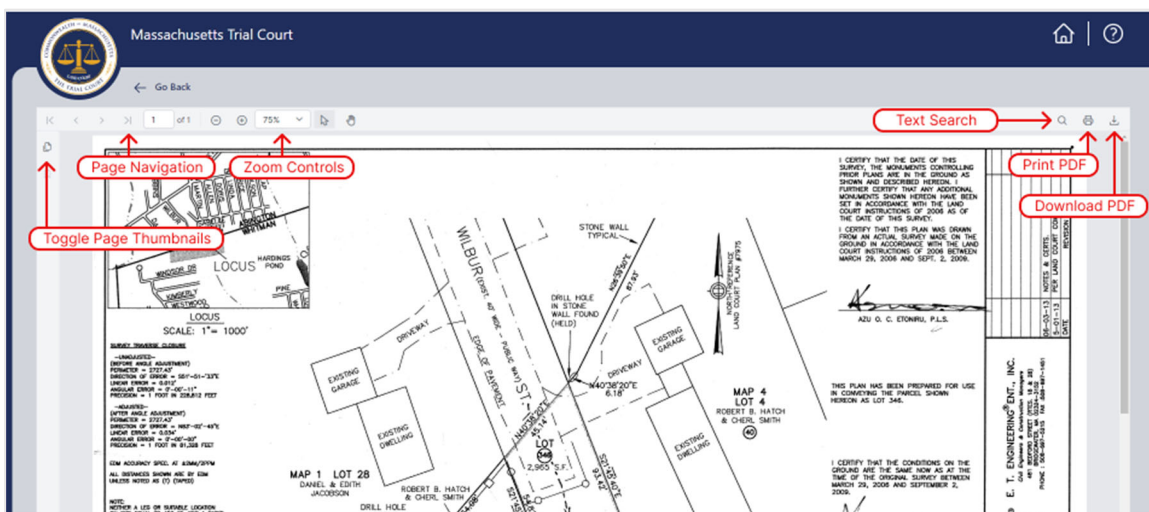
*In the PDF viewer, hover your mouse pointer over the thumbnail to enlarge the image.*

### PDF Viewer

For your convenience, PDF documents can be read directly on the site using the PDF Viewer. The viewer includes the following features:

- Page Navigation
- Zoom Controls
- Text Search
- Print PDF
- Download PDF
- Toggle Page Thumbnails

Refer to the following figure for guidance on how to access these features:



## Tip:

*Image “Text Search” works well for document images that are comprised of text.*

To return to your search results, select the ‘Go back’ button that is in the top left corner.

## Map Search

The map search provides a viewer of the MassGIS property mapping. Selecting the “Map Search” button at the top of the page opens the Map Search and displays the MassGIS basemap (see figure below).

The very top of the map includes an address search. Enter the desired address and click the blue “Search” button. The map will pan and zoom the MassGIS basemap to the location of the entered address. Each property is delineated by a magenta-colored boundary. Select the desired property shape to view detailed property information as reported by the municipality.

Massachusetts Trial Court

Case Search  
Click here to start your search

Map Search  
Search MassGIS parcel mapping by address

9 Kilmer Avenue, Taunton, MA

Select a parcel on the map to view its details.

MassGIS Parcel: 9 KILMER AVENUE

9 KILMER AVENUE  
TAUNTON, MA

Type: FEE  
Source: ASSESS  
Plan ID:  
Legal Type:  
Book: 24222  
Page: 0046  
Owner: DIAZ TONY

Zoom to

Powered by Esri

## Note:

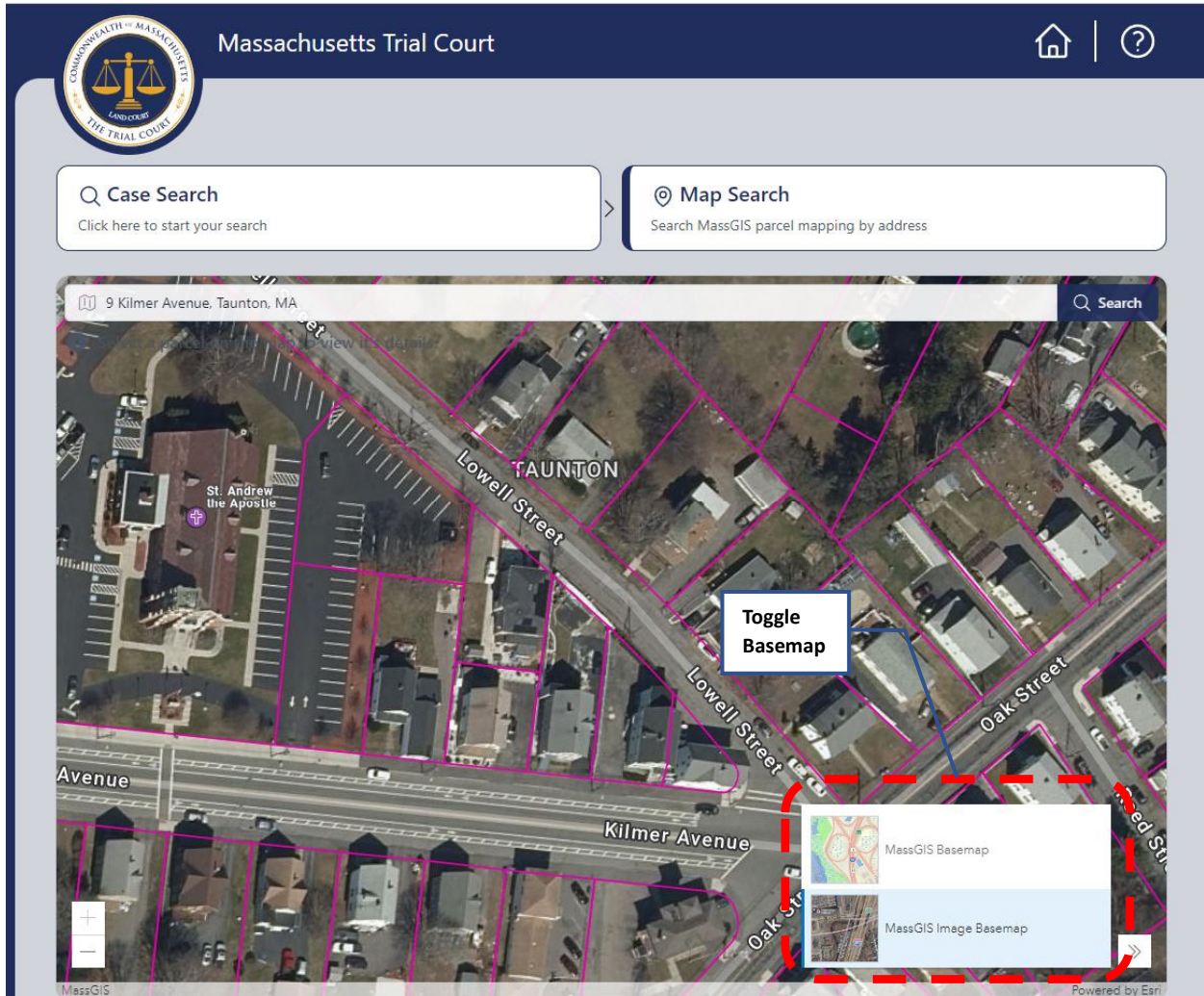
*The MassGIS property data is sourced directly from the municipality’s Assessor’s Office.*



## Basemapping

The MassGIS map viewer provides two modes of basemapping. The default mode is the “Basemap” depicting map features such as structures, roads, street names along with property, county and municipal boundaries.

The basemap may be toggled to the “Image Basemap” mode by selecting the icon in the lower right corner. The “Image Basemap” depicts photography for the view of mapping selected.





## Appendix A: Public Access Site Glossary of Terms

Term	Definition
Cancellation Notice	The process where the appropriate Registry District is notified that a registered land lot has been subdivided, and the original lot number is no longer in use.
Case Number	The unique identifying number assigned in sequence to registered land parcels (property lots). The case number is a 1-to-5-digit integer. It is the primary search field for the database application.
Certificate (of Title)	The registered land ownership document issued by the Land Court to the property owner.
Confirmation	A plan type that guarantees the title and boundary location of a parcel of land as of a particular date.
Decree Plan	See Judgment Plan
Division Plan	Plan prepared by the Survey Division for the subdivision of registered land and forwarded to the appropriate Registry District.
Geographic Information System	See GIS
GIS	Geographic Information System – A property mapping system (cadastre) showing parcel boundaries based upon ownership. MassGIS is a Commonwealth sponsored digital cadastre in Massachusetts. The MassGIS is searched by street address and town.
Judgment Plan	Plan prepared by the Survey Division and issued with Judgment for New Registration or Confirmation.
LSPMS	Land Surveying Project Management System – The Massachusetts Land Court, Survey Division’s database application for the input, tracking and retrieval of registered land information. The information includes both text and images.

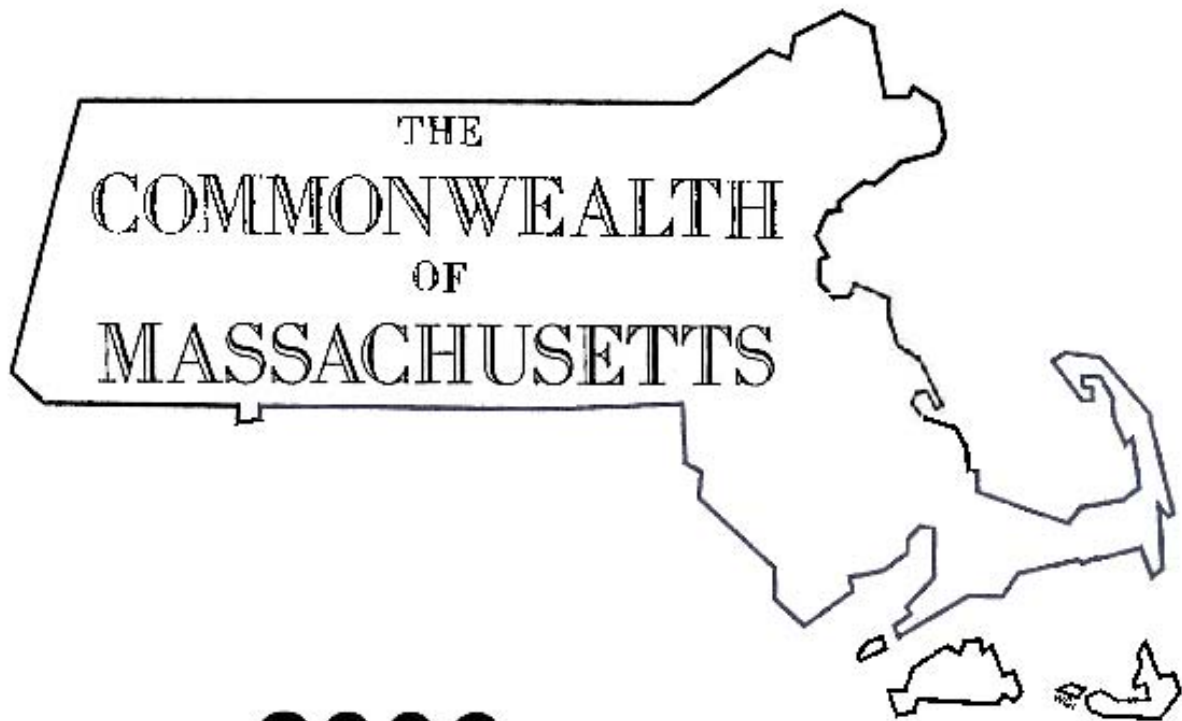
Land Surveying Project Management System	See LSPMS
MassGIS	See GIS
New Registration	The plan type used at the Land Court when a case is initially filed requesting that land be brought into the registration system. Registration of a property lot guarantees the title and boundary location of that parcel of land.
Original Registration	See New Registration
Owner	The entity identified on the Certificate of Title as the owner of the land that is registered.
Petitioner's Plan	A Surveyor's Plan which is filed at the Land Court with a complaint for New Registration or Confirmation. Also referred to as a linen or mylar.
PFR	Pre-File Review – The process for submitting subdivisions of registered land to the Land Court Survey Division. PFR numbers are assigned to subdivisions in the order they are received by the Survey Division. The PFR number is created using the year, month and submittal number. For example: 230503 (May '23, third submittal).
PFR Date Received	The date a PFR submittal is accepted for review by the Survey Division.
PFR Number	See PFR
Plaintiff	The entity that commences an action by filing a complaint.
Plan Filed Date	For New Registration or Confirmation, the date a Petitioner's Plan is accepted by the Land Court. For Subdivisions, the date a Surveyor's Plan of registered land is approved by the Land Court Survey Division. Lots shown on the approved plan are part of the registration system. The lots that the new subdivision was created from have been replaced and no longer exist.

Plan Number	Paired with the case number, this is the unique identifier of a registered land plan. "A" is the first plan assigned at registration. Subsequent subdivision plans of land are assigned starting with "B" through "Z" then numbers starting with "1". For example: 13713-N
Plan Order Date	For New Registration or Confirmation, the date a judgment is issued. For Subdivisions, the date a Court Order is issued as required by the Subdivision.
Plan Type	See Type
PLS	Professional Land Surveyor licensed by the Commonwealth of Massachusetts.
Pre-File Review	See PFR
Recorded Land	Land in the Commonwealth of Massachusetts that is not part of the Registration System.
Registered Land	Land in the Commonwealth of Massachusetts, the title to which has been certified by the Land Court in a case before the court following procedures set by Massachusetts General Laws Chapter 185.
Registry District	The Registry of Deeds office which maintains the records of property ownership in the county where the registered land is located.
Sent to Legal/Registry Date	For New Registration and Confirmation cases, this is the date the Judgment Plan is sent to the Land Court Legal Division for preparation of the Judgment Order. For Subdivision cases, it is the date the Land Court Division Plan is sent to the appropriate Registry of Deeds.
Subdivision	This plan type changes (divides or merges) the current configurations of a lot or a combination of lots.
Surveyor's Plan	Plan filed together with a PFR Submittal for a subdivision of registered land. Also referred to as a linen or mylar.
Tentative Date	The date a PFR is started by the Survey Division.

Type	Plan type. Typically, Subdivision, New Registration, Confirmation, etc.
Voluntary Withdrawal	The process of removing a registered land lot from the Registration System.



# LAND COURT



## **2006** **MANUAL OF** **INSTRUCTIONS**



SURVEY DIVISION

FOR THE SURVEY OF LANDS AND PREPARATION OF PLANS



THE TRIAL COURT OF MASSACHUSETTS  
LAND COURT

Three Pemberton Square  
Boston, MA 02108  
TEL: (617) 788-7470

SURVEY DIVISION

Stephen LaMonica  
Chief Surveyor

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## PRE-FILE REVIEW OF PROPOSED SUBDIVISIONS OF REGISTERED LAND

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REVISED: DECEMBER 26, 2023

The Land Court Survey Division conducts a Pre-File Review for approval of subdivision plans of registered land, submitted by mail, and reviewed on a first received basis. The “submittal package” should be complete and consist of the following:

1. Cover letter from the owner or the owner’s attorney requesting review for filing including name, address, email, and telephone number of the contact person.
2. Proof of Ownership:
  - (a) a complete copy of the certificate of title and encumbrance sheet(s) with a recent original attestation, or
  - (b) if the certificate of title has not been written, the deed into the current owner along with the last written certificate of title per (a) (above).
3. *[Place holder]* – Please leave this section blank
4. Complete attested copies of documents and plans of takings or easements not shown on prior Land Court plans.
5. Two prints of the subdivision plan - **DO NOT SUBMIT ORIGINAL PLAN AT THIS TIME.**
6. Surveyor’s Worksheet(s), **signed and sealed** by the surveyor, including field and record coordinate numbers for all survey points.
7. Surveyor’s computations; **single sided originals with each sheet signed and sealed** by the surveyor consisting of:
  - (a) unbalanced field traverse,
  - (b) balanced field traverse,
  - (c) individual lot closures based upon the subdivision plan dimensions,
  - (d) list of field and record coordinates on the same coordinate system, and
  - (e) easement closures.

**DO NOT SEND ORIGINAL PLAN OR PAYMENT AT THIS TIME**

The submitter should mail the complete package to:

**Land Court Survey Division  
Three Pemberton Square, 5th Floor  
Boston, MA 02108  
Attn.: PRE-FILE REVIEW**

Inquiries can be made by calling (617) 788-7434 or by email to [stephen.lamonica@jud.state.ma.us](mailto:stephen.lamonica@jud.state.ma.us).  
Please reference the assigned “Pre-File Review” number or the Land Court Plan number.

**THE MORE COMPLETE THE PRE-FILE SUBMITTAL - THE BETTER THE LAND COURT CAN SERVE**

# DEFECTIVE LAND COURT PLANS



Edward S. Englander, Esq.  
Englander & Chicoine P.C.  
One Boston Place, Suite 2600  
Boston, MA 02108  
(617) 723-7440

January 26, 2024





181 Bacon St

Natick, Massachusetts

Google

Street View - Sep 2019

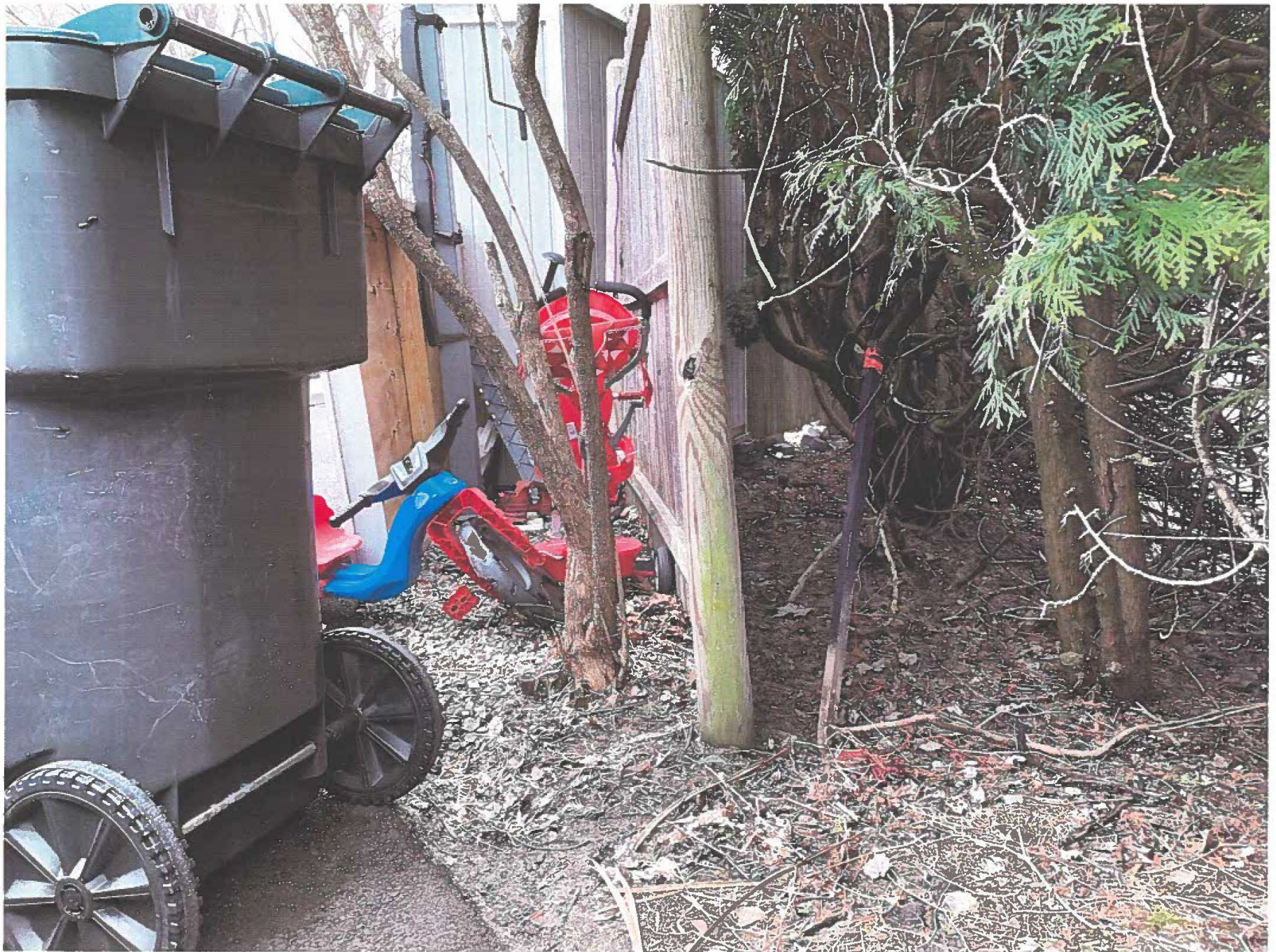


Google













**NO  
TRESPASSING**

**LET'S GO  
BRANDON!**

Small  
Pine  
Driving  
Traded for  
Big  
Pine  
Behind  
Fence  
Thank  
you

Land

You  
Actually  
Lost  
Land  
He He









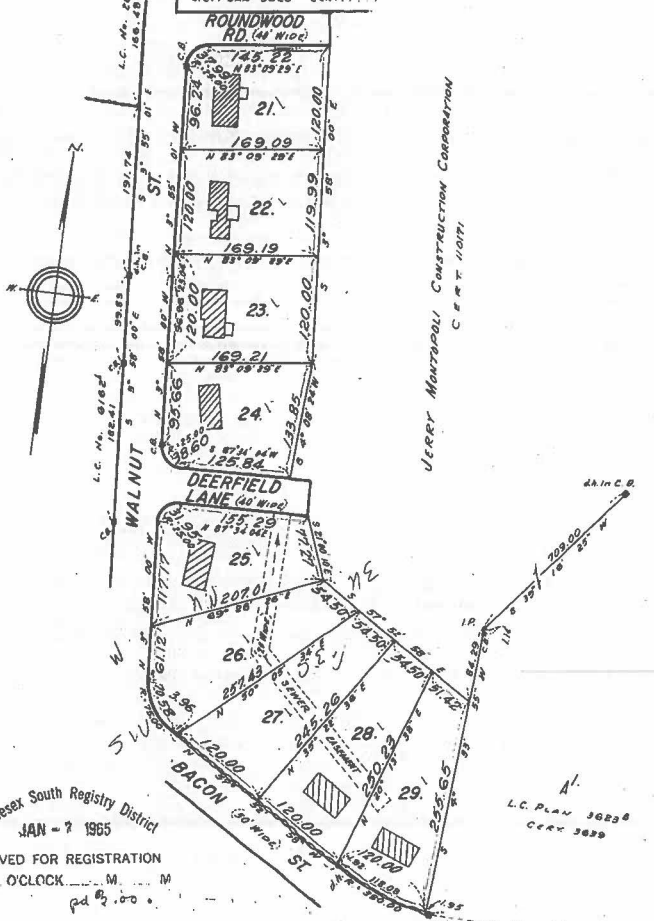
See Key Plan of SUBDIVISION PLAN OF LAND IN NATICK  
Case No. **3623**  
In Land Reg. Plan Dept.

**3623<sup>H</sup>**

M & M Engineering Service  
James A. Bain, Surveyor

March 1963  
19.

L.C. PLAN 3623<sup>H</sup> CERT. ....



URGER MONTROPOLI CONSTRUCTION CORPORATION  
C.E.M. 11077

Middlesex South Registry District  
JAN - 7 1965  
RECEIVED FOR REGISTRATION  
O'CLOCK . . . M . . . M  
pd \$ . . .

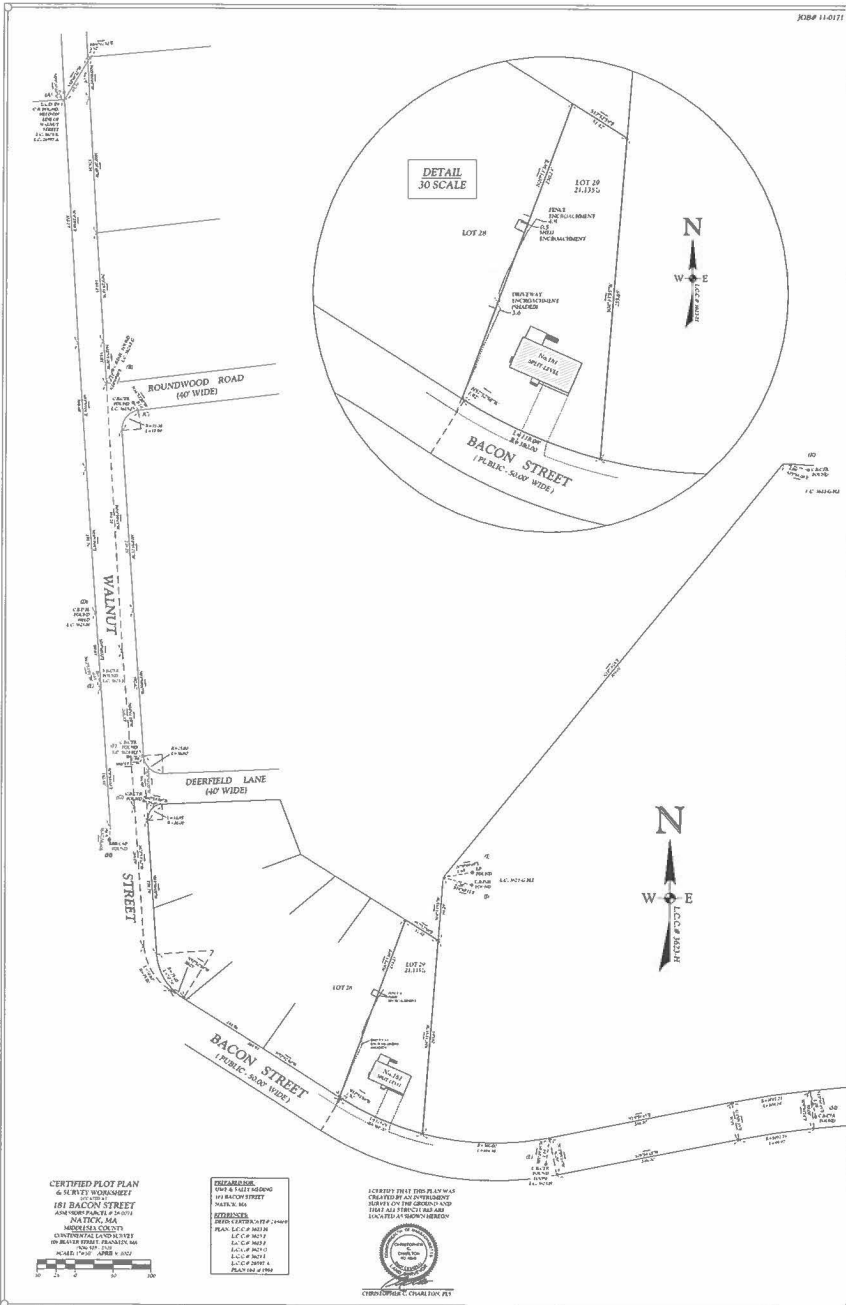
Subdivision of Part of Lot 20  
Shown on Plan 3623<sup>H</sup>  
Filed with Cert. of Title No. ....  
South Registry District of Middlesex County  
Separate certificates of title may be issued for land  
shown hereon as L.A.S. 21, 22, 23, 24, 25, 26, 27, 28, 29.  
By the Court.

*Thomas B. Anderson*  
Recorder  
JAN 14 1965  
C.M.A.

A.  
L.C. PLAN 3623<sup>H</sup>  
CERT 3623

Copy of part of plan  
filed in  
LAND REGISTRATION OFFICE  
- 1000 ST. 1, 1965 -  
Scale of this plan 100 feet to an inch  
C.M. Anderson, Engineer for Court 11





**CERTIFIED PLOT PLAN**  
 4.16.0125 MONROE  
 181 BACON STREET  
 AND/OR PARCELS 28 & 29  
 NANTUCKET, MA  
 NANTUCKET COUNTY  
 02542  
 02/15/2017  
 10:00 AM  
 10:00 AM

**REGULATIONS**  
 4.16.0125 MONROE  
 181 BACON STREET  
 NANTUCKET, MA  
 NANTUCKET COUNTY  
 02542  
 02/15/2017  
 10:00 AM  
 10:00 AM

**LEGEND**  
 1. LOT 29  
 2. LOT 28  
 3. PUBLIC UTILITY  
 4. DRIVEWAY  
 5. GARAGE  
 6. SINGLE DETACHED DWELLING



CHRISTOPHER C. CHAN, P.E.

Hi Stephen, I hope this email finds you well.

I am writing today about land court case # 3623-H.

We spoke about this some time ago by phone.

Verne Porter, cc'd here, has completed a survey on behalf of the title holders of lot 28. I had completed my survey on behalf of title holders of lot 29 last year. The title holders want to know the record location of the common boundary. There are encroachments on the line. I believe they have been to a civil court on the matter.

Verne Porter and I come up with different solutions to the location of the common boundary line. Please see each of our attached worksheets.

My approach is based on holding monuments found on Walnut street & minimizing error of monument locations along Walnut street and at intersections of Walnut St/Roundwood Rd & Walnut St/Deerfield Rd. My solution results in significant unresolved error (order of magnitude 1.8' to 3.0') of monuments on the 709.00' line, which is the southeasterly border of the "Jerry Montopoli" land as shown on the 3623-H decree. I believe I have a solution that holds accessible, local, controlling markers that are likely to be searched for & easily discovered and held by future surveyors that will come to survey land within this portion of case #3623 going forward.

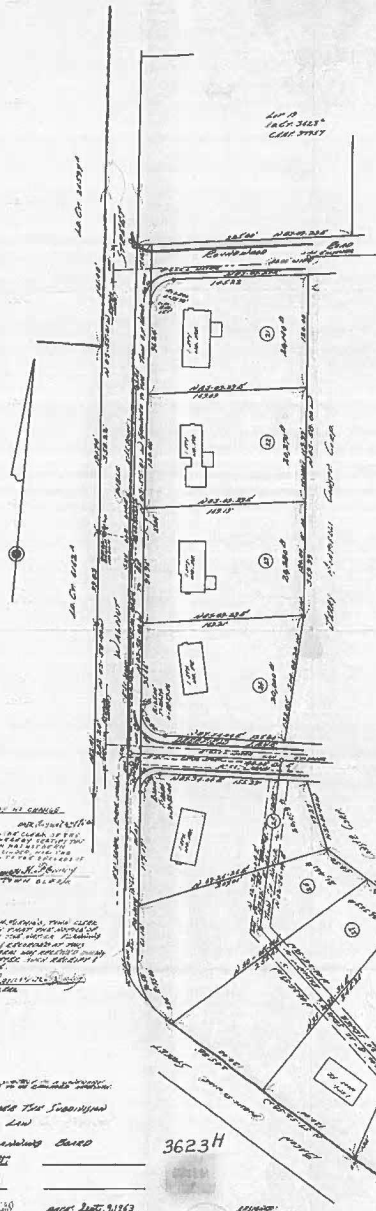
Verne's solution holds the IP found at the west end of the 709.00' line and then holds the bound found on the southern end of the 75.00' line that runs along the east border of lot A1 on plan 3623-B. Verne's solution minimizes error along the 709.00' line and at other monuments found as illustrated on his worksheet. Verne's solution also leaves significant unresolved error of monument locations throughout the case including the Walnut St monuments that I hold, most of which are not illustrated on his worksheet but I estimate to be in the order of magnitude 2.0' to 3.5'. Verne believes that his solution holds local, controlling monuments that check well and control the geometry of Lot A1 (3623-B) and therefore should control this portion of case #3623.

Our established record locations of the common boundary between Lots 28 & 29 vary such that Verne's location is approximately 1.2-feet east of my location at the southerly street end, and widens to approximately 1.5-feet east of my location at the rear northerly common corner.

Both approaches attempt to hold monuments within case #3623 to come up with a record location of the common boundary of lots 28 & 29 on case # 3623-H. We have discussed the matter and appreciate each others efforts. We both agree and realize that each of our solutions leave significant unresolved error.

We would appreciate the Land Court's guidance in resolving the significant conflict in case #3623, to instruct us as to what the Court would consider as controlling this boundary location, and lastly, to help our clients have a single record boundary location solution as was originally intended by the Court.

Thanks for you time.



PLAN ON LAND IN  
NOTICE OF APPOINTMENT  
WEST ST & CLAY ST

Subdivision of Block 10  
in Square No. 1000  
Filed for Record 1914

Ordered By: Henry Anderson County Clerk  
27 Orange Street  
Madison, Wis.

Scale 1" = 40'  
April 1915  
Return of 10/15/15

W. Anderson & Son,  
Civil Engineers  
Madison, Wis.

I hereby certify that the above plan was made in full compliance with the laws and regulations of the State of Wisconsin and that the same is a true and correct copy of the original plan on file in my office.

CERTIFICATE OF RECORD  
I hereby certify that the above plan was made in full compliance with the laws and regulations of the State of Wisconsin and that the same is a true and correct copy of the original plan on file in my office.

I report that I have examined the copy of the above plan and find it to be a true and correct copy of the original plan on file in my office.

Approved Under the Supervision  
County Clerk  
Henry Anderson  
County Clerk

3623 H

3623 H

Edward C. Bennett  
Carlton C. Bennett  
Henry Anderson  
County Clerk

W. Anderson & Son  
Civil Engineers  
Madison, Wis.

SHEET 1 OF 2

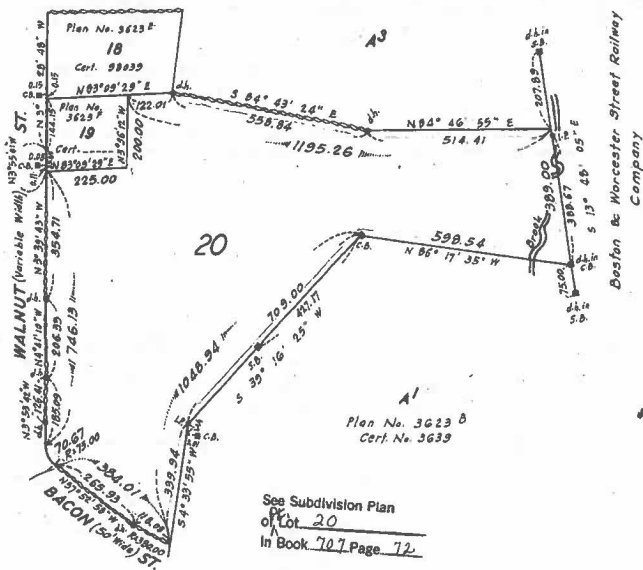
3623 G

SUBDIVISION PLAN OF LAND IN NATICK

M & M Engineering Service  
James A. Bain, Surveyor

December 11, 1962

See Key Plan of  
Case No. **3623**  
in Land Reg. Plan Dept.



See Subdivision Plan  
of Lot 20  
in Book 707 Page 72

Middlesex South Registry District

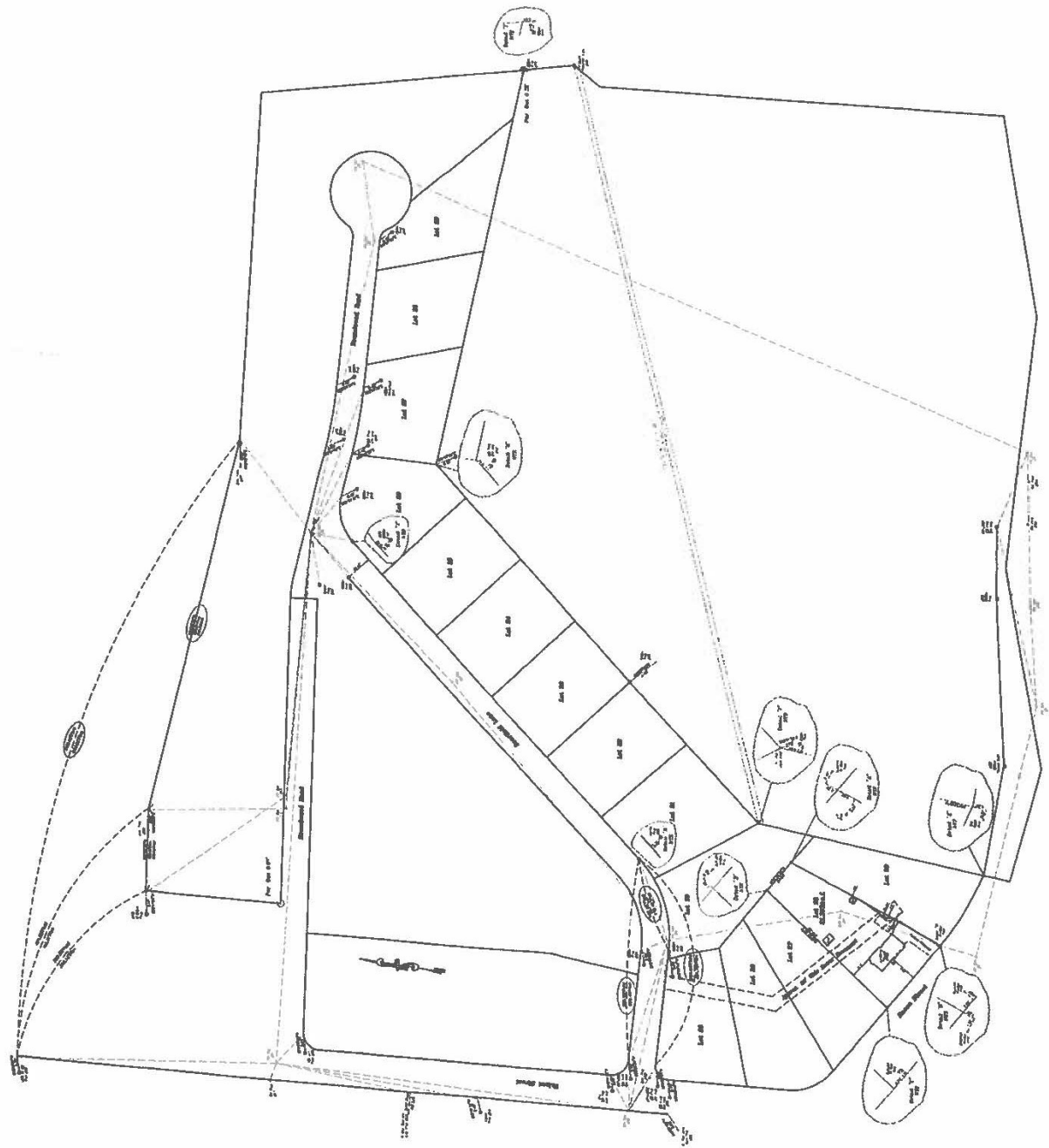
RECEIVED FOR REGISTRATION  
O'CLOCK \_\_\_\_\_ M. \_\_\_\_\_

Subdivision of Part of Lot A<sup>4</sup>  
Shown on Plan 3623  
Filed with Cert. of Title No. 23398  
South Registry District of Middlesex County

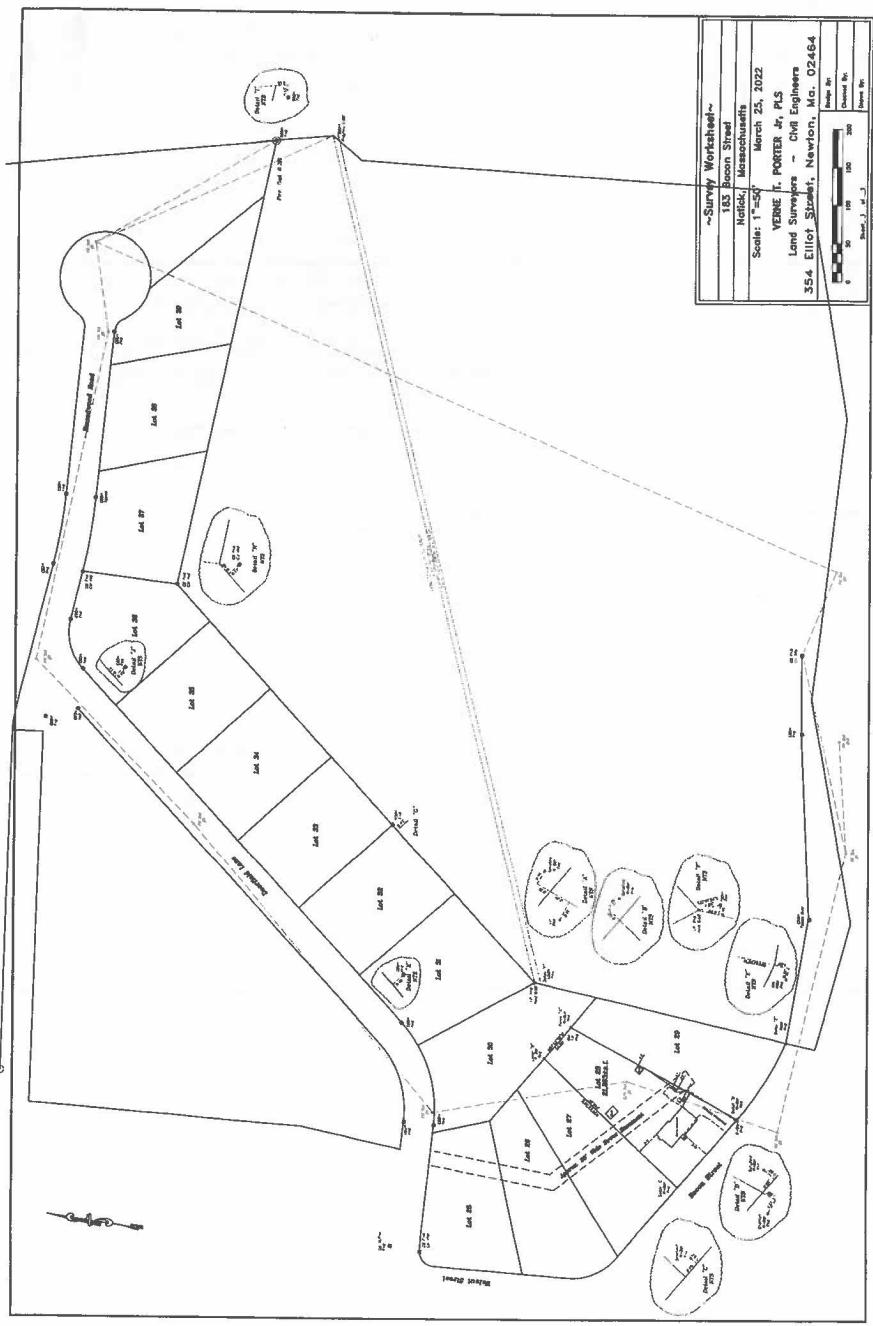
Separate certificates of title may be issued for land  
shown hereon as Lot 20  
By the Court.

*Thomas B. Anderson*  
Deputy Recorder  
JULY 26, 1962

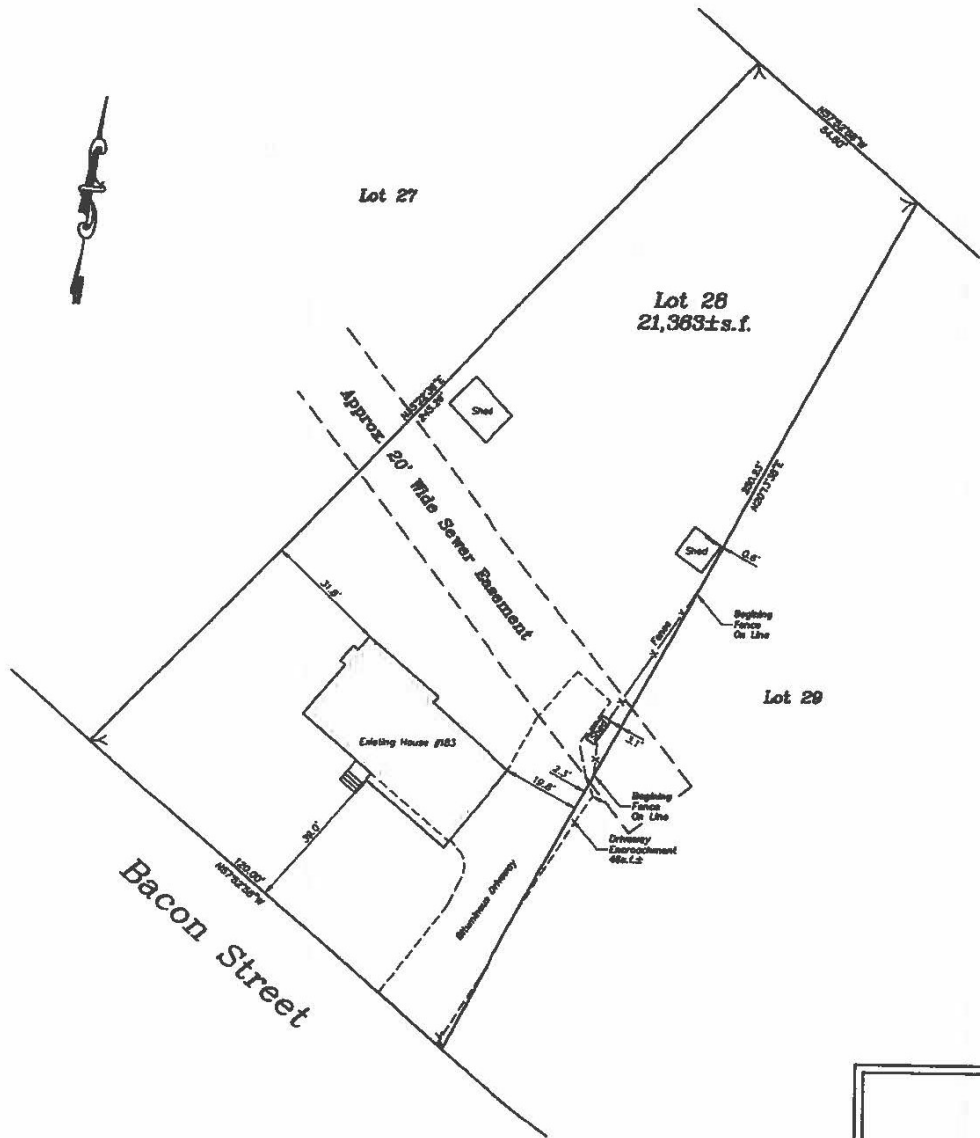
Copy of part of plan  
filed in  
LAND REGISTRATION OFFICE  
JUNE 25, 1962  
Scale of this plan 240 feet to an inch  
C.M. Anderson, Engineer for Court Vt.







~Survey Worksheet~  
 183 Bacon Street  
 Natick, Massachusetts  
 Scale: 1"=50'  
 Date: March 25, 2022  
 Surveyor: VERNE T. PORTER, Jr., PLS  
 Land Surveys - Civil Engineers  
 3554 Elliot Street, Newton, MA, 02464  
 Sheet No. 1 of 1  
 Date: 3/25/22



<b>~Existing Conditions Plot Plan~</b>	
183 Bacon Street	
Natick, Massachusetts	
Scale: 1"=20'	March 28, 2022
<b>VERNE T. PORTER Jr, PLS</b> Land Surveyors - Civil Engineers 354 Elliot Street, Newton, Ma. 02464	
 Sheet 1 of 1	Design By: Checked By: Drawn By:

# Caselaw Developments 2023



**Denise A. Chicoine**

**Englander & Chicoine P.C.**

One Boston Place, Suite 2600

Boston, MA 02108

(617) 723-7440



*Wingren v. McLean*  
*31 LCR 193 (2023)*

# *Wingren v. McLean*

## Facts:

- In 1949, Gershom D. Hall deeded six parcels of land in Barnstable, Massachusetts, to Joseph B. Daggett and A. Harold Castonguay as trustees of the Wequaquet Trust.
- The 1949 Plan created house lots and a Common Beach. Daggett and Castonguay conveyed lots, but none included an express right to use the Common Beach.
- Over the years, various owners received deeds with common beach rights.
- In 1985, Stanislaus recorded an Approval Not Required (“ANR”) plan, designating Lots 49A and 49C, including the Common Beach. Stanislaus later conveyed Lot 49C to Norman. Stanislaus filed a Notice of Intent in 1991 for a pier on Lot 49A, receiving town approval and paying property taxes on the dock.





LOCAL MAP

PROJECT AREA IS SHOWN IN  
BOLD LETTERS

**ZONING SUMMARY**

SEE SHEET 104-1000

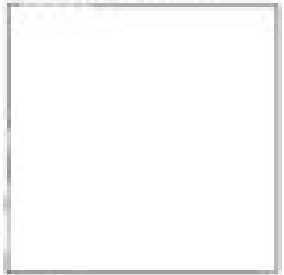
- RESIDENTIAL
- COMMERCIAL
- INDUSTRIAL
- AGRICULTURAL
- UNDEVELOPED
- WATER
- WETLANDS
- WATERWAYS
- WETLANDS
- WATERWAYS
- WETLANDS
- WATERWAYS

SEE SHEET 104-1000  
FOR A DETAILED  
DESCRIPTION OF THE  
ZONING REGULATIONS  
APPLICABLE TO THIS  
PROJECT.

**SITE PLAN**  
OF  
**344 TERRY LANE**  
CENTREVILLE, MA  
PREPARED BY  
**JEFFERY JOHNSON**  
ARCHITECTS  
100 WEST STREET  
CENTREVILLE, MA 01930

DATE: 08/14/2008  
DRAWN BY: J. JOHNSON  
CHECKED BY: J. JOHNSON  
SCALE: AS SHOWN  
PROJECT NO: 08-001

**FOR REVIEW**



SEE SHEET 104-1000

SEE SHEET 104-1000  
FOR A DETAILED  
DESCRIPTION OF THE  
ZONING REGULATIONS  
APPLICABLE TO THIS  
PROJECT.

SEE SHEET 104-1000

SEE SHEET 104-1000

08-001

# *Wingren v. McLean*

## Facts:

- Easement holders and the McLeans involved individuals such as Holly Farnham, Kathleen T. Gleason, Jonathan F. Farnham, Lillian D'Entremont, Richard D'Entremont, Janet M. Benson, Carol A. Harris, Norman, and Nancy, provided insights into their use of the Common Beach over the years.
- Ms. Farnham, residing at 176 Tern Lane, shared her history on the property dating back to her parents' purchase in 1956.
- Others, like Ms. Harris and Ms. Benson, also provided details about their long-term connections to their respective properties, contributing to the overall understanding of the case.

# *Wingren v. McLean*

## Facts:

- The 1949 Plan illustrates the Common Beach, bordered by Wequaquet Lake to the east, extending southerly and westerly below the Pond, abutting Tern Lane on the west.
  - A portion of the Common Beach was conveyed to the Klays in 1954, and a strip next to the Pond was reserved in 1957.
  - Testimony and photographs revealed historical delineations of boundaries, including a pole and cable fence replaced by a split rail fence, a Lake Chain installed in the early 1970s to control access to the area, and a Tern Lane Chain installed in the late 1980s to restrict parking. Signs were also posted indicating private beach access for residents with deeded rights.
- Ms. Farnham testified that the Access Area has been consistently used over the years to access the beach, park cars, launch boats, and for winter activities such as ice skating and fishing on Wequaquet Lake. Testimonies from other residents, including Ms. D'Entremont, Ms. Gleason, Mr. D'Entremont, Ms. Benson, and Ms. Harris, further highlighted the varied uses of the Access Area, such as boat launching, parking, and accessing the beach for recreational activities.

# *Wingren v. McLean*

## Facts:

- Ms. Gleason recounted a meeting with Stanislaus at 198 Tern Lane before acquiring the property in 1964, where he showed them the Common Beach and mentioned the presence of a dock, suggesting it for their children's enjoyment.
- Ms. Farnham testified about a wooden dock constructed by her father, Mr. Pendergast, and Stanislaus in the 1960s, regularly installed in the spring and removed after Labor Day.
- The dock served various purposes, including fishing, swimming, picnicking, and tying up boats, with contributions from Mr. Pendergast, Stanislaus, Norman, Mr. Farnham, Mr. Gleason, and Mr. D'Entremont.
- Testimonies from residents like Ms. Gleason, Ms. Farnham, Mr. and Ms. D'Entremont, and Ms. Benson highlighted the importance of deeded beach rights, including dock access, in their property acquisitions and the continued use of the dock for recreational activities over the years.

# *Wingren v. McLean*

## Facts:

- Testimonies and family photographs spanning six decades confirm that the Common Beach served various recreational purposes, including sunbathing, lounging, cookouts, celebrations, and access to Wequaquet Lake for activities such as swimming, fishing, boating, canoeing, kayaking, paddleboarding, and water skiing.
- Multiple generations of families, including the Pendergasts, Gleasons, Driscolls, Wingrens, Connors, and others, utilized the Common Beach and the dock for various leisure activities.
- The Farnham family, both in Ms. Farnham's childhood and her children's upbringing, actively engaged in beach activities, and Mr. Farnham proposed to his wife on the Common Beach.
- The distinction was made between the Common Beach and the Field, with permissions sought for the latter but not for the former, highlighting the community's understanding of their rights and usage.



# *Wingren v. McLean*

## Facts:

- In 1970, twelve owners on Tern Lane, including the Pendergasts, Gleasons, Driscolls, Aylmers, Wingrens, Connor, and Ward, filed a petition in the Barnstable County Probate Court seeking a declaration of their rights over a 35-foot-wide parcel granted to the Klays in 1954 and a Strip reserved in 1957, expressing concerns about their access to the area marked as "Reserved as Common Beach."
- Stanislaus and Grace, in response, assured that they would not interfere with the petitioners' existing rights to access the Common Beach area. The matter was eventually dismissed on October 4, 1970, and a subsequent deed in 1971 conveyed rights from Stanislaus, Grace, and others to the petitioners, including Charles C. MacDonald and Mary R. MacDonald.

# *Wingren v. McLean*

## Facts:

- In 2018, Mr. Farnham, while installing the dock, was initially asked by Mr. McLean to delay for two weeks due to estate issues related to his father, Stanislaus', death. Weeks later, when Mr. Farnham inquired about repairs, Mr. McLean informed him that no dock would be installed and advised him to hire a lawyer to address the matter, alleging safety and liability concerns. Mr. McLean later installed orange metal stakes along Tern Lane to deter parking, but during the trial, he disclaimed any current attempt to prevent parking in that area.
- Mr. and Mrs. McLean identified various events as instances of overburdening easement rights, including issues related to boats, parties, and unauthorized use of the Common Beach. These incidents involved concerns such as unauthorized access to the dock, loud parties, leaving boats overnight, dog-related issues, and inappropriate behavior on the beach, contributing to their perception of excessive use.
- Mr. Daniel A. Ojala, a professional land surveyor and engineer, testified about the creation of the Down Cape Plan, which displays the location of the Pond, the boundaries of the Strip and the Second Strip, and their relation to the Common Beach. The Down Cape Plan and another plan prepared by Coastal Engineering Co. show agreement in depicting the Klays' parcel extending from Tern Lane to the Common Beach, along with the Strip and the Second Strip. Mr. Ojala also pointed out errors in the 1985 ANR Plan, including its failure to accurately represent the 35-foot wide parcel conveyed to the Klays in 1954.

# *Wingren v. McLean*

Issues:

- (1) over what land, if any, did the Easement Holders have easement rights;
- (2) did the Easement Holders' easement rights include the right to install a dock and/ or park cars;
- (3) had the Easement Holders acquired prescriptive rights and, if so, what were those rights; and
- (4) had the Easement Holders overburdened their easement.

# Wingren v. McLean

## Rules of Law: Implied Easement

- Reagan v. Brissey, 446 Mass. 452 (2006):
  - "The origin of an implied easement 'whether by grant or by reservation ... must be found in a presumed intention of the parties, to be gathered from the language of the instruments when read in the light of the circumstances surrounding their execution, the physical condition of the premises, and the knowledge which the parties had or with which they are chargeable.'"
- Bacon v. Onset Bay Grove Ass'n, 241 Mass. 417 (1922):
  - "[w]here the intent is doubtful, the construction of the parties shown by the subsequent use of the land may be resorted to, if such use tends to explain or characterize the deed, or to show its practical construction by the parties, providing that the acts relied upon are not so remote in time."

## *Wingren v. McLean*

Holding:

- (1) Easement Holders have the right to pass over and park on the Strip
- (2) Easement Holders have the right to install, maintain and store a dock on the Common Beach,
- (3) Easement Holders do not have the right to pass over or park on the Second Strip
- (4) Easement Holders have not overburdened their easement

# *Wingren v. McLean*

Reasoning:

- (1) The Court looks at the 1949 Plan, demonstrating that 37 out of 49 house lots lacked direct access to Wequaquet Lake except through the Common Beach, making such access a valuable feature for potential purchasers.
- The importance of "deeded beach rights" was emphasized by at least three Easement Holders when deciding to buy their lots. Despite the 1949 Plan's later inaccuracies, it consistently showed access to the Common Beach via Tern Lane.
- The court rejects the argument that the conveyance of a portion of the Common Beach to the Klays negates direct access for non-waterfront lot owners, emphasizing the original developers' intent for such access over the Strip.

# *Wingren v. McLean*

Reasoning:

- (2) When an easement is established through a conveyance, the scope of the easement is determined by the conveyance itself, and the language employed in the conveyance is the primary reference for understanding its meaning
- The original developers granted lots on the 1949 Plan with the "right to use" the Common Beach to seven Easement Holders' predecessors between 1954 and 1963, and after Driscoll, Scudder, and Stanislaus acquired nineteen lots and the Common Beach in 1964, conveyed lots with "a right to use" the Common Beach to one Easement Holder and predecessors to twelve others from 1964 to 1969.
- These non-waterfront lots, located up to a quarter-mile from the Common Beach, rely on easement rights for access to Wequaquet Lake.

# *Wingren v. McLean*

Reasoning:

- Driscoll, Scudder, and Stanislaus recognized the value of having docks for non-waterfront lots, with evidence suggesting a dock's presence at the Common Beach since 1964, continuing for over fifty years. While the language of the grant alone may not convey the right to store and install a dock, considering the 1949 Plan, marketing value of docks, and historical evidence, the court concludes it was within the presumed intent of the original grantors.
- The right to park is associated with the Strip, and despite the vacated Default Judgment, the McLeans' fractional interest grants them standing to challenge Easement Holders' parking, supported by overwhelming evidence of historical use for parking in the Access Area. Stanislaus' lack of objection reinforces the understanding that parking is reasonably necessary for the Easement Holders' enjoyment of the Common Beach



# Wingren v. McLean

Reasoning:

- (3) The Court cites Stanislaus' installation of the fences, chains, gave out the keys to the Easement Holders so that they could use the Access Area, by right as to the Strip and by permission as to the Second Strip.
  - Defeating any claim to a prescriptive easement over the Second Strip. *See* Boothroyd v. Bogartz, 68 Mass. App. Ct. 40 (2007) (The common law requires "clear proof of a use of the land in a manner that has been (a) open, (b) notorious, (c) adverse to the owner, and (d) continuous for a period of no less than twenty years.")
- (4) The Court reasons that no overburdening issues can be raised because the events the McLeans' refer to are too isolated, the activities were unrelated to the Common Beach, or were unreasonable.

*Beach Point, LLC v. Mass DOT*  
*31 LCR 104 (2023)*

# *Beach Point, LLC v. Mass DOT*

## Facts:

- **Access Dispute:**
  - The Beach Point property, accessed via Railroad Avenue, requires crossing a disputed Railroad Avenue crossing.
  - The crossing, existing since before 1890, is visible in historical plans and photos.
  - A 1915 valuation plan and a 1968 Confirmation Plan are central to the dispute with “Way 2” leading from a private way to the Beach Point property.
  - Beach Point claims the 1968 plan confirms the crossing, crucial for its sole physical access. MassDOT's intent to permanently close the crossing, realized with gates in 2021, further complicates the situation.

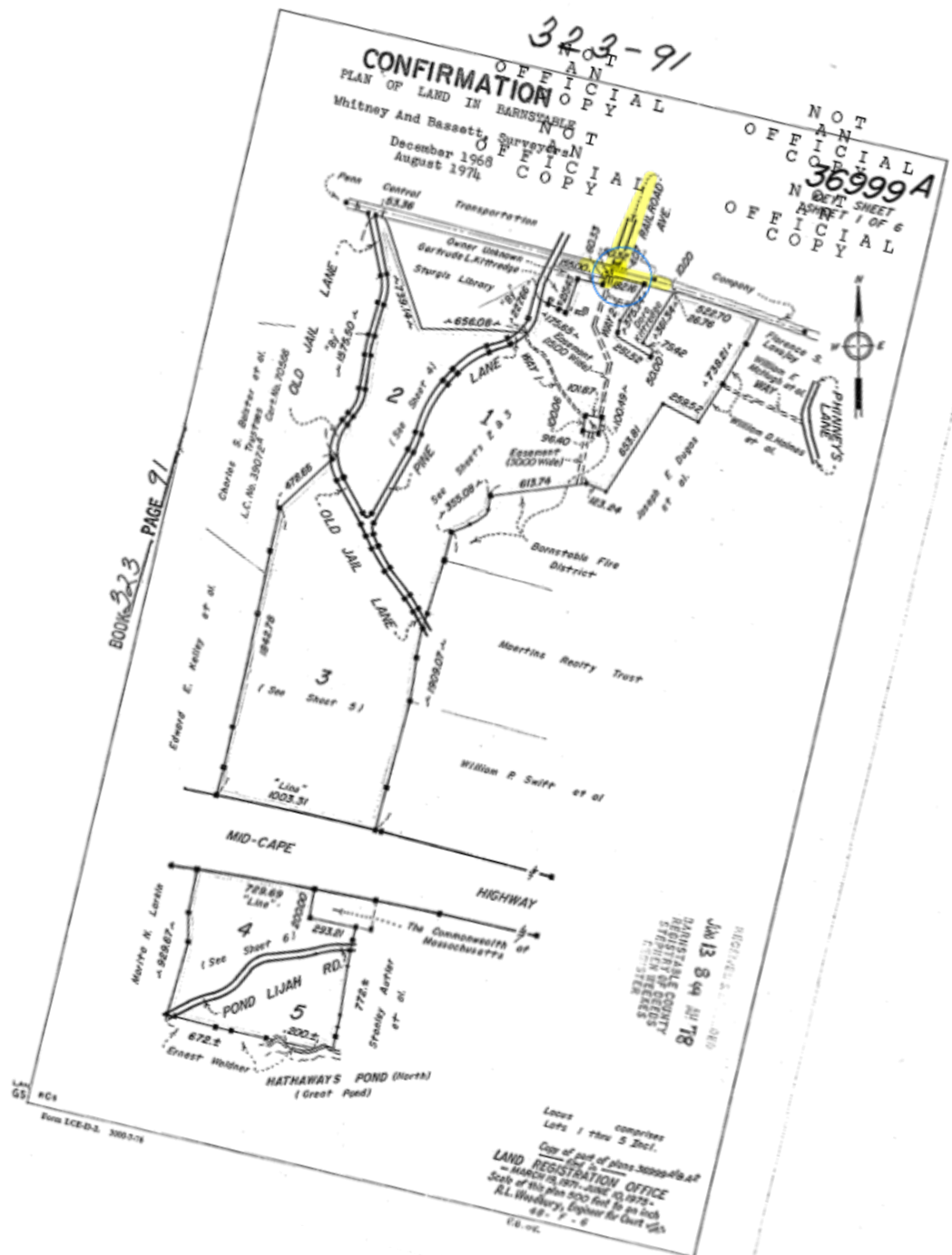
322-91

# CONFIRMATION OFFICIAL COPY

PLAN OF LAND IN BARRSTABLE  
Whitney And Bassett Survey  
December 1958  
August 1974

NOT OFFICIAL COPY  
36999A  
SHEET 1 OF 6  
OFFICIAL COPY

BOOK 223 PAGE 91



RECORDED  
JAN 13 8 49 AM '78  
BARRSTABLE COUNTY  
REGISTER OF DEEDS  
L. W. WOODBURY

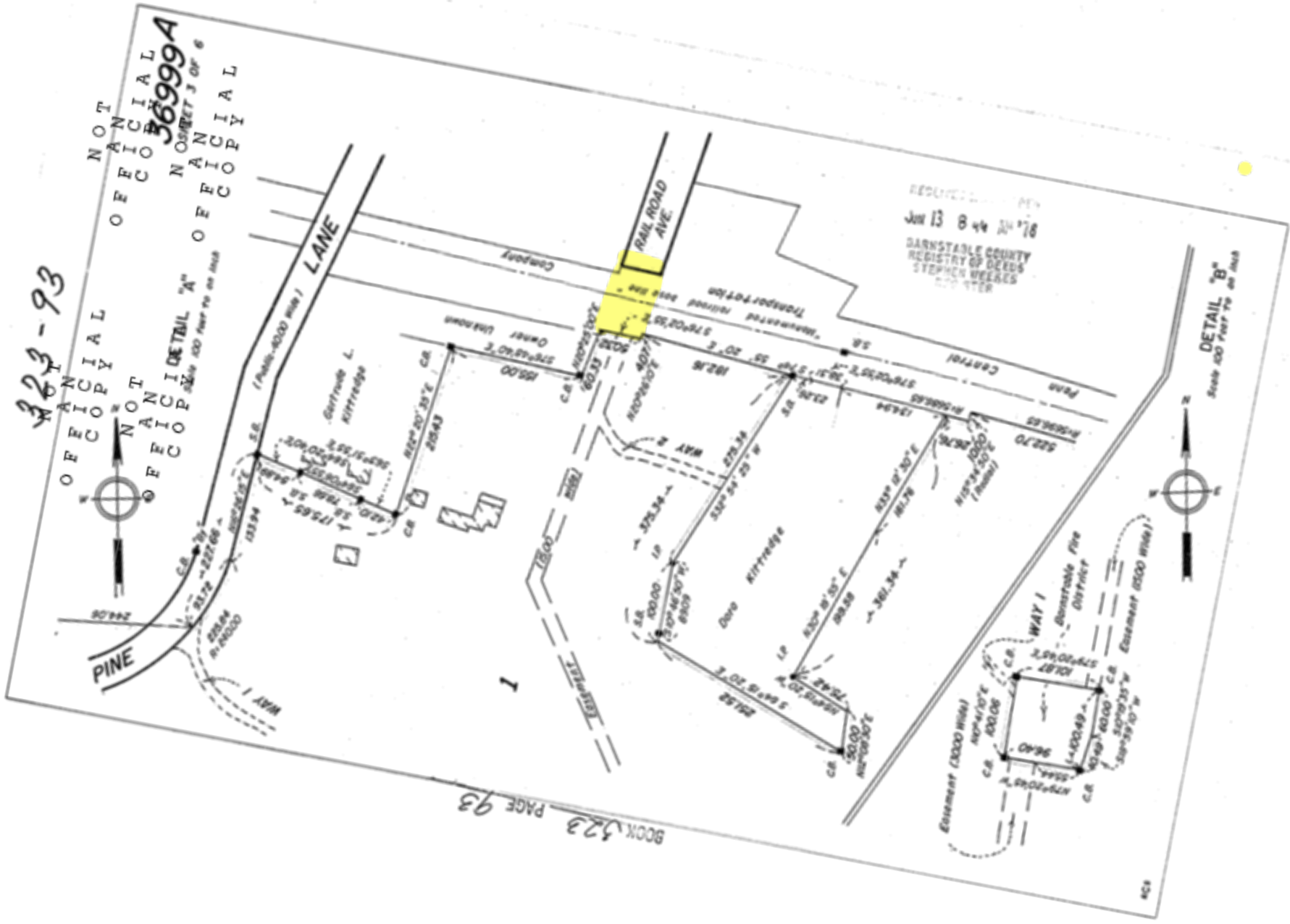
Locs  
Lots 1 thru 5 Incl.  
Copy of part of plans 36999A & B  
- Made in 1977 - June 13, 1978  
Scale of this plan 500 feet to an inch  
R.L. Woodbury, Engineer for Court  
68-11

Form LCE-D-3, 300-778



223-93

NOT AN OFFICIAL COPY OF RECORD 56999A  
NOT AN OFFICIAL COPY OF RECORD 56999A



RECORDED IN DEEDS  
JUN 13 8 44 AM '18  
SARASOTA COUNTY  
REGISTER OF DEEDS  
STEPHEN WEAVER  
TALLahassee, FL 32309

DETAIL "B"  
Scale 400 Feet To An Inch

BOOK 523 PAGE 93

423

# *Beach Point, LLC v. Mass DOT*

## Facts:

- Chain of Title:
  - The Cape Cod Branch Railroad, established in 1846, acquired land for a layout by 1854.
  - The Ainsworths, Phinney, and Kittredge played pivotal roles. Easements reserved in the 1853 Ainsworth deed influenced subsequent deeds.
  - Phinney's land, including the Railroad Avenue crossing, passed through various owners.
  - Kittredge conveyed parcels, affected by mortgage deeds and releases. The Locke trustees foreclosed in 1897, transferring ownership to George Kittredge in 1904. George conveyed to Dora Kittredge in 1934, eventually leading to Beach Point's ownership in 2017.
  - Easements and rights of way further complicate the property's history.

# *Beach Point, LLC v. Mass DOT*

## Facts:

- **Recent Ownership and Easements:**
  - The Dora Kittredge parcel, held by the Wesselhoeft Family trust from 1995, passed to Beach Point in 2017.
  - Easements over Way 2 and a driveway, detailed in the 1995 Wesselhoeft deed, provided access.
  - A Grant of Easement in 2000 covered a driveway to Pine Lane. Beach Point's release of rights in 2017 added complexity.
  - The Beach Point property's chain of ownership, marked by historical disputes, remains intertwined with legal intricacies surrounding access points and easements.

# *Beach Point, LLC v. Mass DOT*

Issue:

- Whether the Beach Point property benefits from an appurtenant easement that grants the right to use the Railroad crossing, that is, to cross the railroad layout at Railroad Avenue.

# *Beach Point, LLC v. Mass DOT*

Rule of Law:

- M.G.L. c. 183 §13L (1912).
  - A deed or reservation of real estate shall be construed to convey or reserve an estate in fee simple, unless a different intention clearly appears in the deed.
- Prescriptive Easement: M.G.L. c. 187 §2
  - To establish a prescriptive easement, a party must prove:
    1. Open;
    2. Notorious;
    3. Adverse; and
    4. Continuous or uninterrupted use of the servient estate for a period of twenty (20) years



# *Beach Point, LLC v. Mass DOT*

## Holding:

- (1) The Barnstable landowners were unable to prove they benefited from a record appurtenant easement over a Cape Cod railroad layout because:
  - The original 1853 deed only accorded a life estate easement due to the omission of the term “heirs” in the granting clause
  - The grantors had no rights in the lot on which the railroad layout was located
- The court determined that the Plaintiffs possessed a prescriptive easement on the railroad layout. This was due to the crossing being openly, continuously, and adversely used for a period of 20 years before 1892, when a statute prohibited the acquisition of future prescriptive rights over railroad right of ways.

# *Beach Point, LLC v. Mass DOT*

## Reasoning:

- (1) The 1853 Ainsworth deed did not reserve an easement in fee; any crossing rights reserved in the 1853 Ainsworth deed were merely a life estate. Today, an easement reserved by a grantor in a deed is equivalent to a granted easement. *Barlow v. Chongris & Sons, Inc.*, 38 Mass. App. Ct. 297 (1995)
- Even if an easement couldn't legally exist prior to a deed due to shared ownership of the land, the court would recognize it as a quasi-easement if it actually existed on the ground. This quasi-easement could be exempted from a transfer and retained by the grantor in fee. However, this principle only applied to pathways already in use at the time of the conveyance. *McDermott v. Dodd*, 326 Mass. 54 (1950)

# *Beach Point, LLC v. Mass DOT*

## Reasoning:

- The 1853 Ainsworth deed reserved a life estate easement for the Ainsworths without creating a fee easement or a quasi-easement running with the land.
- The deed's operative clause, specifying a pass at grade without inheritance language “heirs”, suggests a limited duration by stating:
  - “...we to have a pass at grade in each lot, if required, but no cattle pass or culvert.”
- As the Ainsworth lots were a unified property before the deed, there is no evidence of an existing way retained by the Ainsworths, making the created crossing right a life estate that expired upon their death and does not benefit the current Beach Point property.

# *Beach Point, LLC v. Mass DOT*

## Reasoning:

- The Railroad Avenue crossing falls outside the boundaries of the Ainsworths' land specified in the 1853 Ainsworth deed, which conveyed the area that later became Lot 10.
- As the Ainsworths could only reserve crossing rights over the land they conveyed to the railroad, and they had no rights in Lot 2 (where the crossing is located), any crossing rights reserved in the deed couldn't apply to that specific location.
- The language in the 1853 Ainsworth deed strongly suggests that the Ainsworths intended their crossing rights to be within Lot 10, aiming to connect the northern and southern sections of the bisected property.
  - The inclusion of specific terms like "in each lot" and the prohibition of "cattle pass or culvert" further supports the idea that the easement was meant to directly link the divided areas of their property, eliminating the need to access the crossing through another's land.

# *Beach Point, LLC v. Mass DOT*

## Reasoning:

- (2) The Court infers that Way 2 on Detail A is the present-day driveway for the Beach Point house, and leads to the Phinney way. The 1995 Wesselhoeft deed described the easement rights of the present-day Beach Point property to include Way 2 and also "...along [the Phinney way] to Railroad Avenue in common with all others entitled thereto.”
- The Court recognizes the evidence that supports the fact that the Railroad Avenue crossing has a history dating back to at least 1854 when it appeared on the Railroad location plan. The crossing, initially constructed with wooden planks, is visible in an 1889 photo near the Barnstable Depot.
- Noting the evidence suggests continuous use for at least 35 years, and its location at the end of a public way near the depot implies the railroad's awareness of its use.



# *Beach Point, LLC v. Mass DOT*

## Reasoning:

- Additionally, after the 1870 Edward Kittredge deed, the area encompassing the present-day Beach Point property and the space between Beach Point and the Phinney way was owned by Kittredge, indicating an early connection.
- Despite release deeds executed in 1893 and 1891, the prescriptive easement rights over the crossing remained unaffected.
- The 1934 conveyance to Dora Kittredge included an express easement over the land between her lot and the Phinney way, affirming the ongoing use of the Railroad Avenue crossing. As a result, the Beach Point property is deemed to have a prescriptive easement over the crossing, established more than 20 years prior to 1892 and persisting to the present day.

*Conway v. Caragliano*  
*102 Mass. App. Ct. 773 (2023)*

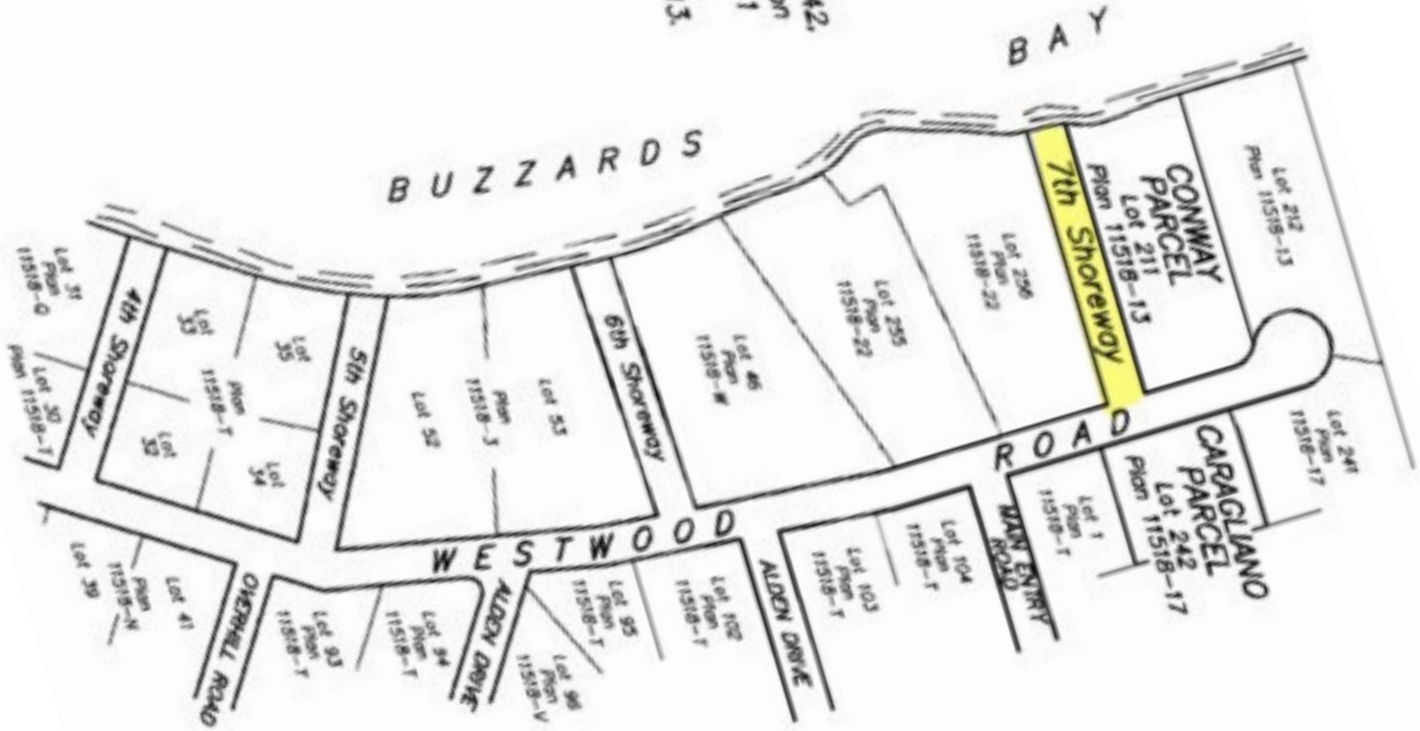
# Conway v. Cargliano

## Facts: Chain of title

- 1950 -- Earl Boardman, a single owner, acquired a large Buzzards Bay parcel in the Nyes Neck neighborhood of North Falmouth.
- His property, registered in the 1920s under two certificates of title in Land Court Registration Case No. 11518, underwent development and consolidation.
- In the K Plan of January 1950, Boardman merged two original plans into one, depicting streets and ways on Buzzards Bay.
- Boardman's certificates of title stated that these streets and ways were subject to the rights of all entitled persons.
- Development continued with the T Plan in 1951, creating over a hundred waterfront and inland lots interconnected by subdivision ways and six "shoreways" leading to Buzzards Bay.



**NOTE:**  
Caragliano's Parcel, Lot 242,  
is derived from Lot 2 on  
L.C. Plan 11518-T sh.1  
and part of Lot 213  
on L.C. Plan 11518-13.



# Conway v. Caragliano

## Facts: Chain of title

- Boardman's deeds, as he transferred lots, included language affirming rights of way in common with others over the private ways shown on the plans.
- Lot C2, now part of the Caraglianos' lot, was marked on the T Plan. Boardman deeded lot C2 to the Hazards in 1962, transferring substantial portions of his property, including the fee in the soil of all ways shown on plans, to them.
- The Hazards, by the 13 Plan of 1961, introduced the disputed 7th Shoreway, and subsequent deeds maintained the provision of rights of way in common with others. The Conways acquired lot 211 in 2000, and their certificate of title confirms their right of way over the common ways.

# Conway v. Caragliano

## Facts: Use of 7<sup>th</sup> Shoreway

- After an uncontested trial, the judge found that in 1991, when the Caraglianos bought their property, the Conways' 7th Shoreway was a grassy path leading to a steep embankment.
- The judge noted that the Caragliano family and their guests used the 7th Shoreway for various activities, including walking to the beach, fishing, launching boats, watching sunsets, having picnics, and playing recreational games.
- In 2009, the Conways' property owners placed a bocce court on the 7th Shoreway, added landscaping, and installed an irrigation system. Between 2018 and 2019, the Conways removed the bocce court, regraded the 7th Shoreway, and raised its height, leaving a narrow grassy strip.
- The Conways also made modifications to their driveway, paving over the entire width of the 7th Shoreway where it meets Westwood Road.



# Conway v. Caragliano

## Facts: Prior proceedings and rulings

- The Conways initiated legal proceedings in the Land Court seeking a declaration asserting their ownership of the 7th Shoreway's fee and denying the Caraglianos any easement rights.
- They alleged that the Caraglianos, by parking and using the way, were trespassing and creating a nuisance. The Caraglianos counterclaimed, seeking a declaration of their easement rights in the 7th Shoreway and requesting an order for the Conways to remove encroachments and restore the way.
- The Judge determined that the original grantor, Boardman, retained the fee in the 7th Shoreway, and both parties had easement rights.
- Subsequently, a trial was conducted to ascertain whether the Conways interfered with the Caraglianos' easement rights, leading to the judge ordering the removal of encroachments.
- The Conways are now appealing the judge's conclusions regarding the scope of the easement and their interference.

# Conway v. Caragliano

## Issues:

- Whether the easement allowed the Caraglianos to drag vessels over the 7th Shoreway to reach Buzzards Bay and to sit, recline, or otherwise remain stationary within the 7th Shoreway.
- Whether the Conways' alterations to the 7th Shoreway unreasonably interfered with the Caraglianos' deeded rights.
- Whether the Caraglianos were entitled to an order directing the Conways to remove encroachments and restore the 7th Shoreway to its prior condition.

# Conway v. Cargliano

Rules of Law:  
M.G.L. c. 183 §58

- The derelict fee statute establishes that any deed for real estate adjacent to a way automatically includes the grantor's fee interest in the way.
- While it used to be possible to challenge a common-law presumption with evidence of the parties' intent, the derelict fee statute makes this presumption conclusive unless the instrument explicitly states otherwise.
- This statute effectively settles title disputes over narrow strips of land bordering other tracts, promoting tranquility. By strongly presuming that the adjacent landowner owns the way, the statute deters others from searching ancient deed records for lost fee interests that could form the basis of a competing claim to title.

# Conway v. Cargliano

## Rules of Law:

- M.G.L. c. 183 §15. Statutory Forms – Easement, Appurtenances to Pass Unless Otherwise Stated.
  - In a conveyance of real estate all rights, easements, privileges and appurtenances belonging to the granted estate shall be included in the conveyance, unless the contrary shall be stated in the deed, and it shall be unnecessary to enumerate or mention them either generally or specifically.
- Adams v. Planning Bd., 64 Mass. App. Ct. 383 (2005):
  - When analyzing an easement, look “to the intention of the parties regarding the creation of the easement or right of way, determined from the language of the instruments when read in the light of the circumstances attending their execution, the physical condition of the premises, and the knowledge which the parties had or which they are chargeable to determined the existence and attributes of a way”

# *Conway v. Cargliano*

## Holding:

- The Conways own the fee interest in 7<sup>th</sup> Shoreway
- The Carglianos do not claim claim an ownership interest but an easement.

# Conway v. Cargliano

## Reasoning: Ownership of the 7<sup>th</sup> Shoreway

- Hickey v. Pathways Ass'n, 472 Mass. 735 (2015) which involved the interpretation of the deeds to the plaintiffs' two lots, which were created by a registered subdivision plan and conveyed to the plaintiffs' predecessors in the late 1930s found that:
  - The statute did not apply to the lots at issue here but does apply to registered land "prospectively."
  - The plans showed a pattern of evenly spaced ways to the water between every three or four lots, along with a network of interconnecting inland ways, demonstrating a clear intent to allow inland lot owners to use the ways to reach the beach.
  - The trial judge concluded, and the Supreme Judicial Court agreed, that a purchaser would have seen a "progression of the development," and that "a review of the defendants' certificates that reference plans showing the way would have informed the plaintiffs that the grantors intended to convey easement rights to those lot owners, even though the easements are not noted on the plaintiffs' certificates."



# Conway v. Cargliano

## Reasoning:

- The first document transferring ownership of the Conways' lot, known as the Anthony deed, outlined lot 211 as bounded by the 7th Shoreway.
- However, the Anthony deed did not explicitly reserve a fee interest and referred to a common right of way without specifying the fee interest.
- Despite the absence of mention or reservation in the Anthony deed, if the derelict fee statute applies, Anthony acquired the fee to the 7th Shoreway, making the Conways the current owners.
- The derelict fee statute, effective from January 1, 1972, applied retroactively and prospectively, except for previously executed instruments concerning registered land.
- Although the Anthony deed related to registered land predating the statute, it was executed and registered post the effective date, thus falling under the statute's scope.
- Consequently, the Anthony deed, guided by the derelict fee statute, transferred the fee interest in the 7th Shoreway from Boardman to Anthony, along with lot 211. Incidentally, it also conveyed the fee interest to the center line of the Westwood Road portion facing the lot.

# Conway v. Caragliano

## Reasoning: Caragliano's easement rights

- In 1962, Boardman reserved a common right of use for his remaining land, including the 7th Shoreway, cul de sac of Westwood Road, and lots 211, 212, and 213.
- Lot 212 was later conveyed with an appurtenant right of way, including the 7th Shoreway, and even after lot 211 was conveyed with the fee in the 7th Shoreway, lot 212's easement rights persisted.
- The Anthony deed, conveying lot 211 with a fee interest in the 7th Shoreway, included a reference to appurtenant easement rights, redundant for the 7th Shoreway but relevant for other ways on the plans.
- Despite the incorrect phrasing in the Anthony deed, it effectively put successors on notice of others' easement rights. A review of plans and deeds would reveal the consistent grant of easement rights, emphasizing the integral role of roads and shoreways in the overall development history.

# Conway v. Cargliano

## Reasoning:

- Beginning with the language of the easement, the Hazard deed like all of the other deeds conveying the lots shown on the 13 Plan, included an appurtenant “right of way in common with others entitled thereto in and over the provided ways shown on plans in registration Case No. 11518” which includes the right to pass and repass over the 7<sup>th</sup> Shoreway by foot and vehicle.
- The term “right of way” does not suggest that easement rights in and over the 7<sup>th</sup> Shoreway, or any of the shoreways, would include sitting, reclining, or picnicking.
- The deeds and plans fail to indicate any distinct treatment intended for the shoreways compared to other ways in the subdivision.
- The language in the deeds makes no distinction between easements granted "in and over" the shoreways and those granted for other subdivision ways; both are described as "the provided ways shown on plans" in the registration case.
- All shoreways, as depicted in the plans, share a consistent width of forty feet, identical to the inland subdivision ways.
- The Conways made a compelling argument that if the easement encompasses the right to sit, recline, and picnic on the shoreways, it logically extends to the same rights on all subdivision streets.

# Conway v. Cargliano

## Reasoning: Remedy

- Easements are a nonpossessory interest that carves out specific uses for servitude beneficiary.
  - Therefore, the Conways as fee owners may make any alterations to the 7<sup>th</sup> Shoreway that they could not have made as mere owners of common easement rights
- The Court ordered that the judge should consider on remand what exactly the steps the Conways must take to permit the Caraglianos and others to exercise their easement rights as necessary for full enjoyment of their dominant estate as fee owners of the servient 7<sup>th</sup> Shoreway.

*Connelly v. Doyle*  
*203 Mass. App. Ct. 1106 (2023)*

# *Connelly v. Doyle*

## Facts:

- The dispute stems from 2005 involving the same parties.
- 1913 – the Land Court issued a decree of registration to the Salisbury Beach Association (“SBA”) for a tract of land along Salisbury Beach, as seen on Land Court Plan 3200A
  - Depicting the locus as a single numbered lot, #344.
- 1920 -- the SBA filed plans that altered certain lots, replacing them with side streets leading to the beach and inland.
  - The 1920 plan depicted lots in Blocks G, P, and Q, including the locus ("8th St. East"), positioned between blocks G and H. In 1992, Doyle purchased the locus, following the 1920 plan's boundaries.
  - This plan lacked eastern and western boundaries for the locus.





# *Connelly v. Doyle*

## Facts:

- A transfer certificate of title was erroneously issued, corrected in 1998 with the registration of a new plan (“1998 plan”). Doyle's updated title acknowledged rights of others to pass over the land.
- Plaintiffs, Connelly, Lucas, Bates, LaRocque, and Farros (“Plaintiffs”) sought amendments to recognize their implied easements to pass over the locus.
- Trial court judge determined implied pedestrian easements for the plaintiffs and granted vehicular access for Lucas and Bates but limited parking rights. Connelly, LaRocque, and the Faros retained pedestrian access.
- Doyle appealed the decision.

# *Connelly v. Doyle*

Issue:

- Whether the trial court judge erred in determining that the lots owned by the plaintiffs benefits from an implied easement to pass and re-pass over the locus by foot or an easement appurtenant to the lot owned by plaintiffs Lucas and Bates also permits passage over the locus by vehicle.

# Connelly v. Doyle

Rule:

- G.L. c. 185, §46.
  - A holder of a certificate of title to registered land take “free from all encumbrances except those noted on the certificate
  - Jackson Exceptions: Jackson v. Knott, 418 Mass. 704 (1994)
    1. **If there were facts described on [Doyle's] certificate of title which would prompt a reasonable purchaser to investigate further other certificates of title, documents, or plans in the registration system; or**
    2. If the purchaser has actual knowledge of a prior unregistered interest.

# *Connelly v. Doyle*

Holding:

- Trial Court:
  - Each of the lots owned by the plaintiffs benefits from an implied easement to pass and re-pass over the locus by foot
  - The easement appurtenant to the lot owned by plaintiffs Lucas and Bates also permits passage over the locus by vehicle
- Appeals Court:
  - Affirmed.

# *Connelly v. Doyle*

Holding:

- The judge concluded that, considering the 1920 plan mentioned in the locus deed, Doyle would have and should have been prompted to contemplate whether SBA intended to grant rights to others in the subdivisions over the land she was acquiring from the successors to the SBA — a parcel explicitly identified on the guiding Land Court plan as a street.
- Doyle's Argument:
  - The judge erred arguing G.L. c. 185, §46 prohibits an easement over registered land unless the easement is shown on the certificate of title.
  - None of the plaintiffs' can meet their burden b/c their certificates of title mention an easement over the locus



# Connelly v. Doyle

Reasoning: Implied easements over the locus appurtenant to the plaintiffs' lots

- *Hickey v. Pathways Ass'n*, 472 Mass. 735 (2015):
  - Purchasers are expected to review the plan showing the lot in question, and to investigate further other certificates of title, documents, & plans within the registration system.
  - The purpose of the 'integral scheme' was to provide waterfront access to inland lots – which was deemed by the Supreme Judicial Court to be “obvious on the fact of the plans, and would have been obvious to those purchasing the lots at issue.
- The 1920s plan identified the locus as "8th St. East" and portrayed a structured network of roads, including a ladder-like system of side streets, consistently breaks the sequence of private lots and extends from the state highway to the beach.
- Judge inferred this layout resembled an easement by common scheme.

# Connelly v. Doyle

Reasoning: Implied easements over the locus appurtenant to the plaintiffs' lots

- The 1920 plan explicitly stated, "[s]eparate certificates of title may be issued for . . . the numbered lots in Blocks G [and] H . . . as shown hereon."
- This instruction might have led potential buyers, including Doyle and the plaintiffs and their predecessors-in-title, to assume that the locus, situated between Blocks G and H without a lot number, was not subject to a certificate of title issuance.
- Judge concluded that The SBA's intent to establish easement rights over the locus for the benefit of the plaintiffs' lots was "clearly evident on the plans" even more so than in *Hickey*.

# Connelly v. Doyle

Reasoning: Easements appurtenant to abutters' lots,  
including vehicular access for lot owned by Lucas and Bates

- In the 1920 plan, the SBA deliberately outlined the two lots as separate entities, each with distinct restrictions and plans for constructing a house and garage, indicating an intention to consider each lot independently for access purposes.
- The fact that the two lots were initially owned jointly or that alternative beach access may have been available to the owners does not negate the possibility of the lots having easements over the locus.
- The Donahue family, who owned these lots until 1997, had access to the beach and road by crossing the other lot, and Doyle asserts that they abandoned any easement by erecting a fence.
- However, the judge found that the fence, constructed in the mid-1980s, did not persist long enough to demonstrate abandonment, with approximately a decade passing before the first challenge to Doyle's title in 1996.
  - The judge noted that even the longest duration argued by Doyle, fifteen years, did not meet the standards for abandonment as established by Massachusetts courts.

# *Connelly v. Doyle*

Issue:

- The Court affirms the Judge's determination where that the SBA wouldn't have intended to establish a beachfront lot without vehicular access over the adjacent locus, labeled as a "street" on the 1920 plan—a term traditionally implying vehicle passage.
  - There is no evidence supporting Doyle's claim that the SBA did not intend vehicular access for the lot currently owned by Lucas and Bates over the locus.



## Presentation Outline

- Your Interest Application Scope Charged with Land Use & Development
- AUL – Activity and Use Limitation
- Grants of Environmental Restrictions – State Application – Large – Special
- “Site” = Contaminated Oil and/or Hazardous Materials – Listed RTN = Release Tracking Number – MA DEP BWSC (Bureau of Waste Site Cleanup) – 4 Regions  
“Site Lookup” you can select Sites with AUL’s
- Towns and Cities are becoming more sophisticated – Norwell MA Addition
- MCP Chart of Soil Category Selection Matrix – Human Exposure Potential
- Risk Characterization Coal Tar – Arsenic Metals – Danger
- Barrier, Asphalt Paving – MA DEP Mandated Audit within Two Years
- Mandate Licensed Site Professional (LSP) Prepare and Implement a Health & Safety Site Plan, Monitor, Advise and Ensure Safety Workers
- Why the AUL – Risk Characterization to Achieve a Level of No Significant Risk
- Close Out a “Site” - Residual Soils – Significant Cost Savings
- AUL NOT to be used to change the groundwater category GW-1 / GW-2
- GW-2 = Vapor Intrusion = Indoor Air Infiltration
- ASTM E2600 Vapor Encroachment Screening
- Survey – Registry Deeds – Land Court



Table 40.933(9)

**SOIL CATEGORY SELECTION MATRIX - HUMAN EXPOSURE POTENTIAL**

Accessibility ↓ of Soil ↓	RECEPTOR CHARACTERISTICS							
	CHILDREN PRESENT				ADULTS ONLY PRESENT			
	<u>HIGH FREQUENCY</u>		<u>LOW FREQUENCY</u>		<u>HIGH FREQUENCY</u>		<u>LOW FREQUENCY</u>	
	High Intensity	Low Intensity	High Intensity	Low Intensity	High Intensity	Low Intensity	High Intensity	Low Intensity
<b>ACCESSIBLE (SURFICIAL) SOIL</b> 0 ≤ 3' (unpaved)	<b>CATEGORY S-1</b>		<b>S-2</b>		<b>S-1</b>	<b>CATEGORY S-2</b>		
<b>POTENTIALLY ACCESSIBLE SOIL</b> 3 ≤ 15' (unpaved) or 0 ≤ 15' (paved)	<b>CATEGORY S-2</b>				<b>S-2</b>	<b>CATEGORY S-3</b>		
<b>ISOLATED SUB-SURFACE SOILS</b> > 15' or under the footprint of a building or permanent structure	<b>CATEGORY S-3</b>							
* - Category S-1 also applies to any accessible soil where the current or reasonably foreseeable use of the soil is for growing fruits and vegetables for human consumption.								



40.1004: Performance Standards for Permanent and Temporary Solutions

- (1) A Permanent or Temporary Solution shall be supported by assessments and evaluations conducted pursuant to 310 CMR 40.0000 which:
- (a) are of sufficient scope, detail, and level of effort to characterize the risk of harm to health, safety, public welfare and the environment posed by the site or disposal site pursuant to 310 CMR 40.0900;
  - (b) are consistent with the Response Action Performance Standard described in 310 CMR 40.0191;
  - (c) are commensurate with the nature and extent of the release or threat of release and complexity of site conditions;
  - (d) demonstrate that all requirements of the applicable Permanent or Temporary Solution pursuant to 310 CMR 40.1000 have been met; and
  - (e) conform with applicable requirements and procedures for conducting response actions specified in 310 CMR 40.0000.

40.1005: Defining "Foreseeable Period of Time" for Purposes of a Permanent Solution

- (1) A Permanent Solution shall ensure a level of control of each identified substance of concern at a site or in the surrounding environment such that no such substance of concern shall present a significant risk of harm to health, safety, public welfare or the environment during any foreseeable period of time.
- (2) "Any foreseeable period of time" shall mean the period of time during which the conditions for achieving and maintaining a level of No Significant Risk upon which a Permanent Solution is based will remain in effect.
- (a) For Permanent Solutions with No Conditions, "any foreseeable period of time" shall be an unlimited period of time;
  - (b) For Permanent Solutions with Conditions, "any foreseeable period of time" shall be the shortest period of time, as applicable, that:
    1. Activity and Use Limitations, where required to maintain a Permanent Solution, remain in effect;
    2. Exposure Pathway Mitigation Measures, where required to maintain a Permanent Solution, remain in effect; or
    3. other conditions on which the Permanent Solution with Conditions is based for which an Activity and Use Limitation is not required, as specified at 310 CMR 40.1013, remain in effect.

40.1012: Application of Activity and Use Limitations

- (1) The purpose of an Activity and Use Limitation is to narrow the scope of exposure assumptions used to characterize risks to human health from a release pursuant to 310 CMR 40.0900, by specifying activities and uses that are prohibited and allowed at the disposal site in the future. 310 CMR 40.1012 establishes rules for determining when an Activity and Use Limitation must be used, when one cannot be used, and when one may be a factor to be considered in appropriately characterizing soil and groundwater at a disposal site, pursuant to 310 CMR 40.0923(3).
- (2) Except as provided in 310 CMR 40.1012(3) and 40.1013, Activity and Use Limitations shall be required:
- (a) at all disposal sites or portions of disposal sites for which a Permanent Solution and the risk characterization pursuant to 310 CMR 40.0900 used to support the Permanent Solution are based upon the restriction or limitation of Site Activities and Uses to achieve or maintain a level of No Significant Risk including:
    1. any disposal site or portion of a disposal site for which a Permanent Solution is based on MCP Method 1 or 2 Soil Standards and the Exposure Point Concentrations of oil and/or hazardous material exceed the S-1 standards but meet applicable S-2 or S-3 standards;
    2. any disposal site or portion of a disposal site where a Method 3 Risk Characterization performed pursuant to 310 CMR 40.0990 relies on reduced exposure potential due to the assumption of limited site use; and



310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

40.1012: continued

3. any disposal site or portion of a disposal site at which the oil and/or hazardous material in soil located at a depth greater than fifteen feet from the ground surface exceeds an applicable Upper Concentration Limit in Soil listed at 310 CMR 40.0996(6) or determined at 310 CMR 40.0996(7).
  - (b) at all disposal sites for which a Permanent Solution relies upon an Exposure Pathway Mitigation Measure to prevent exposure to levels of oil and/or hazardous material that would otherwise pose a significant risk of harm to health, safety, public welfare or the environment, including:
    1. one or more Passive Exposure Pathway Mitigation Measures; or
    2. one or more Active Exposure Pathway Mitigation Measures implemented pursuant to the requirements at 310 CMR 40.1025;
  - (c) at all disposal sites where an existing private water supply well(s) is removed from service as a source of drinking water and maintained for uses other than as a private water supply in accordance with the provisions of 310 CMR 40.0932(5)(d); and
  - (d) at disposal sites for which a Permanent Solution is achieved and NAPL with Micro-scale Mobility is present.
- (3) Activity and Use Limitations shall not be required but may be used to provide notice of the existence of residual contamination to future holders of an interest(s) in property that is located within:
- (a) disposal sites or portions of disposal sites where the concentrations of oil and/or hazardous material have been reduced to background or where the requirements described in 310 CMR 40.0923(3)(b) have been met;
  - (b) disposal sites or portions of disposal sites at which residual contamination at levels at or below the applicable Upper Concentration Limits for Soil listed or determined in 310 CMR 40.0996 is located at a depth greater than 15 feet from the ground surface;
  - (c) any disposal site or portion of a disposal site for which all applicable requirements of a Permanent Solution have been met based upon one or more of the limitations, assumptions or conditions specified at 310 CMR 40.1013;
  - (d) disposal sites or portions of a disposal site for which potential risks are characterized using Method 1 (310 CMR 40.0970) if the levels of oil and/or hazardous material in soil are at or below the applicable Method 1 category S-1 soil standards listed in 310 CMR 40.0975(6);
  - (e) at disposal sites or portions of a disposal site for which potential risks are characterized using Method 2 (310 CMR 40.0980) if the levels of oil and/or hazardous material are at or below the applicable category S-1 soil standards identified in 310 CMR 40.0984 and 40.0985;
  - (f) disposal sites or portions of a disposal site for which potential risks are characterized using Method 3 (310 CMR 40.0990) if the levels of oil and/or hazardous material pose No Significant Risk pursuant to 310 CMR 40.0990, including comparison to any applicable or suitably analogous standards, and no limitations on site use were assumed or implied in the Risk Characterization;
  - (g) any disposal site or portion of a disposal site where all substantial hazards have been eliminated and where all applicable requirements for a Temporary Solution have been met pursuant to 310 CMR 40.1050;
  - (h) any other disposal site or portion of a disposal site where an Activity and Use Limitation is not expressly prohibited by 310 CMR 40.1012.
- (4) Activity and Use Limitations shall not be used:
- (a) to change the groundwater category of groundwater categorized as GW-1 or GW-2 pursuant to 310 CMR 40.0932; or
  - (b) to justify a conclusion that a condition of No Significant Risk exists or has been achieved at sites characterized using Method 1 or Method 2 if an identified Exposure Point Concentration exceeds an applicable Method 1 or Method 2 standard.
- (5) Activity and Use Limitations shall:
- (a) provide notice to holders of any interest(s) in a property or a portion thereof (including without limitation, owners, lessees, tenants, mortgagees, and holders of easement rights) of the existence and location of oil and/or hazardous material at such property and the Activity and Use Limitations that have been implemented in response thereto; and

40.1012: continued

(b) establish a duty to evaluate risks associated with proposed changes in Site Activities and Uses on the subject property that could increase the risk of harm to health, safety, public welfare or the environment pursuant to the requirements of 310 CMR 40.1080, to perform additional response actions prior to any such change in Site Activities and Uses, as required by 310 CMR 40.0000, and to notify the Department of any reportable condition created by a change in Site Activity and Use.

(6) Any Activity and Use Limitations applied at a disposal site pursuant to 310 CMR 40.0000 shall be instituted and maintained in accordance with 310 CMR 40.1070 through 40.1099.

**40.1013: Limitations, Assumptions and Conditions on Site Activities and Uses That Do Not Require an AUL**

(1) An Activity and Use Limitation may be used but shall not be required if the Permanent Solution is based solely upon one or more of the following limitations, assumptions or conditions on Site Activities and Uses:

- (a) the recommendation of Best Management Practices for non-commercial gardening in a residential setting to minimize and control potential risk qualitatively evaluated pursuant to 310 CMR 40.0923(3)(c);
- (b) the concentrations of OHM at the disposal site are consistent with Anthropogenic Background levels;
- (c) the location of residual contamination within a public way or within a rail right-of-way; or
- (d) the absence of an occupied building or structure in an area in which the groundwater would otherwise be classified as GW-2 pursuant to 310 CMR 40.0932(6), and where the residual concentrations of OHM in the groundwater exceed the GW-2 standards published in 310 CMR 40.0974(2).

**40.1020: Background Levels of Oil and Hazardous Material**

(1) At any disposal site or portion of a disposal site where one or more remedial actions are undertaken to achieve a Permanent Solution, those remedial actions shall include, where feasible, one or more measures designed to reduce to the extent possible the concentrations of oil and hazardous material to levels that would exist in the absence of the disposal site of concern. Such measures shall, to the extent feasible, achieve or approach Background levels of oil and hazardous material in the environment as Background is defined in 310 CMR 40.0006.

(2) No further response actions are required at any disposal site where the concentrations of oil and hazardous material in the environment have been reduced to Background levels.

(3) The feasibility of reducing the concentrations of oil and hazardous material in the environment at a disposal site or portion of a disposal site to levels that achieve or approach Background levels shall be evaluated using the criteria described in 310 CMR 40.0860, except where it can be demonstrated that Background levels have been met.

**40.1025: Requirements for Active Exposure Pathway Mitigation Measures Implemented as a Permanent Solution with Conditions**

(1) **Purpose and Scope.** 310 CMR 40.1025 specifies requirements for an Active Exposure Pathway Mitigation Measure Implemented as part of a Permanent Solution with Conditions.

(2) **Demonstration of Effectiveness.** An Active Exposure Pathway Mitigation Measure implemented as part of a Permanent Solution with Conditions shall be designed and demonstrated to eliminate exposure to OHM to the extent feasible and ensure, at a minimum, that a condition of No Significant Risk is achieved and maintained for the Receptor(s) of concern. Demonstration of the effectiveness of Active Exposure Pathway Mitigation Measure shall be made prior to the achievement of a Permanent Solution with Conditions and shall be based on the measurement of Exposure Point Concentrations representative of exposures for the Receptor(s) of concern during operation of the Active Exposure Pathway Mitigation Measure under normal operating conditions and over a period of time sufficient to account for temporal variability.

40.1070: continued

- (d) the requirements of 310 CMR 40.1080; and
- (e) the Public Involvement Activities set forth in 310 CMR 40.1400 through 40.1406, including those requirements specific to Activity and Use Limitations pursuant to 310 CMR 40.1403(7).

40.1071: Grants of Environmental Restrictions for Disposal Sites Where a RP, PRP or Other Person Conducts Response Actions

(1) General Requirements At any disposal site or portion of a disposal site where a RP, PRP or Other Person is conducting a response action(s) for which a Grant of Environmental Restriction has been selected as a form of Activity and Use Limitation pursuant to 310 CMR 40.1070, the following requirements shall be met:

- (a) the Grant of Environmental Restriction shall be prepared using Form 1072A set forth in 310 CMR 40.1099;
- (b) an Activity and Use Limitation Opinion from a Licensed Site Professional shall be submitted on a form prescribed by the Department with each Grant of Environmental Restriction as an exhibit of the Restriction and shall specify:
  - 1. why the Grant of Environmental Restriction is appropriate to:
    - a. achieve and/or maintain a level of No Significant Risk for a Permanent Solution; or
    - b. achieve a condition of No Substantial Hazard for a Temporary Solution;
  - 2. Site Activities and Uses to be prohibited and/or restricted;
  - 3. Site Activities and Uses to be permitted; and
  - 4. obligations and conditions necessary to meet the objectives of the Grant of Environmental Restriction;
- (c) the Grant of Environmental Restriction shall be submitted to the Department for the Commissioner's signature with the applicable fee pursuant to 310 CMR 4.00; and
- (d) the Grant of Environmental Restriction, signed by the Commissioner, shall be recorded and/or registered as specified in 310 CMR 40.1071(3). Acceptance of any such Restriction shall not be construed or deemed to imply Department approval of the adequacy of any response actions performed at the disposal site.

(2) Contents of a Grant of Environmental Restriction A Grant of Environmental Restriction shall contain the following information:

- (a) a description of the property and disposal site, including:
  - 1. the location of the property and its street address;
  - 2. a metes and bounds description of the parcel(s) of land which contain(s) the area that is subject to the Grant of Environmental Restriction;
  - 3. a reference to a survey plan of such parcel(s) of land, prepared by a Massachusetts Registered Land Surveyor, that has been recorded as a plan with the appropriate registry of deeds and/or to a Land Court Plan;
  - 4. if the area subject to the Grant of Environmental Restriction (*i.e.* "the Restricted Area") comprises only a portion of the property described in 310 CMR 40.1071(2)(a)2, a metes and bounds description of the Restricted Area; and:
    - a. (for registered land only) an 8½" x 11" survey plan, prepared by a Massachusetts Registered Land Surveyor, which shows the metes and bounds of the Restricted Area, attached as an exhibit to the Grant of Environmental Restriction; or
    - b. (for unregistered land only) a reference to a survey plan of the Restricted Area, prepared by a Massachusetts Registered Land Surveyor, that has been recorded as a plan with the appropriate registry of deeds;
  - 5. an 8½" x 11" sketch plan showing the location of the Restricted Area in relation to the boundaries of the disposal site to the extent that the boundaries of the disposal site have been established.
- (b) name(s) of the property owner(s);



## Introduction.

Real property law has been the subject of tens of thousands of court cases in Massachusetts. I will be speaking today of issues relating to deed descriptions. I approach this in three different phases:

1. What is the title examiner's responsibility in reporting issues.
2. When are deed descriptions fatal.
3. When are poor deed descriptions fixable with a proper land survey.

There is little statutory law relating to recorded land descriptions which determines their validity. Those few statutes which have been read as affecting legal descriptions are examined in The legal determination as to the validity of a land description usually requires a judicial determination. Judicial determinations involve judges as fact finders and the personalities of numerous parties. Remember that all appellate decisions are based upon parties believing the case should have been decided differently at trial.

1. Factual vs. legal findings. It is the appellate court's job not to decide whether the trial court found the facts correctly, but whether the judge below applied the law correctly to those facts. This leads to seemingly conflicting cases with similar fact patterns, but the appellate court is simply stating the lower court applied the law correctly to the facts or abused their discretion in doing so. Example re adverse possession cases in Land Court and the string citations they use.
2. Personalities matter. Law school torts case which students were asked to analyze to distinguish it from other similar cases. Entire class failed-judge was having a bad day.
3. All descriptions have evolved over time-more particularity is now needed. Following is a fun example of an ambiguous description (Kudos to whoever figures out where this is):

“there shall be no land granted eyther for house plot or garden, to any person, out of the open ground or common field which is left between ye century hill & Mr. Colburns end, except 3 or 4 lotts to make up ye street from Br. Rob't Walker's to the Round Marsh.”

I. Title examiner's responsibility.

- A. RIF. All documents need to be examined. Each deed description needs to be compared to any recorded plan, and inconsistencies need to be flagged.
- B. Parcels need to cross-checked to assessors' plats. If there is an inconsistency the examiner needs to find out why.
- C. Parcels which do not refer to a plan need to be sketched. Use a scale, protractor and ruler. When calls to abutters are used, recommend an instrument survey be prepared. Title companies do not care about this because there is a survey exception in every title policy.
- D. Any possible difficulty with a description needs to be addressed so the risk of a lawsuit can be shifted from the title examiner and title attorney.
- E. Examples of title reports leading to rejection of titles by title insurer. See Exhibit "SAMPLE TITLE EXAMINATIONS" for recent title reports deemed uninsurable by title companies due to poor legal descriptions.

## II. Fatal Descriptions.

A. **Portions of larger tracts without proper identification within the tract.** See REBA Title Standard 27 Title bad if described as part of a tract without describing it within the tract. McHale v. Treworgy, 325 Mass 381,385 (1950), “Here the description in the collector’s deed was ‘19,340 square feet more or less with the buildings thereon being part of lot number 18 unit 4 on a Plan of Land entitled “River Pines” and recorded in Middlesex North Registry of Deeds, Plan Book 52, Plan 10.’ In our view this described no land at all and therefore conveyed no land.” See, also Springfield v. Arcade Malleable Iron, 285 Mass 154, 156 (1934) “must convey reasonably definite knowledge of the tract of land intended.”

### B. Errors in plan references.

1. An error to a specific lot on a plan which is erroneous is not generally correctable. If description says land is in Town X, it will not convey land in Town Y. King v. Little, 55 Mass. 436 (1848), but cf. Perry v. Clark, 157 Mass. 330 1892 allowed even when said to be in a different Town because the parcel was clearly identified. Under these circumstances, even when NO town, county or state is named, title still passes.
2. Examples:
  - (i) Hanson Plan Book 1 Page 36 (2536 lots-most in East Bridgewater, 167 in Hanson) vs. Plan Book 1 Page 46. (15 lots-East Bridgewater, 2380± in Hanson) Most Lots app. 20 x 100. East Bridgewater Tax Takings referred to the wrong plan, Plan Book 1, Page 46, not 36.
  - (ii) Wrong parcels assessed in Billerica title. 20 Indian Road, Tewksbury. Three plans showing lots in Both Towns. Tax takings referred to wrong lot numbers on a Plan Plan Book 24 Plan 23 (C Plan) and Plan Book 24 Plan 24 (D Plan).

### C. Erroneous descriptions which are unambiguous on their face.

1. **General Rule:** Whenever ...an estate is specifically and fully described by monuments, bounds and admeasurements, no evidence dehors the writing can be admitted to show the intention of the parties in making the conveyance...” Gerrish v. Towne, 69 Mass. 82, 87 (1854).

2. **Clear erroneous metes and bounds is fatal.** Mistake is not arguable. A clearly defined metes and bounds will control even when the results seem ludicrous. See, Pollard v. Ketterer, 221 Mass. 317 (1915).

A lot containing 2 buildings was subdivided using a metes and bounds description. It was previously two parcels which had merged. The metes and bounds did not match up with the party wall between the buildings, nor with the prior deed descriptions when it was two parcels. The clear metes and bounds description included part of the other building, taking away its entrance and 4' of the bedrooms on the upper floor. The Court held that Parol evidence or questions of intent not expressed in the deed "is inadmissible where the wording of the instrument is unambiguous and all calls can be satisfied." See apparently contrary result on similar facts of conveyance not coinciding with party wall in Holbrook V. Schofield, 211 Mass. 234, 236 (1912). Two buildings with common party wall but lot line did not coincide with party wall between the two buildings-2 foot 5 inch discrepancy. Court found as a court in equity that a case could be argued for mutual mistake. Distinction is this case described not by metes and bounds but by the Westerly and Easterly halves of the lot which can nevertheless be distinguished by the fact that the description divided lot into Easterly and Westerly halves. This may be more similar to a latent ambiguity as to general terms noted in Gerrish below.

### III. **Salvageable Descriptions.**

- A. **Parol Evidence Rule** must be overcome. Deed must have an ambiguity as opposed to a fatal flaw.

1. **Latent ambiguities.** "where general terms only are used to designate the...conveyance, or the description is of a nature to call for evidence to ascertain the relative situation, nature and qualities of the estate, then parol evidence is not only admissible, but is absolutely essential to ascertain the true meaning of the instrument, and to determine its proper application with reference to extrinsic circumstances and objects." Gerrish v. Towne, 69 Mass. 82, 87 (1854). A latent ambiguity in the descriptions of the disputed boundary...thus arose, and this ambiguity permits the use of extrinsic evidence to show the construction given to the deeds by the parties and their predecessors in title as manifested in their acts." Jones v. Gingras, 3 Mass App. Ct. 393 (1975).

2. **Parties Intentions.** Once parol evidence is allowable, various techniques can be used to establish the parties intentions.

- (i) Recording Plans. Proper Plan can cure defects even when recorded after the conveyance. See, Blaney v. Rice, 37 Mass 62 (1838)

“Missing Bounds, errors in direction or distance, and ambiguous descriptions are cured by reference to a specific lot on a record plan.” Later plans are treated as recorded with the deed and controls if the deed says recorded herewith even if the plan is recorded later. Blaney V. Rice, 37 Mass. 62 (1838).

Once again factual aspects of cases have led to different results. Plan prepared in 1959 was not recorded until 30 years after the deed. This was found to apply when attempting to determine the intention of the parties because the plan is part of the attendant circumstances to determine intention. See, Melone V. Lancaster Land Court Misc. 96-233029 (2016). Case was filed in 1996, case was dormant until 2014 when it was re-assigned to a judge-case was decided in 2016 (aside this was enough time for adverse possession to ripen). But cf. Marvel v. Regienus, 329 Mass. 414 (1952) 16 years found to be too long to record plan for it to be considered part of the conveyance.

- (ii) Parties conduct as to boundary locations. Doctrine of Acquiescence. See, Sparhawk v. Bullard, 42 Mass. 95 (1840); Stone v. Stone, 179 Mass. 555.

### 3. Specific Ambiguities:

- (i) Use of more or less or about create an ambiguity? Cases go both ways. See, Pollard v. Ketterer, 221 Mass. 317 (1915), Roberts v. Welsh, 192 Mass. 278.
- (ii) Easements with undefined locations. A deed stating with the right of passage from the Creek into an arm of the sea not void for indefiniteness. Argument was there was no indication how wide the grant was, its precise location, or its purposes. Court found that language that dominant estate was owned by a shipbuilder, its circumstances require the court to determine what is reasonable under the circumstances but must follow “the straightest and most direct way” unless there is a physical impediment to it.

Old Colony Street Railway Company v. Phillips, 207 Mass. 174 (1911).



- (iii) Descriptions requiring the location of structures. Care must be made in reference to structures. 11 Railroad Avenue, Wellfleet. Call to 12' from the house. Also a store on the property. House burned down. Surveyor can salvage by showing location of structure on plan.
- (iv) Parcels excepted from tract of unknown location. Description is salvageable. Examples:

-Grist Mill. Harvey v. Inhabitants of Sandwich, 256 Mass. 379, 384, 385 (1926) and cases cited:

It is a general rule of construction that "whenever land is occupied and improved by buildings or other structures designed for a particular purpose, which comprehends its practical beneficial use and enjoyment, it is aptly designated and conveyed by a term which describes the purpose to which it is thus appropriated." The grant of a "house," "barn," or "mill," or "cottage," or "wharf," is a familiar instance of the use of such terms, and the conveyance in such a form passes by implication and comprehends the land under the structure and the land adjacent thereto so far as necessary to its use and commonly used with it not as an appurtenance but as parcel."

-Mill. See, Wishart v. McKnight, 184 Mass. 283, 286. The grants in 1831 and in 1841 in terms conveyed the mill, the dam and stream. The dam and stream were necessary incidents to the enjoyment of the mill.

-Bogs. Exception of bogs. Indicating location of bog would require not just the outline of the bog, but also the lands being used to operate the bog, e.g. rim road, sand hill, pump house, but these determinations need to be made as of the time of the creation of the exception or reservation.

See River Farm Road title. Insurance denied. Example case was rejected by title company due to unknown location of bogs. This could be established as a reserved or an excepted area and title does not pass despite perimeter description of the entire area.

- (v) Lands included that are not in a description.

Opposite to (iii) above have been cases in which a person sells the house or farm in which I now live and gives a title reference saying

for my title see deed to me from X. The deed from X did not include later acquired parcels added to the farm.

Would this include a later parcel not originally deeded by X, but after acquired and being used as part of the farm? Hastings v. Hastings, 110 Mass. 280, 183 (1872) holds that it does. Cases indicate that the see my title language must be seen as a clear limitation on the grant to exclude the later parcel. Daniels v. Citizens Sav. Inst., 127 Mass 534 (1879).

#### IV. Statutes related to deed descriptions.

A. **Record Title Transfers require deeds.** Only deeds can transfer record title for inter vivos transfers. M.G.L. c. 40 s. 3 effective January 1, 1921 made it necessary to convey land in Massachusetts by deed. Prior to this date lands could be transferred to a party by cities/towns or vote by proprietors of common lands. The term record title is used to rule out adverse possession case.

B. **Indefinite reference statute. C. 184 s. 25.** Section 25. No indefinite reference in a recorded instrument shall subject any person not an immediate party thereto to any interest in real estate, legal or equitable, nor put any such person on inquiry with respect to such interest, nor be a cloud on or otherwise adversely affect the title of any such person acquiring the real estate under such recorded instrument if he is not otherwise subject to it or on notice of it. An indefinite reference means (1) a recital indicating directly or by implication that real estate may be subject to restrictions, easements, mortgages, encumbrances or other interests not created by instruments recorded in due course, (2) a recital or indication affecting a description of real estate which by excluding generally real estate previously conveyed or by being in general terms of a person's right, title or interest, or for any other reason, can be construed to refer in a manner limiting the real estate described to any interest not created by instruments recorded in due course, ... (4) any other reference to any interest in real estate, unless the instrument containing the reference either creates the interest referred to or specifies a recorded instrument by which the interest is created and the place in the public records where such instrument is recorded. No instrument shall be deemed recorded in due course unless so recorded in the registry of deeds for the county or district in which the real estate affected lies as to be indexed in the grantor index under the name of the owner of record of the real estate affected at the time of the recording..."

The bottom line on this statute is that while an indefinite reference may not subject a buyer to an indefinite right, an actual interest of record, even if prior to the date notice of a 50+ year title examination, still applies. This statute has also

been found to not affect the "attendant circumstance" which must be analyzed to discover the presumed intent of the parties. See, Melone v. Town of Lancaster, Land Court Misc. 96-233029 (2016).

**C. Low value tax titles. M.G.L. c. 60 s. 80 C. Does this cure bad descriptions?**

General Laws c. 60, Section 80C, inserted by St. 1986, c. 283, Section 1, provides: "When any city or town has conveyed or sold any land under section seventy-nine or section eighty by an instrument in writing conveying or purporting to convey such land, and said instrument is duly recorded in the registry of deeds for the district wherein such land is situated and a period of twenty years elapses after the instrument is accepted for record, and the notice or procedure for the taking and sale or conveyance under this chapter or the instrument or record thereof because of a defect, irregularity, or omission, fails to comply in any respect with any requirement of law relating thereto or the instrument or record thereof shall, notwithstanding such defects, irregularities, or omissions be effective for all purposes to the same extent as though such notice or procedure or the instrument or record thereof had originally not been subject to any such defects, irregularities, or omissions, unless within said period of twenty years a proceeding is commenced on account of such defect, irregularity, or omission and notice thereof is duly recorded in said registry of deeds and indexed and noted on the margin of said instrument of conveyance and in the event of such proceeding, unless relief is thereby in due course granted."

Does this cure bad descriptions? Sheriff's Meadow Foundation vs. Bay-Courte Edgartown, Inc., 401 Mass 267 (1987) says no. Tax taking was made against the wrong person. Do they now have title?

"The Statute cannot supply title which did not exist at the time of the taking."

**D. Specific Statutes passed to correct bad titles.**

Chapter 413 of Acts of 2012.

Chapter 385 of Acts of 2018.

I do not believe this statute would or should survive a constitutionality challenge but this is the statute in its entirety:

## **AN ACT RELATIVE TO TAX TITLES IN THE TOWN OF EAST BRIDGEWATER.**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Whenever the town of East Bridgewater has conveyed or sold any land or holds a tax title, under chapter 60 of the General Laws and: (i) the land transfer was memorialized by an instrument in writing, conveying, taking or purporting to convey or take the land; (ii) the instrument effectuating the land transfer was

duly recorded in the registry of deeds for the district wherein the land is situated; (iii) the land was or is located on East Bridgewater assessors' map 85, 86, 87, 95, 96, 104, 105 or 115; (iv) the land's description is based on a plan entitled "Plan of Land Belonging to The Hanson Land Co." situated in the towns of East Bridgewater and Hanson, Mass., by J.C. Torrey C.E., dated July 1888 and filed on July 18, 1888 in the Plymouth county registry of deeds in plan book 1, page 36; and (v) either the notice or procedure for the taking and the sale or conveyance of the land under said chapter 60 or the instrument of record thereof, because of defect, irregularity or omission, fails to comply with any requirement of law relating thereto, including a failure by the town to foreclose the right of redemption, then the instrument or record of the land transfer shall, notwithstanding any deficiencies in clause (v), be effective for all purposes and shall operate to foreclose all rights of redemption to the same extent as though no such deficiencies existed unless an instrument of redemption has been recorded prior to the effective date of this act.

SECTION 2. This act shall only apply to the instruments pertaining to any fiscal year prior to and including fiscal year 2012 and shall not apply to any legal proceeding commenced before the effective date of this act in the courts of the commonwealth in which a party has appeared asserting a cause of action claiming the right to redeem.

SECTION 3. This act shall take effect 1 year after its passage.

*Approved, January 7, 2019.*

V. Quick Application of Standards to Actual Title Report. See Appendix.

-20 Indian Road, Tewksbury. Determined uninsurable by title companies.

-11 Railroad Avenue, Wellfleet. Determined uninsurable without instrument survey.

-27 River Farm Road, Plymouth. Determined uninsurable by title companies.

Answer To location of vague description:

The Street is Boylston Street, and Century Hill was later known as Beacon Hill. The description is of Boston Common. See, Sparhawk v. Bullard, 42 Mass. 95 (1840).

**SAMPLE TITLE  
EXAMINATIONS**

Bartlett Title Services  
8 Rockland Avenue  
Boston, MA 02119  
BartlettTitle@aol.com  
Telephone: 781-910-3652

December 10, 2023

ESTATE: 20 Indian Road, Tewksbury.

OWNER: NO TITLE FOUND IN OWNERS AFTER EXTENSIVE SEARCH DUE TO FAILURE TO ASSESS PROPER PARTIES IN TAX TAKINGS. Nominal title in: Gloria A. Jimenez and Alexander Jimenez, Trustees of the Alexander & Gloria Jimenez 2018 Revocable Trust, u/d/t Dated July 7, 2018; See Trust certificate 34712-19 and deed 34712-22. 114;117

DESCRIPTION: Lot D shown as containing 8328 S.F., Plan Book 169 Plan 38. 12 Note this is said to be Lots 128-133, which are 25' x 100' lots According to the deeds out from the developer, which would indicate 150' of frontage, 100' of depth from the street and 15,000 S.F. total, not the 104.10' of frontage, 80' of depth and 8328 S.F. Total shown on the above plan. The deed into the above recited Owners indicates two parcels, Lot D and part of lots 132 and 133, But the numbered lots are believed to be a portion of Lot D.

SUBJECT TO:

1. Defects in title due to defective tax takings. Locus is a portion of or all of the lots numbered 128 through 133 inclusive on Plan D of Oakland Park dated April 23, 1907 recorded in Plan Book 24, Plan 24 (the D Plan). There was also a Plan of Oakland Park dated April 1907, Plan Book 24, Plan 23 (the C Plan). The C Plan Doesn't depict locus. While each plan contains an index Showing Oakland Park to be in both Tewksbury and Wilmington, the Town line location is not depicted on The lot layout portion of the Plans. The current Tewksbury and Wilmington assessor's plans as well as Plan Book 169 Plan 38 (the Locus Plan) show locus as entirely In the Town of Tewksbury, with the Town line being 44.16 feet Southwesterly of the Southwest corner of locus according to the Locus Plan. The chain of title goes

through several tax titles. I have had to go back to the deeds from the developer of the 1907 Plans to properly track title. I do not have a good starting deed within the last 50 years for lots since those early deeds as the later deeds indicate they are for all the grantor's right, title and interest only, and the portion based on the Tewksbury tax taking for lots 132 and 133 indicates it is for ½ of those lots only. The most recent deed for Quitclaim Covenants is November 1, 1988, Book 4708 Page 266. Following is a partial chain of title to illustrate where the issues arose:

**Lots 128 through 131, D Plan:**

GRANTOR	GRANTEE	TITLE REFERENCE
William H. Hadsit (developer) Tr. Oakland Park	George E. Kane	Book 407 Page 122.
NOTE THIS DEED INCORRECTLY RECITES THESE LOTS AS BEING IN WILMINGTON, NOT TEWKSBURY. It is unclear to me if this is a title defect, but it would seem that the intention was not to only convey portions of the lots in Wilmington (which it turns out is nothing) but the lots as they appear on the plan.		
George E. Kane Lots 130, 131 in Wilmington.	Margaret Patterson	Book 520 Page 330
George E. Kane Lots 128, 129 in Wilmington.	Margaret Patterson	Book 556 Page 158
George E. Kane Confirmatory deed for lots 128, 129, 130 and 131 now said to be partly in Wilmington and partly in Tewksbury.	Margaret Patterson	Book 561 Page 402
Margaret Patterson	George Patterson	Book 636 Page 240
George Patterson	Mary E. Fleming	Book 802 Page 188

RECORD TITLE IS STILL IN MARY E. FLEMING OR HER HEIRS OR DEVISEES. I HAVE NOT DONE PROBATES. There is a deed from John D. Cooke to Abraham Smoller at Book 1013 Page 138 which begins the chain of title into the locus' current owner. John D. Cooke received his title from the Town of Tewksbury per deed 891-538. There was a low value tax affidavit at 884-281 which references well over 100 tax takings, but I do not find a reference to a taking from either George Patterson or Mary E. Fleming. I would have to research the probate records for the last two parties, and/or examine the 100+ tax deeds referenced in the low value taking to find the source of title claimed by the Town.



**Lot 132 and 133, D Plan:**

GRANTOR	GRANTEE	TITLE REFERENCE
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William H. Hadsit (developer) Tr. Oakland Park	Horace P. Lambert	Book 425 Page 499.
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NOTE THIS DEED CORRECTLY RECITES THESE LOTS AS BEING IN TEWKSBURY, NOT WILMINGTON.

Hoarace P. Lambert, Tax Taking Town of Wilmington,	Town of Wilmington	Book 577 Page 178
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**NOTE: THIS WOULD BE A NULLITY AS WILMINGTON HAS NO AUTHORITY TO MAKE A MUNICIPAL TAX ASSESSMENT V. A PARCEL IN TEWKSBURY.**

**NOTE:**

There was a collector's notice for lots 132 and 133 by the Town of Tewksbury at Book 496 Page 11 against a Horace B. Lambert. This was correct. However, there was a later Deed **from the C Plan** to Joseph Zompana at Book 413 Page 1 for lots 132 through 136 inclusive. Zompana deeds to Sabatino Girolamo at Book 461 Page 173, from whom the Town acquires a tax title at Book 478 Page 557. The Town then in error makes a tax taking against Sabatino Girolamo for Lots 132 and 133 on the D Plan, which he did not own. This taking was struck off to Margaret Patterson. See Book 594 Page 114. TITLE TO LOTS 132 AND 133 ARE NOT GOOD UNDER EITHER TAKING AS THE LAND IS ENTIRELY IN TEWKSBURY, AND THE TAX TITLE IN TEWKSBURY ASSESSED THE WRONG OWNER. I FIND NO SUBSEQUENT GRANT OR TAKING FROM HORACE P. LAMBERT, IN WHOSE HEIRS OR DEVISEES THE RECORD TITLE TO LOTS 132 AND 133 WOULD REMAIN. The later tax taking by the Town of Tewksbury from George W. Patterson at 1048-368 would not alter as again George did not hold title (and also note the taking was for 1/2 of the lots). See, Sheriff's Meadow Foundation, Inc. v. Bay Courte Edgartown, 401 Mass 267 (1987) (low value tax taking conveys no title despite passage of M.G.L. c. 60 s. 80C if improper owner is assessed). The deed from John D. Cooke at 1013-138 which begins the post tax taking title for the Wilmington Interest, and the deed from the Town of Tewksbury for "1/2 of Lots 132 and 133" to Abraham Smoller at 1122-529 based on the 1048-368 taking, repeatedly state they are for all right, title and interest of "1/2 of Lots 132 and 133"

2. Easement to Merrimack-Essex Electric Company, 1481-10. 68
3. Easement to Massachusetts Electric Company and New England Telephone and Telephone Company, 5029-312. 79
4. Execution by Massachusetts Electric Company, d/b/a National Grid, \$7179.08, 32731-174. 105

NOTE: This execution was against Raymond J. Paczkowski, a deceased tenant by the entirety. Despite His Death of Raymond J. Paczkowski, I am concerned this may nevertheless attach to the spouse's survivorship interest as the debt was most likely for necessities.

5. Notice of Massachusetts Tax Lien v. Raymond Paczkowski, \$26,280.92, 34576-243. Unclear whether An innocent spouse assertion is needed to avoid this lien. 113
6. Mortgage to MERS, Inc., as nominee for Eastern Bank, 121 \$436,500, 34712-26 dated 10/01/2020.
7. Declaration of Homestead, 34712-46. 128

COMMENTS:

1. Note there was a Land Court Decree eliminating any possible rights in a portion of Oak Street. See 35843-122.

EXAM: Lots 128-132: 7/13/1907 (407-122)-2/09/2023.

DAMORE LAW

Bartlett Title Services  
8 Rockland Avenue  
Boston, MA 02119  
BartlettTitle@aol.com  
Telephone: 781-910-3652

January 2, 2024

ESTATE: 27 River Farm Road, Plymouth.

OWNER: Kun Xu and Zhen Ye, as they are trustees of the KXZY Plymouth Trust, u/d/t dated August 26, 2021; See trust certificates 55544-222 And 56817-216. See also deeds 55544-220 and 56817-218, and 56817-220. 57;59;76;78;17-15

NOTE THE DEEDS AS TO PARCEL A AND B reference the wrong page # for the plan-161 vs. 191. This does not appear to be a defect as there is adequate additional information in the deeds to identify the plan.

DESCRIPTION: Lot 11-54 shown as containing 37,270 s.f. and Parcel A shown 8;9 as containing 170 S.F., Plan Book 66 Page 191 (Plan #165 of 2022).

NOTE: The Plan is unclear as to whether Parcel A is included in Lot 11-54. A new description needs to be created, and I recommend referencing both lots to avoid any ambiguity. Note also the Plan indicates a dock to be constructed or constructed in the waters of Triangle Pond, but I find no License from DEP. 9 There is an Order of Conditions and certificate of compliance Issued by the conservation commission set forth in "15" below.

SUBJECT TO:

1. Rights of others in and to the waters of Triangle Pond, A Great Pond.
2. Defects in title due to uncertainty of location of excluded "bogs" from prior conveyances. 10+  
Note: On and after the starting deed at 3832-699, the deeds State that "No bogs are included." This refers to on the Ground conditions at those times, and it is not possible For me to state whether the locus or portions of it may have been included in the excluded areas.

3. Wetlands Conditions depicted on Plan Book 40 Pages 1022 and 1023. 5-7
4. Terms of a Covenant with the Plymouth Planning Board, 14264-1, as affected by release as to building and sale, 15224-350. 29;37
5. Terms of a Covenant with the Plymouth Planning Board, 14264-6, as affected by release as to building and sale, 15224-350. 30;37
6. Terms of a Covenant with the Plymouth Planning Board, 14264-9, as affected by release as to building and sale, 15224-350. 33;37
7. Common Drive Easement noted as "TO BE DISCONTINUED" ON Plan Book 40 Pages 1022 and 1023, insofar as the same may be in force. 5-7  
NOTE: This easement was not mentioned in either the Deed to locus nor what would have been the dominant estate, Lot 11-22. See deed 20294-349 as to the latter. 17-1  
I have only set it forth in this report as there may be Claims that the easement's depiction on the plan creates An easement by estoppel.
8. Easement to Commonwealth Electric Company and New England Telephone and Telegraph Company, 15103-94. 35
9. Rights and obligations created pursuant to the terms of the Carter's River Farm Association Trust dated August 4, 1997, 15377-42. 38
10. Declaration of Protective Covenants and Restrictions dated August 4, 1997, 15377-51, as amended by 27242-163. Note deed 16486-167 contains a recital that the structure on locus has been approved. 47;51 53
11. Defects in title due to depiction of Parcel A as a "Common Lot" on Plan Book 40 Page 1022. 53  
Note: Parcel A is a portion of Lot 11-17 on the above Plan. It is noted as a common lot and appears to provide access to and a beach area on Triangle Pond. The covenants and deeds make no mention of the lot's purpose. I have been Involved with numerous cases involving similar developments, and Court's have in several cases decided

That the lot is subject to the rights of all persons to use  
The lot for recreational purposes. As to whether in this case  
The fee interest is common to the lot owners is unclear.  
No reference is made to the lot's purpose in the deed to  
Either of the lots which abut it. See 16486-167 and  
16690-21. 53;17-3

I HIGHLY RECOMMEND YOUR TITLE COMPANY  
REVIEW THIS ISSUE, AND I FURTHER  
RECOMMEND YOU NOT CERTIFY TITLE TO  
PARCEL A ABSENT an exception for this issue.

Note also the covenants set forth in 15377-51 also prohibit  
further subdivision except for lot line adjustment. It is  
uncertain whether the creation of the new Parcel A runs  
afoul of this provision (Parcel B does not as it is a lot line  
adjustment).

12. Order of Conditions issued by the Plymouth Conservation  
Commission, 28394-220. 17-7  
NOTE: This applies to Parcel A only.
13. Extant Homestead rights due to failure to include proper 57  
recitals in deed 55544-220.
14. Mortgage to The Village Bank, \$532,000, 55544-225 62  
Dated 8/26/2021.
15. Order of Conditions issued by the Plymouth Conservation  
Commission, 56579-121, as affected by Certificate of  
Compliance, 56688-244. 65;71  
NOTE: There are ongoing, perpetual conditions.

EXAM: 5/08/1961 (3832-699)-1/01/2024.

AB



Bartlett Title Services  
8 Rockland Avenue  
Boston, MA 02119  
BartlettTitle@aol.com  
Telephone: 781-910-3652

January 3, 2021

ESTATE: 11 Railroad Avenue. Wellfleet.

OWNER: Donald J. Watson and Tina J. Watson, as they are trustees of the Watson Revocable Trust of 2019, u/d/t dated February 11, 2014; See trust certificate 27987-103, deed 27987-113. I34;I41

DESCRIPTION: Parcel I: NO REFERENCED PLAN. NOTE AN INSTRUMENT SURVEY IS RECOMMENDED. DESCRIPTION APPEARS TO OMIT THE EASTERLY BOUND. House location is also needed to establish the Easterly Bound of locus.  
Parcel II: NO REFERENCED PLAN. NOTE AN INSTRUMENT SURVEY IS RECOMMENDED.  
Parcel III: NO REFERENCED PLAN. NOTE AN INSTRUMENT SURVEY IS RECOMMENDED. Parcel III was formerly a Portion of Parcels I and II.  
Parcel IV: Lot described as containing 1,307 S.F., Plan filed as sketch with deed 19215-133. Note this does not appear to convey the entire Parcel depicted on Plan Book 340, Page 74, but note The effect of M.G.L. c. 183 s. 58. IV-1;IV-22

SUBJECT TO:

1. Reservation of a ROW and of a ½ interest in all land 12' East of a store located on locus in deed dated May 3, 1895, 216-402. See also deeds 311-236 and 395-114. I-6;I-7;I-8
2. Terms of a Decision issued by the Commonwealth of Massachusetts Department of Environmental Protection, 15258-59. I-21
3. Rights of others in and to so much of the premises as lies within the limits of Railroad Avenue and Commercial Avenue. See sketch Plan filed with 19215-133 which Indicates most of Parcel IV is subject to a traveled way

Shown as Railroad Avenue.

IV-22

4. Reservations set forth in deed from the Penn Central Corporation dated February 6, 1980, 3068-31. Note the Commonwealth has released its statutory Interest in Parcel IV given it's former status as a Railroad ROW. IV-2

#### COMMENTS:

1. Note deed 1042-15 is a nullity: Simon J. Berrio died May 20, 1959. He deeded Parcel I of locus to himself and his wife by deed dated May 9, 1959, but the deed was not recorded until June 1, 1959. According to the affidavit at 13444-342, both Simon and his wife had the same heirs at law so this does not impact on title. I-9 I-17
2. Note the parcel descriptions are both confusing and inaccurate. Parcel I appears to omit information from the locus' bound as it transitions from Commercial Street to Railroad Avenue. There is also the reservation of a ½ interest in all land 12' east of the dwelling house (stated to be a store in deed 216-402), and as this distance is not knowable of record, an instrument survey is needed. It also appears that only a ½ interest is owned in this portion of locus.  
Parcel II is also described by calls to abutters and Commercial Street.  
The description for parcel III is a portion of Parcels I, II and IV, being the Easterly portion of Assessors Plat 79, Map 21. I have shown this as the land East of the red dotted line to the east of the dwelling on the assessor's plat. See sheet I-2. The stated distances in the Parcel III Description also appear to assume Commercial Street is 25' wide, not 40'. This would be consistent with the layout shown on the railroad plan at Plan Book 340 Page 74. This description of parcel III purports to convey a full interest in all lands subject to the ½ interest in deed 395-114 et seq, as set forth above, but the title references are only to the deeds for Parcels I and II, which did not include a full interest in this land East of the building. I am also concerned that after Parcel III was acquired by the Town of Wellfleet through tax title, when the Town deeds Parcel III out it the described property is stated to only be a portion of the land acquired through the tax taking,



although the metes and bound description is virtually identical to that in the deed referenced in the tax taking. See 834-77, 12395-288. II-1 through III-6.

Parcel IV appears to include in its square footage the fee interest in Railroad Avenue. I have begun this search with the deed out from the railroad in 1980. I do not have a source deed, and my description for parcel I which I have followed back to April 12, 1892 (sheet I-4) makes no mention of the railroad as an abutter. Note that I have made assumptions as to where range lines were on the overlay sketch I made on the assessor's plat at sheet I-2. These Assumptions are not known to be accurate.

3. Probates for a partition proceeding BA 99E0046 and I-14 93P1504, Joseph W. Francis

EXAM: Parcel I: 6/15/1917 (395-114)-1/03/2022 at 11:40 A.M.  
Parcel II: 9/24/1942 (596-460)- 1/03/2022 at 11:40 A.M.  
Parcel III: 9/24/1942 (834-77)- 1/03/2022 at 11:40 A.M.  
Parcel IV: 2/06/1980 (3068-31)- 1/03/2022 at 11:40 A.M.

Revision 12/31/2021: Title updated through 1/03/2022 at 11:40 A.M.

Farrell & Robbins, P.C.

# REBA TITLE STANDARDS

## REBA Title Standard No. 21 Scriveners' Errors

A title is not defective by reason of:

(1) The omission or addition of a middle or first initial or name of an individual or minor variation in the spelling of names;

(2) The change of the name of a person as a result of marriage, or judicial change of name (in the latter case, reference should be made to the court and date of judgment);

(3) Minor variations from the correct name of a corporation, trust, limited partnership, limited liability company, limited liability partnership or other legal entity, such as the omission or addition of "The" or the interchange of the long form entity name with the abbreviated form;

(4) Inconsistencies in, or lack of dates of, execution and acknowledgement;

(5) Minor errors in area or in distances of bounds or the omission of one bound or incorrect compass points in a description, especially if the correct lot number and plan reference or reference to title are included in the description;

or

(6) The omission of, or an erroneous reference to, either the date or the record reference (but not both) to a mortgage in the case of an assignment, partial release, or discharge of such mortgage.

### *Comment*

*See Gillespie v. Rogers, 46 Mass. 610, 16 N.E. 711, and Lancy v. Snow, 180 Mass. 411, 62 N.E. 735, as to omissions, additions and variations in names of individuals; Harrison v. Phillips Academy, 12 Mass. 456, Ashkenazy v. R. M. Bradley & Co., 328 Mass. 242, 103 N.E.2d 251, and Dresel v. Jordan, 104 Mass. 407, as to inconsistencies in or lack of dates; and Worthington v. Hyler, 4 Mass. 196, as to minor errors and omissions in descriptions.*

Adopted May 3, 1977

Amended May 3, 1993 (Added Clause (6))

Amended May 11, 1998 (Changes to clause (3))

REBA Title Standard No. 21



## REBA Title Standard No. 27 Title References and Descriptions

1. In order to convey good title, a description of a parcel of land must be capable of referring to only one parcel. A description is not sufficient to convey title if the land is described as part of a tract without a specific description of its location within the tract.

### *Comment*

*See McHale v. Treworgy, 325 Mass. 381, 90 N.E.2d 908.*

2. When a deed contains two inconsistent descriptions of a parcel of land, the more specific will govern. In the absence of evidence in the deed of a different intention, the descending order of priority is: monuments (including neighboring land of someone other than the grantor), courses and bearings in a running description, distances and area.

### *Comment*

*See Ryan v. Stavros, 348 Mass. 251, 203 N.E.2d 85.*

3. Missing bounds, errors in direction or distance, and ambiguous descriptions are cured by reference to a specific lot on a recorded plan or by a title reference to a deed containing an adequate description.

### *Comment*

*See Ide v. Bowden, 342 Mass. 22, 172 N.E.2d 88, Weller v. Barber, 110 Mass. 44. But a consistent metes and bounds description is not affected by an inconsistent general reference. Cassidy v. Charlestown Savings Bank, 149 Mass. 325 and Morse v. Chase, 305 Mass. 504, 26 N.E.2d 326.*

*In a reference to title such words as "For grantor's title, see ..." have the same effect as "Being the same premises conveyed by ...". A deed containing the former may not comply with M.G.L. c. 183, § 6A if the premises conveyed are part only of what was acquired under the earlier deed.*

*A title reference containing a single error in date or book or page number is not on that account defective.*

Adopted May 15, 1978  
(9-1-82)

REBA Title Standard No. 27



# ACCESS TO A HOME SURROUNDED BY TOWN CONSERVATION LAND

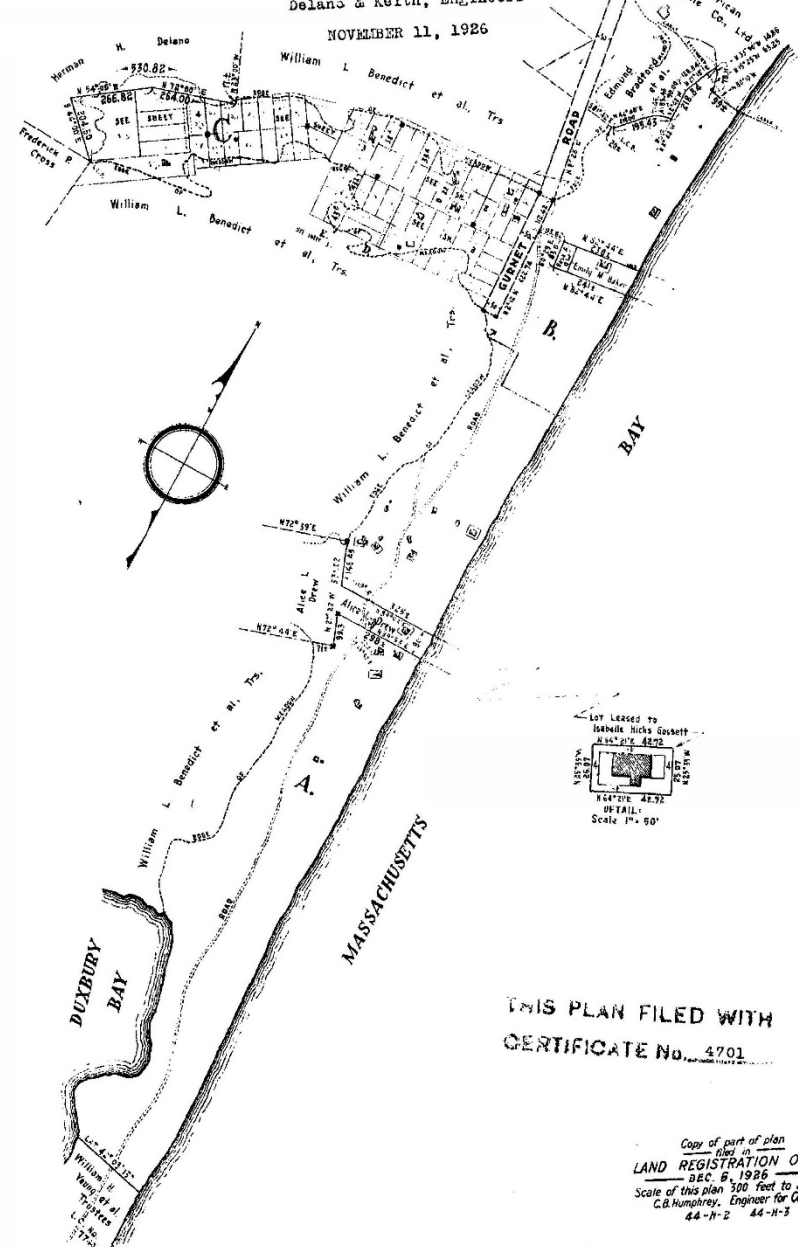


Edward S. Englander, Esq.  
Englander & Chicoine P.C.  
One Boston Place, Suite 2600  
Boston, MA 02108  
(617) 723-7440

January 26, 2024

PLAN OF LAND IN DUXBURY  
 Delano & Keith, Engineers  
 NOVEMBER 11, 1926

11907A 4  
 Sheet 1

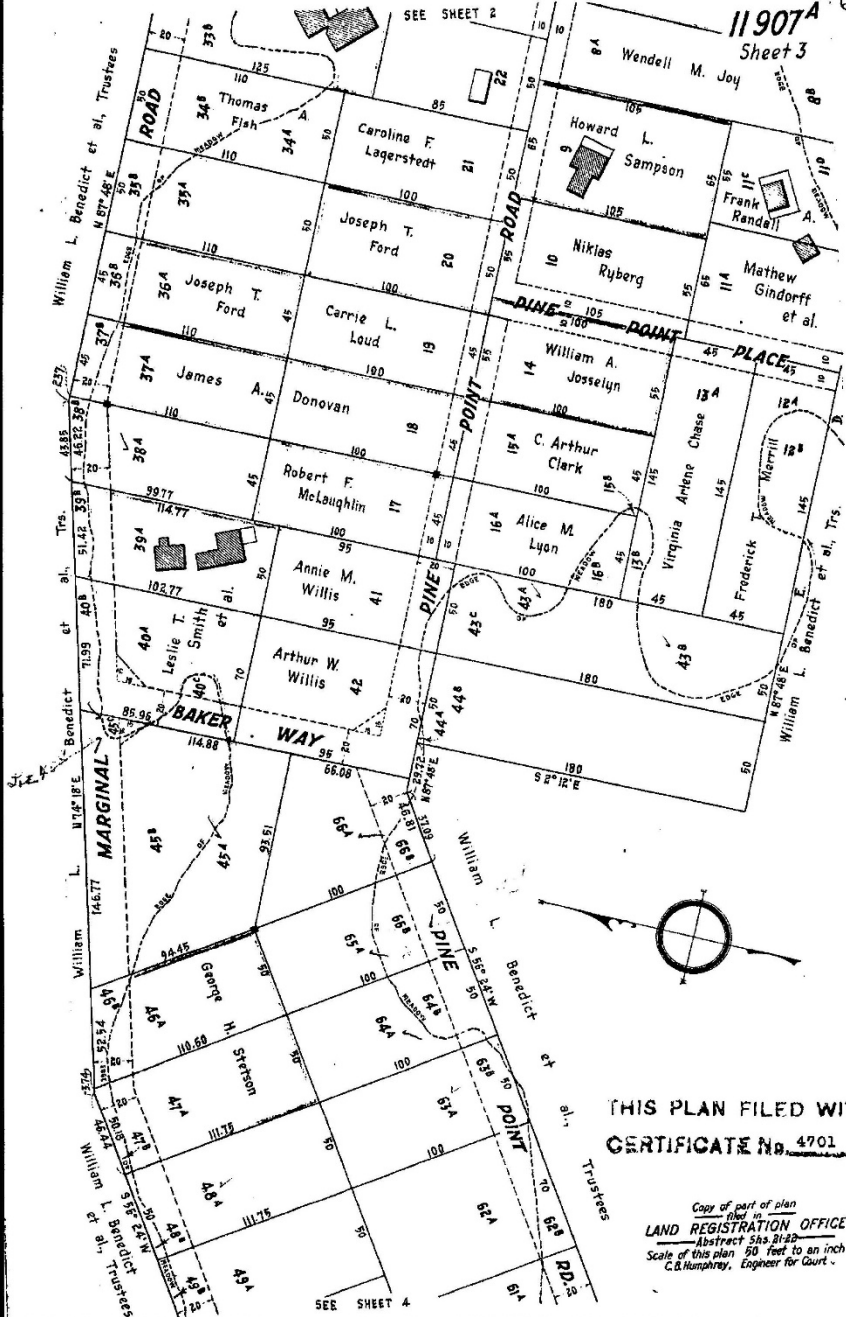


THIS PLAN FILED WITH  
 CERTIFICATE No. 4701

COPY OF PART OF PLAN  
 FILED IN  
 LAND REGISTRATION OFFICE  
 DEC. 6, 1926  
 Scale of this plan 300 Feet to an inch  
 C.B. Humphrey, Engineer for Court.  
 44-N-2 44-N-3



11907A<sup>6</sup>  
Sheet 3



THIS PLAN FILED WITH  
CERTIFICATE No. 4701

Copy of part of plan  
filed in  
LAND REGISTRATION OFFICE  
Abstract Sbs. B1-22  
Scale of this plan 50 feet to an inch  
C.B. Humphrey, Engineer for Court.

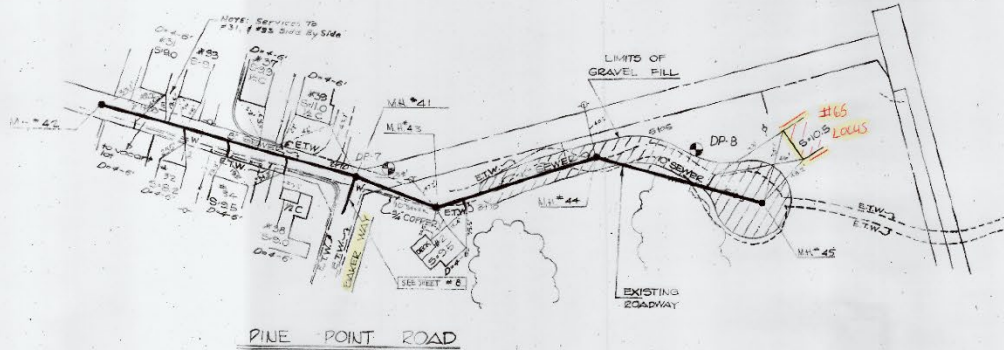
SEE SHEET 4

SEE SHEET 2

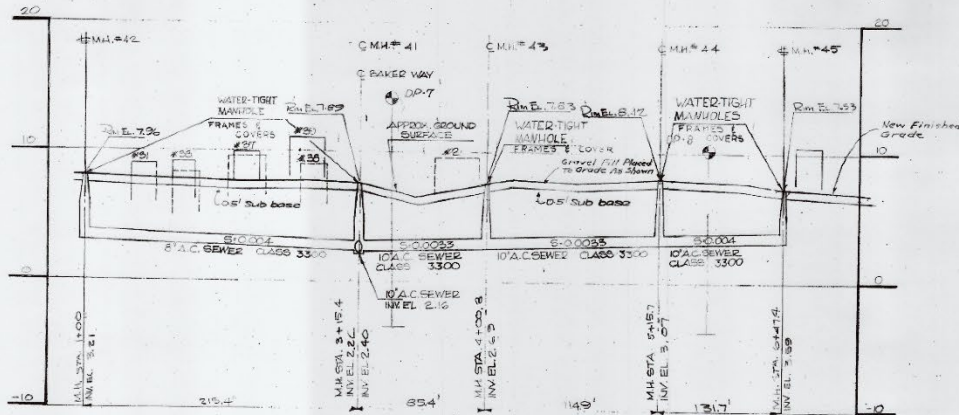




The Town does not warrant the character of the ground or the location of pipes or other underground structures.



PLAN  
SCALE: 1"=40'



PROFILE  
SCALE: HORIZ. 1"=40'  
VERT. 1"=4'

RECORD DRAWING  
NOVEMBER 1980

SEWERAGE SYSTEM  
DUXBURY, MASSACHUSETTS  
PINE POINT ROAD



C/O R ARCHITECTS AND ENGINEERS

BOSTON, MASSACHUSETTS

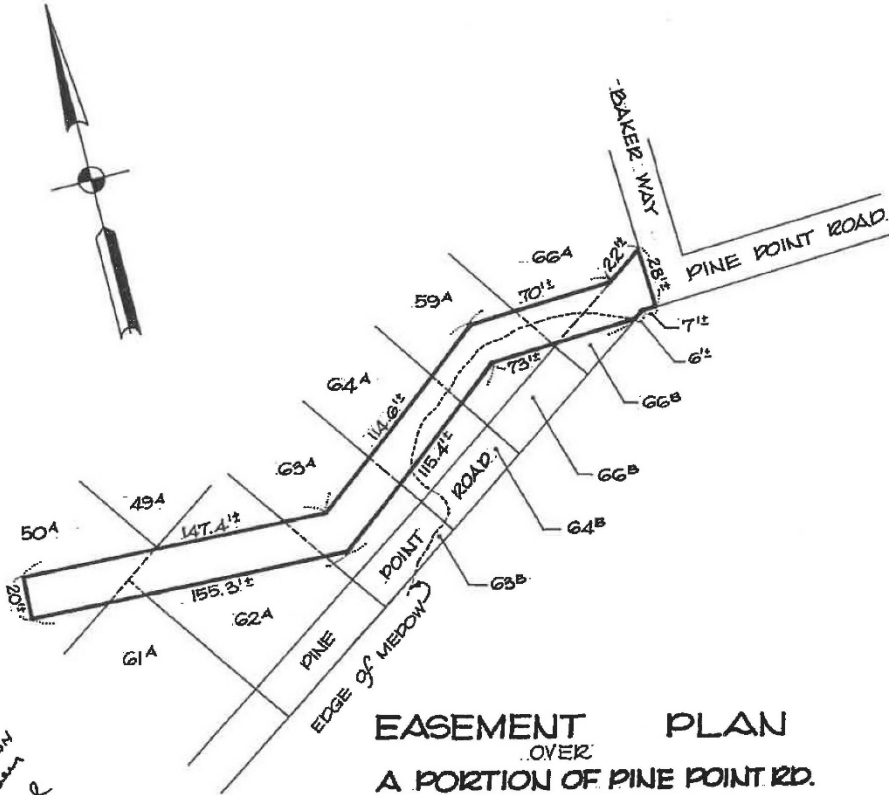
SCALE AS SHOWN SHEET 9 OF 15

JANUARY 1977  
C/R ACC. NO. 4409

C/R PROJ. NO. 1216

PLYMOUTH CO. REG. OF DEEDS  
 AUG 9 1979  
 8-9-79  
 RECORDED

79-597



States for Identification  
 Board of Selectmen  
 John A. Gannon  
 James W. Keller

**EASEMENT PLAN**  
 OVER  
 A PORTION OF PINE POINT RD.  
 & PRIVATE LANDS

IN  
**DUXBURY, MASS.**  
 SCALE: 1" = 50'  
 JUNE 21, 1979  
 PREPARED BY  
**ALLEN & DEMURJIAN, INC.**  
 ENGINEERS & LAND SURVEYORS  
 BOSTON, MASS.

- I HEREBY CERTIFY TO THE FOLLOWING:**
1. THAT THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES DIVIDING THE EXISTING OWNERSHIPS AND THE LINES OF THE STREETS AND WAYS SHOWN ARE THE LINES OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR NEW WAY ARE SHOWN.
  2. THAT THIS PLAN HAS BEEN COMPILED FROM EXISTING RECORDS.
  3. THAT THIS PLAN WAS PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE PLYMOUTH COUNTY REGISTRY OF DEEDS.

DATE: June 21, 1979

*Lawrence C. Allen*  
 LAWRENCE C. ALLEN - R.L.S. NO. 122424



LOT NUMBERS REFER TO L.C.C. #11907A

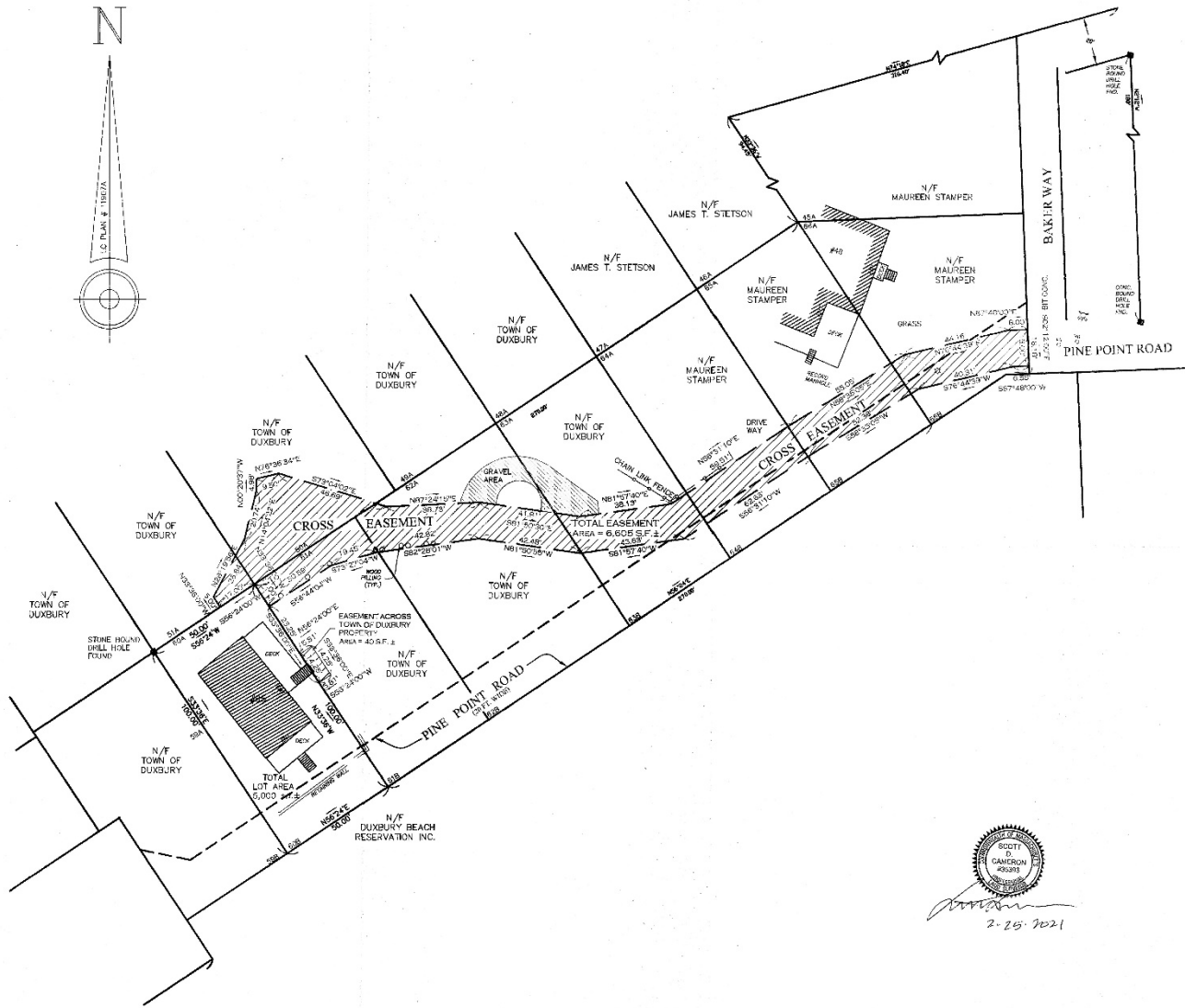
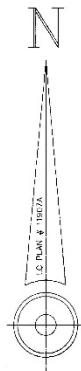
PLYMOUTH CO. REG. OF DEEDS  
 Book 4703 Page 423

79-597

30587

577

PLYMOUTH COUNTY REGISTRY OF DEEDS  
 DEFJ REFERENCE: OWNER:  
 BK. 613 MAUREEN STAMPER  
 PG. 103  
 LC. CRT. 122703  
 PLAN REFERENCE:  
 LC. # 11907A  
 EASEMENT PLAN  
 BK. 597 OF 1879  
 TAKING DOCUMENT  
 #195822



- LEGEND
- ⊙ MANHOLE
  - EM ELECTRIC METER
  - ENT ENTRANCE
  - FND FOUND
  - BIT BITUMINOUS
  - CONC CONCRETE
  - CUY CUY WIRE
  - ☉ LIGHT
  - ⊕ UTILITY POLE

SCOTT D. CAMERON  
 4300  
 2-25-2021

REVISION - ARE  
 2/25/2021

EASEMENT PLAN  
 65 Pine Point Road  
 DUXBURY, MASSACHUSETTS

R.E. Cameron & Associates, Inc.  
 Land Surveyors  
 681 Washington Street, Norwood, Massachusetts 02062  
 Tel: (617) 862-7777 Fax: (617) 862-8844 www.recameron.com





## DEED OF CROSS EASEMENTS

We, Maureen Stamper and Julie Stamper of Duxbury Massachusetts

**Property:                    48 Pine Point Road, Duxbury, Massachusetts;  
                                  65 Pine Point Road, Duxbury, Massachusetts;  
                                  Land Off Pine Point Road, Duxbury, Massachusetts.**

The parties to this agreement (the “Parties”) and the title references to the affected properties are set forth below:

- (1)     Maureen Stamper and Julie Stamper,  
        Property Address: 65 Pine Point Road, Duxbury.  
        Registered Land: Lot 60A, Land Court Plan 11907-A, sheet 4, which Plan is filed with Certificate of Title 4701;  
        Title Reference: Certificate of Title 122,703, together with all right, title and interest of the aforementioned owners in Lot 60B, which lies in recorded land, which interest is set forth in Document 739,143 (hereinafter the “House Lot”);
  
- (2)     Maureen A. Stamper, surviving tenant by the entirety, see Death Certificate for Barry E. Stamper, Document 749,614, and affidavit of No Divorce, Document 749,616.  
        Property Address: 48 Pine Point Road, Duxbury.  
        Registered Land: Lots 45A, 45C, 64A, 65A, 66A, Plan 11907-A, sheet 3, which Plan is filed with Certificate of Title 4701;  
        Title Reference: Certificate of Title 74,041;  
        Recorded Land: Lots 64B, 65B and 66B, see above referenced Plan;  
        Title Reference: Book 7154, Page 146 and Book 22201 Page 308 (hereinafter, the “Maureen Stamper Lots”).
  
- (3)     Town of Duxbury (the “Town”)  
        Property Address: Land Off Pine Point Road, Duxbury.  
        Registered Land: Lots 48A, 49A, 61A, 62A, 63A, Plan 11907-A, sheets 3 and 4, which plan is filed with Certificate of Title 4701, Title Reference: Certificate of Title 61,322;  
        Recorded Land: Lots 61B, 62B and 63B, see above referenced plan;  
        Title Reference: Note: The aforementioned recorded Lots 61B, 62B and 63B lie in recorded land, which interest is set forth in registered land Certificate of Title 61,322 (hereinafter, collectively referred to as “Town Parcel A”).

- (4) Town of Duxbury  
Property Address: Land Off Pint Point Road, Duxbury.  
Lots 50A, 50B, 51A, 51B, 52B and 59A, Plan 11907-A, sheet 4, which plan is filed with Certificate of Title 4701;  
Title Reference: Certificate of Title 61,323 (hereinafter, collectively referred to as “Town Parcel B”, and, collectively with Town Parcel A, the “Town Parcels”).
  
- (5) Town of Duxbury  
Property Address: Land Off Pine Point Road, Duxbury.  
Title Reference: the parcels of land described in deeds recorded in Book 50497, Page 257 and Book 5523, Page 419 (the “Additional Town Parcels”).

### **Purpose of Agreement**

WHEREAS, a portion of Pine Point Road is a paper street which has never been constructed southwesterly of the intersection of Pine Point Road and Baker Way as shown on Land Court Plan 11907-A Sheet 3 and 4 (hereinafter the “Paper Street”) and much of the Paper Street is located in marsh land which is not suitable for road construction or vehicular access;

WHEREAS, the Parties for over 85 years have been accessing the land southwesterly of the intersection of Pine Point Road and Baker Way via a gravel drive located on the upland, which is suitable for use as a way (as defined in more detail below and hereinafter referred to as the “New Way”);

WHEREAS, the Town is desirous of confirming its right to pedestrian and vehicular access over the House Lot and the Maureen Stamper Lots to the Town Parcels and the Additional Town Parcels;

WHEREAS, Maureen A. Stamper and Julie Stamper, as the owners of the House Lot, are desirous of confirming their right to pedestrian and vehicular access their House Lot over the Town Parcels;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereby covenant and agree as follows:

#### **1. Rights in the Paper Street.**

The Parties hereby agree to abandon all rights in the Paper Street and to hereby establish rights in the new location, shown as the “Easement” (referred herein as the “New Way”) on a plan entitled “Easement Plan 65 Point Road, Duxbury, Massachusetts”, dated 9/26/2019, prepared by R.E. Cameron & Associates, Inc. (hereinafter, the “Plan”), filed herewith.

**2. Release of Rights in the Paper Street.**

The Town hereby releases any and all rights to the portions of the Paper Street that are owned in fee by Maureen Stamper and by Maureen Stamper and Julie Stamper other than the rights and easements expressly set forth herein.

Maureen Stamper and Maureen Stamper and Julie Stamper hereby release any and all rights to the portions of the Paper Street that are owned in fee by the Town other than the rights and easements expressly set forth herein.

**3. Easement Held By the Town of Duxbury in the New Way.**

Maureen Stamper, as the record owner of the Maureen Stamper Lots, hereby acknowledges and agrees that the Town (including the Town's agents, employees, representatives and others acting by or through the Town) has the benefit of a permanent access easement in the portions of the Maureen Stamper Lots that are located within the New Way for ingress and egress, via motor vehicle and foot, but not the right to park or store any vehicles, equipment or other personal property. Said easement is appurtenant to the Town Parcels and the Additional Town Parcels (collectively, the "Town Property") and is for the benefit of the Town and its successors and assigns. If the Town permits members of the public to enter and use the Town Property for recreational purposes, the Town shall have the right to permit members of the public to use the New Way for access to said Town Property, and the Town and Maureen Stamper shall be entitled to the benefits of G.L. c. 21, §17C, the so-called "Recreational Use Statute".

**4. Easement Held By the Owners of the House Lot in the New Way.**

The Town, as the record owner of the Town Parcels, hereby acknowledges and agrees that Maureen Stamper and Julie Stamper have the benefit of permanent easements in the following portions of the Town Parcels: (a) such portions of the Town Parcels that are included within the New Way, for ingress and egress, via motor vehicle and foot, but not the right to park or store any vehicles, equipment or other personal property, and (b) in the portion of the Town Parcels shown as "40 S.F.± parcel on Lot 61A" (the "Access Parcel") on the Plan for access to the staircase on Lot 60A. Said easements are appurtenant to the House Lot and for the benefit of Maureen Stamper and Julie Stamper and their successors and assigns.

**5. Maintenance of the New Way.**

The Parties agree as to the following:

- (a) The Town may, but shall not have an obligation to, maintain (including removing snow and ice) and/or repair the New Way in its current condition, and may improve said New Way, but in no event shall the New Way be paved or made of impervious materials.



- (b) The Owners of the House Lot may, but shall not have an obligation to, maintain and/or repair the New Way in its current condition, and may improve said New Way, but in no event shall (i) the New Way be paved or made of impervious materials- and/or (ii) trees be removed from the portions of the New Way that are owned in fee by the Town without the prior written approval of the Town, not to be unreasonably withheld.
- (c) The Owners of the House Lot, and their successors and assigns, shall not place any debris in the New Way, park or place or store any vehicles, equipment, or other personal property within the New Way, or unreasonably obstruct access over the New Way.
- (d) The Owners of the House Lot, and their successors and assigns, shall maintain a fence around three sides of Lot 60A and the Access Parcel with openings for foot and vehicular access and with no fence necessary between Lots 60A and 60B.
- (e) The Owners of the House Lot and the Stamper Lots and their successors and assigns shall not grant any other party a license, easement or other rights in the New Way; such a limitation shall not apply to the Owners and/or their agents, employees, representatives, and guests.

**6. Reservation of Rights.**

- (a) The Parties and their successors and assigns shall hold each other and their successors and assigns harmless from any and all liability for injury or damages to persons or property resulting from their negligent use or negligent maintenance of the New Way.
- (b) The Parties and their successors and assigns may not exclude each other and their successors and assigns from the New Way;
- (c) The Town retains the fee interest in and to the portions of in the portions of the Paper Street that are located on the Town Property and Maureen Stamper and Julie Stamper retain the fee interest in and to the portions of the Paper Street that are located on the Stamper Lots.

**7. Agreement Running with the Land.**

The rights and obligations under this Agreement to the New Way shall run with the land and shall be binding upon the Parties and their successors and assigns.



**8. Payment of Recording Fees.**

Each party to pay the portion of the recording fee that relates to the property that stands in their name and the parties will split the cost of filing the Plan. This settlement shall be contingent on the successful filing of this Agreement with the Plymouth Registry District of the Land Court and successful recording this Agreement with the Plymouth Registry of Deeds against both the Town's and Maureen Stamper's certificates of title and deeds.

To be signed by the attorneys for the parties.

*Signature Page To Follow*

Dated: October \_\_\_\_, 2023

Plaintiffs, Maureen Stamper and  
Julie Stamper,

By their attorneys,

---

Edward S. Englander (BBO# 154540)  
*eenglander@ec-attorneys.com*  
Denise A. Chicoine (BBO# 564152)  
*dchicoine@ec-attorneys.com*  
Englander & Chicoine, P.C.  
One Boston Place, Suite 2600  
Boston, MA 02108  
(617) 723-7440

Town of Duxbury and Duxbury Conservation  
Commission

By its attorneys,

---

Jeffrey T. Blake (BBO# 655773)  
Connor A. Mullen (BBO#703742)  
KP Law, P.C.  
Town Counsel  
101 Arch Street, 12<sup>th</sup> Floor,  
Boston, MA 02110-1109  
(617) 556-0007  
*SEverett@k-plaw.com*  
*jblake@k-plaw.com*  
*cmullen@k-plaw.com*

## GRANT OF CROSS EASEMENTS

We, the **Town of Duxbury** (the “Town”), a municipal corporation with a principal place of business at 878 Tremont Street, Duxbury, Plymouth County, Massachusetts and **Maureen Stamper** and **Julie Stamper** of 48 Pine Point Road, Duxbury, Plymouth County, Massachusetts, jointly the parties to this Grant of Cross Easements (the “Parties”) in consideration of the exchange of easements, the abandonment of the rights in Pine Point Road, and the obligations contained herein, agree as follows:

### **The Parties title references to the affected properties are set forth below :**

- (1) Maureen Stamper and Julie Stamper,  
Property Address: 65 Pine Point Road, Duxbury.  
Registered Land: Lot 60A, Land Court Plan 11907-A, sheet 4, which Plan is filed with Certificate of Title 4701;  
Title Reference: Certificate of Title 122,703, together with all right, title and interest of the aforementioned owners in Lot 60B, which lies in recorded land, which interest is set forth in Document 739,143 (hereinafter the “House Lot”);
- (2) Maureen A. Stamper, surviving tenant by the entirety, see Death Certificate for Barry E. Stamper, Document 749,614, and affidavit of No Divorce, Document 749,616.  
Property Address: 48 Pine Point Road, Duxbury.  
Registered Land: Lots 45A, 45C, 64A, 65A, 66A, Plan 11907-A, sheet 3, which Plan is filed with Certificate of Title 4701;  
Title Reference: Certificate of Title 74,041;  
Recorded Land: Lots 64B, 65B and 66B, see above referenced Plan;  
Title Reference: Book 7154, Page 146 and Book 22201 Page 308 (hereinafter, the “Maureen Stamper Lots” and, collectively with the House Lot, the “Stamper Property”).
- (3) Town of Duxbury (the “Town”)  
Property Address: Land Off Pine Point Road, Duxbury.  
Registered Land: Lots 48A, 49A, 61A, 62A, 63A,  
Plan 11907-A, sheets 3 and 4, which plan is filed with Certificate of Title 4701, Title Reference: Certificate of Title 61,322;  
Recorded Land: Lots 61B, 62B and 63B, see above referenced plan;  
Title Reference: Note: The aforementioned recorded Lots 61B, 62B and 63B lie in recorded land, which interest is set forth in registered land Certificate of Title 61,322 (hereinafter, collectively referred to as “Town Parcel A”).

- (4) Town of Duxbury  
Property Address: Land Off Pint Point Road, Duxbury.  
Lots 50A, 50B, 51A, 51B, 52B and 59A, Plan 11907-A, sheet 4, which plan is filed with Certificate of Title 4701;  
Title Reference: Certificate of Title 61,323 (hereinafter, collectively referred to as “Town Parcel B”, and, collectively with Town Parcel A, the “Town Parcels”).
  
- (5) Town of Duxbury  
Property Address: Land Off Pine Point Road, Duxbury.  
Title Reference: the parcels of land described in deeds recorded in Book 50497, Page 257 and Book 5523, Page 419 (the “Additional Town Parcels” and, collectively with the Town Parcels, the “Town Property”).

#### **Purpose of Agreement**

WHEREAS, the portion of Pine Point Road that runs southwesterly of the intersection of Pine Point Road and Baker Way, as shown more particularly on Land Court Plan 11907-A Sheet 3 and 4 (the “Marsh Way”), is an unconstructed way, as the Marsh Way is located on marsh land and not suitable for road construction or vehicular access;

WHEREAS, the Parties for over 85 years have been accessing their respective parcels not through the Marsh Way, but, rather via a gravel drive located on the upland portions of each others’ properties, which is suitable for use as a way (as defined in more detail below and hereinafter referred to as the “New Way”);

WHEREAS, the Town is desirous of confirming its right to pedestrian and vehicular access over the portions of the New Way that are located on the Stamper Property to the Town Property;

WHEREAS, Maureen A. Stamper and Julie Stamper, as the owners of the House Lot, are desirous of confirming their right to pedestrian and vehicular access over the portions of the New Way that are located on the Town Parcels to the House Lot;

WHEREAS, the Parties have agreed to this Grant of Cross Easements pursuant to a Settlement Agreement filed in a case entitled *Maureen Stamper and Julie Stamper vs. The Town of Duxbury and the Duxbury Conservation Commission*, Land Court Case No. 22 MISC 000319 (KTS);

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereby covenant and agree as follows:



**1. Rights in the Marsh Way.**

The Parties hereby agree to abandon all rights in the Marsh Way and to hereby establish rights in the New Way, which is shown more particularly as the “Easement” on a plan entitled “Easement Plan 65 Point Road, Duxbury, Massachusetts”, dated 9/26/2019, prepared by R.E. Cameron & Associates, Inc. (hereinafter, the “Plan”), filed and recorded herewith. The owners from time to time of the House Lot, the Maureen Stamper Lots, the Town Parcels, and the Additional Town Parcels are referred to herein as the “Owners”.

**2. Release of Rights in the Marsh Way.**

The Town hereby releases any and all rights in and to the portions of the Marsh Way that are owned in fee by Maureen Stamper and by Maureen Stamper and Julie Stamper other than the rights and easements expressly set forth herein.

Maureen Stamper and Maureen Stamper and Julie Stamper hereby release any and all rights in and to the portions of the Marsh Way that are owned in fee by the Town other than the rights and easements expressly set forth herein.

**3. Easement Held By the Town of Duxbury in the New Way.**

Maureen Stamper and Maureen Stamper and Julie Stamper, as the record owner of the Stamper Property, hereby acknowledge and agree that the Town (including the Town’s agents, employees, representatives and others acting by or through the Town) has the benefit of a permanent access easement in the portions of the Stamper Property that are located within the New Way for ingress and egress, via motor vehicle and foot, but not the right to park or store any vehicles, equipment or other personal property. Said easement is appurtenant to the Town Property) and is for the benefit of the Town and its successors and assigns. If the Town permits members of the public to enter and use the Town Property for recreational purposes, the Town shall have the right to permit members of the public to use the New Way for access to said Town Property, and the Town and Maureen Stamper shall be entitled to the benefits of G.L. c. 21, §17C, the so-called “Recreational Use Statute”.

**4. Easement Held By the Owners of the House Lot in the New Way.**

The Town, as the record owner of the Town Parcels, hereby acknowledges and agrees that Maureen Stamper and Julie Stamper, as the owners of the House Lot, have the benefit of permanent easements in the following portions of the Town Parcels: (a) such portions of the Town Parcels that are included within the New Way, for ingress and egress, via motor vehicle and foot, but not the right to park or store any vehicles, equipment or other personal property, and (b) in the portion of the Town Parcels shown as "40 S.F.± parcel on Lot 61A" (the "Access Parcel") on the Plan for the sole purpose of accessing and maintaining the staircase on and serving the single-family home on Lot 60A, which staircase encroaches onto Lot 61A. Said easements are appurtenant to the House Lot and for the benefit of Maureen Stamper and Julie Stamper and their successors and assigns.

**5. Maintenance of the New Way.**

The Parties agree as to the following:

- (a) The Town may, but shall not have an obligation to, maintain (including removing snow and ice) and/or repair the New Way in its current condition, and may improve said New Way, but in no event shall the New Way be paved or made of impervious materials.
- (b) The Owners of the House Lot may, but shall not have an obligation to, maintain and/or repair the New Way in its current condition, and may improve said New Way, but in no event shall (i) the New Way be paved or made of impervious materials- and/or (ii) trees be removed from the portions of the New Way that are owned in fee by the Town without the prior written approval of the Town, not to be unreasonably withheld.
- (c) Neither the Town, the Owners of the Stamper Property nor their successors and assigns shall place any debris in the New Way, park or place or store any vehicles, equipment, or other personal property within the New Way, or otherwise unreasonably obstruct access over the New Way.
- (d) The Owners of the House Lot, and their successors and assigns, shall maintain a fence around three sides of Lot 60A and the Access Parcel with openings for foot and vehicular access and with no fence necessary between Lots 60A and 60B.
- (e) Neither the Owners of the Stamper Property nor their successors and assigns shall grant any other party a license, easement or other rights in the New Way, provided, however, that nothing herein shall prevent use of the New Way by the Owners and/or their agents, employees, representatives, and guests, subject to the terms of this Cross Easement.

**6. Reservation of Rights.**

- (a) The Parties and their successors and assigns shall hold each other and their successors and assigns harmless from any and all liability for injury or damages to persons or property resulting from their negligent use or negligent maintenance of the New Way.
- (b) The Parties and their successors and assigns may not exclude each other and their successors and assigns from the New Way;
- (c) The Town retains the fee interest in and to the portions of the Marsh Way that are located on the Town Property and Maureen Stamper and Julie Stamper retain the fee interest in and to the portions of the Marsh Way that are located on the Stamper Property.

**7. Agreement Running with the Land.**

The rights and obligations under this Agreement to the New Way shall run with the land and shall be binding upon the Parties and their successors and assigns.

Witness our hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Maureen Stamper and  
Julie Stamper,

\_\_\_\_\_  
Maureen Stamper

\_\_\_\_\_  
Julie Stamper

COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss.

On this \_\_\_\_ day of November, 2023, before me, the undersigned notary public, personally appeared \_\_\_\_\_ as aforesaid, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_ to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public:  
My Commission Expires:



Witness our hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

TOWN OF DUXBURY,  
By its Select Board

\_\_\_\_\_  
Cynthia Ladd Fiorini, Chair

\_\_\_\_\_  
Michael McGee, Vice Chair

\_\_\_\_\_  
Amy M. MacNab, Clerk

\_\_\_\_\_  
Brian E. Glennon, II, Member

\_\_\_\_\_  
Fernando Guitart, Member

COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss.

On this \_\_\_\_ day of November, 2023, before me, the undersigned notary public, personally appeared \_\_\_\_\_, member of the Duxbury Select Board as aforesaid, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_ to be the person whose name is signed on the preceding document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose on behalf of the Town of Duxbury.

\_\_\_\_\_  
Notary Public:  
My Commission Expires:

**COMMONWEALTH OF MASSACHUSETTS  
LAND COURT DEPARTMENT  
OF THE TRIAL COURT**

PLYMOUTH, ss

Case No. 22 MISC 000319 (KTS)

MAUREEN STAMPER and  
JULIE STAMPER  
Plaintiffs,

v.

THE TOWN OF DUXBURY and  
THE DUXBURY CONSERVATION  
COMMISSION  
Defendants.

**SETTLEMENT AGREEMENT**

**Property:                    48 Pine Point Road, Duxbury, Massachusetts;  
                                  65 Pine Point Road, Duxbury, Massachusetts;  
                                  Land Off Pine Point Road, Duxbury, Massachusetts.**

The parties to this agreement (the “Parties”) and the title references to the affected properties are set forth below:

- (1) Maureen Stamper and Julie Stamper,  
Property Address: 65 Pine Point Road, Duxbury.  
Registered Land: Lot 60A, Land Court Plan 11907-A, sheet 4, which Plan is filed with Certificate of Title 4701;  
Title Reference: Certificate of Title 122,703, together with all right, title and interest of the aforementioned owners in Lot 60B, which lies in recorded land, which interest is set forth in Document 739,143 (hereinafter the “House Lot”);

- (2) Maureen A. Stamper, surviving tenant by the entirety, see Death Certificate for Barry E. Stamper, Document 749,614, and affidavit of No Divorce, Document 749,616.  
Property Address: 48 Pine Point Road, Duxbury.  
Registered Land: Lots 45A, 45C, 64A, 65A, 66A, Plan 11907-A, sheet 3, which Plan is filed with Certificate of Title 4701;  
Title Reference: Certificate of Title 74,041;  
Recorded Land: Lots 64B, 65B and 66B, see above referenced Plan;  
Title Reference: Book 7154, Page 146 and Book 22201 Page 308 (hereinafter, the “Maureen Stamper Lots” and, collectively with the House Lot, the “Stamper Property”).
- (3) Town of Duxbury (the “Town”)  
Property Address: Land Off Pine Point Road, Duxbury.  
Registered Land: Lots 48A, 49A, 61A, 62A, 63A, Plan 11907-A, sheets 3 and 4, which plan is filed with Certificate of Title 4701, Title Reference: Certificate of Title 61,322;  
Recorded Land: Lots 61B, 62B and 63B, see above referenced plan;  
Title Reference: Note: The aforementioned recorded Lots 61B, 62B and 63B lie in recorded land, which interest is set forth in registered land Certificate of Title 61,322 (hereinafter, collectively referred to as “Town Parcel A”).
- (4) Town of Duxbury  
Property Address: Land Off Pine Point Road, Duxbury.  
Lots 50A, 50B, 51A, 51B, 52B and 59A, Plan 11907-A, sheet 4, which plan is filed with Certificate of Title 4701;  
Title Reference: Certificate of Title 61,323 (hereinafter, collectively referred to as “Town Parcel B”, and, collectively with Town Parcel A, the “Town Parcels”).
- (5) Town of Duxbury  
Property Address: Land Off Pine Point Road, Duxbury.  
Title Reference: the parcels of land described in deeds recorded in Book 50497, Page 257 and Book 5523, Page 419 (the “Additional Town Parcels” and, collectively with the Town Parcels, the “Town Property”).

#### **Purpose of Agreement**

WHEREAS, the portion of Pine Point Road that runs southwesterly of the intersection of Pine Point Road and Baker Way, as shown more particularly on Land Court Plan 11907-A Sheet 3 and 4 (the “Marsh Way”), is an unconstructed way, as the Marsh Way is located on marsh land and not suitable for road construction or vehicular access;

WHEREAS, the Parties for over 85 years have been accessing their respective parcels not through the Marsh Way, but, rather via a gravel drive located on the upland portions of each other's properties, which is suitable for use as a way (as defined in more detail below and hereinafter referred to as the "New Way");

WHEREAS, the Town is desirous of confirming its right to pedestrian and vehicular access over the portions of the New Way that are located on the Stamper Property to the Town Property;

WHEREAS, Maureen A. Stamper and Julie Stamper, as the owners of the House Lot, are desirous of confirming their right to pedestrian and vehicular access over the portions of the New Way that are located on the Town Parcels to the House Lot;

WHEREAS, the Parties have agreed to enter into a Grant of Cross Easements which will reflect the terms of this Settlement Agreement and be filed and recorded at the Plymouth County Registry of Deeds; and

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereby covenant and agree as follows:

**1. Rights in the Marsh Way.**

The Parties hereby agree to abandon all rights in and to the Marsh Way and hereby establish rights in the New Way, which is shown more particularly as the "Easement" on a plan entitled "Easement Plan 65 Pine Point Road, Duxbury, Massachusetts", dated 9/26/2019, prepared by R.E. Cameron & Associates, Inc. (hereinafter, the "Plan"), to be filed and recorded with the Grant of Cross Easements at the Plymouth County Registry of Deeds [and the Registry District of the Land Court]. The owners of record from time to time of the House Lot, the Maureen Stamper Lot, the Town Parcels, and the Additional Town Parcels are referred to herein as the "Owners".

**2. Release of Rights in the Marsh Way.**

The Town hereby releases any and all rights in and to the portions of the Marsh Way that are owned in fee by Maureen Stamper and by Maureen Stamper and Julie Stamper other than the rights and easements expressly set forth herein.

Maureen Stamper and Maureen Stamper and Julie Stamper hereby release any and all rights in and to the portions of the Marsh Way that are owned in fee by the Town other than the rights and easements expressly set forth herein.



**3. Easement Held By the Town of Duxbury in the New Way.**

Maureen Stamper and Julie Stamper, as the record owner of the Stamper Property, hereby acknowledge and agree that the Town (including the Town's agents, employees, representatives and others acting by or through the Town) has the benefit of a permanent access easement in the portions of the Stamper Property that are located within the New Way for ingress and egress, via motor vehicle and foot, but not the right to park or store any vehicles, equipment or other personal property. Said easement is appurtenant to the Town Property and is for the benefit of the Town and its successors and assigns. If the Town permits members of the public to enter and use the Town Property for recreational purposes, the Town shall have the right to permit members of the public to use the New Way for access to the Town Property, and the Town and Maureen Stamper shall be entitled to the benefits of G.L. c. 21, §17C, the so-called "Recreational Use Statute".

**4. Easement Held By the Owners of the House Lot in the New Way.**

The Town, as the record owner of the Town Parcels, hereby acknowledges and agrees that Maureen Stamper and Julie Stamper, as the owners of the House Lot, have the benefit of permanent easements in the following portions of the Town Parcels: (a) such portions of the Town Parcels that are included within the New Way, for ingress and egress, via motor vehicle and foot, but not the right to park or store any vehicles, equipment or other personal property, and (b) in the portion of the Town Parcels shown as "40 S.F.+ parcel on Lot 61A" (the "Access Parcel") on the Plan for the sole purpose of accessing and maintaining the staircase on and serving the single-family home on Lot 60A, which staircase encroaches onto Lot 61A. Said easements are appurtenant to the House Lot and for the benefit of Maureen Stamper and Julie Stamper and their successors and assigns.

**5. Maintenance of the New Way.**

The Parties agree as to the following:

- (a) The Town may, but shall not have an obligation to, maintain (including removing snow and ice) and/or repair the New Way in its current condition, and may improve said New Way, but in no event shall the New Way be paved or made of impervious materials.
- (b) The Owners of the House Lot may, but shall not have an obligation to, maintain and/or repair the New Way in its current condition, and may improve said New Way, but in no event shall (i) the New Way be paved or made of impervious materials, and/or (ii) trees be removed from the portions of the New Way that are owned in fee by the Town without the prior written approval of the Town, not to be unreasonably withheld.

- (c) Neither the Town, the Owners of the Stamper Property nor their successors and assigns shall place any debris in the New Way, park or place or store any vehicles, equipment, or other personal property within the New Way, or otherwise unreasonably obstruct access over the New Way.
- (d) The Owners of the House Lot, and their successors and assigns, shall maintain a fence around three sides of Lot 60A and the Access Parcel with openings for foot and vehicular access and with no fence necessary between Lots 60A and 60B.
- (e) Neither the Owners of the Stamper Property nor their successors and assigns shall grant any other party a license, easement or other rights in the New Way, provided, however, that nothing herein shall prevent use of the New Way by the Owners and/or their agents, employees, representatives, and guests, subject to the terms of the Cross Easement.

**6. Reservation of Rights.**

- (a) The Parties and their successors and assigns shall hold each other and their successors and assigns harmless from any and all liability for injury or damages to persons or property resulting from their negligent use or negligent maintenance of the New Way.
- (b) The Parties and their successors and assigns may not exclude each other and their successors and assigns from the New Way;
- (c) The Town retains the fee interest in and to the portions of the Marsh Way that are located on the Town Property and Maureen Stamper and Maureen Stamper and Julie Stamper retain the fee interest in and to the portions of the Marsh Way that are located on the Stamper Lots and the House Lot.

**7. Agreement Running with the Land.**

The rights and obligations under this Agreement to the New Way shall run with the land and shall be binding upon the Parties and their successors and assigns. The Parties shall execute a Grant of Cross Easements which will reflect the terms of this Settlement Agreement and will be filed and recorded with the Plymouth County Registry of Deeds on both the Land Court section and the recorded land section of the said Registry. For a copy of the Grant of Cross Easement see **Exhibit A** attached hereto.

**8. Payment of Recording Fees.**

Each party to pay the portion of the recording fee that relates to the property that stands in their name and the parties will split the cost of filing the Plan. This settlement shall be contingent on the successful filing of this Agreement with the Plymouth Registry District of the Land Court and successful recording this Agreement with the Plymouth Registry of Deeds against both the Town's and Maureen Stamper's and Julie Stamper's certificates of title and deeds.

To be signed by the attorneys for the parties.

*Signature Page To Follow*



Dated: December \_\_\_\_, 2023

Plaintiffs, Maureen Stamper and  
Julie Stamper,

By their attorneys,

---

Edward S. Englander (BBO# 154540)  
*eenglander@ec-attorneys.com*  
Denise A. Chicoine (BBO# 564152)  
*dchicoine@ec-attorneys.com*  
Englander & Chicoine, P.C.  
One Boston Place, Suite 2600  
Boston, MA 02108  
(617) 723-7440

Town of Duxbury and Duxbury Conservation  
Commission

By its attorneys,

---

Jeffrey T. Blake (BBO# 655773)  
Connor A. Mullen (BBO#703742)  
KP Law, P.C.  
Town Counsel  
101 Arch Street, 12<sup>th</sup> Floor,  
Boston, MA 02110-1109  
(617) 556-0007  
*SEverett@k-plaw.com*  
*jblake@k-plaw.com*  
*cmullen@k-plaw.com*

## **AGREEMENT RELOCATING EASEMENTS**

We, the **Town of Duxbury** (the “Town”), a municipal corporation with a principal place of business at 878 Tremont Street, Duxbury, Plymouth County, Massachusetts and **Maureen Stamper** and **Julie Stamper** of 48 Pine Point Road, Duxbury, Plymouth County, Massachusetts, jointly the parties to this Agreement Relocating Easements (the “Parties”) in consideration of the exchange of easements, the releasing of rights to use Pine Point Road, and the obligations contained herein, agree as follows:

### **The Parties title references to the affected properties are set forth below:**

- (1) Maureen Stamper and Julie Stamper,  
Property Address: 65 Pine Point Road, Duxbury.  
Registered Land: Lot 60A, Land Court Plan 11907-A, sheet 4, which Plan is filed with Certificate of Title 4701;  
Title Reference: Certificate of Title 122,703, together with all right, title and interest of the aforementioned owners in Lot 60B, which lies in recorded land, which interest is set forth in Document 739,143 (hereinafter the “House Lot”);
  
- (2) Maureen A. Stamper, surviving tenant by the entirety, see Death Certificate for Barry E. Stamper, Document 749,614, and affidavit of No Divorce, Document 749,616.  
Property Address: 48 Pine Point Road, Duxbury.  
Registered Land: Lots 45A, 45C, 64A, 65A, 66A, Plan 11907-A, sheet 3, which Plan is filed with Certificate of Title 4701;  
Title Reference: Certificate of Title 74,041;  
Recorded Land: Lots 64B, 65B and 66B, see above referenced Plan;  
Title Reference: Book 7154, Page 146 and Book 22201 Page 308 (hereinafter, the “Maureen Stamper Lots” and, collectively with the House Lot, the “Stamper Property”).

- (3) Town of Duxbury (the “Town”)  
Property Address: Land Off Pine Point Road, Duxbury.  
Registered Land: Lots 48A, 49A, 61A, 62A, 63A,  
Plan 11907-A, sheets 3 and 4, which plan is filed with Certificate of Title  
4701, Title Reference: Certificate of Title 61,322;  
Recorded Land: Lots 61B, 62B and 63B, see above referenced plan;  
Title Reference: Note: The aforementioned recorded Lots 61B, 62B and  
63B lie in recorded land, which interest is set forth in registered land  
Certificate of Title 61,322 (hereinafter, collectively referred to as “Town  
Parcel A”).
- (4) Town of Duxbury  
Property Address: Land Off Pint Point Road, Duxbury.  
Lots 50A, 50B, 51A, 51B, 52B and 59A, Plan 11907-A, sheet 4, which  
plan is filed with Certificate of Title 4701;  
Title Reference: Certificate of Title 61,323 (hereinafter, collectively  
referred to as “Town Parcel B”, and, collectively with Town Parcel A, the  
“Town Parcels”).
- (5) Town of Duxbury  
Property Address: Land Off Pine Point Road, Duxbury.  
Title Reference: the parcels of land described in deeds recorded in Book  
50497, Page 257 and Book 5523, Page 419 (the “Additional Town  
Parcels” and, collectively with the Town Parcels, the “Town Property”).

### **Purpose of Agreement**

WHEREAS, the portion of Pine Point Road that runs southwesterly of the intersection of Pine Point Road and Baker Way, as shown more particularly on Land Court Plan 11907-A Sheet 3 and 4 (the “Marsh Way”), is an unconstructed way, as the Marsh Way is located on marsh land which is not suitable for road construction or vehicular access;

WHEREAS, the Parties for over 85 years have been accessing their respective parcels not through the Marsh Way, but, rather via a gravel drive located on the upland portions of each others’ properties, which is suitable for use as a way (hereinafter referred to as the “New Way”);

WHEREAS, the New Way is located on and over Registered Land parcels 51A, 50A, 61A, 62A, 63A (owned by the Town) and 64A, 65A, 66A (owned by Maureen A. Stamper) and recorded land parcels 63B (owned by the Town) and 64B, 65B, 66B, (owned by Maureen A. Stamper), and shown more particularly as the “Easement” on a plan entitled “Easement Plan 65 Point Road, Duxbury, Massachusetts”, dated 9/26/2019, prepared by R.E. Cameron & Associates, Inc. (hereinafter, the “Plan”); for a copy of the Plan see Exhibit A attached hereto;

WHEREAS, the Town is desirous of confirming its right to pedestrian and vehicular access over the portions of the New Way that are located on the Stamper Property to the Town Property;

WHEREAS, Maureen A. Stamper and Julie Stamper, as the owners of the House Lot, are desirous of confirming their right to pedestrian and vehicular access over the portions of the New Way that are located on the Town Parcels to the House Lot;

WHEREAS, the Parties have agreed to this Agreement Relocating Easements pursuant to a Settlement Agreement to Relocate Easement and Judgment filed in a case entitled *Maureen Stamper and Julie Stamper vs. The Town of Duxbury and the Duxbury Conservation Commission*, Land Court Case No. 22 MISC 000319 (KTS);

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereby covenant and agree as follows:

**1. Rights in the Marsh Way.**

The Parties hereby agree that rights to use the Marsh Way as a way are hereby released and hereby establish their rights and easements to use the New Way for pedestrian and vehicular access to the House Lot and the Town Property, respectively. The owners from time to time of the House Lot, the Maureen Stamper Lots, the Town Parcels, and the Additional Town Parcels are referred to herein as the “Owners”.

**2. Release of Rights in the Marsh Way.**

The Town hereby releases any and all rights in and to the portions of the Marsh Way that are owned in fee by Maureen Stamper and by Maureen Stamper and Julie Stamper other than the rights and easements expressly set forth herein.

Maureen Stamper and Maureen Stamper and Julie Stamper hereby release any and all rights in and to the portions of the Marsh Way that are owned in fee by the Town other than the rights and easements expressly set forth herein.



**3. Easement Held By the Town of Duxbury in the New Way.**

Maureen Stamper and Maureen Stamper and Julie Stamper, as the record owner of the Stamper Property, hereby acknowledge and agree that the Town (including the Town's agents, employees, representatives and others acting by or through the Town) has the benefit of a permanent access easement in the portions of the Stamper Property that are located within the New Way for ingress and egress, via motor vehicle and foot, but not the right to park or store any vehicles, equipment or other personal property. Said easement is appurtenant to the Town Property) and is for the benefit of the Town and its successors and assigns. If the Town permits members of the public to enter and use the Town Property for recreational purposes, the Town shall have the right to permit members of the public to use the New Way for access to the Town Property, and the Town and Maureen Stamper shall be entitled to the benefits of G.L. c. 21, §17C, the so-called "Recreational Use Statute".

**4. Easement Held By the Owners of the House Lot in the New Way.**

The Town, as the record owner of the Town Parcels, hereby acknowledges and agrees that Maureen Stamper and Julie Stamper, as the owners of the House Lot, have the benefit of permanent easements in the following portions of the Town Parcels: (a) such portions of the Town Parcels that are included within the New Way, for ingress and egress, via motor vehicle and foot, but not the right to park or store any vehicles, equipment or other personal property, and (b) in the portion of the Town Parcels shown as "40 S.F.± parcel on Lot 61A" (the "Access Parcel") on the Plan for the sole purpose of accessing and maintaining the staircase on and serving the single-family home on Lot 60A, which staircase encroaches onto Lot 61A. Said easements are appurtenant to the House Lot and for the benefit of Maureen Stamper and Julie Stamper and their successors and assigns.

**5. Maintenance of the New Way.**

The Parties agree as to the following:

- (a) The Town may, but shall not have an obligation to, maintain (including removing snow and ice) and/or repair the New Way in its current condition, and may improve said New Way, but in no event shall the New Way be paved or made of impervious materials.
- (b) The Owners of the House Lot may, but shall not have an obligation to, maintain and/or repair the New Way in its current condition, and may improve said New Way, but in no event shall (i) the New Way be paved or made of impervious materials- and/or (ii) trees be removed from the portions of the New Way that are owned in fee by the Town without the prior written approval of the Town, not to be unreasonably withheld.

- (c) Neither the Town, the Owners of the Stamper Property nor their successors and assigns shall place any debris in the New Way, park or place or store any vehicles, equipment, or other personal property within the New Way, or otherwise unreasonably obstruct access over the New Way.
- (d) The Owners of the House Lot, and their successors and assigns, shall maintain a fence around three sides of Lot 60A and the Access Parcel with openings for foot and vehicular access and with no fence necessary between Lots 60A and 60B.
- (e) Neither the Owners of the Stamper Property nor their successors and assigns shall grant any other party a license, easement or other rights in the New Way, provided, however, that nothing herein shall prevent use of the New Way by the Owners and/or their agents, employees, representatives, and guests, subject to the terms of this Agreement Relocating Easements.

**6. Reservation of Rights.**

- (a) The Parties and their successors and assigns shall hold each other and their successors and assigns harmless from any and all liability for injury or damages to persons or property resulting from their negligence.
- (b) The Parties and their successors and assigns may not exclude each other and their successors and assigns from the New Way;
- (c) The Town retains the fee interest in and to the portions of the Marsh Way that are located on the Town Property and Maureen Stamper and Julie Stamper retain the fee interest in and to the portions of the Marsh Way that are located on the Stamper Property.

**7. Agreement Running with the Land.**

The rights and obligations under this Agreement to the New Way shall run with the land and shall be binding upon the Parties and their successors and assigns.

Witness our hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Maureen Stamper and  
Julie Stamper,

\_\_\_\_\_  
Maureen Stamper

\_\_\_\_\_  
Julie Stamper

### COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss.

On this \_\_\_\_ day of November, 2023, before me, the undersigned notary public, personally appeared \_\_\_\_\_ as aforesaid, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_ to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public:  
My Commission Expires:



Witness our hands and seals on this \_\_\_\_\_ day of January, 2024.

TOWN OF DUXBURY,  
By its Select Board

\_\_\_\_\_  
Cynthia Ladd Fiorini, Chair

\_\_\_\_\_  
Michael McGee, Vice Chair

\_\_\_\_\_  
Amy M. MacNab, Clerk

\_\_\_\_\_  
Brian E. Glennon, II, Member

\_\_\_\_\_  
Fernando Guitart, Member

## COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss.

On this \_\_\_\_ day of January, 2024, before me, the undersigned notary public, personally appeared \_\_\_\_\_, member of the Duxbury Select Board as aforesaid, proved to me through satisfactory evidence of identification, which was \_\_\_\_\_ to be the person whose name is signed on the preceding document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose on behalf of the Town of Duxbury.

\_\_\_\_\_  
Notary Public:  
My Commission Expires:

**COMMONWEALTH OF MASSACHUSETTS  
LAND COURT DEPARTMENT  
OF THE TRIAL COURT**

PLYMOUTH, ss

Case No. 22 MISC 000319 (KTS).

MAUREEN STAMPER and  
JULIE STAMPER  
Plaintiffs,

v.

THE TOWN OF DUXBURY and  
THE DUXBURY CONSERVATION  
COMMISSION  
Defendants.

**Motion for Judgment**

NOW COME, the Plaintiffs, Maureen Stamper and Julie Stamper (the “Plaintiffs”) and move that this Honorable Court enter a Judgment authorizing the relocation of the easement, consistent with the Settlement Agreement to Relocate Easement, the Agreement to Relocate Easement, and the plan entitled “Easement Plan 65 Pine Point Road, Duxbury, Massachusetts”, dated 9/26/2019, prepared by R.E. Cameron & Associates, Inc., all three documents are attached hereto as **Exhibit A**, **Exhibit B** and **Exhibit C** respectively (hereinafter the all three documents are referred to as the “Settlement Documents”) and based on the following facts as agree by the parties in the Settlement Documents:

1. The Plaintiffs are the owners of the home located at 65 Pine Point Road, Duxbury, Massachusetts (the “House Lot”) which property consists of both Registered Land, Certificate of Title 122,703 and Recorded Land, document no. 739,143.

2. The House Lot, Registered Land parcel is shown as Lot 60A, on Land Court Plan 11907-A, Sheet 4, which Plan is filed with Certificate of Title 4701 (the "Plan") and the Recorded Land parcel is shown on the Plan as Lot 60B.
3. Plaintiff, Maureen Stamper, is the owner of Lots 45A, 45C, 64A, 65A, 66A, Plan 11907-A, sheet 3, which Plan is filed with Certificate of Title 4701; Title Reference: Certificate of Title 74,041, and recorded Land: Lots 64B, 65B and 66B, see above referenced Plan; Title Reference: Book 7154, Page 146 and Book 22201 Page 308 (collectively, the "Stamper Lots");
4. The Defendant, the Town of Duxbury, is the owner of Lots 48A, 49A, 61A, 62A, 63A, Plan 11907-A, sheets 3 and 4, which plan is filed with Certificate of Title 4701, Title Reference: Certificate of Title 61,322, and Recorded Land: Lots 61B, 62B and 63B (collectively, "Town Parcel A").
5. The Defendant, the Town of Duxbury, is also the owner of Lots 50A, 50B, 51A, 51B, 52B and 59A, Plan 11907-A, sheet 4, which plan is filed with Certificate of Title 4701 (collectively, the "Town Parcel B" and, collectively with the Town Parcel A, the "Town Parcels").
6. The Plaintiffs' and the Defendant's access of record to the House Lot and the Town Parcels, respectively, is via an unconstructed portion of Pine Point Road which is located in marsh land, shown on Land Court Plan 11907-A, Sheets 3 and 4, running southwesterly of the intersection of Pine Point Road and Baker Way (referred to in the Settlement Documents and herein after as the "Marsh Way").
7. Both the Plaintiffs' and the Defendant, Town of Duxbury, have been accessing the House Lot and the Town Parcels via a gravel drive located on the upland, which is suitable for use as a way.

Given these findings, the Settlement Agreements filed herewith and the law which allows easements to be relocated to meet the practical needs of the parties, this Honorable Court enters an ORDER granting Plaintiffs request that Plaintiffs rights to access the House Lot via the upland easement described in the Settlement Documents is authorized and Plaintiffs rights to use the Marsh Way for access is terminated.

Dated: January \_\_\_\_, 2024

Respectfully Submitted,  
Plaintiffs, Maureen Stamper and Julie  
Stamper,

By their attorneys,

---

Edward S. Englander (BBO# 154540)  
*eenglander@ec-attorneys.com*  
Denise A. Chicoine (BBO# 564152)  
*dchicoine@ec-attorneys.com*  
Englander & Chicoine, P.C.  
One Boston Place, Suite 2600  
Boston, MA 02108  
(617) 723-7440

The Defendant, Town of Duxbury hereby assents to the Plaintiffs' Motion for Judgment.

Town of Duxbury and Duxbury  
Conservation Commission  
By its attorneys,

---

Jeffrey T. Blake (BBO# 655773)  
Connor A. Mullen (BBO#703742)  
KP Law, P.C.  
Town Counsel  
101 Arch Street, 12<sup>th</sup> Floor,  
Boston, MA 02110-1109  
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[jblake@k-plaw.com](mailto:jblake@k-plaw.com)  
[cmullen@k-plaw.com](mailto:cmullen@k-plaw.com)

COMMONWEALTH OF MASSACHUSETTS  
LAND COURT DEPARTMENT  
OF THE TRIAL COURT

PLYMOUTH, ss

Case No. 22 MISC 000319 (KTS)

MAUREEN STAMPER and  
JULIE STAMPER  
Plaintiffs,

v.

THE TOWN OF DUXBURY and  
THE DUXBURY CONSERVATION  
COMMISSION  
Defendants.

SETTLEMENT AGREEMENT  
TO  
RELOCATE EASEMENT

**Property: 48 Pine Point Road, Duxbury, Massachusetts;  
65 Pine Point Road, Duxbury, Massachusetts;  
Land Off Pine Point Road, Duxbury, Massachusetts.**

The parties to this agreement (the “Parties”) and the title references to the affected properties are set forth below:

- (1) Maureen Stamper and Julie Stamper,  
Property Address: 65 Pine Point Road, Duxbury.  
Registered Land: Lot 60A, Land Court Plan 11907-A, sheet 4, which Plan is filed with Certificate of Title 4701;  
Title Reference: Certificate of Title 122,703, together with all right, title and interest of the aforementioned owners in Lot 60B, which lies in recorded land, which interest is set forth in Document 739,143 (hereinafter the “House Lot”);

- (2) Maureen A. Stamper, surviving tenant by the entirety, see Death Certificate for Barry E. Stamper, Document 749,614, and affidavit of No Divorce, Document 749,616.  
Property Address: 48 Pine Point Road, Duxbury.  
Registered Land: Lots 45A, 45C, 64A, 65A, 66A, Plan 11907-A, sheet 3, which Plan is filed with Certificate of Title 4701;  
Title Reference: Certificate of Title 74,041;  
Recorded Land: Lots 64B, 65B and 66B, see above referenced Plan;  
Title Reference: Book 7154, Page 146 and Book 22201 Page 308  
(hereinafter, the “Maureen Stamper Lots” and, collectively with the House Lot, the “Stamper Property”).
- (3) Town of Duxbury (the “Town”)  
Property Address: Land Off Pine Point Road, Duxbury.  
Registered Land: Lots 48A, 49A, 61A, 62A, 63A,  
Plan 11907-A, sheets 3 and 4, which plan is filed with Certificate of Title 4701, Title Reference: Certificate of Title 61,322;  
Recorded Land: Lots 61B, 62B and 63B, see above referenced plan;  
Title Reference: Note: The aforementioned recorded Lots 61B, 62B and 63B lie in recorded land, which interest is set forth in registered land Certificate of Title 61,322 (hereinafter, collectively referred to as “Town Parcel A”).
- (4) Town of Duxbury  
Property Address: Land Off Pine Point Road, Duxbury.  
Lots 50A, 50B, 51A, 51B, 52B and 59A, Plan 11907-A, sheet 4, which plan is filed with Certificate of Title 4701;  
Title Reference: Certificate of Title 61,323 (hereinafter, collectively referred to as “Town Parcel B”, and, collectively with Town Parcel A, the “Town Parcels”).
- (5) Town of Duxbury  
Property Address: Land Off Pine Point Road, Duxbury.  
Title Reference: the parcels of land described in deeds recorded in Book 50497, Page 257 and Book 5523, Page 419 (the “Additional Town Parcels” and, collectively with the Town Parcels, the “Town Property”).

#### **Purpose of Agreement**

WHEREAS, the portion of Pine Point Road that runs southwesterly of the intersection of Pine Point Road and Baker Way, as shown more particularly on Land Court Plan 11907-A Sheet 3 and 4 (the “Marsh Way”), is an unconstructed way, as the Marsh Way is located on marsh land and not suitable for road construction or vehicular access;



WHEREAS, the Parties for over 85 years have been accessing their respective parcels not through the Marsh Way, but, rather via a gravel drive located on the upland portions of each other's properties, which is suitable for use as a way (as defined in more detail below and hereinafter referred to as the "New Way");

WHEREAS, the Town is desirous of confirming its right to pedestrian and vehicular access over the portions of the New Way that are located on the Stamper Property to the Town Property;

WHEREAS, Maureen A. Stamper and Julie Stamper, as the owners of the House Lot, are desirous of confirming their right to pedestrian and vehicular access over the portions of the New Way that are located on the Town Parcels to the House Lot;

WHEREAS, the Parties have agreed to enter into an Agreement Relocating Easements which will reflect the terms of this Settlement Agreement to Relocate Easement and be filed and recorded at the Plymouth County Registry of Deeds; and

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereby covenant and agree as follows:

**1. Rights in the Marsh Way.**

The Parties hereby agree to terminate and release all rights in and to the Marsh Way and hereby establish rights in the New Way, which is shown more particularly as the "Easement" on a plan entitled "Easement Plan 65 Pine Point Road, Duxbury, Massachusetts", dated 9/26/2019, prepared by R.E. Cameron & Associates, Inc. (hereinafter, the "Plan"), to be filed and recorded with the Agreement to Relocate Easements at the Plymouth County Registry of Deeds [and the Registry District of the Land Court]. The owners of record from time to time of the House Lot, the Maureen Stamper Lot, the Town Parcels, and the Additional Town Parcels are referred to herein as the "Owners".

**2. Release of Rights in the Marsh Way.**

The Town hereby releases any and all rights in and to the portions of the Marsh Way that are owned in fee by Maureen Stamper and by Maureen Stamper and Julie Stamper other than the rights and easements expressly set forth herein.

Maureen Stamper and Maureen Stamper and Julie Stamper hereby release any and all rights in and to the portions of the Marsh Way that are owned in fee by the Town other than the rights and easements expressly set forth herein.



**3. Easement Held By the Town of Duxbury in the New Way.**

Maureen Stamper and Julie Stamper, as the record owner of the Stamper Property, hereby acknowledge and agree that the Town (including the Town's agents, employees, representatives and others acting by or through the Town) has the benefit of a permanent access easement in the portions of the Stamper Property that are located within the New Way for ingress and egress, via motor vehicle and foot, but not the right to park or store any vehicles, equipment or other personal property. Said easement is appurtenant to the Town Property and is for the benefit of the Town and its successors and assigns. If the Town permits members of the public to enter and use the Town Property for recreational purposes, the Town shall have the right to permit members of the public to use the New Way for access to the Town Property, and the Town and Maureen Stamper shall be entitled to the benefits of G.L. c. 21, §17C, the so-called "Recreational Use Statute".

**4. Easement Held By the Owners of the House Lot in the New Way.**

The Town, as the record owner of the Town Parcels, hereby acknowledges and agrees that Maureen Stamper and Julie Stamper, as the owners of the House Lot, have the benefit of permanent easements in the following portions of the Town Parcels: (a) such portions of the Town Parcels that are included within the New Way, for ingress and egress, via motor vehicle and foot, but not the right to park or store any vehicles, equipment or other personal property, and (b) in the portion of the Town Parcels shown as "40 S.F.± parcel on Lot 61A" (the "Access Parcel") on the Plan for the sole purpose of accessing and maintaining the staircase on and serving the single-family home on Lot 60A, which staircase encroaches onto Lot 61A. Said easements are appurtenant to the House Lot and for the benefit of Maureen Stamper and Julie Stamper and their successors and assigns.

**5. Maintenance of the New Way.**

The Parties agree as to the following:

- (a) The Town may, but shall not have an obligation to, maintain (including removing snow and ice) and/or repair the New Way in its current condition, and may improve said New Way, but in no event shall the New Way be paved or made of impervious materials.
- (b) The Owners of the House Lot may, but shall not have an obligation to, maintain and/or repair the New Way in its current condition, and may improve said New Way, but in no event shall (i) the New Way be paved or made of impervious materials, and/or (ii) trees be removed from the portions of the New Way that are owned in fee by the Town without the prior written approval of the Town, not to be unreasonably withheld.

- (c) Neither the Town, the Owners of the Stamper Property nor their successors and assigns shall place any debris in the New Way, park or place or store any vehicles, equipment, or other personal property within the New Way, or otherwise unreasonably obstruct access over the New Way.
- (d) The Owners of the House Lot, and their successors and assigns, shall maintain a fence around three sides of Lot 60A and the Access Parcel with openings for foot and vehicular access and with no fence necessary between Lots 60A and 60B.
- (e) Neither the Owners of the Stamper Property nor their successors and assigns shall grant any other party a license, easement or other rights in the New Way, provided, however, that nothing herein shall prevent use of the New Way by the Owners and/or their agents, employees, representatives, and guests, subject to the terms of the Agreement Relocating Easements.

**6. Reservation of Rights.**

- (a) The Parties and their successors and assigns shall hold each other and their successors and assigns harmless from any and all liability for injury or damages to persons or property resulting from their negligent use or negligent maintenance of the New Way.
- (b) The Parties and their successors and assigns may not exclude each other and their successors and assigns from the New Way;
- (c) The Town retains the fee interest in and to the portions of the Marsh Way that are located on the Town Property and Maureen Stamper and Maureen Stamper and Julie Stamper retain the fee interest in and to the portions of the Marsh Way that are located on the Stamper Lots and the House Lot.

**7. Agreement Running with the Land.**

The rights and obligations under this Agreement to the New Way shall run with the land and shall be binding upon the Parties and their successors and assigns. The Parties shall execute the Agreement Relocating Easements which will reflect the terms of this Settlement Agreement to Relocate Easement and will be filed and recorded with the Plymouth County Registry of Deeds on both the Land Court section and the recorded land section of the said Registry. For a copy of the Agreement Relocating Easements see **Exhibit A** attached hereto.

**8. Payment of Recording Fees.**

Each party to pay the portion of the recording fee that relates to the property that stands in their name and the parties will split the cost of filing the Plan. This settlement shall be contingent on the successful filing of this Agreement with the Plymouth Registry District of the Land Court and successful recording this Agreement with the Plymouth Registry of Deeds against both the Town's and Maureen Stamper's and Julie Stamper's certificates of title and deeds.

To be signed by the attorneys for the parties.

*Signature Page To Follow*

Dated: January \_\_\_\_, 2023

Plaintiffs, Maureen Stamper and  
Julie Stamper,

By their attorneys,

---

Edward S. Englander (BBO# 154540)  
[eenglander@ec-attorneys.com](mailto:eenglander@ec-attorneys.com)  
Denise A. Chicoine (BBO# 564152)  
[dchicoine@ec-attorneys.com](mailto:dchicoine@ec-attorneys.com)  
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Boston, MA 02108  
(617) 723-7440

Town of Duxbury and Duxbury Conservation  
Commission

By its attorneys,

---

Jeffrey T. Blake (BBO# 655773)  
Connor A. Mullen (BBO#703742)  
KP Law, P.C.  
Town Counsel  
101 Arch Street, 12<sup>th</sup> Floor,  
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(617) 556-0007  
[SEverett@k-plaw.com](mailto:SEverett@k-plaw.com)  
[jblake@k-plaw.com](mailto:jblake@k-plaw.com)  
[cmullen@k-plaw.com](mailto:cmullen@k-plaw.com)

PLAN OF LAND IN WELLFLEET

26390A

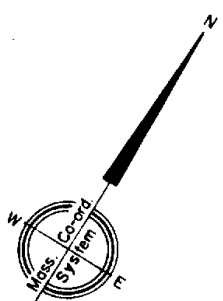
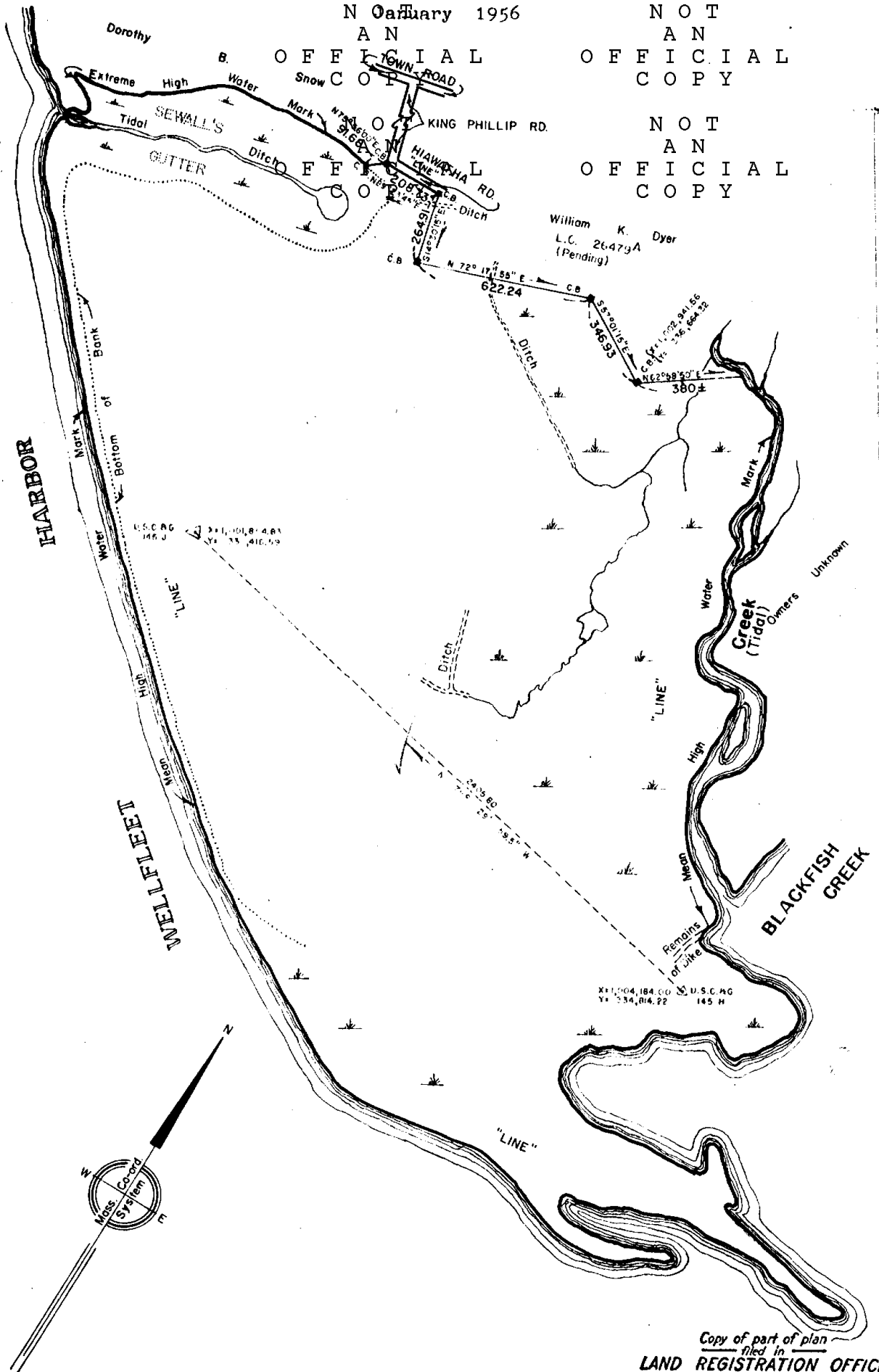
Schofield Brothers, Civil Engineers

January 1956

NOT AN OFFICIAL COPY

NOT AN OFFICIAL COPY

William K. Dyer  
L.C. 26479A  
(Pending)



Copy of part of plan  
filed in  
**LAND REGISTRATION OFFICE**  
Feb. 6, 1956  
Scale of this plan 400 feet to an inch  
C.M. Anderson, Engineer for Court  
51-F-1

**Deed**

**Cape Shore Properties, Inc.**, a Massachusetts Corporation, having a principal place of business at Unit No. 1, 210 West Road in the Town of Wellfleet, County of Barnstable, Commonwealth of Massachusetts (hereinafter "the Grantor")

for NOMINAL CONSIDERATION paid

grants to **Theresa M. Harrison, Trustee of the H.D.Y.L.T.A. Realty Trust** under declaration of trust dated January 28, 1998 and recorded with the Barnstable County Registry of Deeds, in herewith in Book 12103, Page 104.

whose address is: c/o Englander & Chicoine, P.C., Two Newton Place, Suite 200, Newton, MA 02458-1634

**All of the Grantor's right, title, and interest** in and to a parcel of land in South Wellfleet, said parcel being known as Indian Neck, which rights and interests were deeded to Cape Shore Properties, Inc. by deed of Louis Byrne which deed was recorded with the Barnstable County Registry of Deeds, **Book 656, Page 349**. The premises are shown on a plan recorded at Barnstable County Registry of Deeds, **Plan Book 22, Page 25**.

Said parcel is a portion of the premises described in a deed recorded with said Deeds in **Book 656, Page 349**.

WITNESS the execution hereof under seal this 2nd day of **March 1999**.

**CAPE SHORE PROPERTIES, INC.**

by Robert W. Rowell  
**Robert W. Rowell, President**

by Robert W. Rowell  
**Robert W. Rowell, Treasurer**

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss.

March 2nd, 1999

Then personally appeared the above-named **Robert W. Rowell**, President and Treasure as aforementioned and acknowledged the foregoing instrument to be the authorized act of Cape Shore Properties, Inc. and his free act and deed.

Theresa M. Harrison  
Notary Public  
My commission expires: NOV 29 2000

*Crossed Indian Neck, Wellfleet*



COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE

SUPERIOR COURT  
No.. 96-309

GERALDINE D. MASSARI, Individually )  
and as Trustee of the Geraldine D. Massari )  
Amended and Restated Revocable Trust, and )  
ANTHONY T. MASSARI, )

Plaintiffs )

v. )

TODD E. MINDREBO, CAROL A. PARLANTE, )  
TOBIN A. STORER, BARBARA AUSTIN, )  
JERRE AUSTIN, ALFRED BENTON III, )  
SUSAN BENTON, ROBERT MORSE, )  
RICHARD BLAKLEY, TODD LEBART, )  
SHAWN ROSE, RANDY WILLIAMS and )  
TOWN OF WELLFLEET, acting through its duly )  
elected Board of Selectmen, )  
CAROLINA KIGGINS, JOHN RYERSON, )  
CYNTHIA PAINE, DAVID ERNST, and )  
IRA WOOD, )

Defendants )

**MEMORANDUM OF LAW IN SUPPORT OF**  
**DEFENDANTS' OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT**  
**AND DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGMENT**

NOW COME the defendants Todd E. Mindrebo, Carol A. Parlante, Tobin A. Storer, and Todd Lebart (hereinafter collectively referred to as "the Shellfishermen") to oppose Plaintiffs' Motion for Partial Summary Judgment and to present arguments compelling the entry of judgment in favor of the Shellfishermen on their Cross Motion for Summary Judgment.



COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE

SUPERIOR COURT  
No.. 96-309

GERALDINE D. MASSARI, Individually )  
and as Trustee of the Geraldine D. Massari )  
Amended and Restated Revocable Trust, and )  
ANTHONY T. MASSARI, )  
Plaintiffs )

v. )

TODD E. MINDREBO, CAROL A. PARLANTE, )  
TOBIN A. STORER, BARBARA AUSTIN, )  
JERRE AUSTIN, ALFRED BENTON III, )  
SUSAN BENTON, ROBERT MORSE, )  
RICHARD BLAKLEY, TODD LEBART, )  
SHAWN ROSE, RANDY WILLIAMS and )  
TOWN OF WELLFLEET, acting through its duly )  
elected Board of Selectmen, )  
CAROLINA KIGGINS, JOHN RYERSON, )  
CYNTHIA PAINE, DAVID ERNST, and )  
IRA WOOD, )  
Defendants )

**DEFENDANTS' CONCISE STATEMENT**  
**PURSUANT TO SUPERIOR COURT RULE 9A(b)(5)**

**IN SUPPORT OF**  
**OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**  
**AND**  
**DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGMENT**

NOW COME the defendants Todd E. Mindrebo, Carol A. Parlante, Tobin A. Storer, and Todd Lebart, and submit this statement in response to the Concise Statement filed by Plaintiffs herein in accordance with Superior Court Rule 9A(b)(5).

**I. RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS AS TO WHICH THE MOVING PARTY CONTENDS THERE IS NO GENUINE ISSUE TO BE TRIED**

1. Defendants admit Plaintiffs are the owners of Lot 10 as shown on Land Court Plan 26390. Defendants deny that Plaintiffs own the tidal flats adjoining the upland and Defendants deny that Plaintiffs ownership extends out over the tidal flats a distance of 1650 feet.
2. Defendants admit that the shellfish licenses they hold include numbers 85-D, 85-D-A, 811 and 811A. Defendants deny that any of the shellfish licenses are located on any property Plaintiffs own.
3. Admitted.
4. Admitted.
5. Defendants are without sufficient knowledge to admit or deny the identity of Plaintiffs' abutters. Defendants deny that Plaintiffs and their abutters can avoid the required statutory procedure, M.G.L. Ch. 240 § 19 - 24, to determine the sideline boundaries of tidal flats.
6. Defendants admit Plaintiffs have presented evidence of protesting the issuance of the shellfish licenses, but deny Plaintiffs have any standing to do so.
7. Denied.

**II. DEFENDANTS' STATEMENT OF UNDISPUTED FACTS WHICH COMPEL THE ENTRY OF SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS**

1. Plaintiffs' title is derived from Land Court Registration Number 26390. Exhibit 1 attached hereto, Land Court Registration Number 26390 and Land Court Plan 26390-A.
2. The Shellfishermen are in possession of certain tidal flats in the Indian Neck area of Wellfleet, Massachusetts pursuant to licenses issued by the Wellfleet Board of Selectmen under M.G.L. Chapter 130, Section 57. Exhibit 2 attached hereto, Plan of Shellfish Leases at Wellfleet Harbor, 1994.
  - a. Defendants Todd E. Mindrebo and Carol A. Parlante hold shellfish license numbers 85-D and 85-D-A.
  - b. Defendant Storer holds shellfish license numbers 811 and 811-A.
  - c. Defendant Lebart holds shellfish license number 85-E.
  - d. Defendant Blakley holds shellfish license number 85-F.
  - e. Defendants Barbara and Jerre Austin hold shellfish license number 85-G.
  - f. Defendants Susan and Alfred Benton III hold shellfish license numbers 85-J and 85-J-A.
3. The shellfish license held by Defendant Lebart does not encroach on any land Plaintiffs' claim to own. Exhibit 3 attached hereto, Sketch of Land in Wellfleet prepared by Chester Lay (depicting only Mindrebo's and Storer's licenses on the tidal flats Plaintiffs claim to own); Plaintiffs' Concise Statement of Material Facts ¶ 2 (alleging that only Mindrebo and Storer have licenses on the tidal flats Plaintiffs claim to own).
4. In Registration Number 26390 the boundaries of the registered parcel were *inter alia*:

"Southerly and Southwesterly by mean high water mark in Wellfleet Harbor."

Exhibit 1 attached hereto, Land Court Registration Number 26390 and Land Court Plan 26390-A.

5. The Land Court Decree in Registration Number 26390 states:

"All of said boundaries, except the water lines, are determined by the Court to be located as shown upon plan numbered 26390-A. . . . "

The Land Court Decree further states the land is registered subject "to any and all public rights legally existing in and over the same below mean high water mark in Sewall's Gutter." Exhibit 1 attached hereto, Land Court Registration Number 26390 and Land Court Plan 26390-A.

6. The Land Court Decree does not contain any language regarding public rights in the tidal flats in Wellfleet Harbor. Exhibit 1 attached hereto, Land Court Registration Number 26390 and Land Court Plan 26390-A.

7. Land Court Plan 26390-A utilizes the word "LINE" to denote the mean high water mark as the boundary of the registered upland parcel. Exhibit 1 attached hereto, Land Court Registration Number 26390 and Land Court Plan 26390-A.

8. The Land Court Decree in Registration Number 26390 established that title to the registered upland parcel stood in the name of Cape Shore Properties, Inc. as of 1957. Exhibit 1 attached hereto, Land Court Registration Number 26390 and Land Court Plan 26390-A.

9. Cape Shore Properties, Inc. owned the tidal flats at the time of the petition for registration. Exhibit 6 attached hereto, Affidavit of Ruth A. Dillingham in Support of



Defendants' Opposition to Motion for Partial Summary Judgment and Defendants' Cross Motion for Summary Judgment ("Dillingham Aff."), ¶ 12; Exhibit 7 attached hereto, Affidavit of Robert J. Freeman in Support of Defendants' Opposition to Motion for Partial Summary Judgment and Defendants' Cross Motion for Summary Judgment ("Freeman Aff.") ¶¶ 7; Affidavit of Theodore A. Schilling in Support of Plaintiffs' Motion for Partial Summary Judgment ("Schilling Aff.") ¶ 16.

10. The tidal flats shown on Land Court Plan 26390-A were never registered. This resulted in the creation of two parcels standing in the name of Cape Shore Properties, Inc., the registered upland and the unregistered tidal flats. Exhibit 6 attached hereto, Dillingham Aff. ¶¶ 10, 17, 20-21; Exhibit 7 attached hereto, Freeman Aff. ¶ 12; Schilling Aff., ¶ 16; Affidavit of Chester Lay in Support of Plaintiffs' Motion for Partial Summary Judgment ("Lay Affidavit"), ¶ 8.
11. In December 1957, Cape Shore Properties, Inc. conveyed to Cape Lands, Inc. all its right, title and interest in the registered upland parcel shown on Land Court Plan 26390-A. Exhibit 4 attached hereto, Document Number 54276, Quitclaim Deed from Cape Shore Properties, Inc. to Cape Lands, Inc.; Exhibit 6 attached hereto, Dillingham Aff. ¶ 21; Lay Affidavit ¶ 4.
12. Cape Lands, Inc. subdivided the registered upland parcel as reflected on Land Court Plan 26390-B. Plaintiffs own Lot 10 on Land Court Plan 26390-B, as conveyed by Transfer Certificate of Title Certificate Number 75999, now held under Transfer Certificate of Title Certificate Number 138999. Exhibit 5 attached hereto, Land Court Plan 26390-B.

13. There is no record of any other conveyance from Cape Shore Properties, Inc. from 1957 until the time Plaintiffs commenced this action. Exhibit 6 attached hereto, Dillingham Aff. ¶ 22; Schilling Aff., ¶ 7.
14. Exhibit 8 attached hereto is a true and accurate copy of Land Court Registration Number 24489.
15. Exhibit 9 attached hereto is a true and accurate copy of Land Court Registration Number 24490.
16. Exhibit 9 attached hereto is a true and accurate copy of Land Court Registration Number 8896.

**III. DEFENDANTS' STATEMENT OF LEGAL ELEMENTS OF EACH CLAIM UPON WHICH DEFENDANTS SEEK SUMMARY JUDGMENT**

*Plaintiffs' claims must be dismissed for lack of subject matter jurisdiction.*

1. Complaints affecting title to registered land are within the exclusive original jurisdiction of the Land Court. M.G.L. Ch. 185 § 1(a ½); *Feinzig v. Ficksman*, 42 Mass.App.Ct. 113, 674 N.E.2d 1329 (Mass.App.Ct. 1997), *further appellate rev. den.* 424 Mass. 1107, 678 N.E.2d 1333 (1997).
2. The Land Court has exclusive original jurisdiction over "[c]omplaints to determine the boundaries of flats." M.G.L. ch. 185 §1(h); M.G.L. Ch. 240 § 19 - 24.

The Shellfishermen are entitled to summary judgment because Plaintiffs do not own the tidal flats adjoining their upland.

1. Summary judgment must be granted where there are no material facts in dispute and the moving party is entitled to judgment as a matter of law. M.R.Civ.P. Rule 56(c). The party moving for summary judgment may satisfy its burden by demonstrating that the opposing party has no reasonable expectation of proving an essential element of the case at trial. *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 716, 575 N.E.2d 734 (1991).
2. The moving party is entitled to judgment if it successfully submits affirmative evidence negating an essential element of the nonmoving party's case. *See Flesner v. Technical Communications Corp.*, 410 Mass. 805, 809, 575 N.E.2d 1107, 1110 (1991).

Plaintiffs' predecessor in title severed the tidal flats from the upland at the time of the Land Court Registration.

1. The language used to define the boundaries of the registered parcel severed the tidal flats from the upland because a severance of upland and tidal rights is the distinct result of the uniformly specific limiting reference to "mean high water." *Sheftel v. Lebel*, 44 Mass.App.Ct. 175, 689 N.E.2d 500 (1998), and cases cited therein.
2. The ordinary high water mark is the dividing line between the upland and the flats, *Commonwealth v. Roxbury*, 79 Mass. 451, 483 (1857), and a boundary "by the mean high water mark" is the equivalent of "by the beach," "by the flats," or "on the shore." *See, e.g. Litchfield v. Ferguson*, 141 Mass. 97 (1886); *Litchfield v. Scituate*, 136 Mass. 39 (1883); *Niles v. Patch*, 13 Gray 254, *Storer v. Freeman*, 6 Mass. 435, 437 (1810).



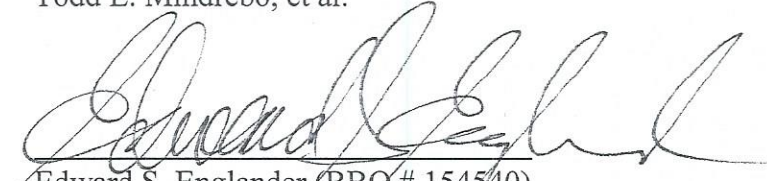
3. The use of the word "LINE" on Land Court Plan 26390-A severed the tidal flats from the upland. "A plan referred to in a deed becomes a part of the contract so far as may be necessary to . . . determine the rights intended to be conveyed." *Wellwood v. Havrah Mishna Anshi Sphard Cemetery Corp.*, 254 Mass. 350, 354-355, 150 N.E. 203 (1926); *Labounty v. Vickers*, 352 Mass. 337, 349, 225 N.E.2d 333 (1967).
4. Prior to statutory changes in 1972, the use of the term "line of ..." denoted that title extended only to the sideline of the boundary. With regard to a watercourse, such language excludes the tidal flats. *Eno and Hovey*, 28 M.P.S. § 4.33, and cases cited therein.
5. The absence of restrictive language referencing the rights of the public pursuant to the Ordinance of 1641-47 in Land Court Decree 26390 indicates the registration severed the tidal flats from the upland. *See Town of Wellfleet v. Glaze*, 403 Mass. 79, 525 N.E.2d 1298 (1988).
6. The original petitioner in Land Court Registration submitted all evidence relevant to its title to the Land Court, and the Court's findings in 1954 now may not be collaterally attacked by Plaintiffs. *See Tetrault v. Bruscoe*, 398 Mass. 454, 459, 497 N.E.2d 275 (1986).

After the Land Court Registration severed the tidal flats from the upland, the registration petitioner retained its rights in the tidal flats and conveyed only the registered upland parcel to Plaintiffs' predecessor in title.

1. The tidal flats became a distinct parcel when Cape Shore Properties, Inc. conveyed all its right, title, and interest in the registered upland parcel shown on Land Court Plan 26390-A to Cape Lands, Inc. The entirety of Cape Lands Inc.'s rights are reflected in the Decree of registration, which by definition could not include land not specified in the decree, *i.e.* the unregistered flats. See *Butler v. Haley Greystone Corp.*, 347 Mass. 478, 487, 198 N.E.2d 635, 639 (1964).
2. Plaintiffs' predecessor in title, Cape Lands Inc., could not convey to Plaintiffs an interest it never obtained. Plaintiffs own only Lot 10 on Land Court Plan 26390-B, bounded by the line of the mean high water, and accordingly all of Plaintiffs' claims which are premised on their ownership of the flats must fail.

Respectfully submitted,  
Todd E. Mindrebo, et al.

Date: February 3, 2000

  
Edward S. Englander (BBO # 154540)

  
Denise A. Chicoine (BBO # 564152)  
ENGLANDER & CHICOINE P.C.  
Two Newton Place, Suite 200  
Newton, MA 02458-1633  
Tel. (617) 964-5400

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE

SUPERIOR COURT  
No.. 96-309

GERALDINE D. MASSARI, Individually )  
and as Trustee of the Geraldine D. Massari )  
Amended and Restated Revocable Trust, and )  
ANTHONY T. MASSARI, )  
Plaintiffs )  
v. )  
TODD E. MINDREBO, CAROL A. PARLANTE, )  
TOBIN A. STORER, BARBARA AUSTIN, )  
JERRE AUSTIN, ALFRED BENTON III, )  
SUSAN BENTON, ROBERT MORSE, )  
RICHARD BLAKLEY, TODD LEBART, )  
SHAWN ROSE, RANDY WILLIAMS and )  
TOWN OF WELLFLEET, acting through its duly )  
elected Board of Selectmen, )  
CAROLINA KIGGINS, JOHN RYERSON, )  
CYNTHIA PAINE, DAVID ERNST, and )  
IRA WOOD, )  
Defendants )

**AFFIDAVIT OF RUTH A. DILLINGHAM**  
**IN SUPPORT OF**  
**DEFENDANTS' OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT**  
**AND DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGMENT**

I, Ruth A. Dillingham, depose and say as follows:

1. I am an attorney at law admitted to practice before all courts of the Commonwealth of Massachusetts. My practice is limited to matters of real estate law and I give this testimony by way of affidavit to report on matters affecting the title to certain parcels of real property in Wellfleet. Barnstable County, Massachusetts, known as Indian Neck and shown, in part on Land Court Plan 26390A.

**Background Information**

2. I am a graduate of Mount Holyoke College (1975, cum laude) and Boston University School of Law (1978). I was admitted to practice in Massachusetts in 1978 and have practiced in the Commonwealth continuously since that time.



3. During the course of my practice I have represented buyers, sellers, mortgage lenders, the Commonwealth of Massachusetts and title insurance companies with regard to the purchase, sale, mortgaging and clearance of title to real property in Massachusetts, with a special concentration in title matters in Barnstable County. In the course of that practice I have examined, analyzed and issued over 5000 title opinions, certifications of title and title insurance policies.
4. I have been retained as a an expert witness in numerous litigation matters relating to the title to real property, and have testified in both the Land Court and Superior Court.
5. I am an active member of the Massachusetts Conveyancers Association, having served on the Association's Board of Directors from 1989 until 1997 and as its president in 1996. I was voted into membership in the Abstract Club in 1994 and was elected to the Massachusetts Bar Foundation in 1992.
6. I have written and lectured extensively on real estate law and related matters in the past twenty years, including Massachusetts Continuing Legal Education: *Fundamentals of Real Estate*; *Real Estate Law Practical Skills*; and *Title Issues and Conveyancing*. I am a contributing author to *Crocker's Notes on Common Forms (8<sup>th</sup> Edition)*.
7. Based upon these criteria, I am confident that I am qualified to provide the following opinion of title in this matter.

#### **General Information**

8. I was retained by the law firm of Englander and Chicoine, P.C. in June 1997 for the purpose of researching the title to and forming an opinion regarding certain parcels of land on Indian Neck, Wellfleet, Massachusetts. During the following months I personally examined the title and reviewed the title records at the Barnstable County Registry of Deeds, the Barnstable County Registry District of the Land Court and at the Land Court (Registration Division) in Boston.

9. My opinion is based upon that research, my knowledge of the law of the Commonwealth of Massachusetts, settled common law doctrines relating to real property, and my professional judgement based upon twenty years of experience in this area of the law.

## **OPINION**

10. It is my opinion, based upon the records referenced above, and the specific documents referred to herein that the title to the tidal flats in Wellfleet Harbor, lying seaward of the line of the mean high water mark, as shown on Land Court Plan 26390-A, was severed from that of the upland parcel. It is my further opinion that such severance occurred by operation of Land Court Registration Case Number 26390 and that title to the tidal flats is a parcel of recorded, not registered, land which stands in the successors to Cape Shore Properties, the original petitioner in the Registration Case.

## **Factual Information**

11. On August 9, 1957 the Land Court of the Commonwealth of Massachusetts issued a Decree in Registration Case Number 26390 pursuant to Massachusetts General Laws Chapter 185. That Decree established that title stood in the name of Cape Shore Properties, Inc. and that the boundaries of the registered parcel were *inter alia*: "Southerly and Southwesterly by mean high water mark in Wellfleet Harbor" and that "All of said boundaries, except the water lines, are determined by the Court to be located as shown upon the plan numbered 26390-A . . . ."
12. The Land Court Examiner's report in Registration Case Number 26390 includes many descriptions of the parcels over time, and concludes that the grantor of the deeds to the petitioner for registration (Louis Byrne to Cape Shore Properties, Inc. dated September 12, 1946, and recorded with Barnstable County Registry of Deeds in Book 656, Page 349) held title to not only the upland but also to the "islands, meadow grounds and sedge

flats on Indian Neck." By definition and common usage, this description would include the flats below the high water mark. The deed from Byrne to Cape Shore Properties, Inc. describes the southerly boundary as "by high water mark, middle tides and the edge of the flats," clearly showing that title to the flats was vested in Cape Shore Properties at the time of the petition for Registration.

13. This description is also shown on an earlier plan recorded with Barnstable County Registry of Deeds dated July 1927 and recorded in Plan Book 22, Page 23. That plan clearly shows the upland, the grass lands, the beach and both the high and low water marks as well as the flats. These monuments are consistent with the descriptions of the parcels prior to the registration.
14. Pursuant to the requirements of the registration statute, the petitioner filed a plan for registration showing the portion of the land the petitioner intended to register. Upon review and modification by the Land Court that plan was approved and incorporated into the final decree and became Land Court Plan #26390-A.
15. Land Court Plan 26390-A plan shows monumentation and boundaries with greater specificity than the metes and bounds description given in the decree. With the exception of the generally northerly bounds, the registered parcel is bounded entirely by water and those other bounds (including the southerly and southwesterly boundaries) are shown with specificity on the plan.
16. For the "Mean High Water Mark" bounds, the plan denotes the boundary is a "LINE", not "BY." "LINE" is a term of art in conveyancing, which means that the parcel's boundary is not the mean low water, but instead the sideline, or the actual line of the mean high water mark.

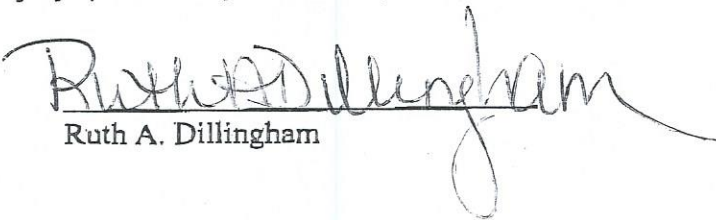


17. In my opinion the failure to include the flats in the parcel submitted for registration was deliberate on the part of the petitioner, and the plan, by denoting the LINE of the High Water Mark acted to subdivide the petitioner's land into two parcels: one registered land and shown on the Land Court Plan and the other, remaining unregistered land consisting of that land which the petitioner owned at the time of the registration but which was not included in the registration, namely, the flats.
18. The deliberate exclusion of the flats is further indicated by the language in the Decree regarding the rights of the public. The Decree states that the land is registered "subject to any and all public rights legally existing in and over the same below mean high water in Sewall's Gutter." The Decree does not contain any language reserving the rights of the public in the tidal flats in Wellfleet Harbor.
19. The deliberate exclusion of the flats from the Registration proceeding would not be unusual. The petitioners, who were clearly motivated by commercial interests (the large parcel is subdivided and sold as house lots within two years), may have decided that the additional engineering costs to establish the boundaries of the flats were prohibitive; or they may have been concerned about the additional time and legal expense required to deal with the possible cloud on title raised by the Nauset Proprietors issues; in any event, the registration statute clearly anticipates that petitioners may withdraw parcels from the petition. (M.G.L. c. 185 § 33).
20. Once severed from the upland parcel, the fee in the flats remained as unregistered land, in the name of Cape Shore Properties, Inc. Unlike Hiawatha Road and King Philip Road, no appurtenant rights to use the flats were granted to the registered land owners in the Decree.
21. On January 10, 1958 Cape Shore Properties, Inc. conveyed to Cape Lands, Inc. the registered parcel as shown on Land Court Plan #26390-A which effectively severed the parcel from the prior common ownership.



22. Once the flats are severed from the upland parcel there are no further conveyances recorded with the Barnstable Registry of Deeds through the completion of my examination in August 1997.
23. Consequently, it is my opinion that the fee in the flats was vested, and remains vested in, Cape Shore Properties, Inc. the original petitioner in the Registration Case, and/or its successors.

Signed and sworn to under the pains and penalties of perjury this first day of February, 2000.

  
Ruth A. Dillingham

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Commonwealth of Massachusetts

BARNSTABLE, ss.

SUPERIOR COURT  
No. 96-309

GERALDINE D. MASSARI<sup>1</sup> & another<sup>2</sup>

vs.

TODD E. MINDREBO & others<sup>3</sup>

MEMORANDUM OF LAW AND ORDER  
ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND ON  
DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

The Board of Selectmen of the Town of Wellfleet ("Board") issued shellfish licenses to defendants Todd E. Mindrebo, Carol Parlante, and Tobin Storer ("Shellfishermen defendants") pursuant to G.L. c. 130 § 57 to shellfish certain tidal flats. The Plaintiffs, Geraldine D. Massari, individually, and as Trustee of the Geraldine D. Massari Amended and Restated Revocable Trust, and her husband Anthony T. Massari, ("the Massaris"), commenced an action against defendants on the grounds the Massaris are the rightful owners of the tidal flat and seek to exclude the Shellfishermen defendants from shellfishing their tidal flats<sup>4</sup> and now move for partial summary judgment on Counts I -IV of their complaint. The defendants cross move for summary judgment arguing that the Massaris do not hold title to the tidal flats and as a result

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<sup>1</sup> Individually and as Trustee of the Geraldine D. Massari Amended and Restated Revocable Trust.

<sup>2</sup> Anthony T. Massari.

<sup>3</sup> Carol A. Parlante, Tobin A. Stoyer, Barabra Austin, Jerre Austin, Alfred Benton, III, Susan Benton, Robert Morse, Richard Blakley, Todd Lobart, Shawn Rose, Randy Williams, and the Town of Wellfleet, acting through its duly elected Board of Selectment, Carolina Kiggins, John Ryerson, Cynthia Paine, David Ernst, and Ira Wood.

<sup>4</sup> Count I is a claim for trespass; Count II is a claim for "wrongful appropriation of property interest" alleging that the Shellfishermen defendants have a profit a prende and seeks relief for continuing trespass; Count III seeks declaratory and injunctive relief; and Count IV alleges that the Board has exceeded its authority under M.G.L. c. 130, § 57.



have no standing to object to the issuing of the aquaculture license or to the shellfishermens' activities.<sup>5</sup> After a hearing and considering all of the legal memorandums and evidence submitted, and for the reasons discussed below, the Massaris' motion for partial summary judgment **DENIED** and the Shellfishermen's motion for summary judgment is **ALLOWED**.<sup>6</sup>

BACKGROUND

The relevant material undisputed facts are as follows. The Massaris are the owners of Lot 10 as shown on Land Court Plan 26390 (sheet 1). The Massaris' quitclaim deed describes the southwesterly boundary of their property as "by mean high water mark in Wellfleet Harbor." The Board issued aquaculture licenses to the Shellfishermen defendants to shellfish the tidal flats adjacent to Lot 10. The Massaris have never given permission to any defendants to conduct aquaculture on the flats and they object to the shellfishermen defendants' activities on the tidal flats.

DISCUSSION

This court grants summary judgment where there are no genuine issues of material fact and where the summary judgment record entitles the moving party to judgment as a matter of law. Highlands Ins. Co. v. Aerovox Inc., 424 Mass. 226, 232 (1997); Cassesso v. Commissioner of Correction, 390 Mass. 419, 422 (1983); Community Nat'l. Bank v. Dawes, 369 Mass. 550, 553 (1976); Mass. R. Civ. P. 56(c). If the pleadings, depositions, answer to interrogatories and admissions on file, along with the affidavits, if any, demonstrate that there are

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<sup>5</sup> The Board claims that the Massaris need to bring their claim against it in the nature of certiorari per G.L. c. 249 § 4. See Bermant v. Board of Selectmen of Belchertown, 425 Mass. 400, 404 (1997) ( A civil action in the nature of certiorari is the sole relief available to a party aggrieved by the discretionary decision of a local licensing authority.) Although this is an accurate statement of the law, the court need not address that issue here in light of the findings below.

<sup>6</sup> The Board requested that summary judgment be rendered against the Massaris pursuant to Mass. R. Civ. P. 56(c) which is essentially the same as the Shellfisherman's cross motion for summary judgment.

genuine issues of material fact summary judgment is appropriate. Mass. R. Civ. P. 56(c). Where both parties have moved for summary judgment and "in essence there is no real dispute as to the salient facts or if only a question of law is involved," summary judgment shall be granted to the party entitled to judgment as a matter of law. Cassesso, 390 Mass. at 422.

Declaratory judgment is an appropriate remedy to settle questions of property rights. G.L. c. 231 § 2; Pazolt v. Director of the Division of Marine Fisheries, 417 Mass. 565 (1994). "It is clear that an adjudication of title to tidal flats, as well as public use of privately held property, is an appropriate subject for declaratory decree." Pazolt, 417 Mass. at 569, quoting Lowell v. Boston, 322 Mass 709, 740 (1948). The declaratory judgment statute is to be construed and administered liberally and a judge enjoys discretion in deciding whether a case is appropriate for declaratory relief. Pazolt, 417 Mass. at 569; Boston v. Keene Corp., 406 Mass. 301, 305 (1989).

There are no material facts in dispute; accordingly, this case presents only a question of law. The pivotal issue involved in this case, which serves as the threshold to many ancillary issues, is whether the Massaris hold title to the tidal flats. Ownership of these flats is a prerequisite to their exercise of private property rights, including an action in trespass. If the Massaris do not hold title to the tidal flats, their claims fail as a matter of law.

The Colonial Ordinances of 1641-1647 established that a person holding title to land adjacent to the sea shall hold title to the land out to the low water mark or 100 rods (1,650 feet),<sup>7</sup> whichever is less. See Pazolt, 417 Mass at 570; Boston Waterfront Dev. Corp. v. Commonwealth, 378 Mass. 629, 635 (1979); Storer v. Freeman, 6 Mass. 435, 437 (1810). "The presumption of law is, that the flats follow that of the upland on which they lie, and proof of title to the upland establishes title to the flats." Porter v. Sullivan, 7 Gray 441, 445 (1856). "Since the passage of the ordinance, a grant of land bounding on the sea shore carries the flats in the

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<sup>7</sup> The tidal flat is the portion of land which is covered with water at high tide and not covered by the water when it is low tide. It is the portion of land which is at issue in this present action.



absence of excluding words.” Commonwealth v. Roxbury, 9 Gray 451, 524 (1857). The use of words “mean high water” to describe the boundaries of a parcel of land in Massachusetts is particularly instructive in light of the ancient and unique feature of Massachusetts property law. Well Settled Massachusetts law “provides that every owner of land bounded on tidal waters, . . . enjoys title to the shore and the *adjacent tidal flats* all the way to the low water mark . . . in contrast to the common law principle that private ownership stops at the high water mark.” Sheftel v. Lebel, 44 Mass. App. Ct. 175, 179 (1998)(emphases added). “The use of language that explicitly grants less than the law confers *is evidence of an intent to separate the upland from the flatland*. Massachusetts courts have recognized that tidal flats can be severed from adjoining upland when parties expressly employ appropriate restrictive terms in an instrument.” Id. at 180, (emphases added).

The Massaris’ quitclaim deed conferring ownership of the upland known as Lot 10, employs the restrictive term “mean high water mark” when describing the southwesterly boundary, the boundary which abuts the tidal flat, of their property. Since the term “mean high water mark” signifies an intent to convey less than is allowed by law,<sup>8</sup> it is evidence of an intent to sever the tidal flat from its adjoining upland. See Sheftel, 44 Mass App. Ct. at 180. Accordingly, as a matter of law, the use of the words “mean high water” in the Massaris’ quick claim deed leads to the inescapable conclusion that the Massaris do not hold title to the tidal flats.

Since the court has determined that the Massaris do not hold title to the tidal flats adjacent to Lot 10, they have no right to exclude the shellfisherman defendants from conducting aquaculture of those flats. Accordingly, the rest of the Massaris’ claims fail as a matter of law.

This court’s ruling is confined only to the holding that the Massaris do not hold title to the tidal flats and in no way affects title to registered land. As a result, the allegation by the

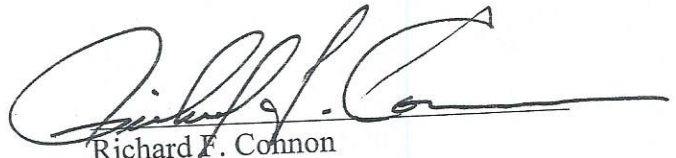
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<sup>8</sup> The deed conferring title to the Massaris predecessor in title likewise employed the restrictive terms making it impossible for the Massaris to claim that their deed gave them title to the tidal flat.

fishermen defendants that this case should be decided in the Land Court pursuant to G.L. c. 185 § 1(a½),<sup>9</sup> is incorrect. Similarly, this decision does not determine the boundaries of the tidal flat at issue in this litigation, but only declares that it has been severed from its adjacent upland, and therefore exclusive Land Court jurisdiction under G.L. c. 185 § 1(h)<sup>10</sup> is likewise incorrect.

**ORDER**

It is hereby **ORDERED** that the plaintiffs' Motion for Partial Summary Judgment is **DENIED** and the defendants' Motion for Summary Judgment is **ALLOWED**. It is **DECLARED** that the Geraldine D. Massari, Individually and as Trustee of the Geraldine D. Massari Amended and Restated Revocable Trust, and Anthony T. Massari, do not hold title to the tidal flats adjacent to Lot 10.

  
Richard F. Connon  
Justice of the Superior Court

DATED: June 1, 2000

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<sup>9</sup> G.L. c. 185 § 1 provides: "The land court department shall have exclusive jurisdiction of the following matters: . . . (a½) Complaints affecting title to registered land, with the exception of actions commenced pursuant to chapter two hundred and eight of two hundred and nine."

<sup>10</sup> G.L. c. 185 § 1 provides: "The land court department shall have exclusive jurisdiction of the following matters: . . . (h) Complaints to determine the boundaries of flats, under section nineteen of chapter two hundred and forty." None of the boundaries of the severed tidal flat are determined by this decision.





Approval is Not Required  
Date: \_\_\_\_\_  
Wellfleet, MA Planning Board

Plan of Land  
Showing a division of land  
at  
INDIAN NECK Wellfleet, MA  
prepared for  
H.D.Y.L.T.A. Realty Trust,  
Theresa M. Harrison, Trustee  
Deed Book 12109, Page 109  
June 14, 2011 Scale 1"=100'  
ols#388-01  
Sheet 2 of 4

For Registry use

I hereby certify that this plan was prepared  
in conformance with the Registry Rules  
and Regulations adopted Jan. 1, 1876 and  
amended July 7, 1888.



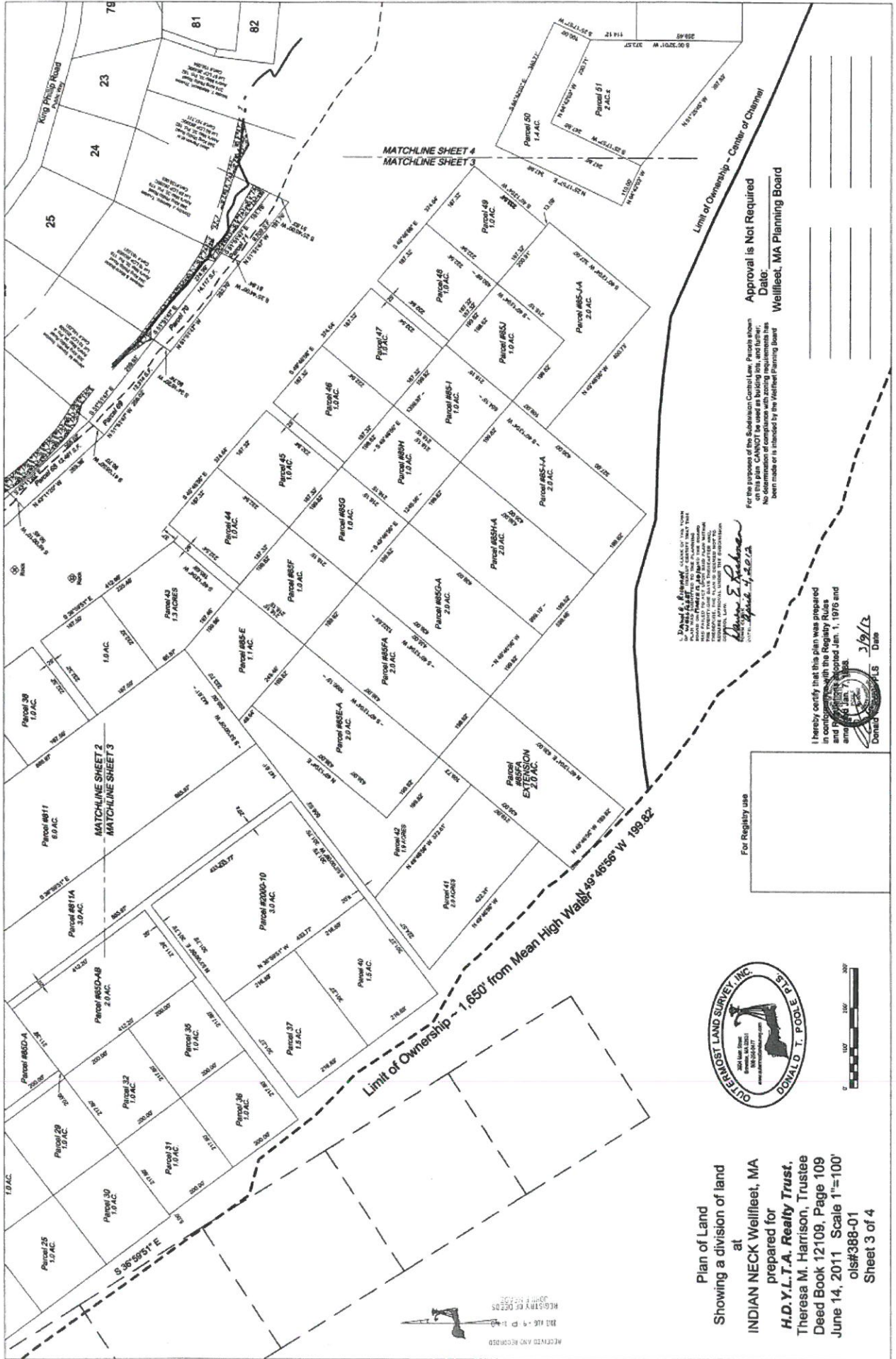
RECEIVED AND RECORDED  
2011 DEC - 9 - P 110  
REGISTRY OF DEEDS  
JENNIFER M. BROWN

For the purposes of the Subdivision Control Law, Parcels shown  
on this plan CANNOT be used as building lots, and further,  
No determination of compliance with zoning requirements has  
been made or is intended by the Wellfleet Planning Board

MASSACHUSETTS  
DONALD T. POOLE PLS  
315 12  
DUB







For the purposes of the Subdivision Control Law, Parcels shown in this plan are shown as contiguous parcels. No determination of compliance with zoning requirements has been made or is intended by the Wellfleet Planning Board.

*David E. Pomeroy*  
 David E. Pomeroy, Licensed Professional Surveyor, No. 10007  
 10007 State Street, Wellfleet, MA 01987  
 Telephone: (508) 847-2222  
 Fax: (508) 847-2222  
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*Theresa M. Harrison*  
 Theresa M. Harrison, Licensed Professional Surveyor, No. 10007  
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 Telephone: (508) 847-2222  
 Fax: (508) 847-2222  
 www.davepomeroy.com

Approval is Not Required  
 Date: \_\_\_\_\_  
 Wellfleet, MA Planning Board

I hereby certify that this plan was prepared in compliance with the Registry Rules and Regulations of the State of Massachusetts, Chapter 18A, Section 1, 1970 and amended by Chapter 18A, Section 1, 1970 and Chapter 18A, Section 1, 1970.

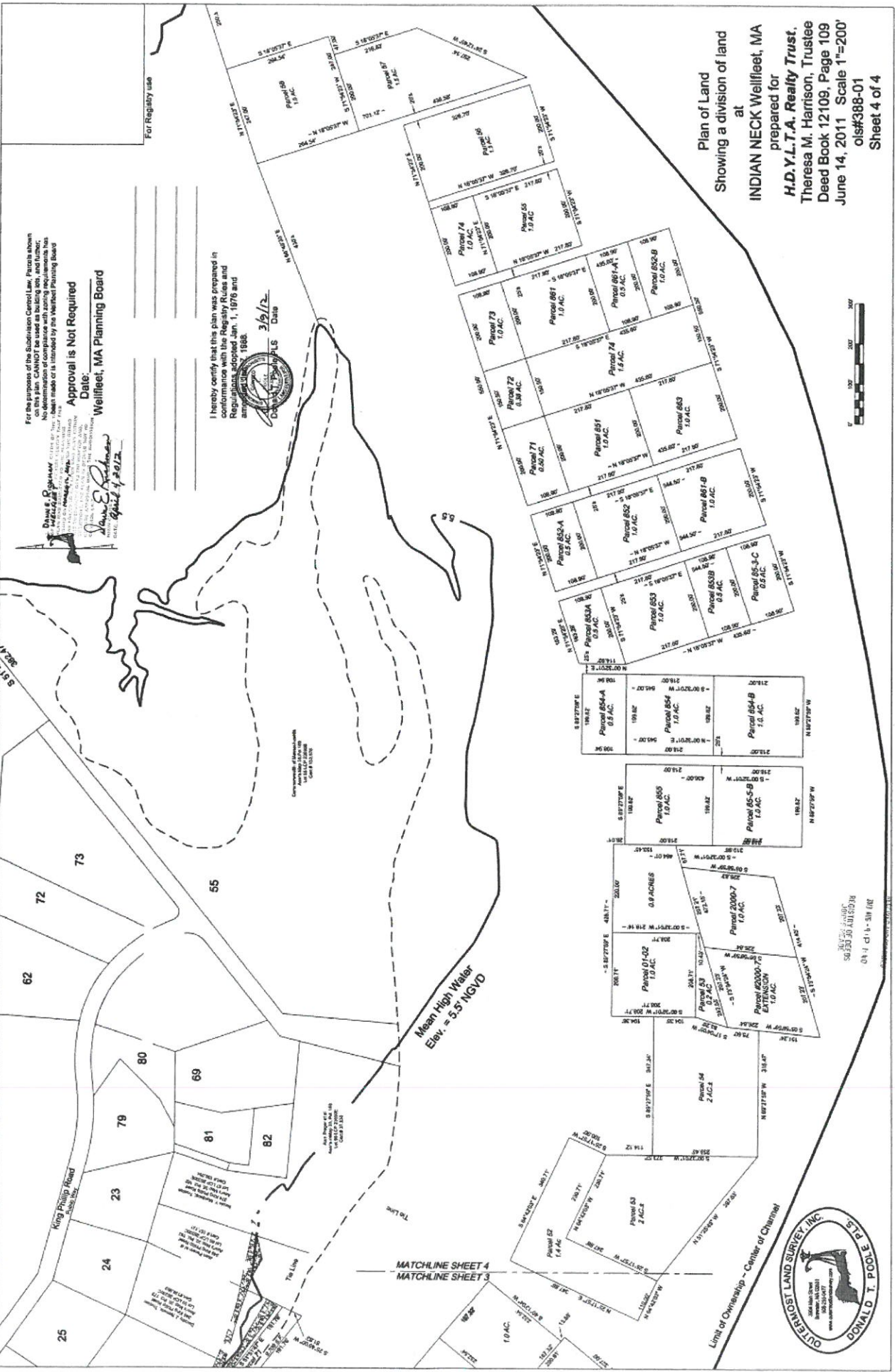
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Date: 3/19/12  
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 Fax: (508) 847-2222  
 www.davepomeroy.com

For Registry use



Plan of Land  
 Showing a division of land  
 at  
 INDIAN NECK Wellfleet, MA  
 prepared for  
 H.D. Y.L.T.A. Realty Trust,  
 Theresa M. Harrison, Trustee  
 Deed Book 12109, Page 109  
 June 14, 2011 Scale 1"=100'  
 ols#388-01  
 Sheet 3 of 4



For the purposes of the Submission Control Law, Parcels shown on this plan have been compared with zoning requirements has been made or is intended by the Walled Planning Board.

**Approval is Not Required**  
Date: Wellfleet, MA Planning Board

*David E. P. [Signature]*  
Date: 3/9/12

I hereby certify that this plan was prepared in conformance with the Registry Rules and Regulations adopted Jan. 1, 1976 and amended through 1988.



DAVID E. P. [Signature]  
Date: 3/9/12

Plan of Land  
Showing a division of land  
at  
INDIAN NECK Wellfleet, MA  
prepared for  
H.D. Y.L.T.A. Realty Trust,  
Theresa M. Harrison, Trustee  
Deed Book 12109, Page 109  
June 14, 2011 Scale 1"=200'  
dlis#388-01  
Sheet 4 of 4



MATCHLINE SHEET 4  
MATCHLINE SHEET 3

650-36

## RELEASE DEED

**Todd Mindrebo, Trustee of the H.D.Y.L.T.A. Realty Trust** under a declaration of trust dated January 28, 1998 and recorded on March 4, 1999 in the Barnstable County Registry of Deeds in Book 12103, Page 104, of Wellfleet, Barnstable County, Massachusetts (hereinafter the "Grantor") See Certificate of Appointment and Acceptance of Trustee recorded in Barnstable County Registry of Deeds on March 15, 2010 in Book 30351, Page 84.

For Consideration Paid in the amount of FORTY THOUSAND DOLLARS AND NO/100 (\$40,0000.00),

Grant to **Winslow Farms, LLC** of P.O. Box 224, Wellfleet, Barnstable County, Massachusetts 02667 ("Grantee"),

Those certain parcels of land, being labeled as **Parcel #2000-10 and Parcel 57** on a plan of land entitled "Plan of Land Showing a division of land at Indian Neck Wellfleet, MA prepared for H.D.Y.L.T.A. Realty Trust" dated March 9, 2012, drawn by Donald T. Poole, P.L.S and recorded on August 9, 2013 with the Barnstable County Registry of Deeds as Plan Book 650, Page 37.

Together with an easement to the Grantee, its successors and assigns for vehicular and pedestrian access, to pass and repass from the high-water line of Omaha Road to Parcel #2000-10 and Parcel 57 over the following strips of land depicted on Sheet (1 of 4) of the aforesaid plan, recorded with Barnstable Registry of Deeds as Plan Book 650 Page 37: along and between the upland and the general northerly boundary of the shellfish parcels of Parcel 1 through Parcel 56 and to Parcel #2000-10 via the 20 foot strip between Parcels 38 and 39 and easterly along the northern boundary of Parcel #811 and southwesterly along the eastern boundaries of Parcel #811 and Parcel #811-A.

Being a portion of the premises conveyed to Grantor by deed dated March 2, 1999 and recorded on March 4, 1999 with the Barnstable County Registry of Deeds in **Book 12103, Page 109**.

Signature and Acknowledgment on Following Page

Executed as a sealed instrument under the penalties of perjury this 20 day of November, 2018

Todd Mindrebo  
**Todd Mindrebo, Trustee**

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss

On this 20 day of November, 2018, before me, the undersigned notary public, personally appeared **Todd Mindrebo, as Trustee H.D.Y.L.T.A. Realty Trust**, proved to me through satisfactory evidence of identification, which was Mass. drivers license, to be the person who signed the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of this knowledge and belief.

Marie E. Pellegrino  
Notary Public

My Commission Expires: 9/20/2024



MARIE E. PELLEGRINO  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires September 20, 2024





COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

TOWN OF WELLFLEET

ORDER OF TAKING

At a regularly convened meeting of the Selectboard of the Town of Wellfleet (the "Town") held on this 25th day of October, 2019, it was voted and ordered as follows:

The Selectboard of the Town of Wellfleet, duly appointed, qualified, and acting pursuant to the vote taken under Article 13 of the April 22, 2019 Annual Town Meeting, a certified copy of which is attached hereto and incorporated herein, G.L. Chapter 79, and any and every other power and authority hereunto enabling, hereby takes, on behalf of the Town, the fee in and to all that land at Indian Neck, Wellfleet, Massachusetts, described in Exhibit A, attached hereto and incorporated herein.

Said land is owned or supposed to be owned by the following:

*Owner:* Todd Mindrebo, Trustee of the H.D.Y.L.T.A. Realty Trust, under Declaration of Trust dated January 28, 1998, recorded with the Barnstable County Registry of Deeds in Book 12103, Page 104

*Deed Reference:* Barnstable County Registry of Deeds, Book 12103, Page 109

If in any instance the name of the owner is not correctly stated, the names of the supposed owners being given as of this Order of Taking, it is understood that in such instance the land referred to is owned by an owner or owners unknown to us.

Damages are awarded to the Owner as set forth in Exhibit B, attached hereto and incorporated herein.

Betterments are not to be assessed under this taking.

[Signature Page Follows]



Exhibit A

All that land owned by the H.D.Y.L.T.A. Realty Trust described in a deed from Cape Shore Properties, Inc., dated March 2, 1999, recorded with the Barnstable County Registry of Deeds in Book 12103, Page 109, including any and all aquaculture and beach rights, said property shown on a "Plan of Land Showing a Division of Land at Indian Neck Wellfleet, MA Prepared for H.D.Y.L.T.A. Realty Trust," dated June 14, 2011, prepared by Outermost Land Survey, Inc., recorded with the Barnstable County Registry of Deeds in Plan Book 650, Pages 34 through 37, excluding that registered land shown on Land Court Plan 26390A and those properties conveyed in a Release Deed recorded with the Barnstable County Registry of Deeds in Book 31747, Page 138 and a Release Deed recorded with the Barnstable County Registry of Deeds in Book 31469, Page 179, together with any and all easements and rights of way appurtenant to the aforesaid property.

Exhibit B

Owner

Todd Mindrebo, Trustee of the  
H.D.Y.L.T.A. Realty Trust

Damages Award

\$2,000,000.00



## OFFICE OF THE TOWN CLERK

Joseph F. Powers, MMC/CMMC

300 Main Street  
Wellfleet, MA 02667

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508-349-0301  
508-349-0317 (fax)

At a legal meeting of the qualified voters of the Town of Wellfleet held on April 22, 2019, the following motion under Article 13 was written in the warrant.

**ARTICLE 13: Purchase of Parcel 17 on Map 34** To see if the Town will vote to appropriate the sum of \$3,400,000, or any other sum, for the purpose of paying all costs related to the purchase of land owned by the HDYLTA Trust, for the purchase of Map 34, Lot 17, not including land owned and deeded to others within the bounds of that lot. And that to meet this appropriation the Town Treasurer, with the approval of the Selectmen, be and hereby is authorized to borrow said amount under and pursuant to M.G.L. c. 44, §7, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; provided, however that no sums shall be borrowed or expended hereunder unless and until the Town shall have voted to exclude the amounts necessary to pay debt service on any bonds or notes issued pursuant to this vote from the limits of M.G.L. c. 59, §21C (Proposition 2½). Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with M.G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount. Or to take any other action in relation thereto.

*Two-thirds vote required*

**Board of Selectmen:** Recommend 4-0

**Finance Committee:** Recommends 7-0-1

And declared by the Moderator so voted by two-thirds vote:

It was moved and seconded that the Town vote to authorize the Board of Selectmen to acquire by purchase, gift, eminent domain or otherwise land owned by the HDYLTA Trust, as shown on Assessor's Map 34, Lot 17, not including land owned and deeded to others within the bounds of that lot for shellfishing, aquaculture and beach access: and further to appropriate the sum of \$2,000,000 for the purpose of paying all costs related to the acquisition of said land, and that to meet this appropriation, the Town Treasurer, with the approval of the Selectmen, be and hereby is authorized to borrow said amount under and pursuant to M.G.L. c. 44, §7, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; provided, however that no sums shall be borrowed or expended hereunder unless and until the Town shall have voted to exclude the amounts necessary to pay debt service on any bonds or notes issued pursuant to this vote from the limits of M.G.L. c. 59, §21C (Proposition 2½). Any premium received upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with M.G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount. Further, no funds shall be borrowed or expended for the acquisition of said land unless or until the Town shall have received a donation or donations of at least \$1 million for this purpose, and further, that the amount to be borrowed under this authorization shall be reduced by the amount of any donated funds received for this purpose.





# OFFICE OF THE TOWN CLERK

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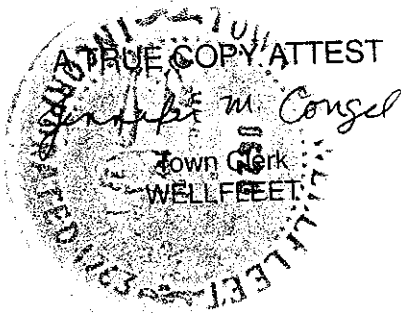
508-349-0301  
508-349-0317 (fax)

At the Annual Town Election on April 29, 2019 the following question:

Question 13: Shall the Town of Wellfleet be allowed to exempt from the provisions of Proposition two and one-half, so called, the amounts required to pay for the bond issued in order to purchase the Parcel 17 on Map 34, from the HDYLTA trust and all other costs incidental and related thereto?

Was so voted of 485 in the affirmative and 277 in the negative.

Joseph F. Powers, Town Clerk  
DATED: May 14, 2019



*Jennifer M. Congel*